

ORDINANCE NO. O-25-11

**AN ORDINANCE AMENDING
AND/OR ADDING SUBSECTIONS §18-3.2, §18-4.4, §18-4.5,
§18-4.10, §18-6.12 IN CHAPTER 18 – ZONING AND
ADDITION OF NEW CHAPTER 28 IN THE BOROUGH OF WEST LONG BRANCH**

WHEREAS, a request was made to review outdoor dining as a potential accessory use within the Borough; and

WHEREAS, a draft outdoor dining area ordinance was prepared for the review by the Planning Board within the HC – Highway Commercial Zone; and

WHEREAS, the Planning Board discussed the draft ordinance at its regular meeting on April 8, 2025 and made recommendations to the ordinance;

WHEREAS, the Planning Board recommended the Borough Ordinance be amended to include outdoor dining area(s) as a permitted accessory use in the HC – Highway Commercial, OP—Office Park and N/C—Neighborhood Commercial Zones to the governing body for review and potential adoption; and

WHEREAS, this final draft is being recommended to the full governing body for adoption.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of West Long Branch that the following additions and revisions to certain subsections in Chapter 18 - Zoning of the Borough ordinances are hereby adopted as follows:

[Any ~~crossed-out~~ language represents existing ordinance language being removed. Any underlined language is being added.]

SECTION 1

§ 18-3 DEFINITIONS

§ 18-3.2 Definitions.

OUTDOOR DINING AREA / USE

A designated Outdoor Dining Area which is clearly defined using barriers, planters, railings, or similar enclosures for which the Borough of West Long Branch has issued an Outdoor Dining Area License. The use of an Outdoor Dining Area shall be for purposes of serving food and/or beverage products by and in conjunction with the operations of a retail food establishment or other such use to which an Outdoor Dining Area may be established as an accessory use as expressly provided by the Zoning Regulations. An Outdoor Dining Area shall be located on the same lot as the principal use and shall not operate as a standalone use. The use of an Outdoor Dining Area may include tables and chairs, and may be shaded by awnings, canopies, umbrellas, and may also include open porches. The Outdoor Dining Area shall not be within or obstruct public property, pedestrian walkways, fire lanes, ADA-accessible pathways, or required parking areas.

SECTION 2

§18-4 – ZONE USE REGULATIONS

§18-4.4 – NC Neighborhood Commercial Zone

[Ord. #513; Ord. #O-00-3, S 5; Ord. #O-01-12, SS 1, 2; Ord. #O-09-10; Ord. No. O-2015-4 § 5]

NC Neighborhood Commercial Zone shall be subject to the following regulations:

- a. Permitted Uses: See Schedule of Permitted and Conditional Uses — For Non-Residential

Zones, subsection 18-4.13. [Ord. No. O-2015-4 § 5]

b. Permitted Accessory Uses:

1. Signs in accordance with Subsection 18-7.16 of this Chapter.
2. Garage space for the storage of commercial vehicles used in conjunction with a permitted business.
3. Swimming pools accessory to one-family dwellings and located in side or rear yards only, as defined in this Chapter.
4. Swimming pools accessory to primary and secondary schools and located in side or rear yards only, as defined in this Chapter. Such swimming pools shall be placed no closer than one hundred (100') feet to the nearest lot line of an existing single-family dwelling or to a property zoned for a single-family dwelling.
5. An outdoor dining area shall be permitted as an accessory use to the following conditional uses within the zone: caterers (722320), drinking places (alcoholic beverages) (722410), full-service restaurants (722511), and limited-service restaurants (722513), subject, however, to the provisions of section §18-6.12 Outdoor Dining Areas of this Chapter.

c.- e. No changes

SECTION 3

§18-4 – ZONE USE REGULATIONS

§ 18-4.5. Highway Commercial Zone.

[Ord. #513; Ord. #O-00-3; Ord. #O-01-12; Ord. #O-09-10; Ord. No. O-2015-4 § 6]

Highway Commercial Zone shall be subject to following regulations:

- a. Permitted Uses. See Schedule of Permitted and Conditional Uses — For Non-Residential Zones, subsection 18-4.13. [Ord. No. O-2015-4 § 6]
- b. Permitted Accessory Uses.
 1. Private garage space for the storage of vehicles used in conjunction with a permitted use.
 2. Signs which relate to the activity being conducted on the premises and which are in accordance with subsection 18-7.1c of this Chapter.
 3. No more than one detached accessory building shall be permitted in this zone. Detached buildings shall be a minimum of 2,500 square feet, providing parking requirements for the entire use are not exceeded. Said site plan for detached building must be submitted and approved by the Planning Board prior to a building permit being issued.
 4. An outdoor dining area shall be permitted as an accessory use to the following permitted uses within the zone: caterers (722320), drinking places (alcoholic beverages) (722410), full-service restaurants (722511), and limited-service restaurants (722513), subject, however, to the provisions of section §18-6.12 Outdoor Dining Areas of this Chapter.

c.- e. No changes

SECTION 4

§ 18-4.10 OP Office Professional Zone.

