

Outdoor seating for
restaurants, bars,
distilleries and breweries.

P.L. 2021, CHAPTER 15, *approved February 5, 2021*
Senate, No. 3340 (*First Reprint*)

AN ACT creating opportunities for restaurants, bars, distilleries, and breweries to adjust operations in response to the COVID-19 public health emergency through expanded outdoor dining; and by permitting certain sales at seasonal farm markets, ¹and supplementing Title 33 of the Revised Statutes¹.

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

1. As used in this act, P.L. , c. (pending before the Legislature as this bill), and only for the purposes of this act:

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

"Distillery" means a distillery that has been issued, and is in compliance with, a distillery license pursuant to R.S.33:1-10.

"Food" means food that is cooked, prepared, sold, served, and consumed on the business premises.

"Outdoor space" means a patio or deck, whether covered or uncovered, a yard, a walkway, or a parking lot, or a portion of any such space, that is located on or adjacent to the business premises, which space is owned, leased, or otherwise in the lawful control of the owner or operator of the business premises.

"Public sidewalk" means a sidewalk on the locally or county owned public right-of-way which is adjacent to the business premises, or a portion thereof.

"Special Ruling No. 2020-10" means Special Ruling No. 2020-10, issued by the acting director of the Division of Alcoholic Beverage Control on June 3, 2020.

2. a. Notwithstanding the provisions of any law to the contrary, during the period that this section is in effect, the owner or operator of a restaurant, bar, distillery, or brewery may use outdoor spaces which they own or lease and which are located either on, or adjacent to, their business premises, as an extension of their business premises for the purpose of conducting sales of food and beverages ¹[, including alcoholic beverages if so licensed and permitted by Special Ruling No. 2020-10]¹.

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

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

d. (1) The zoning officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of this act, with the exception that the zoning officer may deny an application based on current violations of any other health, safety, fire, permitted use, or zoning regulation, or upon any applicable law permitting the denial of a zoning permit, that is not otherwise directly superseded by this section or Special Ruling No. 2020-10. An application under this section shall not be considered a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

(2) A municipality may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of this act or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or¹ the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control, and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.

(3) An appeal to any approval, denial, revocation, or suspension may be filed ¹[consistent with section 59 of P.L.1975, c.291 (C.40:55D-72), and other applicable provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.), and:

the commencement of the 20-day limitation period in section 59 of P.L.1975, c.291 (C.40:55D-72) shall begin on that date that the appellant knew or should have known of the approval, denial, revocation, or suspension, and

the deadline by which a decision on an appeal is to be rendered under section 60 of P.L.1975, c.291 (C.40:55D-73) shall be 60 days. The governing body of a municipality may adjust, by ordinance or resolution, any other deadlines under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) with respect to the filing of such appeal so as to allow compliance with this 60-day limitation] through the municipal clerk with the governing body of the municipality. The governing body, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The governing body may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision¹.

Nothing in this act shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

e. A municipality shall require that any restaurant, bar, distillery, or brewery operating pursuant to this section shall follow, maintain, and enforce protocols promulgated by the Commissioner of Health or Executive Order of the Governor in response to the COVID-19

public health emergency, concerning social distancing and use of personal protective equipment during the period those protocols are in effect.

3. a. Notwithstanding the provisions of any law to the contrary, during the period that this section is in effect, the owners and operators of restaurants, bars, distilleries, and breweries may use public sidewalks as an extension of their business premises for the purpose of conducting sales of food and beverages ¹[, including alcoholic beverages if so licensed and permitted by Special Ruling 2020-10]¹.

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

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

d. (1) The zoning officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of this act, with the exception that the zoning officer may deny an application based on current violations of any other health, safety, fire, permitted use, or zoning regulation, or upon any applicable law permitting the denial of a zoning permit that is not otherwise directly superseded by this section or Special Ruling No. 2020-10. An application under this section shall not be considered a variance under the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

(2) A municipality may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of this act or any provision of a law, ordinance, or regulation related ¹to health, safety, fire, permitted use, zoning, or ¹to the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control, and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.

(3) An appeal to any approval, denial, revocation, or suspension may be filed through the municipal clerk with the governing body of the municipality. The governing body, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The governing body may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision.

Nothing in this act shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction, according to law.

e. Owners and operators of restaurants, bars, distilleries, or breweries desiring to utilize ¹[outdoor spaces] public sidewalks¹ are subject to the following conditions: (1) a walking path not less than four feet wide must be maintained on the public sidewalk at all times so as to not obstruct pedestrian traffic; (2) all fixtures must be removed from public sidewalks at the conclusion of each day, if so required by the municipality; and (3) the municipality reserves the right to order the temporary suspension of outdoor dining and the removal of all fixtures from public sidewalks due to road or utility construction, predicted high winds or severe weather, predicted snow or ice storms, the need to remove snow or ice from the sidewalks, or any other public emergency that may arise.

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

4. a. Notwithstanding the provisions of any other law to the contrary, the expiration date of any COVID-19 Expansion Permit issued by the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Special Ruling No. 2020-10 shall be November 30, 2022 or the date on which indoor dining resumes without capacity limitations pursuant to an executive order issued by the Governor, whichever is later.

b. The governing body of a municipality may file with the Division of Alcoholic Beverage Control an objection to the continued operation under subsection a. of this section by any licensee or permittee the governing body finds to have:

(1) failed to follow, maintain, and enforce protocols promulgated by the Commissioner of Health or by Executive Order of the Governor in response to the COVID-19 public health emergency concerning social distancing and the use of personal protective equipment; or

(2) violated any other health, safety, fire, permitted use, or zoning regulations or ordinances not otherwise directly superseded by this section or Special Ruling No. 2020-10.

