ADOPTED
06-04-2020

RESOLUTION R: 146 – 20

RESOLUTION TEMPORARILY RELAXING EXISTING ORDINANCES AND PROCEDURES ASSOCIATED WITH REVIEW AND APPROVAL FOR EXISTING RESTAURANTS AND FOOD ESTABLISHMENTS AND RETAIL BUSINESSES PROVISION FOR OUTDOOR DINING AND OUTDOOR DISPLAYS TO PROVIDE ASSISTANCE TO LOCAL RETAIL BUSINESSES UNDER THE CURRENT SOCIAL DISTANCING RESTRICTIONS ENACTED IN CONNNECTION WITH THE ONGOING, CORONAVIRUS PUBLIC HEALTH EMERGENCY AND SUBJECT TO THE RESCISSION AND/OR RELAXATION OF THE CURRENT "STAY AT HOME" EXECUTIVE ORDER

WHEREAS, on January 30, 2020, the World Health Organization declared the outbreak of the novel coronavirus (COVID-19) to be a Public Health Emergency of International Concern as human-to-human transmission; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary declared the novel Coronavirus to be a United States Public Health Emergency; and

WHEREAS, on February 3, 2020, New Jersey's Governor, Philip D. Murphy, issued Executive Order 102 establishing the New Jersey Coronavirus Task Force in an effort to monitor the spread of the Coronavirus within the State of New Jersey, the United States of America, and the entire world in order to facilitate necessary and appropriate action to ensure the safety and security of the residents of the State of New Jersey; and

WHEREAS, on March 4, 2020, the State of New Jersey reported the first confirmed positive case of Coronavirus throughout the State; and

WHEREAS, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the novel Coronavirus within the State of New Jersey; and

WHEREAS, on March 13, 2020, the President of the United States of America formally declared the outbreak of the novel Coronavirus to constitute a National Emergency pursuant to the National Emergencies Act (50 U.S.C. § 1601. et seq.); and

WHEREAS, on March 16, 2020, Governor Murphy issued Executive Order 104 enacting several "social distancing" regulations, including but not limited to, limiting public gatherings to no more than 50 people, closing educational facilities, closing various recreation and entertainment based businesses, imposed restrictions on scope of service and hours of operation for other non-essential retail, recreational, restaurants/bars and entertainment businesses; and

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WHEREAS, on March 21, 2020, Governor Murphy issued Executive Order 107 which expanded the social distancing regulations set forth within Executive Order 104, including but not limited to, directing all New Jersey remain in their home or place of residence with specific limited exceptions, prohibited gatherings of any size, closed all non-essential retail businesses and identified essential businesses permitted to continue to operate subject to specific limitations, and reiterated and strengthened social distancing requirements when in public; and

WHEREAS, on March 21, 2020, Governor Murphy also issued Executive Order 108 which specifically voided and precluded County and Municipal Governments from imposing or enforcing any restrictions/regulations that in any way would or might conflict with any of the provisions of Executive Order 107, with the exception of regulating online marketplaces for arranging or offering lodging, municipal or country parks, and beaches and boardwalks; and

WHEREAS, Executive Order 107 specifically regulates the continued operation of Bars/Restaurants and provides, in part, that "All restaurants, cafeterias, 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, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses;" and

WHEREAS, in the anticipation that the regulations, prohibitions, and social distancing requirements within the Governor's Executive Orders may be relaxed and/or modified in the coming weeks or months, potentially permitting bars, restaurants, food and dining establishments and other retail establishments to operate at reduced capacities, the Mayor and Council of the Borough of Glassboro find it to be appropriate to temporarily relax its Ordinances, including but not limited to the procedures associated with review and approval in order to permit said establishments to locate tables and chairs out-of-doors, in the Borough right-of-way (including the sidewalk and the Public Areas) and/or in other locations on site, subject to the requirements and restrictions set forth herein and subsequent to the State of New Jersey rescinding and/or relaxing the restrictions of Executive Order 107 and/or any other directive prohibiting the same; and

WHEREAS, various representatives of the Borough of Glassboro, and its Boards, Commissions, and Agencies have discussed methods to assist and promote the economic development of local business in these extremely difficult times and have determined that the ability for local business' to expand its available space will economically assist the businesses in the reduction of capacity caused by the social distancing requirements; and

