

CITY OF PASSAIC

ORDINANCE - 1831-10

**AN ORDINANCE OF THE CITY OF PASSAIC AMENDING
THE CODE OF THE CITY OF PASSAIC TO PERMIT
SEASONAL OUTDOOR SEATING FOR RESTAURANTS**

WHEREAS, the Mayor and Council of the City of Passaic have determined that the establishment of regulations for seasonal outdoor seating for restaurants will help to foster a pleasant and distinctive ambiance within the City and that the proper regulation of such activity is required in the interests of the health, safety and welfare of the people of the City; and

WHEREAS, the Mayor and City Council wish to clarify certain permit application requirements.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Passaic, that the City Code is hereby amended to add the following new section:

SECTION ONE

SEASONAL OUTDOOR SEATING

Purpose.

The Council of the City of Passaic has determined the purpose of this ordinance is to permit daytime and early evening outdoor dining on private property and sidewalks adjacent to local restaurants for the enjoyment of restaurant patrons without disturbing the immediate neighborhood or pedestrian traffic. It is intended to permit the tasteful, aesthetic use of tables and chairs on adjacent property and sidewalks of local restaurants under the direction and approval of the City of Passaic Engineering Department, provided that all tables, chairs, and/or similar food service equipment meet the requirements of the New Jersey Administrative Code at N.J.A.C. 8:24-1.1 et seq. It is the intention of the Mayor and Council of the City of Passaic to monitor and review the use of these facilities after the adoption of this ordinance to determine its full impact upon the City and the enjoyment of its citizens.

Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

SEASONAL OUTDOOR SEATING

Outdoor seating provided at a restaurants defined in the City Code and duly licensed and approved pursuant to the New Jersey Administrative Code at N.J.A.C. 8:24-1.1 et seq. and City Code § 149-1 et seq. as the same may be from time to time amended and supplemented. Outdoor seating shall include removable seats and tables, located within a defined area of a site plan that is not otherwise devoted to a function essential to the site. Seasonal outdoor seating shall be limited to use between April 15 and November 1 (inclusive). Season outdoor seating permits may be issued annually and shall expire at 12:00am on November second of the calendar year issued.

RESTAURANT

Any establishment at which the primary activity is the preparation and serving of food and beverages for consumption by patrons on its premises.

Permits required, violations and penalties

- A. Except as otherwise provided herein, it shall be unlawful to offer seasonal outdoor seating without first obtaining a permit as required by this chapter and otherwise complying with all other applicable statutes, regulations and ordinances.
- B. All permit applications for properties which propose occupying part of the Passaic County right of way for the outdoor seating must obtain a County of Passaic encroachment permit and submit same with the application to the City engineer.
- C. The hours for outdoor service shall be between 7:00 a.m. and 10:00 p.m. All tables, chairs and equipment shall be removed and placed securely indoors no later than 10:30 p.m.
- D. A liquor licensed establishment which seeks to sell alcoholic beverages in an outdoor seating area should apply for the outdoor seating permit first. If that permit is issued, then the ABC licensee must obtain a place to place transfer to allow the service of alcoholic beverages in the outdoor area. The licensee is deemed to have an interest in this outdoor area for purposes of using and maintaining same for the outdoor seating if a permit is approved.

PERMITTED INSTALLATIONS.

- A. Outdoor tables and chairs shall be permitted within the property commonly owned and adjacent to the retail food establishment and service thereto for the patrons provided:

1. The design of the tables and chairs is aesthetically pleasing and complementary to the surrounding architecture, provided that the sizes of tables meet the requirements set forth City Code § 149-46 and provided that all tables, chairs, and/or similar food service equipment meet the requirements of City Code §149-47 and the New Jersey Administrative Code at N.J.A.C. 8:24-1.1 et seq.

2. The layout of tables and chairs does not in any way interfere with pedestrian or vehicular safety, or with necessary access for fire fighting equipment and ambulances or personnel. At least five (5) feet of open unused space adjacent to the curb shall be provided on any sidewalk area upon which seating is proposed.

