

Section 3.2 Outdoor Dining

[NOTE: Section 6.3.2.G should be deleted]

SECTION I – PURPOSE and DEFINITIONS

A. PURPOSE: It has been determined that the establishment of outdoor dining utilizing a part of the sidewalk in front of or on the side of a business will promote the public interest by creating an attractive pedestrian environment for its businesses and will foster a pleasant and distinctive ambience within the Township. The purpose of this Article is to establish the appropriate regulations to license and regulate this activity in order to ensure that the health, safety and welfare of the Township is protected.

B. DEFINITIONS:

As used in this section, the following terms shall have the meaning indicated:

a) OUTDOOR DINING

Shall mean the use of an outdoor area by a restaurant (as defined by Article 2.1 of the Municipal Land Use Procedures Ordinance) for the same eating and drinking activities that occur within the establishment, with the following characteristics:

- 1) The outdoor area is directly adjacent to the building in which the restaurant is located, and is enclosed within the area bounded by the public street, the building line of the principal facade of such building, and lines extending in a perpendicular direction from the outermost points of the building line where it intersects with adjacent property lines to the public street.
- 2) Containing readily removable tables, chairs, temporary railings and/or planters; and
- 3) Unenclosed by fixed walls, ceilings, or fences, except for retractable awnings, removable barriers, umbrellas or other nonpermanent enclosures.

b) PERSON

Any individual, partnership, corporation, limited liability company, association, or other entity.

c) PRINCIPAL FACADE

The "principal facade" shall be the facade of the principal building facing the street right-of-way.

SECTION II – APPLICABILITY

Outdoor dining shall be permitted in the DD, HB-2, and HB-3 zones as a permitted accessory use that is customarily incidental to a permitted restaurant or similar establishment where food and drink are prepared, served, and consumed, primarily within the principal building. All outdoor dining must also conform with the specific rules and standards set forth in Section VI of this Article.

SECTION III -- LICENSE AND ENFORCEMENT

A. LICENSE REQUIREMENTS

No person shall operate outdoor dining within the Township of Berkeley Heights without first obtaining an outdoor dining license from the Township Board of Health and satisfying all of the requirements of this chapter. Licenses shall be issued in accordance with the following:

- a) The Township of Berkeley Heights shall issue such license upon the adherence to all conditions set forth in this chapter and all applicable Township and State laws and regulations.
- b) The license shall not be transferable; a new license shall be required in the case of a change in ownership or restaurant tenant.
- c) All outdoor dining licenses shall be issued for 9 months commencing March 1 and ending November 30th of each calendar year. Licenses must be renewed each calendar year.
- d) All new applications and renewal applications must be received by the Zoning Officer no later than January 31 of the calendar year in which the licensee intends to operate outdoor dining. Any renewal applications submitted after January 31 shall be subject to a late fee as established in Subsection B below.
- e) The Township reserves the right to revoke, or modify the conditions of, any outdoor dining license issued under this Ordinance to address any compliance, safety, or health issues, or in order to ensure consistency with any other applicable county, state, or federal laws, directives, or guidance.

B. LICENSE FEES

- a) Annual operation fee. An application for an initial outdoor dining license or a renewal license shall be accompanied by an annual operation fee in the amount of \$150 for outdoor dining seating 12 or fewer patrons and an annual operation fee in the amount of \$250 for outdoor dining seating over 12 patrons.
- b) Waiver. For the first year following the passage of this chapter, the fee shall be waived for any applicant who provides proof that he/she has purchased outdoor dining partitions at a reasonable cost to comply with this chapter.

- c) Late fee. A late fee of \$50 will be assessed for renewal applications received after January 31, and \$100 for those received after February 28. All fees will be prorated and are nonrefundable.

C. TEMPORARY SUSPENSIONS

- a) Notwithstanding anything to the contrary contained in this Ordinance or any other laws and ordinances of the Township of Berkeley Heights, the Township may temporarily suspend an outdoor dining license in the event of emergency, if access to the sidewalk is needed in connection with public work to be performed in the area, or for other reasons or purposes including, but not limited to, the facilitation of Town-sponsored events.
- b) In the case of snow or other inclement weather that has the potential to create dangerous or hazardous conditions, all outdoor dining equipment must be removed immediately from the sidewalk.

D. ENFORCEMENT; REVOCATION OF LICENSE.

Enforcement of the requirements and specifications for outdoor dining shall be the responsibility of the Police Department, Fire Official, Health Officer, Zoning Officer and/or Code Enforcement Officer.

