

ORDINANCE 2013-12

**AN ORDINANCE OF THE BOROUGH OF CHESTER,
MORRIS COUNTY, STATE OF NEW JERSEY, ADOPTING
CHAPTER 202 OF THE CODE OF THE BOROUGH OF
CHESTER TO PERMIT AND REGULATE A FORM OF
HISTORIC SEASONAL BUSINESS (MARKET)
ACTIVITIES.**

WHEREAS, municipalities are empowered to make, amend, repeal, and enforce its ordinances pursuant to Statute (*N.J.S.A.* 40:48-1, et seq.); and

WHEREAS, municipalities are required by Statute to follow specific procedures for the passage of ordinances (*N.J.S.A.* 40:49-2 et seq.); and

WHEREAS, the Mayor and Council of the Borough of Chester have determined that there is a need and in the best interests of the Borough to permit and regulate a form of historic seasonal business (market) activities which were once prevalent in the Borough and which are not squarely addressed by Chapter 203 (Special Events) of the Borough Code.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Chester, County of Morris, State of New Jersey that the Borough Code is hereby amended as follows:

SECTION 1: Chapter 202 of the Code of the Borough of Chester is hereby adopted to read in its entirety as follows:

FARMERS' MARKETS

§ 202-1. Purpose.

The purpose of this Chapter is to permit and regulate a form of historic seasonal business (market) activities which were once prevalent in the Borough and which are not squarely addressed by Chapter 203 (Special Events) of the Borough Code. The intention of this Chapter is to address said activity on both municipal and private property.

§ 202-2. Definitions.

For the purpose of this Chapter, the terms used herein are defined as follows:

FARMERS' MARKET – A sale by farmers, growers, or producers from the local area, direct to the public, of farmed food products and produce, including those grown, cultivated, raised, bred, harvested, caught, pickled, baked, smoked, processed, or prepared, together with the incidental sale of natural based products, foods and beverages to patrons.

MARKET CONCESSIONAIRE - Any person, persons, firm, association, partnership, corporation or any other entity which occupies space at a farmers' market for the purpose of selling or displaying for sale any item, including food and beverages.

MARKET – As the term is used in this Chapter hereafter, shall mean a Farmers' Market as defined above.

NOT-FOR-PROFIT - The selling or soliciting for sale of goods, merchandise or services, the proceeds of which action are devoted exclusively to philanthropic, charitable or religious purposes as defined in the Internal Revenue Code, 26 U.S.C. 501, for a religious, charitable, civic, or veteran organization, service club, volunteer fire or first-aid company which is located in or has a substantial membership from or provides substantial service to the Borough or its inhabitants.

PERSON - Includes the singular and plural and shall also mean and include any person, firm, corporation or partnership or other fictitious person or de jure entity.

MARKET PROPRIETOR - A "person" or a "not-for-profit" which proposes to operate a farmers' market within the Borough of Chester, which is licensed pursuant to this Chapter.

MARKET ITEMS – The term “market items” shall mean farmed food products and produce, including those grown, cultivated, raised, bred, harvested, caught, pickled, baked, smoked, processed, or prepared, together with the incidental sale of natural based products, foods and beverages to patrons.

§ 202-3. Licenses required.

A. Except as otherwise provided herein, it shall be unlawful for any person to operate an farmers’ market within the Borough of Chester, without first obtaining a license as required by this Chapter and otherwise complying with all other applicable statutes, regulations and ordinances.

B. It shall be unlawful for any person to violate the regulations set forth in this Chapter or any provision hereof whether or not licensed hereunder.

§ 202-4. Licenses.

There are hereby created two classes of licenses required for a farmers’ market. One for the proprietor of the market and one for the concessioners participating in said market.

A. Market Proprietor license.

(1) A market proprietor license may be issued to a person or entity qualified herein as a proprietor.

