

**CITY OF HACKENSACK
CITY MANAGER EMERGENCY ORDER #2020-3**

WHEREAS, on June 10, 2020, the City Manager issued Emergency Order #2020-2 regarding outdoor dining in the City of Hackensack during the Public Health Emergency and State of Emergency in the state of New Jersey due to COVID-19; and,

WHEREAS, the City Manager explained in Emergency Order #2020-2 that certain provisions of the City Code required temporary modification or amendment to reflect the realities of attempting to operate a viable food or beverage business by serving customers outside only during the period of the State of Emergency; and,

WHEREAS, the terms of Emergency Order #2020-2 were to be effective until October 31, 2020, or when the Governor of New Jersey declared the state of New Jersey is no longer in a State of Emergency, whichever came first; and,

WHEREAS, although indoor dining has resumed in New Jersey to a limited extent, the State of Emergency remains in place and it is apparent that the viability of Hackensack's food and beverage businesses requires the ability to offer outdoor dining for as long as weather conditions allow; and,

WHEREAS, the City wishes to support food and beverage businesses to the fullest extent reasonably possible, and accordingly believes that Emergency Order #2020-2 should be extended through March 31, 2021 with the additional requirements contained herein.

NOW, THEREFORE, BY THE POWERS VESTED IN ME PURSUANT TO SECTION 119-2A AND OTHER APPLICABLE PROVISIONS OF THE CODE OF THE CITY OF HACKENSACK, AND THE LAWS OF THE STATE OF NEW JERSEY, I DIRECT AS FOLLOWS:

1. The terms of Emergency Order #2020-2 are extended and shall remain in full force and effect, subject to any additional provisions or modifications contained herein, through March 31, 2021 or thirty (30) days after the Governor of New Jersey declares the state of New Jersey is no longer in a State of Emergency, whichever comes first.
2. Section 116-18 of the City Code is modified to provide that existing holders of a 2020 outdoor café license shall be permitted to operate through March 31, 2021.

3. Section 116-5 of the City Code is modified to provide that the 2020 outdoor café license shall expire on March 31, 2021. Applicants seeking to ensure that they are permitted to offer outdoor dining for the 2021 season without interruption shall file a new application for such license by March 1, 2021, which if granted shall be valid starting on April 1, 2021. Applications received after that date will be approved or denied as promptly as possible but the City cannot assure that a decision will be issued by April 1, 2021. Application fees for the 2021 season shall be waived.
4. The City shall permit hardwired electric, natural gas and propane heaters for outdoor dining subject to the following minimum requirements:

A. Propane Heating

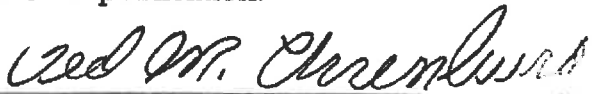
- Propane or any other heater with an LP cylinder requires a permit from the Fire Department.
- The heater cannot be placed within 5' of building, under an overhang or canopy, or within 5' of anything combustible.
- A fire extinguisher must be located within 25' of each heater.
- Patrons must not interact with the heater.
- Heat tank cannot be stored inside or within 10' of the establishment (heater can, but tank must be removed).
- Use of the heater must be discontinued during storms or snow events (meaning actual or expected accumulation of two or more inches of snow)
- The heater must automatically turnoff when tipped over. A tip drill shall be performed to ensure safety.
- The heater must be UL-listed with classifications and safety instructions from manufacturer. Staff must understand the functionality of the heater.
- Propane heaters or other heaters fueled by a flammable or combustible liquid cannot be utilized in a tent or any other covered area, regardless of whether it has sides, unless the heater is specifically rated for use with tents or covered areas and it is situated outside of the tent itself.

