

TOWNSHIP OF MAHWAH

ORDINANCE NO. 1981

ORDINANCE OF THE TOWNSHIP OF MAHWAH, COUNTY OF BERGEN, STATE OF NEW JERSEY, AMENDING CHAPTER 4, GENERAL LICENSING, TO ESTABLISH LICENSING REQUIREMENTS FOR OUTDOOR ENTERTAINMENT (7 PERMITS/3 HOUR TIME LIMIT)

WHEREAS, on June 3, 2020, Governor Murphy issued Executive Order 150, which temporarily authorized restaurants, bars and other food and beverage establishments to provide in-person service at designated outdoor dining areas during the COVID-19 pandemic; and

WHEREAS, the Township Council eased the Township's regulations in order to help such establishments successfully adapt their operations to Executive Order 150 and all other applicable laws through the issuance of permits for outdoor dining; and

WHEREAS, on February 5, 2021, Governor Murphy signed into law P.L.2021, C.15, which, among other things, established formal procedures for municipal review and approval of outside dining applications, expanded the potential outdoor dining footprint for establishments, and extended expiration date of the New Jersey Division of Alcoholic Beverage Control's COVID-19 Expansion Permits issued pursuant to Special Ruling No. 2020-10 to the later of November 30, 2022 or the date on which indoor dining resumes without capacity limitations pursuant to an executive order issued by the Governor; and

WHEREAS, on March 4, 2021, the Township adopted Resolution 134-21 memorializing temporary provisions to implement and regulate expanded outdoor dining and entertainment in accordance with P.L.2021, C.15, which resolution expired on December 31, 2021; and

WHEREAS, on May 5, 2022, the Township adopted Resolution 173-22 memorializing updated temporary provisions for expanded outdoor dining and entertainment in accordance with P.L.2021, C.15, including the prohibition of outdoor entertainment pending adoption of an outdoor entertainment ordinance regulating same; and

WHEREAS, the Township now wishes to provide for outdoor entertainment opportunities beyond November 30, 2022 in continued support of local businesses; and

WHEREAS, at the same time, the Township has the authority and duty to regulate such opportunities to provide for the health, safety and welfare of all Township residents and visitors, including maintaining quality of life; and

WHEREAS, the Mayor and Township Council wish to adopt to establish a regulatory licensing scheme for outdoor entertainment in the Township.

NOW THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Mahwah, County of Bergen, State of New Jersey, as follows:

SECTION 1. Chapter 4, General Licensing, is hereby amended to establish new § 4-11, Outdoor Entertainment License, to read as follows in its entirety.

§ 4-11.1 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this Section, have the meanings set forth below:

AGGRIEVED PARTY

Shall mean any person, persons, or entity, whether corporate or private, aggrieved by the sound of outdoor entertainment emanating from an establishment.

AMPLIFIED

Shall mean increased sound volume created by any mechanical, electric or electronic device.

APPLICATION

Shall mean an application for an Outdoor Entertainment License.

BAR

Shall mean a place of business duly licensed by the Alcoholic Beverage Control Board for the sale and on-premises consumption of alcoholic beverages by the drink as the principal or primary use, with the option of some food service provided, including but not limited to prepackaged snacks.

BREWERY

Shall mean a brewery operating under a brewery license pursuant to R.S.33:1-10.

DECIBEL LEVEL

Shall mean a unit for measuring the volume of a sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter), as measured from an establishment's property boundary.

DISTILLERY

Shall mean a distillery that has been issued, and is in compliance with, a distillery license pursuant to R.S.33:1-10.

ESTABLISHMENT

Shall mean any commercial for-profit bar, distillery, restaurant and other food and beverage establishment.

EVENT

Shall mean a performance for which an Outdoor Entertainment License has been issued.

FOOD & BEVERAGE

Shall mean food and/or beverages that are cooked, prepared, sold, served, and consumed on the business premises.

OUTDOOR

Shall mean a measurement taken from any point within the property boundaries of an aggrieved party, excluding Township rights-of-way, or taken from any point outside of the commercial establishment at the discretion of the Township.

