

CITY OF HACKENSACK
CITY MANAGER EMERGENCY ORDER #2020-2

WHEREAS, Coronavirus disease 2019 (“COVID-19”) is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and,

WHEREAS, on March 9, 2020, Governor Phillip D. Murphy issued Executive Order No. 103, which declared a Public Health Emergency and State of Emergency exists in the state of New Jersey due to COVID-19; and,

WHEREAS, Executive Order No. 103 states that “the spread of COVID-19 within New Jersey constitutes an imminent public health hazard that threatens and presently endangers the health, safety, and welfare of the residents of one or more municipalities or counties of the State;” and,

WHEREAS, the State of Emergency declared by Governor Murphy remains in full effect throughout the state of New Jersey, including the City of Hackensack; and,

WHEREAS, on March 16, 2020, Governor Murphy issued Executive Order No. 104, which limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only, meaning that they could not allow the on-premises consumption of food or beverages; and,

WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order No. 107, which superseded Executive Order No. 104 in full but continued the prohibition of on-premises consumption of food or beverages; and,

WHEREAS, following measurable improvements in the State’s response to the Public Health Emergency, on June 3, 2020, Governor Murphy issued Executive Order No. 150, which establishes a procedure for restaurants, bars, and other food or beverage establishments to resume in-person service in certain outdoor areas subject to strict conditions, with indoor dining to remain prohibited; and,

WHEREAS, pursuant to City Ordinance 23-2020, which was adopted by the Hackensack City Council on April 19, 2020, and is codified in the Hackensack City Code in Section 119-2A, the City Manager has been authorized to issue emergency orders during a state of emergency declared by federal, state or county authorities, and to

pronounce that the conduct enumerated in such orders shall constitute an offense against the general peace and good order of the community; and,

WHEREAS, such emergency orders issued by the City Manager shall promote or enhance the general peace and good order of the community, including, but not limited to, protecting the health, safety and welfare of Hackensack residents during the period of emergency; and,

WHEREAS, such emergency orders shall be approved by the City's Emergency Management Coordinator and thereafter enforced by the Police Department, Fire Department, City Constable and/or any other City official or employee empowered to issue complaints alleging violations of the Chapter 119 of the City Code; and,

WHEREAS, the City Manager, along with the Mayor and Council, recognize that the City's restaurant and bar community represents a critical part of the City's economy and is vital to the City's quality of life, and therefore believe that it is essential that such businesses be permitted to resume on-premises outdoor service to the extent that the appropriate public health authorities believe it is feasible to safely do so during the pandemic; and,

WHEREAS, Executive Order No. 150 further authorizes the City to authorize expansion of the service footprint of restaurants and bars onto property not typically used for outdoor dining, so long as it is done in an equitable manner and comports with public safety; and,

WHEREAS, after consulting with representatives of the City's restaurant and bar community, the City Manager recognizes that certain provisions of the City Code require temporary modification or amendment to reflect the realities of attempting to operate a viable food or beverage business by serving customers outside only during the period of the State of Emergency; and,

WHEREAS, this Emergency Order shall set forth all such modifications or amendments, with the understanding that nothing contained herein shall relieve restaurants and bars from strict compliance with Executive Order No. 150 and other applicable laws, rules and regulations not specifically modified or amended herein.

NOW, THEREFORE, BY THE POWERS VESTED IN ME PURSUANT TO SECTION 119-2A AND OTHER APPLICABLE PROVISIONS OF THE CODE OF THE CITY OF HACKENSACK, AND THE LAWS OF THE STATE OF NEW JERSEY, I DIRECT AS FOLLOWS:

1. Chapter 116 of the Code of the City of Hackensack, "Outdoor Dining," is temporarily modified during the state of emergency as follows:
 - A. 116-1 is modified to provide that outdoor dining may be permitted in any zoning district within the City subject to compliance with the provisions of the City Code (as modified by this Emergency Order and Executive Order 150) and appropriate approvals from the City.
 - B. 116-2 is modified to provide that that the definition of an outdoor café is not limited to the sidewalk immediately in front of a restaurant, cafe, cafeteria or place of business where food and/or other refreshments are served for on-site consumption. Rather, such areas may include alleys, parking lots, vacant land, and other available open space, whether or not contiguous to the property where on-site consumption normally takes place, so long as it is in reasonable proximity to the facility where the applicant prepares food and/or other refreshments, and the Health Officer, in consultation with any other relevant City officials, concludes that the provisions of this Emergency Order, Executive Order 150 and other health and safety requirements can be safely followed (including, but not limited to, proper lighting, a safe means of ingress and egress, ensuring that sufficient staff is available to ensure social distancing requirements are met, and so forth).

Any requested expansion of an outdoor dining area onto a location other than a sidewalk shall require the written consent of the property owner or other person or entity with legal authority to grant such access on behalf of the property owner.

Any proposed expansion of an outdoor dining area that would encroach onto a sidewalk in front of or abutting any other property other than where the applicant's business is situated shall require the written consent of (1) the property owner or other person or entity with legal authority to grant such access on behalf of the property owner and (2) all current tenants of the property. However, expansion of an outdoor dining area that encroaches onto a sidewalk must be contiguous with the property where the applicant's business is situated.

- C. 116-4 is modified to provide that that a licensee is not required to have existing approved indoor seating in order

to operate an outdoor café. Food trucks are excluded from this Emergency Order and remain subject to all existing provisions of the City Code.

116-4 is further modified to provide that outdoor seating may temporarily displace parking spaces otherwise required by building and zoning regulations. In order to utilize a parking area for outdoor seating, the entire parking area must be closed or the applicant must demonstrate that there is a suitable barrier between the area used for seating and the area used for parking. This may include, but is not limited to, a "Jersey Barrier." In such instance, the proposed barrier shall be approved by the Police Department. Outdoor seating shall not block or otherwise interfere with a fire zone.

