

Borough of Demarest

Ordinance No. 1003-13

**An Ordinance Adding Chapter nnn to the
Code of the Borough of Demarest to Authorize the Licensing of
Outdoor Cafes in Certain Areas of the Borough of Demarest**

WHEREAS, the Mayor and Council of the Borough of Demarest finds that outdoor cafes will promote the public interest by creating an active and attractive pedestrian environment and will provide the opportunity for creative, colorful, pedestrian-focused commercial activities on a day, night, and seasonal basis, which activities are aesthetically pleasing and will add to the excitement, charm, and vitality of the Borough of Demarest; and

WHEREAS, the purpose of this ordinance is to establish a procedure and authorize rules and regulations for the licensing of outdoor cafes in the appropriate areas of the Borough;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Borough of Demarest as follows:

Section 1: A new Chapter nnn will be added to the Code of the Borough of Demarest to state:

Chapter nnn. Outdoor Sidewalk Cafes

§nnn-1 Definitions. For the purpose of this ordinance, the following words will have the meanings set forth in this section.

Borough. The Borough of Demarest.

Eating Establishment. Any restaurant, cafe, cafeteria, or place of business where food and/or other refreshments are served for on site consumption.

Outdoor Café. Any eating establishment where food and other refreshments are served upon the public right-of-way, namely the sidewalks immediately in front or along the side or rear of the eating establishment, or at any other location on the premises of an eating establishment outside of the interior portion of the building occupied by the eating establishment.

Person. Any individual, firm, partnership, corporation, association, limited liability company, or organization of any kind.

Sidewalk. The area of the public right-of-way reserved for pedestrian traffic from the curb to the front line of the building housing a proposed or existing outdoor cafe.

§nnn-2 License Required. No person may create, establish, operate, maintain, or otherwise be engaged in the business of conducting an outdoor cafe in the Borough unless that person holds a currently valid license issued pursuant to the terms of this ordinance.

§nnn-3 Standards for Licensing. No license will be issued hereunder unless the licensee meets the following conditions:

- A. The licensee must operate an eating establishment in the following locations: Hardenburgh Avenue or Park Street. The licensee must have existing, approved indoor seating and the total combined indoor and outdoor seating will not exceed the maximum number of indoor seating allowed by state and local regulations.
- B. The licensee will demonstrate that a minimum of six (6) feet of unobstructed paved surface will be available for pedestrian traffic around or through the outdoor cafe and that the outdoor cafe is contiguous to an eating establishment as hereinabove defined.
- C. The hours of operation for outdoor cafes will not extend after 12 midnight on Thursdays, Fridays, and Saturdays, and not after 10:00 p.m. on Sundays, Mondays, Tuesdays, and Wednesdays.
- D. All furniture, umbrellas, barriers, and other property used in the outdoor cafe must be safe, sturdy, and structurally sound, as deemed by the Borough.
- E. Outdoor seating may not displace parking spaces required by building and zoning regulations.
- F. No food or drinks served at an outdoor cafe may be prepared or stored other than in the interior of the eating establishment.

- G. The licensee will demonstrate adequate controls to prevent vermin entrance into the interior of the food establishment, such as air curtains and pass through windows.
- H. Tables and chairs must be removed from the public sidewalks when the establishment is not open for business.

§nnn-4 Application Forms.

- A. Applications for the licenses required by this ordinance will be filed with the Borough Clerk and will be signed by the applicant. The application must 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 ten (10%) percent or greater interest in the corporation and the chief operating executive of the corporation and if a non-domestic 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 non-domestic corporation to conduct business in the State of New Jersey.
 - 2. The address and description of each place where the applicant intends to establish or operate an outdoor cafe.
 - 3. The name and address of the person owning the premises, if other than the applicant, and the consent of the owner (via a signature) of the premises to the application.
 - 4. A copy of the trade, corporate, business or fictitious name upon which the applicant intends to do business pursuant to this ordinance.
 - 5. Three sets of a proposed layout plans containing scaled drawings clearly illustrating the number, type of material, color, and location of all tables, chairs, umbrellas, or other furnishings, or fixtures intended

to be located in the outdoor cafe. The perimeter of the outdoor cafe may, if appropriate, be defined and set off by a portable type enclosure, which may include live plantings. The enclosure will define the perimeter of the area to be used as an outdoor cafe and will separate it from the pedestrians traversing the adjacent sidewalk. The enclosure will not contain doors or windows nor air conditioning or heating equipment and will be open at all times to the air form a height of not more than three (3) feet. Awnings or outdoor umbrellas extending over the enclosure are permitted with the condition that no portion of the enclosure material or overhanging awning and/or umbrella encroaches into the six feet width set aside for the walkway area, subject to approval by the Mayor and Council.