(2) Any proprietor who proposes to conduct a farmers’ market, shall first file a written reservation request with the Borough Clerk and, if any farmers’ market is to take place on a public park, the request must also be filed with the Board of Recreation Commissioners, setting forth the date(s) of the proposed farmers’ market on a form provided by the Borough. Such request must be filed with the Borough Clerk no earlier than October 1st and no later than November 1st of the calendar year prior to that for which a license is sought. In no event shall a license issue unless a written request for same has first been submitted within the aforesaid period. This time period may only be relaxed by the Mayor and Council in the exercise of their sound discretion, (i) upon good cause for the delay being shown by the applicant to the satisfaction of the Mayor and Council, and (ii) only if the request is made at least ninety (90) days prior to the first market date requested. The request shall be provided by the Borough Clerk to the Mayor and Council for its consideration. Filing of the request shall not guarantee approval of said farmers’ market, or issuance of a market proprietor license. The request form shall include the following:

(a) Specification of the nature of the market proposed, and a general description of the goods to be sold.

(b) The date, location, and hours of operation of the proposed market(s) and alternate dates, which may be allowed if such market is cancelled for circumstances beyond the control of the applicant.

(c) All of the contemplated dates on a single form, if more than one date is contemplated within the same calendar year.

(d) In no event shall the filing of a request hereunder excuse compliance with any other ordinance, notwithstanding that said ordinance shall not have been disclosed by the Borough Clerk.

(3) If the reservation request shall be approved by the Mayor and Council, and the Board of Recreation Commissioners if the market is to take place on a public park, an applicant for a market proprietor shall submit an application for a proprietor’s license to conduct the market to the Borough Clerk, together with payment of such charges as may be required from time to time. All applications for a market proprietor’s license must be submitted within sixty (60) after approval of the reservation request. An application for a market proprietor’s license must include all information required by § 202-5, of this Chapter. Approval of a reservation request will not guarantee that a market proprietor license will be issued.

B. Market Concessionaire license.

(1) Application for a market concessionaire license shall be made no later than fourteen (14) days prior the market for which a concessionaire license is sought.

(2) A market concessionaire license shall be issued by the Borough Clerk to those persons defined herein as a market concessionaire and whose application for said license shall be approved as set forth in this Section.

(3) A market proprietor may be designated by the Borough Clerk as the agent of the Borough Clerk for a market, in accordance with § 202-11C.

(4) A market concessionaire license shall be obtained and a license fee paid for each date on which a market concessionaire proposes to operate as set forth herein. The Borough Clerk or agent designated hereby may issue a market concessionaire license with more than one date endorsed thereon, provided that the applicant shall pay the daily fee to the Borough Clerk or agent for each proposed date in advance.

(5) In the event a market proprietor shall cancel or postpone a scheduled market by 9:00 a.m. on the date for which the same shall have been scheduled due to circumstances beyond the control of the proprietor, any market concessionaire license valid on that date may be used by the concessionaire in the event that the proprietor shall have provided for a rescheduling of a market as provided herein upon the license being presented to the Borough Clerk or its agent who shall revalidate same.

(6) The Borough Clerk or agent shall not refund any fee; or portion thereof, paid hereunder, for any reason.

§ 202-5. Application for a Market Proprietor License.

A. An application for a market proprietor license shall be submitted, under oath or affirmation, to the Borough Clerk with the applicable fee. This fee shall not be refundable and shall be used to defray the costs of investigation and processing. The applicant for a market proprietor license shall provide the following information:

