

**TOWNSHIP OF ANDOVER  
SUSSEX COUNTY, NEW JERSEY**

**ORDINANCE NO. 2015- 10**

**AN ORDINANCE OF THE TOWNSHIP OF ANDOVER, COUNTY OF SUSSEX, AND  
STATE OF NEW JERSEY TO AMEND THE TOWNSHIP CODE BY AMENDING  
CHAPTER 59. FOOD ESTABLISHMENTS, RETAIL, TO INCLUDE ARTICLE III.  
OUTDOOR DINING**

**WHEREAS**, the Township of Andover is aware of the desirability and popularity of outdoor dining areas; and

**WHEREAS**, the Mayor and Township Committee wishes to facilitate outdoor dining for local businesses; and

**WHEREAS**, the Zoning Officer has evaluated the concept and is in agreement that permitting outdoor dining is a permissible use in commercial zone districts; and

**WHEREAS**, the Township Committee has determined that amending the Township Code to add a chapter governing outdoor dining is in the best interests of the Township.

**NOW THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Andover, in the County of Sussex, and State of New Jersey as follows:

**SECTION 1.** The Township Code is hereby amended to include a new article in Chapter 59 as follows:

**Article III. Sidewalk Cafes**

**§59-18 Purpose.**

The sidewalk cafe regulations as established in this Article are designed to permit sidewalk cafes to be established on public property, commercial zone districts, in locations where they shall be determined to be appropriate by these regulations and all applicable related ordinances to promote and protect the public health, safety and general welfare. These general purposes shall include, among others, the following specific purposes:

- A. To ensure that adequate space will be provided for pedestrian circulation through areas where sidewalk cafes are established and to insure adequate access to adjoining properties and businesses.
- B. To encourage the establishment of sidewalk cafes as one means of developing a pleasant and distinctive shopping atmosphere.

**§59-19 Definitions.**

As used in this Article:

A. "Restaurant" shall mean a retail food establishment, or similar establishment such as a bakery, ice cream store, bagel shop, etc., licensed by the Board of Health which provides indoor seating for dining and restroom facilities for use by patrons in accordance with the requirements of the New Jersey Uniform Construction Code as codified at N.J.A.C. 5:23-1.1 et seq. and as the same may be from time to time amended and supplemented.

B. "Sidewalk cafe" shall mean a seating area where food and drinks are permitted to be consumed at the tables and/or benches placed on the public sidewalk adjacent to and within the confines of the frontage of that portion of the building in which the restaurant is located. A sidewalk cafe may contain readily removable tables and four (4) chairs, but shall be otherwise unenclosed by fixed walls and open to the air except for retractable awnings, umbrellas or other nonpermanent covers provided such covers do not interfere with pedestrian circulation and do not extend beyond the front building façade.

#### **§59-20 License Required.**

Any person, firm or corporation may operate a sidewalk cafe (hereinafter called a "cafe") within the Township of Andover in commercial zone districts, in which such use is permitted on a sidewalk adjacent to an existing restaurant operated by such person, firm or corporation upon obtaining a license from the division of health. New applications for such license are to be submitted to the Board of Health no later than July 31, of any calendar year. Such license shall allow the operation of a sidewalk cafe from April 1 through and including December 1 of any calendar year and may be renewed annually during the month of January. No license shall be issued by the Board of Health for the operation of a cafe to a person, persons, firm, or corporation other than the person, persons, firm, or corporation who holds the retail food establishment license from the Board of Health for the restaurant where the cafe shall be operated.

The license issued pursuant to this Article is personal to the applicant, and any change or transfer of ownership of the applicant shall terminate the license and shall require a new application and new license in conformance with all of the requirements of this Article.

#### **§59-21 Application Procedures; Requirements and Fee.**

A. Application and Fee. Each applicant for a license shall submit a written application on the form provided by the Board of Health, together with a nonrefundable fee to the Board of Health in the amount set forth at Section 59-3 of the Township Code. All applications for a given calendar year and the application fees must be submitted to the Board of Health by February 15 of the applicable calendar year. No application will be accepted without the fee. In the event that an application, application fee, or other required document as described in this section is received later than February 15, a nonrefundable late fee of one hundred (\$100.00) dollars in addition to the license fee as set forth at Section 59-3 of the Township Code must be paid in order for the application to be considered.

The application shall state the name and address of the applicant, the property owner if other than the applicant, the person preparing the development plans and the written authorization of the owner of the property to submit the application if the applicant is not the owner.

