

# ASSEMBLY, No. 5554

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 5, 2021

**Sponsored by:**

**Assemblyman ERIC HOUGHTALING**

**District 11 (Monmouth)**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Co-Sponsored by:**

**Assemblyman Freiman**

**SYNOPSIS**

Allows municipalities to designate outdoor areas upon which people may consume alcoholic beverages.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 1/10/2022)

A5554 HOUGHTALING, DOWNEY

2

1 AN ACT concerning the consumption of alcoholic beverages,  
2 supplementing Title 33 of the Revised Statutes, and amending  
3 R.S.40:48-1.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7

8 1. (New section) a. As used in this act, “open container area”  
9 means a portion of a municipality or an area encompassing the  
10 entire municipality upon which persons are permitted to carry and  
11 consume open containers of alcoholic beverages outdoors.

12 b. Notwithstanding any other provision of law to the contrary,  
13 a municipality may, by ordinance, authorize the consumption of  
14 alcoholic beverages within an open container area by persons who  
15 are at least 21 years of age.

16 A determination to adopt an ordinance pursuant to this  
17 subsection shall be made only after a public hearing is held by the  
18 municipal governing body on the merits of establishing an open  
19 container area.

20 c. The sale of alcoholic beverages for consumption in an open  
21 container area shall be subject to the provisions of Title 33 of the  
22 Revised Statutes, rules and regulations promulgated by the director,  
23 and municipal ordinances.

24

25 2. R.S.40:48-1 is amended to read as follows:

26 40:48-1. Ordinances; general purpose. The governing body of  
27 every municipality may make, amend, repeal and enforce  
28 ordinances to:

29 Finances and property. 1. Manage, regulate and control the  
30 finances and property, real and personal, of the municipality;

31 Contracts and contractor's bonds. 2. Prescribe the form and  
32 manner of execution and approval of all contracts to be executed by  
33 the municipality and of all bonds to be given to it;

34 Officers and employees; duties, terms and salaries. 3. Prescribe  
35 and define, except as otherwise provided by law, the duties and  
36 terms of office or employment, of all officers and employees; and to  
37 provide for the employment and compensation of such officials and  
38 employees, in addition to those provided for by statute, as may be  
39 deemed necessary for the efficient conduct of the affairs of the  
40 municipality;

41 Fees. 4. Fix the fees of any officer or employee of the  
42 municipality for any service rendered in connection with his office  
43 or position, for which no specific fee or compensation is provided.  
44 In the case of salaried officers or employees, such fee shall be paid  
45 into the municipal treasury;

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 Salaries instead of fees; disposition of fees. 5. Provide that any  
2 officer or employee receiving compensation for his services, in  
3 whole or in part by fees, whether paid by the municipality or  
4 otherwise, shall be paid a salary to be fixed in the ordinance, and  
5 thereafter all fees received by such officer or employee shall be  
6 paid into the municipal treasury;

7 Maintain order. 6. Prevent vice, drunkenness and immorality; to  
8 preserve the public peace and order; to prevent and quell riots,  
9 disturbances and disorderly assemblages;

10 Punish beggars; prevention of loitering. 7. Restrain and punish  
11 drunkards, vagrants, mendicants and street beggars; to prevent  
12 loitering, lounging or sleeping in the streets, parks or public places;

13 Auctions and noises. 8. Regulate the ringing of bells and the  
14 crying of goods and other commodities for sale at auction or  
15 otherwise, and to prevent disturbing noises;

16 Swimming; bathing costume; prohibition of public nudity. 9.  
17 Regulate or prohibit swimming or bathing in the waters of, in, or  
18 bounding the municipality, and to regulate or prohibit persons from  
19 appearing upon the public streets, parks and places clad in bathing  
20 costumes or robes, or costumes of a similar character; regulate or  
21 prohibit persons from appearing in a state of nudity upon all lands  
22 within its borders which are under the jurisdiction of the State  
23 including, without limitation, all lands owned by, controlled by,  
24 managed by or leased by the State;

