

**BOROUGH OF NEW PROVIDENCE
ORDINANCE 2012-09**

**AN ORDINANCE OF THE BOROUGH OF NEW PROVIDENCE, COUNTY OF UNION,
STATE OF NEW JERSEY, AMENDING CHAPTER 109 OF THE CODE OF THE
BOROUGH OF NEW PROVIDENCE ENTITLED "ALCOHOLIC BEVERAGES"**

BE IT ORDAINED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey as follows:

SECTION 1. Chapter 109 of the Code of the Borough of New Providence is amended, to read in full, Article I, entitled "Licensing; Fees; Hours of Sale", as follows:

Sec. 109-1 Purpose.

This chapter is enacted to regulate the sale and transportation of alcoholic beverages in the Borough of New Providence in accordance with the provisions of an act of Legislature of the State of New Jersey entitled An Act Concerning Alcoholic Beverages, comprising Chapter 436 of the Laws of 1933, its supplements and amendments, and also comprising N.J.S. 33:1-1 et seq., and in accordance with the rules and regulations of the State Director of Alcoholic Beverage Control. (new)

Sec. 109-2 Definitions

For the purposes of this chapter, words, and phrases herein shall have the same meaning as in N.J.S.A. 33:1-1 et seq., and the rules and regulations of the Director of the Division of Alcoholic Beverage Control.

Sec. 109-3 Licenses

109-3.1

All applications for licenses, all licenses issued and all proceedings under this chapter shall be in accordance with the act, rules and regulations referred to in Section 109-1, and all other applicable laws of the State of New Jersey or the United States. (new)

109-3.2 Issuing Authority.

All licenses required by this chapter shall be issued by the Borough Council, which shall also administer the provisions of this chapter. (new)

109-3.3 License Required.

No person shall sell or distribute alcoholic beverages within the Borough of New Providence without obtaining a license in accordance with the Act referred to in Section 6-1 and the provisions of this chapter. (new)

109-3.4 Application Forms.

All applications for licenses shall be made on forms prescribed by the State Commissioner of Alcoholic Beverage Control. (new)

109-3.5 Inspection and Investigation.

All licenses issued by the Borough Council under this chapter shall be subject to the terms thereof including inspection by the Code Enforcement Agencies and background investigations by the Police Department and to the rules and regulations promulgated by the State Commissioner of Alcoholic Beverage Control. (new)

109-3.6 Term of License; Application Fee.

The licenses shall be issued for a period from July 1 of each year to June 30, the following year, both inclusive. The fee for obtaining application forms shall be twenty - five (\$25.00) dollars, payable to the Borough Clerk. (new)

109-3.7 License Fees; Maximum Number

A. Annual Fees and Maximum Number of License. The annual fees and maximum number of licenses for the sale or distribution of alcoholic beverages in the Borough of New Providence shall be as follows: (new format)

Class of License	Annual License Fee	Maximum Number
Plenary Retail Consumption License	\$2,500.00	Not more than four (4) (premises operated as a bona fide restaurant)
Plenary Retail Distribution License	\$2,500.00	Not more than three (3)
Club License	\$180.00	Club licenses may be granted from time to time on application, provided the Borough council is satisfied that such licensed club is a bona fide organization.

B. Hotel conditional license (Plenary Retail Consumption License) .

A plenary retail consumption license may be issued to the owner or operator of a hotel with less than 100 rooms, or to the owner or operator of a bona fide restaurant which is located within the same building or structure as a hotel; subject, however to the following restrictions and regulations:

1. No such license may be transferred by the licensee to any other person or to any other locality, except to a person owning or operating such a bona fide hotel or owning or operating such a bona fide restaurant within the principal structure as the hotel, at the same location or such other approved location and owned by the principal owner of the hotel.
2. Any such license for or transferred to a hotel owner or operator or to a person owning or operating a bona fide restaurant located within the same building or structure as the hotel shall remain in force only so long as a bona fide hotel is actually being operated at such location and such location and such license shall be revoked should the hotel cease operating as such at such a location. A bona fide hotel shall only be one whose main business is renting of rooms to transients with hotel service. The Borough council shall have the full right to determine what a bona fide hotel is as referred to in this section and the decision of the council shall be final.
3. Sale or consumption of alcoholic beverages shall be permitted (i) with meals served to customers seated at tables in the room or rooms regularly furnished and used as dining room space, (ii) as part of room service, which may include a reduced food service menu, and (iii) at hospitality suites at which food is served, which shall not exceed seven percent (7%) of the total number of guest rooms in the hotel.
4. Guest Rooms may contain mini bars provided containers or packages of spirits or wine sold by means of a minibar shall hold not less than 50 nor more than 200 milliliters, and that the said minibar shall be restocked with alcoholic liquor or cereal malt beverage only during hours when the hotel is permitted to sell alcoholic liquor and cereal malt beverage as a drinking establishment. Access to these guest rooms containing minibars, via a key, magnetic card or other device, shall be provided only to guests who are registered to stay in such room and who are 21 or more years of age.
5. The licensed premises shall include only that portion of the hotel building or structure open to the general public for dining where meals are actually sold and served on a regular basis or where the alcoholic beverages are stored. A premises licensed under this section may provide tables and a bar/lounge area at which alcoholic beverages may be served without meals for the use of patrons. The number of bar stools shall be calculated as no more than 1 bar stool per 4 seats of dining, but, in any event, no more than 1 bar stool for every three (3) feet

