

**TOWN OF WEST NEW YORK
COUNTY OF HUDSON, STATE OF NEW JERSEY**

ORDINANCE #5/22

**ORDINANCE AMENDING OUTDOOR DINING REGULATIONS ENACTED
PURSUANT TO COVID-19 RELATED RESTRICTIONS**

WHEREAS, on February 5, 2021, Governor Murphy signed P.L.2021, c.15 which, among other things, expands opportunities for restaurants, bars, distilleries, and breweries to provide outdoor dining, in response to the COVID-19 public health emergency

WHEREAS, P.L.2021, c.15 also mandates extension of the expiration date of all COVID-19 Expansion Permits issued by the Director pursuant to the provisions of Special Ruling No. 2020-10 until November 30, 2022 or the date on which indoor dining resumes without capacity limitations, whichever is later; and

WHEREAS, the Town of West New York (the “Town”) previously adopted regulations to expand outdoor dining accommodations and licensing of outdoor cafes for restaurants and food establishments located in business, residential, commercial, and industrial zones throughout the Town of West New York in response to COVID-19 related restrictions and capacity limitations implemented throughout the State; and

WHEREAS, the Town seeks to amend its outdoor dining regulations to restrict the use of parking spaces and to expand the use for outdoor cafés located on the sidewalk of an adjacent structure.

NOW THEREFORE, BE IT ORDAINED that the Mayor and the Board of Commissioners for the Town of West New York do hereby authorize the Code of the Town of West New York to be amended as follows:

SECTION I

Section II of this Ordinance hereby amends and replaces in its entirety Article IX “Outdoor Dining Regulations” of Chapter 352 entitled “Streets and Sidewalks” within the Town of West New York Code of Ordinances.

SECTION II

1. DEFINITIONS

For the purpose of this Ordinance, the following terms shall be defined within this Section as follows:

“Outdoor Café” – any food/beverage establishment or restaurant that serves food/other refreshments upon the sidewalk immediately in front of the food/beverage establishment or restaurant or upon the sidewalk in front of the lot immediately adjacent to the food/beverage establishment or restaurant, provided that the adjacent lot and the food/beverage establishment or restaurant have the same owner.

“Sidewalk” – the area within the public-right-of-way reserved for pedestrian traffic from the curb to the front line of the food/beverage establishment or restaurant.

2. LICENSE.

It shall be unlawful for any person, firm, partnership, corporation, association, or organization of any kind (hereinafter collectively referred to as "person") to create, establish, run, maintain or otherwise operate an outdoor café upon the sidewalks within the Town of West New York or upon private property, unless such person shall hold a currently valid license issued pursuant to the terms of this article. The fee shall be \$250.00 annually for the issuance of a license to operate an outdoor café in the Town of West New York.

3. SITE PLAN APPROVAL.

In addition to securing a license a person may be required to secure informal site plan approval from the Planning Board or the Building Official. Such informal Site Plan approval will be the determination of the Building Official and /or the Town Administrator.

4. LOCATION.

A. When located within the public right-of-way, outdoor cafes shall be located on the public sidewalk directly in front of the restaurant/food establishment to which the outdoor café is accessory. Outdoor cafes may also be located on the sidewalk directly in front of a lot that is immediately adjacent to the restaurant/food establishment, provided that the restaurant/food establishment and the adjacent lot are owned by the same person/entity. For purposes of administering this provision, the term "directly in front of" shall be construed to mean the area represented by an extension of each side of the restaurant/eating establishment extending out to the curb line immediately in front of the establishment. These Outdoor Cafes shall be required to maintain a clear and unobstructed pathway designated to accommodate pedestrian traffic that is at least 60 inches wide, located on the public sidewalk, around or through the Outdoor Café space.

B. "On-Street License Add-On" – Outdoor Cafes are not permitted to be located or operated on any street area or parking lot area within the Town of West New York.

C. When located on private property, outdoor cafes may be located in front of, on the side of, and/or to the rear of the eating establishment to which the outdoor café is accessory so long as they are located in the areas as defined previously in this Ordinance. Such cafes shall be located on the property containing the eating establishment and/or within the public right-of-way as permitted by subsection A above. In the case of outdoor cafes that are located on properties containing multiple tenants, such cafes shall not be permitted to be located in front of, on the side of and/or to the rear of any other establishment on the same property unless both the property owner(s) and/or other tenant(s) give their consent in writing prior to the issuance of the license for the outdoor café. Such consent shall be valid only for the term specified in the consent or for the term of the license, whichever is less, and such consent shall be required to be renewed prior to renewal of the license. Such cafes shall be required to maintain an unobstructed impervious finished surface for pedestrian traffic at least 60 inches wide around or through such outdoor café.

