



Mayor and Common Council Borough of Flemington

May 11, 2020

Online during COVID-19 Emergency

Work Session - Canceled

Regular Meeting (7:30 PM)

This meeting is being held in conformance with the Open Public Meetings Act.

Flag Salute

Roll Call:

Attendee Name	Title	Status	Arrived
Caitlin Giles-McCormick	Council President	Present	
Jessica Hand	Council Member	Present	
Michael Harris	Council Member	Present	
Jeremy Long	Council Member	Present	
Christopher Runion	Council Member	Present	7:36 PM
Kimberly Tilly	Council Vice President	Present	
Betsy Driver	Mayor	Present	

I. OEM Report

OEM 1st Deputy Dave Giuliani summarized the current COVID-19 case counts. There are 723 cases in Hunterdon County, with 46 deaths. In Flemington Borough, there are 48 cases and 1 death. The RVCC testing site is open 5/12 and 5/14, 10 a.m. - 1 p.m. Today he met with Department Heads to go over preparations for reopening to the public.

Following Council Members' reports, OEM Coordinator Brian McNally reported on getting the court ready to reopen. The first court session, set for later in May, has about 30 or more cases scheduled.

He's been reviewing with Department heads the procedures for reopening to the public, and a plan is being prepared.

II. Mayor's Report

She discussed the USDA's approval of funding for the water tower project. The engineer is starting the process for seeking bids.

The Highland-Elwood project will be starting up again toward the end of May. Repair work on the Streetscape project is underway. She's still reaching out to the Governor's office for help for small businesses, to level the playing field.

Charles Pettibone will be joining the Environmental Commission, with a term that expires at the end of 2021.

III. Council Members' Reports

Council Member Long

The Planning Board met 5/28. They're looking at their by-laws and procedural matters. An ordinance on tonight's agenda addresses dining options for restaurants.

Census - They continue to put out information on social media. The turnout so far in the Borough has been pretty good.

Council Vice President Tilly

The HPC met on 5/6. They're rescheduling a planned walk/talk for the fall, depending on the public health situation. The HPC meets again on 5/20; there is one application pending.

DPW - She reminded residents there is no bulk pickup currently.

Utilities - Resolution 2020-90 addresses water meter correction billings. Another change being instituted is the form of water/sewer bills. Rather than post cards, they will be full sheets of paper in an envelope, and there will be more space to include past data, and a larger comment field.

Fire Dept. - They've created a subcommittee to plan a food drive to benefit the Flemington Area Food Pantry. They've cleared the event with OEM; look for more info in the future.

Library Board - meets Friday morning at 8:30 a.m. online.

DPW - meets Wednesday morning.

Council Member Hand

She been working with Ms. Giles-McCormick and Mr. Long on getting people to respond to the Census

Schools - They're offering free meals to all families that need help.

Council President Giles-McCormick

Census- The Borough's response rate so far is just over 60%. It's over the state average but a little under the county average. Next, they'll be working on mapping out residences that haven't yet responded.

Samuel Fleming House - The board held a virtual meeting last week. They're discussing the annual tricky tray and how the current climate might affect things.

FCP - There have been some bumps regarding communications with businesses about operating under the Governor's executive orders; issues have been resolved. Any business owners with questions should contact OEM directly: 908-581-5513.

She'll be asking to amend tonight's agenda to include a resolution authorizing submission of a grant application to the NJ EDA.

DPW - She thanked Ms. Tilly, the Mayor, and Water Department staff for addressing the water-billing issue that stemmed from radios not reading some meters. They've investigated and made some meaningful adjustments.

Council Member Harris

He said efforts regarding the Census should be focused on encouraging people to answer the questions online.

Courts - They're reopening; it's a work in progress. He asked the Mayor to give an update.

Water bills - He's happy to see the resolution and the data it reflects.

DIY - A resolution on tonight's agenda waives the monthly fees they've been paying while they've been locked out of the space they're leasing at 90 Main St. Animal Control - When bite reports are filed, the Animal Control Officer confirms an animal's vaccination history. At this time, getting an animal a rabies vaccine may be difficult; anyone with questions or concerns can call the ACO at 609-915-9013.

Water Tower resolution - He's glad to see the grant came through.