Any decision rendered, or action taken, by the Director of the Division of Alcoholic Beverage Control as a result of an objection filed by the governing body of the municipality pursuant to this subsection shall be a final agency action subject to judicial review in the Appellate Division of the Superior Court of New Jersey in accordance with the Rules of Court.

c. Nothing in this act shall preclude or limit the authority provided to the Director of the Division of Alcoholic Beverage Control pursuant to the provisions of Title 33 of the Revised Statutes or the exercise of such authority thereby.

5. A public sidewalk or an outdoor space shall be considered a portion of the premises which is open to the public for the purposes of section 5 of P.L.1999, c.90 (C.2C:33-27).

6. a. Notwithstanding any provision of this act to the contrary, all other municipal ordinances pertaining to sanitation, property maintenance, noise, business days and hours of operation, and days and hours of service of alcoholic beverages shall apply, unless specifically suspended or modified by the municipality or specifically prohibited by the provisions of this section.

b. With respect to restaurants, bars, distilleries, and breweries operating in outdoor spaces pursuant to section 2 of this act, P.L. , c. (pending before the Legislature as this

bill), municipalities shall not prohibit or limit the days and hours of the outdoor service of food and beverages, including alcoholic beverages, except that municipalities may prohibit or limit operations for the hours after 10:00 p.m. and between 12:00 a.m. and 11:00 a.m. on Sundays through Wednesdays, and between 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with the exception that a municipal ordinance prohibiting or limiting the days and hours of indoor service of food and beverages, including alcoholic beverages, which was in effect prior to March 1, 2020 may be applied to the outdoor service of food and beverages, including alcoholic beverages, as a condition of the zoning approval pursuant to section 2 of this act, P.L. , c. (pending before the Legislature as this bill). This provision shall not be construed as overruling or prohibiting the authority of a city of the first class to impose more restrictive time restrictions or prohibit or limit the days and hours of the outdoor service of food and beverages due to increased positivity rate of COVID-19.

c. A municipality may either prohibit or limit the days and hours of any live performances, including musical performances, and the playing or projection of any content from a recording, streaming service or television, cable or internet broadcasting service in outdoor spaces or on public sidewalks as a condition of the zoning approval pursuant to sections 2 and 3 of this act, P.L. , c. (pending before the Legislature as this bill).

¹[d. A municipality may deny, revoke, or temporarily suspend, the outdoor dining activity of any establishment that violates, or is not in compliance with, any provision of this act or any provision of a law, ordinance, or regulation related to the consumption or control of alcoholic beverages.

e. Notwithstanding the provisions of this section, a municipality may by resolution opt to waive any or all requirements of this section.]¹

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

8. Nothing in this act permits the use of State-owned right of way for the purposes of outdoor dining. Permits for the use of the State right of way will be issued upon application and approval of the New Jersey Department of Transportation. For the purposes of locally-owned roads that intersect the State highway system, setbacks from the State right of way line will be 50 feet from April 1 to October 31, and 100 feet from November 1 to March 31.

9. a. As used in this section:

"Roadside farm stand" means a location owned by a single farmer or producer at which the farmer or producer sells agricultural products only from the farmer's or producer's farm directly to consumers.

"Seasonal farm market" means a premises or facility utilized for the primary purpose of selling predominately agricultural or horticultural products, and which is annually closed to business during an off-season for a period of not less than 90 continuous days.

b. The Director of the Division of Alcoholic Beverage Control may, in accordance with regulations or a special ruling issued pursuant to this section, issue to the holder of a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license, as established pursuant to R.S.33:1-10, a daily or annual permit to sell any of the licensee's products ¹in original containers¹ at a seasonal farm market for consumption off of the premises of the seasonal farm market. The licensee shall obtain a separate permit for each seasonal farm market at which the licensee intends to sell its products. The director shall not issue a permit pursuant to this section for use in connection with a roadside farm stand.

c. Subject to regulation or special ruling, a licensee issued a permit pursuant to this section may:

(1) transport the licensee's products in original containers for the purpose of selling them at a seasonal farm market; and

(2) offer samples for sampling purposes to persons of the legal age to consume alcoholic beverages in the amounts authorized pursuant to R.S.33:1-10 during each day the seasonal farm market is operating.

d. A daily permit shall be valid for the hours during which a seasonal farm market is open within the 24-hour period for which the daily permit is issued. An annual permit shall be valid for one year from the date of issuance. The director may renew a permit, provided the permit holder continues to hold a limited brewery license, restricted brewery license, craft distillery license, plenary winery license, farm winery license, or cidery and meadery license, as applicable.

e. Notwithstanding any law or regulation to the contrary, the director may establish a fee, in an amount determined by the director, for the issuance and renewal of a permit under this section.

f. The Director of the Division of Alcoholic Beverage Control shall issue a special ruling or adopt regulations necessary to effectuate the purposes of this section. Regulations shall be effective immediately upon filing with the Office of Administrative Law for a period not to exceed 18 months, and may, thereafter, be amended, adopted or readopted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

10. This act shall take effect on the 30th day following enactment and sections 1 through 8 shall expire on November 30, 2022 or on the date of the resumption, pursuant to an executive order issued by the Governor, of indoor dining without capacity limitations, whichever is later.