

TOWNSHIP OF WASHINGTON
BERGEN COUNTY, NEW JERSEY

RESOLUTION No. 21- 254

**AFFORDING OPPORTUNITIES FOR RESTAURANTS, BARS,
DISTILLERIES, AND BREWERIES TO ADJUST OPERATIONS IN
RESPONSE TO THE COVID-19 PUBLIC HEALTH EMERGENCY
THROUGH EXPANDED OUTDOOR DINING PURSUANT TO LAW**

WHEREAS, restaurants, bars and liquor license holders are an integral part of the local economies and social fabric of municipalities; and

WHEREAS, policies regarding restaurants, bars and liquor license holders established by the State of New Jersey through law, regulation and executive order rightfully prioritize public health; and

WHEREAS, the proper adherence of measures to mitigate the spread of the COVID-19 virus has greatly affected the business model of these establishments; and

WHEREAS, the Township wishes to help its local businesses through this difficult time; and

WHEREAS, many such establishments are owned and operated by local families that depend upon continued economic activity; and

WHEREAS, the Township previously adopted a resolution which allowed food and beverage establishments to provide services in outdoor areas consistent with applicable law; and

WHEREAS, the New Jersey Legislature passed, and the Governor signed into law, Senate Bill No. 3340 (the "Legislation") which makes various revisions to current law intended to assist restaurants, bars, and other liquor license holders in dealing with the Coronavirus disease 2019 ("COVID-19"); and

WHEREAS, the State of New Jersey, Department of Health (the "State Health Department"), has issued Executive Directive No. 20-014 ("Executive Directive No. 20-014") which establishes protocols for food and beverage establishments offering service in outdoor areas; and

WHEREAS, the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control (the "ABC"), issued Special Ruling No. 2020-10 which established a temporary permit process to enable licensees and permittees to acquire a temporary permit to expand their licensed premises into outdoor areas, either contiguous or non-contiguous to their permanent licensed

premises (the "COVID-19 Expansion Permit"); and

WHEREAS, the Township supports temporary, practical measures that enable restaurants, bars and liquor license establishments to augment their dine-in capabilities as a means to boost customer activity, and wishes to promote the business of these establishments as permitted by applicable law;

NOW, THEREFORE, BE IT RESOLVED that the Township Council of the Township of Washington, County of Bergen, State of New Jersey as follows:

1. The following definitions shall apply to this Resolution, which definitions shall be deemed amended upon enactment of a corresponding change to the Legislation:

"Brewery" means a brewery operating under a brewery license pursuant to R.S.33:1-10.

"Distillery" means a distillery that has been issued, and is in compliance with, a distillery license pursuant to R.S.33:1-10.

"Food" means food that is cooked, prepared, sold, served, and consumed on the business premises.

"Outdoor space" means a patio or deck, whether covered or uncovered, a yard, a walkway, or a parking lot, or a portion of any such space, that is located on or adjacent to the business premises, which space is owned, leased, or otherwise in the lawful control of the owner or operator of the business premises.

"Public sidewalk" means a sidewalk on the locally or county owned public right-of-way which is adjacent to the business premises, or a portion thereof.

"Special Ruling No. 2020-10" means Special Ruling No. 2020-10, issued by the acting director of the Division of Alcoholic Beverage Control on June 3, 2020.

2. **Outdoor spaces which are owned or leased and which are located either on, or adjacent to, business premises.** During the period that this Section 2 is in effect, the owner or operator of a restaurant, bar, distillery, or brewery may use outdoor spaces which they own or lease and which are located either on, or adjacent to, their business premises, as an extension of their business premises for the purpose of conducting sales of food and beverages.

A. The owner or operator of a restaurant, bar, distillery, or brewery desiring to utilize outdoor spaces as an extension of their businesses

shall file an application with the Township zoning officer that includes: (1) 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 (2) 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 used for the service and sale of either food or beverages, or both, the restaurant, bar, distillery, or brewery shall not encumber more than 75 percent of the lot's total parking spaces for such 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.

B. The applicant shall also provide the following: (a) written consent of the owner of the premises, if other than the applicant, (b) an insurance certificate naming the Township of Washington 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, and (3) an indemnification agreement with the Township of Washington with respect to losses arising solely from the operation of the outdoor dining facility.

C. (1) The application shall be filed with the zoning officer who 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 the Legislation, 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, that is not otherwise directly superseded by the Legislation or Special Ruling No. 2020-10. 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) The Township of Washington may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of the Legislation 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 Township 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 an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the Township Council for the purpose of conducting said hearing and rendering said decision.

