

ORDINANCE NO. 11-2021

AN ORDINANCE TO PROVIDE FOR THE PARTIAL AMENDMENT, SUPPLEMENTATION AND REVISION OF "CHAPTER 13, 2000 BOROUGH OF MORRIS PLAINS LAND DEVELOPMENT ORDINANCE" AMENDING SECTION 13-2.1, DEFINITIONS, AMENDING SECTION 13-5.1C, SCHEDULE OF PERMITTED USES, ESTABLISHING A NEW SECTION 13-5.14, OUTDOOR DINING, AMENDING SECTION 13-5.2.A (12.1)(a) TO PERMIT OUTDOOR DINING, AS AN ACCESSORY USE IN CERTAIN ZONES

WHEREAS, the Borough Council has decided to permit outdoor dining, as an appropriate accessory use to establishments selling food and/or beverages where permitted per Borough Code, subject to the requirements set forth in this Ordinance; and

WHEREAS, the Borough Council desires to amend the Land Development Ordinance of the Borough by amending Section 13-2.1, Definitions, amending Section 13-5.1C Schedule of Permitted Uses, amending Section 13-5.2.A (12.1)(a) regarding prohibited uses in the B-1 Business Zone, and establishing a new Section 13-5.14, Outdoor Dining.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Morris Plains, they being the Governing Body thereof, as follows:

Section 1: Borough Code Section 13-2.1, Definitions, shall be amended by the addition of the following:

OUTDOOR DINING AREA

A designated area associated with a business located outside the principal building, and where patrons may sit at tables while consuming food and beverages.

Section 2: Borough Code Section 13-5.14 shall be adopted as follows:

13-5.14 Outdoor Dining.

- A Outdoor dining is allowed as an accessory use only upon approval of a permit, where establishments selling food and/or beverages are permitted per Borough Code, subject to the requirements of this Ordinance. Outdoor dining shall be permitted between April 1st to October 31st in any calendar year.
- B Outdoor dining shall comply with federal, state, county and/or local distancing requirements imposed by any law and/or executive order in effect at any particular time. To the extent that local requirements are permitted to preempt such federal, state and county requirements, such local requirements shall govern.
- C Permit Required. Outdoor dining shall be subject to the following permitting requirements:
 - (1) No person shall operate outdoor dining within the Borough without having first obtained an outdoor dining permit in accordance with the requirements of this section. The permit shall be issued by the Borough Zoning Officer only if all

requirements associated with outdoor dining herein are or will be satisfied. The use of the permit shall, however, be subject to other applicable federal, state, county and Borough regulations, executive orders and states of emergency.

- (2) Applicants shall provide evidence of ownership or sufficient control over proposed outdoor dining area.
- (3) Permits shall be not transferable.
- (4) Permits shall be renewed annually, upon application and payment of fee. Applications for renewal of (previously approved) outdoor dining permits which have no changes from the initial application may submit a license renewal form, updated insurance information and annual fee only.
- (5) Any person or entity that has received approval of outdoor dining by resolution of the Borough Planning Board or Board of Adjustment is exempt from the above permitting requirement and fees set forth herein. All resolutions of the Planning Board or Board of Adjustment that include an approval for outdoor dining shall have as a condition of approval the agreement of the applicant to abide by the other provisions of Section 13-5.14.
- (6) The fee for an outdoor dining area permit shall be \$50.00, payable upon submission of the application.
- (7) Outdoor dining permits shall be valid unless or until there is a change of ownership or change of outdoor dining area plan in which case a new application must be filed with the Zoning Officer per Section 13-5.14(D).

D. Application. Each applicant for an outdoor dining area permit shall submit and file the appropriate application with the Zoning Officer, together with three copies of an outdoor dining area plan, as defined below, and the appropriate fee. The Zoning Officer, in consultation with the appropriate Borough officials, as necessary, shall approve, disapprove or modify the application and outdoor dining area plan within ten (10) business days following its submission.

E. Outdoor Dining Area Plan. The "outdoor dining area plan" shall be drawn to scale but does not require professional seals and may be prepared by the applicant. The plan shall include the following information, and such other additional information, if any as may be deemed necessary and subsequently requested by the Zoning Officer:

- (1) Identification of the principal building to which the outdoor dining is connected.

- (2) The proposed design and location of: the outdoor dining area with identified setbacks from curbs and buildings and setbacks to property lines; all temporary structures, equipment and apparatus to be used in connection with its operation, including any proposed tables, chairs, tents, canopies, umbrellas, planters, awnings, lighting, heat lamps and electrical outlets (if any); and the location of any fire hydrant, plug or standpipe, utility pole, parking meter, or other permanent fixture between the principal building and the curb, including a clear indication of the presence of the required pedestrian passageway and ADA clearance.
- (3) A plan for the control of litter, the removal and storage of garbage and the cleaning of fixtures and public sidewalks.

F. Additional Rules, Regulations and Specifications. The establishment, use and operation of the outdoor dining area shall comply with the following additional rules, regulations and specifications:

- (1) The outdoor dining area shall be operated and maintained in accordance with the outdoor dining area plan as finally approved, and by the same person or entity who operates and maintains the principal establishment selling food and/or beverages to which the outdoor dining area is associated.
- (2) No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor dining area shall be located in such a way that will impede the safe and speedy ingress and egress to or from any building or structure.
- (3) Outdoor dining areas, including associated furniture, apparatus, decoration or other item used in connection with the outdoor dining, shall not be located to project or protrude into a four-foot pedestrian passageway and ADA clearance. A four-foot passageway shall be measured from the curb where applicable and must be maintained on the public sidewalk at all times so as to not obstruct pedestrian traffic.
- (4) The Borough 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.