WHEREAS, the Mayor and Council have determined that it is in the best interest of the Borough to temporarily relax the outdoor dining and outdoor display restrictions on local business establishments and to extend outdoor dining and outdoor retail displays into public rights of way (including sidewalks and Public Areas) and to provide for additional space for outdoor dining into designated public parking lot areas and to allow for outdoor

dining areas to be established on private property and private parking lots under specific terms and conditions consistent with guidelines provided by the State of New Jersey and upon application and approval by the Borough Administrator and/or her designee; and

WHEREAS, *N.J.A.C.* 13:2-5.5 provides: "The Director [of Alcoholic Beverage Control] for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirt of the Alcoholic Beverage Control Act" and that "The Director may impose special conditions or requirements on any such permit;" and

WHEREAS, *N.J.A.C.* 13;2-9.1 provides: "The rules of [*N.J.A.C.* 13:2-1.1, et. seq.] may be relaxed by the Director upon a showing of undue hardship, economic or otherwise, on a licensee; that the waiver of the rule would not unduly burden any affected parties; and that the waiver is consistent with the underlying purposes of Title 33 and the implementing rules."; and

WHEREAS, to the extent that Mayor and Council finds it appropriate to temporarily relax its Ordinances and procedures associated with review and approval in order to permit eating establishments to locate tables out-of-doors, in the Borough right-of-way (including sidewalks and Public Areas) and/or in other locations on site, the Mayor and Council also is of the opinion that the Director of the New Jersey Division of Alcoholic Beverage Control should exercise the authority conferred upon the Director by statute and regulation to implement procedures whereby liquor licensees may obtain permits providing for the extension of licensed premises to the Borough approved outdoor table areas for so long as such Borough approval is valid without the necessity of having to file a formal place-to-place (expansion of licensed premises) application; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Glassboro, County of Gloucester, State of New Jersey as follows:

1.The statements that are set forth in the preamble are true and accurate. All of the statements of the preamble are repeated and are incorporated herein by this reference thereto and are made a part hereof as if each and every statement were set forth fully herein.

2. Effective by way of Resolution of the Mayor and Council of the Borough of Glassboro portions of Public Parking Lots to be designated by the Borough and Designated On-Street Parking Spaces designated by the Borough in consultation with the Police Chief shall be closed to vehicular parking and traffic during the specific dates and times approved by the Borough Administrator in order for the retail businesses, restaurants and food establishments the ability to set-up outdoor display and outdoor dining areas subject to the approval provided for below.

3. Effective immediately, the Borough Administrator in consultation with the Office of Emergency Management Coordinator, Chief of Police, Board of Health, Chief of the Fire Department, the Zoning Officer is hereby authorized to promulgate requirements,

rules and regulations pertaining to the application for and the use of outdoor areas, both public and private, by local business establishments for outdoor dining and outdoor displays consistent with the guidelines established by the State of New Jersey including but not limited to all COVID related safety precautions and measures during the effective dates of this Resolution.

4. Any and all business establishments of the Borough of Glassboro who wish to utilize the public right of way (including sidewalks and Public Areas), the approved designated public parking lots and areas, designated off-street parking spaces and/or private parking lots or private property for outdoor displays and outdoor dining shall, prior to its use, complete and submit an application to the Borough Administrator for review and approval. In an effort to assist the local businesses, the Borough has agreed to waive any application and/or approval fees relating its review.

Restaurants/Bars/Food Service Establishment – Outdoor Dining

5. The Borough Administrator and/or her designee are hereby granted the authority and discretion to approve Outdoor Dining Plan Applications pertaining to existing "full-service bars/restaurants," defined as "restaurants engaged in the preparation and service of meals/food," subject to the review and approval of the Chief of Police, in order to permit said establishments to relocate existing tables/seating or locate new tables/seats to the Borough right-of-way (including sidewalks) and/or other locations on site, during the designated times, and/or designated times, and/or other private locations during the designated times subject to the following requirements and restrictions:

