BOROUGH OF MILLTOWN

RESOLUTION 20-120

RESOLUTION ADOPTING OUTDOOR SEATING REGULATIONS PURSUANT TO EXECUTIVE ORDER 150 OF THE GOVERNOR OF NEW JERSEY

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), the Governor of New Jersey issued Executive Order No. 103 on March 9, 2020, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, on March 16, 2020, the Governor of New Jersey signed Executive Order No. 104, which limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only, meaning that they could not allow the on-premises consumption of food or beverages; and

WHEREAS, on March 21, 2020, the Governor of New Jersey signed Executive Order No. 107, which superseded Executive Order No. 104 (2020) in full but continued the prohibition of on-premises consumption of food or beverages; and

WHEREAS, given the decrease in the rate of reported new cases of COVID-19 in New Jersey, in the total number of individuals being admitted to hospitals for COVID-19, and in the rate of reproduction for COVID-19 infections in New Jersey, the State has begun taking certain steps to lift certain restrictions that were designed to limit person-to-person contact; and

WHEREAS, even as the rate of reported new cases of COVID-19 decreases, the ongoing risks presented by COVID-19 requires that many of the State's current measures must remain in place, both to reduce additional new infections and to save lives; and

WHEREAS, given the reduced risks of COVID-19 transmission outdoors, on June 3, 2020, the Governor of New Jersey issued Executive Order 150 which permitted restaurants, bars, and other food or beverage establishments to provide in-person service at areas designated for food and/or beverage consumption ("outdoor dining"), effective June 15, 2020, in accordance with Centers for Disease Control and Prevention and Department of Health safeguards; and

WHEREAS, on June 3, 2020, the Department of Health issued Executive Directive Number 20-014 providing guidelines for food and beverage establishments to offer service in outdoor areas pursuant to the Governor's Executive Order Number 150; and

WEHREAS, on June 3, 2020, the New Jersey Department of Law and Public Safety, Division of Alcoholic Beverage Control issued Special Ruling SR 2020-10 which established a temporary Covid-19 permit to enable licensees and permittees to expand their licensed premises into outdoor areas; and

WHEREAS, Executive Order 150 recognized that: "Municipalities are permitted to use their existing authority to allow food or beverage establishments to expand their footprint to outdoor areas, both within their property and among municipally-governed areas, including but not limited to sidewalks, streets, or parks;" and

WHEREAS, the Borough Council of the Borough of Milltown believes that it would be appropriate to establish regulations to permit outdoor seating on a temporary basis as an accessory use to a Restaurant, Fast Food Restaurant, Drive-In Restaurant or Tavern as those terms are defined in the Borough's Comprehensive Development ordinance, as well as to

holders of a Club License issued by the New Jersey Division of Alcoholic Beverage Control through the filing of a Zoning Permit Application subject to the procedure and regulations attached hereto as Exhibit "A."

NOW THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Milltown, County of Middlesex, State of New Jersey on this 17th day of June, 2020 as follows:

1. The annexed Outdoor Seating Regulations annexed hereto as Exhibit "A" are hereby adopted effective immediately.

I Gabriella Siboni , Clerk of the Borough of Milltown, do hereby certify that the foregoing is a true copy of a Resolution adopted by the Borough Committee of the Borough of Milltown at a Regular Meeting held on June 17, 2020.

Gabriella Siboni, RMC

Borough Clerk

Exhibit A

Borough of Milltown

1. Outdoor seating will be temporarily permitted as an accessory use to a Restaurant, Fast Food Restaurant, Drive-In Restaurant or Tavern as those terms are defined in the Borough's Comprehensive Development ordinance, as well as holders of a Club License issued by the New Jersey Division of Alcoholic Beverage Control (hereinafter collectively referred to as the "Applicant").

2. Outdoor restaurant seating will not require the filing of a Site Plan Application.

3. Permission to create outdoor seating shall be initiated by the filing of a Zoning Permit Application. A drawing of the proposed outdoor seating area must accompany the Zoning Permit Application. This drawing shall show the location and size of all proposed tables and chairs and distances to other tables and chairs and distances from any other structures such as a host podium and serving stations. All distance separations shall comply with all applicable Executive Orders issued by the Governor of the State of New Jersey, as well as any other requirements, conditions and/or limitations in any applicable Executive Orders. Where available, the sketch shall be superimposed upon an existing site plan drawing or survey.

4. The Borough will waive the filing fee for a Zoning Permit Application seeking to create an outdoor seating area.

5. The Borough will expedite the review of all Zoning Permit Applications seeking to create an outdoor seating area.

6. No performance bond, maintenance bond or engineering inspection fees will be required in connection with an approved outdoor seating area plan.