Following Mr. Harris' report, Mayor Driver summarized the court situation. The NJ court system and the Hunterdon-Somerset Vicinage control operations. Our courtroom technology is not up to date, so we've had to make some purchases to get ready for virtual court proceedings.

Council Member Runion

He said Charles Pettibone will be welcomed onto the Environmental Commission when it meets on Monday, May 18, for a virtual meeting. He noted the final submissions for the electric vehicle charging station grant have been sent in.

IV. Public Comments - Session I (up to 3 minutes each, for a maximum of 30 minutes)

Robin Lapidus, FCP executive director, identified herself as a caller in the meeting, but had no comments.

V. Approval of Minutes

Motion To: **Approve Minutes: April 27, 2020 Regular Council Meeting**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Michael Harris, Council Member
SECONDER:	Kimberly Tilly, Council Vice President
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Regular Agenda

Ms. Giles-McCormick moved to amend the agenda to include a resolution to authorize an application for a NJ EDA challenge grant. Mr. Harris seconded the motion, and all council members approved amending the agenda to include Resolution 2020-94.

1. RESOLUTION 2020-94: AUTHORIZING SUBMISSION AND MAYOR'S SIGNATURE ON AN INNOVATION CHALLENGE GRANT APPLICATION TO THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Ms. Giles-McCormick said a new session just opened up for an innovative challenge grant regarding technical needs due to COVID-19. The funds go quickly, so Council needs to address this now.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Caitlin Giles-McCormick, Council President
SECONDER:	Kimberly Tilly, Council Vice President
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

2. ORDINANCE 2020-7: FIRST READING: AMENDING THE LAND DEVELOPMENT ORDINANCE OF THE BOROUGH OF FLEMINGTON TO EXPAND AND FURTHER OUTDOOR DINING AS A PERMITTED, ACCESSORY USE

Mayor Driver said the Planning Board has looked at this already, but will have a chance to make comments. It includes a \$50 fee to cover the cost of Borough officials' reviews, but plans are to introduce a resolution waiving the fee for now. She noted that this ordinance would not go into effect until after the public health emergency is over. A public hearing will be held at the online-only May 26 meeting, and comments can be emailed to PublicComment@historicflemington.com.

RESULT:	INTRODUCED [UNANIMOUS]	Next: 5/26/2020 7:30 PM
MOVER:	Michael Harris, Council Member	
SECONDER:	Kimberly Tilly, Council Vice President	
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly	

3. RESOLUTION 2020-90: AUTHORIZING AN ADJUSTMENT ON UTILITY BILLS THAT WERE BILLED IN EXCESS OF 75% OF NORMAL USAGE

Mayor Driver summarized that radios weren't working to read the meters for some accounts. The problem has been addressed, but for some time the affected bills were estimated rather than showing the full usage. Since billings are staggered, more issues can be expected to arise. This resolution gives a credit to accounts that were billed more than 75% more than the average bills they were getting. Going forward, they'll pay for the actual usage shown by the meters.

She said bills have also been revised, and will look different. They'll go out in envelopes, and will include past usage and notations about meter readings.

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Kimberly Tilly, Council Vice President
SECONDER: Michael Harris, Council Member
AYES: Giles-McCormick, Hand, Harris, Long, Runion, Tilly

4. RESOLUTION 2020-91: IN SUPPORT OF THE NJ DEPARTMENT OF TRANSPORTATION'S PRELIMINARY PREFERRED ALTERNATIVE FOR WIDENING ROUTE 31 FROM CHURCH STREET TO E. MAIN STREET, MILEPOST 22.21 TO 23.13

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Michael Harris, Council Member
SECONDER: Kimberly Tilly, Council Vice President
AYES: Giles-McCormick, Hand, Harris, Long, Runion, Tilly

5. RESOLUTION 2020-92: REFERRING ORDINANCE 2020-7 TO THE FLEMINGTON BOROUGH PLANNING BOARD FOR COMMENT AND REVIEW

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Michael Harris, Council Member
SECONDER: Jessica Hand, Council Member
AYES: Giles-McCormick, Hand, Harris, Long, Runion, Tilly

