

P.L. 2021, CHAPTER 15, *approved February 5, 2021*
Senate, No. 3340 (*First Reprint*)

1 AN ACT creating opportunities for restaurants, bars, distilleries, and
2 breweries to adjust operations in response to the COVID-19
3 public health emergency through expanded outdoor dining; and
4 by permitting certain sales at seasonal farm markets, ¹and
5 supplementing Title 33 of the Revised Statutes¹.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:
9

10 1. As used in this act, P.L. , c. (pending before the
11 Legislature as this bill), and only for the purposes of this act:

12 “Brewery” means a brewery operating under a brewery license
13 pursuant to R.S.33:1-10.

14 “Distillery” means a distillery that has been issued, and is in
15 compliance with, a distillery license pursuant to R.S.33:1-10.

16 “Food” means food that is cooked, prepared, sold, served, and
17 consumed on the business premises.

18 “Outdoor space” means a patio or deck, whether covered or
19 uncovered, a yard, a walkway, or a parking lot, or a portion of any
20 such space, that is located on or adjacent to the business premises,
21 which space is owned, leased, or otherwise in the lawful control of
22 the owner or operator of the business premises.

23 “Public sidewalk” means a sidewalk on the locally or county
24 owned public right-of-way which is adjacent to the business
25 premises, or a portion thereof.

26 “Special Ruling No. 2020-10” means Special Ruling No. 2020-
27 10, issued by the acting director of the Division of Alcoholic
28 Beverage Control on June 3, 2020.
29

30 2. a. Notwithstanding the provisions of any law to the
31 contrary, during the period that this section is in effect, the owner or
32 operator of a restaurant, bar, distillery, or brewery may use outdoor
33 spaces which they own or lease and which are located either on, or
34 adjacent to, their business premises, as an extension of their
35 business premises for the purpose of conducting sales of food and
36 beverages ¹[, including alcoholic beverages if so licensed and
37 permitted by Special Ruling No. 2020-10]¹.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted January 11, 2021.

1 b. The owner or operator of a restaurant, bar, distillery, or
2 brewery desiring to utilize outdoor spaces as an extension of their
3 businesses shall file an application with the municipal zoning
4 officer that includes: (1) a plan, sketch, picture, or drawing that
5 depicts the design, dimensional boundaries, and placement of tents,
6 canopies, umbrellas, tables, chairs, and other fixtures of the outdoor
7 spaces; and (2) a plan for the control of litter, the removal and
8 storage of garbage, and the cleaning of fixtures and grounds. If a
9 business premises' parking lot is used for the service and sale of
10 either food or beverages, or both, ¹[including, but not limited to,
11 alcoholic beverages if so licensed,] ¹ the restaurant, bar, distillery,
12 or brewery shall not encumber more than 75 percent of the lot's
13 total parking spaces for such service and sale, unless the parking lot
14 contains less than eight parking spaces, and shall maintain at least
15 one handicapped parking space in the parking lot.

16 c. A municipality may require that an applicant provide one or
17 more of the following: (1) written consent of the owner of the
18 premises, if other than the applicant, (2) an insurance certificate
19 naming the municipality as an additional insured, with general
20 liability on an occurrence with a limit of liability of at least
21 \$1,000,000, with respect to losses arising solely from the operation
22 of the outdoor dining facility, or (3) an indemnification agreement
23 with the municipality with respect to losses arising solely from the
24 operation of the outdoor dining facility.

25 d. (1) The zoning officer shall issue an approval to the
26 applicant within 15 business days of the application being submitted
27 and deemed complete provided that the applicant meets and abides
28 by all qualifications and requirements of this act, with the exception
29 that the zoning officer may deny an application based on current
30 violations of any other health, safety, fire, permitted use, or zoning
31 regulation, or upon any applicable law permitting the denial of a
32 zoning permit, that is not otherwise directly superseded by this
33 section or Special Ruling No. 2020-10. An application under this
34 section shall not be considered a variance under the "Municipal
35 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

36 (2) A municipality may deny, revoke, or temporarily suspend
37 the permit of any applicant or permittee that violates, or is not in
38 compliance with, any provision of this act or any provision of a law,
39 ordinance, or regulation related to health, safety, fire, permitted
40 use, zoning, or ¹ the consumption or control of alcoholic beverages
41 not otherwise under the jurisdiction of the Division of Alcoholic
42 Beverage Control, and may also deny, revoke, or temporarily
43 suspend the permit of any applicant or permittee based on any
44 action taken against the applicant or permittee by the Division of
45 Alcoholic Beverage Control related to the division's enforcement of
46 any law or regulation related to the consumption or control of
47 alcoholic beverages under its jurisdiction.

