

**TOWNSHIP OF HAMILTON
COUNTY OF MERCER, NEW JERSEY**

ORDINANCE

No. **21-029**

1ST READING May 4, 2021

DATE TO MAYOR _____

2ND READING & PUBLIC HEARING June 1, 2021

DATE RESUBMITTED TO COUNCIL _____

WITHDRAWN _____ LOST _____

DATE EFFECTIVE _____

APPROVED AS TO FORM AND LEGALITY

FACTUAL CONTENTS CERTIFIED TO BY

TOWNSHIP ATTORNEY

TITLE

ORDINANCE AMENDING AND SUPPLEMENTING THE CODE OF THE TOWNSHIP OF HAMILTON, NEW JERSEY, CHAPTER 550, LAND DEVELOPMENT, ARTICLE III, DISTRICT REGULATIONS, § 550-95, OUTDOOR DINING

Be It Ordained by the Council of the Township of Hamilton, in the County of Mercer and State of New Jersey, that the *Code of the Township of Hamilton, New Jersey, Part III, Land Use Legislation, Chapter 550, Land Development, Article III, District Regulations, § 550-95, Outdoor Dining*, as amended and supplemented, be further amended and supplemented as follows:

Chapter 550

LAND DEVELOPMENT

ARTICLE III. DISTRICT REGULATIONS

.....
§ 550-94. Special Housing Zone III.

.....
§ 550-95. Outdoor Dining.

A. Purpose. The purpose of this section is to encourage the continued provision of outdoor dining areas as accessory uses in conjunction with permitted restaurants in order to provide a safe and unique environment for enjoyable food consumption and social interaction. At the same time, regulations are specifically required for outdoor dining areas to control and ameliorate the potential impact of such areas in adjacent uses, particularly adjacent residential uses, and to protect the public, health, safety and welfare of residents of the Township.

B. Where permitted. Outdoor dining areas shall be permitted as accessory uses to restaurants in all Zones with the express exclusion of the Rural Resource Conservation (RRC) zone.

C. General Requirements.

(1) Outdoor dining uses or outdoor dining areas shall be permitted as accessory uses only in conjunction with a permitted restaurant. The restaurant and its outdoor dining area shall be in compliance with and subject to all Federal, State and Township laws, codes and regulations, including but not limited to, the Americans with Disabilities Act, any and all state and local health codes, and the Alcoholic Beverage Control (A.B.C.) regulations. All outdoor dining areas shall be in

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- compliance with U.C.C. life and safety codes and regulations, and subject to inspection, therefore.
- (2) The outdoor dining area and associated open structures may be located within a required front, side and/or rear yard areas. Encroachment upon a Township Right of Way shall not be permitted.
- (3) In the event that the outdoor dining extends to an area(s) belonging to another space in the same building or an adjacent property, the licensee shall obtain the written permission of the owner(s) and/or tenant(s), if any, of the building or space abutting any additional area(s).
- (4) No exterior lighting that illuminates beyond the boundaries of the property or the outdoor dining areas in excess of one-half footcandle shall be permitted.
- (5) No signs other than a menu board shall be permitted outside the restaurant. Not more than one menu board shall be allowed for each outdoor dining use. The menu board shall not exceed four square feet. The menu board shall be attached to the abutting building and/or on one easel. All signage including the menu board and signage on awnings, canopies and umbrellas and other fixtures, shall be in compliance with Township codes regulating signage.
- (6) The outdoor dining area, including the area extending from the outdoor dining area to the street and/or parking area shall be maintained in a neat and orderly appearance at all times and shall be cleared of all debris on a periodic basis during the day and at the close of each business day.
- (7) Patrons may not be seated in the outdoor dining area prior to 7:00 a.m. or remain seated in the outdoor dining area after 10:00 p.m. on Sunday through Thursday nights and 11:00pm on Friday and Saturday nights.
- (8) Any food or beverage preparation, storage, cooling or refrigeration within the outdoor dining area shall be subject to Health and Fire Inspection. Any and all food and beverages must be brought inside each night or secured and covered appropriately.
- (9) Tables and chairs shall not be placed within four feet of fire hydrants or counter service windows, or within two feet of any building entrances and/or exits.
- (10) The operations or activities within the outdoor dining areas shall not create undue noise, glare, littering, loitering, disorderliness or other such nuisance so as to be a detriment to adjacent businesses or residents living within 200 feet of the outdoor dining area. A violation of any Township Ordinance shall subject both the patron and restaurant to violations and may be cause for revocation of the outdoor dining use.
- (11) Parking and seating capacity.
- (a) In computing the number of off-street parking spaces required for restaurants with outdoor seating areas, the outdoor seating capacity shall be added to the indoor seating capacity for the total number required. There shall be no increase in total seating capacity of the restaurant when including the outdoor seating capacity. A portion of the indoor seating capacity shall only be relocated to the outdoor dining area.

