ORDINANCE NO. 2022-05

AN ORDINANCE OF THE BOROUGH OF NEPTUNE CITY, COUNTY OF MONMOUTH, STATE OF NEW JERSEY, ADOPTING REGULATIONS FOR OUTDOOR DINING

WHEREAS, as a result of the COVID-19 pandemic and the emergency orders issued by the State and Federal authorities, several businesses in the Borough of Neptune City have utilized outdoor seating space for the provision of food and beverages; and

WHEREAS, the Borough anticipates that these businesses will continue with the provision of outdoor dining, if permitted by local ordinance and regulation; and

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

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Neptune City, in the County of Monmouth, State of New Jersey, as follows:

CHAPTER ___ is hereby added as follows:

§ ___ OUTDOOR DINING

§ ___ Outdoor Dining Permitted.

All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, and all holders of a liquor license with retail consumption privileges (hereinafter "Establishments") are permitted to off in-person service in outdoor areas, provided that the Establishment obtains an Outdoor Dining Permit from the Borough of Neptune City for outdoor dining in accordance with the requirements set forth herein.

§ ___ Permit Required.

The Outdoor Dining Permit Application shall include a completed application, signed and dated by the owner of the Establishment, or such owner's authorized agent, together with a plan depicting the existing and proposed layout and location of such outdoor tables and seating, which shall also include a confirmation of the number of existing approved tables and seats, a depiction of all aisles, routes of ingress and egress, clearances and distances between tables and between the seating area of any curb line (six (6) foot minimum pedestrian clearance is required), trash and recycling receptacles, any proposed lighting, and any proposed temporary structures to protect the outdoor dining area from the elements. In addition to the creation and/ or expansion of the outdoor dining area, the application and plan may include proposed awnings, tents, and other similar devices to protect the outdoor dining areas from the elements, and any additional wiring, heating, and/or electrical changes that are proposed within this new outdoor seating area, provided that no

permanent structures shall be permitted under this Chapter. If the owner of the Establishment is not the owner of the property, the property owner must also sign the application.

§ ___ Expanded Outdoor Dining Areas.

a. The application and plan for outdoor dining may propose expanded outdoor dining areas, including, but not limited to, sidewalks, decks, patios, and private lawns contiguous with the Establishment, provided that any area proposed for outdoor seating and dining must be accessible from the Establishment, shall not obstruct the free flow of pedestrian traffic, and shall provide a safe location for patrons.

b. Parking areas will not be permitted.

c. The total amount of seats available to patrons shall not exceed the permitted occupancy of the Establishment.

d. In the event the outdoor dining area is proposed to be located in the right of way in front of a neighboring property, it must be an immediate neighboring property and written consent of the neighboring property owner shall be provided as part of the application.

e. If the neighboring property is not owner-occupied, the written consent of any tenant(s) shall also be provided.

§ ___ Review of Permit Application.

The application and plan for an Outdoor Dining Permit shall be reviewed by the Borough Zoning Officer, Construction Official, Borough Administrator, Fire Official, and Police Department (hereinafter "Reviewer"). At the discretion of any Reviewer, additional information needed to process the application may be required and must be submitted by the applicant. The Outdoor Dining Permit does not replace, or eliminate the need for, any construction permit required for any improvement at the Establishment' s outdoor dining area.

§ ___ Standards for Permits.

The following standards are created for the outdoor dining areas:

a. Outdoor dining areas must be designated and operated in accordance with the State of New Jersey, Department of Health, and any applicable County Health Department requirements.

b. Outdoor dining areas may be located on sidewalks, decks, patios, and private lawns contiguous with the Establishment. Parking areas will not be permitted.

c. If the contiguous area is located in a County Right of Way, approval from the County must be obtained.

d. Lighting will be required if the outdoor dining area is proposed to be utilized after dusk and there is inadequate existing lighting. Electrical permits may be required.

e. A non-enclosed tent, awning or umbrellas may be utilized within an outdoor dining area provided they do not restrict pedestrian access. Six (6) foot minimum pedestrian clearance is required. A tent permit from the zoning department must be obtained annually and Fire Department approval must be obtained, if applicable.

