

**TOWNSHIP OF MOORESTOWN**

**ORDINANCE NO. 16-2020**

**AN ORDINANCE OF THE TOWNSHIP OF MOORESTOWN  
AUTHORIZING RESTAURANTS WITHIN THE TOWNSHIP  
TO EXPAND THEIR FOOTPRINT TO OUTDOOR AREAS  
DURING THE COVID-19 STATE OF EMERGENCY**

**WHEREAS**, in response to the COVID-19 Pandemic, Governor Murphy has issued executive orders which declared a State of Emergency and Public Health Emergency within the State of New Jersey, and that have imposed restrictions imposing social distancing requirements and limiting gatherings of people; and

**WHEREAS**, Executive Order 104 issued on March 16, 2020 specifically limited all restaurant and food and beverage establishment operations to offering food delivery and/or take out services; and

**WHEREAS**, based upon a decrease in the rate of reported new cases of COVID-19 in New Jersey, the Governor issued Executive Order 150 which authorized restaurants and other food and beverage establishments: “to provide in-person service at areas designated for food and/or beverage consumption (“outdoor dining”) in accordance with CDC and DOH safeguards,” but not indoor dining since that still poses a higher risk of transmission at this time; and

**WHEREAS**, Executive Order 150 further provides that: “many restaurants ... will not have sufficient outdoor space to serve their patrons, and thus may seek to use additional space for outdoor food and/or beverage consumption, including other areas of their property, such as parking lots, and shared spaces, such as sidewalks, streets, and parks;” and

**WHEREAS**, restaurants, and other food and beverage establishments, in Moorestown Township may desire to offer outdoor dining as permitted by Executive Order 150; and

**WHEREAS**, paragraph 5, on page 7, of Executive Order 150 further provides that: “Municipalities are permitted to use their existing authority to allow food or beverage establishments to expand their footprint to outdoor areas, both within their property and among municipally-governed areas, including but not limited to sidewalks, streets, or parks;” and

**WHEREAS**, in order to assist establishments in the Township of Moorestown with resuming in-person service of patrons consistent with the authority granted by Executive Order 150, the Township Council of the Township of Moorestown believes it is in the best interest of the Township, its businesses and residents, to temporarily relax any existing procedural or substantive zoning requirements in order to permit outdoor dining subject to the requirements and limitations set forth herein; and

**WHEREAS**, the Township Council would like to establish a process, for permitting outdoor dining areas during the State of Emergency and Public Health Emergency, that is

expeditious and efficient, while continuing to protect the public health, safety and welfare of the community.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Moorestown, County of Burlington, State of New Jersey as follows:

**Section 1. Outdoor Dining Permitted.** All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, and all holders of a liquor license with retail consumption privileges, including but not limited to, restaurants, club licensees, golf facilities, as more particularly set forth in Section II of ABC Special Ruling 2020-10, “Eligible Licensees and Permittees” [“establishment”] are permitted to offer in-person service at outdoor areas, provided that the establishment obtains a Temporary Outdoor Dining Permit from the Township of Moorestown for outdoor dining in accordance with the requirements set forth herein.

**Section 2. Permit Required.** The Temporary Outdoor Dining Permit Application shall include a completed application, signed and dated by the owner or an authorized agent, together with a plan depicting the existing and proposed layout and location of such outside tables/seating, which shall also include a 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 and any curb line or sidewalk line, trash receptacles, any proposed lighting, any proposed structures to protect the outdoor seating area from the elements, and for any seating area proposed to be located in a parking lot, the proposed temporary structures that will separate the patrons from the vehicles. In addition to the creation and/or expansion of the outdoor dining area, the application and plan may include proposed temporary awnings, tents, pergolas and other similar devices to protect the outdoor dining area from the elements.

**Section 3. Expanded Outside Dining Areas.** The application and plan for outdoor dining may propose expanded outside dining areas including, not limited to, decks, patios, sidewalks and parking lots contiguous with the establishment, provided that any area proposed for outside seating/dining must be accessible from the establishment, shall not obstruct the free flow of pedestrian or motor vehicle traffic, and shall provide a safe location for the patrons. The total amount of seats available to patrons shall not exceed the permitted occupancy of the establishment. In the event the outdoor dining area is proposed to be located in the right of way in front of a neighboring property, written consent of the neighboring property owner shall be provided as part of the application. If the neighboring property is not owner occupied, the written consent of any tenant(s) shall also be provided.

**Section 4. Issuance of Permit.** The application and plan for a Temporary Outdoor Dining Permit shall be reviewed and approved by the Township Zoning Officer, Construction Official, Fire Official and Police Department (“reviewer”). In the discretion of any reviewer, additional information needed to process the application may be required and must be submitted by the applicant. The issuance of a Temporary Outdoor Dining Permit for outside dining, including, but not limited to, location, scope, setbacks and size of the outside dining area, is solely in the discretion of the Township and its reviewers. The Temporary Outdoor Dining

Permit does not replace, or eliminate the need for, any construction permit required for any structure or improvement at the establishment outside dining area.

