

ARTICLE VIII
Sidewalk Cafes

[Adopted 4-9-1998 by Ord. No. 98-05R; amended in its entirety 6-15-2020 by Ord. No. 20-12R¹]

§ 259-35. Introduction.

The Mayor and Council have determined that restaurants and retail uses located in the Borough in certain permitted zones shall be allowed to maintain sidewalk use in accordance with the requirements set forth hereafter.

§ 259-36. Definitions.

As used in this article, the following terms shall have the meanings indicated:

DEVELOPMENT PLAN — A written plan setting forth the following information, and such other additional information, if any, as may be subsequently requested by the Borough:

- A. A description of the principal building, limited to ground floor tenant frontage and a description of all properties immediately adjacent to such building.
- B. A description of the proposed design and location of the sidewalk cafe/retail use, its dimensions and all temporary structures, equipment, and apparatus to be used in connection with its operation, including tables, temporary fences and barriers, planters, serving carts, chairs, awnings, umbrellas, lighting and electrical outlets (if any).
- C. A statement of the seating capacity of the proposed sidewalk cafe and of the existing restaurant actually operated by the applicant in the principal building.
- D. A diagram demonstrating that pedestrian traffic along the sidewalk on which the sidewalk cafe and retail use is proposed to be located will in no way be impeded; and that there shall be at least six feet between the edge of the sidewalk closest to the curb and/or any traffic lanes (excluding therefrom any unpaved area) and the area where the sidewalk cafe/retail use or any appurtenances thereto are to be located, and including a diagram of the sidewalk cafe/retail use itself with all appurtenances.

PERMITTED ZONE — The GC, CC and Block 64 Zones, all as defined in Chapter 184, Land Use, of the Borough Code.

PERSON — Any individual, partnership, corporation, association or other entity.

PRINCIPAL BUILDING — The building which the principal, side or rear facade fronts on the sidewalk where the sidewalk cafe/retail use is located, or is proposed to be located.

PRINCIPAL FACADE — The face of the principal building facing the street right-of-way.

RESTAURANT — An establishment actually located within the principal building, the primary activity of which is the preparation of food for consumption by the public on its premises and where the food is to be consumed on, and with utensils of permanent, nondisposable, durable and reusable material, and shall include, by way of example, a restaurant, hotel, coffee shop, tearoom, dining room cafeteria, luncheonette, soda fountain, sandwich shop and the like.

SIDEWALK — The paved surface provided for the exclusive use of pedestrians and situated between and extending from any building line to the curb of any street, parking aisle and/or imaginary curbline if not fronting on a street (excluding therefrom any unpaved area).

1. Editor's Note: Prior amendments included Ord. Nos. 99-25R; 05-10R; 06-11R; 98-09R; and 98-12R.

SIDEWALK CAFE or CAFE — A restaurant as defined herein which also is characterized by the following:

- A. Serving food to be consumed by the public at tables located within that more or less rectangular portion of the sidewalk which lies within the area bounded by the public street, parking aisle and/or imaginary curbline if not fronting on a street, the principal, side and/or rear facade and the imaginary perpendicular lines running from the outer edge of such facade to the public street, parking aisle and/or imaginary curbline if not fronting on a street.
- B. Containing readily removable tables, chairs, temporary railings and/or planters.
- C. Unenclosed by fixed walls or ceilings, fences, except for retractable awnings, removable barriers, umbrellas or other nonpermanent enclosures.

§ 259-37. License required.

No person shall operate a sidewalk cafe/retail use within the Borough without first obtaining a sidewalk cafe/retail use license and satisfying all of the requirements of this article. The license shall be initially issued by the Mayor and Council and may contain conditions. Renewal of the license initially issued by the Mayor and Council may be by the Borough Clerk.

§ 259-38. Application.

- A. Each applicant for a sidewalk cafe/retail use license shall submit and file an application with the Borough Clerk, together with three copies of a development plan and the required fee. The application shall set forth and/or attach:
 - (1) The name and address of the applicant.
 - (2) The name and address of the owner of the principal building (if other than the applicant).
 - (3) The name and address of the person who has prepared the development plan; and shall be accompanied by the written authorization and approval of the owner of the principal building (if other than the applicant).
 - (4) Three copies of the development plan.
- B. The application, including the development plan, shall be referred by the Borough Administrator to the Zoning Officer, who shall thereupon recommend approval, disapproval or modification of the plan within 15 business days following its submission. The Borough Administrator or the Zoning Officer may also refer the development plan to the Chiefs of Police and/or Fire, the Borough Engineer, the Health Officer and/or the Construction Official for such persons' review and recommendation. Upon receipt of the recommendation from the Zoning Officer, the application and recommendation shall be forwarded by the Borough Administrator to the Mayor and Council.

§ 259-39. Insurance required.

No sidewalk cafe/retail use license shall be issued unless the applicant shall have first filed with the Borough Administrator a copy of an insurance policy or certificate of insurance, issued by a company duly authorized to transact business under the laws of this state, providing for the payment in the aggregate of not less than \$1,000,000 to satisfy any and all claims for damage by reason of bodily injuries to, or the death of, any person as a direct or indirect result of the operation of the sidewalk cafe/retail use or for injury to any person occurring on the premises occupied by such cafe; and further providing for

the payment of not less than \$25,000 to satisfy any claims for property damage occurring as a direct or indirect result of the operation of such cafe, and naming the Borough as an additional insured.

§ 259-40. Indemnification agreement.

No sidewalk cafe/retail use license shall be issued unless the applicant shall have executed and filed with the Borough Administrator an indemnification agreement in a form approved by the Borough Attorney, pursuant to which the licensee, in further consideration of the issuance of the license, agrees to forever defend, protect, indemnify and save harmless Fanwood, its elected officials, officers, agents and/or employees, from, and against, any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs, including attorney's fees, arising out of, or which may arise out of, the operation of such sidewalk cafe.

