

**Ordinance #2019-14**

**AN ORDINANCE BY THE MUNICIPALITY OF PRINCETON CONCERNING SIDEWALK CAFES AND AMENDING THE "CODE OF THE BOROUGH OF PRINCETON, NEW JERSEY, 1974" AND "CODE OF THE TOWNSHIP OF PRINCETON, NEW JERSEY, 1968."**

WHEREAS, the Borough of Princeton and Township of Princeton pursuant to the provisions of the New Jersey Municipal Consolidation Act, N.J.S.A. 40:43-66.35 consolidated as Princeton on January 1, 2013; and

WHEREAS, pursuant to N.J.S.A. 40:43-66.64, the Princeton Council on January 1, 2013 adopted a Resolution continuing in effect Ordinances of the former Borough of Princeton and the former Township of Princeton as a new Code for Princeton is prepared; and

WHEREAS, the Princeton Council seeks to amend Chapter 29 of the "Code of the Borough of Princeton, New Jersey, 1974," entitled "Sidewalk Cafes," as well as related provisions of the "Code of the Township of Princeton, New Jersey, 1968," for application throughout the consolidated municipality, which will become a part of the new Princeton Code at a future date.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Council as follows:

Section 1. Chapter 29 of the "Code of the Borough of Princeton, New Jersey, 1974", entitled "Sidewalk Cafes" shall be amended as follows (additions underlined and deletions [bracketed]):

**Sec. 29-1. Definitions.**

For the purposes of this chapter, the following words or phrases shall have the meanings respectively ascribed to them by this section:

*Adjacent building.* The building whose principal facade fronts on the sidewalk where the sidewalk cafe is or is proposed to be located.

[Permitted district. The CBD (Central Business District), NB Zone (Neighborhood Business Zone) (SB Zone, Service Business Zone), as defined in Development Regulations Ordinance of the Borough of Princeton, as amended, and as shown on the Zoning Map of the Borough of Princeton.]

[Person. Any individual, partnership, corporation, association or other entity.]

*Principal facade.* The portion of the facade of a building, which fronts on a public street.

*Retail food establishment.* An establishment actually located within the adjacent building for which a current retail establishment inspection certificate has been issued by the board of health and shall include, by way of example, a restaurant, hotel, coffee shop, tea room, dining room, cafeteria, luncheonette, soda fountain, sandwich shop, and delicatessen.

*Required pedestrian passageway.* An area of sidewalk, parallel to the principal facade, at least six feet wide between the sidewalk cafe and the adjacent curb, which area shall be unobstructed by trees, light poles, trash receptacles, parking meter posts, telephone booths and similar structures.

*Sidewalk.* The paved surface provided for the exclusive use of pedestrians and situated between and extending from any building to the curb of any street, whether private or public property (excluding any unpaved area).

*Sidewalk cafe or cafe.* A retail food establishment (as defined herein):

(a) Serving food that has been prepared on the premises to be consumed by the public at tables located within that more or less rectangular portion of the sidewalk which lies within the area bounded by the public street, the principal facade of the adjacent building, and the imaginary perpendicular lines running from the outer edge of such principal facade to the public street;

(b) Containing one row of readily removable tables and chairs not exceeding six feet in width with temporary railings and/or planters; and

(c) Unenclosed by fixed walls or ceilings, except for retractable awnings, umbrellas or other nonpermanent enclosures that in no way present a safety hazard to or impede pedestrian traffic.

**Sec. 29-2. Annual license required.**

No person, firm, or corporation shall pursue the business or occupation of selling food or drink in a public place as defined in section 29-1, to be consumed on the premises in the [Borough] municipality of Princeton, until the owner, lessee, or proprietor shall have first obtained from the [borough]municipal clerk a license to carry on or conduct the same and paid to the [borough]municipal clerk an annual fee to be determined in the following manner:

Exterior sidewalk cafe seating:

One to eight	\$200.00
Nine to twelve	\$300.00
Over twelve not to exceed twenty-four seats	\$600.00

**Sec. 29-3. Initial application.**

(a) Each applicant for a sidewalk cafe license shall submit and file an application with the [borough]municipal clerk, together with four copies of a cafe plan (as defined below), and the nonrefundable two hundred fifty dollar application review fee. The application shall set forth:

- (1) The name and address of the applicant;
- (2) The name and address of the owner of the adjacent building (if other than the applicant); and
- (3) The name and address of the person who has prepared the cafe plan; and shall be accompanied by the written authorization and approval of the owner of the adjacent building (if other than the applicant).

(b) The term cafe plan shall mean a plan setting forth the following information:

- (1) Identification of the adjacent building and all properties immediately adjacent to such building;

- (2) A scaled drawing of the proposed design and location of the sidewalk cafe, all temporary structures, equipment and apparatus to be used in connection with its operation, including tables, chairs, planters, awnings, lighting and electrical outlets (if any), provisions for the storage of such structures, equipment and apparatus, proposed signage and the location of any fire hydrant, plug or standpipe, utility pole, parking meter stanchion, telephone booth, or other permanent fixture between the adjacent building and the curb, including a clear indication of the presence of the required pedestrian passageway. (The plan shall be draw to scale, but need not be prepared professionally.) The plan shall demonstrate that pedestrian traffic along the sidewalk upon which the sidewalk cafe is proposed to be located will in no way be impeded, and that the provisions of section 29-6 of this chapter will be satisfied.