25 Prohibit annoyance of persons or animals. 10. Regulate or  
26 prohibit any practice tending to frighten animals, or to annoy or  
27 injure persons in the public streets;

28 Animals; pounds; establishment and regulation. 11. Establish  
29 and regulate one or more pounds, and to prohibit or regulate the  
30 running at large of horses, cattle, dogs, swine, goats and other  
31 animals, and to authorize their impounding and sale for the penalty  
32 incurred, and the costs of impounding, keeping and sale; to regulate  
33 or prohibit the keeping of cattle, goats or swine in any part of the  
34 municipality; to authorize the destruction of dogs running at large  
35 therein;

36 Hucksters. 12. Prescribe and regulate the place of vending or  
37 exposing for sale articles of merchandise from vehicles;

38 Building regulations; wooden structures. 13. Regulate and  
39 control the construction, erection, alteration and repair of buildings  
40 and structures of every kind within the municipality; and to  
41 prohibit, within certain limits, the construction, erection or  
42 alteration of buildings or structures of wood or other combustible  
43 material;

44 Inflammable materials; inspect docks and buildings. 14.  
45 Regulate the use, storage, sale and disposal of inflammable or  
46 combustible materials, and to provide for the protection of life and  
47 property from fire, explosions and other dangers; to provide for  
48 inspections of buildings, docks, wharves, warehouses and other

1 places, and of goods and materials contained therein, to secure the  
2 proper enforcement of such ordinance;

3 Dangerous structures; removal or destruction; procedure. 15.  
4 Provide for the removal or destruction of any building, wall or  
5 structure which is or may become dangerous to life or health, or  
6 might tend to extend a conflagration; and to assess the cost thereof  
7 as a municipal lien against the premises;

8 Chimneys and boilers. 16. Regulate the construction and setting  
9 up of chimneys, furnaces, stoves, boilers, ovens and other  
10 contrivances in which fire is used;

11 Explosives. 17. Regulate, in conformity with the statutes of this  
12 State, the manufacture, storage, sale, keeping or conveying of  
13 gunpowder, nitroglycerine, dynamite and other explosives;

14 Firearms and fireworks. 18. Regulate and prohibit the sale and  
15 use of guns, pistols, firearms, and fireworks of all descriptions;

16 Soft coal. 19. Regulate the use of soft coal in locomotives,  
17 factories, power houses and other places;

18 Theaters, schools, churches and public places. 20. Regulate the  
19 use of theaters, cinema houses, public halls, schools, churches, and  
20 other places where numbers of people assemble, and the exits  
21 therefrom, so that escape therefrom may be easily and safely made  
22 in case of fire or panic; and to regulate any machinery, scenery,  
23 lights, wires and other apparatus, equipment or appliances used in  
24 all places of public amusement;

25 Excavations. 21. Regulate excavations below the established  
26 grade or curb line of any street, not greater than eight feet, which  
27 the owner of any land may make, in the erection of any building  
28 upon his own property; and to provide for the giving of notice, in  
29 writing, of such intended excavation to any adjoining owner or  
30 owners, and that they will be required to protect and care for their  
31 several foundation walls that may be endangered by such  
32 excavation; and to provide that in case of the neglect or refusal, for  
33 10 days, of such adjoining owner or owners to take proper action to  
34 secure and protect the foundations of any adjacent building or other  
35 structure, that the party or parties giving such notice, or their  
36 agents, contractors or employees, may enter into and upon such  
37 adjoining property and do all necessary work to make such  
38 foundations secure, and may recover the cost of such work and  
39 labor in so protecting such adjacent property; and to make such  
40 further and other provisions in relation to the proper conduct and  
41 performance of said work as the governing body or board of the  
42 municipality may deem necessary and proper;

43 Sample medicines. 22. Regulate and prohibit the distribution,  
44 depositing or leaving on the public streets or highways, public  
45 places or private property, or at any private place or places within  
46 any such municipality, any medicine, medicinal preparation or  
47 preparations represented to cure ailments or diseases of the body or  
48 mind, or any samples thereof, or any advertisements or circulars

