

CITY OF CAPE MAY, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE NO. 461-2022

**ORDINANCE AMENDING SECTION 412 REGARDING OUTDOOR SEATING
FOR CONSUMPTION OF FOOD OR BEVERAGES**

WHEREAS, pursuant to Section 412-1 of the City Code, the City has determined that the establishment of regulations for outdoor seating and dining will foster a pleasant and distinctive ambience within the City and that the proper regulation of such activity is required in the interests of the health, safety and welfare of the City's residents and visitors; and

WHEREAS, the City of Cape May recognizes the continuing impact of the COVID-19 pandemic on the local community and the emphasis on outdoor spaces as providing a more safe environment for enjoyment of local businesses; and

WHEREAS, the City of Cape May also recognizes the benefits of promoting options for alfresco dining in appropriate circumstances; and

WHEREAS, pursuant to Section 417-2(B) of the City Code, site plan review shall not be required for development not involving a change in use and not affecting existing circulation, drainage, building arrangements, landscaping, buffering, lighting and other considerations of site plan review; and

WHEREAS, City Council recognizes the potential for existing restaurant and bar operations to allocate existing seating to outdoor areas in a limited and defined manner, and without eliminating parking, impairing beneficial use of the City's right of ways, or otherwise implicating conventional site plan considerations; and

WHEREAS, the City has determined that its public right of ways constitute a valuable resource, finite in nature, and which exist as a common right of the public to pass and repass freely over and across said lands without unreasonable obstruction or interference, and which therefore must be managed carefully; and

WHEREAS, the City also recognizes pedestrian traffic should be invited and encouraged in the area of the Washington Street Mall and that enabling limited alfresco dining opportunities in this area compliment the character of the existing commercial uses; and

WHEREAS, City Council deems it in the best interests of the public health, safety and general welfare to modify Section 412 in order to provide efficient procedures to promote the use of outdoor spaces for outdoor dining that do not implicate considerations of site plan review.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cape May, County of Cape May, State of New Jersey, as follows:

SECTION 1. Section 412 of the City Code shall be amended as follows (~~striketrough~~ portions indicating deletions and **bold/underline** portions indicating new language):

§ 412-1. Purpose.

The City Council has determined that the establishment of regulations for outdoor seating and dining will foster a pleasant and distinctive ambience within the City and that the proper regulation of such activity is required in the interests of the health, safety and welfare of the City's residents and visitors.

§ 412-2. Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Chapter:

- A. "Dining table" shall mean any surface from which individuals eat, whether permanent or moveable, and with a minimum height of 30 inches and a minimum surface diameter of 36 inches.
- B. "Person" shall mean any individual, partnership, corporation, association or other entity.
- C. "Retail food establishment" shall mean an establishment on private property that serves food or beverage products for onsite consumption.
- D. "Outdoor seat" for purposes of this section shall mean an outdoor seat at a retail food establishment where food or drinks will be consumed, but shall not include pool seats that are limited primarily to hotel and motel guests; seats used as a general hotel or restaurant seating areas, such as waiting areas and lobbies; and seats (without dining tables) located on the verandas and porches of any restaurant, hotel, motel, inn or tourist guest house. Outdoor seats shall also not include any seats set up for special events with all necessary approvals. However, such special events that occur outside shall be governed by all other sections of the City Code, including the outdoor tent provisions contained in Chapter 463.
- E. "Seat" shall mean a bench, chair or any other item of furniture in which someone sits. A seat may be an individual fixture (i.e. chair or stool) or a structure on which several people may sit (i.e. bench, booth, picnic table, couch). For any structure that can accommodate more than one person, it shall be deemed to be one seat for each full 30 inches of seating space (i.e. a bench that is 90 inches long shall equal three seats).

§ 412-3. Licensing.

This subsection applies to all food service establishments in zoning district where outdoor dining is permitted or where a food service establishment is a preexisting use. This subsection does not apply to any food service establishment that has previously received site plan approval for outdoor dining. Those establishments may continue to operate without the necessity of additional permitting under this subsection. Furthermore, this subsection shall not apply to

food service establishments within the Washington Street Mall business improvement district.

No person to whom this subsection applies shall provide outdoor seating within the City without having a mercantile license and without having first obtained a outdoor seating license in accordance with the requirements of this chapter. The Zoning Officer shall be responsible for reviewing and determining whether an applicant qualifies for the issuance of an outdoor seating license pursuant to this Chapter and shall make such determination in consultation with the Planning Board Engineer and City Attorney and shall seek input from the subcode officials, Fire Department, Police Department and such other departments as necessary to ensure full compliance with the terms and conditions of this Chapter. The license shall then be issued by the City Clerk following the zoning officer's final determination. The Zoning Officer shall make a determination within 30 days from the submission of a complete application containing all of the items required under this Chapter. If not approved within such 30-day period, the application will be deemed denied unless the applicant agrees to an extension of the time required for the Zoning Officer to make a final determination.