6. RESOLUTION 2020-93: WAIVING FINANCIAL OBLIGATIONS OF FLEMINGTON DIY, INC., FOR LEASE OF BOROUGH-OWNED PROPERTY AT 90 MAIN ST., DURING THE COVID-19 PUBLIC HEALTH EMERGENCY

RESULT: **ADOPTED [UNANIMOUS]**
MOVER: Michael Harris, Council Member
SECONDER: Jeremy Long, Council Member
AYES: Giles-McCormick, Hand, Harris, Long, Runion, Tilly

VI. Public Comments - Session II (up to 3 minutes each, for a maximum of 30 minutes)

Tim Bebout, 194 Main St., thanked Council for being proactive by introducing the outdoor dining ordinance. He also said it's encouraging to see that the Friends of Historic Flemington have lost another lawsuit, and he asked about the status of the remaining lawsuit. Mayor Driver said since litigation is still ongoing she can't say much, but the Redevelopment Committee has been reaching out to the Friends group. She said the current suit, regarding the Planning Board, is in discovery. Mr. Harris asked about Planning Board options; Mayor Driver declined to discuss legal strategy.

Robin Lapidus, FCP executive director, thanked the Council for introducing the outdoor dining ordinance and thinking of the restaurants and reopening- it gives a sense of a future normal.

VII. Attorney's Report

At the next meeting there will be an ordinance to clean up some parking space issues.

The contract for the library interior renovations has been signed.

On Thursday, the state Legislature will be acting on several COVID-19 bills. One of them deals with the extension of Municipal Land Use Law deadlines, and permits.

VIII. Payment of the Bills

Mr. Harris asked about the extra \$1,500 for trash collection. Mayor Driver said that in the first pickup after the public health emergency was declared, volume was exceptionally high and, to get garbage off the street in a timely manner, the garbage company had to bring in an extra truck and crew. OEM Coordinator McNally said that amount can be submitted to FEMA for reimbursement as part of the Borough's COVID-19 response expenses.

Motion To: **Pay the Bills in the Amount of \$1,872,089.57**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Vice President
SECONDER:	Michael Harris, Council Member
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

IX. Executive Session for Any Other Applicable Matter Identified During the Regular Meeting (Action May Be Taken)

None needed.

X. Adjournment

Motion To: **Adjourn**

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Michael Harris, Council Member
SECONDER:	Jessica Hand, Council Member
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Meeting adjourned at 8:45 p.m.

Attest: _____
Sallie Graziano, RMC

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 05/11/20 07:00 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Rebecca Newman
Sponsors:

ADOPTED

RESOLUTION 2020-90

DOC ID: 3220

**Authorizing an Adjustment on Utility Bills that Were Billed in
Excess of 75% of Normal Usage**

WHEREAS, the Borough of Flemington participated in a meter reading program;
and

WHEREAS, there were many meters that were not functioning; and

WHEREAS, some residents had not been billed actual usage for long periods of
time; and

WHEREAS, the Borough Water Department began fixing these issues in January
of 2020 before this COVID-19 pandemic began; and

WHEREAS, billing went out in April which charged residents for water that was
used over multiple years at once; and

WHEREAS, the Borough of Flemington acknowledges this is a very sensitive time
for residents financially and residents cannot afford to be billed excessive
amounts; and

WHEREAS, the Borough had to create a matrix for abating these charges which
is any bill that is 75% or higher than a normal bill; and

WHEREAS, the bills will be adjusted down to their normal average usage; and

WHEREAS, the following accounts will receive the following adjustments:

1005906-0 credit of \$252.00 for water and \$101.45 for sewer
1006407-0 credit of \$892.50 for water and \$298.45 for sewer
1008116-0 credit of \$372.99 for water and \$192.25 for sewer
1009382-0 credit of \$525.25 for water and \$197.50 for sewer
1009764-0 credit of \$2041.50 for water and \$655.65 for sewer
7007906-0 credit of \$159.00 for water - water only account
1008001-0 credit of \$125.00 for water and \$54.05 for sewer
1008085-0 credit of \$147.00 for water and \$61.10 for sewer
1009730-0 credit of \$132.50 for water and \$58.75 for sewer
1020702-1 credit of \$204.00 for water and \$70.50 for sewer

NOW THEREFORE BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey that the above-referenced accounts that received large bills for usage over multiple years which was higher than 75% of their normal usage are credited in the amounts above.

