

## **40-7.32 Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas.**

### **40-7.32.1 Definitions.**

As used in this section, these terms shall have the following meanings:

- a. *Outdoor Dining Area* shall mean a designated area on the premises of a retail food establishment or restaurant, but outside the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress.
- b. *Outdoor Eating Area* shall mean a designated area on the premises of a retail food establishment, but outside the principal building, and where patrons may sit at tables while consuming foods, soft drinks, ice cream, and similar confections purchased from the retail food establishment.
- c. *Sidewalk Cafe Area* shall mean a designated area of a public sidewalk where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress.  
(Ord. No. 2011-04 § 1)

### **40-7.32.2 Permit Required.**

- a. Areas in which Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafes Areas, collectively referred to as "area" or "areas," are permitted:
  1. Outdoor Eating Areas, as defined in this Section may be established as an accessory use to permitted restaurants and retail food establishments in the BC Zone and Seaport Village Redevelopment Area.
  2. Outdoor Dining Areas, as defined in this Section may be established as an accessory use to permitted restaurants and retail food establishments in the BC, CB-1, MC-1 Zones and Seaport Village Redevelopment Area.
  3. Sidewalk Cafe Areas, as defined in this Section, may be established as an accessory use to permitted restaurants in the CB-1, CB-2 Zones and Seaport Village Redevelopment Area zones.
- b. No person shall operate an Outdoor Dining Area, an Outdoor Eating Area or a Sidewalk Cafe unless a permit has been obtained from the Borough of Belmar.
- c. Applicants shall apply for permit approval in accordance with the provisions of this Chapter. All such applications shall be approved by the Zoning Officer and shall be referred to the Chief of Police and the Fire Code Official, who shall provide the Zoning Officer with written reports of their opinions and recommendations regarding the application.
- d. Applicants shall meet all general ordinance requirements and all other laws, rules, regulations and codes applicable to the proposed activity.
- e. Applicants proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area must provide satisfactory proof to the Zoning Officer of the following:
  1. Applicants proposing to establish an Outdoor Eating Area or Outdoor Dining Area in the BC Zone and/or Seaport Village Redevelopment Area must provide

- an architectural barrier such as floral arrangements, landscaping and/or decorative fencing designed to enclose the eating area and limit the ability of litter to blow off the premises. The Zoning Officer shall also require such architectural barriers to litter in any other locations or situations where the Zoning Officer determines that the litter would otherwise be likely to result from the accessory use. All other Outdoor Dining Areas and Sidewalk Cafe Areas shall be delineated by a decorative chain and bollards or other means approved by the Zoning Officer.
2. An applicant proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall submit to the Zoning Officer a layout of the proposed seating areas, which shall include but not be limited to a depiction of all aisles, routes of ingress and egress; clearances between tables and between the seating area at the curb; the location of all food preparation and service areas; the landscape plan; location and description of all plumbing, electrical and other equipment and fixtures that will be utilized; an illustration, rendering and/or photograph of all proposed furniture, umbrellas, awnings, signage and other furniture proposed. No picnic-style tables are permitted.
  3. Physical design elements inclusive of but not limited to: architectural barriers, tables, seating, planters and litter containers placed within the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall conform to Section 8, Design Criteria, of the Seaport Redevelopment Plan.
  4. The Zoning Officer shall review each application to ensure that the proposed operation of the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area will not interfere with pedestrian or vehicular traffic. Six (6') feet of unobstructed sidewalk should be provided with the exact width being determined by the Zoning Officer as he deems it to be appropriate to promote pedestrian or vehicular safety or the visual harmony of the neighborhood, however, in no event shall the unobstructed sidewalk be less than four (4') feet.
  5. The Zoning Officer shall require each applicant to submit a litter control plan which shall include, but not be limited to, a description of the number and location of trash receptacles for the areas and the frequency with which the tables, surrounding area and adjacent public and private properties will be policed for litter. Failure to abide by an established litter control plan shall constitute a violation of the permit approval of which it was made a condition, and shall subject the applicant to a fine in an amount not less than one hundred (\$100.00) dollars per violation.
  6. The Zoning Officer shall establish the hours of operation for each Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area. In establishing the hours, the Zoning Officer shall take into consideration the nature of the restaurant or retail food establishment at issue, the character of the neighborhood adjacent to the premises, and the character and nature of other uses in the vicinity of the premises at varying times of day.
  7. BYOB privileges for wine or malt alcoholic beverages are allowed in Outdoor Eating Areas, Outdoor Dining Areas or Sidewalk Cafe Areas subject to N.J.S.A. 2C:33-7 and the restrictions in Belmar Code subsection 17-7.8. The service of other alcoholic beverages in Outdoor Eating Areas, Outdoor Dining Areas or

