ORDINANCE 2018-16

Borough of Metuchen
County of Middlesex
State of New Jersey

ORDINANCE AMENDING CHAPTER 124 OF THE CODE OF THE BOROUGH OF METUCHEN REGULATING THE USE OF THE METUCHEN TOWN PLAZA

WHEREAS, Borough of Metuchen is the owner of certain real property known and designated as Block 115, Lot 36.03, consisting of approximately .46 acres, on the Official Tax Map of the Borough of Metuchen, commonly known as “the Borough of Metuchen Town Plaza” (hereinafter referred to as the “Town Plaza”; and

WHEREAS, the Mayor and Council of the Borough of Metuchen wish to establish guidelines, rules and regulations relating to the use of the Town Plaza; and

WHEREAS, Chapter 124 of the Code of the Borough of Metuchen, entitled “Parks and Recreation Areas” governs, inter alia, the use of the Borough of Metuchen Parks and Recreation Areas; and

WHEREAS, the Mayor and Council deem it in the best interest of the Borough of Metuchen to create a subsection of Chapter 124 regulating the use of the Metuchen Town Plaza and establishing permitting for the same.

NOW, THEREFORE BE IT ORDAINED, by the Council of the Borough of Metuchen, County of Middlesex and State of New Jersey that the Chapter 124 of the Code of the Borough of Metuchen is hereby amended to include ARTICLE 3 entitled “Metuchen Town Plaza” in the Code of the Borough of Metuchen, to state the following:

ARTICLE 3

METUCHEN TOWN PLAZA

§ 124-15 Intent

The Town Plaza is a publicly owned space which is managed and operated by the Borough of Metuchen. It is the intent of the Borough that the Town Plaza is a welcoming, safe, flexible, public gathering space for residents and visitors to downtown Metuchen. The Borough promotes the use of the Plaza for Metuchen based civic, non-profits, associations, school groups, for events where the public is welcome to attend. Formal Events as defined herein as “Special Events” require a use permit to be issued by the Borough of Metuchen as provided for herein. The Town Plaza is not available for private events where members of the public are excluded, or an admission is charged.
The Town Plaza is not available for private events including, but not limited to, weddings, birthday parties or any other private event.

§ 124-16 Hours of Operation

The Town Plaza shall be open daily to the public for informal and scheduled events from 7:00 a.m. to 10:00 p.m. All Town Plaza events, both scheduled and/or informal must be open to the public, free of charge, and not on an invitation only or restricted basis. Access to and through the Plaza must be maintained at all times including during set-up and clean-up for an event. Sidewalk and tenant access must also be maintained at all times.

§ 124-17 Prohibited Acts and Conduct

No person in the Town Plaza shall:

A. Willfully mark, deface, disfigure, injure, tamper with or displace or remove any tables, benches, pavings or paving materials, or appurtenances thereof, signs, notices or placards, whether temporary or permanent, monuments, stakes, posts, or other boundary markers, or other structures or equipment, facilities or Plaza property or appurtenances whatsoever either real or personal. Plaza tables and chairs should not be stacked on top of each other.

B. Dig or remove any soil, rock, sand, stones, pavers, trees, shrubs or plants or other wood or materials or make any excavation by tool, equipment, blasting or other means or agency.

C. Construct or erect any structures of whatever kind, whether permanent or temporary, or run or string any public service utility into, upon or across such lands, except on special written permit issued hereunder.

D. Damage, carve, transplant or remove any tree or plant or injure the bark, or pick flowers or seed of any tree or plant, dig in or otherwise disturb grass areas or in any other way injure the natural beauty or usefulness of any Plaza area.

E. Climb any tree or walk, stand or sit upon monuments, vases, planters, fountains, railings, fences or upon any other property not designated or customarily used for such purposes.

F. Tie or hitch any animal or leash to any tree, plant or bench.

G. Throw, discharge or otherwise place or cause to be placed in the waters of any fountain, storm sewer or drain flowing into such water any substance, matter or thing, liquid or solid, which will or may result in the pollution of the waters.
H. Have brought in or shall dump in, deposit or leave any bottles, broken glass, paper, boxes, cans, dirt, rubbish, waste, garbage or refuse or other trash. No such refuse or trash shall be left anywhere on the Plaza but shall be placed in the proper receptacles where these are provided. Where receptacles are not provided, all such rubbish or waste shall be carried away from the Plaza by the person responsible for its presence and properly disposed of elsewhere.

K. Leave a bicycle in a place other than a bicycle rack or dock when such is provided and there is space available.

L. Leave a bicycle lying on the ground or paving or set against trees or in any place or position where other persons may trip over or be injured by them.

