

SENATE, No. 3128

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 5, 2020

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator PAUL A. SARLO

District 36 (Bergen and Passaic)

Senator NILSA I. CRUZ-PEREZ

District 5 (Camden and Gloucester)

Co-Sponsored by:

Senators Addiego, Oroho, O'Scanlon, Testa and Diegnan

SYNOPSIS

Expands opportunities for restaurants, bars, and breweries to provide outdoor dining.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/12/2020)

1 AN ACT creating opportunities for restaurants, bars and breweries to
2 adjust operations in response to the COVID-19 public health
3 emergency through expanded outdoor dining.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in this act:

9 “Brewery” means a brewery operating under a brewery license
10 pursuant to R.S.33:1-10.

11 “Food” means food that is cooked, prepared, sold, served, and
12 consumed on the business premises.

13 “Outdoor space” means a patio or deck, either covered or
14 uncovered, a yard, a walkway, or a parking lot, or a portion of any
15 such space.

16 “Public sidewalk” means a sidewalk on the public right-of-way
17 which is adjacent to the business premises, or a portion thereof.

18
19 2. a. Notwithstanding the provisions of any law to the contrary,
20 during the period that this act is in effect, the owner or operator of a
21 restaurant, bar, or brewery may use outdoor spaces which they own
22 or lease and which are located either on, or adjacent to, their business
23 premises, as an extension of their business premises for the purpose
24 of conducting sales of food and beverages, including alcoholic
25 beverages if so licensed.

26 b. The owner or operator of a restaurant, bar, or brewery desiring
27 to utilize outdoor spaces as an extension of their businesses shall file
28 an application with the municipal zoning officer that includes: (1) a
29 plan, sketch, picture, or drawing that depicts the design, dimensional
30 boundaries, and placement of tents, canopies, umbrellas, tables,
31 chairs, and other fixtures of the outdoor spaces; and (2) a plan for the
32 control of litter, the removal and storage of garbage, and the cleaning
33 of fixtures and grounds. If a business premises’ parking lot is used
34 for the service and sale of either food or beverages, or both,
35 including, but not limited to, alcoholic beverages if so licensed, the
36 restaurant, bar, or brewery shall not encumber more than 75 percent
37 of the lot’s total parking spaces for such service and sale, unless the
38 parking lot contains less than eight parking spaces, and shall maintain
39 at least one handicapped parking space in the parking lot.

40 c. A municipality may require that an applicant provide one or
41 more of the following: (1) written consent of the owner of the
42 premises, if other than the applicant, (2) an insurance certificate
43 naming the municipality as an additional insured, with general
44 liability on an occurrence with a limit of liability of at least
45 \$1,000,000, with respect to losses arising solely from the operation
46 of the outdoor dining facility, or (3) an indemnification agreement
47 with the municipality with respect to losses arising solely from the
48 operation of the outdoor dining facility.

1 d. An application that is compliant with the provisions of this
2 section shall be approved by the zoning officer within 10 business
3 days of the application being submitted and deemed complete, and
4 the municipality shall not charge a fee for either accepting the
5 application or issuing the approval.

6 e. A municipality shall require that any restaurant, bar, or
7 brewery operating pursuant to this section shall follow, maintain, and
8 enforce protocols promulgated by the Commissioner of Health or
9 Executive Order of the Governor in response to the COVID-19 public
10 health emergency, concerning social distancing and use of personal
11 protective equipment during the period those protocols are in effect.
12

13 3. a. Notwithstanding the provisions of any law to the contrary,
14 during the period that this act is in effect, the owners and operators
15 of restaurants, bars, and breweries may use public sidewalks as an
16 extension of their business premises for the purpose of conducting
17 sales of food and beverages, including alcoholic beverages if so
18 licensed.

19 b. The owner or operator of a restaurant, bar, or brewery desiring
20 to utilize public sidewalks as an extension of their businesses shall
21 file an application with the municipal zoning officer that includes:
22 (1) a plan, sketch, picture, or drawing that depicts the design,
23 dimensional boundaries, and placement of tents, canopies, umbrellas,
24 tables, chairs, and other fixtures of the public sidewalks; and (2) a
25 plan for the control of litter, the removal and storage of garbage, and
26 the cleaning of fixtures and public sidewalks.

