

BOROUGH OF BOUND
RESOLUTION 2020-121

RESOLUTION PROVIDING FOR THE ISSUANCE OF TEMPORARY PERMITS TO ALLOW LOCAL RESTAURANTS AND EATING ESTABLISHMENTS TO SERVE FOOD AND/OR BEVERAGES IN AN OUTDOOR SPACE IN A MANNER CONSISTENT WITH EXECUTIVE ORDER 150, THE NEW JERSEY DEPARTMENT OF HEALTH DIRECTIVE 20-014 AND, IF APPLICABLE, THE NEW JERSEY ALCOHOLIC BEVERAGE CONTROL SPECIAL PERMIT REGARDING OUTDOOR SERVICE IN LIGHT OF THE COVID-19 HEALTH EMERGENCY

WHEREAS, on February 3, 2020, New Jersey's Governor, Philip D. Murphy, issued Executive Order 102 establishing the New Jersey Coronavirus Task Force in an effort to monitor the spread of the Coronavirus within the State of New Jersey, the United States of America, and the entire world in order to facilitate necessary and appropriate action to ensure the safety and security of the residents of the State of New Jersey; and

WHEREAS, on March 4, 2020, the State of New Jersey reported the first confirmed positive case of Coronavirus throughout the State; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the novel Coronavirus within the State of New Jersey; and

WHEREAS, on March 16, 2020, Governor Murphy issued Executive Order 104 enacting several "social distancing" regulations, including but not limited to, limiting public gatherings to no more than 50 people, closing educational facilities, closing various recreation and entertainment-based businesses, and imposing restrictions on scope of service and hours of operation for other non- essential retail, recreational, restaurants/bars and entertainment businesses; and

WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order 107, which expanded the social distancing regulations set forth within Executive Order 104, including but not limited to, directing all New Jersey residents to stay at home with specific limited exceptions, prohibiting gatherings of any size, closing all non-essential retail businesses and identifying essential businesses permitted to continue to operate subject to specific limitations, and reiterating and strengthening social distancing requirements when in public; and

WHEREAS, Executive Order 107 specifically provided that "All restaurants, cafeterias, dining establishments and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses;" and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), Governor Murphy announced a multi-stage New Jersey's Road Back Plan for the methodical

and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, the several executive orders have been issued by the Governor to **implement the State's** reopening process, relaxing restrictions on certain businesses, including the authorization of curbside pickup at retail establishments, the resumption of non-essential construction, and the allowance of a number of lower-risk outdoor activities; and

WHEREAS, on June 3, 2020, Governor Murphy issued Executive Order 150 that, subject to municipal approval, permits restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail **consumption privileges, collectively referred to as "food or beverage establishments,"** to offer in-person service at outdoor areas effective June 15, 2020, provided that the establishment complies with certain requirements contained in Executive Order 150, as follows:

- Ensure all areas designated for food and/or beverage consumption are in conformance with applicable local, State, and Federal regulations;
- Limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table;
- Satisfy all standards issued by the New Jersey Department of Health;
- Ensure that tables seating individual groups are six feet apart in all directions and that individual seats in any shared area that is not reserved for individual groups, such as an outdoor bar area, are also six feet apart in all directions;
- Prohibit patrons from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom;
- Require patrons to wear a face covering while inside the indoor premises of the food or beverage establishment, unless the patron has a medical reason for not doing so or is a child under two years of age;
- Prohibit smoking in any outdoor areas designated for the consumption of food and/or beverages; and

WHEREAS, on June 3, 2020, the New Jersey State Department of Health (DOH) issued Executive Directive No. 20-014, which provides COVID-19 protocols for food or beverage establishments offering service in outdoor areas pursuant to Executive Order No. 150; and

WHEREAS, to facilitate the re-opening of bars and restaurant in a manner that maintains social distancing, the Division of Alcoholic Beverage Control (ABC) has created a new permit to address the anticipated need of bars and restaurants holding ABC licenses to liberally expand their premises to allow reasonable seating capacity while observing social distancing guidelines **consistent with the mandates in the Governor's Executive Orders; and**