116-4 is further modified to provide that the Health Officer may permit tables and chairs (as well as outdoor umbrellas and tents) to remain in place when an outdoor café is approved for a location other than a sidewalk, provided that the Health Officer agrees this can be accomplished in a safe manner (with any appropriate conditions). The provision that tables and chairs must be removed from the public sidewalks when an outdoor café is not open for business shall remain in force.

- D. 116-5 is modified to provide that the Health Officer shall have the authority to modify the procedures for applying for an outdoor café license to provide the maximum possible flexibility for applicants to quickly have applications reviewed and approved. This includes, but is not limited to, allowing applications to be obtained and submitted electronically. A legible diagram setting forth the proposed area of the outdoor café shall be required, with measurements demonstrating that the outdoor café will meet all legal requirements.

116-5 is further modified to provide that tents are allowed, provided the tent remains fully open on the sides at all times to ensure the open circulation of air into the area where such dining will take place. Tents or canopies covering 900 or more feet, or 30 feet or more in any direction (including smaller tents attached) require a Type I permit from the Fire Department, with the \$54 fee waived during the pendency of this Emergency Order.

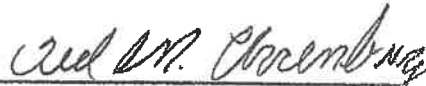
116-5 is further modified to waive the \$100 application and annual license fee for 2020 only. If an applicant has already submitted payment, he/she/it will be credited for said fee for 2021.

116-5 is further modified to provide that outdoor café licenses issues for 2020 shall expire on October 31, 2020 unless further modified by subsequent Emergency Order or action of the City's Governing Body.

- E. 116-6 shall remain unchanged, however, the Health Officer and any other applicable City officials are directed to treat applications for outdoor cafés with high priority and to review and approve or deny such applications as promptly as feasible while ensuring all health and safety requirements are met.
- F. 116-10, "Indemnification" and 116-11, "Insurance," shall be strictly complied with by a person or entity seeking to operate an outdoor café. Failure to maintain sufficient insurance shall result in the immediate suspension of an outdoor café license.
- G. 116-16 is modified to provide that if the Health Officer, Zoning Officer, City Constable, Police Department, or Fire Department determines that a licensed outdoor café is not in compliance with this Emergency Order and Executive Order 150, or other applicable health and safety regulation, it shall be deemed an emergency permitting the outdoor café license to be immediately suspended or modified without a hearing until such time as the deficiency is remedied. The enforcing authority shall provide written notice to the licensee of such suspension as soon as practicable, including the specific deficiency or deficiencies requiring correction. The licensee shall have the opportunity to present a response to the enforcing authority within one (1) business day after receiving the written notice. Upon correction of the deficiency, the outdoor café license shall be immediately restored to active status. The foregoing shall not preclude the City Manager from seeking a further suspension or revocation of an outdoor café license pursuant to 116-12, nor shall it limit the City with respect to any other remedies available to it in the City Code.

- H. 116-21, allowing the limited use of sound devices at an outdoor café, shall not be expanded. Outdoor cafés shall not be permitted to use speakers except on the sidewalk directly in front of the café, and only if they have been previously approved to do so in 2019. Moreover, all expanded outdoor cafés shall take all reasonable steps to minimize noise and disruption to their neighbors.
- I. 116-23 is modified to provide that table service is not required in order to operate an outdoor café.
2. All outdoor cafes shall strictly comply with the health and safety requirements set forth in Executive Order 150 along with all other applicable existing rules and regulations, including, but not limited to, ensuring all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table; limiting access to the indoor premises of the establishment (and when access is required, such as to use the bathroom, requiring face masks absent a medical reason for not doing so), prohibiting smoking in any areas where food and/or beverages are consumed, and so forth.
 3. Existing holders of qualifying ABC licenses with on-premises retail consumption privileges in the City shall be eligible to seek expansion of their licensed premises pursuant to the Special Ruling (SR-2020-10) issued by the Acting Director of the State Division of Alcoholic Beverage Control and will be reviewed and approved by the City Clerk and the City's Chief Law Enforcement Officer (or designee), consistent with the provisions set forth in SR-2020-10. No application will be approved unless an outdoor café license has been granted pursuant to the provisions of Chapter 116 of the City Code, as modified by this Emergency Order.
 4. All provisions of the City Code not specifically referenced herein but that are in conflict with any of the provisions of this Emergency Order are temporarily suspended during the pendency of this Emergency Order.
 5. This Emergency Order shall take effect immediately upon written approval of the Emergency Management Coordinator and shall remain in effect until October 31, 2020, or when the Governor of New Jersey declares the state of New Jersey is no longer in a State of Emergency, whichever is sooner. However, no outdoor café may commence operations until 7:00 A.M. on Monday, June 15, 2020. Applications to operate an outdoor café shall be accepted immediately.

6. The City Clerk is directed to provide a copy of this Emergency Order to the City Council no later than the next City Council meeting after issuance, and as soon as practicable after issuance, shall be posted at City Hall at the location where city public notices are posted, filed in the office of the City Clerk, and published on the City's Internet web site. This Emergency Order shall also be submitted for publication in the City's official newspaper(s) as soon as practicable, although it shall remain effective and enforceable during the period prior to publication.



Ted Ehrenburg,
City Manager

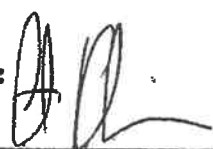
Dated: 6/1/2020

Approved:



Emergency Management
Coordinator

Attest:



Steven Kleinman, Esq.
City Attorney