

**TOWNSHIP OF MIDDLETOWN  
DELAWARE COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 854**

AN ORDINANCE AMENDING THE MIDDLETOWN TOWNSHIP CODE OF ORDINANCES OF THE TOWNSHIP OF MIDDLETOWN, DELAWARE COUNTY, PENNSYLVANIA, CHAPTER 210, SUBDIVISION AND LAND DEVELOPMENT, ARTICLE V, STANDARDS, SECTION 41, RECREATIONAL FACILITIES AND OPEN SPACE, BY DELETING THE EXISTING SECTION IN ITS ENTIRETY AND REPLACING WITH A NEW SECTION 41, PROVIDING FOR THE PUBLIC DEDICATION OF LAND; CONSTRUCTION OF RECREATIONAL FACILITIES, THE PAYMENT OF FEES-IN-LIEU THEREOF, PRIVATE RESERVATION OF LAND, OR A COMBINATION, FOR PARK OR RECREATION PURPOSES, AS A CONDITION PRECEDENT TO FINAL PLAN APPROVAL.

The Council of the Township of Middletown hereby ENACTS AND ORDAINS the following amendments to the Code of Ordinances of the Township of Middletown, Delaware County, Pennsylvania:

**SECTION I.**

The Middletown Township Code of Ordinances, Chapter 210, Subdivision and Land Development is hereby amended by deleting in entirety and adding new Section 210-41, Recreational facilities and open space, to be provided as follows:

- A. The public dedication of suitable land shall be provided for the use intended; and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees-in-lieu thereof, the private reservation of the land, or a combination, for park or recreation purposes as a condition precedent to final plan approval shall be required in accordance with the provisions of this section.
  
- B. The following general provisions shall apply:
  - 1. Each subdivision and/or land development proposed to be improved for a residential dwelling unit shall set aside land to be used for park or recreational purposes in an amount which shall equal at least 2,200 square feet of land for each residential dwelling unit in the proposed development; or make a payment of a fee in lieu of the public dedication of land in the amount as determined from time to time by resolution of the Township Council, in accordance with the Recreation and Open Space Plan, dated March 28, 2022, as may be amended or updated from time to time.
  
  - 2. Each subdivision and/or land development proposed to be improved for use other than for a residential use (nonresidential use) shall set aside land to be used for park or recreational purposes in an amount which shall equal at least 500 square feet of land per 1,000 square feet of nonresidential building area; or make a payment of a fee in lieu of the public dedication of land in the amount as determined from time to time by resolution of the Township Council, in accordance with the Recreation and Open Space Plan, dated March 28, 2022, as may be amended or updated from time to time.

3. The provisions of this section shall not apply to a development plan approved and developed pursuant to the planned residential development provisions of Article XI Chapter 275, Zoning; or approved and developed pursuant to the cluster subdivision option provisions of Chapter 275, Zoning, in the R-1 Residential District or R-2 Residential District; or approved and developed pursuant to the open space requirements for townhouses and/or apartments in the R-4 or R-5 Districts; or that is pending, whether preliminary or final, at the time of enactment of this section.

C. If it is determined that the land proposed to be dedicated is not suitable for the use intended by reason of its size, shape and/or location or if park or recreational lands are already available and accessible to the proposed development, or if the Township and the applicant or developer agreement otherwise, the applicant or developer shall either make payment of a fee-in-lieu of dedication of land or provide sufficient and suitable land for dedication within the Township, but which is not part of the proposed development. Such determination shall also be made in accordance with the following provisions:

1. Where the open space requirement is 2.00 acres or less, the fee option shall be preferred; however, the set aside of less than 2.00 acres of land may be acceptable to the Township if that land is contiguous to an existing area of permanent open space, has been identified by the Township for acquisition, or is otherwise deemed acceptable by Council.
2. Where the land to be set aside is less than the amount required, the Township may accept payment of a fee in lieu of the balance of the requirement.

D. The determination of the suitability of land which is acceptable for dedication, or use for park or recreational purposes, shall include its overall size, shape, location, and natural features, and shall also be based on the following additional criteria:

1. The dedicated land must be easily accessible to all inhabitants of the development by virtue of at least one side of each parcel of dedicated land abutting an existing or proposed public street for a minimum distance of 50 feet.
2. The park or recreational land shall be located so that it serves all inhabitants of the subdivision and/or land development.
3. The shape of the land shall be suitable to accommodate those park or recreational activities appropriate to the location and needs of the inhabitants of the development.
4. Any parcel of park or recreation land to be dedicated to the Township shall be comprised of at least one acre in size and no less than 50 feet in width.