WHEREAS, in recognition of the economic repercussions suffered by various local businesses as a result of the Covid-19 health emergency, the Borough believes that, to promote the economic viability of local businesses in these extraordinarily difficult times, it is necessary to permit retail food establishments to reasonably expand their available space in order to open, subject to compliance with Executive Order 150 and the DOH Directive 20-014 **and, if applicable, the ABC's special permit**

for outdoor service, in a manner that will maintain social distancing requirements while, at the same time, making it economically feasible for such businesses to re-open; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the Borough to temporarily permit outdoor dining at local retail food establishments to extend outdoor dining into public rights of way (including sidewalks) and to provide for additional space for outdoor dining through use of private property and private parking lots for outdoor dining under specific terms and conditions consistent with **Executive Order 150**, the DOH's Directive 20-014 and, if applicable, the ABC's special permit requirements, upon application and approval by the Administrative Officer and/or his designee,

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Bound Brook, County of Somerset, State of New Jersey as follows:

1. The aforesaid recitals are incorporated herein as if set forth at length;
2. A restaurant or sidewalk café, as those terms are defined in Chapter 21, Land Use (an "Establishment"), of the Revised General Ordinances of the Borough of Bound Brook, located within the NB/R, B/R, OB, MU/2 and RB-1 zoning district, may apply to the Administrative Officer, or his designee, for a Temporary Outdoor Dining Permit to create a dining area to serve food and/or beverages in outdoor areas, including public sidewalks, private decks, patios, parking lots, excluding spaces marked as handicapped parking spots, or other areas that are (i) adjacent or contiguous to the Establishment, with the consent of the adjoining property owner and adjoining business.
3. The Establishment seeking a Temporary Outdoor Dining Permit shall apply to the Administrative Officer using forms available from the Code Enforcement Office.
4. The Administrative Officer and/or his designee is hereby granted the authority and discretion to approve Outdoor Dining Permit Applications pertaining to existing Establishments, subject to the review and approval of Zoning, Office of Emergency Management, Fire Prevention, Health Department, the Bound Brook Police Department, and Administration. The application will be reviewed for public safety, sidewalk passage, traffic and parking lot flow along with compliance with New Jersey COVID-19 guidelines and regulations.
5. All Establishments granted a Temporary Outdoor Dining Permit shall comply with the requirements of Executive Order 150, the New Jersey Department of Health's (DOH) Directive 20-014 and, if applicable, the New Jersey Division of Alcoholic Beverage Special Permit allowing reasonable expansion of licensed premises to facilitate social distancing requirements.
6. Establishments applying for a Temporary Outdoor Dining Permit shall be required to submit an application and a drawing depicting the proposed layout and location of tables/seating outside of the Establishment, and shall also include an illustration, rendering, and/or photograph of all proposed furniture, umbrellas, and trash receptacles intended to be located at or near the

outdoor dining area. The applicant shall also describe how the proposed plan conforms to the requirements of Executive Order 150 and DOH Directive 20-014. Approval of any Temporary Outdoor Dining Permit application shall be subject to the following conditions:

(a) Applicants may be permitted to relocate existing approved tables/seats and/or to locate newly acquired tables/seats to other locations on site, including a Borough right-of-way (except that no Temporary Outdoor Dining Permits shall be issued for use of any public street). Notwithstanding anything contained herein, no tables/seats shall encroach on or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of its approaches. In addition, notwithstanding the provisions of this Resolution, the outdoor seating area may not exceed 1,000 square feet or the maximum inside seating capacity, whichever is less..

(b) Applicants may be permitted to utilize the public right of way (i.e., sidewalks) of an adjacent property owner for outdoor dining with the express written consent and approval of the adjacent property owner, which must be submitted with the Application.

(c) Tables/seats may be permitted to be located in the Borough right-of-way (i.e., sidewalk) provided a minimum six (6) feet pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements.

(d) An Establishment holding an Outdoor Dining Permit may not serve outdoor dining customers after 9:00 PM.

(e) Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining area, and the frequency with which the outdoor dining area will be surveyed for litter in order to control the accumulation of trash/recycling.

(f) Applicants must also acknowledge and agree to full compliance with all current and any newly imposed safety and precautionary measures and guidelines established by the State of New Jersey relating to COVID-19.