of bar counter. The maximum capacity of the bar area shall not exceed 90 people having a maximum capacity of 50 seats, 18 bar stools and a standing capacity of 25. Such bar/lounges shall offer its full dining menu. The bar/lounge area should be delineated by a knee wall, railing or architectural feature to designate the limits of the bar/lounge area. Each seat at tables provided for this purpose shall be included in computing the floor space required by this section for obtaining such license.

6. Notwithstanding any provisions herein to the contrary, if the hotel contains conference or meeting rooms, and lobby areas, which are restricted to hotel guests or hotel functions, and which are or may be used from time to time for private meetings, banquets, conferences, parties or other similar occasions, alcoholic beverages may be served to persons attending such private meeting, conference or party by the licensee. Such conference or meeting room shall be considered part of the licensed premises if so requested by the licensee.

7. Any such licensee shall, as a condition of obtaining and retaining such license, operate the licensed premises as a bona fide restaurant and shall serve or cause to be served at least two meals a day, being lunch and dinner and shall be open for business a minimum of six days per week for a minimum of forty-eight weeks per year. This requirement shall not apply to not more than four (4) holidays per year. Such license shall be revoked should the holder thereof cease operating such bona fide restaurant.

8. There shall be at least twelve square feet of floor space in the dining area for each seat and the computation of said dining area shall not include any space used for kitchen, pantry, storage, rest-rooms or any other purpose than dining. After initial approval, such licensed premises shall not be altered or rearranged without first obtaining approval of the Borough council.

9. There shall be located on the premises adequate washrooms and toilet facilities for the purpose of servicing the customers of the restaurant, that are within the restaurant or closely proximate thereto, at least one for men and one for women. For the first 150 seats or fraction thereof in the dining room area, the men's lavatory shall contain two water closets, one urinal and one wash basin. For the first 150 seats or fraction thereof in the dining room area, the women's lavatory shall contain two water closets and one wash basin. For each additional seventy-five or fraction thereof in dining seating capacity over one hundred and fifty, there shall be one additional water closet required in each of said lavatories and one additional urinal required in the men's lavatory. For each additional one hundred or fraction thereof in dining seating capacity over one hundred and fifty, there shall be an additional wash basin required in each lavatory.

10. There shall be suitable facilities on the licensed premises for temporary storage of coats, hats, umbrellas, overshoes and other items of clothing outside the dining area.

11. Daily food and drink specials shall be permitted, however "timed" happy hours with a defined period of time where drinking is encouraged are prohibited.

12. The licensee shall keep and maintain accurate records of all sales sufficient to disclose what receipts were derived from the sale of alcoholic beverages and what receipts were derived from food stuffs, which records shall be open to inspection any time by the licensing body or its representatives, and may be kept under its supervision as directed if desired. In the event that inspection of the records of any licensee discloses that over fifty percent of the gross receipts are derived from the sale of alcoholic beverages, the licensing body may, in its discretion, after notice and proper hearing, revoke the license.

13. The Borough council shall further have the right to decline to issue such license, whether or not applications may be received conforming to the above regulations and conditions, where they shall deem any application by reason of location, increased traffic congestion, structural inadequacies of licensed premises, fire or health hazard, or proximity to churches or schools to be detrimental to the health, morals, safety or welfare of the town.

14. Any license issued under this section shall bear the notation "Hotel Conditional License".

C. Restaurant conditional license (Retail Consumption License). (new format)

Restaurant conditional licenses may be issued to operators of bona fide restaurants, as defined in section 33.1-1 (t) of the Revised Statutes; subject however, to the following restrictions and regulations:

1. No such license may be transferred by the licensee to any other person or to any other locality, except to a person operating such a bona fide restaurant as hereinafter more particularly defined and restricted at the same or such other approved locality, at the discretion of Council.

