

EXPLANATORY STATEMENT: This Ordinance, which shall expire on November 1, 2020 unless extended by the Township Council, allows restaurants to seek approval to operate temporary outdoor dining areas in light of the COVID-19 pandemic.

**TOWNSHIP OF BERKELEY HEIGHTS
ORDINANCE NO. 2020-__**

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, permitting restaurants to seek approval to operate temporary outdoor dining areas.

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the COVID-19 virus in the State of New Jersey; and

WHEREAS, since then, Governor Murphy has issued numerous Executive Orders related to the COVID-19 pandemic, including Executive Order 107, which permits restaurants to operate during their normal business hours, but restricts their activities to only offering delivery and/or take-out services; and

WHEREAS, although Executive Order 107 currently remains in effect, the Township Council for the Township of Berkeley Heights (“Township”) believes that it is appropriate to make preparations in conjunction with current and future directives or guidance from the Governor’s Office and Centers for Disease Control and Prevention (CDC) regarding the relaxation of restrictions on restaurant operations and/or the utilization of outdoor dining areas; and

WHEREAS, in conjunction with any current and future directives or guidance from the Governor’s Office and CDC regarding the relaxation of restrictions on restaurant operations and/or the utilization of outdoor dining areas, the Township Council believes that it is appropriate to establish a mechanism that will enable restaurants to more easily comply with any applicable capacity and/or social distancing requirements by making use of temporary outdoor dining areas.

NOW, THEREFORE, BE IT ORDAINED by the Township Council for the Township of Berkeley Heights as follows:

SECTION I – PURPOSE

The purpose of this Ordinance is to help put the Township’s restaurants in a better position to comply with any potentially forthcoming executive orders or regulations from the Governor’s Office that would allow restaurants to resume their dine-in operations at reduced capacities and/or with social distancing requirements.

This Ordinance seeks to accomplish this purpose by permitting restaurants to utilize tasteful and aesthetic outdoor dining on areas and/or sidewalks adjacent to the restaurant, under the direction and approval of the Township’s Restaurant Review Committee, which is created herein.

All approvals granted pursuant to this Ordinance shall be temporary and shall not be construed to have any force or effect following the expiration of this Ordinance. The enforcement of existing provisions of the Township Code that are inconsistent with this Ordinance shall be suspended during the effective period of this Ordinance, but only to the extent of such inconsistency, and only with respect to restaurants operating an outdoor dining area pursuant to this Ordinance.

SECTION II – APPLICABILITY

This Ordinance shall apply to all “restaurants” within the Township, where “restaurant” has the meaning prescribed in Section 2.1.1 of Appendix A (Municipal Land Use Ordinance) of the Township Code.

SECTION III – 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 Board of Health, either via the Township website, mail, or hand delivery to Township offices. There shall be no fee required to be submitted with such application. The application shall be on prescribed forms and shall be filled out completely and submitted with the following attachments and exhibits:

- A. Scaled layout of tables, chairs, and other structures such as low barriers if proposed (such as bollards), showing dimensions of tables, chairs, other structures, and overall area (including all sidewalks);
- B. A detailed narrative and plan of relevant information, describing method of service, proposed hours of service outdoors, use of personal protective equipment (“PPE”) and proper social distancing, method of litter control and trash handling for outdoor service, and 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 V(J) of this Ordinance;
- C. Photographs or diagrams of tables, chairs, and other furniture or structures to be utilized, showing style, design, materials, size and colors;
- D. A narrative as to how tables, chairs, umbrellas and/or benches will be secured overnight;
- E. Proof of insurance that complies with the requirements of Section VI of this Ordinance;
- F. An executed indemnification agreement that complies with the requirements of Section VII of this Ordinance;
- G. An executed maintenance agreement that complies with the requirements of Section VIII of this Ordinance;
- H. 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 IV – COMMITTEE REVIEW AND APPROVAL OF APPLICATIONS

All applications submitted pursuant to this Ordinance shall be forwarded by the Board of Health Secretary to the Township’s Restaurant Review Committee, which shall be established pursuant to this Ordinance and shall be comprised of: the Board of Health Secretary, Township Administrator, Zoning Officer, Technical Assistant to the Construction Official, Chair of the Downtown Beautification Committee (or Chair’s designee thereof), OEM Coordinator (or Deputy Coordinator as designee), Police Chief (or designee), and the Fire Chief (or designee). In addition, the Restaurant Review Committee shall, prior to approving any application submitted, consult with the Township’s Health Officer (or designee) to ensure that the proposed outdoor dining area complies with all applicable health and sanitary laws and regulations.

