

**AN ORDINANCE AMENDING CHAPTER 25, SECTION 11.10 OF THE REVISED
GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE
(OUTDOOR CAFES IN THE B-1, B-2 AND PC DISTRICTS)**

**BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF
WEST ORANGE, NEW JERSEY** that Chapter 25, Section 11.10 of the Revised General Ordinances of the Township of West Orange be and are hereby amended as follows:

I. PURPOSE

The purpose of this ordinance is to modify the fines set forth in Chapter 25, Section 11.10 of the Revised General Ordinances of the Township of West Orange to require additional standards to be met regarding outdoor cafes located in the Township.

**II. CHAPTER 25 SECTION 11.10 SHALL BE AND HEREBY IS AMENDED AND
SUPPLEMENTED TO INCORPORATE THE FOLLOWING: §25-11.10 BE AND
HEREBY AMENDED AS FOLLOWS:**

- The portion entitled “Outdoor Cafes in the B-1, B-2 and PC Districts” which specifies the requirements for outdoor cafes in the Township of West Orange, shall be repealed and replaced by the following language:

Outdoor cafes shall be permitted subject to the standards and conditions of § 5-10 of Chapter 5, General Licensing, of the Revised General Ordinances of the Township of West Orange and in conjunction with the following conditions:

- a. Adequate access for emergency response personnel must be allowed to the main entrance of the serving establishment from the outdoor serving area as defined by Township fire regulations.
- b. Adequate sidewalk access (at least four feet) must be maintained for easy passage of pedestrians on any public sidewalk or right-of-way.
- c. Some form of formal space delineation, such as a removal fence, may be required during cafe business hours to define sidewalk space from cafe space.
- d. Outdoor or patio type furniture must be used; upholstered furniture is prohibited.
- e. Street furniture (seating, tables, fencing, etc.) must be moved into the serving establishment when the outdoor cafe is not open for business.

f. Cleanliness of the outdoor serving area is the responsibility of the serving establishment.

g. Signage, in addition, to that permitted for the serving establishment pursuant to § 25-15, is prohibited.

h. A sketch showing the proposed location of tables, chairs and umbrellas shall be prepared and submitted to the Director of Planning and Development for approval prior to the use of the sidewalk area.

i. The use of the described locations shall be authorized by a sidewalk cafe permit issued by the Director of Planning upon compliance by the applicant with the requirements of ~~t~~^f This subsection and the payment of an annual fee to be prescribed by Resolution at the approval of the Township Council.

j. Any permit issued by the Director of Planning shall designate the hours of operation of any sidewalk ~~cafe~~ cafe or outdoor cafe which shall not exceed the hours of 12:00 p.m.(noon) to 10:00 p.m. but in no event may a sidewalk cafe remain open after 11:00 p.m. on Sunday through Thursday or after 12:00 midnight on Friday, Saturday and legal holidays.

k. Nothing herein shall be deemed to be a waiver of the provisions of any health and/or licensing ordinance regulating the operation of a sidewalk or outdoor cafe.

l. The use of any sound amplification device on sidewalk or outdoor cafes is prohibited.

m. Whenever amplified sound or music is being played inside an establishment with an outdoor cafe or sidewalk cafe, all doors and windows that open to the outside sidewalk or outdoor café shall remain closed, except as necessary for entry and exit.

n. Effective May 30, 2025, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license Notwithstanding the provisions of any law to the contrary, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license may use, for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), outdoor

spaces as an extension of their business premises that they own or lease and that are located either on their business premises contiguous to the business premises, or in a non-contiguous location. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license seeking to utilize, for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), outdoor spaces as an extension of their businesses shall file an application with the municipal zoning officer. The application to the municipal zoning officer shall include: ~~the owner or operator of a restaurant that does not sell alcoholic beverages seeking to utilize for purposes other than selling alcoholic beverages in outdoor spaces as an extension of their businesses shall file an application with the Municipal Zoning Officer and such application shall include:~~

(i) a plan, sketch, picture or drawing that depicts the design, dimensional boundaries, and placement of tents, canopies, umbrellas, tables, chairs, and other fixtures of the outdoor spaces; ~~and~~

(ii) a plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures and grounds. If a business premises' parking lot is being used for the service and sale of either food or beverages, or both, the owner or operator of a restaurant that does not sell alcoholic beverages shall not encumber more than 75 (75%) percent of the lot's total parking spaces for service and sale, unless the parking lot contains less than eight parking spaces, and shall maintain at least one handicapped parking space in the parking lot.

(iii) written consent of the owner of the premises, if other than the applicant.

(iv) an insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility; or an indemnification agreement with the municipality arising solely from the operation of the outdoor dining facility.

d. (1) The zoning officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of P.L.2024, c.95 (C.40:55D-164 et al.), with the exception that the zoning officer may deny an application based on current violations

of any other health, safety, fire, permitted use, or zoning regulation or upon any applicable law permitting the denial of a zoning permit. An application under this section shall not be considered a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

(2) A municipality may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of P.L.2024, c.95 (C.40:55D-164 et al.) or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.