1 (3) An appeal to any approval, denial, revocation, or suspension
2 may be filed ¹【consistent with section 59 of P.L.1975, c.291
3 (C.40:55D-72), and other applicable provisions of the “Municipal
4 Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.), and:

5 the commencement of the 20-day limitation period in section 59
6 of P.L.1975, c.291 (C.40:55D-72) shall begin on that date that the
7 appellant knew or should have known of the approval, denial,
8 revocation, or suspension, and

9 the deadline by which a decision on an appeal is to be rendered
10 under section 60 of P.L.1975, c.291 (C.40:55D-73) shall be 60
11 days. The governing body of a municipality may adjust, by
12 ordinance or resolution, any other deadlines under the “Municipal
13 Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.) with respect
14 to the filing of such appeal so as to allow compliance with this 60-
15 day limitation **】** through the municipal clerk with the governing body
16 of the municipality. The governing body, or its designee, shall
17 conduct a hearing and render a decision within 30 days of the filing of
18 the appeal. The governing body may designate a municipal official or
19 an attorney licensed in the State of New Jersey to serve as a hearing
20 officer in place of the governing body for the purpose of conducting
21 said hearing and rendering said decision¹.

22 Nothing in this act shall be construed to restrict the right of any
23 party to obtain a review by any court of competent jurisdiction,
24 according to law.

25 e. A municipality shall require that any restaurant, bar,
26 distillery, or brewery operating pursuant to this section shall follow,
27 maintain, and enforce protocols promulgated by the Commissioner
28 of Health or Executive Order of the Governor in response to the
29 COVID-19 public health emergency, concerning social distancing
30 and use of personal protective equipment during the period those
31 protocols are in effect.

32
33 3. a. Notwithstanding the provisions of any law to the
34 contrary, during the period that this section is in effect, the owners
35 and operators of restaurants, bars, distilleries, and breweries may
36 use public sidewalks as an extension of their business premises for
37 the purpose of conducting sales of food and beverages ¹【, including
38 alcoholic beverages if so licensed and permitted by Special Ruling
39 2020-10**】**¹.

40 b. The owner or operator of a restaurant, bar, distillery, or
41 brewery desiring to utilize public sidewalks as an extension of their
42 businesses shall file an application with the municipal zoning
43 officer that includes: (1) a plan, sketch, picture, or drawing that
44 depicts the design, dimensional boundaries, and placement of tents,
45 canopies, umbrellas, tables, chairs, and other fixtures of the public
46 sidewalks; and (2) a plan for the control of litter, the removal and

1 storage of garbage, and the cleaning of fixtures and public
2 sidewalks.

3 c. A municipality may require that an applicant provide one or
4 more of the following: (1) written consent of the owner of the
5 premises, if other than the applicant, (2) an insurance certificate
6 naming the municipality as an additional insured, with general
7 liability on an occurrence with a limit of liability of at least
8 \$1,000,000, with respect to losses arising solely from the operation
9 of the outdoor dining facility located on public sidewalks, or (3) an
10 indemnification agreement with the municipality with respect to
11 losses arising solely from the operation of the outdoor dining
12 facility on public sidewalks.

13 d. (1) The zoning officer shall issue an approval to the
14 applicant within 15 business days of the application being submitted
15 and deemed complete provided that the applicant meets and abides
16 by all qualifications and requirements of this act, with the exception
17 that the zoning officer may deny an application based on current
18 violations of any other health, safety, fire, permitted use, or zoning
19 regulation, or upon any applicable law permitting the denial of a
20 zoning permit that is not otherwise directly superseded by this
21 section or Special Ruling No. 2020-10. An application under this
22 section shall not be considered a variance under the “Municipal
23 Land Use Law,” P.L.1975, c.291 (C.40:55D-1 et seq.).

24 (2) A municipality may deny, revoke, or temporarily suspend
25 the permit of any applicant or permittee that violates, or is not in
26 compliance with, any provision of this act or any provision of a law,
27 ordinance, or regulation related ¹to health, safety, fire, permitted
28 use, zoning, or¹ to the consumption or control of alcoholic
29 beverages not otherwise under the jurisdiction of the Division of
30 Alcoholic Beverage Control, and may also deny, revoke, or
31 temporarily suspend the permit of any applicant or permittee based
32 on any action taken against the applicant or permittee by the
33 Division of Alcoholic Beverage Control related to the division’s
34 enforcement of any law or regulation related to the consumption or
35 control of alcoholic beverages under its jurisdiction.

36 (3) An appeal to any approval, denial, revocation, or suspension
37 may be filed through the municipal clerk with the governing body
38 of the municipality. The governing body, or its designee, shall
39 conduct a hearing and render a decision within 30 days of the filing
40 of the appeal. The governing body may designate a municipal
41 official or an attorney licensed in the State of New Jersey to serve
42 as a hearing officer in place of the governing body for the purpose
43 of conducting said hearing and rendering said decision.