Adopted: May 11, 2020

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Kimberly Tilly, Council Vice President
SECONDER:	Michael Harris, Council Member
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 05/11/20 07:00 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Sallie Graziano
Initiator: Sallie Graziano
Sponsors:

ADOPTED

RESOLUTION 2020-91

DOC ID: 3215

**In Support of the NJ Department of Transportation's
Preliminary Preferred Alternative for Widening Route 31 from
Church Street to E. Main Street, Milepost 22.21 to 23.13**

WHEREAS, the NJ Department of Transportation held a Public Information Center in October 2019 on its plans for widening Route 31 from Church Street to E. Main Street; and

WHEREAS, the Preliminary Preferred Alternative will address existing safety and operational issues by widening Route 31 to provide a consistent roadway cross section throughout; and

WHEREAS, the roadway section will include two lanes in each direction with a 16' center turn lane and 8' shoulders; and

WHEREAS, the widened roadway will require right-of-way acquisition for properties within the widening boundaries; driveways within the limits of the roadway work will be regraded to tie into the new edge of pavement; and utility relocations will be necessary; and

WHEREAS, the Black River and Western Railroad Bridge, which currently restricts the roadway to its narrowest point, will be replaced with a steel through girder bridge that will mimic the existing look and feel of the bridge while improving the vertical clearance to the roadway below; and

WHEREAS, traffic signal upgrades and timing adjustments will improve the flow of traffic throughout the project area; and

WHEREAS, sidewalks, curb ramp locations and crosswalk striping will be added to provide uninterrupted pedestrian travel and achieve Americans with Disabilities Act (ADA) compliance;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey support the Preliminary Preferred Alternative for widening Route 31 from Church Street to E. Main Street as presented by the state Department of Transportation.

Adopted: May 11, 2020

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Harris, Council Member
SECONDER:	Kimberly Tilly, Council Vice President
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 05/11/20 07:00 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

ADOPTED

RESOLUTION 2020-92

DOC ID: 3222

**Referring Ordinance 2020-7 to the Flemington Borough
Planning Board for Comment and Review**

**BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON, NEW JERSEY**

WHEREAS, the Flemington Borough Council passed the first reading of ordinance 2020-7 at the regular Borough Council meeting held on May 11, 2020; and

WHEREAS, the Planning Board has 35 days to provide comment and review prior to a second reading and public hearing;

NOW, THEREFORE, BE IT RESOLVED that the Flemington Borough Council sends Ordinance 2020-7 to the Planning Board for comment and review.

Adopted: May 11, 2020

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Harris, Council Member
SECONDER:	Jessica Hand, Council Member
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 05/11/20 07:00 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

ADOPTED

RESOLUTION 2020-93

DOC ID: 3224

**Waiving Financial Obligations of Flemington DIY, Inc., for
Lease of Borough-Owned Property at 90 Main St., During the
COVID-19 Public Health Emergency**

WHEREAS, Resolution 2017-80, adopted April 12, 2017, authorizes a lease with Flemington DIY, Inc., for usage of Borough-owned property at 90 Main St.; and

WHEREAS, a rental fee of \$1 per month has been agreed upon; and

WHEREAS, Resolution 2018-95, adopted June 11, 2018, amends the lease to allow for estimated monthly payments for utility costs; and

WHEREAS, Coronavirus disease 2019 ("COVID-19") is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, on March 9, 2020 Governor Phil Murphy declared that a Public Health Emergency and State of Emergency exist in the State of New Jersey; and

WHEREAS, on March 16, 2020 the Borough of Flemington declared that a local public health emergency and state of emergency exist in the Borough of Flemington; and

WHEREAS, on March 21, 2020, Governor Phil Murphy issued Executive Order 107 ordering the closure of all non-essential retail businesses; and

WHEREAS, as a result of Governor Murphy's Executive Orders requiring the closure of businesses and social distancing, Flemington DIY, Inc., has been blocked from use of the space it is leasing at 90 Main St. during this emergency;

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, hereby waive collection of the monthly fees due from Flemington DIY, Inc., during the period they have been blocked from using the premises due to the COVID-19 emergency dating back to March 9, 2020; and

BE IT FURTHER RESOLVED that the monthly financial obligation of Flemington DIY, Inc., is waived until such time as the public health emergency is over and Flemington DIY, Inc., is allowed access to the property it is leasing at 90 Main St.