7. The following standards are hereby created in connection with an outdoor seating area:

   a. The outdoor seating area may not exceed 1,000 square feet.

   b. An outdoor seating area can be located upon public sidewalks where adequate provision is made for the pedestrian public, on relatively level grass areas, and in parking lots where an adequate number of parking stalls remain in the opinion of the Borough Zoning Officer. Preference should be given to creating outdoor seating on sidewalks and upon grass areas.

   c. Where an outdoor seating area is proposed to be created in a parking lot, bollards or other protection structures shall be erected along the perimeters of the outdoor seating area in order to enhance public safety.

   d. Temporary lighting may be required, in the discretion of the Borough Zoning Officer, if the outdoor seating area is proposed to be utilized after dusk and there is insufficient existing site lighting in the vicinity of the outdoor seating area.

   e. Landscaping of the perimeter of or within the outdoor seating area will not be required but may be proposed by the applicant.

   f. An awning or umbrellas may be utilized within an outdoor seating area, but tents shall not be permitted.

   g. Serving stations and a host podium may be located within an outdoor seating area provided a plexiglass or other similar partition is used.

   h. No change in grading will be permitted in order to create an outdoor seating area, and no temporary flooring or mats may be utilized.

   i. The proposed hours of operation of an outdoor seating area shall be included in the Zoning Permit Application.

j. No outdoor seating area may be located within an approved delivery area/loading zone.

k. An Applicant with existing outdoor seating area may seek to expand the existing outdoor seating area.

l. The proposed outdoor seating area may not affect the effective functioning of a prior approved site plan.

m. An Applicant for a proposed outdoor seating area must have previously secured site plan approval from the Borough Zoning Board of Adjustment or Planning Board and must be in compliance with its existing site plan approval.

n. The consumption of alcoholic beverages within an outdoor seating area will be regulated by Special Ruling SR 2020-10 issued by the New Jersey Division of Alcoholic Beverage Control on June 3rd, 2020.

o. Smoking is prohibited in all outdoor seating areas.

p. All outdoor seating areas must be in conformance with all applicable local, state and federal regulations, including the state of New Jersey Department of Health Executive Directive No. 20-014, dated June 3, 2020.

q. Capacity within the outdoor seating area shall be limited to a number that ensures that all patrons can remain six (6) feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table.

r. Tables seating individual groups must be six (6) feet apart in all directions and individual seats in any shared area that is not reserved for individual groups, such as an outdoor bar area, are also six (6) feet apart in all directions.

s. Patrons are prohibited from entering the indoor portion of an Applicant's premises except to walk through such indoor portion in order to access the outdoor seating area, or to use the restrooms.

t. All patrons are required to wear a face covering while inside the indoor portion of an Applicant's premises, unless the patron has a medical reason for not doing so or is a child under two years of age.

u. In multi-tenanted properties, an approved outdoor seating area must be discontinued or reduced in size if other retail, personal service and/or commercial establishments are permitted to reopen and there is not then an adequate number of parking stalls available in the discretion of the Borough Zoning Officer.

v. An approved outdoor seating area must be discontinued or reduced in size if proper social distancing is not maintained or the Applicant does not comply with applicable sanitary and cleaning standards, use of masks and partitions or other Executive Order requirements issued by the Governor or the State or County Departments of Health.

w. The Borough Zoning Officer shall have the discretion to set the hours of operation of an outdoor seating area, and to create additional standards for a particular property and to fashion such conditions as may be necessary to further the purposes of the Borough Land Development ordinance and/or these regulations.

x. The Applicant shall not direct or permit to be directed to or from the outdoor seating area any bell, siren, whistle, loudspeaker, public address system, radio or similar device.

y. An approved outdoor seating area must allow for appropriate access (maintaining appropriate social distancing) for any individual availing themselves of take-out service being offered by an Applicant.

z. Outdoor seating areas must provide seating to demark the areas to be occupied by patrons. Standing room only is not permitted as a proposed outdoor seating area.

aa. No food shall be prepared in an outdoor seating area with the exception of any food truck, owned by the Applicant, holding any and all necessary approvals from the State, County and local governmental authorities.

bb. An approved outdoor dining area must provide adequate aisle area for the unimpeded passage of handicapped individuals.

cc. Any Applicant which does not own the area in which the outdoor seating area is proposed must supply consent from the owner of the area.

dd. Any Applicant may permit individuals to consume alcoholic beverages within the outdoor seating area; as provided by N.J.S.A. 2C:33-27.

8. Any Applicant who wishes to use any portion of a right-of-way owned by the Borough as an outdoor seating area must execute an agreement to defend, indemnify and hold the Borough harmless for the use of the right-of-way.

9. The use of any approved outdoor seating area may be continued until one of the following occurs: ninety (90) days from the date of the adoption of a resolution by the Borough Council adopting these regulations; the adoption of a resolution by the Borough Council terminating these regulations; or termination of the permission granted for outdoor seating areas under Executive Order 150.