B. Development Plans. The following information shall be shown on all development plans:

1. The applicant's entire property and the adjacent sidewalk area to be used.
2. The design, number and location of all temporary structures proposed including tables, chairs, planters, awnings and other equipment as well as lighting and electrical outlet locations, if any. Each establishment must provide for the placement of at least one (1) raised planter which compliments the décor of the building's façade. Each establishment may provide a bench in place of table and chairs arrangement.
3. Capacity of existing restaurant and proposed cafe.
4. Proposal for providing adequate pedestrian circulation as detailed herein in paragraph (F)(4) below.
5. Name, title and seal, if applicable, of person who prepared the development plan.
6. Statement that a public restroom is available in the existing restaurant.

D. Review of Development Plans. Prior to the issuance of a license pursuant to this section, the development plans and application shall be reviewed by the Board of Health and the zoning officer. The Board of Health shall review the development plans for compliance with N.J.A.C. 8:24-1.1 et seq. and as the same may be from time to time amended and supplemented together with the sanitary requirements detailed in this section and any applicable local health ordinances. The zoning officer shall review the development plan for compliance with applicable New Jersey Uniform Construction Code requirements and requirements detailed in this section relative to the placement of tables, chairs, planters, awnings, lighting, and electrical outlets as well as dimensions and distances. The health officer and construction official/zoning officer shall either approve or recommend modifications of the plans within twenty (20) days of submission of the plans.

E. Conditions for Issuance of License. Upon approval by the Board of Health and zoning officer of the application and plans submitted by the applicant pursuant to this section, the Board of Health shall issue a license to the applicant provided the applicant has furnished the following to the Township:

1. A maintenance agreement signed by the applicant to ensure the outside dining area is kept free from debris and garbage. The maintenance agreement must ensure that a garbage container will be placed outside during hours of operation, but removed prior to closing.
2. An agreement signed by the applicant to repair any damage caused to the sidewalk in the operation of the cafe at the expense of the applicant. The Township may require a bond to be filed by the applicant in an amount to be determined by the Township to secure the repair of any damage to the sidewalk.
3. An agreement signed by the applicant indemnifying and holding the Township harmless against loss, including costs and expenses, resulting from injury to person(s) or property as a direct or indirect result of the operation of the cafe or for injury to person(s) or property occurring on the premises occupied by the cafe. The applicant shall provide a

certificate of insurance as evidence of the required general liability policy to the Township, and naming the Township as an additional named insured, in the amount of not less than one million (\$1,000,000.00) dollars.

F. Rules, Regulations and Specifications. A cafe authorized and operated pursuant to this Article shall comply with all of the following rules, regulations and specifications:

1. The applicant and/or operator shall fully comply with all plans submitted and approved by the Board of Health and zoning officer under the terms of this Article.
2. Within 30 minutes after the closing of the cafe, the operator shall have all furniture, utensils, or any other materials used in the operation of the cafe or within the area used by the cafe, and all customers, removed from the sidewalk area, provided that furniture may remain outside if stored in a neat and orderly manner. Said closing shall be no later than 10:00 p.m.
3. Music, if any, shall be kept at a reasonable level that is not unnecessarily loud or objectionable to persons in or around the area.
4. The operator shall maintain an area for pedestrian movement free of any obstruction a distance of three (3) feet from the curb. The operator shall provide that tables, chairs, and other materials do not interfere with these required open areas and pedestrian traffic. Chairs next to the pedestrian walkway shall be placed at a 90 degree angle so as not to obstruct the pedestrian walkway. Where there are obstructions, such as light posts and mailboxes, which would cause the pedestrian aisle to be less than four feet wide, the construction official/zoning officer shall have the discretion to approve an alternate arrangement.
5. The operator shall comply with all the requirements of N.J.A.C. 8:24-1 et seq., also known as Chapter XXIV of the New Jersey Sanitary Code, and as the same may be from time to time amended and supplemented along with the sanitary requirements detailed in this section.
6. No pets or animals, except for certified service animals, may be present in the sidewalk cafe area at any time.
7. The operator shall comply with all other ordinances of the Township of Andover.
8. A license issued under the provisions of this Article shall limit the operation of a sidewalk cafe to that area within the confines of the frontage of the licensed premises. At no time shall the tables, chairs and other accessory items used in connection with the operation of the licensed cafe extend to the frontage or any portion thereof of any adjacent business, building or property.
9. Applicant shall not be barred from obtaining a license under this Article due to parking restrictions.
10. Applicant shall ensure there are adequate and appropriate curb stops in place, if necessary, to serve as a shield between the sidewalk cafe and parking area(s) in front of the sidewalk café.

**§59-22 Location and size limitations.**

A. A sidewalk cafe must be located contiguous to and directly in front of a restaurant as hereinabove defined. The term "directly in front of" shall confine the sidewalk cafe to the area represented by an extension of each side of the adjacent building or portion of the adjacent building occupied by the restaurant (whichever is smaller) projected directly to the curbline immediately in front thereof. No sidewalk cafe may be located in a rear yard or side yard. An on-site sidewalk cafe must be located on a preexisting hard, level, man-made surface, such as concrete, asphalt or pavers. Elevated decks, porches, verandas and the like shall not qualify for licensing under this Article and shall require site plan approval. Restaurants located on corner lots may locate a sidewalk cafe in either of the two (2) front yards of the lot (but not both) and may use the sidewalk space fronting either side of the restaurant (but not both) for sidewalk cafe operations.