5. APPLICATION FOR LICENSE

Application for license required hereunder shall be made the Construction Code Official and shall be signed by the applicant. The application shall contain the following information:

A. The name, residence address and telephone number of each individual, owner or partner, or if a domestic corporation, the names, residence addresses and telephone numbers of the directors and officers owning a ten percent or greater interest in the corporation and the chief operating executive of the corporation, and if a non-domestic corporation, the name, residence address and telephone number of the managing officer for service of process within the State of New Jersey and a copy of the qualification of said non-domestic corporation to conduct business in the State of New Jersey.

B. A copy of the trade, corporate, business or fictitious name upon which the applicant intends to do business pursuant to this article.

C. The address and description of each place where the applicant intends to establish or operate an outdoor cafe.

D. The name and address of the person owning the premises, if other than the applicant, and the consent of the owner of the premises to the application.

E. Three (3) sets of a proposed layout plan containing scaled drawings clearly illustrating the number, type of materials, color and location of all tables, chairs, umbrellas or other furnishings or fixtures intended to be located in the outdoor café. The perimeter of the outdoor café shall be defined by a portable-type enclosure, which may include live plantings. The enclosure shall define the perimeter of the area to be used as an outdoor café and shall be separate from the designated walkway for pedestrian sidewalk traffic. The enclosure shall not contain doors, windows, air conditioning or heating equipment and shall be open at all times to the air from a height of not more than three feet. Awnings or outdoor umbrellas extending over the enclosure are permitted so long as the minimum height from the ground to the underside of the umbrella or awning is 72". The scaled drawings shall also illustrate the following:

1. The location of any doors leading from the eating establishment to the outdoor café. No such doors may be obstructed in any manner.
2. The number of feet and location of unobstructed space permitting free passage of pedestrian traffic around or through each outdoor café.
3. The location of the place where any food or drink is intended to be prepared.
4. An illustration of the enclosure or protective barrier separating the eating and serving area of each outdoor café from pedestrian traffic.
5. The location of all fire hydrants, parking meters, utility poles, benches, handicap ramps, street furniture, trees and any other fixtures permanently located on the sidewalk in front of the eating establishment or within 10 feet thereof on either or any side.
6. The type and location of any proposed outdoor lighting and fixtures.
7. Name, address, block and lot of all uses within 200 feet on either side of the property, including types of uses, and, in the case of mixed-use building, the location and type of use for each level within the mixed-use building.
8. Seating capacity of the existing restaurant and the proposed outdoor dining area and compliance of the restaurant with the parking requirements of the Town of West New York.

F. The annual application fee shall be Two Hundred Fifty (\$250.00) Dollars.

6. ON-STREET DINING PROHIBITED

The Town of West New York prohibits the operation of any Outdoor Café that extends onto a public street, an area designated for street-parking or on any public or private parking lot. As of the effective date of this Ordinance, all on-street dining licenses previously issued by the Town of West New York prior to this Ordinance shall be deemed invalid. The Town of West New York will not consider any On-Street License Add-on Requests included with an application for a license to operate an Outdoor Café after the effective date of this Ordinance.

7. REVIEW OF APPLICATION

The Construction Code Official will review the application for completeness and compliance with the terms of this article. If the application is complete, the Construction Code Official will act upon the same within 10 business days of the submittal of the application or within 10 business days after the application becomes complete. If the application is not complete, the Construction Code Official will so notify the applicant within 10 business days of the submission and specifically detail the areas in which the application lacks compliance with the requirements of this article.

8. ISSUANCE OF LICENSE

If the application complies with the article, the Construction Code Official shall issue a license strictly subject to the terms and conditions of this article.

In computing the number of off-street parking spaces required for restaurants with outdoor dining area, the outdoor dining area and its seating capacity shall be subject to any applicable health, building and fire department codes and requirements as may be required by law and Ordinance. However, where such outdoor seating represents a relocation of indoor seating such that there will be no increase in the overall seating capacity of the restaurant, such areas shall not be included.

9. TRANSFER OF LICENSE

The license is personal to the applicant, and any change or transfer of ownership of the Outdoor Café License shall terminate the license and shall require a new application for a license in conformity with all requirements set forth within this Article.

10. INSPECTIONS

Acceptance of the license by the applicant shall operate as a consent to the health, fire, police and building officials of the Town to inspect the outdoor café for continued compliance with the terms and conditions of this article and any federal, state, county or local law, article or regulation affecting the same.

11. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

No license to operate an Outdoor Café issued pursuant to this article shall be granted to any person until and unless such person has filed with the Construction Code Official a statement agreeing to indemnify and hold harmless the Town of West New York, its agents, servants, representatives or employees from any or all claims, damages, judgment costs or expenses, including attorney's fees, which they or any of them may incur or be required to pay due to any personal injury, including death, or damage to property suffered by any person or persons as a result of or related in any way to the operation and maintenance of the outdoor café for which the license is issued.

12. LIABILITY INSURANCE REQUIREMENT

A. No license required by this article shall be granted to any person to operate an outdoor café until such person shall have first filed with the Construction Code Official a comprehensive general liability policy issued to such person by a public liability insurance company authorized to do business in the State of New Jersey affording the coverages set forth below in the amount so specified. Such insurance policy shall name the Town of West New York, its agents, officers, servants, representatives and employees as additional insured with respect to the operation and maintenance of the outdoor café in the following amounts:

- (1) Bodily injury.
 - (a) Each person: \$300,000.
 - (b) Each accident: \$1,000,000
- (2) Property damage.
 - (a) Each person: \$300,000
 - (b) Each accident: \$1,000,000

B. The insurance coverage required by this section shall at all times be maintained for the full amount. The policy of insurance required by this section shall be filed with the Construction Code Official and shall contain a clause obligating the company issuing same to provide no less than 30 days' written notice to the Town Clerk before cancellation or amendments of any of the terms within the policy. Notice of cancellation shall not relieve the company issuing such policy from liability for any injury or claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the immediate effect of suspending the license of such person to operate the outdoor café covered thereby until a new policy complying the provisions of this section is filed with the

Construction Code Official and a letter in writing confirming the new effective date of the license is issued by the Construction Code Official.

13. CONDITIONS OF POLICY.

Every insurance policy required hereunder shall contain a provision for continuing liability thereunder to the full amount thereof notwithstanding any recovery thereon, that the liability for the insured shall not be affected by the insolvency or the bankruptcy of the insured, and that until the policy is cancelled the insurance company will not be relieved from liability on account of nonpayment of premium or of any act or omission by the named insured. Such policy of insurance shall be further conditioned for the payment of any and all judgments up to the limits of such policy.

14. REVOCAION OR SUSPENSION OF LICENSE.

Any license issued hereunder is issued solely as a revocable license, which shall be subject to revocation or suspension by the Construction Code Official for failure of any licensee to comply with this article or for violation of any other applicable federal, state, county or municipal law, regulation or article. Any license issued hereunder is issued upon the express understanding that the licensee obtains no property right thereunder, nor any interest in the continuation of said license.

15. OPERATION WITHOUT LICENSE UNLAWFUL.

It shall be unlawful for any person to operate an outdoor café after the suspension or termination of the applicable license, or to utilize any parking space area; violators shall be subject to fines of up to \$1000.00 for each violation. Each day an outdoor café or parking space area is utilized without the applicable license or add-on is a separate violation.

16. PROPERTY MAINTENANCE.

Each licensee is responsible for keeping the area of the outdoor cafe and the adjacent walks and streets free and clear of any debris or litter occasioned by the café. Areas must be cleaned as needed and at the time that business is closed and at the beginning of each business day, not later than 9:00 A.M. Sidewalks shall be washed and maintained daily and kept free of all debris, All foreign substances shall be removed from the sidewalk surface. No menu type podiums or advertisements boards and/or any reception type stands shall be permitted to be placed on the sidewalk.

17. VENDING MACHINES PROHIBITED.

No vending machines of any kind are permitted on the exterior of any building an outdoor café.

18. SIGNS.

No signs shall be permitted in the area of the outdoor cafe except signs on the awnings complying with the Sign Ordinance of the Town. Outdoor umbrellas located in the outdoor cafe shall be exempt from the Sign Ordinance of the Town of West New York.

19. ADDITIONAL RIGHTS OF TOWN OF WEST NEW YORK

In addition to the powers of suspension or revocation as set forth above, the Town reserves the right to modify, suspend or revoke any license on 24 hours written notice if the Town; determines that pedestrian traffic is, in fact, impeded, made unsafe because of the operation of the outdoor café or because of any other safety issue which the Town determines adversely affects the Town because of such operation. The license may also be suspended or revoked on 10 days' written notice in the event that the Town determines that it is necessary to utilize the area or any part thereof for the maintenance or installation of underground utilities. In the event of an emergency, which emergency is certified by the Town Administrator, the license may be suspended or revoked without notice.