5. The parcels to be dedicated, comprising the intended park or recreational land shall be contiguous.
6. Soils and drainage shall be suitable for the intended park or recreational uses and shall conform to all Township ordinances.
7. Such land, taken in the aggregate, shall have an average slope of less than 8%, and shall have no more than 20% of the land contained within the boundaries of a floodplain, or steep slope area greater than 15%, or a combination of floodplain and steep slope.
8. Vehicular parking shall be in accordance with Article XXXI of the Middletown Township Zoning Ordinance, and shall be designed, constructed, and maintained such that any site can be adequately served and accessed.
9. Provisions shall be made for trails, footpaths, and other pedestrian circulation systems and accessways.

E. In the event any applicant or developer of land proposes to dedicate land and/or construct recreational facilities, the applicant or developer shall make provision for such dedication and/or the permanent ownership and maintenance of such facilities, as applicable. Acceptable means of such provisions include:

1. The proposed recreational facilities and/or improvements are not duplicative of those park and/or recreational facilities already available to the inhabitants of the proposed subdivision and/or land development.
2. The proposed recreational facilities and/or improvements will be properly owned, managed, and maintained by a responsible entity such as a homeowners' association, the governing documents for which shall be acceptable to the Township Solicitor.
3. The proposed park and/or recreational area shall be subject to a declaration of covenants, easements, and restrictions which shall be acceptable to the Township Solicitor.
4. The proposed park or recreational area shall be suitably landscaped as depicted on a landscape plan which shall be submitted as part of the applicant or developer's subdivision and/or land development plan and which shall be reviewed by the Township as part of the applicant or developer's final plan.
5. Land to be publicly dedicated to the Township shall be by fee-simple deed of special warranty. At the time of dedication, title to said land shall be good and marketable, free and clear of all liens and encumbrances. The applicant or developer shall supply a title report evidencing the foregoing to the Township, prior to final approval of the subdivision and/or land development plan. The executed deed of dedication shall be

delivered to the Township at the time of final subdivision and/or land development approval and prior to the signing of the approved plan by the Township Council and recorded at the time of recording of the final plan. All costs associated with said dedication shall be borne by the applicant or developer.

6. If public dedication of the land is rejected by the Township, the land may alternatively be conveyed to a legally constituted homeowners' association or retained by and managed by such private ownership or other such suitable entity, all subject to approval by the Township Council and upon the condition that the use remains open to the residents of the proposed development. In the event that the recreational land is to be privately owned, adequate provision shall be made for its maintenance and the posting of adequate financial security in accordance with Section 509 of the Pennsylvania Municipalities Planning Code. The Township may further require such limited rights of entry onto the proposed land for maintenance and similar purposes, should the owner(s) of said land fail to do so, and such failure shall, in the opinion of the Township, pose a threat to the health, safety and welfare of the Township or its residents.

F. All moneys paid to the Township pursuant to the provisions of this section shall be placed in a Park and Recreation Development Fund as established by Township Council clearly identifying the specific recreational facilities for which the fee was received. Said fund shall be used by the Township for the acquisition and improvement of park or recreational sites and land in accordance with the Township Open Space and Recreation Plan, recognizing that funds shall be expended only on properly allocated portions of the cost incurred to acquire land or construct the specific recreational facilities for which the funds were collected.

## SECTION II.

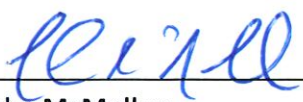
If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held invalid or unconstitutional by any courts of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not render this Ordinance invalid.

## SECTION III.

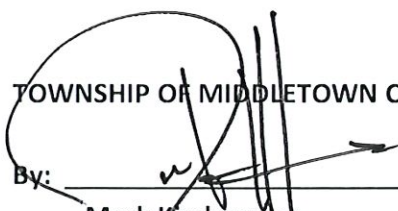
This Ordinance shall become effective thirty-one (31) days after its enactment.

ENACTED AND ORDAINED this 25<sup>th</sup> day of September 2023.

ATTEST:

  
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John McMullan  
Township Manager

TOWNSHIP OF MIDDLETOWN COUNCIL  
By:   
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Mark Kirchgasser  
Chairman of Council