



Kearny Town Council

402 Kearny Avenue
Kearny, NJ 07032

www.kearnynj.org

FIRST READING -	
PUBLISH -	
SECOND READING -	
PUBLISH -	
PLAN BD REVIEW -	

ORDINANCE 2020-23

Ordinance Modifying Various Provisions of the Town Code to Permit Outdoor Dining and Retail Sidewalk Sales During the Remainder of Calendar Year 2020 Pursuant to Governor Murphy’s Executive Orders

WHEREAS, the COVID-19 Pandemic has caused significant hardship to small businesses and restaurants in the Town of Kearny; and,

WHEREAS, as operational restrictions are lifted by Governor Murphy, and certain aspects of businesses are permitted to re-open, there will still be modified occupancy guidelines which will continue to have an impact on the viability of certain businesses; and,

WHEREAS, the Town of Kearny wants to provide a range of alternatives that support new and expanded outdoor retail and dining opportunities and other outdoor amenities to help recoup lost occupancy and still maintain safe social distancing.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF KEARNY HUDSON COUNTY, NEW JERSEY THAT:

SECTION ONE: Chapter 23A - Streets and Sidewalks Supplemental is hereby created and made a part of the Town Code of the Town of Kearny for the stated period of time.

CHAPTER 23A - Streets and Sidewalks Supplemental

§23A-1. Purpose and Objective.

- A. The Mayor and Council of the Town of Kearny recognizes the immense impact that the Covid-19 shut down has had on our local economy and small businesses and wish to help stimulate the economic recovery by adopting immediate short-term changes to certain regulations; and
- B. The Mayor and Council of the Town of Kearny further recognize that to maintain the health and safety of the public by continuing safety protocols such as social distancing, changes must be adopted that help local businesses remain viable.
- C. This Ordinance is intended to implement and supplement the provisions of Executive Order 150 issued by Governor Murphy on June 3, 2020 (“EO-150”) the Executive Directive No. 20-014 issued by the Department of Health dated June 3, 2020 (the “DOH Directive”) and the Special Ruling SR 2020-10 of the NJ Division of Alcoholic Beverage Control dated

June 3, 2020 (the “ABC Special Ruling”). EO-150, the DOH Directive, and the ABC Special Ruling and all future amendments to any of the foregoing are incorporated herein by reference.

§23A-2. Applicability and Expiration of Provisions.

- A. This Ordinance shall apply only to restaurants and non-profit operations (including social clubs and cultural clubs) located anywhere in the Town, and retail establishments located in any Town Commercial District or Redevelopment Area, each of which must be associated with an adjacent “brick and motor “establishment.
- B. The provisions in this ordinance shall take effect immediately upon adoption of the ordinance as provided by law.
- C. This ordinance shall expire on December 31, 2020 unless extended by amending ordinance approved by the Mayor and Council of the Town of Kearny, provided however that the provisions relating to the service of alcoholic beverages in outdoor dining areas shall expire on November 30, 2020 pursuant to the ABC Special Ruling, unless further extended by the ABC.
- D. This ordinance shall supersede, from the time of adoption until the expiration hereof, all other inconsistent provisions of any section of the Town Code.

§23A-3. Retail Businesses and Services.

Retail businesses and services may use the area in front of their stores to display merchandise and conduct business pursuant to the following provisions:

- A. Projection into Sidewalk. Where sidewalks are more than 20 feet wide, retail businesses may use up to 10 feet of sidewalk space adjacent to their storefront. Where sidewalks are less than 20 feet wide, retail businesses may use the available space adjacent to their storefront provided that not less than 6 feet of safe unobstructed pedestrian egress is maintained.
- B. Sidewalk displays may be set up on the sidewalk during a business’s regular hours, except that no business or merchandise shall remain outside overnight between the hours of 9:00 p.m. and 8:00 a.m. except where expressly permitted and/or previously approved.
- C. No flashing or moving lights or additional signage shall be part of the sidewalk setup.
- D. All merchandise shall be removed from the sidewalk and curb side every evening.
- E. The provisions of this section 23A-3 shall not apply to restaurants and other outdoor dining

areas which are covered by other sections of this ordinance.

§23A-4. Sidewalk Cafes/Out Door Dining

A. Application; Fees.

1. Applicants for a sidewalk café/outdoor dining shall submit to the Town Clerk a map detailing the location, number of tables and seating capacity of the outdoor dining space. All other documents normally required for application or renewal of a sidewalk café/outdoor dining space are waived for the term of this ordinance.
2. Fees for the 2020 sidewalk café/outdoor dining space license period, beginning January 1, 2020 and ending December 31, 2020 are hereby waived. Those applicants who have already obtained their 2020 sidewalk café license will have their fees paid credited to the 2021 sidewalk café license period.