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- (b) For currently existing and permitted restaurants at the time of the adoption of this chapter, who, as a result of the 2020-2021 COVID-19 Pandemic, temporarily provided outdoor dining areas by removing off-street parking spaces, for the purposes of this chapter, the Township parking standards may be waived to accommodate the continuation and permanence of the outdoor dining in the same area, upon a showing that alternate parking is available and there are no negative impacts in consultation with the Township Police Division.
- (c) For those restaurants whose site plans have not yet been approved at the time of the adoption of this chapter, during site plan approval, the determination of required off-street parking spaces shall consider the total indoor and outdoor seating capacity and availability of alternative parking availability.
- (12) The perimeter around the outdoor dining areas must be delineated with permanent and nonpermanent fixtures such as bollards, fixtures such as fencing, railings, potted plants, decorative chains, or other approved fixtures. All anchoring of fixtures must meet all applicable local, state and federal codes, ordinances and laws. Such area shall be suitably landscaped and screened as appropriate to block noise, glare, lighting and other potential impacts from adjoining properties and from vehicular movement.
- (13) Review and Approval process. For those restaurants whose site plans have not yet been approved at the time of the adoption of this chapter, an application for an outdoor dining area shall be reviewed as part of the site plan approval process, subject to the requirements of this section. For currently existing and permitted restaurants at the time of the adoption of this chapter, providing that all requirements of this chapter are met, an application for the permanent extension of their permitted premises to include an outdoor dining area shall be subject to administrative review and determination in consultation with Township professionals. The supplemental administrative site plan submission requirements are as follows:
- (a) Name, address, and general description of all uses within 200 feet;
- (b) A survey (drawn to scale) showing the layout and dimensions of the outdoor dining area. The survey shall include: the proposed location, size and number of tables, chairs, host/hostess station, server station(s) if any, steps, umbrellas, awnings, canopies, location of doorways, lighting, electric outlets, trees, signs and menu board, benches, trash receptacles, railings, traffic safety measures, decorative chains and any other fixture, structure or obstruction, either existing or proposed within the outdoor dining area; and
- (c) If any table, railing, awning, canopy, deck, column or any other fixture is to permanently anchored, such information shall be shown on the drawing.
- (14) Appeal. Should the administrative review of the application of an existing restaurant at the time of the adoption of this ordinance be denied, the applicant shall have the right to appeal to the Zoning Board of Adjustment.

§ 550-[95]96 through § 550-110. (Reserved)

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Any Ordinance or Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

This Ordinance shall become effective immediately upon final adoption and publication thereof according to law.

PRESIDENT

MUNICIPAL CLERK

RECORD OF VOTE

| First Reading | | | | | | | Second Reading | | | | | | |
|-----------------------------|-----|-----|----|----|-----|-----|-----------------------------|-----|-----|----|----|-----|-----|
| COUNCIL | AYE | NAY | NV | AB | ORD | SEC | COUNCIL | AYE | NAY | NV | AB | ORD | SEC |
| ANTHONY P. CARABELLI, JR. | ✓ | | | | | | ANTHONY P. CARABELLI, JR. | | | | | | |
| RICHARD L. TIGHE, JR. | ✓ | | | | | | RICHARD L. TIGHE, JR. | | | | | | |
| CHARLES F. WHALEN | ✓ | | | | | ✓ | CHARLES F. WHALEN | | | | | | |
| NANCY PHILLIPS | ✓ | | | | ✓ | | NANCY PHILLIPS | | | | | | |
| PASQUALE "PAT" PAPERIO, JR. | ✓ | | | | | | PASQUALE "PAT" PAPERIO, JR. | | | | | | |

X - Indicates Vote A.B. - Absent N.V. - Not Voting ORD. - Moved SEC. - Seconded

REJECTED _____

JEFFREY S. MARTIN, MAYOR

DATE

APPROVED _____

RECONSIDERED BY COUNCIL _____

OVERRIDE VOTE

AYE _____

NAY _____

L:\COUNCIL\Ordinance\LANDDEVL\2021 Revisions\Ord.Sec.550-95.OutdoorDining.4-26-21.docx

EXPLANATION Matter UNDERLINED thus in this legislation is new matter.
Matter contained in **BRACKETS [thus]** is to be omitted from the law.