

RESOLUTION 20-192

**BOROUGH OF SOUTH PLAINFIELD
MIDDLESEX COUNTY, NEW JERSEY**

RESOLUTION TEMPORARILY RELAXING THE PROHIBITION OF OUTDOOR DINING IN THE BOROUGH OF SOUTH PLAINFIELD TO PROVIDE ASSISTANCE TO LOCAL RETAIL BUSINESSES UNDER THE CURRENT SOCIAL DISTANCING RESTRICTIONS ENACTED IN CONNECTION WITH THE ONGOING, CORONAVIRUS PUBLIC HEALTH EMERGENCY

WHEREAS, on January 30, 2020, the World Health Organization declared the outbreak of the novel coronavirus (COVID-19) to be a Public Health Emergency of International Concern as human-to-human transmission; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared the novel Coronavirus to be a United States Public Health Emergency.

WHEREAS, on February 3, 2020, New Jersey's Governor, Philip D. Murphy, issued Executive Order 102 establishing the New Jersey Coronavirus Task Force in an effort to monitor the spread of the Coronavirus within the State of New Jersey, the United States of America, and the entire world in order to facilitate necessary and appropriate action to ensure the safety and security of the residents of the State of New Jersey; and

WHEREAS, on March 4, 2020, the State of New Jersey reported the first confirmed positive case of Coronavirus throughout the State; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the novel Coronavirus within the State of New Jersey; and

WHEREAS, on March 13, 2020, the President of the United States of America formally declared the outbreak of the novel Coronavirus to constitute a National Emergency pursuant to the National Emergencies Act (50 U.S.C. § 1601. et seq.); and

WHEREAS, on March 16, 2020, Governor Murphy issued Executive Order 104 enacting several "social distancing" regulations, including but not limited to, limiting public gatherings to no more than 50 people, closing educational facilities, closing various recreation and entertainment based businesses, imposed restrictions on scope of service and hours of operation for other non-essential retail, recreational, restaurants/bars and entertainment businesses; and

WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order 107 which expanded the social distancing regulations set forth within Executive Order 104, including but not limited to, directing all New Jersey remain in their home or place of residence with specific limited exceptions, prohibited gatherings of any size, closed all non-essential retail businesses and identified essential businesses permitted to continue to operate subject to specific limitations, and reiterated and strengthened social distancing requirements when in public; and

WHEREAS, on March 21, 2020, Governor Murphy also issued Executive Order 108 which specifically voided and precluded County and Municipal Governments from imposing or enforcing any restrictions/regulations that in any way would or might conflict with any of the provisions of Executive Order 107, with the exception of regulating online marketplaces for arranging or offering lodging, municipal or country parks, and beaches and boardwalks; and

WHEREAS, Executive Order 107 specifically regulated the continued operation of Bars/Restaurants and provided, in part, that “All restaurants, cafeterias, 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, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses;” and

WHEREAS, on June 3, 2020, Governor Murphy issued Executive Order 150 permitting restaurants, cafeterias, dining establishments and food courts, with or without a liquor license, and all bars to offer “in person” service at outdoor areas subject to certain requirements and conditions effective June 15, 2020; and

WHEREAS, on June 3, 2020, Judith Persichilli, R.N., B.S.N., M.A., the Commissioner of the State of New Jersey Board of Health issued Executive Directive No. 20-014 providing for “COVID-19 Protocols for Food Establishments Offering Service in Outdoor Areas Pursuant to Executive Order No. 150”; and

WHEREAS, *N.J.A.C.* 13:2-5.5 provides: “The Director [of Alcoholic Beverage Control] for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act” and that “The Director may impose special conditions or requirements on any such permit;” and

WHEREAS, *N.J.A.C.* 13;2-9.1 provides: “The rules of [*N.J.A.C.* 13:2-1.1, *et. seq.*] may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules.”; and

WHEREAS, on June 3, 2020, James Graziano, Acting Director of the Division of Alcoholic Beverage Control of the State of New Jersey, Department of Law and Public Safety issued a Special Ruling Establishing a Temporary COVID-19 Permit to Expand Licensed Premises (“COVID-19 Expansion Permit”) upon application and approval by the Division and the Municipality; and

