

**BOROUGH OF WEST CAPE MAY
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

ORDINANCE NO. 581-20

**EMERGENCY ORDINANCE TEMPORARILY AMENDING SECTION 27 OF THE
BOROUGH OF WEST CAPE MAY CODE REGARDING OUTDOOR SEATING**

WHEREAS, on March 9, 2020, Governor Philip D. Murphy issued Executive Order 103 (2020) which declared a Public Health Emergency and State of Emergency in New Jersey; and

WHEREAS, since the issuance of Executive Order 103 (2020) Governor Murphy has issued a series of Executive Orders the purpose of which is to protect the health, safety and welfare of New Jersey residents through efforts to reduce the rate of community spread of COVID-19; and

WHEREAS, Executive Order No. 104 (2020) deemed a subset of businesses as "essential," and required "non-essential" retail businesses to close physical stores to the public while permitting delivery and online operations of retail businesses to continue; and

WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order No. 107 (2020) permitting restaurants and bars to operate during normal business hours but limiting those businesses to offering only food delivery and/or take-out services; and

WHEREAS, on March 21, 2020 Governor Murphy issued Executive Order 108 (2020) which, *inter alia*, recognized that certain municipalities may have legitimate concerns about an influx of new visitors and the resulting public health concerns as the entire state endeavors to comply with social distancing measures and avoid unnecessary increases in density of individuals and, accordingly, provided municipalities with the ability to impose restrictions with respect to online marketplaces for arranging or offering lodging; and

WHEREAS, on April 28, 2020, Governor Murphy issued Executive Order 131 (2020) establishing the Governor's Restart and Recovery Commission formed to provide guidance to the Governor for reopening the New Jersey economy in a way that is consistent with the State's public health efforts to slow the spread of COVID-19; and

WHEREAS, on May 5, 2020 the Cape May County Board of Chosen Freeholders submitted a proposal to the Governor Murphy entitled: Proposal for the Safe, Thoughtful and Progressive Reopening of Cape May County in the Time of COVID ("the Proposal"), which was prepared in consultation with the Cape May County-Wide Recovery Initiative; and

WHEREAS, the Proposal describes the unique vulnerability of Cape May County's seasonal economy, County infection rate statistics in relation to the entire State, and proposed mitigation protocols designed to emulate the effects of the Governor's stay-at-home order embodied in Executive Order 107; and

WHEREAS, the Proposal encourages the utilization of outdoor spaces for restaurants and bars as a way to maximize social distancing and minimize potential for spread; and

WHEREAS, the Centers for Disease Control and Prevention's journal Emerging Infectious Diseases recently reported a recommendation increasing the distance between tables and improving ventilation in restaurant settings. See https://www.nc.cdc.gov/eid/article/26/7/20-0764_article#comment; and

WHEREAS, the Board of Commissioners of the Borough of West Cape May has determined it is in the best interests of the Borough, its residents, property owners, and visitors to provide up to date local direction in response to executive and administrative orders, and other government directives relating to COVID-19/Coronavirus, and that these concerns by their nature are urgent; and

WHEREAS, pursuant to N.J.S.A. 40:74-4 the Borough of West Cape May is empowered to make emergency ordinances for the immediate preservation of the public peace, health or safety which will take effect before 20 days from the time of final passage; and

NOW, THEREFORE, BE IT ORDAINED by the Borough Commission of the Borough of West Cape May as follows:

1. **Effect of Emergency Ordinance.** Section 27-27.15 of the Code regarding outdoor seating shall be temporarily suspended, superseded, and replaced in its entirety by the provisions contained herein effective immediately. The use of premises described herein is conditioned upon the Governor's modification of restrictions contained in Executive Order No. 104 and 107 permitting restaurants and retail businesses to resume regular operation.
2. **Purpose.** In response to the developing public health and safety concerns of Covid-19, this Emergency Ordinance provides for the temporary use of exterior areas on commercial premises and, in certain limited circumstances and where available, use of adjoining Borough property or Public Right of Way for use to relocate dining tables and/or retail merchandise displays.
3. **Temporary Site Plan.** Restaurants and Retail Establishments intending to utilize exterior portions of commercial premises shall submit a Temporary Site Plan. The Temporary Site Plan may be unsealed and prepared by the applicant but must include at a minimum (1) accurate dimensions, measurements, and depiction of the proposed outdoor seating, including any temporary furnishings or structures that impact the visual environment of the streetscape. A survey is not required but if one is available, the applicant will include a copy, (2) the current seating capacity/number of parking spaces, (3) the proposed number and allocation of seating to exterior spaces and number and location of parking spaces to be occupied by temporary outdoor seating, if any.

This ordinance shall not be read to increase the total amount of seating already existing at the business. Notwithstanding any other provision of code to the contrary, the temporary plan may amend the site conditions to reflect one parking space for every 10 seats in order to accommodate outdoor seating.