27 c. A municipality may require that an applicant provide one or
28 more of the following: (1) written consent of the owner of the
29 premises, if other than the applicant, (2) an insurance certificate
30 naming the municipality as an additional insured, with general
31 liability on an occurrence with a limit of liability of at least
32 \$1,000,000, with respect to losses arising solely from the operation
33 of the outdoor dining facility located on public sidewalks, or (3) an
34 indemnification agreement with the municipality with respect to
35 losses arising solely from the operation of the outdoor dining facility
36 on public sidewalks.

37 d. An application that is compliant with the provisions of this
38 section shall be approved by the zoning officer within 10 business
39 days of the application being submitted and deemed complete, and
40 the municipality shall not charge a fee for either accepting the
41 application or issuing the approval.

42 e. Owners and operators of restaurants, bars, or breweries
43 desiring to utilize public sidewalks are subject to the following
44 conditions: (1) a walking path not less than four feet wide must be
45 maintained on the public sidewalk at all times so as to not obstruct
46 pedestrian traffic; (2) all fixtures must be removed from public
47 sidewalks at the conclusion of each day; and (3) the municipality
48 reserves the right to order the temporary suspension of outdoor dining

1 and the removal of all fixtures from public sidewalks due to road or
2 utility construction, predicted high winds or severe weather,
3 predicted snow or ice storms, the need to remove snow or ice from
4 the sidewalks, or any other public emergency that may arise.

5 f. Municipalities shall require that any restaurants, bars, or
6 breweries operating pursuant to this section shall follow, maintain,
7 and enforce protocols promulgated by the Commissioner of Health
8 or Executive Order of the Governor in response to the COVID-19
9 public health emergency, concerning social distancing and use of
10 personal protective equipment during the period those protocols are
11 in effect.

12

13 4. The Director of the Division of Alcoholic Beverage Control
14 in the Department of Law and Public Safety shall issue a special
15 ruling within ten calendar days of the effective date of this act
16 pursuant to R.S.33:1-39 to entitle the holders of plenary retail
17 consumption licenses and limited brewery licenses to extend their
18 licensed premises to allow for the sale and consumption of alcoholic
19 beverages in outdoor spaces and on public sidewalks, provided those
20 licensees also serve food.

21 The special ruling shall require that any restaurant, bar, or brewery
22 operating pursuant to this section shall follow, maintain, and enforce
23 protocols promulgated by the Commissioner of Health or Executive
24 Order of the Governor in response to the COVID-19 public health
25 emergency, concerning social distancing and use of personal
26 protective equipment during the period those protocols are in effect.

27 The special ruling shall not require licensees to submit an
28 application to, receive approval from, or pay a fee to either the
29 municipality or the Division of Alcoholic Beverage Control to extend
30 their licensed premises, other than that which is required by sections
31 2 and 3 of this act, but shall require that the licensee notify the chief
32 of police and municipal clerk not less than five days prior to engaging
33 in the business activity authorized in this act. This special ruling
34 shall be in effect only during the time period established in section 8
35 of this act.

36

37 5. In accordance with section 5 of P.L.1999, c.90 (C.2C:33-27),
38 the owners and operators of restaurants shall be permitted to conduct
39 “bring-your-own-bottle” privileges in outdoor spaces and on public
40 sidewalks, in accordance with the provisions of this act, and the
41 applicable outdoor spaces and public sidewalks shall be considered a
42 portion of the restaurant’s premises for the purposes of section 5 of
43 P.L.1999, c.90 (C.2C:33-27).

44

45 6. a. Notwithstanding any provision of this act to the contrary,
46 all other municipal ordinances pertaining to sanitation, property
47 maintenance, noise, business days and hours of operation, and days
48 and hours of service of alcoholic beverages shall apply, unless

1 specifically suspended or modified by the municipality or
2 specifically prohibited by the provisions of this section.