WHEREAS, in the anticipation of the effective date of the permission granted in Executive Order 150 (June 15, 2020), the Mayor and Council of the Borough of South Plainfield find it to be appropriate to temporarily relax its Ordinances, including but not limited to the prohibitions relating to outdoor dining in order to permit said establishments to locate tables and chairs out-of-doors, in existing Parking Lots and/or in other locations on site, subject to the requirements and restrictions set forth in Executive Order 150, the Executive Directive No. 20-014 issued by the State of New Jersey Department of Health, and those set forth herein; and

WHEREAS, the Borough of South Plainfield has determined that it is in the best interests of the Borough to assist and promote the economic development of local business in these extremely difficult times and have determined that the ability for local businesses to expand its available dining space outdoors will economically assist the businesses in the reduction of capacity caused by the social distancing requirements; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the Borough to temporarily relax the outdoor dining restrictions on local business establishments and to extend outdoor dining into Private Parking Lots and areas to be established on private property under specific terms and conditions consistent with guidelines provided by Executive Order 150 and the State of New Jersey Department of Health and upon application and approval by a Committee of Borough Employees and Representatives to be established by the Borough.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of South Plainfield, County of Middlesex, State of New Jersey as follows:

1. The statements that are set forth in the preamble are true and accurate. All of the statements of the preamble are repeated and are incorporated herein by this reference thereto and are made a part hereof as if each and every statement were set forth fully herein.
2. Effective immediately, a Temporary Outdoor Dining Committee ("TODC") is hereby established made up six (6) members comprised of the following: (1) the Borough Health Official, (2) the Borough Engineer, (3) the Borough Fire Official, (4) the Borough Clerk, (5) the Police Chief or his designee, and (6) the Borough Zoning Official. The TODC is hereby authorized to promulgate requirements, rules and regulations pertaining to the application for and the use of outdoor areas, by local business establishments for outdoor dining consistent with the guidelines established by the State of New Jersey including but not limited to all COVID related safety precautions and measures during the effective dates of this Resolution. The TODC is also authorized to grant approval to any business establishment for the use of space for outdoor dining for the time frames contained in the within Resolution.

3. Any and all business establishments of the Borough of South Plainfield who wish to utilize the existing private parking lots or private property for outdoor dining shall, prior to its use, complete and submit an application to the Borough Zoning Official for review and approval by the TODC. In an effort to assist the local businesses, the Borough has agreed to waive any application and/or approval fees relating its review.

Restaurants/Bars/Food Service Establishment – Outdoor Dining

4. The TODC is hereby granted the authority and discretion to approve Outdoor Dining Plan Applications pertaining to existing “full-service bars/restaurants,” defined as “restaurants engaged in the preparation and service of meals/food,” in order to permit said establishments to relocate existing indoor tables/seating or locate new tables/seats to other locations on site during the designated times, and/or the designated areas of Parking Lots and/or other private locations during the designated times subject to the following requirements and restrictions:
 - A. Applicants who wish to relocate existing approved tables/seats to other locations on site, or to locate newly acquired tables/seats outdoors and/or other locations on site, shall be required to submit an Outdoor Dining Plan application, and a drawing depicting the proposed layout and location of tables/seating outside of said bar/restaurant, which shall also include but not be limited to, confirmation of the number of existing, approved tables/seats, a depiction of all aisles, routes of ingress and egress, clearances/distances between tables and between the seating area outside, the parking areas and any areas designated for “take-out” or “pick-up”, an illustration, rendering, and/or photograph of all proposed furniture, umbrellas, canopies, and trash receptacles, etc. must be of like nature and appearance to what is currently utilized on site. Applicants shall also submit a brief written narrative describing the proposed method of serving food and beverages in the newly proposed areas. The Applicant should also include how the proposed plan conforms to all safety and precautionary measures relating to social distancing and COVID-19 related issues. The approval of any temporary Outdoor Dining Plan in relation to this Resolution shall be subject to the following conditions:
 - i. Applicants may be permitted to relocate existing approved tables/seats and/or to locate newly acquired tables/seats to other locations on site, including existing Parking Lots, subject to the review and approval of the TODC. Notwithstanding the provision of the Resolution, no tables/seats shall encroach on or obstruct the free flow of vehicular traffic and/or pedestrian traffic on a pedestrian walkway or any of its approaches. In addition, notwithstanding the provision of the Resolution, Applicants will not be permitted to increase the currently approved capacity for the Premises.

