

Chapter 700. Zoning

Article VII. Use Regulations

§ 700-41. Outdoor cafes and sidewalk cafes.

- A. The purpose of this section is to establish a procedure and authorize rules and regulations thereunder for the licensing of outdoor sidewalk cafes and outdoor cafes (hereinafter collectively called "cafes") in all business zones where restaurants are permitted. In any business zone in which restaurants are a prohibited use, such cafes are a prohibited use.
- B. Definitions. For the purpose of this section, the following words shall have the meanings respectively ascribed in this subsection:

OUTDOOR CAFE

Any eating establishment where food and other refreshments are served out of doors directly on the side of or to the rear of any restaurant or other place of business where food and/or other refreshments are served.

OUTDOOR SIDEWALK CAFE

Any eating establishment where food and other refreshments are served out of doors directly in front of any restaurant or other place of business where food and/or other refreshments are served.

PUBLIC RIGHT-OF-WAY

Improved or unimproved public property dedicated or deeded to the Township for the purpose of providing vehicular, pedestrian and public use. That area immediately outside of and contiguous to any restaurant, cafe, cafeteria or place of business which is currently used or reserved for use by the public.

SIDEWALK

That area of the public right-of-way reserved for pedestrian traffic and designated by the construction of cement, brick paver or like material, and existing in varying degrees between the curb and the front line of the building housing an eating establishment.

- C. It shall be unlawful for any person, firm, partnership, corporation, association or organization of any kind (hereinafter collectively referred to as "person") to create, establish, operate, maintain or otherwise be engaged in the business of conducting an outdoor sidewalk cafe or an outdoor cafe unless such person shall hold a currently valid license issued pursuant to the terms of this section.
- D.

A person may apply for a license to operate an outdoor sidewalk cafe if the cafe is directly in front of an existing restaurant, cafe, cafeteria or place of business where food and/or other refreshments are served. The outdoor sidewalk cafe may operate in the public right-of-way and on the sidewalk, provided that a minimum of four feet of unobstructed sidewalk remains available for pedestrian traffic around or through such cafe. No food or drinks served at such cafe shall be prepared or stored other than in the interior of the eating establishment. The term "directly in front of" shall confine the cafe to the area represented by an extension of each side of the store occupied by the eating establishment projected directly to the curblin immediately in front thereof.

- E. A person may apply for a license to operate an outdoor cafe if the cafe is not directly in front of an existing restaurant or other place of business where food and/or other refreshments are served, but is directly to the side of or in the rear of said establishment. The outdoor cafe may not operate in the public right-of-way unless the public right-of-way is strictly and solely for pedestrian use. If the public right-of-way includes a sidewalk, a minimum of four feet of unobstructed sidewalk must remain available for pedestrian traffic around or through such cafe. No food or drinks served at such cafe shall be prepared or stored other than in the interior of the eating establishment.
- F. Application for the license required hereunder shall be made to the Construction Code Official and shall be signed by the applicant. The application shall contain the following information:
 - (1) The name, residence address and telephone number of each individual, owner, partner or, if a domestic corporation, the names, residence addresses and telephone numbers of the directors and officers owning a 10% or greater interest in the corporation and the chief operating executive of the corporation, and, if a nondomestic corporation, the name, residence address and telephone number of the managing officer for service of process within the State of New Jersey and a copy of the qualification of said nondomestic corporation to conduct business in the State of New Jersey.
 - (2) A copy of the trade, corporate, business or fictitious name in which the applicant intends to do business pursuant to this section.
 - (3) The address and description of each place where the applicant intends to establish or operate an outdoor cafe or sidewalk cafe.
 - (4) The name and address of the person owning the premises, if other than the applicant, and the consent of the owner of the premises to the application.
 - (5) Layout plan.
 - (a) Three sets of a proposed layout plan containing scaled drawings clearly illustrating the number, type of materials, color and location of all tables, chairs, umbrellas or other furnishings or fixtures intended to be located in the cafe. The perimeter of the cafe shall be defined and set off by an enclosure, which may include live plantings. The enclosure shall define the perimeter of the area to be used as a cafe and shall separate it from the pedestrians traversing the adjacent sidewalk. The enclosure shall not contain doors or windows and shall be open at all times to the air from a height of not more than three feet. Awnings or outdoor umbrellas extending over the enclosure

are permitted but must conform to all existing regulations, including the municipal Sign Ordinance.^[1]