3 b. With respect to restaurants, bars and breweries operating in
4 outdoor spaces pursuant to section 2 of P.L. , c. (C.)
5 (pending before the Legislature as this bill), municipalities shall not
6 prohibit or limit the days and hours of the outdoor service of food
7 and beverages, including alcoholic beverages if so licensed, except
8 for the hours after 11:00 p.m. and between 12:00 a.m. and 11:00 a.m.
9 on Sundays through Wednesdays, and between 12:00 a.m. and 11:00
10 a.m. on Thursdays through Saturdays, with the exception that a
11 municipal ordinance prohibiting or limiting the days and hours of
12 indoor service of food and beverages, including alcoholic beverages,
13 which was in effect prior to March 1, 2020 may be applied to the
14 outdoor service of food and beverages, including alcoholic
15 beverages, as a condition of the zoning approval pursuant to section
16 2 of this act.

17 c. A municipality may either prohibit or limit the days and hours
18 of any live performances, including musical performances, and the
19 playing or projection of any content from a recording, streaming
20 service or television, cable or internet broadcasting service in outdoor
21 spaces or on public sidewalks as a condition of the zoning approval
22 pursuant to sections 2 and 3 of this act.

23 d. A municipality may deny, revoke, or temporarily suspend, the
24 outdoor dining activity of any establishment that violates, or is not in
25 compliance with, any provision of this act or any provision of a law,
26 ordinance, or regulation related to the consumption or control of
27 alcoholic beverages.

28
29 7. Nothing in this act shall be interpreted or construed as
30 permitting or mandating the opening, expansion, or resumption of
31 unlimited operations of a restaurant, bar, or brewery that is closed,
32 whether permanently or temporarily, or operating subject to
33 limitations on its operations, service, or hours, as a result of
34 disciplinary or legal sanctions imposed by, or entering into a
35 settlement agreement with, a court of the State of New Jersey, a
36 municipal court, the New Jersey Department of Law and Public
37 Safety, the New Jersey Division of Alcoholic Beverage Control, or a
38 municipal governing body acting as a local alcoholic beverage
39 control board, as applicable.

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41 8. This act shall take effect immediately and shall expire on
42 January 2, 2023.

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45 STATEMENT

46
47 This bill would allow the owners and operators of restaurants,
48 bars, and breweries to use outdoor spaces which they own or lease

1 and which are located either on, or adjacent to, their business
2 premises, as an extension of their business premises for the purpose
3 of conducting sales of food and beverages, including alcoholic
4 beverages if so licensed. The bill defines “outdoor spaces” as
5 including patios and decks, both covered and uncovered, yards,
6 walkways, and parking lots, or a portion thereof. The bill would also
7 allow the owners and operators of restaurants, bars and breweries, to
8 use public sidewalks, as defined in the bill, as an extension of their
9 business premises for that purpose, as well.

10 The bill requires owners and operators of restaurants, bars, and
11 breweries seeking to utilize outdoor spaces or public sidewalks as
12 extensions of their business premises pursuant to the provisions of
13 the bill to file an application with the municipal zoning officer,
14 including information concerning the use of the outdoor spaces or
15 public sidewalks, as appropriate. The zoning officer is required to
16 approve an application that is compliant with the bill’s provisions
17 within 10 business days of the submission of the application, and the
18 bill prohibits municipalities from charging fees for the filing of the
19 application or issuing the approval.

20 Under the bill, a municipality may require that an applicant provide
21 one or more of the following: (1) written consent of the owner of
22 the premises, if other than the applicant, (2) an insurance certificate
23 naming the municipality as an additional insured, with general
24 liability on an occurrence with a limit of liability of at least
25 \$1,000,000, with respect to losses arising solely from the operation
26 of the outdoor dining facility, or (3) an indemnification agreement
27 with the municipality with respect to losses arising solely from the
28 operation of the outdoor dining facility.

29 Restaurants, bars, or breweries operating under the provisions of
30 the bill are required to follow, maintain, and enforce protocols
31 promulgated by the Commissioner of Health or the Governor in
32 response to the COVID-19 public health emergency, concerning
33 social distancing and use of personal protective equipment during the
34 period those protocols are in effect. The bill also provides for the
35 operation of “bring your own bottle” privileges in applicable outdoor
36 spaces and on public sidewalks.

37 The bill also permits municipalities to control the days and hours of
38 certain activities, including the outdoor service of food and beverages,
39 including alcoholic beverages if so licensed, and live performances, as
40 well as to deny, revoke, or suspend, the outdoor dining activity of any
41 establishment that violates the provisions of the bill.