- ii. Applicants may be permitted to utilize the private property of the adjacent property owner for outdoor dining with the express written consent and approval by the adjacent property owner and business, which must be submitted with the Application.
- iii. Applicants who lease or rent their premises must provide written consent of their landlord to the utilization of the property for outdoor dining.
- iv. Tables/seats may be permitted to be located in the existing Parking Lots and other on-site locations provided a minimum six (6) feet pedestrian walkway is maintained at all times and subject to applicable ADA requirements within the outdoor dining areas.
- v. An approved tables/seats located in an “outdoor dining area,” defined as “a designated area on the premises of a retail food establishment or restaurant, but located outside of the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress,” may be permitted to be utilized between the hours of 9:00 A.M. and 9:00 P.M.
- vi. Applicants must submit a Parking Plan which sets forth the existing number of spaces and the proposed number of parking spaces to be eliminated by the outdoor dining area. The Parking Plan shall also detail the flow of vehicular traffic and parking on-site. The location of the proposed outdoor dining area must be of a sufficient distance from the vehicular traffic to maintain a safe area for dining. Outdoor Dining will only be permitted in the event a sufficient number of parking spaces remain for the safe operations and effective flow of traffic on-site for the operation of the business establishment.
- vii. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.
- viii. Applicants must also acknowledge and agree to full compliance with all current and newly imposed safety and precautionary measures and guidelines established by the State of New Jersey relating to COVID - 19.

- ix. The sale/service of alcoholic beverages in these locations shall be permitted, subject to compliance with any and all applicable ABC regulations/statutes, including but not limited to a COVID-19 Expansion Permit application, and subject to the review and approval of the Borough Administrator and Chief of Police and the Division of Alcoholic Beverage Control. The approval of any extension of premises application to permit the sale/consumption of alcoholic beverages in outdoor dining areas shall be temporary and shall automatically terminate upon the expiration of the within Resolution and/or by way of further Resolution of the Mayor and Council and/or direction and/or expiration of the Special Ruling of the Alcoholic Beverage Control.
- x. Applicants proposing to relocate existing tables/seats to the Parking Lots and on-site locations shall indemnify and hold harmless the Borough of South Plainfield, its employees, agents, and/or or officers from all claims, losses, liens, expenses, suits and attorney's fees arising out of the placement, operation, and maintenance of the Outdoor Dining Area. Applicants must name the Borough of South Plainfield as an additional insured under the Applicant's general liability insurance, bodily injury, property damage, and personal injury insurance policies, on a primary and non-contributory basis in the minimum amount of one million (\$1,000,000.00) Dollars, and provide proof of same to the Borough Administrator, and proof that said policies have been amended to reflect coverage for the proposed outdoor dining area.

Temporary Signs

- 5. Effective immediately, the Borough hereby relaxes and permits the usage of temporary signs without the necessity of a permit during the effective dates of the within Resolution. The composition and placement of temporary signs must be approved by the TODC. However, upon expiration of the within Resolution all temporary signs shall be removed and the existing procedures and requirements of the erection and location of temporary signs shall be reinstated.
- 6. Notwithstanding Section 5 hereof, nothing herein shall be construed to allow or permit the erection or location of permanent signs within the Borough of South Plainfield without the necessity of the formal application and approval by the Borough as provided for in its existing Resolution.

Canopies

7. In the event the applicant seeks to utilize a canopy or similar covering for outdoor dining, they must provide with the application information regarding such canopy or covering to include the height, width and proposed location. A photograph is recommended but not required. Any such canopy or covering will be required to comply with the International Building Code and International Fire Code.