Once approval has been received, no further approval is needed unless there is a change in the outdoor seating plan or a development plan is proposed that requires a full site plan review of the property where the outdoor seating is located. Any new site plan application shall be required to include the existing or proposed outdoor seating plan. A retail food establishment that has obtained site plan approval for its outdoor seating shall not have to submit an application for an outdoor seating license.

§ 412-4. Fees.

All retail food establishments that provide outdoor seating shall pay the following fees:

- A. The applicant shall pay a one-time application fee of \$250.00 and an escrow payment of \$500.00 for the review and processing of the initial application for outdoor seating. Furthermore, the applicant shall pay an annual fee of \$10.00 for the processing of each annual outdoor seating license. Such fees shall be paid with the mercantile license fee.
- B. If changes are proposed to an already existing outdoor seating plan a new application must be submitted with the application and escrow fees as stated in Section A above.

§ 412-5. Application.

All applications for an outdoor seating license shall be submitted currently with an application for a mercantile license and shall include the following:

- A. Each applicant for an outdoor seating license shall submit and file an application with the Zoning Officer, together with two copies of an outdoor seating plan (as outlined below), and the appropriate fee. The application shall set forth:
1. The name, address, phone number, and email address of the applicant;
 2. The name, address, phone number, and email address of the owner of the primary building (if other than the applicant);
 3. The name address, phone number, and email address of the person who has prepared the outdoor seating plan; and
 4. The written authorization and approval of the owner of the primary building (if other than the applicant).
 5. A survey of the property showing all existing conditions.
- B. The “outdoor seating plan” shall be drawn to scale but does not require professional seals. The scaled drawing of the proposed design and location of the outdoor seating shall include setbacks, all outdoor structures, equipment and apparatus to be used in connection with its operation, including tables, chairs, planters, **(applicant to provide “cut sheets” depicting the material and style of materials to be used)** ~~trash/recycling receptacles~~, bus trays, equipment and apparatus, and the location of any fire hydrant or Fire Department Connection (“FDC”), utility pole, parking meter, or other permanent fixture between the primary building and the curb, including a clear indication of the presence of the required pedestrian passageway. If the outdoor seating is located on private property adjacent to the sidewalk, the plan shall demonstrate that the pedestrian traffic will in no way be impeded by showing the dimensions between all seats should they be occupied and the outermost edge of the sidewalk.
- C. A statement of the seating capacity of the proposed outdoor seating and of the existing retail food establishment actually operated by the applicant in or outside of the primary building.
- D. The hours of operation of the retail food establishment.

§ 412-6. Term of License; Renewals

All outdoor seating licenses shall run concurrently with the mercantile license issued for that year. Licenses may be renewed annually by the filing of an application in accordance with the provisions of this Chapter.

§ 412-7. Regulations.

Outdoor seating authorized and operating pursuant to this Chapter shall be subject to the following regulations:

- A. The outdoor seating shall be operated and maintained in accordance with the outdoor seating plan as finally approved, and by the same person who operated and maintains the abutting retail food establishment.
- B. The outdoor seating plan shall be so arranged that if all seats are occupied, there is no less than five feet of unobstructed walkway for pedestrian passage. The outdoor seating plan shall allow for adequate ingress and egress for all outdoor seating areas as determined by the Fire Department and Construction Official. **This Chapter contemplates seating in connection with food and beverage service. No outdoor bars are permitted or contemplated by this Chapter.**
- C. The outdoor seating areas shall comply with all side yard and rear yard setback requirements set forth in Chapter 525- Zoning for structures that are already lawfully existing in the setback area as an approved conforming or pre-existing nonconforming condition, such as a porch, patio, or other permanent structure.
- D. The seating layout and number of seats shall comply with the requirements of the International Building Code 2015, New Jersey Edition, or any subsequent building code adopted in New Jersey, based on the review and approval of the City Construction Official.
- E. The placement of furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor seating in relation to any fire hydrant or FDC shall be prohibited.
- F. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the outdoor seating shall be located in such a way as to impede the safety and speedy ingress and egress to or from any building or structure. **No furniture or other appurtenances shall be chained to poles or other structures in view of the streetscape.**
- G. No permanent lighting, signage, umbrellas with signage except the name of the licensed business, or canopies not already existing may be placed in the outdoor seating area.
- H. No furniture, apparatus, decoration, structure, or appurtenance, including but not limited to an HVAC system, used in connection with the operation of the outdoor seating shall be located in or project or protrude into the required pedestrian passageway or any parking lot or on-site parking areas. **Any heating or AC apparatuses servicing the outdoor dining**

area shall be subject to approval of the Police and Fire Departments. No outdoor cooking facilities are permitted by this Chapter. No additional signage is permitted by this Chapter, including street or "chalk" signs.