Adopted: May 11, 2020

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Harris, Council Member
SECONDER:	Jeremy Long, Council Member
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 05/11/20 07:00 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

ADOPTED

RESOLUTION 2020-94

DOC ID: 3226

**Authorizing Submission and Mayor's Signature on an
Innovation Challenge Grant Application to the New Jersey
Economic Development Authority**

WHEREAS, the COVID-19 pandemic has required the Borough of Flemington to move many services and meetings online in order to continue operations; and

WHEREAS, these changes have required the expenditure of additional moneys; and

WHEREAS, the New Jersey Economic Development Authority has made grant funding available for the purpose of technology and infrastructure improvements made in the face of COVID-19;

NOW THEREFORE BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, that the Borough hereby endorses the submission of the Innovation Challenge grant application to the New Jersey Economic Development Authority and authorizes the Mayor and Clerk to execute any required documents to make such application.

Adopted: May 11, 2020

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Caitlin Giles-McCormick, Council President
SECONDER:	Kimberly Tilly, Council Vice President
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly

Mayor and Common Council

38 Park Avenue
Flemington, NJ 08822

Meeting: 05/11/20 07:00 PM
Department: Clerk of the Borough
Category: Council Ordinance
Prepared By: Sallie Graziano

Initiator: Sallie Graziano
Sponsors:

TABLED

ORDINANCE 2020-7

DOC ID: 3221

**First Reading: Amending the Land Development Ordinance
of the Borough of Flemington to Expand and Further Outdoor
Dining as a Permitted, Accessory Use**

WHEREAS, the Borough of Flemington, along with the rest of the World, has and continues to experience and suffer from the effects of COVID-19; and

WHEREAS, the food service, sales and distribution industry is one of the industries that has been hit the hardest by the effects of COVID-19 and despite the availability of federal, state, county and local funding and/or other assistance continues to deteriorate; and

WHEREAS, in an effort to expedite the stimulation of local food-related businesses in the wake of COVID-19 and its restrictions, the Borough Council of the Borough of Flemington seeks to expand and further outdoor dining as a permitted accessory use within the Borough as specifically outlined herein; and

WHEREAS, pursuant to N.J.S.A. 40:55D-62b, the Mayor and Council of the Borough of Flemington (the "Council") is authorized and empowered to adopt and amend the zoning ordinances of the Borough of Flemington; and

WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:55D-62.1, the Council held a public hearing on this ordinance on May 26, 2020; and

WHEREAS, the Borough Council of the Borough of Flemington has determined that it would be appropriate, proper and in the best interests of the residents of the Borough of Flemington to amend the provisions of the Land Development Ordinance to further these goals and objectives through the expansion and furtherance of outdoor dining as a permitted, accessory use within the Borough.

NOW THEREFORE, be it ordained by the Borough Council of the Borough of Flemington that Chapter 26 of the Code of the Borough of Flemington (the "Code"), entitled "Zoning," is hereby amended and supplemented as outlined below. All additions shall be underlined, and deletions shall be ~~stricken~~.

1. The definition of “Outdoor Dining” in Section 1201 “Words and Terms Defined” shall be amended to read as follows:

Outdoor Dining. The consumption and/or serving of food and/or drink outside a building to patrons as an accessory use.

2. The definition of “Site Plan” in Section 1201 “Words and Terms Defined” shall be amended to read as follows:

Site Plan. A development plan of one or more lots on which is shown:

- A. _____ The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, drainage, flood plains, marshes and waterways;
- B. _____ The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping, structures and signs, lighting, screening devices, and
- C. _____ Any other information that may be reasonably required in order to make an informed determination pursuant to this ordinance which requires review and approval of site plans by the Planning Board adopted pursuant to N.J.S.A. 40:55D-37 et seq.

A site plan shall not require any plan solely for outdoor dining that complies with the definition of Outdoor Dining set forth in Section 1201 herein.

