

**BOROUGH OF RED BANK
COUNTY OF MONMOUTH**

RESOLUTION NO. 22-147

RESOLUTION AUTHORIZING STREET EATERIES WITHIN THE BOROUGH OF RED BANK

WHEREAS, on February 5, 2022 New Jersey Bill S3340 was adopted in order to extend the NJ Department of Law and Public Safety Division of Alcoholic Beverage Control's Special Ruling 2020-010 which created a COVID-19 Expansion Permit that allows licensees to expand their premises onto areas adjacent to or contiguous with the licensed premises, where they may provide for the sale and service of alcoholic beverages as on the primary licensed premises to November 30, 2022; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the Borough to continue to temporarily relax its Ordinances as they pertain to outdoor dining and outdoor retail display procedures and restrictions on local business establishments; and to extend outdoor dining and outdoor retail displays into public rights-of-way (including sidewalks and street); and to provide for additional space for outdoor dining and outdoor retail displays into designated public parking lot areas; and to allow for outdoor dining areas and outdoor retail displays to be established on private property and private parking lots under specific terms and conditions consistent with guidelines provided by the State of New Jersey and upon application and approval by the Borough Administrator and/or his designee;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Red Bank, County of Monmouth, State of New Jersey as follows:

1. For the purposes of providing restaurants, food establishments and retail businesses the ability to set-up outdoor dining and outdoor retail display areas subject to the requirements, application and approval provided for below and for use by members of the community for recreational purposes, during the effective dates of this Resolution, the Borough Administrator, in consultation with the Office of Emergency Management Coordinator, Chief of Police, and the Fire Marshall, shall have the ability to wholly or partially open and close various streets to vehicular traffic and/or parking areas within the Borough of Red Bank, during any days or hours deemed necessary.
2. The Borough Administrator and/or his designee are hereby granted the authority and discretion to approve 2022 Temporary Outdoor Dining and Outdoor Retail Sales Permit applications, in order to permit establishments outdoor dining or outdoor retail display activities.
3. Any and all business establishments in the Borough of Red Bank with a current Mercantile License on file with the Borough Clerk's Office who wishes to utilize, for outdoor dining or outdoor retail display, public rights-of-way (including sidewalks and streets) and/or private property, including private parking lots, prior to its use, shall be permitted to do so upon completion, submission, and approval of:
 - a. A 2022 Temporary Outdoor Dining and Outdoor Retail Sales Permit application to the Borough Clerk's Office for review and approval.
 - b. A COVID-19 Expansion of Premises Permit for alcoholic beverages, subject to the review and approval of the Borough Clerk and Chief of Police.
 - c. A drawing depicting the proposed layout and location of seating or retail displays outside of said establishment; a depiction of all aisles, routes of ingress and egress, clearances/distances between tables and between the outside seating area and the curb-line (as applicable). Drawings MUST provide exact dimensions of proposed layout.
 - d. A Security Plan detailing how alcoholic beverage service will be regulated. The Borough Administrator reserves the right to require businesses to provide additional security and/or Red Bank Police Department resources should any issues occur.
 - e. A Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining/sales area, when trash and the frequency with which the outdoor dining/sales area will be policed for litter in order to control the accumulation of trash/recycling. All businesses are responsible for disposing of their own waste and for maintaining the cleanliness of any Borough rights-of-way (sidewalks and streets) approved for use.

- f. A Hold Harmless Agreement that indemnifies, defends and hold harmless the Borough of Red Bank, its employees, elected officials, volunteers, and its insurance fund (the NJIIF) from and against any and all liability or claims, including but not limited to death, bodily injury, and property damage, arising from the Applicant's implementation, operation and utilization of the 2022 Temporary Outdoor Dining and Outdoor Retail Sales Permit.
- g. Evidence of general liability insurance coverage on an occurrence-based form that is applicable to the operations contemplated under this permit application. Applicants shall provide with this application a certificate of insurance (COI) demonstrating coverage for bodily injury and property damage with minimum limits of one million (\$1,000,000) dollars per claim and one million (\$1,000,000) dollars in the aggregate. The Borough of Red Bank shall be named on the COI as an additional insured on a non-contributory basis and the subject policy shall be endorsed to reflect that coverage has been so amended.
- h. A non-refundable fee of \$20.00 per day per parking space (or equivalent area utilized by the Applicant) for the duration of said Applicant's use of said space(s).