A. Applicants who wish to relocate existing approved tables/seats to other locations on site, or to locate newly acquired tables/seats outdoors, including the Borough right-of-way (including sidewalks and Public Areas) and/or other locations on site, shall be required to submit an Outdoor Dining Plan application, and a drawing depicting the proposed layout and location of tables/seating outside of said bar/restaurant, which shall also include but not be limited to, confirmation of the number of existing, approved tables/seats, a depiction of all aisles, routes of ingress and egress, clearances/distances between tables and between the seating area outside and the curb-line, an illustration, rendering, and/or photograph of all proposed furniture, umbrellas, and trash receptacles, etc. must be of like nature and appearance to what is currently utilized on site. Applicants shall also submit a brief written narrative describing the proposed method of serving food and beverages in the newly proposed areas. The Applicant should also include how the proposed plan conforms to all safety and precautionary measures relating to social distancing and COVID-19 related issues. The approval of any temporary Outdoor Dining Plan in relation to this Resolution shall be subject to the following conditions:

i. Applicants may be permitted to relocate existing approved tables/seats and/or to locate newly acquired tables/seats to other locations on site, including the Borough right-of-way (including sidewalks and Public Areas), subject to the review and approval of the Borough's Borough Administrator and/or her designee. Notwithstanding the provision of

the Resolution, no tables/seats shall encroach on the or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of its approaches. In addition, notwithstanding the provision of the Resolution, Applicants will not be permitted to increase the currently approved capacity for the Premises.

ii. Applicants may be permitted to utilize the public right of way (including sidewalks and Public Areas) of the adjacent property owner for outdoor dining with the express written consent and approval by the adjacent property owner and business, which must be submitted with the Application.

iii. Tables/seats may be permitted to be located in the Borough right-of-way (including sidewalks) provided a minimum 6 feet pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements.

iv. An approved tables/seats located in an "outdoor dining area," defined as "a designated area on the premises of a retail food establishment or restaurant, but located outside of the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress," may be permitted to be utilized between the hours of 7:00 A.M. and 11:00 P.M.

v. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.

vi. Applicants must also acknowledge and agree to full compliance with all current and newly imposed safety and precautionary measures and guidelines established by the State of New Jersey relating to COVID -19.

vii. The sale/service of alcoholic beverages in these locations shall be permitted, subject to compliance with any and all applicable ABC regulations/statutes, including but not limited to an extension of premises application, and subject to the review and approval of the Borough Clerk and Chief of Police. The approval of any extension of premises application to permit the sale/consumption of alcoholic beverages in outdoor dining areas shall be temporary and shall automatically terminate upon the State of New Jersey rescinding Executive Order 107, and/or the elimination of all social distancing regulations, and/or the expiration of the within Resolution and/or by way of Resolution of the Mayor and Council.

viii. The Borough of Glassboro may permit the consumption of alcoholic beverages at tables/seats approved by the Borough Administrator and/or her designee. However, said consumption of alcoholic beverages shall be limited solely to the tables/seats of the food establishment.

ix. Applicants proposing to relocate existing tables/seats to the Borough right-of-way designated areas of the Public Parking Lots and designated On-Street Parking shall indemnify and hold harmless the Borough of Glassboro, its employees, agents, and/or or

officers from all claims, losses, liens, expenses, suits and attorney's fees arising out of the placement, operation, and maintenance of the Outdoor Dining Area. Applicants must name the Borough of Glassboro as an additional insured under the Applicant's general liability insurance, bodily injury, property damage, and personal injury insurance policies, required to have a minimum limit of one million ($1,000,000.00) Dollars, and provide proof of same to the Borough Administrator, and proof that said policies have been amended to reflect coverage for the proposed outdoor dining area.

Retail Businesses – Outdoor Displays

6. The Borough Administrator and/or her designee are hereby granted the authority and discretion to approve an Outdoor Display Plan Applications pertaining to Retail Businesses to locate outdoor displays in the Borough right-of-way during the designated times, and/or the designated areas of Public Parking Lots during the designated times, and/or designated On-Street Parking Spaces during the designated times, and/or other private locations during the designated times subject to the following requirements and restrictions:

A. Applicants who wish to locate outdoor displays on site, including the Borough right-of-way and/or other locations on site, shall be required to submit a site plan application, and a site drawing depicting the existing and proposed lay out and location of the outdoor display, which shall also include but not be limited to, a depiction of all aisles, routes of ingress and egress, clearances/distances between the outdoor displays and the curb-line, an illustration, rendering, and/or photograph of all proposed furniture, trash receptacles, and/or the outdoor displays, mobile carts, racks and trash receptacles, etc. must be of like nature and appearance to what is currently utilized on site. Applicants shall also submit a brief written narrative describing the proposed method of servicing customers in the newly proposed areas. The Applicant should also include how the proposed plan conforms to all safety and precautionary measures relating to social distancing and COVID-19 related issues. The approval of any outdoor display plan in relation to this Resolution shall be subject to the following conditions:

i. Applicants may be permitted to locate outdoor displays, including the Borough right-of-way subject to the review and approval of the Borough's Borough Administrator and/or her designee. .Notwithstanding the provision of the Resolution, no outdoor display shall encroach on the or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of its approaches.