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that it hereby reserves the right to amend, terminate, or repeal this Resolution and/or any approvals granted herein at any point in time, if it determines that it is in the best interest of the health safety and welfare of the Borough, and accordingly no property rights or interests are granted to any person(s) or entities by virtue of this Resolution and/or approval hereunder and any person(s) or entities electing to pursue temporary relief in accordance with the provisions of this Resolution are hereby given notice that the expenditure of any funds, or the incurrence of any costs, in reliance upon this Resolution and any approval hereunder shall be at their sole and exclusive risk and expense. All persons and/or entities are hereby given notice that the risk of loss for any expenditure and/or costs incurred shall be their sole and exclusive responsibility; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that with the exception of the temporary relief and application process set forth herein relating to outdoor dining, existing and proposed retail businesses must comply with any and all other federal, state, county, and local laws and regulations, including any and all other existing zoning ordinances and/or general ordinances governing the operation of bars/restaurants; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that in the event the Borough Administrator, Zoning Officer and/or Police Department determines that a business establishment or person is in violation of the conditions of any temporary Outdoor Dining Plan approved in relation to this Resolution, the TODC is hereby authorized to immediately revoke the approval received in relation to this Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that the Borough Administrator, Zoning Officer and Police Department are hereby authorized and empowered to enforce this Resolution and the several provisions hereof as well as the conditions of approval for the use of outdoor dining; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that the Borough Administrator, Zoning Officer and the TODC are hereby further empowered to enforce the discretionary powers which are considered necessary in order to make the provisions hereof properly effective and useful for the benefit of the Borough and its businesses, including but not limited to the commencement of the application and approval process for outdoor dining; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that in order to avoid injustice or the possible abuse of discretion and to correct the possibility of error in judgment, any Applicant, who's Outdoor Dining Plan application is denied by the TODC, has the right to appeal to the Council by filing a notice of appeal with the Borough Clerk within ten (10) days of the denial of said application. Upon receipt of any such notice of appeal, the Council will hear the appeal at its next scheduled regular meeting which is scheduled at least three (3) calendar days after receipt of the notice of appeal, at which time the owner and any other persons appearing in the matter will be heard or afforded the opportunity to be heard. At the conclusion of said hearing, the Council will consider the matter, determine whether to uphold, overturn or modify the TODC's decision, and thereafter notify the owner of its decision; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that the within Resolution and the authority delegated herein and the effects of any permission and/or approvals hereto are expressly conditioned upon Governor Philip Murphy Executive Order 150 and any other restrictions on residents of the State of New Jersey and essential and non-essential businesses and no action is authorized or permitted that would conflict with the actions and/or Executive Orders of Governor Murphy, or any rules, regulations, requirements, prohibitions, and/or guidance of the State of New Jersey and any of its Departments, Agencies, Divisions, including but not limited to the Office of Emergency Management; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that this Resolution shall take effect immediately, however, any approval for outdoor dining shall not be effective until June 15, 2020. The TODC is authorized and directed to commence immediately the promulgation of requirements, rules and regulations pertaining to the application for and the use of outdoor areas by local business establishments for outdoor dining and the approval of same to be effective June 15, 2020; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that in the event that Executive Order 150 is rescinded and/or modified to prohibit outdoor dining or this Resolution is rescinded and/or expires, any temporary approval afforded by the TODC in accordance with the terms and conditions of this Resolution shall be deemed void and have no further effect and the provision for outdoor dining shall cease; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that, upon the effective date of this Resolution, all requirements of prior ordinances, resolution or parts of ordinances or resolutions inconsistent with this temporary resolution are hereby temporary suspended to the extent of their inconsistencies only; and

BE IT FURTHER RESOLVED, by the Mayor and Council of the Borough of South Plainfield, that the within Resolution and all authorizations contained herein, including but not limited to the delegation of authority and any and all approvals to allow for outdoor dining permitted herein on private property and the permission to locate temporary signs shall lapse and have no further legal effect on November 30, 2020; the State of New Jersey rescinding Executive Order 107 or eliminating social distance regulations; or by further resolution of the Borough, whichever first occurs; and

BE IT FURTHER RESOLVED by the Mayor and Borough Council of the Borough of South Plainfield that all Borough officials, employees and agents shall take all necessary actions to in order to effectuate the within Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of South Plainfield that should any section, paragraph, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid for any reason, or not approved by the State of New Jersey, the remaining portions of this Resolution shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this Resolution are hereby declared to be severable.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the following:

1. John Obryk, Health Officer/TODC
2. Amy Antonides, Municipal Clerk/TODC
3. Richard Wolff, Zoning Officer/TODC
4. James Parker, Police Chief/TODC
5. Len Miller, Borough Engineer/TODC
6. Joe Abbruzzese, Fire Official/TODC

COUNCIL	MOTION	2 ND	AYES	NAYS	ABSTAIN	ABSENT	RECUSE
Councilman Bengivenga		X	X				
Councilwoman Mott			X				
Councilman Smith	X		X				
Councilman White			X				
Councilman Wolak			X				
Council President Faustini			X				
		VOTE:	6	0			
Mayor Anesh – TIE ONLY							

I do hereby certify that the foregoing is a true and exact copy of a Resolution adopted by the Mayor and Borough Council of South Plainfield Borough on June 15, 2020

Amy Antonides, RMC/CMC/CMR
Municipal Clerk – South Plainfield Borough