

TOWNSHIP OF MANALAPAN

ORDINANCE NO. 2020 -12

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MANALAPAN, COUNTY OF MONMOUTH, NEW JERSEY AMENDING AND SUPPLEMENTING CHAPTER 157, "OUTDOOR DINING" OF THE CODE OF THE TOWNSHIP OF MANALAPAN BY THE ADDITION THERETO OF CHAPTER 157A, "TEMPORARY EMERGENCY OUTDOOR DINING LICENSE."

WHEREAS, as a result of the COVID-19 pandemic and the emergency orders issued by State and Federal authorities, many businesses in the Township of Manalapan have been closed for several months, resulting in severe economic hardship to the owners, employees, and landlords of those businesses; and

WHEREAS, all restaurants in the Township have been closed for several months with the exception of takeout and delivery services; and

WHEREAS, the Township Committee anticipates that restaurants will be allowed to open initially with only outdoor seating, if permitted by local ordinance and regulation; and

WHEREAS, the Township Committee requires to provide the owners and operators of restaurants in the Township the opportunity to obtain a temporary license permitting outdoor dining service, without the cost, expense and delay of the requirement to obtain approval of the site plan by the Manalapan Township Planning Board; and

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Manalapan, County of Monmouth in the State of New Jersey, as follows:

SECTION ONE. The Code of the Township of Manalapan, as amended and supplemented, be and the same is hereby further amended and supplemented by the addition thereto of the following Chapter:

"Chapter 157A. TEMPORARY EMERGENCY OUTDOOR DINING LICENSE.

§ 157A-1. Purpose.

The purpose of this Chapter is to establish guidelines for restaurants to procure a temporary emergency license to permit outdoor dining to assist in recovery from the economic hardships caused by the COVID-19 pandemic.

§ 157A-2. Conditional accessory use.

Outdoor dining shall be permitted as a conditional accessory use to any category one and category two restaurant as more fully defined in the Development Regulations of the Township of Manalapan.

§ 157A-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OUTDOOR DINING AREA

The designated area of the property of a restaurant to be used for purposes of the outdoor dining facility. The outdoor dining area shall be located in the rear yard or side yard of the property or the sidewalk area immediately in front of the establishment's building or storefront.

PROPERTY

A lot, parcel, or tract of land, together with the building and structures located thereon.

RESTAURANT

A category one or category two restaurant as defined in Section 95-2.4 of the Development Regulations of the Township of Manalapan.

SIDEWALK

That area of the public or private right-of-way reserved for pedestrian traffic from the curb to the front line of the building housing a restaurant.

§ 157A-4. License required.

It shall be unlawful for any person, firm, corporation or other entity to operate an outdoor dining facility within the Township without first obtaining an outdoor dining facility license therefor from the Township Clerk in compliance with the provisions of Chapter 157 or a temporary

emergency outdoor dining license in compliance with this Chapter. Such license shall not be transferrable from the person or entity to whom the license is issued.

§ 157A-5. Application for license.

- A. Every applicant for a temporary emergency outdoor dining facility license shall file with the Township Clerk a sworn application which shall contain the following information:
- (1) The name, address, and telephone number of the applicant.
 - (2) The name, address, and telephone number of the retail food establishment where outdoor dining is proposed to be maintained.
 - (3) A detailed description of the proposed outdoor dining facility that shall include a diagram of the dimensions of the area and the number of tables, chairs, benches, umbrellas, and receptacles for garbage and recyclables to be used for outdoor dining purposes.
 - (4) Consent of the owner of the premises, if other than the applicant.
 - (5) A statement that the applicant shall indemnify and hold harmless the Township, its officers, agents and employees from any and all claims, actions, liability, damages or costs, including reasonable attorney's fees and other costs of defense arising out of any action or claim brought against the Township pertaining to licensee's operation of an outdoor dining facility.
 - (6) A plan identifying the location of the outdoor dining area; the required barrier between the seating area and the public circulation areas; table, chair and bench locations; and refuse disposal location which includes the existing square footage of the indoor dining area and the square footage of the proposed outdoor dining area.
 - (7) Photographs of the uses adjacent to the proposed outdoor dining area.
 - (8) Photographs of the area where the outdoor dining will be located.
 - (9) A screening and lighting plan, including details of the fixtures and levels of proposed illumination.