ii. Outdoor Displays may be permitted to be located in the Borough right-of-way provided a minimum 6 feet pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements

.iii. Applicants may be permitted to utilize the public right of way(including sidewalks and Public Areas) of the adjacent property owner for outdoor displays with the express written consent and approval by the adjacent property owner and business, which must be submitted with the Application.

iv. An approved Outdoor Display located outside of the principal building may permitted to be utilized between the hours of 7:00A.M. and 11:00 P.M. daily.

v. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor area, and the frequency with which the outdoor dining area will be policed for litter in order to control the accumulation of trash/recycling.

vi. Applicants must also acknowledge and agree to full compliance with all current and newly imposed safety and precautionary measures and guidelines established by the State of New Jersey relating to COVID -19.

vii. Applicants proposing to locate Outdoor Displays in the Borough right-of-way and designated On-Street Parking shall indemnify and hold harmless the Borough of Glassboro and the Parking Authority, its employees, agents, and/or or officers from all claims, losses, liens, expenses, suits and attorney's fees arising out of the placement, display, operation, and maintenance of the Outdoor Dining Area. Applicants must name the Borough of Glassboro and the Parking Authority of the Borough of Glassboro as an additional insured under the Applicant's general liability insurance, bodily injury, property damage, and personal injury insurance policies, required to have a minimum limit of one million ($1,000,000.00) Dollars, and provide proof of same to the Borough Administrator, and proof that said policies have been amended to reflect coverage for the proposed outdoor dining area.

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that Section 354-5 of the Code of the Borough of Glassboro, entitled, "Consumption of alcoholic beverages in public and quasi-public places" shall not apply to the specific outdoor dining and tables and chairs approved by the Borough Administrator and/or her designee consistent with, and for the life of the within Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that it hereby reserves the right to amend, terminate, or repeal this Resolution and/or any approvals granted herein at any point in time, if it determines that it is in the best interest of the health safety and welfare of the Borough, and accordingly no property rights are granted to any person(s) or entities by virtue of this Resolution and/or approval hereunder and any person(s) or entities electing to pursue temporary relief in accordance with the provisions of this Resolution are hereby given notice that the expenditure of any funds, or the incurrence of any costs, in reliance upon this Resolution and any approval hereunder shall be at their sole and exclusive risk and expense. All persons and/or entities are hereby given notice that the risk of loss for any expenditure and/or costs incurred shall be their sole and exclusive responsibility; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that with the exception of the temporary relief and application process set forth herein relating to outdoor dining and outdoor displays, existing and proposed retail businesses must comply with any and all other federal, state, county, and local laws and regulations, including any and all other existing zoning ordinances and/or general ordinances governing the operation of bars/restaurants and retail businesses; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that in the event the Borough Administrator, Zoning Officer and/or Police Department determines that a business establishment or person is in violation of the conditions of any temporary Outdoor Dining and/or Outdoor Display Plan approved in relation to this Resolution, the Borough Administrator is hereby authorized to immediately revoke the approval received in relation to this Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that the Borough Administrator, Zoning Officer and Police Department are hereby authorized and empowered to enforce this Resolution and the several provisions hereof as well as the conditions of approval for the use of outdoor dining and outdoor displays; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that that the Borough Administrator is hereby further empowered to enforce the discretionary powers which are considered necessary in order to make the provisions hereof properly effective and useful for the benefit of the Borough and its businesses, including but not limited to the separation of the commencement of the application and approval process for outdoor dining and outdoor displays; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that in order to avoid injustice or the possible abuse of discretion and to correct the possibility of error in judgment, any Applicant, who's Outdoor Dining and/or Outdoor Display Plan application is denied by the Borough Administrator and/or her designee, has the right to appeal to the Council by filing a notice of appeal with the Borough Clerk within thirty (30) days of the denial of said application. Upon receipt of any such notice of appeal, the Council will hear the appeal at its regular meeting, at which time the owner and any other persons appearing in the matter will be heard or afforded the opportunity to be heard. At the conclusion of said hearing, the Council will consider the matter, determine whether to uphold or overturn the Borough Administrator and/or her designee's decision, and thereafter notify the owner of its decision; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro by this passage of this Resolution, the Mayor and Council of the Borough of Glassboro requests that the Director of the New Jersey Division of Alcoholic Beverage Control exercise the authority conferred upon the Director by the provisions of *N.J.A.C.* 13:2-5.5 and *N.J.A.C.* 13:2-9.1 to immediately implement procedures whereby liquor licensees may obtain permits providing for the extension of licensed premises to the outdoor table areas that are approved pursuant to the provisions of this Resolution for so long as such municipal approval is valid without the necessity of having to file a formal place-to-place (expansion of licensed premises) application with the Borough; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that the within Resolution and the authority delegated herein and the effects of any permission and/or approvals hereto are expressly conditioned upon Governor Philip