- (1) Name and address of the applicant;
- (2) Description of the applicant;
- (3) Name and address of the representative of an entity, if any, and an acknowledged statement from the entity certifying that the representative is authorized to act as the entity's representative;
- (4) If the applicant is a natural person, the names, addresses and telephone numbers of three persons who have known the applicant for a period in excess of three years;
- (5) If the applicant is a natural person, the place of residence of the applicant for the three years immediately preceding the date of application;
- (6) A brief description of the nature of the market and a description of the market items to be offered for sale or purchase at the market or market(s) on the dates reserved;
- (7) A list of any criminal or disorderly persons offense convictions (indicating the places of arrests, the number and places of convictions, the nature of the convictions, and the statutory reference for the offense) of the representative or natural person completing the application;
- (8) Two current passport photographs showing the full face of the representative or natural person making the application, which photos shall be affixed to the application;
- (9) Proof of tax identification number issued by the State of New Jersey to the applicant;
- (10) Proof of current sales tax filing by the applicant with the State of New Jersey, pursuant to *N.J.S.A. 40:52-1.3*;
- (11) Date, hours of operation, location plan of market concessionaires, an index of market concessionaires, and the market items to be sold or displayed for sale. (If the final list of market concessionaires and market items are unknown at the time of application, the applicant may provide a "not to exceed" number of concessions, but shall otherwise comply with the provisions of this subsection, and shall file same upon filing of all concessionaire licenses.);
- (12) An administrative site plan to be approved by the Borough Clerk setting forth the following:
 - [a] The area, public and/or private, to be licensed for the market;
 - [b] Layout of concessions: fixed and movable facilities including, but not limited to the nature, size, extent, and construction thereof, signs, displays, pennants, banners, balloons, and similar advertising or attraction devices;
 - [c] Sanitary and solid waste control and removal plans;
 - [d] Circulation (on and off-site), loading and unloading, crowd and traffic control, fire prevention, lighting and emergency access plans;
 - [e] Proof of compliance with applicable statutes, ordinances, codes and regulations, including any health codes regulating the sale of food and/or beverages.

- (13) Based upon a review of the administrative site plan by the Clerk and the expressed desire by the applicant for scheduled re-occurrence of the market, an applicant may be required to first obtain site plan approval from the Planning Board to address traffic, public safety and/or quality of life issues raised by the application.
- (14) All other information required to determine compliance with the provisions of this Chapter.

B. The representative or natural person completing the application for a market proprietor license shall be fingerprinted using an agency chosen by the Chester Borough Police Department. The Chief of Police shall, verify the information included on the application and respecting the moral character and business background of the applicant. The Chief of Police is authorized to receive state criminal history record information from the Division of State Police, State Bureau of Identification, or other authorized source, for use in considering the suitability of all applicants covered under this Chapter. All requested criminal history record checks will be subject to payment of the required user fee by the applicant.

§ 202-6. Application for a Market Concessionaire License.

A. Each application for a market concessionaire license shall be made no later than fourteen (14) days prior the market for which a concessionaire license is sought. The application for a market concessionaire license shall be submitted, under oath or affirmation, to the Borough Clerk with the applicable fee. This fee shall not be refundable and shall be used to defray the costs of investigation and processing. The Borough Clerk shall issue a market concessionaire license to those persons defined herein as a market concessionaire and whose application for said license has been approved as set forth in this Section. The applicant for a market concessionaire license shall provide the following information:

- (1) Name and address of the applicant;
- (2) Description of the applicant;
- (3) Name and address of the representative of an entity, if any, and an acknowledged statement from the entity certifying that the representative is authorized to act as the entity's representative;
- (4) If the applicant is a natural person, the names, addresses and telephone numbers of three persons who have known the applicant for a period in excess of three years;
- (5) If the applicant is a natural person, the place of residence of the applicant for the three years immediately preceding the date of application;
- (6) A brief description of the nature of the market items to be offered for sale or displayed for sale at the market or market(s) on the dates reserved. In the event the market items are otherwise regulated by law, proof of compliance therewith shall be shown;
- (7) If a vehicle is to be used by a market concessionaire, a description thereof including state of registration, license plate number, the name and address of the insurance carrier and insurance policy number;
- (8) A list of any criminal or disorderly persons offense convictions (indicating the places of arrests, the number and places of convictions, the nature of the convictions, and the statutory reference for the offense) of the representative or natural person completing the application for a market concessionaire license;
- (9) Two current passport photographs showing the full face of the representative or natural person making the application, which photos shall be affixed to the application;
- (10) Proof of tax identification number issued by the State of New Jersey to the market concessionaire;
- (11) Proof of current sales tax filing with the State of New Jersey, pursuant to *N.J.S.A.* 40:52-1.3, by the market concessionaire;

B. A market proprietor may be designated by the Borough Clerk as the agent of the Borough Clerk for a market event, and if so designated, shall be responsible for collecting and submitting all market concessionaires license applications fully completed together with required fees to the Borough Clerk for review, and issuance of market concessionaire licenses.