M. Set up tents, canopies or any other temporary shelter unless specifically permitted to do so by the Borough as set forth in this Chapter.

N. Take part in or abet the playing of any games involving thrown or otherwise propelled objects, that could cause a risk or danger to other occupants of the Plaza, including handball or ball throwing.

O. Ride a bicycle, skateboard, scooter or horse, roller skate, roller blade and/or hoverboard through the Plaza. Walking a bicycle, skateboard, scooter, hoverboard through the Plaza is permitted. Exceptions to the herein may be made for Borough related safety events, i.e., safety demonstrations performed by the Metuchen Police Department or groups like Bike Walk Metuchen.

P. Bring or possess alcoholic beverages with an intent to consume the same within the Plaza, or to publicly consume alcoholic, with the exception being when a permitted special event takes place with the required security, the required State of NJ Division of Alcohol Beverage Control and Borough permits and insurance coverage is provided. All events where alcohol is served shall be in full compliance with the NJ Division of Alcoholic Beverage Control rules and regulations.

Q. Drive or park a vehicle onto the Plaza. Vehicles are only permitted onto the Plaza for purposes of loading and unloading and only after all necessary safety precautions are established during said times. Vehicles are not permitted to idle while on the Plaza.

R. Permit a pet to walk or run in or on the Plaza without a leash. All persons walking a pet must clean up after all pets.

S. Have in his or her possession, or set or otherwise cause to explode or discharge or burn, any firecrackers, torpedo rockets or other fireworks, firecrackers or explosives of inflammable material or discharge them or throw them into any such areas from lands or highways adjacent thereto. This prohibition includes any substance, compound, mixture or article that in conjunction with another substance or
compound would be dangerous from any of the foregoing standpoints. At the discretion of the Borough Administrator and Recreation Director, permits may be given for conducting properly supervised fireworks in designated Town Plaza areas.

T. Build or attempt to build a fire. Fire pits are not permitted. No person shall drop, throw or otherwise scatter burning cigarettes or cigars, tobacco paper or other inflammable material within the Plaza.

U. Enter an area of the Plaza posted as "Closed to the Public," nor shall any person use or abet in the use of any area in violation of posted notices.

V. Gamble, or participate in or abet any game of chance, except in such areas and under such regulations as may be designated by the Recreation Commission.

W. Sleep or protractedly lounge on the seats or benches or other areas or engage in loud, boisterous, threatening, abusive, insulting or indecent language or engage in any disorderly conduct or behavior tending to breach the public peace.

X. Fail to produce and exhibit any permit issued from the Borough claimed to have upon request of any authorized person who shall desire to inspect the same for the purpose of enforcing compliance with any ordinance or rule.

Y. Disturb or interfere unreasonably with any person or party occupying any area or participating in any activity under the authority of a permit issued by the Borough.

Z. Expose or offer for sale any article or thing, nor shall a station or place any stand, cart or vehicle for the transportation, sale or display of any such article or thing. Exception is here made as to any regularly licensed concessionaire acting by and under the authority and regulation of the Borough.

AA. Paste, glue, tack or otherwise post any sign, placard, advertisement or inscription whatever, nor shall any person erect or cause to be erected any sign whatsoever on Plaza without specific authorization to do so. Signs belonging to stores, offices or retailers located on the Plaza must only be displayed in front of the business and no place else on the Plaza.

Nothing herein shall permit activities and/or conduct that are prohibited in the existing Ordinances. §§124-1, 124-2 and Chapter 158 shall apply to the Town Plaza. Smoking, as defined in § 158-1 shall be prohibited in the Town Plaza.

§ 124-19. Special Events and Permit Requirement

A group or gathering of twenty (20) or more persons shall constitute a Special Event requiring a permit to be issued by the Borough for the use of the Town Plaza. No group of twenty (20) or more persons shall utilize the Town Plaza for an event, gathering or outing without first having obtained a use permit in advance from the Borough. Groups
of less than twenty people gathering for the same purpose or intent are not permitted to
use the Plaza without a permit. Permits are not required by individuals using the Plaza for
casual, informal gatherings. Adult supervision of children's groups requiring a permit is
required at all times. No person shall call or hold any public meeting or give any concert
or entertainment of any kind or erect any structure, stand, tent, or platform, utilize any
loudspeaker, public address system, or amplifier except by the specific written authority
of the Borough, as authorized by permit. Although all events shall be opened to the
public, no other organized group or persons other than the one holding the use permit
shall interfere with permit holder’s use of the Town Plaza during the time covered by the
permit issued by the Borough. All permits that are granted must be produced upon
demand.