B. Hardwired Electric or Natural Gas Heaters

- Hardwired electric or natural gas heaters require approval from the Construction Code Official.
 - A fire extinguisher must be located within 25' of each such heater.
 - Patrons must not interact with the heater.
 - Use of the heater must be discontinued during storms or snow events (meaning actual or expected accumulation of two or more inches of snow)
 - The heater must be UL-listed with classifications and safety instructions from the manufacturer available. Staff must understand the functionality of the heater.
5. Tents (or other membrane structures) may continue to be utilized for outdoor dining subject to certain requirements. Any tent does not remain at least 50% open to outside air will only be permitted if allowed by the state of New Jersey, subject to any additional conditions that may be applicable. Beginning November 30, 2020 through March 31, 2021, all such tents must be reviewed and approved by the City's Health Officer and Construction Code Official, while meeting the following requirements:
- A New Jersey-licensed structural engineer or other qualified professional must certify that the tent can support any reasonably expected snow load and provide an anchoring plan for protection against uplift. A UCC permit shall be obtained from the Construction Code Official prior to any use of the tent by any employee or patron of the business starting on November 30, 2020.
 - A diagram must be provided along with an egress plan for staff and patrons and how access to the disabled will be available for patrons seeking to use the dining area, consistent with the Americans with Disabilities Act.
 - Evidence must be submitted that the tent is labeled flame retardant as per NFPA standards.
 - No smoking is permitted, and no smoking signs installed.

- Illuminated exit signs and emergency lighting shall be installed unless the tent will remain open on all sides under all conditions.
 - No cooking shall take place in a tent, nor shall any open or exposed flame be permitted.
6. Any non-fixed outdoor café equipment (e.g. partitions, planters, tables, umbrellas, chairs and so forth) shall either be removed or secured during hours when the outdoor café is not in operation to ensure safety from adverse weather conditions.
 7. The City Manager reserves the right to issue upon reasonable notice temporary modifications or restrictions on the operations of outdoor cafés due to adverse weather or other emergent situation potentially affecting public health and safety.
 8. Holders of ABC licenses or permits that have been issued COVID-19 Expansion Permits by the State Division of Alcoholic Beverage Control may seek renewal of that permit through March 31, 2020 pursuant to the October 19, 2020 Special Ruling (SR-2020-21) issued by the Acting Director of the State Division of Alcoholic Beverage Control. All such applications will be reviewed and approved by the City Clerk and the City's Chief Law Enforcement Officer (or designee), consistent with the provisions set forth in SR-2020-21. No application will be approved unless an outdoor café license has been granted pursuant to the provisions of Chapter 116 of the City Code, as modified by Emergency Order #2020-2 and this Emergency Order. If the holder of an Expansion Permit fails to renew it, alcohol sales in the permitted area must immediately cease. Consumption of alcoholic beverages in areas authorized by a valid COVID-19 Expansion Permit shall not be deemed a violation of Section 119-18 of the City Code.
 9. All provisions of the City Code not specifically referenced herein but that are in conflict with any of the provisions of this Emergency Order are temporarily suspended during the pendency of this Emergency Order.
 10. All food and beverage businesses must comply with any Executive Order or other rule or regulation promulgated by the Governor of New Jersey or competent legal authority with respect to the operation of their business.

11. This Emergency Order shall take effect immediately upon written approval of the Emergency Management Coordinator and shall be enforced the by Police Department, Fire Department, City Constable and/or any other City official or employee empowered to issue complaints alleging violations of the Chapter 119 of the City Code.
12. The City Clerk is directed to provide a copy of this Emergency Order to the City Council no later than the next City Council meeting after issuance, and as soon as practicable after issuance, shall be posted at City Hall at the location where city public notices are posted, filed in the office of the City Clerk, and published on the City's Internet web site. This Emergency Order shall also be submitted for publication in the City's official newspaper(s) as soon as practicable, although it shall remain effective and enforceable during the period prior to publication.



Ted Ehrenburg,
City Manager

Dated: 10/22/2020

Approved:



Emergency Management
Coordinator

Attest:



Steven Kleinman, Esq.
City Attorney