§ 202-7. Approval or rejection of application.

A. Upon verification of the application for a market proprietor license by the Borough Clerk and the Chief of Police, and such other investigation as necessary for the protection of the public good, and upon payment of the applicable licensing fee, the Borough Clerk may issue the license.

B. A license shall not be issued to any person who has been convicted of a crime, misdemeanor, or other offense involving moral turpitude; who has made a misrepresentation or false statement in his application, or who has otherwise been found to be of unsatisfactory character or business responsibility by the Borough Clerk.

C. In the event of the refusal of the issuance of such license, the Mayor and Council, on written request of the applicant, shall conduct a hearing to determine whether the license should be granted under this Chapter. Such request must be filed with the Borough Clerk no later than seven (7) calendar days after the rejection of the application.

D. Market applicants should attempt to coordinate dates with Special Events, and approved proprietor licenses issued by the Borough. Proprietor and concessionaire licenses expire December 31st of the calendar year issued. Prior issuance of a proprietor's license shall not guaranty issuance of a license to a proprietor in any subsequent year. Licenses are issued based upon completed applications and payment of associated fees.

E. If a market is to take place on a public park, the Borough Clerk shall refer the application to the Board of Recreation Commissioners which shall within thirty (30) days of receipt of a completed application notify the Borough Clerk of the applicant's conformance with the Recreation Commission's rules and regulations pertaining to the use of public parks. A market proprietor's license shall not be issued for a market to take place on a public park if said market violates the rules and regulations of the Board of Recreation Commissioners.

F. If the market is to take place in whole or in part on municipal property, the proprietor must be a nonprofit corporation or association for a public purpose, consistent with *N.J.S.A. 40A:12-14*. The proprietor application must then set forth, the name of the corporation or corporations, the public purpose served by the proprietor; the number of persons benefiting from that public purpose (whether within or without the Borough); and attach proof of the continued tax-exempt status of the nonprofit corporation pursuant to both State and federal law.

G. In no event shall more than (1) one market be authorized to take place on any one day. Should the number of approved applications for a market proprietor license exceed the number of licenses permitted, the Mayor and Council may in the sole discretion of the Mayor and Council waive this prohibition, and approve two (2) or more markets for the same date(s) only if the second applicant has shown to the satisfaction of the Mayor and Council (1) there is no geographical proximity which would cause a public safety concern; and (2) one market will not negatively impact the other market.

H. The occurrence of a Special Event (§203) and a market on the same day should be avoided, unless approved by the Mayor and Council upon a satisfactory showing (i) there is no geographical proximity which would cause a public safety concern and (ii) the two events will not negatively impact on each other.

§ 202-8. Issuance; records; non-transferability.

A. All market licenses shall be issued on forms drawn by the Clerk in accordance with this Chapter. Records of all licenses shall be maintained by the Clerk in such a manner so as to identify the name of the licensee, the activity license, the location of the activity licensed, the amount of fee paid and the goods, if any, involved. All licenses shall be issued under the signature of the Borough or a facsimile thereof and the seal of the Borough.

B. A record of all current market licenses issued pursuant to this Chapter shall be kept by the Borough Clerk and Police Department.

C. All licenses issued under this Chapter shall authorize only the person named in said license to engage in the activity designated thereon. The license shall not be transferable from the person to whom it is issued to any other person or entity.

§ 202-9. Fees; renewals.

A. The fees for an application and/or license required by this Chapter shall be as established in Ch. 127, Art. I, Municipal Fees.