- a) Upon a determination by an enforcement entity (as listed above) that a licensee has violated one or more of such provisions, the entity shall give written notice to the licensee to correct such violation within 24 hours of the receipt of such notice by the licensee.
- b) In the event that the licensee fails or refuses to correct such violation within such period, the licensee's outdoor dining license shall thereupon, and automatically, be revoked.
- c) Upon the revocation of such license, the licensee, upon written request, shall be entitled to a hearing before the Township Council of Berkeley Heights within 45 days of the date of its request.

SECTION IV – SUBMISSION OF APPLICATIONS

Any restaurant wishing to establish and utilize an outdoor dining area pursuant to this Ordinance must submit an application to the Berkeley Heights Zoning Officer, either via the Township website, mail, or hand delivery to Township offices. The application shall be on prescribed forms and shall be filled out completely and submitted with the following attachments and exhibits:

- a) A scaled drawing of the proposed outdoor dining area, not necessarily by a licensed professional), including the following details:
 - 1) The location of all temporary structures, equipment, and apparatus to be used in connection with the operation of outdoor dining, including but not limited to tables, chairs, signs, planters, awnings, lighting and electrical outlets, heating devices, partitions, and other enclosures.

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- 2) The location of any fire hydrant, plug or standpipe, utility pole, parking meter stanchion, or other permanent fixtures located on the sidewalk between the principal facade and the curb.
 - 3) The width of the portion of the sidewalk that provides clear, unobstructed passageway for pedestrians between the outdoor dining area and any permanent fixtures.
- b) A detailed narrative and plan of relevant information, describing method of service, proposed hours of service outdoors, and method of litter control and trash handling for outdoor service;
 - c) An indication of whether the applicant intends to serve alcohol in the outdoor dining area, or permit patrons to bring their own wine or beer for consumption in the outdoor dining area pursuant to Section VI(M) of this Ordinance;
 - d) Photographs or diagrams of tables, chairs, signs, and other furniture or structures to be utilized, showing style, design, materials, size and colors;
 - e) A narrative as to how temporary structures, equipment, and apparatus will be secured overnight or stored in situations requiring their temporary removal from the sidewalk;
 - f) Proof of insurance that complies with the requirements of Section VII of this Ordinance;
 - g) An executed indemnification agreement that complies with the requirements of Section VIII of this Ordinance;
 - h) An executed maintenance agreement that complies with the requirements of Section IX of this Ordinance;
 - i) Proof that the applicant has ownership of any private property upon which the outdoor dining is to be located, or written consent from the person or entity that owns or controls such property or properties.

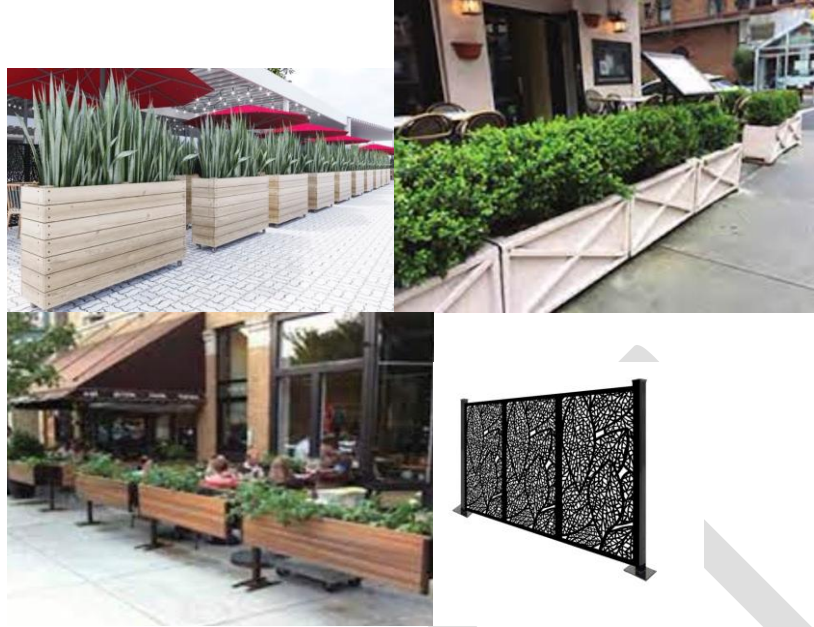
SECTION V – REVIEW AND APPROVAL OF APPLICATIONS

All applications submitted pursuant to this Ordinance shall be reviewed by the Zoning Officer. Following receipt of a complete application, the Zoning Officer shall review the application in accordance with the requirements set forth herein and issue a decision in writing within twenty business days. The Zoning Officer may consult other Township officials and committees, such as the Board of Health, Township Engineer, Downtown Beautification Committee and Fire Official, to determine compliance. If the application is not complete, the Zoning Officer will so notify the applicant within 20 business days of the submission and identify the areas in which the application lacks compliance with the requirements. Appeal of any action taken by the Zoning Officer may be made to the Zoning Board of Adjustment.