§ 124-20. Use Permit

All permits for the Town Plaza shall be approved by the Borough Administrator in
consultation with the Recreation Director, with further approval of the Chief of Police or
his designee, Fire Chief or his designee, and or the Superintendent of Public Works or his
designee as deemed necessary by the Borough Administrator. The issuance of use
permits shall be limited to Metuchen based public, school, civic and non-profit
associations, groups or entities and Metuchen based for-profit businesses or entities.

Permits for special events in the Town Plaza shall be obtained by application to the
Recreation Department in accordance with the following procedure:

A. A person, entity or group seeking issuance of a permit hereunder shall file an
application with the Recreation Department providing:

(1) The name and address of the applicant.

(2) The name and address of the person, persons, corporation or association
sponsoring the activity, if any.

(3) The day and hours for which the permit is desired and the type of event
planned.

(4) The estimated size and number of attendees of the event.

(5) A detailed map of the Plaza must be submitted showing the desired area or
location in the Town Plaza sought to be used for the event and a detailed
description of all equipment, vendors, vehicles and associated items for use
during the event.

(6) Any other information which the Borough Administrator or Recreation
Director shall find reasonably necessary to a fair determination as to whether a
permit should be issued hereunder.
B. In addition to the completed application, a person, entity or group seeking issuance of a permit hereunder shall also provide the following:
   (1) A security deposit in the amount of two hundred fifty dollars ($250.00) made payable to the “Borough of Metuchen”, unless waived by the Borough Administrator.
   (2) Adequate Insurance Information demonstrating that it will provide the Borough with a Certificate of Liability Insurance and additional insured endorsement, such information shall also state the specific dates and limits of coverage.

C. Application for a permit for an event can be submitted up to one year in advance of the event date. Date selection will not be transferred upon request after approval is provided. All applications for a permit for an event shall be submitted no later than sixty (60) days prior to the requested use, unless sufficient good cause is shown and there is no other event proposed for said date. However, under no circumstances will the Borough issue a permit for an event less than thirty (30) days prior to the proposed date of the event.

D. Rain dates will not be held in addition to the requested event date for all events. Requests can be made for one rain date, in addition to the scheduled event date. The Borough Administrator will decide if a rain date can be approved on a case by case basis.

E. Standards for issuance of a use permit by the Borough Administrator and Recreation Director shall include the following findings:
   (1) That the proposed activity or use of the Town Plaza will not unreasonably interfere with or detract from the general public enjoyment of the Town Plaza.
   (2) That the proposed activity and use will not unreasonably interfere with or detract from the promotion of public health, welfare, safety and recreation.
   (3) That the proposed activity or uses that are reasonably anticipated will not include violence, crime or disorderly conduct.
   (4) That the proposed activity will not entail extraordinary or burdensome expense or police operation by the Borough.
   (5) That the proposed activity will not result in a breach of this Ordinance, another ordinance, or law, or may be adverse to the public interest, to public health and/or safety, or the protection of persons and/or property.
   (6) That the Town Plaza or portions thereof desired have not been reserved for other use at the date and hour requested in the application.

F. The Borough of Metuchen Recreation Department shall maintain a final schedule of events which have received approval for a use permit as well as a proposed schedule of applications pending approval. Events sponsored by the Borough or other public entities, shall have a preference over all other requests, thereafter, Metuchen based civic, non-profits, associations, school groups, for events shall have preference over business or
requests made by for-profit entities and/or groups. The Borough will use its best efforts to provide all parties seeking to utilize the Town Plaza for an event has a fair opportunity to do so.

G. The Borough Administrator may approve a permit with modifications or special conditions as the Borough Administrator deems necessary under the circumstances. Some examples of the conditions which the Borough Administrator may require at the applicant sole cost and expense include but are not limited to the provision of onsite event security coverage or traffic control which must be provided by the Metuchen Police Department and/or portable bathrooms for the event.

H. Appeal.

(1) Within five days after the receipt of the denial for a permit any aggrieved person, entity or group shall have the right to appeal to the Mayor and Council President by submitting a formal written request. The Mayor and Council President shall consider the request for an appeal and shall provide the applicant with a decision in writing no later than fourteen (14) days in advance of the proposed date for the Special Event.

(2) In considering the request for appeal, the Borough Officials may request further information from the applicant or from any other person or entity. Borough Council by serving written notice thereof on the Borough Clerk within five days of the refusal.