B. An application for a market proprietor license shall also include an escrow to be established by the Clerk for reimbursement to the Borough for direct costs incurred by the Borough in connection with the granting of said license. Said costs may include, but shall not be limited to: the use of Borough police; damages to and use of public property, streets, and parks; surcharge of the Borough sewer system; and personnel for cleanup or remediation of public property by members of the Public Works Department. The escrow and any costs assessed pursuant to this subsection will be determined by the Clerk based upon each individual application, subject to review by the Mayor and Council.

§ 202-10. Revocation or suspension of license.

A. Licenses issued under this Chapter may be revoked by the Clerk for any of the following causes:

(1) Misrepresentation or false statement contained in the application.

(2) Misrepresentation or false statement made in the course of carrying on the activities herein.

(3) Conviction of any crime of misdemeanor involving moral turpitude.

(4) Conducting the licensed business in an unlawful manner in violation of this Chapter, state or federal statutes or regulations, or in such manner as to cause breach of the peace, create a nuisance or constitute a menace to the health, safety or general welfare of the public.

(5) A determination, after investigation, that the applicant's moral character or business responsibility are unsatisfactory.

(6) Violation of the requirements imposed by §202-10 or §202-11 of this Chapter 202.

B. All persons whose licenses have been revoked shall have the right of appeal to the Mayor and Council by filing a written request within seven (7) days to the Borough Clerk for such hearing. The Mayor and Council shall within thirty (30) days after receipt of the request hold a hearing. At the conclusion of said hearing, the Mayor and Council shall affirm or set aside the revocation of the license. The decision of the Mayor and Council on such appeal shall be final and conclusive.

§ 202-11. Regulations of market proprietor.

A. A market proprietor shall not permit a market to commence earlier than 9:00 a.m. nor end later than 5:00 p.m. Notwithstanding, setup and cleanup may be allowed by the Borough Clerk at other times as may be determined in its reasonable discretion.

B. A market proprietor canceling any proposed market shall notify the Borough Clerk of any such cancellation as soon as is practical.

C. Upon submission and approval of an application and the granting of a market proprietor license, the Borough Clerk, if authorized by the Mayor and Council, may designate said market proprietor as its agent for the purpose of accepting and forwarding applications and fees for market concessionaire licenses to the Borough Clerk.

D. The market proprietor or an agent thereof shall be present at the site of the market on the date of its operation at all times.

E. A market proprietor, when acting as the agent of the Borough Clerk, shall ensure that any applications and/or licenses are in compliance with the provisions of § 202-4B (Market Concessionaire licenses); § 202-6 (Applications); § 202-8 (Issuance records; nontransferability); and § 202-12 (Sale of foods/beverages). A proprietor, when authorized to act as the agent for the Borough Clerk, shall collect the appropriate license fees as set forth in § 202-8 and shall be

responsible for delivering said fees, fully completed applications, and a record of all licenses sought to be issued to the Borough Clerk no less than seven days before the market except under exceptional circumstances subject to the discretion of the Clerk.

E. Police and security officers.

(1) A market proprietor may, in the discretion of the Clerk, be required to employ off-duty Borough police officers or licensed private security officers to be on duty while the market is open. Private security officers employed by the proprietor license shall be duly licensed in accordance with the provisions of *N.J.S.A.* 45:19-8 et seq. and *N.J.A.C.* 13:55-1.1 et seq.

(2) The Clerk with the advice of the Chief of Police of the Borough shall determine whether police officers are needed to control traffic at or in the vicinity of a market and shall assign according to the usual practice the number of police officers required. The Clerk shall notify the market proprietor of its determination and the market proprietor shall have the opportunity to appeal the decision to the Mayor and Council within ten (10) days of notification of such decision in the event that the market proprietor contests the decision. A market proprietor shall reimburse the Borough of Chester for expenses incurred by the Borough as a result of providing police officers of the Borough of Chester to perform functions relative to controlling traffic attributable to a market in accordance with the provisions of Chapter 55, Police Department, Article II, Contracted Off-Duty Employment.

