

**TOWNSHIP OF MILLBURN  
ORDINANCE NO. 2639-23  
ORDINANCE AMENDING SECTION 4-40  
OF THE MILLBURN TOWNSHIP ORDINANCE CODE RELATING TO SIDEWALK CAFES**

**STATEMENT OF PURPOSE:** *the purpose of this Ordinance is make amendments to Chapter 4-40 “Sidewalk Cafes” of the Township’s code. These amendments will add fees and regulations for those qualified businesses that place tables and chairs on an authorized street closure in the Township. The road closure must be longer than two (2) weeks and fees will paid at a per table rate of \$50.00 for any additional tables that utilize the roadway and are in addition to a qualified business’s normal café seating.*

**WHEREAS,** the Township Committee of the Township of Millburn wishes to provide a fee structure for additional tables placed in any authorized, extended road closure in the Township; and

**WHEREAS,** the additional per table fee under section 4-40.6 will go into effect immediately upon adoption of this ordinance; and

**WHEREAS,** any changes under section 4-40.4 will not go impact any business that has applied for or received a café license already for 2023; and

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Millburn in the County of Essex and State of New Jersey as follows:

**Section 1. Article 4-40 “Sidewalk Cafe”, is hereby amended and supplemented by deleting existing text as per ~~strike throughs~~ and adding new text as underlined below.**

**4-40 SIDEWALK CAFES.**

**4-40.1 Definition.**

**SIDEWALK CAFE**

Shall mean a restaurant, fast-food restaurant, ~~or~~ retail food or other properly zoned establishment which is a permitted use under the Township's Development Regulations and Zoning Ordinance, ~~and Restaurants, fast-food restaurants or retail food must hold~~ which holds a valid license to serve food to be consumed by the public at tables located within the restaurant's lot area or on the sidewalk in front of the restaurant. No other businesses shall be permitted to serve food or drinks unless properly zoned and licensed by the Health Department.

**4-40.2 License Required; Term.**

No person shall operate a sidewalk cafe within the Township without having first obtained a sidewalk cafe license in accordance with the requirements of this section. The license shall be issued by the Township Committee and may contain conditions. The license shall not be transferable and shall be for the period of January 1st through December 31st of the issuing year. The license shall, however, be subject to future amendments to this section or other applicable

regulations.

#### **4-40.3 Application for License.**

Each applicant for a sidewalk cafe license shall submit an application to the Township Clerk on forms furnished by the Township Clerk at least two (2) months prior to the commencement of the license period together with the license fee. The application shall set forth:

- a. The name and address of the applicant.
- b. The name and address of the owner of the restaurant of which the sidewalk cafe is a part.
- c. The written consent to the application by the owner of the restaurant (if other than the applicant).
- d. A description of the dimensions of the area and all temporary structures, equipment and apparatus to be used in connection with operation of the sidewalk cafe, including (but not limited to) tables, temporary fences and barriers, planters, benches, chairs and umbrellas (if any).
- e. A statement of the seating capacity of the proposed sidewalk cafe and of the existing restaurant.
- f. A sketch drawn to scale (but not necessarily by a professional) of the proposed design and location of the sidewalk cafe, including the location of all appurtenances, demonstrating that pedestrian traffic will not be impeded and that the provisions of subsection **4-40.5a** will be satisfied. The sketch required by this paragraph shall be reviewed by the Construction Code Official/Zoning Officer.
- g. The entire application shall be reviewed by the Police Department for public safety and Alcoholic Beverage Control issues, the Fire Official for public fire safety, and the Health Officer for health issues. The review and report on the applications shall be completed by Township Officials and acted on by the Township Committee within one month of filing of the application.
- h. Enforcement of the requirements and specifications for sidewalk cafes shall be the responsibility of the Police Department, Fire Official, Health Officer, Zoning Officer and Code Enforcement Officer.

#### **4-40.4 License Fees.**

The following fees are set for Sidewalk Café Licenses (refer to 40-40.6 for Temporary Street Closure Additional Fees):

~~Application Fee~~ \$50.00

Café Rates/Fees—

1 to 8 seats with no more than 2 tables ~~\$100.00~~ \$150.00

9 to 12 seats with no more than 3 tables ~~\$150.00~~ \$200.00

13 to 16 seats with no more than 4 tables ~~\$200.00~~ \$250.00

17 to 20 seats with no more than 5 tables ~~\$250.00~~ \$300.00

21 or more seats with 6 or more tables ~~\$400.00~~ \$500.00

**4-40.5 Requirements and Specifications.**

- a. All furniture, equipment or decoration used in connection with a sidewalk cafe shall be located in such a way that there shall be a minimum of five (5') feet of paved sidewalk for use by the public between the curb and the operations of the sidewalk cafe and shall not exceed the width of the storefront unless the owner of the property adjacent to the sidewalk cafe files a written consent to the application for the adjacent property.
- b. No sidewalk cafe license shall be issued unless the licensee shall have first filed with the Township Clerk a copy of an insurance policy or certificate of insurance, issued by a company duly authorized to transact business under the laws of New Jersey, providing for the payment of not less than one million dollars (\$1,000,000.00) to satisfy all claims for damage by reason of bodily injuries to, or the death of, any person as a direct or indirect result of the operation of the sidewalk cafe or for injury to any person occurring on the premises occupied by such cafe, and further providing for the payment of not less than ten thousand dollars (\$10,000.00) to satisfy all claims for property damage occurring as a direct or indirect result of the operation of such cafe. The policy and certificate shall name the

