

**AN ORDINANCE AMENDING CHAPTER 25, SECTION 9.12 OF THE
REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF WEST ORANGE
(HOURS OF OPERATION FOR BUSINESSES OPERATING IN
RESIDENTIAL ZONES IN THE TOWNSHIP OF WEST ORANGE)**

BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF WEST ORANGE, NEW JERSEY that Chapter 25-9.12 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 set limitations on the hours of operation for any business operating within 200 feet of any residential zone.

II. CHAPTER 25, SECTION 9.12 SHALL BE AND HEREBY IS AMENDED AND SUPERCEDED TO READ AS FOLLOWS:

- .12 Hours of Operation of Businesses Operating within Residential Districts

- a. For purposes of this section, *Business* shall mean a restaurant, retail food establishments, retail sales and personal services business. *Businesses* shall not include an establishment that sells prescription or non-prescription pharmaceuticals, or an establishment provides emergency medical care services provided that the establishment does not perform any other commercial functions during the hours prohibited under subsection (e) of this ordinance.
- b. No businesses established within 200 feet of any residential zone shall have hours of operation with opening of the business earlier than 6:00 a.m. and closing of the business later than 12:00 midnight.
- c. No deliveries to such businesses shall likewise commence prior to 6:00 a.m. and all deliveries must be completed before 12:00 midnight except as may be approved by any reviewing board.
- d. Nothing herein shall preclude the reviewing board hearing any application for establishing more restrictive hours for operations or delivery, based upon the nature of the proposed business operation and other facts and circumstances considered by the board.
- e. Hours of operation or delivery beyond that authorized by this Ordinance shall be prohibited.
- f. The foregoing restrictions shall not apply to any business already established and in operation on the date this ordinance is adopted where hours of operation differ

from the requirements of this subsection. No business already established and in operation as of the date of this subsection shall increase or expand hours of operation beyond existing hours of operation or the hours permitted by this subsection, whichever is the greater.

- g. Any businesses may obtain a permit to operate during the hours prohibited under subsection (e) of this ordinance on a temporary basis not to exceed one month after applying to and receiving approval from the Township of West Orange Planning Board or the Township of West Orange Zoning Board of Adjustment.
- h. Nothing within this ordinance shall alter or affect the requirements set forth in Chapter 4, Section 9 of the Municipal Code of the Township of West Orange and any Business operating during all or part of the hours of 12:00 midnight and 6:00 a.m. shall be required to comply with the requirements of Chapter 4, Section 9 of the Municipal Code of the Township of West Orange.

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.

Robert D. Parisi, Mayor

Susan McCartney, Council President

Karen J. Carnevale, Municipal Clerk

Introduced: September 9, 2014

Adopted: September 23, 2014

Legislative History

This ordinance is drafted to limit the hours of operations of businesses located in residential districts within the Township of West Orange or located within two hundred (200) feet of a residential district. The limits as to the hours of operation of businesses are limited only to businesses located in residential districts or within two hundred (200) feet of a residential district in compliance with Fasino v. Mayor and Member of the Borough Council of the Borough of Montvale, 122 N.J. Super. 304 (Law Div. 1973) which deemed unconstitutional a general closing ordinance passed by the Borough of Montvale that governed hours of operations for all businesses within a municipality. In addition, this ordinance is drafted consistent with the Appellate Division's holding in Fulbrook v. City of Camden, 2013 WL 5942128 (N.J. App. Div. 2013) wherein the Appellate Division affirmed a trial court's finding that an ordinance limiting the hours of operations for certain businesses within Residential Zones or within two hundred (200) feet of a Residential Zone represented a valid exercise of the City of Camden's police power.

Similarly, the Township of West Orange seeks to regulate the hours of operations for business located within two hundred (200) feet of a residential district as an exercise of its police powers and in support of the general welfare of the residents of the Township of West Orange. Modeled after the ordinance addressed in Fulbrook v. City of Camden, this ordinance seeks to maintain the esthetic and serenity of the Township of West Orange's residential districts for the benefit of the residents who reside in those districts in an effort to minimize the amount of debris, noise, and activity that often accompanies commercial business which is particularly detrimental to a residential district where commercial businesses are fewer.