

P.L. 2021, CHAPTER 395, *approved January 18, 2022*
Senate, No. 2921 (*First Reprint*)

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, a
13 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 ¹**[**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;

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ACE committee amendments adopted December 6, 2021.

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

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

12 Maintain order. 6. Prevent vice, drunkenness and immorality; to
13 preserve the public peace and order; to prevent and quell riots,
14 disturbances and disorderly assemblages; to prohibit the
15 consumption of alcoholic beverages by underage persons on private
16 property pursuant to section 1 of P.L.2000, c.33 (C.40:48-1.2);

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

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

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

32 Prohibit annoyance of persons or animals. 10. Regulate or
33 prohibit any practice tending to frighten animals, or to annoy or
34 injure persons in the public streets;

35 Animals; pounds; establishment and regulation. 11. Establish
36 and regulate one or more pounds, and to prohibit or regulate the
37 running at large of horses, cattle, dogs, swine, goats and other
38 animals, and to authorize their impounding and sale for the penalty
39 incurred, and the costs of impounding, keeping and sale; to regulate
40 or prohibit the keeping of cattle, goats or swine in any part of the
41 municipality; to authorize the destruction of dogs running at large
42 therein;

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

45 Building regulations; wooden structures. 13. Regulate and
46 control the construction, erection, alteration and repair of buildings
47 and structures of every kind within the municipality; and to
48 prohibit, within certain limits, the construction, erection or

1 alteration of buildings or structures of wood or other combustible
2 material;

3 Inflammable materials; inspect docks and buildings. 14.
4 Regulate the use, storage, sale and disposal of inflammable or
5 combustible materials, and to provide for the protection of life and
6 property from fire, explosions and other dangers; to provide for
7 inspections of buildings, docks, wharves, warehouses and other
8 places, and of goods and materials contained therein, to secure the
9 proper enforcement of such ordinance;

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

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

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

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

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

25 Theaters, schools, churches and public places. 20. Regulate the
26 use of theaters, cinema houses, public halls, schools, churches, and
27 other places where numbers of people assemble, and the exits
28 therefrom, so that escape therefrom may be easily and safely made
29 in case of fire or panic; and to regulate any machinery, scenery,
30 lights, wires and other apparatus, equipment or appliances used in
31 all places of public amusement;

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

1 performance of said work as the governing body or board of the
2 municipality may deem necessary and proper;

3 Sample medicines. 22. Regulate and prohibit the distribution,
4 depositing or leaving on the public streets or highways, public
5 places or private property, or at any private place or places within
6 any such municipality, any medicine, medicinal preparation or
7 preparations represented to cure ailments or diseases of the body or
8 mind, or any samples thereof, or any advertisements or circulars
9 relating thereto, but no ordinance shall prohibit a delivery of any
10 such article to any person above the age of 12 years willing to
11 receive the same;

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

14 Fire escapes. 24. Provide for the erection of fire escapes on
15 buildings in the municipality, and to provide rules and regulations
16 concerning the construction and maintenance of the same, and for
17 the prevention of any obstruction thereof or thereon;

18 Care of injured employees. 25. Provide for the payment of
19 compensation and for medical attendance to any officer or
20 employee of the municipality injured in the performance of his
21 duty;

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

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

30 Appropriation for life-saving apparatus. 28. Appropriate
31 moneys to safeguard people from drowning within its borders, by
32 location of apparatus or conduct of educational work in harmony
33 with the plans of the United States volunteer life-saving corps in
34 this State;

35 Fences. 29. Regulate the size, height and dimensions of any
36 fences between the lands of adjoining owners, whether built or
37 erected as division or partition fences between such lands, and
38 whether the same exist or be erected entirely or only partly upon the
39 lands of any such adjoining owners, or along or immediately
40 adjacent to any division or partition line of such lands. To provide,
41 in such ordinance, the manner of securing, fastening or shoring such
42 fences, and for surveying the land when required by statute, and to
43 prohibit in any such ordinance the use at a height of under 10 feet
44 from the ground, of any device, such as wire or cable, that would be
45 dangerous to pedestrians, equestrians, bicyclists, or drivers of off-
46 the-road vehicles, unless that device is clearly visible to pedestrians,
47 equestrians, bicyclists or drivers of off-the-road vehicles. In the
48 case of fences thereafter erected contrary to the provisions thereof,

1 the governing body may provide for a penalty for the violation of
2 such ordinance, and in the case of such fence or fences erected or
3 existing at the time of the passage of any such ordinance, may
4 provide therein for the removal, change or alteration thereof, so as
5 to make such fence or fences comply with the provisions of any
6 such ordinance;