[1] *Editor's Note: See Art. XII, Signs.*

(b) The scaled drawings shall also illustrate the following:

[1] The location of any doors leading from the eating establishment to the cafe. No such doors may be obstructed in any manner.

[2] The number of feet and location of unobstructed space permitting free passage of pedestrian traffic around or through the cafe.

[3] The location of the place where any food or drink is intended to be prepared.

[4] An illustration of the enclosure or protective barrier separating the eating and serving area of the cafe from pedestrian traffic.

[5] The location of all fire hydrants, parking meters, utility poles, benches, handicap ramps, street furniture, trees and any other fixtures permanently located on the sidewalk in front of the eating establishment or within 10 feet thereof on either or any side.

[6] The type and location of any proposed outdoor lighting and fixtures.

[7] An application fee shall be \$100.

G. The Construction Code Official will review the application for completeness and compliance with the terms of this section. If the application is complete, the Construction Code Official will act upon the same within 10 business days of the submittal of the application or within 10 business days after the application becomes complete. If the application is not complete, the Construction Code Official will so notify the applicant within 10 business days of the submission and specifically detail the areas in which the application lacks compliance with the requirements of this section.

H. If the application complies with this section, the Construction Code Official shall issue a license strictly subject to the terms and conditions of this section.

I. The license is personal to the applicant, and any change or transfer of ownership of the cafe shall terminate the license and shall require new application and a new license in conformance with all of the requirements of this section.

J. Acceptance of the license by the applicant shall operate as a consent to the health, fire, police and Building Officials of the Township to inspect the cafe and eating establishment for continued compliance with the terms and conditions of this section and any federal, state, county or local law, regulation or ordinance, including, but not limited to, municipal parking requirements.

K. No license required by this section shall be granted to any person to operate a cafe until such person shall have filed with the Construction Code Official a statement agreeing to indemnify and hold harmless the Township of Nutley, its agents, servants, representatives or employees from any or all claims, damages, judgment costs or expenses, including attorney fees, which they or any of them may incur or be required to pay because of any personal injury, including death, or property damage suffered by

any person or persons as a result of or related in any way to the operation and maintenance of the cafe for which the license is issued.

L. Liability insurance requirement.

(1) No license required by this section shall be granted to any person to operate a cafe until such person shall have first filed with the Construction Code Official a comprehensive general liability policy issued to such person by a public liability insurance company authorized to do business in the State of New Jersey affording the coverage set forth below in the amounts specified. Such insurance policy shall name the Township of Nutley, Nutley, New Jersey 07110, its agents, officers, servants, representatives and employees as additional insureds with respect to the operation and maintenance of the cafe in the following amounts:

(a) Bodily injury.

[1] Each person: \$300,000.

[2] Each accident: \$1,000,000.

(b) Property damage.

[1] Each person: \$300,000.

[2] Each accident: \$1,000,000.

(2) The insurance coverage required by this subsection shall at all times be maintained for the full amount. The policy of insurance required by this subsection to be filed with the Construction Code Official shall contain a clause obligating the company issuing the same to give not less than 30 days' written notice to the Township Clerk before cancellation or amendments of any of the terms thereof. Notice of cancellation shall not relieve the company issuing such policy of liability for any injury or claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the immediate effect of suspending the license of such person to operate the cafe covered thereby until a new policy complying with the provisions of this section is filed with the Construction Code Official and a letter in writing confirming the new effective date of the license is issued by the Construction Code Official.