3. The layout shall not cause irreparable damage to existing landscaping.

4. Notwithstanding Section 75-23 of the Passaic City Code, alcoholic beverages of any kind may be served or consumed in conjunction with the outdoor dining on public sidewalks where the permittee has the appropriate ABC license. No alcoholic beverages brought to the establishment by patrons or other persons shall be served or consumed in the outside facility on public sidewalks.

5. The highest standards of cleanliness of the outdoor area are to be maintained at all times, including frequent litter removal, within and around and beyond the subject property. A plan for litter removal, trash handling, and overall cleanliness and maintenance must be submitted together with the application.

6. The hours for outdoor service shall be between 7:00 a.m. and 10:00 p.m. All tables, chairs and equipment shall be removed and placed securely indoors no later than 10:30 p.m.

7. No outdoor music or public address system shall be permitted.

8. No outside lighting shall be permitted except small individual table lighting that is self-powered.

9. Outdoor seating shall not be permitted if it will interfere in any way with the peace and quiet of nearby residences.

10. Low barriers of a temporary nature (not to exceed 3 feet in height) may be placed at the edge of the seating area during business hours so long as there is no interference with public safety or pedestrian movement patterns.

11. No outside cooking of any kind shall be permitted.

12. All requirements as set forth City Code § 149-47 are met at all times.

Application; Review.

- A. Each applicant for a seasonal outdoor seating permit shall submit and file an application with the City Engineer. The application shall set forth:

- (1) The name and address of the applicant;
- (2) The name and address of the owner of the subject property (if other than the applicant);
- (3) The written authorization and approval of the owner of the establishment (if other than the applicant);
- (4) A description of the proposed design and location of the seasonal outdoor seating and all temporary structures, equipment, and apparatus to be used in connection with its operation, including tables, chairs, and planters.;
- (5) A statement of the seating capacity of the proposed seasonal outdoor seating and of the existing eating establishment operated by the applicant in the adjacent building;
- (6) A description of the proposed location of the seasonal outdoor seating showing the actual dimensions of the area to be utilized and pedestrian traffic related thereto.
- (7) Scaled layout of tables and chairs, and low barrier if proposed, showing dimensions of tables, chairs and overall area, as related to building façade, sidewalk, existing poles, news boxes, trees or other sidewalk installations.
- (8) A detailed narrative and plan of relevant information, describing method of service, proposed hours of service outdoors and method of litter control and trash handling for outdoor service.
- (9) Photographs or diagrams of tables, chairs, etc. to be utilized, showing style, design, materials, size and colors.
- (10) Evidence regarding where tables and chairs, etc., will be stored indoors after 10:30 p.m.
- (11) A Passaic County encroachment permit, if the applicant is proposing to encroach on the Passaic County right of way for the table and chairs.

(12) A copy of the liability insurance certificate with the coverage limits set forth below shall be submitted with the application.

(13) Section 259-1 of the Passaic City Code shall not apply to the placement of table and chairs on the public areas if a permit is obtained pursuant to this ordinance.

B. Applicant must have liability insurance in effect at the time of the application. If restaurant operator is not the property owner, then the property owner must likewise have insurance in effect at the time of application by the restaurant operator. The City of Passaic must be named as an additional insured on the operator's policy as well as on the property owner's policy. The limits of liability required are a minimum of \$500,000 combined single limit bodily injury and property damage or a split limit of \$500,000 bodily injury liability and \$100,000 property damage liability. In addition, the County of Passaic requires an additional Certificate of Insurance indemnifying the County as well as a hold harmless agreement.

C. The annual fee for a seasonal outdoor seating permit of \$250.00 shall be submitted with the application.

D. A Seasonal Outdoor Seating permit may only be issued to a food establishment permitted in accordance with Chapter 149.