B. Projection into Sidewalk.

1. For all establishments where there is less than 20 feet of width, an establishment with a sidewalk café/outdoor dining space may utilize as much of the sidewalk as is practicable provided that not less than 6 feet of safe unobstructed pedestrian egress is provided. Where fixed obstruction of the right-of-way exist, such as bus shelters, trees, bike racks, utility poles and streetlights, the projection of the sidewalk café/outdoor dining space shall be modified to maintain 6 feet of pedestrian egress.
2. Where a sidewalk café/outdoor dining space is located next to another commercial establishment that is not open during hours that it is in operation, the sidewalk café/outdoor dining space may extend laterally into the adjacent sidewalk area provided:
 - a. The operator of the sidewalk café/outdoor dining space has written consent from the adjacent business owner and the property owner to utilize said area; a copy of the written consent shall be provided to the Town;
 - b. Liability insurance is provided by the sidewalk café/outdoor dining space operator indemnifying the property owner and the Town of Kearny; and
 - c. All entrances and exits of the buildings remain clear of sidewalk café/outdoor dining space equipment.
3. Restaurants may utilize adjacent parking areas (or driveways wider than 20 feet) which are owned, leased, or otherwise controlled by them for outdoor dining provided that
 - a. No more than one parking space per 8 outside dining seats (not to exceed 10 spaces) is used for outdoor dining; and

- b. If the parking area or driveway is adjacent to a residential building, the outdoor dining space shall provide a buffer from the residential building as determined by the Zoning Officer.
4. Businesses holding liquor licenses that expand to outdoor seating areas shall be subject to the provisions of EO-150 and DOH Directive and ABC Special Ruling.
5. The number of outside dining chairs or seats shall not exceed the number of chairs or seats that are legally permitted inside the establishment.

C. General Provisions.

1. All provisions of EO-150, the DOH Directive and ABC Special Ruling as may be further amended, are incorporated herein.
2. Partitions may be spaced differently or modified where needed to delineate the larger permitted café area. Partitions may be supplemented with or replaced by planters, bollards or other temporary demarcation. Where café demarcation is not fixed, it is the café operators responsibility to make sure the pedestrian way remains clear of furniture and other café accessories at all times. Partitions such as jersey barriers, planters or bollards shall be used to protect dining areas in parking lots or adjacent to the street. Partition requirements may be waived by the Zoning Officer on a case-by-case basis.
3. Partitions, planters, tables, chairs and related sidewalk dining equipment may remain on the sidewalk overnight through September 30, 2020 provided it is broken down and properly secured against weather conditions, high winds, vagrancy and other mischief. From October 1, 2020 through the end of the year all equipment shall be removed overnight. Sidewalks, curbs, gutters and streets immediately in front of the establishment shall be broom swept at the end of every evening.
4. Overhead covering such as awnings or umbrellas are recommended but will not be required.
5. Bistro lights will be permitted through September 30, 2020 provided: they are at least 7 feet above sidewalk grade, the amount of lighting does not create significant light intrusion affecting pedestrian or vehicular traffic or neighborhood residences, and all lights are turned off when the business is closed.
6. Customers of the sidewalk café/outdoor dining area shall be permitted to use the restrooms of the brick and mortar establishment, provided that masks are worn indoors and all CDC requirements and Executive Orders are followed.
7. All tables and chairs shall have a minimum six foot clearance from other tables and

chairs.

8. No pets are permitted in outdoor dining areas except for service animals.
9. No smoking shall be permitted in outdoor dining areas.
10. All restaurant employees, including service and wait staff, shall wear a facemask covering their nose and mouth.

D. Hours or Operations.

Hours of operation shall be between 8:00 a.m. and 10:30 p.m. Sunday through Saturday, except for dining areas that are not located in a commercial district or redevelopment area, which shall close by 8 p.m.

§23A-5. StrEATERIES.

A. Definition.

StrEATERY. A shared public space temporarily converting curbside parking space into an area specifically intended for outdoor dining where take-away food and beverages may be consumed. A streatory may be sponsored or co-sponsored by more than one business on the block or by an entity supporting local businesses.

B. General Requirements; Design Standards.

1. No parking space, parking lane or other portion of the public right-of-way shall be encumbered without prior approval by the Police Department. No streatory shall be installed without prior approval of the Town Engineer in accordance with the provisions stated herein. Use of the right-of-way along a County roadway may require consent, approval or waiver by Hudson County Division of Planning.
2. Streateries platform shall be flush with the curb and sidewalk to prevent tripping hazard.
3. Streateries shall not be located within 25 feet of a crosswalk, 10 feet of hydrants or in handicap spaces or loading zones.
4. The area of the streatory established by the application and approved by the Town of Kearny, shall be delineated from adjacent parking spaces and the travel lane of the adjacent street using temporary crowd control barriers, bollards, poles, planters or other approved means.
5. Temporary ADA curb ramps must be provided; for streateries up to 30 linear feet one

ramp shall be required, for streateries over 30 linear feet two ramps shall be required.