- B. The scaled drawings also will illustrate the following:
1. The location of any doors leading from the eating establishment to the outdoor cafe. No 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 each outdoor 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 each outdoor 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 ten (10) feet thereof on either or any side.
 6. The type and location of any proposed outdoor lighting and fixtures.

7. The application fee and annual license fee will be \$400.00 and will be submitted with the application.

§nnn-5 Approval of Licenses.

- A. Upon the filing of a complete application and submitting a check for the application / license fee, the Borough Clerk will submit same for review by the health officer and chief of police, who will complete their review within 14 days and submit any objections in writing to the Borough Clerk.
- B. The Mayor and Council may approve any license if the application is complete and conforms to the requirements of this ordinance and if the application and license fees are paid in full
- C. Licenses will expire annually on March 31st.

§nnn-6. Standards For Operation.

- A. The license granted pursuant to this ordinance is personal to the applicant and any change or transfer of ownership of the outdoor cafe will terminate the license and will require a new application and a new license in conformance with all of the requirements of this ordinance.
- B. Acceptance of the license by the applicant will operate as a consent to the health, fire, police, and building officials of the Borough to inspect the outdoor cafe for continued compliance with the terms and conditions of this ordinance.
- C. No license required by this ordinance will be granted to any person to operate an outdoor cafe until the applicant has filed with the Borough Clerk a statement agreeing to indemnify and hold harmless the Borough, its agents, servants, representatives, or employees from any or all claims, damages, judgment costs, or expenses including attorneys' 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 outdoor cafe for which the license is issued.

D. No license required by this ordinance will be granted to any person to operate an outdoor cafe until such person will have first filed with the Borough Clerk 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 coverages set forth below in the amounts specified. The insurance policy will name the Borough of Demarest, 118 Serpentine Road, Demarest, New Jersey 07627, its agents, officers, servants, representatives, and employees as additional insured with respect to the operation and maintenance of the outdoor cafe in the following amounts:

Bodily injury, each person	\$ 300,000.00
Each accident	\$1,000,000.00
Property damage, each person	\$ 300,000.00
Each accident	\$1,000,000.00

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

E. Every insurance policy required hereunder will contain a provision for continuing liability thereunder to the full amount thereof notwithstanding any recovery thereon, that the liability of the insured will 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 non-payment of premium or of any act omission by the named insured. The policy of

insurance will be further conditioned for the payment of any and all judgments up to the limits of the policy.

- F. Each licensee is responsible for keeping the area of the outdoor cafe and the adjacent walks and streets free and clear of any debris or litter generated by the cafe. Areas must be cleaned at the time that business is closed and at the beginning of each business day, but not later than 9:00 a.m.
- G. No vending machines of any kind are permitted on the exterior of any building operating an outdoor cafe.
- H. No signs are permitted in the area of the outdoor café, including signs on the awnings or umbrellas, unless permitted by the sign ordinance of the Borough.
- I. If the applicant is the holder of an alcoholic beverage control license pursuant to laws of the State of New Jersey, it will be the applicant's responsibility to cause the Alcohol Beverage Control license to be amended to include the premises utilized for outdoor cafe purposes in order to serve alcoholic beverages therein.
- J. Outdoor cafes will be permitted to operate from April 1st through March 31st weather permitting. The license, when issued, will be valid through March 31st.
- K. No tables, chairs or other equipment used in the outdoor cafe will be attached, chained or in any manner affixed to any tree, post, sign, or other fixtures, curb, or sidewalk, within or near the licensed area.

§nnn-7. Revocation or suspension of license.

- A. Any license issued hereunder is issued solely as a revocable license, which will be subject to revocation or suspension by the Borough Council, after a hearing held on notice to the licensee, for failure of any licensee to comply with this ordinance 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.

- B. It is unlawful for any person to operate an outdoor cafe after the suspension or termination of the applicable license.
- C. In addition to the powers of suspension or revocation as set forth above, the Borough reserves the right to modify, suspend or revoke and license on ten (10) days' written notice if the Borough determines that pedestrian traffic is, in fact, impeded or made unsafe because of the operation of the outdoor cafe or because of any other safety issue that the Borough determines adversely affects the Borough because of the operation. The license may also be suspended or revoked, on ten (10) days' written notice, if the Borough 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 Borough, the license may be suspended or revoked without notice.

Section 2: All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed, but only to the extent of any inconsistencies.

Section 3: The provisions of this ordinance are severable. If any part of this ordinance is declared to be unconstitutional or invalid by any court, the remaining parts of this ordinance will remain in full force and effect.

Section 4: This ordinance will take effect upon final approval and publication, according to law.

Introduced and passed first reading:

Passed second reading:

ATTEST:

APPROVED BY:

Susan Crosman, Borough Clerk

Raymond Cywinski, Mayor

