

CITY OF SEA ISLE CITY  
NEW JERSEY

ORDINANCE NO. 1457 (2008)

AN ORDINANCE TO AMEND AND REPLACE ORDINANCE #1447 (2008) TO PROVIDE THE PROCEDURES AND REGULATIONS FOR COMMERCIAL SIDEWALK DINING IN CHAPTER 4, SUBSECTION 3 OF THE SEA ISLE CITY REVISED GENERAL ORDINANCES, ENTITLED "SIDEWALK DINING", TO FURTHER PROMOTE COMMERCIAL ACTIVITY AND TOURISIM IN THE CITY OF SEA ISLE CITY AND ALLOWING ALCOHOL SERVICE AT SUCH OUTSIDE SIDEWALK DINING AREAS.

WHEREAS, the City of Sea Isle City finds it desirable and in the best interest of the City to provide an additional license, permitting sidewalk dining for businesses licensed to serve food in designated areas in the City of Sea Isle City; and

WHEREAS, it is the intention of the City of Sea Isle City to replace Ordinance #1447 (2008) with this Ordinance;

WHEREAS, the City's purpose is to do the following: increase patronage at local dining establishments; enhance the ambiance of the City as a tourism destination; and promote the City's outdoor resources; and

WHEREAS, the City believes promoting sidewalk dining on the public right of way will add to the ambiance of the City as a shore community; and

WHEREAS, the City seeks to permit sidewalk dining on the public right of way in a manner that is consistent with the health, safety and general welfare of the public; and

WHEREAS, the City recognizes that there are dining establishments in the City of Sea Isle City that have outdoor operations on their own property. Nothing in this Ordinance is intended, nor shall be interpreted, to affect or regulate dining establishments conducting business solely on their own private property.

WHEREAS, the City's first priority in creation of this Ordinance is to assure that travel, safety and welfare of the public are not jeopardized in the promotion of patronage at local dining establishments; and

WHEREAS, The City seeks to establish strict regulations and conditions to obtaining and retaining a sidewalk dining license; and

WHEREAS, the City seeks to allow sidewalk dining on the public right of way, provided that the regulations and conditions noted below are complied with; and

WHEREAS, at the request of the business community, the City is allowing the service of alcoholic beverages in the outside sidewalk dining areas consistent with a business liquor license, state law and/or state bring your own alcohol laws and this Ordinance; and

WHEREAS, the City desires to monitor and review the effect of this ordinance from time to time, and retain the ability to revoke sidewalk dining licenses in the event that (1) they are determined to threaten the public health, safety or general welfare, or (2) businesses do not strictly comply with the terms of this ordinance and the Chapters of the Sea Isle City revised General Ordinances pertaining to sidewalk dining; and

WHEREAS, Council desires to automatically terminate this Ordinance and the force, effect and rights provided for herein on December 1, 2009, notwithstanding the

desire to monitor and review the force and effect of sidewalk dining on the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED, by the City of Sea Isle City, in the County of Cape May, State of New Jersey, as follows:

**SECTION I.** Chapter 4 subsection 3, entitled "Sidewalk Dining" of the Revised General Ordinances is hereby deleted in its entirety and replaced with the following:

**4-3 Sidewalk Dining.**

**4-3.1 Purpose and Areas Covered.** The purpose of this Chapter is to promote sidewalk dining areas on the public right of way in the City of Sea Isle City in a manner that promotes and enhances enjoyment of the City's ambiance and outdoor resources. The City seeks to promote sidewalk dining to effectuate increased patronage at dining establishments in the City that are properly licensed under Sea Isle City Code Section 4-1.9. The City will promote sidewalk dining by allowing portions of the public right of way, between the curb and the adjacent property line, to be used by properly licensed dining establishments. The City intends to monitor and review the use of sidewalk dining facilities after the adoption of this ordinance to determine its full impact upon the City and the health, safety, general welfare and enjoyment of the public.