20. ALCOHOLIC BEVERAGE CONTROL LICENSE.

If the applicant is the holder of an alcoholic beverage control license pursuant to the laws of the State of New Jersey, it shall be the applicant's responsibility to cause the alcohol beverage control license to be amended to include the premise utilized for outdoor café purposes in order to serve alcoholic beverages therein. Alcoholic beverages shall not be the primary or sole item to be sold in the outdoor cafe.

21. SEASONAL OPERATION: DURATION OF LICENSE.

Outdoor cafes shall be permitted to operate from May 1st through October 20th. The license, when issued, shall be valid for the calendar year in which it is issued.

22. EQUIPMENT.

No tables, chairs, benches or other equipment used in the outdoor cafe shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk or property of the Town of West New York within or near the licensed area. All outdoor items must be removed daily at the close of business or no later than 10:00 P.M.

23. VACATION OF SIDEWALK SPACE: REMOVAL OF PROPERTY BY THE TOWN OF WEST NEW YORK

The licensee agrees that at the end of the license period, or in the event that the license is temporarily or permanently suspended or revoked, that the licensee will at his own cost and expense vacate the sidewalk space and promptly remove any property placed thereon. Failure to do so on five days written notice shall grant to the Town the right to remove any property on the sidewalk, and the licensee agrees to reimburse the Town for the cost of removing and storing the same.

24. NOISE.

The licensee shall not direct or permit to be directed to or from the area occupied by the outdoor cafe any bell, chime, siren, whistle, loudspeaker, public address system, radio, sound amplifier or similar device.

25. HOURS OF OPERATION.

No outdoor cafe shall be open for business prior to 8:00 A.M. nor remain open for business after 10:00 P.M. All persons occupying the outdoor cafe shall vacate the same no later than 10:00 P.M.

26. TABLE SERVICE.

No food or drinks served or consumed at outdoor cafes located either on public or private property shall be prepared or stored other than in the interior of the eating establishment. Table service is required at restaurants only.

27. TERMS AND CONDITIONS OF PERMIT.

The Town of West New York shall issue a permit certificate upon payment in full of the appropriate annual fee and compliance by the applicant of the prerequisites set forth in this article. The licensee is required to display the permit certificate prominently in the front window, facing towards the sidewalk of the establishment. Failure to properly display the requisite permit certificate shall result

in suspension or termination of the license by order of the Town of West New York Town Administrator.

28. LICENSE TERMS AND CONDITIONS.

- A. An outdoor dining facility license shall be valid only through October 20th of a given year;
- B. A new outdoor dining facility license must be obtained for each year;
- C. An outdoor dining facility license may not be transferred in any way;
- D. The license shall be displayed in a conspicuous place on the premises prior to the use of the outdoor dining facility.

29. SMOKING PROHIBITED; SIGNS; ENFORCEMENT.

A. Smoking shall mean the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked, or the inhaling or exhaling of smoke or vapor from an electronic smoking device.

B. Smoking shall be prohibited in all restaurants, food establishments and Outdoor Cafes as defined herein. No-smoking signs or the international no-smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a diagonal red line through its cross section) shall be clearly, sufficiently and conspicuously posted at such outdoor restaurants and cafes. The signs shall be clearly visible to the public and shall contain letters or a symbol that contrasts in color with the sign, indicating that smoking is prohibited therein. The sign shall also indicate that violators are subject to a fine.

C. Enforcement of this chapter shall be within the authority of the Police Department, Fire Department and Health Department of the Town of West New York.

D. Any person who violates any provision of this chapter shall be subject to a fine of not less than \$250.00 for the first offense, \$500.00 for the second offense and \$1,000.00 for each subsequent offense,

30. REGULATIONS.

The conduct of outdoor dining pursuant to a license issued under this section shall be subject to and inclusive of all of the following restrictions and requirements.

A. Outdoor dining may only be in districts zoned for business, designated in the Town of West New York, Construction Code Official and /or the appropriate authority;

B. The outdoor dining area must be clearly defined and limited by way of a barrier, such as fencing, landscaping, a wall or as approved by the Town of West New York;

C. The Outdoor Cafes must not block, obstruct and/or inhibit pedestrian traffic on public sidewalks. Pedestrian traffic must have a clear, open and unobstructed right-of-way between the closest edge of the outdoor dining tables and the curb line of the sidewalk. Such pedestrian access shall have a minimum width of the greater of 10 feet or 1/2 of the sidewalk's width, but no less than six feet. There shall be a minimum of six feet between the building and the front property line in order for the dining area to be approved;

D. Any outdoor dining area shall have adequate buffering from adjacent buildings or sites consisting of landscaping and/or fencing. If the outdoor dining area abuts residentially zoned land, the outdoor dining area shall be located a minimum of five feet from the common property line;

