

MEMORANDUM

TO: Township of West Orange Planning Board

FR: Gerard M. Haizel, PP, AICP, Principal 

RE: **Master Plan Consistency Review – Ordinance 2935-25 - An Ordinance Amending and Supplementing Chapter 25 of the Revised General Ordinances of the Township of West Orange (Outdoor Cafes in the B-1, B-2 and PC Districts).**

DT: August 4, 2025

Pursuant to The *NJ Municipal Land Use Law (MLUL)* at N.J.S.A. 40:55D-26(a), the above referenced matter was referred to the Township Planning Board for review and comment to the Governing Body, regarding the proposed Ordinance's consistency with the Township's Master Plan.

For this review, the following documents were reviewed:

- ✓ Township of West Orange Ordinance 2935-25
- ✓ Township of West Orange Ordinance 2925-25

Overview

The Township Council approved amendment **Ordinance 2935-25**, on first reading, at its July 22, 2025 meeting. This ordinance amends and supplements Chapter 25, Section 11.10 of the *Revised General Ordinance of the Township of West Orange*, to require additional standards to be met regarding outdoor cafes located in the Township.

The scope and purpose of the amendment as stated in **Ordinance 2935-25** is 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B-1, B-2 and PC Districts" which specifies the requirements for outdoor cafes in the Township of West Orange, shall be repealed and replaced by the following language: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 which is aesthetically pleasing, such as a removable fence, shall be required in a parking lot or on sidewalks.*
- d. Outdoor or patio type furniture must be used; upholstered furniture is prohibited. Outdoor cafes serving areas shall be kept broom clean by the establishment with no sweeping of food debris into any street or parking lot.*
- 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 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 or outdoor cafe which shall not exceed the hours of 8:00 a.m. to 10:00 p.m.*
- 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 must be solid, not storm or screen, and windows that open to the outside sidewalk or outdoor café shall remain closed, except as necessary for entry and exit.*
- n. As of the effective date of this Ordinance, 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 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;*
 - (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 and the holder of an alcoholic beverage manufacturer license or retail consumption license shall not encumber more than seventy-five (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.*
- o. 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 herein and imposed by N.J.S.A. 40:55D-164 et seq. with the exception that the zoning officer*

may deny an application based on current violations of any other health, safety, fire, permitted use, uniform construction code regulation 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. The Township may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of this Ordinance, applicable State Law, or any provision of a regulation, ordinance or law related to health, safety, fire, permitted use, uniform construction code regulation, zoning, or 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.*
- q. An appeal to any approval, denial, revocation or suspension may be filed through the municipal clerk with the Township Council. The Township Council, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The Township Council may designate a municipal official or attorney to serve as the hearing officer in place of the Township Council for the purpose of conducting said hearing and rendering said decision.*
- r. A permit issued pursuant to this Ordinance shall be subject to annual renewal.*
- s. If the Township approves an application for the holder of an alcoholic beverage manufacturer license or retail consumption license the applicant shall submit its endorsement to the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 40:55D-165.*
- t. 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 Township or specifically prohibited by the provisions of this section.*
- u. The Township 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).

- v *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.

- w. *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 the Township pursuant to this Ordinance shall be permitted provided that the tent, canopy, umbrella, table, chairs, or other fixtures 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 N.J.S.A. 52:27D-119 et seq. and N.J.S.A. 52:27D-192 et seq., respectively.*

Comment:

It is noted that in the proposed provision (c.) above, it states that, “... *some form of formal space delineation which is aesthetically pleasing, such as a removable fence, shall be required in a parking lot or on sidewalks.*”

In my opinion, the requirement that the proposed space be “*aesthetically pleasing*,” is subjective and raises concern over interpretation of this provision, which may impact both implementation and enforcement. This stipulation should be eliminated or replaced by one that is clearer and more objective.

Consistency with the Township of West Orange 2019 Master Plan Update

While the Township’s Master Plan 2019 Update does not explicitly address outdoor dining, the Plan does recommend that the Land Use Regulation Ordinance “...*Consider changes to permitted uses,*” in recognition of market changes for retail and other uses, “...*including ‘experiential’ retail and activities, such as arcades, arts and crafts studios and stores that integrate dining, coffee and/or bar areas...*” The proposed Ordinance, which amends the regulations governing the Outdoors Cafes, is in keeping with this recommendation of the Master Plan, as it proposes updates to the zoning standards governing various uses, as the market characteristics for the uses change.

Outdoor dining has always been a popular form of dining for many patrons of the Township’s restaurants. This form of dining took on even greater popularity during and in the aftermath of the Covid pandemic, when eating outdoors became even more common place. As a standalone use or an increasingly prevalent accessory to restaurants and similar establishments, the continued success and viability of many of these establishments has become more dependent on their outdoor dining capability.

While outdoor cafes are already permitted in the Township’s B-1, B-2 and P-C zones, the proposed amendment seeks to better integrate this use into the zone, with fewer adverse impacts on the surrounding areas within the three (3) zoning districts where they are permitted.

Based on my review as detailed above, in my opinion, the amendment to the Land Use Regulation Ordinance proposed by Ordinance 2935-25 is consistent with the Township’s Master Plan and furthers the goals and objectives of the same.