Sidewalk dining without the service of or consumption of alcoholic beverages is permitted for businesses licensed to serve food in all commercial zones of the City;

The City determines that it is in the best interests of the citizens of Sea Isle City to test the service of and consumption of alcoholic beverages in the side walk dining area in a limited area of the City and for a limited duration. Therefore, the service of and consumption of alcoholic beverages are permitted only in the following areas:

- A) Landis Avenue inclusive between 37<sup>th</sup> Street to 47<sup>th</sup> Street, 49<sup>th</sup> Street to 51<sup>st</sup> Street and 61<sup>st</sup> Street to 64<sup>th</sup> Street including both East and West sides of Landis Avenue;
- B) J.F.K. Boulevard East of Landis Avenue to the Promenade, but not on the Promenade, including both North and South sides of J.F.K. Boulevard;
- C) Park Avenue inclusive between J.F.K. Boulevard to 44<sup>th</sup> Street, including both East and West sides of Park Avenue;
- D) 42<sup>nd</sup> Place between Park Avenue to Kneass Avenue along the South side only of 42<sup>nd</sup> Place.

**4-3.2 Definitions.**

**Alcohol or Alcohol Beverage** shall mean any fluid or solid capable of being converted into a fluid, suitable for human consumption, and having an alcohol content of more than one-half of the one per centum (1/2 of 1%) by volume, including alcohol, beer, lager beer, ale, porter, naturally fermented wine, treated wine, blended wine, fortified wine, sparkling wine, distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors fit for use for beverage purposes or any mixture of the same, and fruit juices.

**City** shall mean the City of Sea Isle City, New Jersey.

**County** shall mean the County of Cape May County, New Jersey.

**Dining Establishment** shall mean any person or corporation, whose business is serving food that has properly obtained a license to serve food pursuant to Sea Isle City Code 4.1.9.

**Sidewalk Dining Area** shall mean an area adjacent to a dining establishment that is also located within the sidewalk area of the public right of way, or located on a combination of the public right of way and the set back of a dining establishment. The dining establishment shall be permitted to use the full width of the cemented or paved sidewalk area, subject to regulations herein, including any extensions of the sidewalk.

**4-3.3 Applicability.** This chapter and subsection entitled “Sidewalk Dining” applies to all persons and corporations whose business is service food in the City of Sea Isle City, in the Commercial District as defined in the Zoning Code.

**4-3.4 Permitted Subject to Approval.** Sidewalk Dining shall be permitted provided that the dining establishment has complied with this Chapter, obtained all appropriate licenses for service food, and other approvals as may be required by the City Planning Board, Zoning Board, Zoning Official, Code Enforcement, Health Inspector, or any other City Official.

Should the sidewalk be in the County right of way then in addition to the above approvals, all County approvals and requirements must be met before application for a license pursuant to Section 4-3.7 herein.

**4-3.5 No Grant of Property Right.** The City of Sea Isle City reserves its right to amend, terminate or repeal this chapter and accordingly no property rights are granted to any person(s) or entities by virtue of this chapter. All person(s) or entities seeking to comply with this chapter are hereby given express notice that any expenditures of funds, or other costs, in reliance on the provisions of this chapter shall be at their sole expense. All person(s) or entities seeking to comply with this chapter are hereby given express notice that they bear the sole risk of loss for any expenditures and costs in the event this chapter is amended, terminated or repealed. The foregoing reservations apply to any use of the County right of way.

**4-3.6 Design and Regulation of Sidewalk Dining Areas.** Sidewalk dining areas shall be designed and regulated as follows:

1. The design of outdoor tables, chairs umbrellas and all other outdoor personal property of the dining establishment shall be aesthetically consistent with surrounding design and architecture.
2. No advertisement shall be permitted on outdoor tables, chairs, umbrellas or other outdoor personal property of the dining establishment.
3. Awnings and/or umbrellas may be used in conjunction with a sidewalk dining area. Awnings and umbrellas shall be adequately secured and retractable. All umbrellas and awnings shall be removed and stored on the private property of the dining establishment to prevent use and access by the public during non-business hours. At no point shall an umbrella or awning, including the valance, be less than seven (7) feet from the adjacent grade elevation or more than fifteen (15) feet above the adjacent grade elevation, in height.
4. The tables shall not be greater than six (6) seats per table.
5. The design and layout of the sidewalk dining area shall not cause irreparable damage to existing landscape.
6. The highest standards of cleanliness of the sidewalk area shall be maintained at all times including frequent litter and trash/recycling removal within, around, and beyond the subject property. A plan for litter and trash/recycling removal and handling,

and over-all cleanliness and maintenance shall be submitted with the application for sidewalk dining.

