

## **ORDINANCE NO. 2025-05**

### **AN ORDINANCE AMENDING AN ORDINANCE ENTITLED, “CODE OF THE BOROUGH OF SHIP BOTTOM, COUNTY OF OCEAN, STATE OF NEW JERSEY, (1997)” AND CREATING A NEW CHAPTER 16.93, WHICH PERTAINS TO OUTDOOR DINING**

#### **STATEMENT OF PURPOSE**

The purpose of this Ordinance is to create a new Chapter 16.93 to adopt outdoor dining regulations in accordance with State law.

#### **SECTION I**

##### Chapter 16.93 Outdoor Dining

##### §16.93.010 Premises Expansion Permit.

- A. No outdoor food or beverage service shall be permitted without the issuance of a premises expansion permit pursuant to the regulations set forth herein and in N.J.S.A. 40:55D-164, et seq., as amended. The premises expansion permit is valid for one year and shall require annual renewal.
- B. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the municipality prior to the effective date of N.J.S.A. 40:55D-164 (November 26, 2024) shall be entitled to convert the permit to a premises expansion permit to be used in 2025 for purposes other than selling alcoholic beverages in such spaces as authorized by the statute and this Chapter, provided that there are no changes to the outdoor space previously approved and the documents required by this Chapter are on file with the Borough. In the event the documents required by §26-1.3 are not on file, such documents must be provided to the Borough, but there shall be no fee for 2026. Beginning in 2026, the applications must be filed annually and subject to review and approval.

##### §16.93.020 Definitions.

In addition to any definitions set forth herein, the definitions are set forth in N.J.S.A. 40:55D-164.

##### §16.93.030 Applications.

- A. All holders of alcoholic beverage manufacturer licenses or retail consumption licenses shall be required to file an application for a premises expansion permit with the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 40:55D-165 to serve alcoholic beverages in outdoor space. The Director may not approve or deny such an application until it receives endorsement or approval from the Borough.
  - 1. If the Borough approves the application, the Borough shall submit its endorsement to the Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 40:55D-165.
- B. All holders of alcoholic beverage manufacturer licenses or retail consumption licenses and the owners of all restaurants and establishments seeking to sell food in outdoor space as an extension of their business premises shall file an application for a premises expansion permit with the Zoning Officer. The application shall include the following.
  - 1. A plan, sketch, picture, or drawing that depicts the design, dimensional boundaries, and placement of tents, canopies, umbrellas, tables, chairs,

lighting, and other fixtures of the outdoor spaces.

2. A plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures and grounds.
  3. Written consent of the owner of the premises, if other than the applicant.
  4. An insurance certificate naming the municipality as an additional insured, with general liability on an occurrence with a limit of liability of \$1,000,000 with respect to losses arising from the operation of the outdoor dining facility.
  5. An executed indemnification agreement required by the Borough with respect to losses arising solely from the operation of the outdoor dining facility.
- C. The Zoning Officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of N.J.S.A. 40:55D-164, with the exception that the Zoning Officer may deny an application based on current violations of any other health, safety, fire, permitted use, or zoning regulation, or upon any applicable law permitting the denial of a zoning permit.

#### §16.93.040 Permits, Renewals, and Validity.

- A. All permits issued shall be subject to annual renewal. All permits shall expire on December 31<sup>st</sup> of each calendar year.
- B. The Borough may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of N.J.S.A. 40:55D-164, et seq., or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages not otherwise permitted under the jurisdiction of the Division of Alcoholic Beverage Control and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the Division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.
- C. An appeal of any approval, denial, revocation, or suspension may be filed through the Municipal Clerk with the Mayor and Council. The Mayor and Council or its designee shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The Mayor and Council may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision.
- D. The fee for each annual permit shall be \$50.

#### §16.93.050 Parking.

Pursuant to N.J.S.A. 40:55D-164, et seq., if a business premises' parking lot is used for the service and sale of either food or beverages, or both, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license shall not encumber more than 75 percent of the lot's total parking spaces for service and sale and shall maintain at least 1 handicapped parking space in the parking lot. No outdoor dining shall be permitted on any parking lot containing less than 8 parking spaces. No parking spaces designated for the service and sale of food or beverages shall be used for outdoor space.

