

ORDINANCE 8-2022

**ORDINANCE OF THE BOROUGH OF MADISON AMENDING
CHAPTER 166 OF THE BOROUGH CODE ENTITLED "STREETS
AND SIDEWALKS" REGARDING OUTDOOR DINING**

WHEREAS, the Administration, Zoning Officer, and the Downtown Development Commission have considered and recommend that the Borough Council consider proposed amendments to Chapter 166 of the Borough Code regarding outdoor dining, outdoor eating areas, and sidewalk cafes; and

WHEREAS, the Borough Council, having review the proposed amendments, concurs in this recommendation from the Director of Business Development to amend outdoor dining regulations in the Borough.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Borough of Madison, County of Morris, State of New Jersey that:

SECTION 1: Chapter 166 of the Borough Code, entitled "Streets and Sidewalks" is amended and supplemented to include the following:

CHAPTER 166, ARTICLE V: OUTDOOR DINING AREAS, OUTDOOR EATING AREAS AND SIDEWALK CAFE AREAS.

§ 166-43. Definitions.

A. As used in this section, these terms shall have the following meanings:

OUTDOOR DINING AREA

Shall mean a designated area on the premises of a retail food establishment or restaurant, but outside the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a wait staff.

OUTDOOR EATING AREA

Shall mean a designated area on the premises of a retail food establishment, but outside the principal building, and where patrons may sit at tables while consuming foods, soft drinks, ice cream, and similar confections purchased from the retail food establishment.

SIDEWALK CAFE AREA

Shall mean a designated area of a public sidewalk where patrons may sit at tables while consuming food and beverages ordered from and served by a wait staff.

§ 166-44. License Required.

No person shall operate an Outdoor Dining Area, an Outdoor Eating Area or a Sidewalk Cafe unless a license has been obtained from the Borough of Madison.

A. Areas in which Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafes Areas, collectively referred to as "area" or "areas," are permitted:

- 1) Outdoor Eating Areas, as defined in this section may be established as an accessory use to permitted restaurants and retail food establishments in the CBD1, CBD2 and CC zoning district.
 - 2) Outdoor Dining Areas, as defined in this section may be established as an accessory use to permitted restaurants and retail food establishments in the CBD1, CBD2 and CC zoning district.
 - 3) Sidewalk Cafe Areas, as defined in this section, may be established as an accessory use to permitted restaurants in the CBD1, CBD2 and CC zoning district.
- B. Applicants shall apply for permit approval in accordance with the provisions of this Chapter. All such applications shall be approved by the Zoning Officer and shall be referred to the Chief of Police, Construction Code Official, Fire Code Official, and other such Borough Official(s) the Zoning Officer deems appropriate, who shall provide the Zoning Officer with written reports of their opinions and recommendations regarding the application.
- C. Applicants shall meet all general ordinance requirements and all other laws, rules, regulations and codes applicable to the proposed activity.
- D. Applicants proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area must provide satisfactory proof to the Zoning Officer of the following:
- 1) A layout including all dimensions of the proposed seating areas, which shall include but not be limited to a depiction of all aisles, routes of ingress and egress; clearances between tables and between the seating area at the curb; and service areas; the landscape plan; and other equipment and fixtures that will be utilized; an illustration, rendering and/or photograph of all proposed furniture, planters, umbrellas, awnings, tents, signage proposed.
 - 2) Freestanding umbrella(s) and base(s) and/or devices to secure umbrella(s) shall be permitted within an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe subject to the following:
 - a) One umbrella shall be permitted for each table within the seating area.
 - b) Umbrella shall be adequately secured by a center base, arm base and/or otherwise adequately secured by a wind resistant structure.
 - c) The umbrella, when in an open position shall not overhang beyond the designated seating area; the minimum clearance height will be seven feet and the maximum height of the umbrella from base to finial shall not exceed nine feet.
 - d) Umbrellas placed within the seating area shall be uniform as to color and

design to create a pleasant aesthetic affect and shall at all times be properly maintained in good working orders and aesthetic condition including but not limited to being clean and without tears.