7 Advertise municipality. 30. Appropriate funds for advertising
8 the advantages of the municipality;

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

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

40 Private cable television service aggregation programs. 33.
41 Establish programs and procedures pursuant to which a
42 municipality may employ the services of a private aggregator for
43 the purpose of facilitating the joint action of two or more
44 municipalities in granting municipal consent for the provision of
45 cable television service provided that any such municipality shall
46 adhere to the provisions of the "Cable Television Act,"
47 P.L.1972, c.186 (C.48:5A-1 et seq.) as amended and supplemented,
48 and to the provisions of the "Local Public Contracts Law,"

1 P.L.1971, c.198 (C.40A:11-1 et seq.) as amended and
 2 supplemented. Notwithstanding the provisions of any other law,
 3 rule or regulation to the contrary, a municipality that employs the
 4 services of a private aggregator pursuant to the provisions of
 5 P.L.1972, c.186 (C.48:5A-1 et seq.) shall not be deemed a public
 6 utility pursuant to R.S.48:1-1 et seq., to the extent that the
 7 municipality is solely engaged in employing the services of a
 8 private aggregator for the purpose of facilitating the joint action of
 9 two or more municipalities in granting municipal consent and is not
 10 otherwise owning or operating any facility for the provision of
 11 cable television service as provided in P.L.1972, c.186 (C.48:5A-1
 12 et seq.);

13 Protective Custody. 34. Provide protective custody to persons
 14 arrested for operating a motor vehicle under the influence of
 15 alcoholic beverages, any chemical substance, or any controlled
 16 dangerous substance in violation of R.S.39:4-50 as provided in
 17 section 1 of P.L.2003, c.164 (C.40:48-1.3);

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

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

27 (cf: P.L.2015, c.142, s.3)]¹

28

29 ¹2. R.S.40:48-1 is amended to read as follows:

30 40:48-1. Ordinances; general purpose. The governing body of
 31 every municipality may make, amend, repeal and enforce
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 34 finances and property, real and personal, of the municipality;

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 36 manner of execution and approval of all contracts to be executed by
 37 the municipality and of all bonds to be given to it;

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

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 46 municipality for any service rendered in connection with his office
 47 or position, for which no specific fee or compensation is provided.

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2 into the municipal treasury;

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6 otherwise, shall be paid a salary to be fixed in the ordinance, and
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10 preserve the public peace and order; to prevent and quell riots,
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16 crying of goods and other commodities for sale at auction or
17 otherwise, and to prevent disturbing noises;

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19 Regulate or prohibit swimming or bathing in the waters of, in, or
20 bounding the municipality, and to regulate or prohibit persons from
21 appearing upon the public streets, parks and places clad in bathing
22 costumes or robes, or costumes of a similar character; regulate or
23 prohibit persons from appearing in a state of nudity upon all lands
24 within its borders which are under the jurisdiction of the State
25 including, without limitation, all lands owned by, controlled by,
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28 prohibit any practice tending to frighten animals, or to annoy or
29 injure persons in the public streets;

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33 animals, and to authorize their impounding and sale for the penalty
34 incurred, and the costs of impounding, keeping and sale; to regulate
35 or prohibit the keeping of cattle, goats or swine in any part of the
36 municipality; to authorize the destruction of dogs running at large
37 therein;

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39 exposing for sale articles of merchandise from vehicles;

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41 control the construction, erection, alteration and repair of buildings
42 and structures of every kind within the municipality; and to
43 prohibit, within certain limits, the construction, erection or
44 alteration of buildings or structures of wood or other combustible
45 material;

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48 combustible materials, and to provide for the protection of life and

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

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46 depositing or leaving on the public streets or highways, public
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48 any such municipality, any medicine, medicinal preparation or

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11 the prevention of any obstruction thereof or thereon;

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14 employee of the municipality injured in the performance of his
15 duty;

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18 or maintained by the owners of lands facing upon any navigable
19 water in front of their lands, and in front of or along any highway or
20 public lands of said municipality, and to designate the materials to
21 be used, and the type, height and dimensions thereof;

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23 lifeguard upon any beach within or bordering on the municipality;

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

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

1 Advertise municipality. 30. Appropriate funds for advertising
2 the advantages of the municipality;

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

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

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

1 employing the services of a private aggregator for the purpose of
2 facilitating the joint action of two or more municipalities in
3 granting municipal consent and is not otherwise owning or
4 operating any facility for the provision of cable television service as
5 provided in P.L.1972, c.186 (C.48:5A-1 et seq.);

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

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

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

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

22
23 3. This act shall take effect immediately.
24
25
26

27
28 Allows municipalities to designate outdoor areas upon which
29 people may consume alcoholic beverages.