f. Serving stations and a host podium may be located within an outdooring dining area. There shall be no outdoor cooking allowed.

g. No change in grading will be permitted in order to create an outdoor dining area.

h. Establishments with existing outdoor dining areas may seek to expand the existing area in accordance with the regulations set forth herein.

i. The operator of an outdoor dining area shall be responsible to provide, maintain, and empty an adequate amount of outdoor trash and recycling receptables for the outdoor dining area, and shall not be permitted to dispose of trash or recycling into municipal receptacles.

j. The operator of an outdoor dining area shall be responsible for maintaining a sanitary, safe, litter-free, and well-kept appearance of the property at all times.

k. Adequate provision for pedestrian safety must be provided. To allow for pedestrian circulation, a minimum of six (6) feet of sidewalk along the curb and to the entrance of the establishment shall be maintained and free of tables and other encumbrances. Sidewalk seating must be limited to tables of four (4) seats or less.

l. Planters, posts with ropes, wrought iron railings, or other removable enclosures are encouraged and shall be used as a way of defining the area occupied by the outdoor dining area.

m. To the extent possible, all elements of the outdoor dining area shall be compatible with the architectural character of the building where the establishment is located.

n. Outdoor dining areas may have outdoor heaters, provided same are in locations identified on the plan and subject to inspection by the Borough Zoning Officer and/ or the Fire Department.

o. Establishments with outdoor dining areas shall not be entitled to additional signage, over and beyond what is permitted for the restaurant use.

p. Establishments with on-premises retail consumption privileges are responsible for compliance with the New Jersey Alcoholic Beverage Control Commission.

q. No live outdoor entertainment/performances will be permitted in the outdoor dining areas permitted by this Code. Any other outdoor music must comply with Borough noise ordinances and be considerate of businesses and residential neighbors.

§ ___ General Permit Conditions.

Outdoor Dining Permits shall be subject to the following general conditions:

a. Outdoor Dining Permits are valid from April 1st through November 30th.

b. An Outdoor Dining Permit may be amended or revoked if the Borough Administrator or his/her designee identifies a safety issue that may involve but not be limited to traffic, fire, pedestrian safety, or trash management, and/or if the Establishment fails to comply and/or if conditions of the penult are not adhered to.

c. For any outdoor seating and dining activities in a public right-of-way, the Establishment shall provide a Certificate of Insurance, with acceptable limits of coverage as required by the Borough Administrator, naming the Borough as an additional insured, and shall indemnify and hold harmless the Borough, its employees, agents and/or officers from all claims, losses, liens, expenses, suits, including costs and attorney's fees, arising out of the placement, operation and maintenance of the outdoor dining area approved by said Outdoor Dining Permit.

d. All expenses and expenditure of any funds in reliance on the provisions of the Outdoor Dining Permit shall be at the Establishment's sole and exclusive cost and expense.

e. Any changes to a permit granted hereunder shall require the submission of a new permit application.

§ ___ Existing Approvals.

Nothing herein shall prevent the continued use of outdoor dining area at any establishment already authorized and approved by the Borough pursuant to any prior site plan or other land use approval. Outdoor dining areas authorized by an Outdoor Dining Permit shall be conducted during the same hours of operation currently applicable to the establishment.

§ ___ Approvals.

The issuance of an Outdoor Dining Permit for outdoor dining, including, but not limited to, location, scope, setbacks, and size of the outdoor dining area, is solely in the discretion of the Borough. In order for an application to be considered for administrative approval, the following must be met:

a. There must be an approved site plan on file with the Borough for the site.

b. All of the conditions indicated above must be met.

c. If any of the conditions listed above cannot be met, or if the applicant does not agree with the determination made by the Borough Administrator or his/her designee, the applicant shall make an application to the Land Use Board for site plan approval.

d. No new impervious cover is proposed.

e. The cost of the administrative review shall be $250.00 and shall be nonrefundable.

§ ___ Violations and Penalties.

Any person or entity who violates any provisions of this Chapter shall be fined as set forth in Borough Code Section 1-16, "Violations and Penalties." Every day that a violation continues shall constitute a separate and distinct offense. Each and every violation shall be considered a separate violation.

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