§ 259-41. Maintenance agreement.

No sidewalk cafe/retail use license shall be issued unless the applicant shall have executed and filed with the Borough Administrator a maintenance agreement in a form approved by the Borough Attorney, pursuant to which the licensee, in further consideration of the issuance of a license, agrees, at the option of the Borough, to either repair at the licensee's sole cost and expense any damage caused to the sidewalk by the operation of the cafe or to reimburse the Borough in full for all costs and expenses incurred by it in making any such repairs and any attorney's fees or engineering fees incurred as a result thereof and/or relating thereto.

§ 259-42. Application fee.

The initial annual application fee for a sidewalk cafe/retail use license shall be \$100 per application and shall be paid prior to any license or renewal thereof being issued. The application fee for renewal of the license, assuming the applicant has satisfied all of the requirements of this article, shall be \$100 per application. If more than one or more years has elapsed since the last license has expired, or a new applicant submits the application even if for the same property, the application will be deemed an initial application.

§ 259-43. Term of license; renewals.

All sidewalk cafe/retail use licenses shall be issued for a seven-month period commencing April 1 and ending October 31 of a particular year. Licenses may be renewed annually by the filing of a renewal application pursuant to § 259-38 with the Borough Administrator in accordance with the provisions of this article.

§ 259-44. Requirements and specifications.

A sidewalk cafe authorized and operating pursuant to this article shall comply with all of the following regulations and specifications:

- A. The cafe/retail use shall be operated and maintained in accordance with the development plan and application as finally approved.
- B. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe shall be placed within 50 feet of any fire hydrant, plug or standpipe without the written authorization of the Chief of the Fire Department or the Chief's designee.
- C. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the

sidewalk cafe shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building, structure or crosswalk. At least six feet of unobstructed walkway shall be provided for access from any door or opening on the principal, side and/or rear facade.

- D. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe/retail use shall be located in such a way that less than six feet of paved sidewalk remains for the exclusive use of pedestrians and/or motor vehicles in the case of side and/or rear locations (the required passageway), nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above the required passageway. All sidewalk cafes/retail uses shall have portable barriers or planters not less than three feet nor more than four feet in height which shall be placed around the sidewalk cafe area on the sidewalk to define the cafe area and the required passageway.
- E. All dishes, utensils, containers, tablecloths, cutlery and other items used in the operation or decoration of the sidewalk cafe shall be made of nondisposable and reusable materials. The furniture to be used in the operation of the sidewalk cafe shall be made of durable material, such as sturdy vinyl/plastic, wrought iron or wood. Tables shall have a diameter not larger than 24 inches.
- F. The sidewalk area utilized by the cafe shall be kept clean and free of litter. No food items shall be left on the tables for any unreasonable time period unless they are being presently consumed. Surfaces of the tables shall be cleaned as soon as patrons are finished consuming food and/or beverages. Sidewalks shall be cleaned daily and trash receptacles, with lids, shall be provided as required, within close proximity of the sidewalk area and approved from time to time by the Borough.
- G. Noise shall be kept at such levels as to comply in all respects with the provisions of applicable state, county and local law.
- H. Sidewalk cafes/retail use shall be permitted to operate only within the permitted zones and only from 7:00 a.m. until 11:00 p.m. during the months of April to October, inclusive.
- I. Within 30 minutes after the closing of the cafe/retail use, the operator shall have all furniture, apparatus, decorations, barriers, planters and appurtenances and any other items used in connection with the operation of such cafe/retail use removed from the sidewalk. All such materials shall be stored in a safe and secure interior location.
- J. No advertisements or signs of any kind shall be placed on any furniture, fencing or other appurtenances related to the sidewalk cafe.
- K. The operator shall comply with all the requirements of N.J.A.C. 8:24-1.1 et seq. (also known as Chapter XII of the New Jersey State Sanitary Code) and N.J.S.A. 24:15-1 et seq.
- L. The cafe/retail use shall be operated and maintained by the same person who operates and maintains the related use of which the cafe/retail use is a part and an extension.
- M. The operator shall fully comply with all provisions of this Code.

§ 259-45. Alcoholic beverages.

- A. The sidewalk area upon which a cafe has been authorized to operate shall constitute premises duly licensed for the sale and consumption of alcoholic beverages, provided that the related restaurant of which the cafe is a part is so licensed and that specific approval has been obtained from the local Alcoholic Beverage Commission for an extension of the alcoholic beverage consumption license to

include the sidewalk cafe area. Such approval shall be separate from, and must be obtained in addition to, the license to operate a sidewalk cafe pursuant to this article.

- B. Patrons of a cafe that does not have a license to sell alcoholic beverages in the sidewalk area upon which the cafe has been authorized to operate pursuant to this article may be allowed, at the licensee's option, to carry within and consume wine or beer in such sidewalk cafe area.

§ 259-46. Notice of violation; failure to comply.

- A. Upon a determination by the officers or employees of the Borough charged with enforcing the provisions of this article that a licensee has violated one or more of the provisions of this article, such officer or employee shall give written notice to the licensee to correct such violation within 24 hours of receipt of such notice by the licensee. In the event that the licensee fails or refuses to correct such violation within such period, the licensee's sidewalk cafe/retail use license shall thereupon automatically be revoked.
- B. Upon revocation of such license, the licensee, upon written request, shall be entitled to a hearing before the Mayor and Council within 20 business days of the date of its request.

§ 259-47. Violations and penalties.

Any person who shall violate any provision of this article shall, upon conviction thereof, be punished by a fine not exceeding \$2,000, or by imprisonment for a term not exceeding 90 days, and/or by a period of community service not exceeding 90 days.