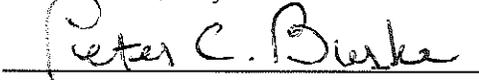
4. **Utilization of Borough Property or Right of Way.** Any applicant requesting utilization of Borough Property or a Public Right of Way as part of Temporary Site Plan shall submit an (a) Application for Use of Public Right of Way and (b) a Use of Public Right of Way Agreement and comply with the terms contained therein. The forms for (a) and (b) will be available on the Borough website and via hard copy upon request and appointment if digital copies are otherwise unavailable to the applicant. Any proposed utilization of Borough property or Right of Way shall reserve not less than 5' wide of paved surface for exclusive use by pedestrian traffic.
5. **Review of Temporary Site Plan.** An applicant seeking approval of a Temporary Site Plan shall submit the same to the Borough Zoning Officer. Temporary Site Plans shall be subject to the review and discretion of the Zoning Officer in order to ensure protection of the public health, safety, and general welfare and including but not limited to preservation of ingress and egress in the area of the establishment. Accordingly, the Zoning Officer may (a) recommend approval, (b) approval with conditions necessary for the protection of the public, health, safety and general welfare, (c) require submittal of additional documents or information necessary to complete review to ensure protection of the public health, safety, and general welfare, or (d) decline, suspend, or rescind approval if determined necessary to preserve or protect the public health, safety, or general welfare.
6. **Conditions of General Applicability to Temporary Site Plan.**
 - (a) Exterior seating may be accompanied by awnings, umbrellas, planters or other temporary furnishings that help create and maintain an attractive appearance, or temporary structures (such as temporary tent with roll up panels) providing coverage from rain, and provided the Zoning Officer determines these furnishings or structure do not unduly burden or impede the free flow of fresh air and open space, the preservation and utilization of same being the central purpose of this ordinance.
 - (b) Capacity shall be limited to that which is permitted by further Executive Order or applicable governmental order. If none is specified, 75% of fire code limitation or a capacity reached by placement of customer seating areas at least six (6) feet apart measured from the back of the nearest occupied seat (not the table edge), whichever provides greater social distancing shall control.
 - (c) Any additional outdoor lighting must be noted on the plan and be indirect lighting directed to minimize the impact to surrounding property owners.
 - (d) No additional outdoor cooking facilities are permitted or provided by this ordinance.

- (e) No customers shall be seated after 9:30 p.m.
 - (f) All outdoor seating and parking converted to seating shall be delineated with markings or barriers for safety.
 - (g) For retail businesses, the use of merchandise displays for sales may be placed on the outside of the building to help compensate for social-distancing requirements inside the establishments. Any proposed exterior displays will be subject to the same conditions and restrictions for temporary approval as exterior restaurant seating areas.
 - (h) All application documents, including any plans or exhibits shall be submitted in electronic form to the Zoning Officer. If an applicant is unable to transmit the application in electronic form, the applicant shall contact the Zoning Office to arrange for an appointment to safely deliver hard copy materials.
7. Any applicants temporarily reducing parking as part of a Temporary Site Plan will provide notice to their customers of reduced parking conditions and encourage alternative methods of transportation, such as bicycling utilizing the Cape Island Connection Bike Map, which are likely to reduce the impact of any reduced parking conditions.
 8. Any and all provisions of the code inconsistent with this Ordinance are hereby superseded. All other provisions of the Code not superseded by this Ordinance, or other governmental order, shall remain in full force and effect.
 9. By this Ordinance, the Board of Commissioners of the Borough of West Cape May request the Director of the New Jersey Division of Alcoholic Beverage Control exercise the authority conferred upon the Director by the provisions of N.J.A.C. 13:2-5.5 and N.J.A.C. 13:2-9.1 to immediately implement procedures whereby liquor licenses may obtain permits providing for the extension of the licensed premises to the outdoor seating that are approved pursuant to the provisions of this Ordinance for so long as such municipal approval is valid without the necessity of having to file a formal place-to-place (expansion of licensed premises) application with the local alcoholic beverage control board.
 10. Pursuant to N.J.S.A. 40:74-4, this Ordinance will take effect immediately upon adoption, and shall remain in effect until December 31, 2020, unless modified or rescinded by the Board of Commissioners.

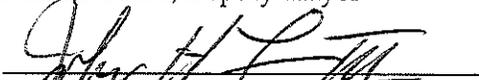
11. The Borough Clerk is directed to forward copies, electronically or otherwise, to the following officials: Hon. Phillip D. Murphy, Governor State of New Jersey, New Jersey Director of the Division of Alcoholic Beverage Control, Cape May County Board of Chosen Freeholders and Municipal Clerks of each Cape May County Municipality.



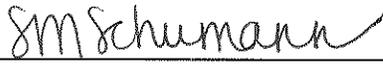
Carol E. Sabo, Mayor



Peter C. Burke, Deputy Mayor



John H. Francis, III, Commissioner



Suzanne M. Schumann, RMC
Municipal Clerk

Introduced: May 13, 2020

First Publication: May 20, 2020

Second Reading & Adoption: May 27, 2020

Final Publication: June 3, 2020

Effective Date: May 27, 2020

I hereby certify that the foregoing is a true copy of an Emergency Ordinance duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on May 27, 2020.

Municipal Clerk