3. The following definitions shall be added and replaced to Section 1201 “Words and Terms Defined” in appropriate alphabetical order:

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

Principal Façade. That portion of the facade of a building which fronts on a public street.

Retail Food Establishment. An establishment actually located within the principal 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, sandwich shop, delicatessen, pastry shop and the like.

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 (excluding therefrom

~~any unpaved area). SIDEWALK (AREA) A paved path provided for pedestrian use and usually located at the side of a road within the right-of-way.~~

4. The following shall amend the Borough zoning district standards and the remaining lists shall be renumbered:

Section 2618 TRANSITION COMMERCIAL (TC) DISTRICT

....

C. Accessory uses Permitted...

~~1. Outdoor Dining~~

...

E. Additional Regulations for Retail and Service Uses

...

~~3. Outdoor Dining. Outdoor dining shall conform to the following requirements:~~

[delete entirety of subsection 3]

Section 2620 DOWNTOWN BUSINESS (DB) DISTRICT

....

C. Accessory uses Permitted...

~~1. Outdoor Dining~~

...

F. Additional Regulations for Retail and Service Uses

...

2. ~~Outdoor Dining. Outdoor dining shall conform to the following requirements:~~

[delete entirety of subsection 2]

Section 2621 DOWNTOWN BUSINESS II (DBII) DISTRICT

....

C. Accessory uses Permitted...

1. ~~Outdoor Dining~~

...

F. Additional Regulations for Retail and Service Uses

...

2. ~~Outdoor Dining. Outdoor dining shall conform to the following requirements:~~

[delete entirety of subsection 2]

Section 2623 VILLAGE ARTISAN SHOPPING (VAS) DISTRICT

....

C. Accessory uses Permitted...

1. ~~Outdoor Dining~~

...

F. Additional Regulations for Retail and Service Uses

...

2. ~~Outdoor Dining. Outdoor dining shall conform to the following requirements:~~

[delete entirety of subsection 2]

5. The following shall be added to Section 2627 Additional Standards Applying to All Districts:

O. Outdoor Dining

1. Outdoor dining, as defined herein, shall be specifically deemed a permitted, accessory use to a Brewery; Hotel; Restaurant; Restaurant drive-in; Restaurant, fast food; Retail Food Establishment and Social Club, as such uses are defined within Section 1201 or elsewhere of the Ordinance. Notwithstanding, Outdoor Dining shall not be deemed a permitted, accessory use to convenience stores.

2. Outdoor seating shall comply with federal; state; county and/or local distancing requirements imposed by any law and/or Executive Order in effect at any particular time. To the extent that local requirements are permitted to preempt such federal; state and county requirements, such local requirements shall govern.

3. Outdoor Dining Area. The area to be utilized for Outdoor Dining shall be known as the “Outdoor Dining Area”, which shall:
 - a. Be utilized to serve food and drink to be consumed by the public at tables located adjacent to the principal building;
 - b. Be located solely on the sidewalk area or privately owned property adjacent to the principal building. The outdoor dining shall not be located between a use and a public street or parking lot and a use that does not serve or sell the food or drink consumed. This shall not be construed to prohibit outdoor dining on the sidewalk.
 - c. Contain readily removable tables, chairs, umbrellas, heat lamps, lights and/or planters. Such items shall not be required to be removed daily; however, they must be secured from the elements and improper use.
 - d. Be unenclosed by fixed walls or ceilings, except for retractable awnings, umbrellas or other non-permanent enclosures which shall in no way present a safety hazard to or impede pedestrian traffic; and
4. Permit Required. The Outdoor Dining Area shall be subject to the following permitting requirements:
 - a. No Person shall operate an Outdoor Dining Area within the Borough without having first obtained an Outdoor Dining Area Permit in accordance with the requirements of this section. The permit shall be issued by the Zoning Official only if all requirements associated with Outdoor Dining herein are or will be satisfied. The use of the Permit shall, however, be subject to other applicable Federal, State, County and Borough regulations, Executive Orders and State of Emergencies.
 - b. Permits shall be not transferable to new uses.
 - c. Permits shall be automatically renewed annually if no changes to the Outdoor Dining Plan are proposed. Permits shall be newly applied for where changes to the Outdoor Dining Area Plan are proposed.
 - d. A person who has received approval of the outdoor seating by resolution of the Borough Planning Board or prior land use board with jurisdiction for outdoor seating is exempt

from the above permitting requirement and fees set forth herein. This exemption applies only for the Outdoor Dining Plan permitted in the approving resolution.