- 3) Tents shall be permitted within an Outdoor Eating Area, Outdoor Dining Area only. They are prohibited in a Sidewalk Café.
- E. The Zoning Officer shall review each application to ensure that the proposed operation of the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area will not interfere with pedestrian or vehicular traffic.
 - F. The Zoning Officer shall require each applicant to submit a litter control plan which shall include, but not be limited to, a description of the number and location of trash receptacles for the areas and the frequency with which the tables, surrounding area and adjacent public and private properties will be policed for litter. Failure to abide by an established litter control plan shall constitute a violation of the permit approval of which it was made a condition, and shall subject the applicant to a fine in an amount not less than \$100 per violation.
 - G. The Zoning Officer shall approve the hours of operation for each Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area. In approving the hours, the Zoning Officer shall take into consideration the nature of the restaurant or retail food establishment at issue, the character of the neighborhood adjacent to the premises, and the character and nature of other uses in the vicinity of the premises at varying times of day. At no time will outdoor dining be permitted beyond 10:00 p.m.
 - H. BYOB privileges for wine or malt alcoholic beverages are allowed in Outdoor Dining Areas and Sidewalk Cafe Areas subject to **N.J.S.A. 2C:33-7**. Any licensed premises must secure and provide copies to the Borough Clerk of all necessary permits from the New Jersey Division of Alcoholic Beverage Control to extend their licensed premises in accordance with applicable New Jersey law.
 - I. The seating contained in an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall not be counted in determining any parking space requirement for a retail food establishment or restaurant use.
 - J. The permit granted pursuant to this section shall allow the use of the Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas at any time of year. However, the area must be properly maintained at all times including complying with the litter control plan, complying with all applicable laws, rules, regulations and codes, properly securing and/or removing tables, chairs and other items during times of inclement weather and high wind, further at no time shall chairs, tables or other items be stacked in the area.

§ 166-45. Application for license

An application, sworn to by the applicant, for an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe license shall be filed annually with the Borough Clerk on forms supplied by the Clerk. The forms shall require the following information and such additional information as deemed necessary:

- A. The name of the applicant and the address.
- B. The name and address of the eating establishment where area or café is to be maintained.
- C. Written consent of the owner of the premises, if other than the applicant.
- D. Any licensed premises must secure and provide copies to the Borough of all necessary permits from the New Jersey Division of Alcoholic Beverage Control to extend their licensed premises in accordance with applicable New Jersey law.
- E. A **Certificate of Insurance** providing at least \$1,000,000 of comprehensive general liability extending premises coverage to all activities associated with sidewalk dining and listing the Borough of Madison as an additional insured with respect to such activities.
- F. A check payable to the Borough of Madison in the amount of the license fee required by **§ 166-47**.
- G. Execution and filing with the Borough Clerk of an **Indemnification Agreement** pursuant to which the licensee, in further consideration of the issuance of the license, 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 arising out of or which may arise out of the licensee's operation of its sidewalk dining establishment.
- H. Execution and filing with the Borough Clerk of a **Maintenance Agreement** pursuant to which the licensee, in further consideration of the issuance of the license, shall agree, at the Borough's option, either to repair at its sole cost and expense any damage caused to the sidewalk or any Borough owned property by the operation of its sidewalk dining operation, or to reimburse the Borough in full for all costs and expenses incurred by it in making any such repairs.
- I. Execution and filing with the Borough Clerk of a **Outdoor Dining Addendum Permission for Use of Neighboring Space** if applicable.
- J. The Borough Clerk may require a bond to be filed by the licensee in an amount to be fixed by the Borough.

§-166-47. Fees Set by Resolution.

- A. The annual fee for each year for the operation of an Outdoor Dining Area, Outdoor Eating Area and/or Sidewalk Cafe shall be set by resolution by the Mayor and Borough Council.
- B. No fees shall be pro-rated nor any part thereof refunded for any reason.

§ 166-48. License terms and conditions.

- C. An Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe license shall be valid only through December 31 of a given year, and a new license must be obtained for each year.
- D. An Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe license may not be transferred.
- E. The license shall be displayed in a conspicuous place on the premises prior to the use of the premises for sidewalk dining.

§ 166-49. Regulations.