G. A market proprietor license issued hereunder shall be prominently displayed at the location of the market.

H. A market proprietor shall not allow anyone except a holder of a market concessionaire license to sell or display for sale any item of tangible personal property.

I. A market proprietor shall not allow anyone to sell or display for sale any market item unless such person shall be licensed as a market concessionaire and shall prominently display at all times a valid concessionaire license.

J. At least thirty (30) days prior to the market event, the market proprietor shall post bond or other financial security and proof of insurance for the market as a condition of such license.

K. A market proprietor shall, within eight (8) hours after the close of operations, clean the site of the market, adjoining areas and roads, of any debris, waste or trash.

L. A market proprietor shall provide adequate sanitary facilities at the site of the market and shall comply with all Board of Health requirements and recommendations.

M. If the market is to take place on a public park, a market proprietor shall comply with and shall cause all market concessionaires to comply with the rules and regulations set forth by the Board of Recreation Commissioners and satisfy such charges as may be established by said Board from time to time.

§ 202-12. Sale of foods/beverages.

A. A market concessionaire shall not sell any foods, beverages, ice cream, confections or related commodities without obtaining a valid food handler's permit issued by the Chester Borough Board of Health.

B. A market proprietor shall not rent or provide space to a concessionaire, nor shall any market proprietor approve any application, nor issue any license to a concessionaire who shall sell any foods, beverages, ice cream, confections, or related commodities who does not possess a valid food handler's permit issued by the Chester Borough Board of Health.

C. The equipment used or employed by any market concessionaire in the sale of ice cream, foods, beverages, confections and other related commodities shall be maintained in a clean and sanitary manner and be subject to inspection by the Board of Health or its authorized agents in accordance with the provisions of this Chapter and the ordinances of the Board of Health of the Borough of Chester. Any violation found and not immediately corrected shall be grounds for revocation of the license.

D. Notwithstanding the penalties set forth in this Chapter, any person violating this Chapter shall be liable for the penalties set forth in Chapter 235, Board of Health General Provisions, Article III, General Penalty.

§ 202-13. Discrimination.

No license shall issue to any individual, organization, or entity who shall directly or indirectly exclude, withhold or deny, any person of any advantage, privilege, membership, or right, or otherwise discriminate against said person on account of race, creed, color, national origin, ancestry, marital status, or sex or otherwise as prohibited by law. Nor shall the Borough Clerk or his agent refuse to issue a license on account of race, creed, color, national origin, ancestry, marital status, or sex or otherwise as prohibited by law.

§ 202-14. Violations and penalties.

Any person violating any of the provisions of this Chapter shall be liable for the penalty(s) stated in Chapter 1, General Provisions, Article III, General Penalty, which in no event shall be less than \$500 and upon conviction shall forfeit such license issued hereunder and the right to renew such a license and shall be ineligible for the issuance of a license hereunder for a period of one year from the date of conviction.

§ 202-15. Effect.

A. All licenses issued prior to the adoption of this Chapter shall not be affected by this Chapter, but all subsequent license applications must comply with all the provisions of this Chapter.

B. All persons not required to be licensed previously, but who are required by this Chapter to apply for a license, must obtain a license upon its adoption.

SECTION 2. If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 3: All ordinances or rules or regulations of the Borough of Chester, which are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 4: This ordinance shall take effect upon passage and publication according to law.

Dated: _____

Robert Davis, Mayor

Attest:

Valerie A. Egan, Borough Clerk

LEGAL NOTICE OF FINAL ADOPTION

NOTICE is hereby given that the above Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Chester, in the County of Morris, State of New Jersey, held in the municipal building on the 15th day of October 2013, and the same came up for final passage at a meeting of the said Borough Council on the 4th day of November 2013 at which time, after persons interested were given an opportunity to be heard concerning said ordinance, the same was passed and will be in full force in the Borough according to law. By order of the Borough Council of the Borough of Chester, County of Morris and State of New Jersey.

Valerie A. Egan, Municipal Clerk