- I. The outdoor area utilized by the outdoor seating shall be kept clean and free of litter and shall be washed as frequently as needed to maintain a clean and sanitary area for the consumption of food and beverages.
- J. Noise shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances of the City, including hours of outdoor music pursuant to City Code Section 134-5E. The last seating for any outdoor dining area shall be no later than 9PM. No public address system shall be utilized.
- K. Outdoor seating as permitted under this Chapter shall not increase the required parking spaces for any retail food establishment. No change in grading or drainage shall be permitted by this Chapter.
- L. The licensee shall comply with all other ordinances of the City and the Cape May County Board of Health.
- M. The licensee shall comply with all State and local alcoholic beverage laws, specifically noting areas where alcoholic beverages may be consumed on the premises and in enforcing that no alcoholic beverages may be removed from the approved licensed areas. The sale or service of alcoholic beverages in these locations may be permitted, subject to compliance with all applicable ABC regulations and statutes, including extension of premises applications, and subject to the review and approval of the City Clerk and Chief of Police.
- N. Umbrellas are permitted, subject to the following: (1) The number of umbrellas shall be no more than the number of tables permitted (2) The size of the umbrella shall allow at least a vertical clearance under the umbrella of six feet eight inches. The width of the umbrella and its placement shall be such as to leave a four-foot-wide unobstructed path of sidewalk parallel to the curb across the entire frontage of the property in question. (3) All umbrellas shall be vented and properly secured with pins or bolts through the table framework, with weighted umbrella stands of at least 20 pounds directly beneath the table to prevent toppling in high winds.
- O. This section is intended to provide for a streamlined process to permit outdoor seating not impacting parking, circulation or other issues implicating site plan review. Applicants are not permitted to eliminate parking areas (public or private) in connection with an Outdoor Seating permit pursuant to this section. Nothing herein shall prevent

any applicant from seeking conventional site plan or other appropriate land use approval.

P. Temporary Use of Right of Way in Certain Areas. Food service establishments, not otherwise subject to the "patio permit" process in the Washington Street Mall pursuant to Section 324, may request seating in a sidewalk right of way provided (i) there is no substantial detriment to public health or safety, and (ii) a minimum five-foot pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements. Tables and seats approved to be located within a City right-of-way must be removed from the right-of-way and stored on site on a daily basis by 12 a.m. Tables and seats approved to be located on site in areas privately-owned shall be permitted to remain in said locations.

Licensing Agreement, Indemnification, & Hold Harmless. Applicants proposing to relocate existing tables or seats in a City right-of-way pursuant to this section shall enter into a licensing agreement with the City, in a form to be determined by the City. The agreement shall require the applicant to indemnify and hold harmless the City of Cape May, its employees, agents, and/or officers 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 City of Cape May as an additional insured under the Applicant's general liability insurance, bodily injury, property damage, and personal injury insurance policies, required to have a minimum limit of one million (\$1,000,000.00) Dollars, and provide proof of same to the City Clerk, and proof that said policies have been amended to reflect coverage for the proposed outdoor dining area.

Use of any right of way will be subject to approval by City Council confirming the conditions set forth in this subsection and a Right of Way use fee calculated as follows: Square Footage of Reserved Sidewalk Area (x Number of Months of Operation) (x \$1.00 per SF).

§ 412-8. Enforcement Fines.

Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be subject to the fines and penalties set forth in Chapter 1, Article III for each violation. In addition, any person who violates this ordinance may be subject to all penalties applicable to licensees under Chapter 310, Section 9, including, but not limited to, revocation of said license. Nothing herein contained shall prevent the City of Cape May, from taking such other lawful action as is necessary to prevent or remedy any violation.

§412-9 No Grant of Property Right.

The City of Cape May reserves its right to amend, terminate or repeal this chapter, and accordingly no property rights are granted to any person or entity by virtue of this chapter. **The licenses herein are non-transferable. The licenses contemplated herein are a privilege and not a contract or property. The issuance or renewal of a license rests in the sound discretion of the City of Cape May and the issuing authority.**

SECTION 2. This Ordinance shall supersede all other ordinances in conflict or inconsistent with it.

SECTION 3. Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provisions of this Ordinance are hereby declared to be severable.

SECTION 4. This Ordinance shall take effect within twenty (20) days of final passage and publication as provided by law.

ATTEST: CITY OF CAPE MAY, a municipal corporation
of the State of New Jersey

Erin C. Burke, City Clerk BY: _____
Zachary M. Mullock, Mayor

NOTICE

Ordinance 461-2022 was introduced at a meeting of the City Council of the City of Cape May, held on April 5, 2022 and will be further considered for final passage during a meeting of the City Council, to be held at the Cape May City Hall Auditorium, 643 Washington Street, Cape May, New Jersey, on May 3, 2022 at 6:00 P.M. at which time a Public Hearing will be held.

Roll Call	Ayes	Nays	Absent	Abstain	Motion	Second
Baldwin						
Meier						
Sheehan						
Yeager						
Mullock						

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