7. No bottles, plates, bowls, glasses or trash/recycling shall be on the ground, and the dining establishment shall properly organize and dispose of such items to prevent tripping or falling.

8. The hours of operation for sidewalk dining shall be from 7:00 a.m. to 11 p.m. on all days of the week.

9. Alcohol, whether the alcohol is provided by the dining establishment or brought to the dining establishment by the patron, shall be allowed only from 11:00 a.m. to 11:00 p.m. on Monday through Saturday, and from 12:01 p.m. to 11:00 p.m. on Sunday.

10. Tables and chairs occupying the public right of way during business hours shall be stored on the private property of the dining establishment to prevent use and access by the public during non-business hours.

11. Only soft music shall be permitted at sidewalk dining areas.

12. No outdoor lighting shall be permitted except small self-powered tabled lighting, other than approved signs and light fixtures.

13. Low barriers of a temporary nature may be placed at the edge of seating areas during business hours so long as there is no interference with public safety or pedestrian movement patterns. Nothing is to be placed beyond the restaurant property that will infringe on the adjacent property owner(s).

14. There shall be no outside cooking or food preparation of any kind. This provision applies strictly to sidewalk dining and is not intended to prohibit the activities of approved hotdog vendors.

15. Food purchased at a sidewalk dining area shall not be sold or purchased from a permanent or temporary area that is located outside. Food service will be provided from inside the dining establishment.

16. Sidewalk dining areas shall only be permitted in a setback and sidewalk area directly adjacent to a dining establishment, including any extensions of the sidewalk.

17. The layout of outdoor tables, chairs, umbrellas and all other property shall not in any way interfere with pedestrian or vehicular safety, or with necessary access by fire, police and ambulance personnel.

18. If outdoor tables and seating at sidewalk dining areas cause complaints from neighbors and the problem is not immediately abated, upon notice from the Sea Isle City Police Department, Code Enforcement or other City Official, the outdoor tables and seating shall be removed and the dining establishment's sidewalk dining license may be revoked and terminated immediately.

19. Dining establishments, licensed to serve alcohol by the New Jersey Division of Alcoholic Beverage Control, that are seeking to provide and allow for consumption of alcohol in the sidewalk dining area must strictly comply with this Chapter, Chapters 6 and 3-6.8 of the Sea Isle City Revised General Ordinances, and all other applicable laws of the City and the State of New Jersey.

20. Dining Establishments, not licensed to serve alcohol by the New Jersey Division of Alcoholic Beverage Control, that are seeking to allow patrons to consume alcoholic beverages in the sidewalk dining area must strictly comply with this Chapter

and Chapter 3-6.8 of the Sea Isle City Revised General Ordinances, and all other applicable laws of the City and the State of New Jersey. In addition such establishments shall meet the following:

1. All outside servers shall be 18 years of age or older.
2. All outside servers shall complete the T.I.P.S. Training Program.
3. No one visibly intoxicated shall be permitted to consume alcohol.
4. No coolers or chilling containers shall be allowed except as permitted to be supplied by the establishment consistent with State Law.

21. The layout of the sidewalk dining area, and all items therein, shall be arranged in a manner providing no less than six (6) feet of unobstructed paved passageway for pedestrians walking between the sidewalk dining area and the edge of the curb. The purpose of this section is to provide pedestrians a minimum of six (6) feet of free passage at all times and under all conditions on paved areas. The minimum six (6) foot passage way shall be completely free of obstructions, including but not limited to trash and recycling receptacles, paper boxes, trees, poles and any other sidewalk installations.