4. Approved applicants will be permitted until November 29, 2022 to utilize public right of way, sidewalk, and private property to:

- a. Make use of approved seating and retail displays from 7:00am until 10:00pm on Mondays, Tuesdays, Wednesdays, Thursdays, and on Sundays not preceding a legal holiday, as well as from 7:00am until 12:00am on Fridays, Saturdays, and on Sundays preceding a legal holiday.
- b. Relocate existing, or newly acquired, tables/chairs (seating) or retail displays to other locations onsite, including the Borough rights-of-way (including sidewalks and streets) and/or private property, including private parking lots, subject to the review and approval of the Borough Administrator and/or his designee.
- c. Utilize the public rights-of-way (including sidewalks and streets) in front of adjacent properties for outdoor dining and/or outdoor retail sales activities with the express written consent and approval by the adjacent property owner/business, which must be submitted with the Application.
- d. Utilize umbrellas for shade. Pop-up canopies are permitted provided they are removed each day outside of the approved hours set forth in Section 4(a) hereinabove, do not exceed 10' x 10' in size, are properly secured using weights or other such devices, and are removed immediately following notice by the Borough of Red Bank due to impending weather condition or any other reason. Failure to adhere to these rules will result in a fine.

5. Notwithstanding the provision of the Resolution, no seating, outdoor retail displays or signage (including sandwich boards) shall encroach on or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of their approaches.

6. Applicants requesting use of both sidewalk and street space must provide an ADA ramp from raised curb to street level as well as a minimum 5 feet pedestrian walkway that will be maintained and provided for the general public along the sidewalk.

7. Seating and outdoor retail sales displays must not obstruct access to Fire Department Connections (FDCs).

8. Food and beverage preparation outdoors is prohibited.

9. Businesses establishments located on the Red Bank Broadwalk may not expand outdoor dining or outdoor retail sales beyond areas previously approved in prior years.

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank that Section 4-9 of the Code of the Borough of Red Bank, entitled, "Display of Merchandise in Public Areas; Outdoor/Sidewalk Cafes" shall not apply to the specific outdoor tables, chairs and retail sales displays approved by the Borough Administrator and/or his designee consistent with, and for the life of the within Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank 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 City, and accordingly no property rights 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 Red Bank that with the exception of the temporary relief and application process set forth herein relating to outdoor dining and outdoor retail displays, 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 retail businesses; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank that in the event the Borough Administrator, Zoning Officer, Code Enforcement Office and/or Police Department determines that a business establishment or person is in violation of any conditions of its 2022 Temporary Outdoor Dining and Outdoor Retail Sales Permit approved in relation to this Resolution, is in violation of any applicable Ordinances of the Borough of Red Bank, or for any other reason deemed to be in the best interest of the Borough of Red Bank, the Borough Administrator 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 Red Bank that the Borough Administrator, Zoning Officer Code Enforcement Office 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 outdoor retail sales displays; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank that the Borough Administrator is 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 separation of the commencement of the application and approval process for outdoor dining and outdoor retail sales displays; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank that this Resolution shall take effect immediately and the provisions herein shall expire on November 29, 2022; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank that, upon the effective date of this Resolution, all requirements of prior ordinances inconsistent with this temporary Resolution are hereby temporarily suspended to the extent of their inconsistencies only; and

BE IT FURTHER RESOLVED, by the Mayor and Council of the Borough of Red Bank, that the within Resolution and all authorizations contained herein, and the delegation of authority and any and all approvals to allow for outdoor dining and outdoor retail displays permitted herein on public and private property shall remain in effect until further Resolution of the Mayor and Council of the Borough of Red Bank; and

BE IT FURTHER RESOLVED by the Mayor and Borough Council of the Borough of Red Bank that, except as provided for above pertaining to the promulgations of rules and regulations and the acceptance and approval of application, all Borough officials, employees and agents shall take all necessary actions in order to effectuate the within Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank that should any section, paragraph, sentence, clause or phrase of this Resolution or the accompanying ordinance 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; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Red Bank, upon adoption of this Resolution the Borough Clerk shall forward copies, electronically or otherwise, to the New Jersey Director of the Division of Alcoholic Beverage Control.

	MOVED	SECONDED	AYES	NAYS	ABSTAIN	ABSENT
Councilwoman Mirandi			x			
Councilwoman Sturdivant		x	x			
Councilwoman Triggiano				x		
Councilman Ballard	x		x			
Councilman Zipprich			x			
Councilwoman Horgan					x	
Mayor Menna						
ON CONSENT AGENDA			Yes <u> </u>	No <u>x </u>		

I hereby certify that the above Resolution was adopted by the Borough Council of the Borough of Red Bank, In the County of Monmouth at a Meeting held on June 8, 2022.

Laura
Reinertsen

Laura Reinertsen, Borough Clerk