(4) Nothing in this Resolution shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

(5) Any restaurant, bar, distillery, or brewery operating pursuant to this section shall follow, maintain, and enforce protocols promulgated by the Commissioner of Health or Executive Order of the Governor in response to the COVID-19 public health emergency, concerning social distancing and use of personal protective equipment during the period those protocols are in effect.

3. Public sidewalks as an extension of business premises. During the period that this Section 3 is in effect, the owners and operators of restaurants, bars, distilleries, and breweries may use public sidewalks as an extension of their business premises for the purpose of conducting sales of food and beverages.

A. The owner or operator of a restaurant, bar, distillery, or brewery desiring to utilize public sidewalks as an extension of their businesses shall file an application with the Township of Washington zoning officer that includes: (a) 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 public sidewalks; and (b) a plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures and public sidewalks.

B. The applicant shall also provide the following: (1) written consent of the owner of the premises, if other than the applicant, (2) an insurance certificate naming the Township of Washington 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 located on public sidewalks, and (3) an indemnification agreement with the Township of Washington with respect to losses arising solely from the operation of the outdoor dining facility on public sidewalks.

C. (1) The application shall be filed with the zoning officer who 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 the Legislation, 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, that is not otherwise directly superseded by the Legislation or Special Ruling No. 2020-10. 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) The Township of Washington may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of the Legislation or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or to 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 30 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 Township 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 an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the Township Council for the purpose of conducting said hearing and rendering said decision.

(4) Nothing in this Resolution shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

(5) Owners and operators of restaurants, bars, distilleries, or breweries desiring to utilize public sidewalks are subject to the following conditions: (1) a walking path not less than four feet wide must be maintained on the public sidewalk at all times so as to not obstruct pedestrian traffic; (2) all fixtures must be removed from public sidewalks at the conclusion of each day, if so required by the Township of Washington; and (3) the Township of Washington reserves the right to order the temporary suspension of outdoor dining and the removal of all fixtures from public sidewalks due to road or utility construction, predicted high winds or severe weather, predicted snow or ice storms, the need to remove snow or ice from the sidewalks, or any other public emergency that may arise.

(6) Any restaurants, bars, distilleries, or breweries operating pursuant to this section of the Resolution shall follow, maintain, and enforce protocols promulgated by the Commissioner of Health or Executive Order of the Governor in response to the COVID-19 public health emergency, concerning social distancing and use of personal protective equipment during the period those protocols are in effect.

4. Nothing in this Resolution permits the use of State-owned right of way for the purposes of outdoor dining. Permits for the use of the State right of way may 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.

5. The regulations and procedures set forth in Sections 2 and 3 of this Resolution governing outdoor dining to accommodate COVID-19 conditions shall remain in effect until November 30, 2022 or the date on which indoor dining resumes without capacity limitations pursuant to an executive order issued by the Governor of the State of New Jersey, whichever is later, or until such time as applicable law requires modification thereof.

6. In accordance with the terms of the Legislation, the expiration date of any 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 22 shall be November 30, 2022 or the date on which indoor dining resumes without capacity limitations pursuant to an executive order issued by the Governor of the State of New Jersey, whichever is later.

7. 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 of Washington or specifically prohibited by the provisions of the Legislation. Where not in contravention with the provisions of the Legislation all applicants shall conform with all requirements of the New Jersey State Uniform Fire Code, New Jersey Uniform Fire Safety Act, New Jersey State Uniform Construction Code, New Jersey Public Health Nuisance Code and all other Township ordinances, and state laws, rules, regulations and directives.

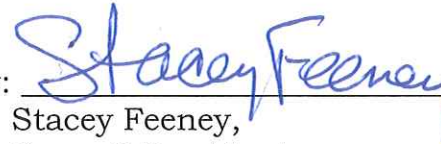
8. Nothing in this Resolution shall be interpreted or construed as permitting or mandating the opening, expansion, or resumption of unlimited operations of a restaurant, bar, or brewery that is closed, whether permanently or temporarily, or operating subject to limitations on its operations, service, 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 the Township Council acting as a local alcoholic beverage control board, as applicable.

9. This Resolution shall take effect immediately upon adoption by the Township Council.

ATTEST:

APPROVED:
TOWNSHIP COUNCIL OF THE
TOWNSHIP OF WASHINGTON


Susan Witkowski,
Township Clerk

By: 
Stacey Feeney,
Council President

DATED: June 21, 2021

COUNCIL	MOTION	SECOND	AYES	NAYES	ABSTAIN	ABSENT	RECUSE
Cascio	X		X				
DeSena			X				
Feeney			X				
Morgan		X	X				
Sears			X				