Following receipt of an application, the Restaurant Review Committee shall issue an initial decision in writing within five business days, or advise the applicant if additional time is required to process the application. The Restaurant Review Committee may approve each application as submitted or may approve the application with amendments and conditions or may disapprove such application. It is expressly understood that the Restaurant Review Committee shall have the discretion, right and power to waive one or more of the above-referenced application requirements. If an application is denied, the Restaurant Review Committee shall provide the reasons for disapproval. Whenever possible, the Restaurant Review Committee shall make reasonable efforts to work with applicants who wish to remedy deficiencies in their applications.

Following approval from the Restaurant Review Committee, the Berkeley Heights Board of Health Secretary shall issue a permit authorizing the applicant to establish and utilize an outdoor dining area, subject to the rules and regulations set by this Ordinance, as well as any additional conditions imposed by the Restaurant Review Committee.

SECTION V – RULES AND REGULATIONS

- A. The outdoor dining area shall be operated and maintained in accordance with the applicant’s sketches, narrative, and plan as finally approved.
- B. The outdoor dining area shall be actually operated and maintained by the same person or entity who operates and maintains the related restaurant of which the outdoor dining area is a part and an extension.

- C. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall 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.
- D. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way that less than six feet of paved sidewalk remains for the exclusive use of pedestrians, nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above the required pedestrian passageway.
- E. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way that interferes with vehicular safety, or with necessary access for fire-fighting equipment and ambulances or personnel. However, nothing in this Ordinance shall preclude the use of a portion of a parking area for all or a portion of an outdoor dining area, provided the Restaurant Review Committee is satisfied that public safety and accessibility will not be impaired or unduly affected.
- F. The Restaurant Review Committee 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.
- G. The Restaurant Review Committee may require 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:
 - 1. Defining the boundaries of the outdoor seating area or any waiting area;
 - 2. Setting forth rules or guidelines applicable to restaurant patrons;
 - 3. Promoting safety for vehicular and/or pedestrian traffic; or
 - 4. Any other purpose deemed appropriate and/or necessary by the Restaurant Review Committee.
- H. 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.
- I. Noise shall be kept at such a level as to comply with the appropriate section of the Township Code.
- J. 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.
- K. 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.
- L. Outdoor dining areas shall be permitted to operate only during the hours that the associated restaurant is permitted to operate. Within 30 minutes after the closing of the outdoor dining area, the operator shall have all furniture, apparatus, decoration and appurtenances and any other items used in connection with the operation of such outdoor dining area appropriately covered, secured, or stored so as to avoid a public hazard or nuisance.
- M. Operators of outdoor dining areas shall be required to comply with all applicable regulations of the Township's Board of Health.
- N. The Township reserves the right to revoke, or modify the conditions of, any outdoor dining area permit 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.

SECTION VI – 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 \$500,000 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 VII – 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 VIII – 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.

SECTION IX – EXISTING OUTDOOR CAFES

This Ordinance shall not affect or invalidate any current and valid approvals to operate an outdoor café under 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 X – 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 XI – 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 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.

SECTION XII - EFFECTIVE DATE

This Ordinance shall take effect upon the last to occur of both: 1) final passage and publication as required by law, and 2) the date the Governor (or an authorized State agency) issues a directive or Executive Order allowing food establishments, restaurants and bars to serve food and/or drink for consumption on-premises.

SECTION XIII - EXPIRATION DATE

This Ordinance shall automatically lapse and have no further legal force or effect (without further action of the Township Council) on November 1, 2020, unless this Ordinance is further extended on or before such date by ordinance of the Township Council.

INTRODUCED the _____ day of _____, 2020.

ADOPTED the _____ day of _____, 2020.

By: _____
Angie Devanney, Mayor

ATTEST:

Ana Minkoff, Township Clerk