The conduct of Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe dining pursuant to a license issued under this article shall be subject to all of the following restrictions and requirements:

- A. Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe dining may be conducted in the CBD1, CBD2 and CC zoning district.
- B. The Sidewalk Cafe area must not inhibit pedestrian traffic on public sidewalks, and an area must be open and unobstructed for pedestrian traffic between the closest edge of the cafe-type tables and the curblin, which area shall have a minimum width of the greater of four feet or 1/2 of the sidewalk width. The passage area must be a straight line, barrier free and clear of any obstructions such as tree roots and the like. Passing areas of at least six feet may be required in larger Sidewalk Cafes.
- C. Restaurateurs shall not place anything in an alleyway or walkway or set up tables in such a manner as to block any alleyways or walkways or any building entrance/egress. It shall be unlawful to obstruct or reduce in any manner the clear width of any exit discharge passageway, as determined by the clear width opening of the entrance/egress door(s). The passageway shall be as straight as possible leading directly to the street.
- D. The only items permitted are tables, chairs, umbrellas and containers for the disposal of recyclable cans/bottles and garbage.
- E. Restaurateurs shall not place any table, sign, umbrella or other item in such a manner as to block any municipal signs, receptacles for garbage, public benches or other

public amenity, including fire hydrants.

- F. Restaurateurs must provide for the disposal of recyclable cans/bottles and garbage. Public receptacles for garbage shall not be used. Sidewalk areas shall be kept clean during hours of operation. Litter shall not be permitted on adjoining sidewalks or property.
- G. Restaurateurs are prohibited from serving drivers or passengers of vehicles. All customers must be seated throughout their meal.
- H. Restaurateurs are prohibited from using public utility hookups.
- I. Use of amplified sound systems are prohibited after 9:30 p.m., and all noise regulations must followed when in use. See **Chapter 210 Nuisance: 218-3 Noises and sounds**. The Zoning Officer may issue additional restrictions based on location.
- J. All food preparation shall be in the regular kitchen area of the restaurant, not outside.
- K. All outdoor food service is subject to the regulations contained in Chapter 12 of the New Jersey Sanitary Code.
- L. The placement of outdoor tables shall be limited to the area immediately in front of existing and/or properly approved restaurants, cafes or eating establishments. No portion of any sidewalk dining equipment, including chairs, tables and opened umbrellas, shall encroach upon the sidewalk area in a manner to block, impede or cover adjacent storefronts, doors or windows in front of other business establishments without the written permission of the property owner and adjoining business.
- M. Permissible hours of operation shall be from 7:00 a.m. to 10:00 p.m.
- N. An applicant wishing to serve alcohol on the Sidewalk Cafe area must execute a revocable agreement with the Borough to have conditional use of the sidewalk as a right of way. Any licensed premises must secure and provide copies to the Borough of all necessary permits from the New Jersey Division of Alcoholic Beverage Control to extend their licensed premises in accordance with applicable New Jersey law.
- O. Everything must be neatly stacked or removed and sidewalks cleaned at the end service daily.
- P. The Borough retains the right to suspend an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe license to allow for construction activity, utility repairs, and special events or for other reason as deemed appropriate by the Borough Council, with reasonable advance notice to be given to affected licensees.
- Q. All Sidewalk Cafes must be cleared of all furnishings in advance of any snowstorm or weather emergency declared by the Borough.

R. Use of private parking lots for Outdoor Eating or Dining Areas.

- 1) Must be in an area where onsite parking is not required or parking studies have demonstrated the availability of excess parking spaces.
- 2) Permit required, subject to all rules and regulations included in this ordinance.
- 3) Must be separated from other parking and travel lanes by barricades.
- 4) Tents shall be permitted within an Outdoor Eating Area, Outdoor Dining Area only and require approval from the Zoning Officer, Construction, and Fire Code Officials.
 - a) The clearance to the lowest part of any tent covering shall be the same as required in **Code § 166-4 Awnings**.
 - b) All tent frame components supported by the ground must be clearly visible to pedestrians and other passersby so as not to constitute a safety hazard and the Zoning Officer may require a decorative chain or other means to ensure visibility of frame components supported by the ground.
 - c) Tents in use from December 1 through March 1 must be certified snow load compliant.
 - d) Restaurants utilizing outdoor tents with temporary heat must be reviewed and approved by the Madison Fire Code Official.
 - e) Except for permitted construction or repair of a tent, at no time shall property owners be permitted to remove the tent covering and leave bare frame components visible.