Township of Millburn as an additional insured and provide for ten (10) days' written notice plus three (3) days mail service of any proposed cancellation of the policy to the Township Clerk. Any business that is on or abuts a county road shall list the County of Essex County as additional insured on the policy submitted to the Township.

- c. No sidewalk cafe license shall be issued unless the licensee shall have first executed and filed with the Township Clerk an indemnification agreement on the form provided by the Township Clerk pursuant to which the licensee shall agree to forever defend, protect, indemnify and save harmless the Township of Millburn, its officers, agents and employees, from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of, or which may arise out of, the licensee's operation of such sidewalk cafe.
- d. The property shall be maintained as required by applicable Township regulations including the Property Maintenance Code and Chapter 12 of the State Sanitary Code.
- e. ~~Wine and beer are the only alcoholic beverages which may be consumed at a sidewalk café on the condition that table service is provided.~~ BYOB privileges for wine or malt alcoholic beverages are allowed in Outdoor Dining Areas and Sidewalk Cafe Areas subject to N.J.S.A. 2C:33-7. Any licensed premises must secure and provide copies to the Municipal Clerk of all necessary permits from the New Jersey Division of Alcoholic Beverage Control to extend their licensed premises in accordance with applicable New Jersey law.
- f. Operating hours shall be between the hours of 7:00 a.m. and 11:00 p.m.
- g. The licensee shall be responsible for maintaining good order and control of patrons and the sidewalk cafe premises.
- h. Enforcement of the requirements and specifications for sidewalk cafes shall be the responsibility of the Police Department, Health Officer, Fire Official, Zoning Officer and Code Enforcement Officer. The review and report on the applications shall be completed by Township Officials and acted on by the Township Committee within one month of the filing of the application.
- i. Food preparation, cooking or storage of any food items is prohibited outside the establishment at all times.

#### 4-40.6 Temporary Street Closure Expanded Dining

- a. Businesses that have been approved or received their license for a sidewalk cafe that wish to apply and place additional seating within in a street closure shall submit an addendum sheet to their application, along with the appropriate additional fees, to the Municipal Clerks Office for consideration and approval by the Township Business Administrator. The Business Administrator, in consultation with the Special Improvement District Executive Director, shall have the discretion to regulate the use of this area.
- b. Any outdoor seating by a qualified business that utilizes the roadway portion of a Township approved temporary street closure that exceeds two (2) weeks will be required to pay an

additional fee of \$50.00 per table not to exceed eight (8) seats per table.

- c. All other requirements and specifications of Section 40-40.5 must be adhered to for tables placed within any road closure.
- d. Fees associated with the placement of additional tables within a road closure that exceeds two (2) weeks will not be prorated.
- e. Additional Certificates of Insurance(s) and Hold Harmless(s) may be required to be submitted to the township listing the County of Essex and Township of Millburn as additional insured to ensure the additional road closure areas are properly insured by the business in compliance with 40-40.5(b).

#### **4-40.6Z Revocation of License; Notice of Hearing; Penalty.**

- a. Licenses issued under the provisions of this section may be revoked by the Township Business Administrator after hearing on notice for any of the following causes:
  - 1. Fraud, misrepresentation or false statement contained in the application for license.
  - 2. Any violation of this section or applicable law or Township regulation.
- b. Notice of the hearing for revocation of license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for the hearing.
- c. The penalty upon an adverse finding for a first offense shall range from a letter of reprimand to a suspension of from one (1) to thirty (30) days of the sidewalk cafe license, for a second offense a suspension of from thirty (30) to sixty (60) days and for a third offense a suspension of sixty (60) days to one (1) year.

Introduced: 05/16/2023

Published: 5/24/2023

Public Hearing/Adopted: 6/20/2023

Published: 6/29/2023

Ordinance 2639-23

ATTEST:

MILLBURN TOWNSHIP

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By:

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Christine A. Gatti, Clerk

Maggee Miggins, Mayor

CERTIFICATION

I, Christine A. Gatti, Clerk of the Township of Millburn, in the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Township Committee at a regular meeting held on the 20<sup>th</sup> day of June, 2023.

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Christine A. Gatti, RMC

Municipal Clerk