For applications to renew an existing permit, the Zoning Officer may waive the submittal of certain items set forth in Section IV assuming there are no changes to any existing operations.

SECTION VI – RULES AND REGULATIONS

- A. An outdoor dining area and all associated furniture, apparatus, decoration, and appurtenance used in connection with its operation shall be sited according to the following standards:
- a) Shall not be positioned in a manner that may obstruct any fire exit from any building or placed in such a way as to impede the safe and speedy ingress and egress to or from any building or structure, and may be subject to further direction by the Fire Official.
 - b) Shall not be positioned in a manner that may interfere with vehicular safety, or with necessary access for fire-fighting equipment and ambulances or personnel.
 - c) Shall provide a minimum of 4 feet of paved sidewalk area that remains for the exclusive use of pedestrians, which area shall be unobstructed by any fire hydrant, plug or standpipe, utility pole, parking meter stanchion, or other permanent fixture.
 - d) During the months when outdoor dining is not permitted, no furniture, apparatus, decoration, appurtenances, or other equipment associated with outdoor dining shall be placed outside. All equipment must be stored indoors when outdoor dining is not in operation.
- B. An outdoor dining area and all associated furniture, apparatus, decoration, and appurtenance shall be subject to the following design standards:
- a) Easily removable tables, chairs or other seating shall be provided. Tables shall be two-top or four-top only; no tables accommodating more than four persons shall be permitted. Tables and chairs shall be spaced at least six feet apart measured from the backs of opposite facing chairs.
 - b) Outdoor lighting shall be permitted in the form of individual table lighting or lighting attached to the building façade wall or underneath umbrellas, awnings, canopies, or other similar furnishings.
 - c) Removable shade coverings such as umbrellas, awnings, and pop-up canopies may be included. Any shade covering utilized for outdoor dining purposes shall have a minimum clearance of 7 feet and be anchored securely against wind. No shade covering shall negatively affect vehicular or pedestrian visibility; no part of the shade covering shall extend into the required 4 foot unobstructed sidewalk access area; and no shade covering shall contain advertising.
 - d) Outdoor dining areas shall not be enclosed by walls or similar structures. Partitions or planters are allowed to screen and delineate the outdoor dining area, provided that such partitions or planters shall be at least 3 feet in height measured from the grade and shall not utilize materials with little or no precedent in Berkeley Heights, such as exposed concrete, exterior insulation finish systems (EIFS). Recommended types of partitions or planters are provided below:



- C. Seating provided within outdoor dining areas shall be exempt from the calculation of off-street parking requirements.
- D. No existing parking spaces are allowed to be eliminated to accommodate outdoor dining without approval from the Planning Board or Zoning Board of Adjustment.
- E. The outdoor dining area shall be operated and maintained in accordance with the applicant's sketches, narrative, and plan as finally approved.
- F. The outdoor dining area shall be operated and maintained by the same person who operates and maintains the related restaurant of which the outdoor dining area is a part and an extension.
- G. No furniture, apparatus, decoration, or appurtenance used in connection with the operation of the outdoor dining area shall be constructed or installed in such a way that poses a danger to the public.
- H. No heating or cooking of food or open flames shall be allowed in outdoor dining areas.
- I. The Zoning Officer may require low barriers of a temporary nature (such as bollards) to be placed at the edge of the outdoor dining area during business hours in order to protect the outdoor patrons from vehicle movements within parking areas or streets adjacent to the establishment.
- J. The Zoning Officer may permit minimum signage, including the size, shape, material and related characteristics thereof, to be placed in and/or around the outdoor dining area for any of the following purposes:
 - a) Defining the boundaries of the outdoor seating area or any waiting area;