B. Notwithstanding any other provision of this Article, a sidewalk cafe licensed hereunder may not exceed 250 square feet in total area. The square footage of a sidewalk cafe shall be measured from the façade of the building so that there is no gap between the building and the cafe.

**§59-23 Notice of Violation; Failure to Comply.**

Upon a finding by the zoning officer that an applicant has violated any provisions of this Chapter, notice shall be given to the applicant to correct said violation. Upon failure to immediately correct said violation the zoning officer may revoke the applicant's license to operate a sidewalk cafe. Upon the revocation of such license, the applicant shall be entitled to a hearing before the governing body within thirty (30) days, upon notice thereof, provided that a hearing is requested by the applicant in writing, within five (5) days of revocation of the license.

**§59-24 Sale and Consumption of Alcoholic Beverages.**

The area encompassed within a sidewalk cafe authorized pursuant to this Article shall not be considered duly licensed for sale or consumption of alcoholic beverages.

**§59-25 Sanitary Requirements.**

The licensee shall comply with the following Board of Health requirements:

A. No fruit, vegetables and other food shall be stored or displayed for sale in the cafe authorized by this Article.

B. No food or drinks shall be prepared other than in the interior areas of the retail food establishment approved by the Board of Health for such use.

C. All equipment used in the outdoor seating area, including but not limited to chairs and tables, shall be nonabsorbent, smooth, easily cleanable, of corrosive-resistant material, and meet the requirements of the New Jersey Sanitary Code ( N.J.A.C. 8:24-1.1 et seq.), as the same may be from time to time amended and supplemented.

- D. No food service equipment shall be located in, stored in or permanently mounted to any area of the outdoor dining area.
- E. Containers used in the conveyance of soiled tableware shall not be permanently stored outdoors. Soiled tableware shall be promptly removed to the establishment's equipment washing area after patron use.
- F. Smoking shall be prohibited in the outdoor dining area. Such areas shall be marked by a sign approved by the Board of Health indicating that smoking is prohibited.
- G. Each licensee is responsible for keeping the area of the outdoor dining area and the adjacent walks and streets clean, free of litter and food wastes, free of nuisances and sanitary at all times. Areas must be cleaned at the beginning of each business day, at closing time and as often as needed so as to prevent unsanitary conditions.
- H. Effective control measures shall be utilized to minimize, prevent and eliminate the presence and entry of rodents, flies, and all other vermin into the establishment. Outdoor dining areas and all other parts of the establishment shall be kept in such condition so as to prevent the breeding, harborage or feeding of all vermin.
- I. The licensee shall provide adequate receptacles for the depositing of waste by patrons as deemed necessary by the Board of Health. Such receptacles shall have lids and designed so as to preclude the entry, harborage, or breeding of vermin. Such receptacles shall be constructed of easily cleanable nonabsorbent material and shall be maintained in a sanitary manner at all times. The licensee shall ensure that waste receptacles are routinely serviced so as to prevent overflow of contents upon the ground. Waste receptacles owned and maintained by the township shall not be used by the licensee for depositing of waste generated by the establishment including the outdoor cafe.

**§59-26 Enforcement.**

- A. The zoning officer shall investigate violations related to and enforce all applicable requirements set forth in N.J.A.C. 8:24-1.1 et seq. and as the same may be from time to time amended and supplemented along with the sanitary requirements detailed in this section and any applicable local health ordinances.
- B. The zoning officer shall investigate violations related to and enforce all applicable requirements set forth in New Jersey Uniform Construction Code and requirements detailed in this section relative to the placement of tables, chairs, planters, awning, lighting, electrical outlets along with dimensions and distances.
- C. Violations of subsection 59-21(F)(2) and (3) shall be investigated and enforced by the Andover Township Police Department.

**SECTION 2.** All ordinances of the Township of Andover, which are inconsistent with the provisions of this Ordinance, are hereby repealed to the extent of such inconsistency.

**SECTION 3.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance.

**SECTION 4.** This Ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

**SECTION 5.** This Ordinance may be renumbered for codification purposes.

**TOWNSHIP OF ANDOVER  
COUNTY OF SUSSEX  
ATTEST:**

**STATE OF NEW JERSEY**

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Diana Francisco, RMC Deputy Clerk

By:  
Michael Lensak, Mayor

**INTRODUCED:           JUNE 22, 2015  
ADOPTED:             JULY 13, 2015  
CERTIFIED             JULY 20, 2015**