(3) An appeal to any approval, denial, revocation, or suspension may be filed through the municipal clerk with the governing body of the municipality. The governing body, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The governing body may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision. Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

e. A permit issued pursuant to this section to a restaurant without an alcoholic beverage retail license shall be subject to annual renewal.

f. A municipality that approves an application for the holder of an alcoholic beverage manufacturer license or retail consumption license shall submit its endorsement to the Director of the Division of Alcoholic Beverage Control pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165).

g. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of this act shall be entitled to convert

the permit to a premises expansion permit established pursuant to this section to be used for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165). An owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of this act and converts the permit pursuant to this subsection shall not be required to submit to the municipal governing authority an additional application pursuant to P.L.2024, c.95 (C.40:55D-164 et al.).

4. The installation and continuous use of tents, canopies, umbrellas, tables, chairs, and other fixtures on private property or public property or right of way designated by a municipality pursuant to P.L.2024, c.95 (C.40:55D-164 et al.) shall be a permitted use provided that the tent, canopy, umbrella, table, chairs, or other fixture conforms to all applicable provisions of the State Uniform Construction Code and Uniform Fire Code, which have been adopted by the Commissioner of Community Affairs pursuant to P.L.1975, c.217 (C.52:27D-119, et seq.) and P.L.1983, c.383 (C.52:27D-192 et seq.), respectively.

5. a. Notwithstanding any provision of P.L.2024, c.95 (C.40:55D-164 et al.) to the contrary, all other municipal ordinances pertaining to sanitation, property maintenance, noise, business days and hours of operation, and days and hours of service of alcoholic beverages shall apply, unless specifically suspended or modified by the municipality or specifically prohibited by the provisions of this section.

b. With respect to a restaurant that does not sell alcoholic beverages and the holder of a premises expansion permit issued pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165) operating in outdoor spaces pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165), a municipality shall not prohibit or limit the days and hours of the outdoor service of food and beverages, including alcoholic beverages, except that municipalities may prohibit or limit operations for the hours after 10:00 p.m. and between 12:00 a.m. and 11:00 a.m. on Sundays through Wednesdays, and between 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with the exception that a municipal ordinance prohibiting or limiting the days and hours of indoor service of food and beverages, including alcoholic beverages, may be applied to the outdoor service of food and beverages, including alcoholic

beverages, as a condition of the zoning approval pursuant to section 3 of P.L.2024, c.95 (C.40:55D-166). This provision shall not be construed as overruling or prohibiting the authority of a city of the first class to impose more restrictive time restrictions or prohibit or limit the days and hours of the outdoor service of food and beverages.

c. A municipality may either prohibit or limit the days and hours of any live performances, including musical performances, and the playing or projection of any content from a recording, streaming service, or television, cable, or Internet broadcasting service in outdoor spaces or on public sidewalks as a condition of the zoning approval pursuant to sections 3 and 4 of P.L.2024, c.95 (C.40:55D-166 and C.40:55D-167).

6. A public sidewalk or an outdoor space, including pedestrian walkways and pedestrian malls, which is subject to a premises expansion permit issued pursuant to section 2 or section 3 of P.L.2024, c.95 (C.40:55D-165 or C.40:55D-166) shall be considered a portion of the premises that is open to the public for the purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).

Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) shall be interpreted or construed as permitting or mandating the opening, expansion, or resumption of unlimited operations of a restaurant that does not sell alcoholic beverages and the holder of a COVID-19 Expansion Permit issued by the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Special Ruling No. 2020-10 or a premises expansion permit issued pursuant to section 2 of P.L.2024, c.95 (C.40:55D-165) that is closed, whether permanently or temporarily, or operating subject to limitations on its operations, service, or hours, as a result of disciplinary or legal sanctions imposed by, or entering into a settlement agreement with, a court of the State of New Jersey, a municipal court, the New Jersey Department of Law and Public Safety, the New Jersey Division of Alcoholic Beverage Control, or a municipal governing body acting as a local alcoholic beverage control board, as applicable.

Nothing in P.L.2024, c.95 (C.40:55D-164 et al.) permits the use of State-owned rights-of-way for the purposes of outdoor dining . A permit for the use of the State rights-of-way shall be issued upon application and approval of the New Jersey Department of Transportation. For the purposes of locally owned roads that intersect the State highway system, setbacks from the

State right-of-way line will be 50 feet from April 1 to October 31, and 100 feet from November 1 to March 31.

III. REPEAL OF CONFLICTING ORDINANCES

Any Ordinances of the Township which are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

IV. SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

V. EFFECTIVE DATE

This Ordinance shall take effect upon final passage and publication in accordance with the law.

SUSAN MCCARTNEY, MAYOR

**JOE KRAKOVIAK,
COUNCIL PRESIDENT**

**KAREN J. CARNEVALE, R.M.C.,
MUNICIPAL CLERK**

INTRODUCED:

ADOPTED:

Legislative History

The purpose of this ordinance is to add additional requirements for establishments located in these B-1, B-2, and PC districts to operate an outdoor cafes. This Ordinance shall apply prospectively.