**Section 5. Standards for Permits.** The following standards are created for the outdoor dining areas permitted by this Ordinance:

a. Outdoor dining areas must be designed and operated in accordance with State of New Jersey, Department of Health Executive Directive 20-014, and any amendments or subsequent directives, and any applicable County Health Department requirements.

b. Outdoor dining areas may be located upon public sidewalks, on relatively level grass areas, and in parking lots, with approval from the appropriate jurisdiction (County or Municipal) where adequate provision is made for pedestrian safety.

c. Where outdoor dining is proposed to be created in a parking lot, bollards or other protection structures shall be erected along the perimeters of the outdoor dining area in order to enhance public safety.

d. Temporary lighting will be required if the outdoor dining area is proposed to be utilized after dusk and there is inadequate existing lighting.

e. A non-enclosed tent, awning or umbrellas may be utilized within an outdoor dining area but shall not restrict pedestrian access.

f. Serving stations and a host podium may be located within an outdoor dining area. There shall be no outdoor cooking allowed.

g. No change in grading will be permitted in order to create an outdoor dining area.

h. Restaurants with existing outdoor dining areas may seek to expand the existing area in accordance with the regulations set forth herein.

i. The proposed outdoor dining area shall be configured in such a manner as to permit site circulation of vehicles for employees, customers, emergency vehicles, delivery vehicles and trash pickup.

j. The operator of an outdoor dining area shall be responsible to provide, maintain and empty an adequate amount of outdoor trash receptacles for the outdoor dining area, and shall not be permitted to dispose of trash into municipal trash receptacles.

k. The operator of an outdoor dining area shall be responsible for maintaining a sanitary, safe, litter-free and well-kept appearance of the property at all times.

l. Licensees or permittees with on-premises retail consumption privileges are responsible for obtaining a Covid-19 Expansion Permit and compliance with the New Jersey Alcoholic Beverage Control Commission (See ABC Special Ruling 2020-10 dated 6/3/2020.).

m. A Temporary Outdoor Dining Permit may be amended or revoked if the Township Zoning Officer and/or Township Manager or his designee identifies a safety issue that may involve but not be limited to traffic, fire, pedestrian safety and trash management, or if the restaurant establishment fails to comply with applicable sanitary and cleaning standards, use of masks and partitions, social distancing or other requirements issued by the Governor, State or County Department of Health or the Township.

**Section 6. General Permit Conditions.** Temporary Outdoor Dining Permits shall be subject to the following general conditions:

a. Permits shall be valid upon issuance, and shall remain valid until the earlier of 12/1/2020 or the issuance of an Executive Order removing restrictions on the number of patrons permitted inside a restaurant or food and beverage establishment.

b. In the case of an establishment licensed by the ABC, compliance with all conditions and requirements of Special Ruling 2020-10 for the issuance of “Temporary COVID-19 Permit to Expand Licensed Premises” and any such further requirements issued by the ABC.

c. The Township reserves the right to amend or revoke any Temporary Outdoor Dining Permit at any time, in the Township's sole discretion.

d. The owner or authorized agent shall certify that they will comply with all applicable County and State Health regulations and directives, Executive Orders issued by the Governor as well as any other local requirements, conditions and/or limitations and will designate an employee onsite for compliance at all times the area is open.

e. For any outdoor seating/dining activities on public property or in a public right-of-way, the establishment shall provide a Certificate of Insurance naming the Township as an additional insured, and shall indemnify and hold harmless the Township, its employees, agents and/or officers from all claims, losses, liens, expenses, suits, including costs and attorney’s fees, arising out of the placement, operation and maintenance of the outdoor seating/dining area approved by said Temporary Outdoor Dining Permit.

f. All expenses and expenditure of any funds in reliance on the provisions of the Temporary Outdoor Dining Permit shall be at the establishment's sole and exclusive cost and expense.

g. Any changes to a permit granted hereunder shall require the submission of a new permit application.

**Section 7. Existing Approvals; Hours of Operation.** Nothing herein shall prevent the continued use of outdoor seating/dining at any establishment already authorized and approved by the Township pursuant to any prior site plan or other land use approval. Outside seating/dining authorized by a Temporary Outdoor Dining Permit shall be conducted during the same hours of operation currently applicable to the establishment.

**Section 8. Relaxation of Rules and Regulations.** All provisions of the Moorestown Township Code that are inconsistent with the intent and purpose of this Ordinance are temporarily suspended during the time that this Ordinance is in effect and shall not apply to expanded areas for outdoor dining authorized by a Temporary Outdoor Dining Permit. Section 46-18 of the code of the Township of Moorestown entitled "Consumption restricted" is hereby relaxed to allow public consumption of alcohol in an outdoor seating area of a restaurant or food and beverage establishment that has been granted a Temporary Outdoor Dining Permit pursuant to this Ordinance.

**Section 9. Term.** This Ordinance shall remain in full force and effect until (i) the issuance of a subsequent Executive Order or other regulation permitting unrestricted indoor dining, as permitted prior to the issuance of Executive Orders 104 and 107, or (ii) the amendment or repeal of this Ordinance.

**Section 10. Severability.** In the event that any section paragraph, clause phrase, term, provision or part of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid or unenforceable for any reason, such judgment shall not effect, impair or invalidate the remainder thereof, but shall be confined in its operation to the section, paragraph, clause, term, provision or part thereof directly involved in the controversy in such judgment shall be rendered.

**Section 11. Effective Date.** This ordinance shall take effect 20 days after adoption.

**Section 12. Short Title.** This Ordinance shall be known as Ordinance 16-2020.

#### CERTIFICATION

I, Patricia L. Hunt, Township Clerk, hereby certify that the attached is a true and correct copy of Ordinance No. 16-2020 which was introduced and adopted on first reading on June 17, 2020 and heard on second reading and was duly adopted by the Township Council of the Township of Moorestown, County of Burlington, State of New Jersey at a meeting of the Township Council held on July 13, 2020.

<u>VOTE:</u>	
GILLESPIE	YES
DONNELLY	YES
LOCATELL	YES
NAPOLITANO	YES
PETRIELLO	YES

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Vicki M. Gough, RMC  
Deputy Township Clerk