(3) In addition to the criteria set forth in § 124-20(B), the following will be considered in the review of the request to appeal:

   a. A report of the Borough Administrator or other Borough Official providing for the reasons for the denial and any information provided by the applicant;
   b. Whether the application form and/or the information provided by the applicant was complete and accurate;
   c. Whether the Applicant is able to provide the Borough with the adequate protection for the public health, safety, welfare and protection of property.

(4) The decision of the Mayor and Council President shall be final.

I. Notwithstanding any other section, the Borough shall refuse to issue a permit if the Finance Department notes that the applicant or any principal, director or officer of the applicant has an outstanding and unpaid debt to the Borough including a debt relating to a special event regardless of whether such debt was incurred through another organization or legal entity in relation to a special event.
J. A permittee shall be bound by all Borough rules and regulations and all applicable ordinances fully as though the same were inserted in the permits.

K. The person or persons to whom the permit is issued shall be liable for all loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall have been issued. The Recreation Commission shall have the right to require any permittee to submit evidence of liability insurance covering injuries to members of the general public arising out of such permitted activities in such amounts as may be from time to time determined by the Commission prior to the commencement of any activity or issuance of any permit.

L. Revocation. The Borough Administrator, in consultation with the Recreation Director, and/or the Chief of Police or his designee shall have the authority to revoke a permit if there is reasonable grounds to believe that the holding or continuation of the special event

   (1) poses a danger to the health and safety of any person;

   (2) poses a danger to property;

   (3) is not in the public interest; or

   (4) is in contravention of this ordinance, rule or policy of the Borough or for the failure to comply with a condition of the permit.

To the extent permissible, in the case of a revocation prior to the date and time of the proposed event, the Borough Official shall immediately inform the permit holder or the permit representatives of the revocation and the reasons for it by means of contacting the permit holder at the address or at the telephone number provided in the permit application. Nothing herein shall limit the Borough’s right to revoke a permit during the course of the event if determined by the Borough Official that the above criteria apply. In such a case, the Borough Official shall immediately advise the designated Supervisor of the event of the revocation and the event shall be immediately terminated and the person, entity or group shall forfeit its deposit.

§ 124-21. Permit Fee, Security Deposit and Insurance Requirements

A. There shall be a Permit Fee of $300.00 for a full day use of the Town Plaza. Full day shall be the use of the Town Plaza for over five (5) hours. There shall be a Permit Fee of $150.00 for a half day use of the Town Plaza. Both set-up and clean-up time shall be factored into the time required and which permit is required. The Permit Fee shall be waived by the Borough for all public entities and Metuchen based school, civic, community, non-profit, charitable, associations, entities or groups.
B. A security deposit of $250.00 in the form of a check made payable to the “Borough of Metuchen” shall be submitted with the Application for a use permit. The security deposit shall be refunded, without interest, to the applicant within thirty (30) days of the event date with any deductions made for any damage and/or failure to comply with clean-up policies after an event. The required security deposit may be waived by the Borough Administrator.

C. No permit shall be issued for the use of the Town Plaza unless the applicant shall provide the Borough with satisfactory proof of the following:

   (1) Proof of insurance coverage as follows:
       a. For bodily injury to any one person in the amount of $1,000,000 and any occurrence in the aggregate amount of $3,000,000;
       b. For property damage for each occurrence in the aggregate amount of $500,000;

   (2) A certificate of insurance shall be delivered to the Borough Administrator which shall name the Borough of Metuchen, its officers, employees, agents and representatives and the Metuchen Downtown Alliance, its officers, agents and representatives as an additional insureds on the policy.

§ 124-22. Miscellaneous Use Permit Requirements and Conditions

A. Any organization, entity or group utilizing the Town Plaza shall be solely responsible for cleaning up the Town Plaza during and upon the conclusion of an event, whether formal or informal. The Department of Public Works of the Borough of Metuchen shall not be responsible for the clean-up or maintenance of the Town Plaza both during and after an event. Any organization, entity or group utilizing the Town Plaza are also responsible for moving Plaza furniture, to the extent necessary and approved by permit for their event. Do not stack Plaza tables and chairs on top of each other. Upon the conclusion of the event, any organization, entity or group utilizing the Town’s Plaza shall return all of the Plaza furniture to its original location. Failure to maintain, clean-up and/or return Plaza furniture will result in the loss or deduction of the security deposit.

B. Permittees, upon approval by the Borough, are allowed to utilize the electrical outlets available in the planting beds, and those located throughout the Plaza. Unless, specifically authorized, Permittee shall not utilize an extraordinary amount of electricity for or during any event.