OUTDOOR ENTERTAINMENT

Shall mean any amplified live act, including vocalists, actors, dancers, floor shows, instrumentalist, recorded music played by a DJ, and live performances, including but not limited to musical performances, and the playing or projecting of any content from a recording or streaming service, for an audience of less than 500 people, that is taking place in an Outdoor Space and that is intended to be audible or that is actually audible beyond the Outdoor Space. Outdoor Entertainment shall not include non-amplified acoustic performances.

OUTDOOR ENTERTAINMENT LICENSE

Shall mean a license issued pursuant to this Section regulating Outdoor Entertainment.

OUTDOOR SPACE

Shall mean a patio or deck, whether covered or uncovered, a yard, a walkway, or a parking lot, or a portion of any such space, that is located on or adjacent to the establishment, which space is owned, leased, or otherwise in the lawful control of the owner or operator of the establishment.

PERSON

Shall mean any individual, firm, partnership, association, corporation, company or organization of any kind, including a charitable, religious, membership, hospital or not-for-profit corporation

RESTAURANT

Shall mean a place of business or portion thereof where food and beverages are cooked, prepared, sold, served, and consumed on the business premises.

§ 4-11.2 Licensing.

- a. Outdoor entertainment shall be prohibited at all establishments, except where specifically requested in an outdoor entertainment license application and approved by the Township Zoning Officer.
- b. An outdoor entertainment license is granted to a specific person to offer outdoor entertainment in a specified outdoor space on a single specified date and time.
- c. The application for a license shall be on the form provided by the Clerk, addressed to the Zoning Officer, and filed with the Clerk at least twenty-one (21) days prior to the date the event will be held.

- d. The Application shall include, but not be limited to, the following information:
1. The name, age and personal address of the applicant, including proof of address in the form of a photo ID; if the applicant is a corporation, the name of the corporation and the names and addresses of directors and officers of the corporation; if the applicant does not reside in Bergen County, the name, address and phone number of any agent, who shall be a natural person and shall reside or have a place of business in Bergen County and who shall be authorized to and shall agree by verified statement to accept notices or summonses issued with respect to violations of any law, ordinances, rules or regulations.
 2. The name and personal address of the record owner of the subject property or properties and the nature and interest of the applicant in the property; the proposed date and hours of the outdoor entertainment, including setup and shutdown times; expected maximum number of persons intended to use the property at one time and collectively; the expected number of automobiles and other vehicles intended to use the property at one time and collectively; the purpose of the event, including the nature of the activities to be carried on and the admission fee to be charged, if any; and the name of groups, organizations, charities or individuals who shall benefit from the proceeds of the event.
 3. The application shall be signed by the applicant and the property owner.

§ 4-11.3 Conditions for Granting License.

- a. Outdoor entertainment shall not be the norm and a license shall be granted only where the Zoning Officer is convinced that it would not unreasonably interfere with the quality of life of the surrounding community. In determining whether or not to grant a license, the Zoning Officer shall consider, but not be limited to, the following criteria:
1. Nature and location of the establishment, including its proximity to residential properties, and input of residents of the surrounding area, including history of complaints from any aggrieved parties;
 2. Impact of the event on the safe and orderly movement of traffic within and contiguous to the event;
 3. Need for the Township to police the event and the event's impact on fire and police protection and ambulance service to contiguous areas.
 4. Impact of the event on the general health, safety and welfare of the Township.
 5. Verification that there are no outstanding violations on the property at which the event will be held or any outstanding or unsatisfied conditions of a Township agency approval, including but not limited to the Planning Board or the Zoning Board of Adjustment.