E. Property owners shall not place anything in an alleyway, path, or walkway or set up tables in such a manner as to block, obstruct, or inhibit access to such alleyways, paths, or walkways;

F. Outdoor dining facility owners, employers, and employees shall not block, obstruct, or inhibit a building's entrance/egress. It shall be unlawful to block or obstruct in any manner the clear width of any exit's discharge passageway, as determined by the clear width opening of the entrance/egress door(s). The exit's discharge passageway shall proceed directly to the street;

G. Only tables, chairs, umbrellas, and receptacles for garbage and recyclables are permitted within the outdoor dining area;

H. Outdoor dining facility owners, employers, and employees shall not place any table, chair, sign, umbrella or other item in such a manner as to block or obstruct any municipal sign receptacles for garbage and recyclables, public hydrants, or other public amenity;

I. Outdoor dining facility owners, employers, and employees must provide for the disposal of garbage and recyclables. Public receptacles for garbage shall not be used;

J. The outdoor dining area and surrounding sidewalk and property areas shall be kept clean from any and all litter during hours of operation;

K. All customers must be seated in the outdoor dining area during their patronage. Outdoor dining facility owners, employers, and employees are prohibited from serving drivers or passengers of all vehicles;

L. All food preparation shall be indoors in the regular kitchen area of the retail food establishment;

M. Any outdoor dining facility serving alcohol products in the outdoor dining area shall be required to do so only in connection with food service at tables. Alcohol service and/or consumption at the outdoor dining facility is subject to further regulations more fully described herein;

N. All outdoor food service is subject to the regulations contained in Chapter 12 of the New Jersey Sanitary Code;

O. There must be absolutely no offensive odor emanating from the outdoor dining facility and/or outdoor dining area due to food preparation, handling, spoilage, and/or litter;

P. Outdoor dining facility owners, employers and employees are prohibited from using public utility hookups;

Q. All sound and video systems are prohibited within the outdoor dining area. The licensee shall not direct or permit to be directed to or from the outdoor dining area any bell, chime, siren, whistle. All noise emanating from the outdoor dining area shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances;

R. Smoking shall be prohibited within and around the outdoor dining area. Such areas shall be marked by a sign indicating the prohibition of smoking;

S. No signs of any nature shall be permitted in the outdoor dining area, except as previously expressed;

T. Outdoor dining may commence May 1 and may continue through October 20th;

U. Permissible hours of operation shall be from 8:00 a.m. to 10:00 p.m.;

V. The outdoor dining areas must be cleared and washed daily by 10:00 p.m.;

W. All Sanitary Code, alcoholic beverage requirements, and all other laws and regulations shall apply to the outdoor seating unless specifically excluded;

X. The Town of West New York retains the right to temporarily suspend license to operate an Outdoor Cafe to allow for construction activity, utility repairs, special events, or any other appropriate reason as determined by the Mayor and Board of Commissioners. Reasonable advance notice must be given to the affected outdoor dining facility licensees;

Y. All tables, chairs, and other materials must be removed from the sidewalk except during hours of operation. All tables, chairs and other materials must be kept within the areas permitted by the outdoor dining license, and the sidewalk must be washed and/or swept daily;

Z. If there is to be any chairs or tables placed on top of any basement access hatches or Bilco type doors, such doors and openings shall be inspected, and certification provided to the Building Department with the application identifying the structural integrity of such areas as sufficient to adequately handle the weight;

SECTION THREE

Severability. The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FOUR

Repealer. All Ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only however, to the extent of such conflict or inconsistency, it being the legislative intent that all Ordinances or part of ordinances now existing or in effect unless the same being conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION FIVE

Codification. It is the intention of the Mayor and Board of Commissioners of the Town of West New York that the provisions of this article shall become and be made a part of the Town Code of Ordinances, and that the sections of this article may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION SIX

This Ordinance shall take effect upon passage and publication as required by law.

SUMMARY OF ORDINANCE

This Ordinance amends the Outdoor Dining Rules and Regulations within the Town of West New York.

Introduced: April 6, 2022

Adopted: April 27, 2022

Statement

The foregoing ordinance having been previously adopted for first reading and published was further considered by the Mayor and Board of Commissioners of the Town of West New York on **April 27, 2022** and at said date was duly and finally adopted after public hearing thereon.

Adelanny Plaza, RMC
Town Clerk

Commissioner Victor M. Barrera

Commissioner Cosmo A. Cirillo, PhD.

Commissioner Margarita A. Guzman

Commissioner Yoleisy Yanez

Mayor Gabriel Rodriguez
BOARD OF COMMISSIONERS

Attest: _____
Adelanny Plaza, RMC
Town Clerk