44 Nothing in this act shall be construed to restrict the right of any
45 party to obtain a review by any court of competent jurisdiction,
46 according to law.

47 e. Owners and operators of restaurants, bars, distilleries, or
48 breweries desiring to utilize ¹【outdoor spaces】 public sidewalks¹ are

1 subject to the following conditions: (1) a walking path not less than
2 four feet wide must be maintained on the public sidewalk at all
3 times so as to not obstruct pedestrian traffic; (2) all fixtures must be
4 removed from public sidewalks at the conclusion of each day, if so
5 required by the municipality; and (3) the municipality reserves the
6 right to order the temporary suspension of outdoor dining and the
7 removal of all fixtures from public sidewalks due to road or utility
8 construction, predicted high winds or severe weather, predicted
9 snow or ice storms, the need to remove snow or ice from the
10 sidewalks, or any other public emergency that may arise.

11 f. Municipalities shall require that any restaurants, bars,
12 distilleries, or breweries operating pursuant to this section shall
13 follow, maintain, and enforce protocols promulgated by the
14 Commissioner of Health or Executive Order of the Governor in
15 response to the COVID-19 public health emergency, concerning
16 social distancing and use of personal protective equipment during
17 the period those protocols are in effect.

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19 4. a. Notwithstanding the provisions of any other law to the
20 contrary, the expiration date of any COVID-19 Expansion Permit
21 issued by the Director of the Division of Alcoholic Beverage
22 Control pursuant to the provisions of Special Ruling No. 2020-10
23 shall be November 30, 2022 or the date on which indoor dining
24 resumes without capacity limitations pursuant to an executive order
25 issued by the Governor, whichever is later.

26 b. The governing body of a municipality may file with the
27 Division of Alcoholic Beverage Control an objection to the
28 continued operation under subsection a. of this section by any
29 licensee or permittee the governing body finds to have:

30 (1) failed to follow, maintain, and enforce protocols
31 promulgated by the Commissioner of Health or by Executive Order
32 of the Governor in response to the COVID-19 public health
33 emergency concerning social distancing and the use of personal
34 protective equipment; or

35 (2) violated any other health, safety, fire, permitted use, or
36 zoning regulations or ordinances not otherwise directly superseded
37 by this section or Special Ruling No. 2020-10.

38 Any decision rendered, or action taken, by the Director of the
39 Division of Alcoholic Beverage Control as a result of an objection
40 filed by the governing body of the municipality pursuant to this
41 subsection shall be a final agency action subject to judicial review
42 in the Appellate Division of the Superior Court of New Jersey in
43 accordance with the Rules of Court.

44 c. Nothing in this act shall preclude or limit the authority
45 provided to the Director of the Division of Alcoholic Beverage
46 Control pursuant to the provisions of Title 33 of the Revised
47 Statutes or the exercise of such authority thereby.

1 5. A public sidewalk or an outdoor space shall be considered a
2 portion of the premises which is open to the public for the purposes
3 of section 5 of P.L.1999, c.90 (C.2C:33-27).

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5 6. a. Notwithstanding any provision of this act to the contrary,
6 all other municipal ordinances pertaining to sanitation, property
7 maintenance, noise, business days and hours of operation, and days
8 and hours of service of alcoholic beverages shall apply, unless
9 specifically suspended or modified by the municipality or
10 specifically prohibited by the provisions of this section.

11 b. With respect to restaurants, bars, distilleries, and breweries
12 operating in outdoor spaces pursuant to section 2 of this act,
13 P.L. , c. (pending before the Legislature as this bill),
14 municipalities shall not prohibit or limit the days and hours of the
15 outdoor service of food and beverages, including alcoholic
16 beverages, except that municipalities may prohibit or limit
17 operations for the hours after 10:00 p.m. and between 12:00 a.m.
18 and 11:00 a.m. on Sundays through Wednesdays, and between
19 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with
20 the exception that a municipal ordinance prohibiting or limiting the
21 days and hours of indoor service of food and beverages, including
22 alcoholic beverages, which was in effect prior to March 1, 2020
23 may be applied to the outdoor service of food and beverages,
24 including alcoholic beverages, as a condition of the zoning approval
25 pursuant to section 2 of this act, P.L. , c. (pending before the
26 Legislature as this bill). This provision shall not be construed as
27 overruling or prohibiting the authority of a city of the first class to
28 impose more restrictive time restrictions or prohibit or limit the
29 days and hours of the outdoor service of food and beverages due to
30 increased positivity rate of COVID-19.