1 relating thereto, but no ordinance shall prohibit a delivery of any  
2 such article to any person above the age of 12 years willing to  
3 receive the same;

4 Boating. 23. Regulate the use of motor and other boats upon  
5 waters within or bounding the municipality;

6 Fire escapes. 24. Provide for the erection of fire escapes on  
7 buildings in the municipality, and to provide rules and regulations  
8 concerning the construction and maintenance of the same, and for  
9 the prevention of any obstruction thereof or thereon;

10 Care of injured employees. 25. Provide for the payment of  
11 compensation and for medical attendance to any officer or  
12 employee of the municipality injured in the performance of his  
13 duty;

14 Bulkheads and other structures. 26. Fix and determine the lines  
15 of bulkheads or other works or structures to be erected, constructed  
16 or maintained by the owners of lands facing upon any navigable  
17 water in front of their lands, and in front of or along any highway or  
18 public lands of said municipality, and to designate the materials to  
19 be used, and the type, height and dimensions thereof;

20 Lifeguard. 27. Establish, maintain, regulate and control a  
21 lifeguard upon any beach within or bordering on the municipality;

22 Appropriation for life-saving apparatus. 28. Appropriate  
23 moneys to safeguard people from drowning within its borders, by  
24 location of apparatus or conduct of educational work in harmony  
25 with the plans of the United States volunteer life-saving corps in  
26 this State;

27 Fences. 29. Regulate the size, height and dimensions of any  
28 fences between the lands of adjoining owners, whether built or  
29 erected as division or partition fences between such lands, and  
30 whether the same exist or be erected entirely or only partly upon the  
31 lands of any such adjoining owners, or along or immediately  
32 adjacent to any division or partition line of such lands. To provide,  
33 in such ordinance, the manner of securing, fastening or shoring such  
34 fences, and for surveying the land when required by statute, and to  
35 prohibit in any such ordinance the use at a height of under 10 feet  
36 from the ground, of any device, such as wire or cable, that would be  
37 dangerous to pedestrians, equestrians, bicyclists, or drivers of off-  
38 the-road vehicles, unless that device is clearly visible to pedestrians,  
39 equestrians, bicyclists or drivers of off-the-road vehicles. In the  
40 case of fences thereafter erected contrary to the provisions thereof,  
41 the governing body may provide for a penalty for the violation of  
42 such ordinance, and in the case of such fence or fences erected or  
43 existing at the time of the passage of any such ordinance, may  
44 provide therein for the removal, change or alteration thereof, so as  
45 to make such fence or fences comply with the provisions of any  
46 such ordinance;

47 Advertise municipality. 30. Appropriate funds for advertising  
48 the advantages of the municipality;

1 Government Energy Aggregation Programs. 31. Establish  
2 programs and procedures pursuant to which the municipality may  
3 act as a government aggregator pursuant to sections 40 through 43  
4 of P.L.1999, c.23 (C.48:3-89 through C.48:3-92), section 45 of  
5 P.L.1999, c.23 (C.48:3-94), and sections 1, 2 and 6 of P.L.2003,  
6 c.24 (C.48:3-93.1 through C.48:3-93.3). Notwithstanding the  
7 provisions of any other law, rule or regulation to the contrary, a  
8 municipality acting as a government aggregator pursuant to  
9 P.L.1999, c.23 (C.48:3-49 et al.) shall not be deemed to be a public  
10 utility pursuant to R.S.40:62-24 or R.S.48:1-1 et seq. or be deemed  
11 to be operating any form of public utility service pursuant to  
12 R.S.40:62-1 et seq., to the extent such municipality is solely  
13 engaged in the provision of such aggregation service and not  
14 otherwise owning or operating any plant or facility for the  
15 production or distribution of gas, electricity, steam or other product  
16 as provided in R.S.40:62-12;