(g) The sale/service of alcoholic beverages shall be permitted, subject to compliance with any and all applicable ABC regulations/statutes, including but not limited to a special permit issued by the ABC to allow the temporary expansion of premises, and subject to the review and approval of the Borough Clerk and Chief of Police. The approval of any extension of premises application to temporarily permit the sale/consumption of alcoholic beverages in outdoor dining areas shall automatically terminate upon the earlier of (i) expiration or revocation of the Temporary Dining Permit issued pursuant to this Resolution or (ii) November 30, 2020.

(h) Temporary Dining Permits issued in accordance with this Resolution shall expire upon the rescission or expiration of Executive Order 150, except that the Borough Administrator or the Administrative Officer shall have the right to immediately revoke the Temporary Dining Permit of any Establishment that fails to comply with the outdoor dining requirement set forth in this Resolution or that otherwise violates applicable law.

(i) Applicants proposing to relocate existing tables/seats to the Borough right-of-way (i.e., public sidewalks) shall defend, indemnify and hold harmless the Borough of Bound Brook, its officers, employees and/or agents, from all claims, losses, liens, expenses, suits and attorney's fees arising out of the placement, operation, and maintenance of the Outdoor Dining Area. Applicants must name the Borough of Bound Brook as an additional insured under the Applicant's general liability insurance, bodily injury, property damage, and personal injury insurance policies, with a minimum limit of one million (\$1,000,000.00) dollars, and provide proof of same to the Borough Administrator and Administrative Officer, and proof that said policies have been amended to reflect coverage for the proposed outdoor dining area; and

BE IT FURTHER RESOLVED that Establishments issued a Temporary Outdoor Dining Permit pursuant to this Resolution shall not be required to apply for a separate permit; and

BE IT FURTHER RESOLVED that, notwithstanding anything herein to the contrary, the Borough hereby reserves the right to amend, terminate, or repeal this Resolution and/or any permits or approvals granted hereunder at any point in time, if it determines that it is in the best interest of the health, safety and welfare of the Borough and its residents, and accordingly no property rights are granted to any persons or entities by virtue of this Resolution and/or permits or approvals hereunder, and any persons or entities electing to pursue economic relief through application and issuance of a Temporary Outdoor Dining Permit in accordance with the provisions of this Resolution are hereby given notice that the expenditure of any funds or the incurrence of any costs by such persons or entities in reliance upon this Resolution and any permit or approval hereunder shall be at their sole and exclusive risk, cost and expense; and

BE IT FURTHER RESOLVED that, except as otherwise provided herein, all existing Establishments must comply with any and all federal, state, county, and local laws and regulations, including any and all existing Land Use and general ordinances governing the operation of the Establishments; and

BE IT FURTHER RESOLVED that the Administrative Official, Borough Administrator, Zoning Officer and Police Department are hereby authorized and empowered to enforce this Resolution and the several provisions hereof as well as the conditions of approval for a Temporary Outdoor Dining Permit; and

BE IT FURTHER RESOLVED that that the Borough Administrator and Administrative Officer are hereby further empowered to enforce the discretionary powers that are considered necessary in order to implements the provisions of this Resolution; and

BE IT FURTHER RESOLVED that any applicant who is denied a Temporary Outdoor Dining Permit by the Administrative Officer and/or his designee may appeal such denial to the Borough Council by filing a notice of appeal with the Borough Clerk within ten (10) days of such denial. Upon receipt of any such notice of appeal, the Council will hear the appeal at a subsequent public meeting, at which time the Establishment's duly authorized representative and any other interested persons will be afforded the opportunity to be heard.

At the conclusion of said hearing, the Council will either uphold or overturn the Administrative Officer and/or his designee's decision; and

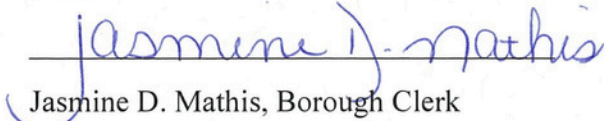
BE IT FURTHER RESOLVED that notwithstanding anything herein contained to the contrary, the Mayor and Council may rescind this Resolution, and all approvals or permits issued hereunder, by further Resolution; and

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

Approved:


Mayor Robert P. Fazen

Attest:


Jasmine D. Mathis, Borough Clerk

Date of Adoption: June 9, 2020