31 c. A municipality may either prohibit or limit the days and
32 hours of any live performances, including musical performances,
33 and the playing or projection of any content from a recording,
34 streaming service or television, cable or internet broadcasting
35 service in outdoor spaces or on public sidewalks as a condition of
36 the zoning approval pursuant to sections 2 and 3 of this act,
37 P.L. , c. (pending before the Legislature as this bill).

38 ¹[d. A municipality may deny, revoke, or temporarily suspend,
39 the outdoor dining activity of any establishment that violates, or is
40 not in compliance with, any provision of this act or any provision of
41 a law, ordinance, or regulation related to the consumption or control
42 of alcoholic beverages.

43 e. Notwithstanding the provisions of this section, a
44 municipality may by resolution opt to waive any or all requirements
45 of this section.]¹

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47 7. Nothing in this act shall be interpreted or construed as
48 permitting or mandating the opening, expansion, or resumption of

1 unlimited operations of a restaurant, bar, or brewery that is closed,
2 whether permanently or temporarily, or operating subject to
3 limitations on its operations, service, or hours, as a result of
4 disciplinary or legal sanctions imposed by, or entering into a
5 settlement agreement with, a court of the State of New Jersey, a
6 municipal court, the New Jersey Department of Law and Public
7 Safety, the New Jersey Division of Alcoholic Beverage Control, or
8 a municipal governing body acting as a local alcoholic beverage
9 control board, as applicable.

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11 8. Nothing in this act permits the use of State-owned right of way
12 for the purposes of outdoor dining. Permits for the use of the State
13 right of way will be issued upon application and approval of the New
14 Jersey Department of Transportation. For the purposes of locally-
15 owned roads that intersect the State highway system, setbacks from the
16 State right of way line will be 50 feet from April 1 to October 31, and
17 100 feet from November 1 to March 31.

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19 9. a. As used in this section:

20 “Roadside farm stand” means a location owned by a single
21 farmer or producer at which the farmer or producer sells
22 agricultural products only from the farmer’s or producer’s farm
23 directly to consumers.

24 “Seasonal farm market” means a premises or facility utilized for
25 the primary purpose of selling predominately agricultural or
26 horticultural products, and which is annually closed to business
27 during an off-season for a period of not less than 90 continuous
28 days.

29 b. The Director of the Division of Alcoholic Beverage Control
30 may, in accordance with regulations or a special ruling issued
31 pursuant to this section, issue to the holder of a limited brewery
32 license, restricted brewery license, craft distillery license, plenary
33 winery license, farm winery license, or cidery and meadery license,
34 as established pursuant to R.S.33:1-10, a daily or annual permit to
35 sell any of the licensee’s products ‘in original containers’¹ at a
36 seasonal farm market for consumption off of the premises of the
37 seasonal farm market. The licensee shall obtain a separate permit
38 for each seasonal farm market at which the licensee intends to sell
39 its products. The director shall not issue a permit pursuant to this
40 section for use in connection with a roadside farm stand.

41 c. Subject to regulation or special ruling, a licensee issued a
42 permit pursuant to this section may:

43 (1) transport the licensee’s products in original containers for
44 the purpose of selling them at a seasonal farm market; and

45 (2) offer samples for sampling purposes to persons of the legal
46 age to consume alcoholic beverages in the amounts authorized
47 pursuant to R.S.33:1-10 during each day the seasonal farm market is
48 operating.

1 d. A daily permit shall be valid for the hours during which a
2 seasonal farm market is open within the 24-hour period for which
3 the daily permit is issued. An annual permit shall be valid for one
4 year from the date of issuance. The director may renew a permit,
5 provided the permit holder continues to hold a limited brewery
6 license, restricted brewery license, craft distillery license, plenary
7 winery license, farm winery license, or cidery and meadery license,
8 as applicable.

9 e. Notwithstanding any law or regulation to the contrary, the
10 director may establish a fee, in an amount determined by the
11 director, for the issuance and renewal of a permit under this section.

12 f. The Director of the Division of Alcoholic Beverage Control
13 shall issue a special ruling or adopt regulations necessary to
14 effectuate the purposes of this section. Regulations shall be
15 effective immediately upon filing with the Office of Administrative
16 Law for a period not to exceed 18 months, and may, thereafter, be
17 amended, adopted or readopted in accordance with the provisions of
18 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
19 1 et seq.).

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21 10. This act shall take effect on the 30th day following
22 enactment and sections 1 through 8 shall expire on November 30,
23 2022 or on the date of the resumption, pursuant to an executive
24 order issued by the Governor, of indoor dining without capacity
25 limitations, whichever is later.

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30 Expands opportunities for restaurants, bars, distilleries, and
31 breweries to provide outdoor dining and permits certain sales at
32 seasonal farm markets in response to COVID-19 public health
33 emergency.