(10) Total number of seats on site, both indoor and outdoor.

(11) The applicant must comply with the parking requirements for restaurant uses. In calculating the required parking, all seats, both indoor and outdoor, must be utilized.

2. Any applicant who is denied a license may request, in writing, a hearing on the denial decision before the Township Committee on all issues.

§ 157A-6. Application review.

A. The application for a temporary emergency outdoor dining license is subject to review by the following offices: the Zoning Office, the Police Department, the Health Department and the Construction Office. The application shall be reviewed and a report delivered to the Township Clerk within seven (7) days of receipt. If the application is deemed to be deficient, the applicant will be advised of the denial and the reason(s) therefor and the applicant may resubmit the application at no additional charge or fee.

§ 157A-7. License fee.

The license fee for each and every premise on which a temporary emergency outdoor dining facility is conducted shall be one dollar (\$1.00). The fee shall be paid with the license application and is not refundable.

§ 157A-8. Insurance required.

No temporary emergency outdoor dining license shall be issued unless the licensee shall have first filed an insurance certificate demonstrating that the following insurance requirements have been provided:

A. The following language/wording must appear on the insurance certificate: "The certificate holder (The Township of Manalapan) is included as an additional insured as respects losses arising solely from the operation of the outdoor dining facility."

B. Ten days' written notice of cancellation must be provided to the Township Clerk.

C. The insurance certificate must be written by a company licensed to do business in

the State of New Jersey and rated A or better by A.M. Best Rating.

D. The minimum insurance coverage requirements are:

- (1) General liability: \$1,000,000 per occurrence/\$2,000,000 aggregate.
- (2) Products and completed operation aggregate: \$500,000.
- (3) Personal and advertising injury: \$500,000.
- (4) Each occurrence: \$500,000.
- (5) Fire damage (any one fire incident): \$500,000.
- (6) Medical expense (any one person): \$500,000.
- (7) Worker's compensation: statutory requirements.

§ 157A-9. License terms and conditions.

A. A temporary emergency outdoor dining license shall be valid for six (6) months; provided, however, that all such licenses shall expire on January 31, 2021.

B. An outdoor dining facility license may not be transferred in any way;

C. The license shall be displayed in a conspicuous place on the premises during the use of the outdoor dining facility.

§ 157A-10. Restrictions and requirements.

The conduct of outdoor dining pursuant to a license issued under this chapter shall be subject to and inclusive of all of the following restrictions and requirements.

A. Outdoor dining may only be conducted in districts zoned for business uses.

B. All outdoor dining areas shall be immediately adjacent to the principal restaurant. The dining area may be located in an adjacent parking area; provided, however, that adequate parking spaces are otherwise available.

C. The outdoor dining area must be clearly defined and limited by way of a barrier, such as fencing, landscaping or a wall.

D. The outdoor dining area must not block, obstruct and/or inhibit pedestrian traffic on public sidewalks. Pedestrian traffic must have clear, open and unobstructed access between the edge of the outdoor dining tables and the curbline of the sidewalk.

E. Any outdoor dining area shall have adequate buffering from adjacent buildings or sites consisting of landscaping and/or fencing. If the outdoor dining area abuts residentially zoned land, the outdoor dining area shall be located a minimum of 50 feet from the common property line.

F. Outdoor dining facility owners, employers, and employees shall not block, obstruct, or inhibit a building's entrance/egress.

G. Only tables, chairs, benches, umbrellas, and receptacles for garbage and recyclables are permitted within the outdoor dining area.

H. Outdoor dining facility owners, employers, and employees shall not place any table, chair, bench, sign, umbrella or other item in such manner as to block or obstruct any municipal sign; receptacles for garbage and recyclables; public hydrants; or other public amenity.

I. Outdoor dining facility owners, employers, and employees must provide for the disposal of garbage and recyclables. Public receptacles for garbage shall not be used and outdoor storage of refuse shall not be permitted. All receptacles for garbage and recyclables shall be removed at the time of closing.

J. The outdoor dining area and surrounding sidewalk and property areas shall be kept clean from any and all litter during hours of operation.

K. Customers must be seated in the outdoor dining area during their patronage. Outdoor dining facility owners, employers, employees are prohibited from serving drivers or passengers of all vehicles;

L. All food preparation shall be indoors in the regular kitchen area of the retail food establishment.

M. Alcohol service and/or consumption at the outdoor dining facility is subject to further regulation more fully described in this chapter.