- e. The fee for an Outdoor Dining Area Permit shall be fifty (\$50.00) dollars payable upon submission of the application. This fee can be waived by Borough council at any particular time period.
5. Application. Each Applicant for an Outdoor Dining Area Permit shall submit and file the appropriate application with the Zoning Officer, together with three (3) copies of an Outdoor Dining Area Plan, as defined below, and the appropriate fee. The application shall be approved by the property owner. The Zoning Officer, in consultation with the Fire Official as necessary, shall approve, disapprove or modify the Application and Outdoor Dining Area Plan within fifteen (15) business days following its submission.
6. Outdoor Dining Area Plan. The "Outdoor Dining Area Plan" shall include the following information (and such other additional information, if any as may be deemed necessary and subsequently requested by the Zoning Officer):
- a. Identification of the principal building and all properties immediately adjacent to such building, including names and addresses of the adjacent property owners; and
 - b. The plan shall be drawn to scale but does not require professional seals and may be prepared by the Applicant.
 - c. The scaled drawing of the proposed design and location of the Outdoor Dining Area shall include setbacks from curbs (setbacks to property lines shall not be required) , all temporary structures, equipment and apparatus to be used in connection with its operation, including any proposed tables, chairs, planters, awnings, lighting, heat lamps and electrical outlets (if any); provisions for the storage of such structures, equipment and apparatus; and the location of any fire hydrant, plug or standpipe, utility pole, parking meter, or other permanent fixture between the principal building and the curb, including a clear indication of the presence of the required pedestrian passageway and ADA clearance. If the Outdoor Dining Area is located on private property adjacent to the sidewalk, the Outdoor Dining Area Plan shall demonstrate that pedestrian traffic will in no way be impeded.

7. Additional Rules, Regulations and Specifications. The establishment, use and operation of the Outdoor Dining Area shall comply with all of the following additional rules, regulations and specifications:

- a. The Outdoor Dining Area shall be operated and maintained in accordance with the Outdoor Dining Area Plan as finally approved, and by the same person who operates and maintains the abutting retail food establishment.
- b. The placement of furniture, apparatus, decoration or appurtenance used in connection with the operation of the Outdoor Dining Area 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 Outdoor Dining Area Plan.
- c. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the Outdoor Dining Area shall be located in such a way that will impede the safe and speedy ingress and egress to or from any building or structure.
- d. Outdoor dining areas, including associated furniture, apparatus, decoration or other item used in connection with the outdoor dining, shall not be located to project or protrude into a four foot (4') pedestrian passageway and ADA clearance. The four foot (4') passageway shall be measured from the curb.
- e. Any table service provided at the outdoor seating 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 outdoor seating in which patrons carry their food from inside the premises to tables located in the Outdoor Dining Area.
- f. The Outdoor Dining Area 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 Zoning Officer. If no table service is provided, the trash receptacles shall include those needed for recycling.
- g. Noise shall be kept at such a level as to comply in all respects with the provisions of applicable ordinances of the Borough.
- h. The hours of operation of the Outdoor Dining Area shall coincide with the hours of operation of the principal use to which it is accessory.