- (3) A certificate of insurance as set forth in section 29-4 of this chapter.

- (4) A statement of the seating capacity of the proposed sidewalk cafe and of the existing retail food establishment actually operated by the applicant in the adjacent building.

The [borough]municipal clerk shall approve or disapprove the initial application or request for modification of the cafe plan within fifteen days following its submission after referral of the cafe plan to the chief of police, the fire official, health officer and the zoning officer for inspection and written recommendation.

In the case of the zoning officer, such recommendation shall include an inspection of the condition of the sidewalk upon which the sidewalk cafe is proposed to be located and the adjacent curbing.

#### **Sec. 29-4. Insurance required.**

(a) The following wording must appear on the insurance certificate:

"The certificate holder ([Borough]Municipality of Princeton) is included as an additional insured with respect to losses arising solely from the operation of the Sidewalk Cafe."

(b) The following wording may appear on the insurance certificate or the applicant may provide this statement as a separate signed notarized agreement:

"The licensee shall indemnify and hold harmless the [Borough]Municipality of Princeton and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the Sidewalk Cafe, providing that such claims, damages, losses or expenses (1) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and (2) are caused in full or in part by a party indemnified hereunder."

(c) Ten days' written notice of cancellation must be provided to the [borough]municipality.

(d) Insurance in force must be written by a company licensed to do business in the State of New Jersey.

(e) Minimum coverage requirements are:

- (1) General aggregate – one million dollars;
- (2) Products and completed operation aggregate – one million dollars;
- (3) Personal and advertising injury – one million dollars;
- (4) Each occurrence – one million dollars;
- (5) Fire damage (any one fire) – fifty thousand dollars;
- (6) Medical expense (any one person) – five thousand dollars;
- (7) Workmen's compensation – Statutory requirements;
- (8) Employers liability – one hundred thousand dollars (each Accident) five hundred thousand dollars (Disease – policy limit) one hundred thousand dollars (Disease – each employee)

**Sec. 29-5. Terms of license; renewals.**

All sidewalk cafe licenses shall be issued for the [seven] twelve-month period commencing April 1 and ending [October]March 31 of [a particular]the following year. Licenses may be renewed annually by the filing of an application in accordance with the provisions of section [20]29-3. If the cafe plan is to be modified, a new cafe plan with a nonrefundable two hundred fifty dollar application review fee must accompany the renewal application. The [borough]municipality may temporarily suspend a sidewalk cafe license if access to the sidewalk is needed in connection with public work to be performed in the area.

**Sec. 29-6. Rules, regulations and specifications.**

A sidewalk cafe authorized and operating pursuant to this chapter shall comply with all of the following rules and regulations, and such others as may be adopted by ordinance of the common council.

(a) The cafe shall be operated and maintained in accordance with the cafe plan as finally approved, and by the same person who operated and maintains the abutting retail food establishment.

(b) The placement of commercial grade wood or metal furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe in relation to any fire hydrant, plug or standpipe permanent fixture shall be approved by specific written authorization of the fire official based upon his review of the cafe plan.

(c) No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building or structure.

(d) No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe shall be located in or project or protrude into the required pedestrian passageway.

(e) The sidewalk cafe may be separated from the required pedestrian passageway by a suitable temporary and portable barrier designed for such or similar use and not exceeding four feet in height, which shall have been shown on the approved as part of the cafe plan.

(f) Any table service provided at the sidewalk cafe shall be provided by persons engaged or employed for that purpose and shall be furnished to seated patrons only. Table service is not required, and retail food establishments that do not provide table service may operate sidewalk cafes in which patrons carry their food from inside the premises to tables located in the sidewalk cafe.

(g) The sidewalk area utilized by the sidewalk cafe shall be kept clean and free of litter and shall be washed as required. Trash receptacles shall be provided as required and approved by the [borough]municipality. If no table service is provided, the trash receptacles shall include those needed for recycling.

(h) The following types of signs and decorations are prohibited within the sidewalk cafe and the portable barrier:

- (1) Signs painted or lettered on banner type material;
- (2) Tent type signs placed on sidewalks;
- (3) Moving, fluttering and flapping pennants, flags, balloons and similar decorations;
- (4) Signs including logo's applied painted or lettered upon umbrellas.

(i) Noise shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances of the [borough]municipality.

(j) Sidewalk cafes shall be permitted to operate only within a [permitted] zoning district in which retail food establishments are permitted by right or when otherwise authorized under the applicable land use code, and only from 7:00 a.m. until 10:00 p.m. [during the months of April to October, inclusive.]