- (5) All associated furniture, apparatus, decoration or other items used in connection with outdoor dining shall be removed from the outdoor dining area by the permittee within one week of the termination of the outdoor dining season.
- (6) Though not required, any table service provided at the outdoor dining area shall be provided by persons engaged or employed for that purpose and shall be furnished to seated patrons only.
- (7) The outdoor dining area shall be kept clean and free of litter and shall be washed as required. The establishments shall provide trash receptacles and are responsible for keeping the area clean and orderly. If no table service is provided, the trash receptacles shall also include those needed for recycling.
- (8) Noise shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances of the Borough.
- (9) Adequate lighting shall be provided for safety of outdoor dining patrons.
- (10) The hours of operation of the outdoor dining area shall coincide with the hours of operation of the principal use to which it is accessory. All outdoor dining and seating areas can operate only between the hours of 7:00 am and 10:00 pm.
- (11) Smoking and vaping of any kind are prohibited in outdoor dining areas.
- (12) Outdoor seating is excluded from calculating parking requirements.
- (13) All other applicable ordinances of the Borough shall also be complied with.

G. Consumption of Alcoholic Beverages. The applicant may permit the consumption of alcoholic beverages in the outdoor dining area as follows:

- (1) An applicant that does not possess a liquor license may permit its patrons to consume alcoholic beverages brought to the premises by its patrons to the extent permitted by Borough Ordinance and the Alcoholic Beverage Control Board.
- (2) An applicant that possesses a plenary retail consumption permit must amend their liquor permit to include the outdoor dining area in order to permit the consumption of alcoholic beverages therein by its patrons, subject to applicable law and regulations, including the Alcoholic Beverage Control Board.

H. Indemnification. The applicant shall indemnify and save harmless the Borough, its employees, agents or officers from all claims, losses, liens, expenses, suits and attorney fees (liabilities) arising from the placement, operation and maintenance of the applicant's outdoor dining. No outdoor dining permit shall be issued unless the permittee shall have first executed and filed with the Borough Zoning Officer an indemnification agreement

pursuant to which the permittee, in further consideration of the issuance of the permit, shall agree to forever defend, protect, indemnify and save harmless the Borough, its officers, agents and employees, from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs, including attorneys' fees, arising out of or which may arise out of the permittee's operation of such outdoor dining area.

- I. Insurance. Prior to issuing the permit, the applicant shall submit evidence of naming the Borough as an additional insured under the applicant's general liability insurance, with a minimum required limit of one million [\$1,000,000] dollars, bodily injury, property damage and personal injury, and maintain such insurance for such time as the outdoor dining exists. The following wording must appear on the insurance certificate: "The certificate holder (Borough of Morris Plains) is included as an additional insured." A copy of the current policy shall be submitted to the Clerk's office prior to expiration.
- J. Notice of Violation; Failure to Comply. Upon a determination by the appropriate Borough official that an applicant has violated one or more of such provisions applicable to the use or operation of outdoor dining, the appropriate Borough official shall give written notice to the applicant to correct such violation within 24 hours of the receipt of such notice. In the event that the applicant fails or refuses to correct the violation within such period, the applicant's outdoor dining area permit shall be automatically and immediately revoked without the need for further action.
- K. Penalties. Any person convicted of a violation of any of the provisions of this section shall be subject to a fine of at least \$200 but not exceeding \$500 for each and every offense for each day in which the violation has not been abated.
- L. Should any State, County or Borough law, rule, regulation, ordinance or executive order permit outdoor dining more lenient than permitted via this ordinance, then the provisions of such law, regulation or executive order shall apply, upon adoption of such a resolution by the Borough Council.

Section 3:

Borough Code Section 13-5.2.A(12.1)(a), regarding prohibited uses in the B-1 Business Zone, shall be revised to read as follows:

Any business conducted outside the confines of a building, including the outdoor storage of products and merchandise and any business transaction where the customer is outside the building, except for permitted drive-up window facilities and permitted outdoor dining.

Section 4

Section 13-5.1C, Schedule "C", Schedule of Permitted Uses in Chapter 13 is hereby amended and supplemented with the addition of a row for "Outdoor Dining Area" in the accessory uses table as permitted in the following zones: B-1, B-2, B-3, B-4, OB, C-1, L-1, L-2, I, and TRPUD.

Section 5:

All Ordinances and parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 6:

If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid by a Court of competent jurisdiction, such a decision shall not affect the validity of the remaining portions of this Ordinance.

Section 7:

The Borough Clerk is hereby directed to give notice at least ten (10) days prior to hearing on the adoption of this Ordinance to the County Planning Board and to all other persons entitled to notice pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-62.1 (if required.) Upon the adoption of this Ordinance after public hearing thereon, the Borough Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Morris County Planning Board as required by N.J.S.A. 40:55D-16. The Clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Borough Tax Assessor as required by N.J.S.A. 40:49-2.1.

Section 8:

This Ordinance shall take effect as of November 1, 2021.

Introduced: July 15, 2021

Adopted: August 19, 2021

/s/ Jason Karr