M. Every insurance policy required hereunder shall contain a provision for continuing liability thereunder to the full amount thereof notwithstanding any recovery thereon, that the liability of the insured shall not be affected by the insolvency or the bankruptcy of the insured and that until the policy is canceled the insurance company will not be relieved from liability on account of nonpayment of premium or of any act or omission by the named insured. Such policy of insurance shall be further conditioned for the payment of any and all judgments up to the limits of such policy.

N. No license required by this section shall be granted to any person to operate a cafe until such person shall have filed with the Construction Code Official any written approvals which may be required from the County of Essex and State of New Jersey. If the establishment is located on a county or state road, the Construction Code Official shall presume that the approvals of the respective governmental entities are required. If the entity declines to take a position on the application, the applicant must produce a letter from the entity so indicating.

- O. Revocation or suspension of license. Any license issued hereunder is issued solely as a revocable license, which shall be subject to revocation or suspension by the Code Enforcement Official for failure of any licensee to comply with this section or for violation of any other applicable federal, state, county or municipal law, regulation or ordinance. Any license issued hereunder is issued upon the express understanding that the licensee obtains no property right thereunder nor any interest in the continuation of said license.
- P. It shall be unlawful for any person to operate a cafe after the suspension or termination of the applicable license.
- Q. Each licensee is responsible for keeping the area of the cafe and the adjacent walks and streets free and clear of any debris or litter occasioned by the cafe. Areas must be cleaned as needed and at the time that business is closed and at the beginning of each business day, but not later than 9:00 a.m.
- R. No vending machines of any kind are permitted on the exterior of any building operating a cafe.
- S. Signs. No signs shall be permitted in the area of the cafe except signs on awnings and umbrellas which comply with the Sign Ordinance of the Code of the Township.^[2] Any language, logos, pictures or other expressions contained on awnings or umbrellas are strictly prohibited.
[2] Editor's Note: See Art. XII, Signs.
- T. In addition to the powers of suspension or revocation as set forth above, the Township reserves the right to modify, suspend or revoke any license on 10 days' written notice if the Township determines that pedestrian traffic is, in fact, impeded or made unsafe because of the operation of the cafe or because of any other safety issue which the Township determines adversely affects the Township because of such operation. The license may also be suspended or revoked on 10 days' written notice in the event that the Township determines that it is necessary to utilize the area or any part thereof for the maintenance or installation of underground utilities. In the event of an emergency, which emergency is certified by the Director of Public Safety, the license may be suspended or revoked without notice.
- U. If the applicant is the holder of an alcoholic beverage control license pursuant to the laws of the State of New Jersey, it shall be the applicant's responsibility to cause the alcohol beverage control license to be amended to include the premises utilized for cafe purposes in order to serve alcoholic beverages therein.
- V. Cafes shall be permitted to operate throughout the calendar year.
- W. Application for a license renewal can be accomplished on an expedited basis by the applicant submitting a renewal application to the Construction Code Official, accompanied by the required licensing fee. The application shall contain a sworn statement by the applicant that the ownership, name and layout of the cafe is the same as set forth in the original application, and the applicant is aware that any false information submitted in the original or renewal application shall be cause for immediate revocation of the license. The renewal application may also contain such other information as the Code Enforcement Office may require.
- X.

No tables, chairs or other equipment used in the cafe shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk or property of the Township of Nutley within or near the licensed area.

- Y. The licensee agrees that after the end of the license period, or in the event that the license is temporarily or permanently suspended or revoked, the licensee will, at its own cost and expense, vacate the sidewalk space and promptly remove any property placed thereon. Failure to do so on five days' written notice shall grant to the Township the right to remove any property on the sidewalk, and the licensee agrees to reimburse the Township for the cost of removing and storing the same.
- Z. The licensee shall not direct nor permit to be directed to or from the area occupied by the cafe any bell, chime, siren, whistle, loudspeaker, public address system, radio, sound amplifier or similar device.
- AA. No cafe shall open for business prior to 7:00 a.m. nor remain open for business after 11:00 p.m. All persons occupying the cafe are required to vacate the cafe no later than 11:30 p.m.
- BB. Table service is required.