22. The layout of the sidewalk dining area, shall be designed, if not abutting the building, to allow for safe crossing of servers through the pedestrian passageway and shall be entirely on the sidewalk adjacent to the dining establishment. In no event shall the dining area or pedestrian passageway enter or cross a City or County street.

**4-3.7 City Approval of Sidewalk Dining License.** Any dining establishment seeking a license for sidewalk dining pursuant to this chapter must make application to the Sea Isle City Business Administrator or a designee thereof annually in conjunction with the submission of an application for mercantile license. Approval must be received from the Sea Isle City Business Administrator or a designee thereof and all other requirements for consumption of alcohol at the sidewalk dining areas must also be obtained, when applicable, before the dining establishment may begin to set up any sidewalk dining areas.

**4-3.8 Application and Information to be provided.** The application for a sidewalk dining area license shall be on City forms, completely filled out and submitted to the Sea Isle City Business Administrator or a designee thereof, and in accordance with a schedule to be set by the Business Administrator or a designee thereof, with the following items and information to be provided:

A. Scaled layout of proposed tables, chairs, trash/recycling receptacles, bus trays and low barriers, showing dimensions of tables, chairs, trash/recycling receptacles and overall area with respect to the building façade, sidewalk space, existing poles, signs, trees or other sidewalk installations. The layout shall address all issues required in Section 4-3.6, Design and Regulation of Sidewalk Dining Area.

B. Whether the dining establishment seeks to allow for consumption of alcoholic beverages in the sidewalk dining area, and if so, whether the dining establishment is licensed and approved by the New Jersey Division of Alcoholic Beverage Control to serve alcohol in the sidewalk dining area.

C. A detailed narrative, supported by a plan of relevant information, describing the method of serving tables, the proposed hours of outdoor service, where alcohol will

be consumed at the sidewalk dining area and how it will be served, and the method of outdoor litter control and trash/recycling handling.

D. Photographs or diagrams indicating the style, colors, sizes and materials used for tables, chairs, umbrellas and other property in the operation of the sidewalk dining area.

E. A description of the existing buildings on either side of the dining establishment.

F. A non-refundable application fee shall be paid to the City at the time the application is submitted to the City as follows:

1) \$100.00 – For dining establishment which shall not allow the service or consumption of alcohol in the sidewalk dining area.

2) \$200.00 – For dining establishment which will allow service and/or consumption of alcohol in the sidewalk dining area.

G. Proof that the County has approved the placement of tables etc., and service of food, alcohol etc. in its right of way, if applicable.

H. Proof of approval from the New Jersey Division of Alcoholic Beverage Control, when applicable.

**4-3.9 Processing, Criteria for Review of Application, and Continued Use of License.** In the processing applications for sidewalk dining, the Sea Isle City Business Administrator or a designee thereof shall confer as necessary with the Police, Fire Department, Code Enforcement Officer, Construction Official, City Clerk and the City Engineer, and shall use the following factors to determine to provide, or continue to provide, a license for sidewalk dining:

1. Pedestrian safety.
2. Level of pedestrian traffic in the area.
3. Vehicular safety.
4. Level of vehicular traffic in the area.
5. Public safety.
6. The management plan for clean up, litter control, and trash/recycling handling.
7. Impact on existing landscaping.
8. Potential interference with police or fire safety.
9. Interference with use and enjoyment of adjacent property owners.
10. Present and past deviation from compliance with the terms of this Chapter and other provisions pertaining to sidewalk dining areas.
11. Adequacy of the design plan submitted pursuant to Section 4-3.6.
12. Compliance with County conditions where applicable.

**4-3.10 Insurance and Hold Harmless Agreement.** No side walk dining license shall be issued before the City receives proof of the following:

A. Insurance. Each applicant must supply the City with a certificate of insurance to hold harmless the City, showing limits of not less than \$1,000,000 bodily injury and property damage, combined single limit of liability; and for any establishments that are permitted to allow or sell alcoholic beverages, the applicant shall also provide for liquor liability insurance with not less than \$2,000,000 bodily injury and property damage, combined single limit of liability. The City must be added to the liability insurance policy of the permit applicant, as an additional insured. The policy or policies of insurance

must be with a company or companies authorized to do business in the State of New Jersey and shall be delivered to the City, with evidence of payment of premiums therefore. If the dining establishment abuts a County right of way in addition to the above, the County shall be added as an additional insured.