(k) Furniture, apparatus, decorations and appurtenances may be secured in accordance with a sidewalk cafe plan which describes the method for securing same that is specifically approved by the chief of police and the fire chief with particular attention being material being used to create a public hazard.

(l) No food may be prepared in the sidewalk cafe or outside the adjacent building.

(m) The licensee shall comply with all other ordinances of the [borough]municipality.

### **Sec. 29-7. Alcoholic beverages [– prohibited].**

[The sidewalk area upon which a sidewalk cafe has been authorized to operate pursuant to this chapter shall not constitute premises duly licensed for sale and consumption of alcoholic beverages. Customers and patrons of the sidewalk cafe shall not be permitted to carry to or consume any alcoholic beverages on such sidewalk area.]Nothing in this chapter shall be construed as prohibiting the holder of a license issued under this chapter, who does not also hold a plenary retail consumption, plenary retail distribution or club license issued under chapter 3 of the “Code of the Township of Princeton, New Jersey, 1968,” to permit its customers and patrons to consume wine or malt alcoholic beverages in accordance with N.J.S.A. 2C:33-27.

### **Sec. 29-8. Notice of violation; failure to comply.**

Upon a determination by the [borough]municipal clerk that a licensee has violated one or more of such provisions, the [borough]municipal clerk shall give written notice to the licensee to correct such violation within twenty-four hours of the receipt of such notice by the licensee. In the event that the licensee fails or refuses to correct such violation within such period, a license revocation shall take effect immediately. A revoked license holder shall be subject to daily penalties if immediate compliance does not occur.

### **Sec. 29-9. Appeals.**

Any person aggrieved by any action of the [borough]municipal clerk, in the denial or revocation of a sidewalk cafe license, shall have the right to appeal to the [borough] administrator. The appeal shall be taken by filing with the [borough]municipal clerk, within ten 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 section 29-3 herein, a written statement setting forth fully the grounds for appeal. The [borough]municipal 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.

Any person aggrieved by a decision of the [borough] administrator may make an appeal to the common council. Such appeal shall be taken by filing with the [borough]municipal clerk within ten days after notice of the decision has been made, a written statement setting forth fully the grounds of the appeal, along with a fee of twenty-five dollars. The [borough]municipal clerk shall

set a time and place of hearing for the appeal, at which time the common council shall conduct a hearing and affirm, modify or reverse the decision appealed from.

**Sec. 29-10. Penalties.**

Any person convicted of a violation of any of the provisions of this chapter shall be subject to a fine of at least two hundred dollars and not exceeding five hundred dollars for each and every offense in addition to court costs.

Section 2. Section 3-25 of Chapter 3 of the "Code of the Township of Princeton, New Jersey, 1968," entitled "Alcoholic beverage consumption and possession in public places," shall be amended as follows (additions underlined and deletions [bracketed]):

**Sec. 3-25. Alcoholic beverage consumption and possession in public places.**

(a) Prohibitions. No person of legal age shall consume or possess in any opened container any alcoholic beverage in or upon any public or quasi-public place, including but not limited to any public street, alley, sidewalk, mall, park, playground, public conveyance, parking facility or in or around any public building. For the purposes of this section, a quasi-public area shall be defined as that portion of private lands which have been made open to the public for their use and enjoyment by the owner of said lands in connection with zoning approvals, dedication of said lands or similar means, and where the Council, upon written application from the owner of said lands, determines that the provisions of this section be made applicable thereto.

(b) Exceptions. Nothing herein shall be construed to prohibit the following: the possession or consumption of alcoholic beverages within or upon premises duly licensed for the consumption of alcoholic beverages[.]; the consumption of wine or malt alcoholic beverages as may be permitted under N.J.S.A. 2C:33-27 within that portion of a retail food establishment which constitutes a sidewalk cafe licensed under chapter 29 of the "Code of the Borough of Princeton, New Jersey, 1974;" or the possession, distribution or consumption of alcoholic beverages in any public park, recreation area, public building, or other public area in connection with any organized function or social affair for which previous permission has been granted by the Council or as otherwise authorized by Title 33 or the administrative regulations promulgated thereunder, as may be amended.

Section 3. All ordinances and resolutions or parts thereof inconsistent with this ordinance are repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

Section 5. The provisions of this ordinance and amendments to the respective portions of Chapters 3 and 29 shall be applicable within Princeton upon final adoption and shall become a part of the new Princeton Code once completed and adopted.

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Delores A. Williams, Clerk

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Liz Lempert, Mayor

Ordinance Introduced: March 25, 2019

Ordinance Adopted: April 8, 2019

NEWSPAPER PUBLICATIONS:

First Insertion: March 29, 2019

Final Insertion: April 12, 2019

This ordinance is part of the ongoing process of merging and harmonizing the code provisions of former Princeton Borough and former Princeton Township into a new code for the consolidated municipality of Princeton. It updates the requirements for “sidewalk cafes” and does so for application throughout the consolidated municipality.