N. There shall be no offensive odor emanating from the outdoor dining facility

due to food preparation, handling, spoilage, and/or litter.

O. All lighting shall be directed towards the principal restaurant. No exterior lighting that extends beyond the boundaries of the property or the outdoor dining area shall be permitted.

P. Outdoor heating components and temporary patio enclosure materials for inclement weather shall be permitted.

Q. All noise emanating from the outdoor dining area shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances. Light music, limited to allow for conversation, shall be permitted.

R. Hours of operation shall be from 6:00 a.m. to 11:00 p.m. and all outdoor dining areas must be cleared and washed daily by 11:30 p.m.

S. The Township reserves the right to temporarily suspend a temporary emergency outdoor dining license to allow for construction activity, utility repairs, special events, or other appropriate reasons as determined by the Township Committee. Reasonable advance notice will be given to the affected outdoor dining facility licensees.

§ 157.11. Sale and consumption of alcoholic beverages.

The outdoor dining area upon which an outdoor dining facility has been authorized to operate pursuant to this chapter may constitute premises duly licensed for the sale and/or consumption of alcoholic beverages, provided:

A. The retail food establishment of which an outdoor dining facility is a part is a licensed premise.

B. Specific approval has been obtained from the appropriate local and state agencies for the extension of the alcoholic beverage consumption license to the outdoor dining area, unless the requirement for such approval has been waived by state legislation, regulation or Emergency Order of the Governor or the New Jersey Division of Alcoholic Beverage Control.

§ 157A-12. Revocation of license.

A. Licenses issued under the provisions of this chapter may be revoked by the Township Clerk, in writing, for any of the following causes:

- (1) Fraud, misrepresentation or false statements contained in the application for license.
- (2) Fraud, misrepresentation or false statements by the licensee in the course of conducting the business licensed.
- (3) Any violation of this chapter.
- (4) Conviction of any crime or offense involving moral turpitude.
- (5) Conducting the business licensed in an unlawful manner.

B. Revocation of a license may be appealed to the Township Committee in the same manner as set forth in § 157A-13 of this article for an appeal of a denial of a license. The licensee may not operate the business or enterprise licensed during the pendency of said appeal.

§ 157A-13. Appeals.

A. Any person aggrieved by the action of the Township Clerk in the denial of a license, shall have the right to appeal to the Township Committee. Such appeal shall be taken by filing with the Township Committee, within 10 days after the notice of the action complained of has been mailed to such person's last known address, by certified mail, return receipt requested, a written statement setting forth fully the grounds for the appeal.

B. The Township Committee shall set a time and place for hearing on such appeal, and notice of such hearing shall be given to the applicant. The decision of the Township Committee on such appeal shall be final and conclusive.

§ 157A-14. Violations and penalties.

Any person violating any of the provisions of this article shall, upon conviction thereof, be subject to a fine not to exceed \$1,000 or imprisonment for a term not to exceed thirty (30) days, or both, in the discretion of the court."

SECTION TWO. All Ordinances or parts thereof inconsistent with the

provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION THREE. Should any section, paragraph, clause or other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect or impair the remainder of this Ordinance.

SECTION FOUR. This Ordinance shall take effect upon its passage and publication according to law.

NOTICE OF PUBLIC HEARING

The Ordinance published herewith was Introduced and approved at a meeting of the Township Committee of the Township of Manalapan held on [May 27, 2020](#) and will be further considered for final passage after a Public Hearing thereon before the Township Committee of the Township of Manalapan during a meeting to be held on [June 10, 2020](#) at the Municipal Complex, 120 Route 522 and Taylors Mills Road, Manalapan, New Jersey at 7:30 p.m. or as soon thereafter as the matter may be reached, or at any meeting to which that meeting may be adjourned, at which time any and all persons who may be interested therein will be given an opportunity to be heard.

The proposed Ordinance in its entirety is on file in the Municipal Clerk's Office and copies may be obtained without charge between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday. A complete copy may also be obtained from the Manalapan Township web-site www.mtnj.org by clicking on the Ordinance title listed on the Agenda posted for the Township Committee meeting of [June 10, 2020](#).

SHARI ROSE, RMC
Deputy Municipal Clerk