The City shall be designated by applicant to be notified by the insurance company in the event of cancellation of insurance for any reason.

B. Hold harmless, Permit applicants must also agree to save, hold and keep harmless and indemnify the City from and for any and all payments, expenses, costs, attorney fees and from any and all claims and liability for losses or damage to property or injuries to persons occasioned wholly or in part by or resulting from any acts or omission by the permit applicant or the permit applicant's agents, employees, guests, licensees, invitees, assignees or successors, or for any cause or reason whatsoever arising out of or by reason of the use by the permit applicant and the conduct of the permit applicant's business within that portion of the sidewalk dining area for which a permit was issued to the respective applicant. An application by a permit applicant pursuant to this section shall be deemed conclusive evidence of the permit applicant's agreement to indemnify the City as aforesaid. However, in addition, applicant shall execute a hold harmless agreement in a form supplied by the City. If the dining establishment abuts a County right of way, in addition to the above, an application by a permit applicant pursuant to this section shall be deemed conclusive evidence of the permit applicant's agreement to also indemnify the County. Further, the applicant shall also execute a hold harmless agreement in a form supplied by the City indemnifying the City and County.

**4-3.11 Violations and Penalties.** In the event of non-compliance with any provision of this Chapter, a written notice of violation shall be issued by a member of the Sea Isle City Police Department, Code Enforcement, or other City Official. Upon notice of a violation, the violator shall remove all outdoor benches, tables, chairs and other outdoor facilities until the violation is completely abated. Each and every day the violation continues will be considered a separate offense subject to a separate punishment by fine and/or community service.

Any person in violation of any provision of this section shall be liable for a fine for each offense of the sum of not less than one hundred (\$100.00) dollars nor more than three hundred (\$300.00) dollars and/or community service for each offense.

**4-3.12 Term of License.** All licenses shall have a term of one (1) year and shall run concurrent with the mercantile license of the adjoining property.

**4-3.13 Revocation, Revision, or Denial.** The City specifically reserves the right to revise, revoke or deny an application for a sidewalk dining area upon a determination that one (1) or more provisions of any Chapter applicable to sidewalk dining areas have been violated or that the design and plan are inadequate, or that the operation of a sidewalk dining area will endanger the public health, safety or welfare.

Any application for a sidewalk dining area shall be made at the sole risk and expense of the applicant in light of a potential fore revocation, revision or denial of permission by the City.

**SECTION II. Severability.** If for any reason any section of this Ordinance shall be declared illegal by any Court of competent jurisdiction, the remaining section of the Ordinance shall remain in full force and effect notwithstanding.

**SECTION III. Repealer.** Any Ordinance or provision thereof inconsistent with this Ordinance is hereby repealed to the extent of such inconsistency.

**SECTION IV. Publication.** This Ordinance shall take effect immediately upon the adoption and publication in accordance with the law.

CITY OF SEA ISLE CITY

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John J. Divney, Council President

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Mayor Leonard C. Desiderio

I HEREBY CERTIFY THAT the foregoing ordinance was duly passed by the City Council of the City of Sea Isle City, New Jersey, on first reading at the regular meeting of said Council held on the 25<sup>th</sup> day of November, 2008, and was taken up for second reading, public hearing and final passage at the regular meeting of said Council held on the 9<sup>th</sup> day of December 2008, in the Public Safety Building, 233 John F. Kennedy Boulevard, Sea Isle City, New Jersey at 7:00 p.m.

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Cindy Griffith, Municipal Clerk

**I HEREBY FURTHER CERTIFY** that the ordinance was promptly forwarded to the Mayor on December 10, 2008 for his signature. On December 16, 2008, Mayor Desiderio returned the ordinance unsigned indicating that he has not been a supporter, but will not veto the ordinance. The ordinance shall take effect in the time and manor prescribed by law without the Mayor's signature.

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Cindy Griffith, Municipal Clerk