Sidewalk Cafe Areas is permitted only if the operator's liquor license specifically allows for such service.

8. The seating contained in an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall not be counted in determining any parking space requirement for a retail food establishment or restaurant use.
9. The permit granted pursuant to this section shall allow the use of the Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas at any time of year. However, the area must be properly maintained at all times including complying with the litter control plan, complying with all applicable laws, rules, regulations and codes, properly securing and/or removing tables, chairs and other items during times of inclement weather and high wind, further at no time shall chairs, tables or other items be stacked in the area.
10. Applicants receiving permit approval for an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area may obtain a permit each year without further Zoning Officer approval to continue operations in the years subsequent to the initial approval, provided that the operations are not changed.
11. Notwithstanding anything contained in this section, any use falling within the definitions of "Outdoor Eating Area," "Outdoor Dining Area" or "Sidewalk Cafe Area" that was in operation as of September 1, 1993 may continue without further approval by the Zoning Officer or be required to obtain a yearly permit as required herein; provided, however, permit approval in accordance with this section shall be required in the event (i) the premises are conveyed to a new owner; (ii) the use is expanded or substantially changed, or (iii) the owner of the premises makes any alteration or improvement to the property that would otherwise require either major or minor site plan approval.
12. Notwithstanding anything contained in this section, any Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area that was approved by the Planning Board or Zoning Board of Adjustment prior to the effective date of this Section, (adopted March 16, 2011 by Ordinance No. 2011-04) may continue without further approval by the Zoning Officer or be required to obtain a yearly permit as required herein; provided, however, permit approval in accordance with this Section shall be required in the event (i) the premises are conveyed to a new owner; (ii) the use is expanded or substantially changed; or (iii) the owner of the premises makes any alteration or improvement to the property that would otherwise require either major or minor site plan approval.
13. Applicant shall indemnify and save harmless the Borough of Belmar, its employees, agents or officers from all claims, losses, liens, expenses, suits and attorney fees (liabilities) arising from the placement, operation and maintenance of the applicant's Sidewalk Cafe/Outdoor Dining/Outdoor Eating Areas. Applicant agrees to name the Borough of Belmar as an additional insured under the applicant's general liability insurance (minimum required limit of one million (\$1,000,000.00) dollars, bodily injury, property damage and personal injury, and maintains such insurance for such time as the Sidewalk Cafe/Outdoor Dining/Outdoor Eating Area(s) exists. Owner shall provide the Zoning Officer with evidence of such insurance.

(Ord. No. 2011-04 § 1)

**40-7.32.3 Application—Form.**

All permits required by this Section shall be applied for and obtained from the Office of the Zoning Officer during normal business hours. Applications for such permits shall be in a form approved by the Borough Administrator and be accompanied by permit fees in the amounts established by this Section and Section 40-7.32.4. (Ord. No. 2011-04 § 1)

**40-7.32.4 Fees Set by Resolution.**

- a. The annual fee for each year for the operation of an Outdoor Dining Area, Outdoor Eating Area and/or Sidewalk Cafe shall be set by resolution by the Mayor and Borough Council.
- b. No fees shall be pro-rated nor any part thereof refunded for any reason.  
(Ord. No. 2011-04 § 1)

**40-7.32.5 Appeals.**

The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged by the appellant that there is error in any requirement, decision or refusal made by the Zoning Officer in the enforcement of this section. Additionally, the Planning Board or Zoning Board of Adjustment, as appropriate, shall have the power to hear and request for a variance from the regulations and conditions of this Section. (Ord. No. 2011-04 § 1)