6. Verification that the information contained in the application is not found to be false or nonexistent in any material detail.
 7. Verification that the grant of the outdoor entertainment license would not violate any existing covenants on the property.
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- b. If a license is granted, the license shall set forth the maximum number of persons permitted to attend the event. The Zoning Officer, in determining the maximum limit, shall take into consideration the capacity of the site, the facilities to be available and the availability of public highway and other means of transportation to and from the site. The applicant shall limit all ticket sales or invitations to such maximum number and shall include such limitations in all advertising.
 - c. An outdoor entertainment license shall expire at the close of the event for which the license is issued.
 - d. Licenses are limited to seven (7) times per calendar year and no more than two (2) times per month, for a maximum of three (3) hours per license.
 - e. Licensed outdoor entertainment shall begin no earlier than 12 noon and end no later than 7 p.m. on Monday through Thursday and no later than 9 p.m. on Friday and Saturday. No licenses shall be issued for Sundays. Outdoor entertainment shall be limited to no more than three (3) hours total per license.
 - f. The decibel level of outdoor entertainment shall not exceed 55 dB.
 - g. The establishment and outdoor space shall be fully accessible to authorized members of the Mahwah Police Department and the various Township departments having regulatory jurisdiction over the premises. Prior to the issuance of a license, the applicant shall furnish the Township with written authorization to permit the Township or its lawful agents to enter the subject property for the purpose of inspecting the same, and for the protection of health, safety and welfare of citizens of the Township of Mahwah.
 - h. Prior to the issuance of a license, the applicant shall furnish the Township with proof of a comprehensive liability insurance policy, issued by a company duly licensed by the State of New Jersey, insuring the applicant against liability for damage to persons or property, with limits as established by the Township's risk management consultant.
 - i. The Township may issue a license upon such other reasonable conditions necessary to ensure compliance with this law and for the general protection of the health, safety and welfare of the persons and property in the Township.

§ 4-11.4 Review of Application; Approval or Denial of License.

- a. All applications shall be submitted to the Township Clerk. Applications will be reviewed by the Chief of Police, Fire Official, Health Office and any other required Township Departments prior to the Zoning Officer rendering a decision.
- b. An appeal for a review of any license approval, denial, revocation, suspension, or waiting period issued by the Zoning Officer may be filed through the Township Clerk with the Township Council, with a copy forwarded to the Zoning Officer. The Township Council, or a designee if so delegated by the Township Council, shall conduct a hearing within thirty (30) days of the appeal properly being filed with the Clerk, unless an extension is agreed to between the Township Council and the appellant. The Township Council shall thereafter render a decision.

§ 4-11.5 License Fee.

The license fee shall be \$100 per license/event, to be paid with the application.

§ 4-11.6 Modification or Rescission of License.

- a. If, after a license is issued, the Zoning Officer determines that any of the representations and/or statements contained in the application, or that any of the conditions of the license have not been complied with, the Zoning Officer may serve the licensee's agent, for service of process as appointed pursuant to subsection 4-11.2 hereof, a five (5) day notice of public hearing specifying the manner in which the licensee has not complied with the terms of its license, and, at which hearing, the Township Council may for good cause modify or rescind such license, absolutely or upon conditions.
- b. If the Police Chief or designee, or Fire Official or designee, determines that there is an immediate threat to public safety as a result of weather conditions, overcrowding, code violations, traffic or other reasons the Police Chief or Fire Official may revoke the licenses.

§ 4-11.7 Violations and Penalties.

- a. Any person who violates any provision of this section shall, upon conviction thereof, be punishable by a fine not exceeding \$2,000 or such other penalties consistent with N.J.S.A. § 40:49-5. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.
- b. Any person violating any of provisions of this section shall be subject to a six (6) month waiting period before applying for a subsequent outdoor entertainment license.

SECTION 2. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

SECTION 3. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

SECTION 4. This ordinance shall take effect twenty (20) days following final passage, approval, and publication as required by law.

Introduced:

Adopted:

Effective Date:

TOWNSHIP OF MAHWAH

David May, Council President

ATTEST:

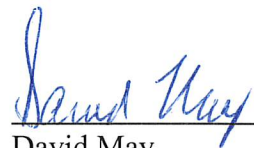
Kathrine G. Coviello, RMC/CMC/MMC
Municipal Clerk

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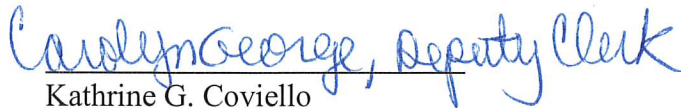
Page: 8

Dated: September 1, 2022

Attest

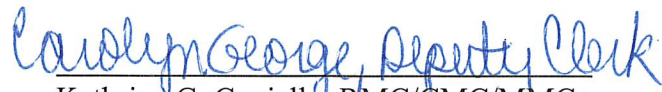


David May
Council President



Kathrine G. Coviello
Municipal Clerk

I, Kathrine G. Coviello, Municipal Clerk of the Township of Mahwah, hereby certify that the within Ordinance was passed and adopted at a meeting of the Township Council held on the 11th day of August, 2022.



Kathrine G. Coviello, RMC/CMC/MMC
Municipal Clerk