#### §16.93.060 General Regulations

- A. All proposed outdoor space shall be accessible from the establishment and shall not obstruct the free flow of and shall not obstruct pedestrian traffic and shall be proposed in a manner that protects the public health, welfare, and safety.
- B. All outdoor space shall be limited to the service of food and beverages, as authorized by law, alone. No outdoor cooking or food preparation is permitted. Serving stations and a host podium may be located within the outdoor space.
- C. The total number of seats available to patrons at the location, including outdoor dining pursuant to the premises expansion permit and permitted indoor dining, shall not exceed the permitted occupancy of the establishment.
- D. The installation and continuous use of tents, canopies, umbrellas, tables, chairs, and other fixtures on private property or public property or right of way designated by the Borough shall be a permitted use provided that the tent, canopy, umbrella, table, chairs, or other fixture conforms to all applicable provisions of the State Uniform Construction Code, Uniform Fire Code, and Borough Code.
- E. A public sidewalk or an outdoor space, including pedestrian walkways and pedestrian malls, which is subject to a premises expansion permit and is contiguous to the establishment and located within the property lines of the subject property shall be considered a portion of the premises that is open to the public for the purposes of this Chapter.
- F. No public sidewalk or rights-of-way shall be approved and used for outdoor space unless the proposed area is set forth in the application and reviewed and approved by the Zoning Officer and Chief of Police. The proposed use of such space shall provide sufficient ingress and egress to the public and patrons and ensure the protection of the public health, welfare, and safety.
  - 1. A minimum of 6 feet of sidewalk along the curb and to the entrance of the establishment shall be maintained and free of tables and other encumbrances.
  - 2. Bollards or barriers may be required by the Borough to be installed as a condition of approval of the permit.
  - 3. No State-owned rights-of-way shall be permitted for the purposes of outdoor dining without the approval of the State Department of Transportation pursuant to N.J.S.A. 40:55D-171.
  - 4. No Ocean County-owned rights-of-way shall be permitted for the purposes of outdoor dining without the approval of the Ocean County Planning Board or designated Department.
- G. The outdoor space shall be maintained and free of any and all litter, trash, refuse, and debris in receptacles controlled and/or owned by the establishment.
- H. No live performances, including musical performances, nor the playing or projection of any recording, streaming service, television, cable, or internet broadcasting service in outdoor spaces or on public spaces shall be permitted.
- I. No outdoor dining space shall be located within 10 feet of any trash, refuse, or garbage receptacles.

#### §16.93.060 Enforcement and Violations.

- A. This Chapter shall be enforced by the Police Department, Zoning Officer, and/or Code Enforcement Officer during the course of ordinary enforcement duties.
- B. Any person(s) who is found to be in violation of the provisions of this Chapter shall be subject to the general penalty provisions of Title 1, General Provisions, 1.08

General Penalty.

- C. Any violation of this Chapter shall require the establishment to immediately cease and desist from the use of the outdoor space until compliance with this Chapter. The owners and lessees of the property shall be liable for any violations of this Chapter.

## **SECTION II**

All ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

## **SECTION III**

If any word, phrase, clause, section, or provision of this ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal, or unconstitutional, such word, phrase, clause, section, or provision shall be severable from the balance of the ordinance and the remainder of the ordinance shall remain in full force and effect.

### **Effective date.**

This ordinance shall take effect after final adoption and publication as required by law.

## **NOTICE**

Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a regular meeting of the Mayor and Council of the Borough of Ship Bottom, County of Ocean, State of New Jersey, held on Tuesday, April 22, 2025, at 6:30 p.m.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a regular meeting of the Mayor and Council to be held on Tuesday, May 29, 2025, at 6:30 p.m. at the Ship Bottom Volunteer Fire Company, 2006 Central Avenue, Ship Bottom, New Jersey 08008.

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Sara Dela Cruz, RMC  
Deputy Municipal Clerk

## **CERTIFICATION**

I, KRISTY CORRENTI, RMC, Municipal Clerk for the Borough of Ship Bottom do hereby certify that the foregoing Ordinance 2025-05 was duly adopted by the Mayor and Council at the meeting held on May 29, 2025, at 6:30 p.m.

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Kristy Correnti, RMC  
Municipal Clerk