2. A premises licensed under this section may provide tables and a bar/lounge area at which alcoholic beverages may be served without meals for the use or patrons.; The number of bar stools shall be calculated as no more than 1 bar stool per 4 seats of dining, but in any event no more than 1 bar stool for every three (3) feet of bar counter. The maximum capacity of the bar/lounge area shall not exceed 90 people having a maximum capacity of 50 seats, 15 bar stools and a standing capacity of 25. Such bar/lounges shall offer its full dining menu. The bar/lounge area should be delineated by a knee wall, railing or architectural

feature to designate the limits of the bar/lounge area. Each seat at tables provided for this purpose shall be included in computing the floor space required by this section and shall also be included in the total seating capacity required by this section to meet the requirement for obtaining such license.

3. To qualify as a bona fide restaurant under this section, the premises must comply with the following requirements:

a. The premises must have a seating capacity at tables for at least twenty-five persons at one sitting. There shall be no food or beverages consumed at counters on the licensed premises even though such counter may be in a room separated from the portion of the restaurant where alcoholic beverages are served.

b. No room on the licensed premises devoted to the purposes of dining shall contain fewer than 300 hundred square feet of floor space, exclusive of any spaced used for kitchen, pantry, storage or any other purpose than dining.

c. There shall be at least twelve (12) square feet of floor space in the dining area for each seat, and the computation of said dining area shall not include any space used for kitchen, pantry, storage, rest rooms or any other purpose than dining.

d. Men's lavatory. For the first seventy-five seats or fraction thereof in the dining room area, the men's lavatory shall contain one water closet, one urinal and one wash basin. For each additional seventy-five or fraction thereof in dining capacity over seventy-five, there shall be one additional water closet and one additional urinal required in the men's lavatory.

e. Women's lavatory. For the first one hundred fifty seats or fraction thereof in the dining room area, the women's lavatory shall contain two water closets and one wash basin. For each additional seventy-five or fraction thereof in dining seating capacity over one hundred fifty there shall be one additional water closet required in the women's lavatory.

f. Both lavatories. There shall be an additional wash basin in each lavatory for each seventy-five seats or fraction thereof above one hundred and fifty.

g. Miscellaneous. The entrances to such lavatories shall be screened from public view.

h. There shall be suitable facilities on the licensed premises for temporary storage of coats, hats, umbrellas, overshoes and other items of clothing outside the dining area.

4. Daily food and drink specials shall be permitted. However “timed” happy hours with a defined period of time where drinking is encouraged are prohibited.

5. No alcoholic beverage shall be sold, served to or consumed by guests in any part of the licensed premises except the rooms/space furnished and used as dining room space and the bar/lounge area

6. The licensee shall keep and maintain an accurate record of all sales, sufficient to disclose what receipts were derived from the sale of alcoholic beverages and what receipts from foodstuffs, which record shall be open to inspection at any time by the licensing body of its representative, and may be kept under its supervision as directed, if desired. In the event that inspection of the records of any licensee discloses that over fifty percent (50%) of the gross receipts is derived from the sale of alcoholic beverages, the licensing body may, in its discretion, after notice and proper hearing revoke the license.

7. Any such license issued under this section for, or transferred to, a restaurant shall only remain in force so long as the premises licensed are being actually operated as such a bona fide restaurant, and so long as such premises are not altered or rearranged without first obtaining approval of the Borough council, and such license shall be revocable should the owner thereof cease from operating such restaurant, or alter or rearrange the licensed premises without obtaining the necessary approval.

8. Any license issued under this section shall be subject to all the conditions of this section. The Borough council shall have the sole right to determine what is a bona fide restaurant as referred to in this section, and the decision of the council shall be final. The Borough council shall further have the right to limit the number of licenses granted under section 109-3.7, whether or not applications may be received conforming to the above regulations and conditions, where they shall deem any application by reason of location, increased traffic congestion, structural inadequacies of the licensed premises, fire or health hazard, or proximity to churches or schools to be detrimental to the health, morals, safety or welfare of this town.

9. Any license issued under this section shall bear the notation “Restaurant Conditional License”.

D. Restriction on Club Licenses. (new)

No club licensee or agent or employee of such licensee shall sell alcoholic beverages to any person other than bona fide members of the club and their guests.

E. Subject to State law. (new format)

All licenses under this chapter shall, in addition to the foregoing restrictions and conditions, be subject to all provisions of the Revised Statutes of New Jersey and to all of the rules and regulations as prescribed by the Director of the Division of Alcoholic Beverage Control in the State.

Sec. 109-4 Regulations of License (new format)

109-4.1 Hours of Operations.