[Ord. #O-09-10; Ord. No. O-2015-4 § 7]

Office Professional Zone shall be subject to the following regulations:

- a. Permitted Uses. See Schedule of Permitted and Conditional Uses — For Non-Residential Zones, subsection 18-4.13.[Ord. No. O-2015-4 § 7]
- b. Permitted Accessory Uses.
 1. Private garage space for the storage of vehicles used in conjunction with a permitted use.

2. Signs which relate to the activity being conducted on the premises and which are in accordance with subsection 18-7.1c of this Chapter.
3. No more than one detached accessory building shall be permitted in this zone. Detached building shall be a minimum of 2,500 square feet, providing that parking requirements for the entire use are not exceeded said site plan for detached building must be submitted and approved by the Planning Board prior to a building permit being issued.
4. An outdoor dining area shall be permitted as an accessory use to the following permitted uses within the zone: caterers (722320), drinking places (alcoholic beverages) (722410), full-service restaurants (722511), and limited-service restaurants (722513), subject, however, to the provisions of section §18-6.12 Outdoor Dining Areas of this Chapter.

c.- e. No changes

SECTION 5

§18-6. GENERAL REGULATIONS.

§ 18-6.12. Outdoor Dining Areas.

Where an Outdoor Dining Area is permitted the following regulations shall apply. In the event, however, of any express conflict with a State statute or regulation governing the same, the State statute or regulation shall control.

- a. Outdoor Dining Area shall be defined as set forth in subsection 18-3.2 (Definitions) of this Chapter.
- b. Outdoor Dining Areas are permitted only in such zone(s) wherein they are expressly listed as permitted accessory uses, and then only ancillary and accessory to the specific use or uses listed in such zone(s) for which Outdoor Dining Areas may be established as an accessory use. In all other instances, Outdoor Dining Areas are prohibited.
- c. Minor site plan approval is required by the Planning Board where an Outdoor Dining Area is proposed to be accessory to an existing specified permitted use (i.e., a use listed in the zone at issue which is not only permitted in said zone, but also which is expressly listed as a use to which an Outdoor Dining Area may be established as an accessory) in the zone. All other applications proposing accessory Outdoor Dining Areas shall be in accordance with all applicable required site plan review and approval procedures and requirements.
- d. Maximum seating capacity for an Outdoor Dining Area shall be established by the Planning Board and shall not exceed 50 percent of the indoor seating capacity of the associated principal use at issue, unless a variance from this requirement is granted by the Planning Board.
- e. Outdoor Dining Areas shall provide for one (1) additional parking space for every four (4) outdoor seats, unless there is no increase in seating capacity of the establishment (i.e. the number of inside seats is reduced by number of seats placed outside), or unless a variance is otherwise granted from this requirement by the Planning Board.
- f. Outdoor Dining Areas shall meet the following minimum setback requirements:
 - (i) side and rear yard – 10 feet
 - (ii) Front yard - shall meet the principal building setback of the zone as specified in the schedule of area, yard, building (bulk) and unit requirements (§18-5.1)
 - (iii) Adjacent residential lot – 50 feet
- h. g. An Outdoor Dining Area must also comply with all applicable Borough regulations pertaining to “Outdoor Dining” (Chapter 28 – Outdoor Dining Area Regulations) Prior to commencing operations of an Outdoor Dining Area, a license for same must be obtained, and thereafter maintained, in accordance with applicable Borough regulations.

SECTION 6

New Chapter 28 Outdoor Dining Area Regulations is hereby added as follows:

CHAPTER 28 OUTDOOR DINING AREA REGULATIONS

§28-1 OUTDOOR DINING AREA

Where an Outdoor Dining Area is permitted the following regulations shall apply. In the event, however, of any express conflict with a State statute or regulation governing the same, the State statute or regulation shall control.

a. License required.

1. Outdoor Dining Areas are prohibited, except as same may be expressly permitted and authorized under applicable Zoning Regulations. Outdoor Dining Areas shall require an "Outdoor Dining Area License" and fee.
2. An application for an Outdoor Dining Area License shall be made annually to the Borough on a form so provided by the Clerk and made available upon request, and in accordance with the requirements this subchapter herein.
3. Any license for an Outdoor Dining Area and/or any license extension issued pursuant to the terms of this Chapter shall be renewed annually.
4. The licensee shall be permitted to operate a licensed Outdoor Dining Area throughout the year.

b. The fee for an annual Outdoor Dining Area License shall be \$250.00, with the initial fee to be submitted with said application.

c. Rules and Regulations of Operation.