6. The road surface shall be covered with synthetic turf, solid color indoor-outdoor carpeting, or other approved street covering.
7. Easily removable tables, chairs or other seating shall be provided. Tables shall be 2-top or 4-top only, no tables accommodating more than 4 persons shall be permitted. Tables and chairs shall be spaced at least 6 feet apart measured from the backs of opposite facing chairs.
8. Shade coverings such as umbrellas or pop-up canopies may be included as part of the streatory set up provided: there is no reduction in vehicular or pedestrian visibility; no part of the shade canopy extends into the travel lane or over the sidewalk; the shade covering is anchored securely against wind; and all coverings are removed overnight. Shade covering shall not contain advertising.
9. One 24 inch by 36 inch A-frame or similar movable sign shall be included for a streatory up to 500 square feet in size. Streateries over 500 square feet shall have two signs to be located at either end of the streatory. Signs shall be positioned on the covered surface within the boundaries of the streatory, not on the adjacent sidewalk.
 - a. The sign(s) shall clearly state that the streatory is open to the public;
 - b. The sign(s) may identify the sponsor(s) of the streatory;
 - c. The sign(s) shall include guidance regarding social distancing; and
 - d. The sign shall state that there is a 90-minute time limit for occupants of the streatory.
10. Hours of operation shall be between 8:00 a.m. and 10:30 p.m. except that streateries that are not located in a commercial district or redevelopment area shall close by 8 p.m. Daily set-up of the streatory shall follow the street-sweeping schedule and adjust accordingly.
11. All furniture, street delineation, safety equipment and road covering shall be removed at the end of each day by the responsible party.
12. Failure to comply with the guidelines stated herein shall be subject to a municipal fine of up to \$100 per occurrence and revocation of approval of the streatory.
13. The Town reserves the right to limit the number of streateries per block based on available space and the need to maintain publicly accessible curbside space on each block for other uses.

C. Application; Approval; Fees.

1. An application for a streatory shall be made to the Town Clerk.
 2. The application shall include, at minimum:
 - a. Designation of the responsible party by name, address, a 24-hour phone number and email.
 - b. A detailed description of the proposed location; including the start and end point of the proposed streatory related to some fixed or easily identifiable street marker;
 - c. The length of the proposed streatory both in feet and number of parking spaces;
 - d. The location of fire hydrants, handicap parking spaces, and loading zones and the distance from each where the streatory will be located;
 - e. Detailed specifications for all materials to be used to delineated the streatory from adjacent parking and the travel lane; and
 - f. The days of the week that the proposed streatory would operate.
 3. Upon receipt of an application for a streatory, the Town Engineer, in cooperation with the Kearny Police Department shall review the application and proposed setup for consistence with the design standards established herein and shall approve or deny the application within 10 business days.
 4. Upon approval, the sponsor(s) of a streatory shall remit a rental fee of \$0.25 per linear foot per day, payable on a monthly basis. Monthly fees shall be paid to the Town of Kearny on the 1st of each month.
- D. The Town of Kearny, by order of the Chief of Police or the Office of Emergency Management, may require a steatory to be the removed or restrict the set-up of streateries for reasons of public safety.

§23- 6. Rights; Privileges; and Immunities.

- A. The Town of Kearny reserves all rights, privileges and immunities concerning its inalienable ownership over all sidewalks, streets, public lanes, alleys or other public grounds within the Town, whether or not any projection or encumbrance has been permitted to be erected on the same, without any waiver of such rights, privileges or immunities, whether expressed or implied.
- B. The Town of Kearny expressly reserves the right to require the removal of any or all encroachments of the public right-of-way, and other such encumbrances upon any sidewalk, street, public lane, alley or other public ground that present a danger to the

health, safety and welfare of the public.

- C. As part of the petition process, the grantee of any revocable consent must agree to defend, protect, indemnify and hold harmless the Town of Kearny, its’ officers, agents and employees from and against any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of, or which may arise out of, the grantee’s use of the public right-of-way.

SECTION TWO: VIOLATIONS

Except as otherwise provided herein, any violations of this Ordinance shall be subject to a \$100.00 fee for each offence and/or revocation of any license, permit or approval. Each day that a violation continues shall be a separate offence.

SECTION THREE: SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FOUR: EFFECTIVE DATE

This Ordinance shall take effect immediately upon passage and publication as provided by law.

SECTION FIVE: CODIFICATION

This ordinance shall be a part of the Code of the Town of Kearny as though codified and fully set forth therein.

I certify that the foregoing ordinance was introduced by the Council on first reading on June 9, 2020, duly published according to law, and passed on second reading and final passage on

_____.

PATRICIA CARPENTER, TOWN CLERK

I hereby approve the foregoing ordinance this ____ day of _____, ____.

ALBERTO SANTOS, MAYOR

James Bruno