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- b) Setting forth rules or guidelines applicable to restaurant patrons;
 - c) Promoting safety for vehicular and/or pedestrian traffic; or
 - d) Any other purpose deemed appropriate and/or necessary by the Zoning Officer.
- K. The sidewalk or other area utilized for the outdoor dining area shall be kept clean and free of litter. Trash receptacles shall be provided as needed.
- L. Noise shall be kept at such a level as to comply with the NJ Noise Control Act.
- M. Unless approved in advance by the Township or the New Jersey Division of Alcohol and Beverage Control with respect to premises already possessing a liquor license, no alcoholic beverages of any kind shall be served in conjunction with the outdoor dining. With respect to any outdoor dining area not covered by an existing liquor license, patrons of such unlicensed premises may be permitted by the ownership of the restaurant to bring only wine and beer for consumption at such outdoor dining area, consistent with N.J.S.A. 2C:33-27.
- N. Outdoor dining areas shall not be permitted to operate in a manner or during times which unduly interfere with the peace and quiet of nearby residences, as determined by the Restaurant Review Committee. The Township may revoke, or amend the conditions of, a previously issued permit to eliminate such interference.
- O. Outdoor dining areas shall be permitted to operate only during the hours that the associated restaurant is permitted to operate. Notwithstanding the above, all outdoor dining shall cease operations at 11pm; if the associated restaurant's permitted operating hours extend beyond 11pm, only indoor dining shall be allowed past 11pm.
- P. Operators of outdoor dining areas shall be required to comply with all applicable regulations of the Township's Board of Health.

SECTION VII – INSURANCE REQUIRED

No outdoor dining area permit shall be issued unless the applicant provides a certificate of insurance, issued by a company duly authorized to transact business under the laws of the State of New Jersey, evidencing insurance which provides for the payment of not less than \$1,000,000 to satisfy all claims for damage by reason of bodily injuries to or the death of any person as a direct or indirect result of the operation of the outdoor cafe or for injury to any person occurring on the premises occupied by such cafe, and further provides for the payment of not less than \$10,000 to satisfy all claims for property damage occurring as a direct or indirect result of the operation of such cafe. Such certificate shall provide that the insurance company shall notify the Township of Berkeley Heights 10 days prior to cancellation or substantial change in coverage, and shall name the Township of Berkeley Heights as an additional insured thereunder.

SECTION VIII – INDEMINIFICATION AGREEMENT

No outdoor dining area permit shall be issued unless the applicant shall have first executed and filed an indemnification agreement in a form approved by the Township Attorney of the Township of Berkeley Heights pursuant to which the applicant, in further consideration of the issuance of the permit, shall agree to forever defend, protect, indemnify and save harmless the Township of Berkeley Heights, its officers, agents and employees from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of or which may arise out of the applicant's operation of such outdoor dining area.

SECTION IV – MAINTENANCE AGREEMENT

For outdoor dining areas involving any Township sidewalk or property, no outdoor dining area permit shall be issued unless the applicant shall have first executed and filed a maintenance agreement in a form approved by the Township Attorney of the Township of Berkeley Heights pursuant to which the applicant shall agree, at the option of the Township, to either repair at its sole cost and expense, any damage caused to the sidewalk or other location by the operation of the outdoor dining area or to reimburse the Township in full for all costs and expenses incurred by it in making any such repairs, with and if so required by the Township Council for the Township of Berkeley Heights. The Township may require a bond to be filed by the licensee in an amount to be fixed by the Township.

SECTION X – EXISTING OUTDOOR DINING

This Ordinance shall not affect or invalidate any current and valid approvals to operate an outdoor café under Section 6.3.2.G of the Township Code. Eligible restaurants shall still be permitted to apply for permission to operate an outdoor café pursuant to Section 6.3.2 of Appendix A (Municipal Land Use Ordinance) of the Township Code.

However, restaurants that apply for or possess approval to operate an outdoor café pursuant to Section 6.3.2 of Appendix A (Municipal Land Use Ordinance) of the Township Code shall continue to be subject to all of the requirements therein, as well as all other applicable provisions of the Township Code.

SECTION XI – REPEAL

This Ordinance is not meant to repeal any provisions of the Code, and all ordinances, portions of ordinances and provisions of the Township Code which are inconsistent or in conflict with the provisions of this Ordinance are temporarily suspended only for the purpose and duration set forth in this Ordinance and only to the extent of such inconsistency or conflict.

SECTION XII – SEVERABILITY

The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any court of competent jurisdiction, such judgment shall

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be limited in its effect only to that portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

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