1. An Outdoor Dining Area shall comply with all Borough, county and state health and safety regulations.
2. An Outdoor Dining Area shall be located on the same lot as the principal use and shall not operate as a standalone use.
3. The total Outdoor Dining Area(s) space associated with a particular principal use shall be established by the Planning Board and shall not exceed 30 percent of the gross indoor dining area of the particular associated principal use at issue.
4. Seating capacity for the Outdoor Dining Area shall be established by the Planning Board and shall not exceed 50 percent of the indoor seating capacity of the particular associated principal use at issue unless otherwise approved by the Planning Board.
5. Noise shall be kept at a level to comply with all provisions of the Borough Ordinance relating to noise as well as all applicable state statutes. Reasonable measure shall be taken to prevent excessive noise including the use of sound-absorbing materials and strategic seating arrangements.
6. Outdoor dining shall be permitted between 8:00 a.m. and 10:00 p.m. Sunday through Thursday, and 8:00 a.m. and 11:00 p.m. Friday and Saturday.
7. Outdoor dining area lighting shall be established by the Planning Board and be shielded and downward-directed to minimize glare on adjacent properties and roadways.
8. Outdoor dining areas shall be clearly defined using barriers, planters, railings, or similar enclosures
9. Defined outdoor dining areas shall not be located within or encroach upon public property, or obstruct pedestrian walkways, fire lanes, ADA- accessible pathways, or required parking areas.
10. No temporary fixture used in connection with the use and operation of the outdoor dining area shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building or structure.
11. Overhead coverings, such as retractable awnings and umbrellas, are permitted. All coverings shall be wholly contained within the designated area of the allowed outdoor dining area so as not to interfere with the required pedestrian passageway and be closed and/or removed from the Outdoor Dining Area when the Outdoor Dining Area is not in operation. Overhead coverings shall be anchored securely against wind. Permanent awnings are subject to

approval of the Code Enforcement Officer and Construction Code Official.

12. Outdoor Dining Areas shall be maintained in a clean and orderly condition at all times:
 - [a] Trash receptacles shall be provided and emptied regularly to prevent littering.
 - [b] All food preparation must occur indoors, and outdoor cooking shall be prohibited unless specifically permitted by applicable health codes.
13. All temporary fixtures and permanent canopies, awnings and porch roofs used in connection with an Outdoor Dining Area shall be clean and neat and maintained in good repair at all times.
14. No Outdoor Dining Area shall be located within three (3) feet of a fire hydrant or a building fire department connection; or within four (4) feet of an adjacent building entrance door.
15. Tables, benches, and chairs shall be commercial grade wood or metal, and shall be easily removable.
16. All temporary fixtures shall be fire-retardant or manufactured of fire-resistant material.
17. Moving, fluttering and flapping pennants, flags, balloons and similar decorations are prohibited.
18. Portable heaters may be used only if the Fire Marshal issues written permission, in which case a copy of the Fire Marshal's written approval shall be filed with the Outdoor Dining Area License application.

d. Outdoor Dining Area License application.

An Outdoor Dining Area License application shall be required and shall include the following minimum requirements:

1. The name, address, e-mail and 24-hour phone number of the applicant. The applicant must be the owner or registered agent of a retail food establishment or such other principal use to which the Outdoor Dining Area is accessory as specifically permitted pursuant to the Zoning Regulations.
2. Non-refundable application fee as provided above.
3. A diagram of the Outdoor Dining Area shall be drawn to scale and include all dimensions of any and all items located or proposed to be located within the Outdoor Dining Area, including but not limited to, the location of the Outdoor Dining Area relative to the principal use. The plan shall provide a clear description of the pedestrian passageways. The diagram may, but is not required to be prepared by professional engineer, surveyor, or architect.
4. Photographs of the furnishings in place, or a suitable facsimile of the same, may be submitted to further demonstrate the design and location.
5. A Certificate of Insurance that evidences that the applicant has procured and maintains such insurance that complies with the following requirements:
 - [a] The licensee shall furnish the Borough with a Certificate of Insurance as evidence that it has procured and maintains such commercial liability, automobile liability, workers' compensation and employer's liability insurance coverage to cover injuries and damages resulting from the licensee's operation of the outdoor dining use and outdoor dining area. The minimum limits shall be as follows:
 - [1] Workers' Compensation and Employer's Liability Insurance in accordance with the requirements of the General Laws of New Jersey and all other applicable laws and regulations.
 - [2] Commercial General Liability Insurance Including Contractor's Liability and Contractual Liability Insurance with a minimum combined single limit of \$1,000,000 for bodily injury and/or property damage per accident per occurrence. All liability coverage shall be on an occurrence basis.