17 Joint municipal action on consent for the provision of cable  
18 television service. 32. Establish programs and procedures pursuant  
19 to which a municipality may act together with one or more  
20 municipalities in granting municipal consent for the provision of  
21 cable television service pursuant to the provisions of the "Cable  
22 Television Act," P.L.1972, c.186 (C.48:5A-1 et seq.) as amended  
23 and supplemented. Notwithstanding the provisions of any other  
24 law, rule or regulation to the contrary, two or more municipalities  
25 acting jointly pursuant to the provisions of P.L.1972, c.186  
26 (C.48:5A-1 et seq.) shall not be deemed a public utility pursuant to  
27 R.S.48:1-1 et seq., to the extent those municipalities are solely  
28 engaged in granting municipal consent jointly and are not otherwise  
29 owning or operating any facility for the provision of cable  
30 television service as provided in P.L.1972, c.186 (C.48:5A-1 et  
31 seq.);

32 Private cable television service aggregation programs. 33.  
33 Establish programs and procedures pursuant to which a  
34 municipality may employ the services of a private aggregator for  
35 the purpose of facilitating the joint action of two or more  
36 municipalities in granting municipal consent for the provision of  
37 cable television service provided that any such municipality shall  
38 adhere to the provisions of the "Cable Television Act," P.L.1972,  
39 c.186 (C.48:5A-1 et seq.) as amended and supplemented, and to the  
40 provisions of the "Local Public Contracts Law," P.L.1971, c.198  
41 (C.40A:11-1 et seq.) as amended and supplemented.  
42 Notwithstanding the provisions of any other law, rule or regulation  
43 to the contrary, a municipality that employs the services of a private  
44 aggregator pursuant to the provisions of P.L.1972, c.186 (C.48:5A-  
45 1 et seq.) shall not be deemed a public utility pursuant to R.S.48:1-  
46 1 et seq., to the extent that the municipality is solely engaged in  
47 employing the services of a private aggregator for the purpose of  
48 facilitating the joint action of two or more municipalities in

1 granting municipal consent and is not otherwise owning or  
2 operating any facility for the provision of cable television service as  
3 provided in P.L.1972, c.186 (C.48:5A-1 et seq.);

4 Protective Custody. 34. Provide protective custody to persons  
5 arrested for operating a motor vehicle under the influence of  
6 alcoholic beverages, cannabis items as defined in section 3 of  
7 P.L.2021, c.16 (C.24:6I-33), any chemical substance, or any  
8 controlled dangerous substance in violation of R.S.39:4-50 as  
9 provided in section 1 of P.L.2003, c.164 (C.40:48-1.3);

10 Private Outdoor Video Surveillance Camera Registry. 35.  
11 Establish a private outdoor video surveillance camera registry and  
12 allow voluntary registration of private outdoor video surveillance  
13 cameras as provided in P.L.2015, c.142 (C.40:48-1.6 et al.).

14 Consumption of Alcoholic Beverages Outdoors. 36. Designate an  
15 open container area upon which people are permitted to carry and  
16 consume open containers of alcoholic beverages outdoors pursuant  
17 to section 1 of P.L. , c. (C. ) (pending before the Legislature  
18 as this bill).

19 (cf: P.L.2021, c.25, s.16)

20

21 3. This act shall take effect immediately.

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23

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#### STATEMENT

25

26 This bill allows a municipality to permit people to consume  
27 alcoholic beverages outdoors in designated open container areas.  
28 The bill defines “open container area” as a portion of a municipality  
29 or an area encompassing the entire municipality in which  
30 pedestrians are permitted to carry and consume open containers of  
31 alcoholic beverages outdoors.

32 The bill requires a public hearing to be held on the merits of  
33 establishing an open container area prior to a municipality adopting  
34 an ordinance. The sale of alcoholic beverages for consumption in  
35 an open container area would be subject to statutory law, rules and  
36 regulations promulgated by the director, and municipal ordinances.