C. Any tent or canopy utilized in the Town Plaza must be properly weighted for wind resistance. Tents or canopies greater than 10 X 10 must be weighted with concrete. Spikes cannot be hammered into the Plaza surface to secure tents, canopies or other equipment. The Plaza surface cannot be damaged or altered in any way whatsoever. Permittees and/or occupants of the Plaza will be responsible for any damage to the Plaza sustained during an event, whether scheduled or informal.
D. All applicants for a permit must agree to be responsible for indemnifying and holding harmless both the Borough of Metuchen, its officers, employees agents and representatives from any claim whatsoever arising out of, or in connection with the use of the Town Plaza in order to obtain a use permit.

E. It shall be the Applicant and/or Permittee’s sole responsibility, at its sole cost and expense, to obtain all necessary inspections, permits and approvals for the proposed event to comply with all State, County or local regulations. Applicant must provide to the Borough copies of all necessary permits issued prior to receiving the Town Plaza Event Use Permit. The Borough reserves the right to impose further conditions upon the Use Permit in the event that necessary approvals are not provided.

F. If the Permittee leaves any item(s) at the Plaza after the completion of the event breakdown and/or load-out, Permittee will be charged a minimum of $40.00 per day for storage including the hourly rates set forth below for the transportation of the item/s.

G. Additional fees may be deemed necessary by the Borough of Metuchen based upon the nature and/or size of item(s) left onsite and all security deposit funds will be forfeited. Items may be held at Metuchen DPW for pickup for a reasonable period of time. However, under no circumstances shall the Borough of Metuchen, its employees, officials, agents or representatives shall be held liable for any damage to items left on the premises after the prescribed permit hours.

H. Repairs for damages, maintenance and/or clean-up shall be calculated at a minimum of $65.00 per man-hour plus the cost of materials. Additional costs may be deemed necessary by the Borough based upon the nature of repairs and/or replacements. Failure to pay within thirty (30) days will require forfeit of the deposit. In the event that the security deposit is insufficient to cover the costs to the Borough and the permittee fails to make a timely payment therefor, an action by Borough to recover the fees will be instituted and the permittee will be responsible for all collection costs, including attorneys’ fees, and disqualification from consideration for issuance of future permits.

§ 124-23. Cancellation

A. Cancellation of any event, after a permit is issued, must be provided to the Borough Administrator, in writing. Cancellations of events received more than sixty (60) days in advance may be rescheduled within three hundred sixty five (365) days of cancellation date upon the submission of a written request and approval by the Borough Administrator without an adverse consequence. If the cancellation occurs thirty (30) days or less before the date of the event, the permittee must submit of new application for a use permit. Any Applicant seeking a permit shall notify the Borough, in writing, in the event that the event for which the party seeks a permit is cancelled or a permit is no longer sought.
Repeated cancellations shall be considered as negative criteria in considering future requests for use permits.

B. Rain dates and requests therefor shall be governed by y § 124-20(D) above.

§ 124-24. Enforcement

A. The Borough Administrator, Recreation Director, Fire Chief or his designee, and or the Superintendent of Public Works or his designee and all members of the Metuchen Police Department shall, in connection with their duties imposed by law, diligently enforce the provisions of this article.

B. The Borough Administrator, Recreation Director, Fire Chief or his designee, and or the Superintendent of Public Works or his designee and all members of the Metuchen Police Department shall have the authority to eject from the Town Plaza any person or persons acting in violation of this article.

C. The Borough Administrator, Recreation Director, Fire Chief or his designee, and or the Superintendent of Public Works or his designee and all members of the Metuchen Police Department shall have the authority to seize and confiscate any property, thing or device in the Town Plaza used in violation of this article.

§ 124-25. Violation and penalties

Any person, persons, organization, entity or group violating any of the provisions of this article or any rule or regulation promulgated pursuant hereto, shall upon conviction be subject to penalties as provided in Chapter 1, General Provisions, Art. 1.

§ 124-26. Severability

Each section, subsection, sentence, clause and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this Ordinance.

§ 124-27. Effective Date

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.
I hereby certify the foregoing to be a true copy of an ordinance introduced by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a special meeting held on June 28, 2018

________________________
Susan D. Jackson, RMC
Borough Clerk

Adopted: July 16, 2018
Date of Publication: July 19, 2018

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X – INDICATES VOTE AB- ABSENT NV- NOT VOTING

I hereby certify the foregoing to be a true copy of an ordinance adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on July 16, 2018

________________________
Susan D. Jackson, RMC
Borough Clerk

ATTEST: BOROUGH OF METUCHEN

________________________  ____________
Susan D. Jackson, RMC          Jonathan M. Busch
Borough Clerk                  Mayor