Murphy relaxing the restrictions of Executive Order 107 and any other restrictions on residents of the State of New Jersey and essential and non-essential businesses and no action is authorized or permitted that would conflict with the actions and/or Executive Orders of Governor Murphy, or any rules, regulations, requirements, prohibitions, and/or guidance of the State of New Jersey and any of its Departments, Agencies, Divisions, including but not limited to the Office of Emergency Management; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that this Resolution shall take effect immediately upon and subject to the State of New Jersey relaxing the provisions of Executive Order 107, specifically the provisions pertaining to the regulations upon the residents of the State of New Jersey and the operation of restaurants and bars and/or other essential and non-essential retail businesses. However, the Borough Administrator is authorized to commence the promulgation of requirements, rules and regulations pertaining to the application for and the use of outdoor areas, both public and private, by local business establishments for outdoor dining and outdoor displays and the approval of same. Upon passage of the within Resolution, the Borough Administrator is further authorized to accept and review said Applications, however shall not be permitted to approve such applications until such time as the effective date pursuant to the terms hereto; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that in the event the prohibitions of Executive Order 107 are not relaxed in order to effectuate the within Resolution or this Resolution rescinded and/or expires, any temporary approval afforded by the Borough Administrator and/or her designee in accordance with the terms and conditions of this Resolution shall be deemed void; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that, upon the effective date of this Resolution, all requirements of prior ordinances or parts of ordinances inconsistent with this temporary Resolution are hereby temporary suspended to the extent of their inconsistencies only; and

BE IT FURTHER RESOLVED, by the Mayor and Council of the Borough of Glassboro, that the within Resolution and all authorizations contained herein, including but not limited to the closing of New Street, and the designated areas of the Public Parking lots and the designated On-Street Parking spaces and the delegation of authority and any and all approvals to allow for outdoor dining and outdoor displays permitted herein on public and private property shall remain in effect until further Resolution of the Mayor and Council of the Borough of Glassboro; and

BE IT FURTHER RESOLVED by the Mayor and Borough Council of the Borough of Glassboro that, except as provided for above pertaining to the promulgations of rules and regulations and the acceptance and approval of application, immediately upon Governor Philip Murphy's rescission or relaxation of the restrictions upon the residents of the State of New Jersey and the operation of essential and non-essential businesses

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throughout the State of New Jersey, all Borough officials, employees and agents shall take all necessary actions to in order to effectuate the within Resolution; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro that should any section, paragraph, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid for any reason, or not approved by the State of New Jersey, the remaining portions of this Resolution shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this Resolution are hereby declared to be severable; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Glassboro, upon adoption of this Resolution the Borough Clerk shall forward copies, electronically or otherwise, to the New Jersey Director of the Division of Alcoholic Beverage Control.

ADOPTED at a meeting of the Mayor and Council of the Borough of Glassboro in the County of Gloucester and State of New Jersey on June 4, 2020.

BOROUGH OF GLASSBORO

JOHN E. WALLACE, III, Mayor

Attest:

KAREN COSGROVE, Municipal Clerk

ADOPTED
06-04-2020

CERTIFICATION

I, Karen Cosgrove, Municipal Clerk, of the Borough of Glassboro, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Glassboro held on June 4, 2020.

KAREN COSGROVE
Municipal Clerk

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