- i. Furniture, apparatus, decorations and appurtenances utilized in connection with the Outdoor Dining Area shall be stored indoors.
 - j. No food may be cooked in the Outdoor Dining Area. Food and drink may be prepared, including but not limited to mixing of ingredients and dishing cooked food.
 - k. Smoking is prohibited in outdoor dining areas.
 - l. All other applicable ordinances of the Borough shall also be complied with.
8. Consumption of Alcoholic Beverages. The Applicant may permit the consumption of alcoholic beverages in the Outdoor Dining Area as follows:
- a. An Applicant that does not possess a liquor license may permit its patrons to consume alcoholic beverages brought to the premises its patrons to the extent permitted by Borough Ordinance and the Alcoholic Beverage Control Board.
 - b. An Applicant that possesses a plenary retail consumption permit must amend their liquor permit to include the Outdoor Dining Area in order to permit the consumption of alcoholic beverages therein by its patrons.
9. Notice of Violation; Failure to Comply. Upon a determination by the Zoning Officer an Applicant has violated one or more of such provisions applicable to the use or operation of the Outdoor Dining Area, the Zoning Officer shall give written notice to the Applicant to correct such violation within twenty-four (24) hours of the receipt of such notice. In the event that the Applicant fails or refuses to correct the violation within such period, the Applicant's Outdoor Dining Area Permit shall be automatically and immediately revoked without the need for further action.
10. Appeals. Any Person aggrieved by any action of the Zoning Officer may appeal as follows:
- a. If the action of the Zoning Officer concerns the denial of an Outdoor Dining Area Permit for failure to comply with the requirements of the Borough Ordinances, the appeal shall be to the Borough Planning Board pursuant to the provisions of the Municipal Land Use Law, specifically N.J.S.A. 40:55D-70(a) or (b). The Applicant may also apply to the Borough Planning Board for a variance pursuant to the provisions of the Municipal Land Use Law, specifically N.J.S.A. 40:55D-70(c) or (d) in the event that it wishes to seek

permission to operate an Outdoor Dining Area in a location or manner that does not comply with the provisions of the Borough Ordinance.

- b. If the action of the Zoning Officer concerns the revocation of an Outdoor Dining Area Permit, the appeal shall be to the Mayor and Borough Council. (Need to confirm with Borough Counsel) The appeal shall be taken by filing a written statement fully setting forth the grounds for appeal with the Borough Clerk no later than thirty (30) days after the notice of the action complained of has been served personally upon the Applicant or mailed, postage prepaid, to the Applicant at the address provided on the Application. The Borough Clerk shall set a time and place of hearing for the appeal, at which time the Mayor and Borough Council shall conduct a hearing and affirm, modify or reverse the action of the Zoning Officer that is the subject of the appeal.

11. Penalties. Any person convicted of a violation of any of the provisions of the Borough Ordinance relative to Outdoor Dining section shall be subject to a fine of at least two hundred (\$200.00) dollars but not exceeding five hundred (\$500.00) dollars for each and every offense for each day in which the violation has not been abated.

6. Section 2629D “Parking: Number of Spaces”, Table 26.2 “Off Street Parking Space Requirements for Nonresidential Land Uses” shall be amended to include the following in between the parking requirements for offices and mortuary:

Outdoor Dining No additional parking shall be required

7. 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 portions thereof.

8. The Borough Clerk is hereby directed, upon adoption of this ordinance after public hearing, to publish notice of the passage thereof and to file a copy of this ordinance with the Hunterdon County Planning Board as required by N.J.S.A. 40:55D-16.

9. Inconsistency. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

10. Effective Date. This ordinance shall take effect immediately upon final passage and publication thereof according to law and the expiration of any applicable waiting period.

Attest:

Sallie Graziano, Borough Clerk

Betsy Driver, Mayor

CERTIFIED to be a true copy of an ordinance finally adopted by the Borough Council at a regular meeting on _____.

Sallie Graziano, Borough Clerk

APPLICATION FOR OUTDOOR DINING PERMIT

Suggested Information to Include in Application

1. Name and address of the Applicant;
2. The name and address of the owner of the principal building (if other than the applicant);
and
3. The name and address of the Person who has prepared the Outdoor Dining Area Plan;
4. Consent of the owner of the principal building if other than the Applicant, to the Outdoor Dining Area Plan;
5. A statement of the seating capacity of the proposed Outdoor Dining Area and of the existing retail food establishment actually operated by the Applicant in the principal building.

Introduced: May 11, 2020

Adopted:

Attest:

Betsy Driver, Mayor

Sallie Graziano, Borough Clerk

RESULT:	INTRODUCED [UNANIMOUS]	Next: 5/26/2020 7:00 PM
MOVER:	Michael Harris, Council Member	
SECONDER:	Kimberly Tilly, Council Vice President	
AYES:	Giles-McCormick, Hand, Harris, Long, Runion, Tilly	