S. Use of public curbside/parking spaces for expansion of Sidewalk Café.

- a) Prohibited on Main Street, NJ State Highway Route 124.
- b) Permit required, subject to all rules and regulations included in this ordinance.
- c) Must be separated from other parking and travel lanes by barricades.
- d) A platform will be required to insure accessibility between the sidewalk and street area and must meet the following standards. Platforms must be approved by the Zoning, Officer, Construction and Fire Code Officials:
 - (1) Durable materials that can withstand wear and tear of elements. It is your responsibility to maintain all platform elements in good condition.
 - (2) All structures on parking lane must allow for access to public utilities for maintenance and repairs (e.g. provide access panels, removable pavers, etc.)
 - (3) Deck or platform must be flush with sidewalk and must not leave a gap greater than 1/2 inch, nor a vertical separation greater than 1/4 inch.
 - (4) At no time may any element of the platform be attached, anchored, bolted

or affixed in any way to the roadway or any structure (including but not limited to: buildings, fire hydrants, street trees, streetlight or traffic poles, etc.)

(5) Surface materials must be textured or treated with a non-skid coating to ensure a safe walking surface. Loose particles, such as sand or loose stone, are not permitted.

(6) Platforms should allow for curbside drainage flow. An approximately 6 inch x 6 inch minimum clear gutter space must be provided along the entire length of the proposed platform.

e) Use of public curbside/parking spaces for expansion of Sidewalk Café begins on April 15 and ends on November 15. Barricades, all equipment, and platforms must be removed by November 15.

T. Restaurateurs must comply with the provisions of the **Smoke-Free Air Act, N.J.S.A. 26:3D-55 to 64**, including displaying the appropriate designated site-specific conditions for smoking that are appropriate to their particular circumstances and environments. Moreover, in accordance with **N.J.S.A. 26:3D-63** and **N.J.A.C. 8:6-2.3**, smoking is prohibited at a sidewalk dining establishment if smoking in the exterior area results in migration, seepage, or recirculation of smoke to an indoor public place or a workplace at which smoking is prohibited.

U. The licensee shall comply with all other Borough ordinances.

§ 166-50. Suspension and revocation of license.

A. Any license may be suspended or revoked for good cause by the Borough Council, including but not limited to a misrepresentation of the information supplied in the application, the conviction of a crime, a violation of any ordinance, statute or government regulation or a violation of this article.

§ 166-51. Enforcement.

A. The Borough Clerk shall be responsible for licensing and the collection of fees. This chapter shall otherwise be enforced by the Zoning Officer, Madison Police Department and the Board of Health, as to the Sanitary Code.

§ 166-52. Violations and penalties.

A. Any violations of the provisions of this article shall be punishable by a fine not to exceed \$500 as determined by the Municipal Court. Each day the violation shall continue after a notice and a reasonable opportunity to correct or remedy the violation shall constitute a separate violation.

§ 166-53. Appeals.

- A. Any person aggrieved by any action of the Borough Clerk, in the denial or revocation of an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe license, shall have the right to appeal to the Borough Administrator. The appeal shall be taken by filing with the Borough Clerk, within 30 days after the notice of the action complained of has been served personally upon the licensee, or mailed, postage prepaid, to the licensee at the address given by the licensee in making application under § 166-44 herein, a written statement setting forth fully the grounds for appeal. The Borough Clerk shall set a time and place of hearing for the appeal, at which time the Borough Administrator shall conduct a hearing and affirm, modify or reverse the action appealed from.

§ 166-54. Severability.

- A. Each section of this article is an independent section, and the holding of any section or part thereof to be unconstitutional or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other section or part thereof.

ADOPTED AND APPROVED

ROBERT H. CONLEY, MAYOR

Attest:

ELIZABETH OSBORNE, Borough Clerk