- [3] Comprehensive Automobile Liability Insurance, covering the licensee for claims arising from all owned, hired and non-owned vehicles with a combined single limit not less than \$1,000,000 for bodily injury and/or property damage each accident.
- [b] The Borough and its officers, employees and agents shall be listed as additional insured on such policies except workers' compensation.
- [c] By accepting an Outdoor Dining Area License, the licensee expressly agrees to defend, indemnify and hold harmless the Borough of West Long Branch, its officers, employees and agents from any and all claims, suits, actions, damages or costs, whether for personal injury, property damage or other liability, arising out of or in any way connected with the licensee's operation and use of the outdoor dining use and Outdoor Dining Area.
- [d] The licensee's Certificate(s) of Insurance shall evidence the coverage required above and shall include coverage for the indemnification language and shall be updated as necessary to ensure proof of compliance. The Certificate(s) shall evidence that the Borough of West Long Branch shall be given at least ten days' prior written notice of any intention not to renew any of the insurance required herein or of any intention to cancel or materially change such coverage, or any reduction in such insurance coverage.
6. A written description of the seating capacity of the proposed Outdoor Dining Area and of the retail food establishment (or such other principal use to which the Outdoor Dining Area may be established as an accessory pursuant to Zoning Regulations) operated or to be operated by the applicant within the principal building.
7. A written description of the applicant's program for the control, removal and storage of litter, garbage and other refuse, control of pests, and the cleaning of temporary fixtures and the Outdoor Dining Area, including a description of the establishment's existing waste collection program.
8. When applicable, proof of compliance with New Jersey State Alcoholic Beverage Control rules and regulations governing extension of premises for the sale, service and consumption of alcoholic beverages.
- e. Receipt, Review and Approval of Application
1. The Borough Clerk or said official's designee, shall be the "licensing authority" under this chapter.
2. Upon receipt of an application, the licensing authority shall review the application for completeness, subject to the requirements set forth in this chapter and any other applicable laws. If the application is incomplete or otherwise fails to comply with the minimum application requirements, then the licensing authority shall advise the applicant and provide said applicant with the opportunity to correct same. If the applicant fails to correct same within the time provided by the licensing authority, then the application shall be deemed incomplete and returned to the applicant without any further action by the licensing authority.
3. Once the application is deemed complete, the licensing authority shall distribute the application to the Chief of Police, Fire Marshal, Health Officer, Clerk, and Administrator for inspection and written comments and/or recommendations.
4. The licensing authority shall issue a license or a denial within fifteen (15) days of designation of the application as complete. The licensing authority may deny a license based on current outstanding violations of any other health, safety, fire, use, or zoning regulation, or upon any applicable law or ordinance permitting the denial of a license that is not otherwise directly superseded by this chapter. Neither an application nor license issued under this chapter shall be considered a variance under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).
- f. License Appeal.

Any person who has been denied an Outdoor Dining Area License or whose Outdoor Dining Area License has been revoked shall have the right to appeal said denial or revocation to the Borough Administrator. The appeal shall be taken by filing with the Borough Clerk, within ten (10) days after the notice of the action complained of has been served personally upon the licensee or mailed, postage prepaid, to the

licensee at the address given by the licensee in making application under herein, a written statement setting forth fully the grounds for appeal. The Borough Clerk shall set a time and place of hearing for the appeal, at which time the Borough Administrator shall conduct a hearing and affirm, modify or reverse the action appealed from.

g. Notice of Violation; Failure to Comply

1. The Code Enforcement Officer, Chief of Police, and Fire Marshal shall be authorized to enforce this chapter.
2. In the event any of the enforcing officers designated above determine that a licensee has violated the terms of its license or provisions of this chapter, the Borough Clerk shall provide written notice of same. Said notice shall advise licensee that it shall correct such violation(s) within 24 hours of the receipt of such notice by the licensee. In the event the licensee fails or refuses to correct the violation(s) within such period, the enforcing officer may revoke the license. Notice of revocation shall be communicated to the licensee in writing.

h. Terms and Conditions of License

1. A licensee shall only be permitted to utilize the licensed Outdoor Dining Area in strict accordance with the license and the requirements of this chapter.
2. Outdoor dining area licenses shall expire on December 31st each year and may be renewable each year.
3. The licensing authority and Chief of Police, Construction Department, Code Enforcement Officer and Fire Marshall, shall each have the authority to order the temporary suspension of an Outdoor Dining Area License and removal of all temporary fixtures associated from the outdoor dining area, at the licensee's expense for failure to comply with license requirements.

SECTION 7

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

Introduced: May 7, 2025
Passed: May 21, 2025
Adopted: May 21, 2025

Jamex W. Succi
MAYOR

Carlin Dantz
BOROUGH CLERK