

**ORDINANCE 2007-16**

**AN ORDINANCE AMENDING CHAPTER 188-78 (FREESTANDING RESTAURANTS, BARS AND NIGHTCLUBS) OF THE CODE OF THE TOWNSHIP OF HILLSBOROUGH, COUNTY OF SMERSET, STATE OF NEW JERSEY TO PROVIDE REGULATIONS FOR OUTDOOR CAFES**

**BE IT ORDAINED**, by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey as follows:

1. Section 188-78 is amended by adding the following section:

**F. Outdoor Cafes**

**1. Purpose**

The purpose of this section is to establish a procedure and authorize rules and regulations for outdoor cafes in conjunction with restaurants which adjoin sidewalks.

**2. Definition**

OUTDOOR CAFÉ- Any eating establishment where food and other refreshments are served on a sidewalk area immediately adjoining any restaurant, café or place of business where food and/or other refreshments are served. Said outdoor café shall be considered as part of the building structure and shall be limited in use to table service only for patrons of the eating establishment.

**3. Zoning Permit Required**

It shall be unlawful for any person, firm, partnership, corporation, association or organization (hereinafter collectively referred to as “person” or “applicant”) to create, establish, operate, maintain or otherwise be engaged in the business of conducting an outdoor café upon the sidewalks of the Township of Hillsborough, unless such person shall hold a currently valid zoning permit issued pursuant to the terms of this section.

**4. Alcoholic Beverages**

Consumption of permitted alcoholic in an outdoor café by patrons shall not be considered in violation of state regulations and/or local ordinances prohibiting the consumption of such beverages in containers. The sidewalk area upon which a café has been authorized to operate pursuant to this section may constitute a duly licensed premises for the consumption of alcoholic beverages, provided, however, that the related restaurant of which the café is a part and an extension of is so licensed, and provided further, however, that specific approval has been obtained from the Hillsborough Police Department and/or the Township of Hillsborough Board of Alcoholic Beverage Control, as appropriate, for the extension of the alcoholic beverage consumption license to the sidewalk area. Such approval shall be separate from and must be obtained in addition to the zoning permit in order to operate a sidewalk café pursuant to this section. Retail food establishments which do not have a license to sell or serve alcoholic beverages within their premises shall not be permitted to allow patrons to carry onto or consume alcoholic beverages on any sidewalk area permitted as a café.

**5. General Eligibility Standards**

No zoning permit shall be issued for an outdoor café unless the applicant shall demonstrate that a minimum of four (4) feet of unobstructed sidewalk surface or delineated paved surface adjacent to the premises will be available for pedestrian traffic around or through such outdoor café, except where the sidewalk is isolated and not connected to a pedestrian walkway. No food or drinks served at such outdoor café shall be prepared or stored other than in the interior of the eating establishment. To the extent practicable, the outdoor café shall be confined to an area directly in front of the building façade containing the existing eating establishment, however, an exception may be made where the applicant can demonstrate that sufficient space exists in another location adjoining the premises.

**6. Application for a Zoning Permit**

Application for a zoning permit is required to be made to the Township Zoning Officer by the applicant. The application shall be accompanied by a proposed layout plan clearly illustrating the number and location of all tables, chairs, umbrellas, garbage receptacles and other necessary furniture, as well as a separation barrier from the sidewalk area. The layout plan shall also illustrate the following:

- (a) The location of any doors leading from the eating establishment to the outdoor café. No such doors may be obstructed in any manner.
- (b) The number of feet permitting free passage of pedestrian traffic around or through the outdoor café.

**7. Zoning Permit Process**

The Zoning Officer will review the application for completeness and compliance with the terms of this section. If the application is complete, the Zoning Officer will act upon the same within ten (10) business days after the date of completeness. If the application is not complete, the Zoning Officer will notify the applicant within ten (10) business days of the submission and specifically detail the areas in which the application lacks compliance with the requirements of this section. If the application complies with this section, the Zoning Officer shall issue a zoning permit subject to the terms and conditions of this section.

**8. Restriction on Transfer**

The zoning permit is personal to the applicant and any change or transfer of ownership of the outdoor café shall terminate the zoning permit and require a new application and a new zoning permit to be issued.

**9. Consent to Inspections**

Acceptance of the zoning permit by the applicant shall serve as a consent to the health, fire, police and building officials of the Township to inspect the outdoor café for continued compliance with the terms and conditions of this section and any federal, state, county or local law, ordinance or regulations affecting the same.

**10. Indemnification Agreement and Insurance Requirements**

No zoning permit required by this section shall be granted to any person to operate an outdoor café located on any public property or right-of-way until such person shall have filed with the Zoning Officer a statement agreeing to indemnify and hold harmless the Township of Hillsborough, its agents, representatives or employees from any claims, damages, judgment costs or expenses, including attorneys fees, which they or any of them may incur or be required to pay because of any personal injury, including death, or property damage suffered by any person or persons as a result of or related in any way to the

operation and maintenance of the outdoor café for which the zoning permit was issued. Said indemnification agreement shall be in a form acceptable to the Township attorney.

In addition, a certificate of insurance must be submitted by the operators of any sidewalk café which must include the following: Hillsborough Township must be named as the “Additional Named Insured” under Comprehensive General Liability coverage with limits of \$1,000,000 per occurrence/\$2,000,000 annual aggregate limit. It is understood that the insurance for the café operator is primary and non-contributory. Further, Hillsborough Township must be given 60 day notice in the event of cancellation or non-renewal.

#### **11. Responsibilities of Person Receiving the Zoning Permit**

- (a) Each person receiving a zoning permit is responsible for keeping the area of the outdoor café and the adjacent area, including walkways and parking areas, free and clear of any litter or debris occasioned by the café. Areas must be cleaned as needed, at the time the business is closed and the beginning of each day, but not later than 9:00 am.
- (b) No vending machines of any kind are permitted on the exterior of any building operating an outdoor café.
- (c) Any signs relating to the outdoor café or eating establishment must comply with Section 188-83 of the Hillsborough Development Regulations Ordinance.
- (d) Within thirty (30) minutes after closing the outdoor café, the operator shall have all furniture, apparatus, decoration and appurtenances and any other items used in connection with the operation of such outdoor café removed from the sidewalk unless it is demonstrated at the time of filing the permit application that all such items can be otherwise adequately secured.. All such materials shall be stored in a safe and secure interior location.

#### **12. Restrictions on Use**

- (a) No tables, chairs, or other equipment used in conjunction with the outdoor café shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk or property of the Township within or near the area that is permitted to be used as an outdoor café.
- (b) Any umbrellas or awning used in connection with an

outdoor café shall provide a minimum clearance of seven (7) feet from its lowest point to the sidewalk grade.

**13. Violations and Penalties**

Any person who shall violate any of the provisions of this section shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500), or by imprisonment in the county jail for a period not to exceed thirty (30) days, or by both such fine and imprisonment, and each violation of any of the provisions of this section and each day there is a violation thereof shall be deemed and taken to be a separate and distinct offense.

2. This ordinance shall take effect immediately upon passage and publication according to law.

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Kevin P. Davis, Township Clerk

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Anthony Ferrera, Mayor

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