E. In reviewing an application for a seasonal outdoor seating permit, the City Engineer shall consider the following aspects of an administrative site plan, including but not by way of limitation the following:

- (1) Pedestrian and traffic circulation, to insure that pedestrian access and traffic are not impacted;
- (2) Number, type and location of existing seats in conjunction with approved wastewater flows;
- (3) Police and first aid/emergency squad access is available to the site;
- (4) Fire Safety is not impacted by the use
- (5) Parking will be maintained in the same amount ; and
- (6) Trash removal is provided; and

F. After review of the administrative site plan, the City Engineer may issue a seasonal outdoor seating permit with conditions, including but not by way of limitation:

- (1) Limitation on seasonal outdoor seating so as not to exceed the total number of existing approved indoor seats as provided in the retail food establishment's Certificate of Occupancy.
- (2) When deemed necessary, directional or other informational signs; and
- (3) Any other condition that may be deemed necessary and/or appropriate to the protection of public health, safety and welfare.

G. The City Engineer shall refer the application to the Zoning Officer, Health Officer, Police Department or other official deemed appropriate by the City Engineer, who shall thereupon recommend approval, disapproval or modification of the application.

H. Plans and specifications for an addition, alteration, or modification of an outdoor seating area shall be submitted to the City Engineer and Division of Health for review and approval in accordance with the requirements of Code § 149 and the New Jersey Administrative Code at N.J.A.C. 8:24-1.1 et seq. as the same may be from time to time amended and supplemented.

I. Any applicant who has been found in violation of any ordinance, statute or regulation involving the outdoor seating area or its operation shall be barred from applying for an outdoor seating permit for the next season after the violation.

SECTION 2 VIOLATIONS AND FINES

A. It shall be unlawful to violate this chapter, the terms and conditions of any permit issued hereunder, or any provision herein.

B. Any person convicted of a violation of any of the provisions of this chapter shall be subject to a fine not to exceed \$1,250 or 90 days imprisonment or both as set forth in the Code of the City of Passaic, as may be amended. Each violation of a section or subsection of this chapter, and each day that a violation continues, shall constitute a separate offense.

C. The City of Passaic reserves the right to revoke the permit of any permit holder who, upon the expiration of ten (10) days after receipt of notice from the City of Passaic or its agents of a violation of the state law or any requirements set forth in this chapter, fails to cure the violation. If the permit holder seeks a new permit he must follow the provisions of Chapter 177 for issuing a new permit.

D. The City of Passaic expressly reserves the right to require the removal of all of the outdoor seating areas upon any sidewalk or public place which are improperly maintained.

E. All violations of this ordinance involving ABC licensed premises shall be forwarded to the Passaic ABC Board.

SECTION 3. If any Chapter, Article, Section or Subsection, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid by any court of competent jurisdiction such decisions shall not affect the remaining portions of this Ordinance.

SECTION 4: All ordinances or rules or regulations of the City of Passaic, which are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

SECTION 5: This ordinance shall take effect upon passage and publication according to law.

INTRODUCED BY COUNCILPERSON: Jose Garcia

SECONDED BY COUNCILPERSON: Maritza Colon-Montanez

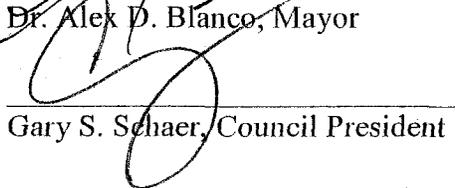
Record of Council Vote on Final Passage	Aye	Nay	Abstain	Absent
COLÓN-MONTAÑEZ, M.	x			
GARCIA, J.	x			
LOVE, T.	x			
LUCIANIN, K.	x			
MUNK, C.	x			
SCHAER, G.	x			
SCHWARTZ, D.	x			

Adopted on first reading at a meeting of the Council of the City of Passaic, NJ on April 27, 2010. Adopted on second and final reading after hearing on May 11, 2010.

APPROVED:



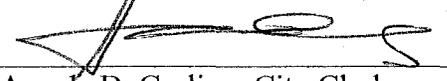
 Dr. Alex D. Blanco, Mayor



 Gary S. Schaer, Council President

May 12, 2010

 Date



 Amada D. Curling, City Clerk

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