No plenary retail consumption licensee or club licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage or permit the consumption of any alcoholic beverage any day of the week between the hours of 1:00 A.M. and 9:00 A.M., provided that on the first day of January such sales may be made up to 3:00 A.M.

No plenary retail distribution licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises or allow, permit or suffer the removal of any alcoholic beverage in its original or opened container from retail licensed premises, from 10:00 P.M. to 9:00 A.M., any day of the week.

Notwithstanding the foregoing, the hotel may continue to engage in all its other operations during the hours of closure set forth above.

109-4.2 Sales to Certain Persons

No licensee or employee of a licensee shall sell or deliver, directly or indirectly, any alcoholic beverage to any intoxicated person or person under the legal age, or permit the consumption of alcoholic beverages on any licensed premise by any of the above named persons.

109-4.3 Lotteries prohibited on licensed premises.

No retail plenary consumption licensee under this chapter shall allow, suffer or permit any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale on or about the licensed premises, except as may be permitted under applicable New Jersey law.

109-4.4 Penalties

Any person, partnership, association or corporation violating this section shall be punishable, upon conviction thereof, by a fine not exceeding \$500.00 dollars, or by

imprisonment not exceeding (90) days or both, such fine and imprisonment at the discretion of the Court.

Sec. 109-5 Revocation of license (new format)

Any license issued pursuant to this chapter may be suspend or revoked for violation of any of the provisions of this chapter, the Alcoholic Beverage Law or Alcohol Beverage Tax Act or any of the rules and regulations promulgated or to be promulgated by the State Commissioner of Alcohol Beverage Control.

Proceedings for suspension or revocation shall be in accordance with the provisions of N.J.S.A 33:1-31 by service of a five (5) day notice of charges preferred against the licensee and affording a reasonable opportunity for hearing.

Suspension or revocation of a license shall be in addition to any penalty which may be imposed for a violation of this chapter.

Sec 109-6. Persons under the legal age. (new format)

109-6.1 Sales to Persons Under the Legal Age Prohibited. (new format)

No licensee shall sell or serve alcoholic beverages to persons under the legal age.

109-6.2 Unlawful Acts by Persons Under Legal Age for Purchase of Alcoholic Beverages; Disorderly Persons. (new format)

It shall be unlawful for:

- A. A person under the legal age for purchasing alcoholic beverages to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing or having served or delivered to him or her, any alcoholic beverage; or
- B. A person under the legal age for purchasing alcoholic beverages to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to purchase, attempt to purchase or have another purchase for him any alcoholic beverages, or
- C. Any person to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or to purchase alcoholic beverages, for another person who does not because of his age have the right to purchase and consume alcoholic beverages.
- D. Violations. Any person who shall violate any of the provisions of this section shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine of not less than one hundred (\$100.00) dollars. In addition, the Court shall suspend the person's license to operate a motor vehicle for six (6) months or prohibit the person from obtaining a license to operate a motor vehicle in this State for six (6) months beginning on the date he becomes eligible to obtain a license or on the date of conviction, whichever is later. In addition to the general penalty prescribed for an offense, the Court may require any person under

the legal age to purchase alcoholic beverages who violates this act to participate in an alcohol education or treatment program authorized by the Department of Health for a period not to exceed the maximum period of confinement prescribed by law for the offense for which the individual has been convicted. (N.J.S.A. 33:1-81)

SECTION 2. Chapter 109 of the Code of the Borough of New Providence is amended, to read in full, Article II, entitled “Open Containers”, as follows:

Sec 109-8 Consumption or possession in certain places unlawful

A. Except for persons possessing or consuming alcohol served in an outdoor dining setting, by a person licensed under this ordinance, no person shall, within the boundaries and limits of such zones and areas the Borough of New Providence as may be identified from time to time by the Zoning Ordinance of the Borough of New Providence, being Chapter 310 of the code of the Borough of New Providence, as C District-Central Business District, C-1 Specialty Commercial District, and C-2-Neighborhood Commercial District consume any alcoholic beverages except within a building, structure or other ordinance permitting such use, where the same is permitted by law. The possession of any unsealed alcoholic beverage container with alcoholic beverages contained therein shall constitute a presumption that the person in possession thereof is consuming or intends to consume an alcoholic beverage in violation of the provisions hereof.

B. For the purposes of this section, a container shall be regarded as “unsealed” when:

1. Its top or cork has been removed
2. Any of its contents have been removed
3. The government tax stamp has been removed or broken
4. In the case of a metal container the container has been opened in any manner; or
5. In the case of a twist-top container, the original seal has been broken.

SECTION 3. This ordinance shall take effect as provided by law.

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