

ORDINANCE No.4- 2005

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING AND SUPPLEMENTING CHAPTER 170 OF THE CODE OF THE TOWNSHIP OF LIVINGSTON BY ESTABLISHING REGULATIONS FOR TEMPORARY OUTDOOR SEATING AREAS FOR CONSUMPTION OF FOOD OR BEVERAGES BY PATRONS AND AMENDING AND SUPPLEMENTING CHAPTER 244 OF SAID CODE

WHEREAS, the Planning Board and the Livingston Community Partnership Management Group have worked together to establish standards and procedures for design and approval of appropriate seasonal outdoor seating areas for patrons of establishments providing food or beverages on identified streets with pedestrian traffic in specified zoning districts; and

WHEREAS, these regulations will provide a basis for quality control, safety, and assistance in sound commercial revitalization design and techniques, and will encourage creative concepts;

THEREFORE, BE IT ORDAINED, by the Township Council of the Township of Livingston, in the County of Essex, State of New Jersey, as follows:

Section 1. Section 170-91 Fences. of the Revised General Ordinances of the Township of Livingston is hereby amended and revised by adding after "as appropriate" in "C" thereof the following:

", except for an area for outdoor seating for consumption of food or beverages established under a permit issued pursuant to Section 170-92.1."

Section 2. Section 170-92 Facades. of the Revised General Ordinances of the Township of Livingston is hereby amended and revised by

(a) deleting from "B." thereof "All business building facades, new construction, alteration and additions. Business use activity extending outside the building such as sidewalk cafes and other forms of sidewalk setting." and substituting therefor:

"The following standards apply upon construction or alteration of, or addition to, any business building or a façade of such building."

(b) In "B.(6)" thereof deleting "Sidewalk" and substituting therefor "Streetscape".

Section 3. In Article II. OUTDOOR SALES of Chapter 244 of the Revised Ordinances of the Township of Livingston Section 244-22 is hereby amended by adding after "control" "; provided, however that this Article shall not apply to outdoor seating areas for consumption of food or beverages."

Section 4. Section 170 of the Revised General Ordinances of the Township of Livingston is hereby further amended, revised and supplemented by adding new Section 170-92.1 to read as follows:

170-92.1 Seasonal outdoor seating for consumption of food or beverages by patrons.

A. **Inapplicability.** This Section 170-92.1 shall not apply in the Livingston Towncenter Redevelopment District.

B. **Definitions.** As used in this Section 170-92.1, the following terms shall have the meanings indicated:

“**Purveyor**” shall mean a licensed business whose sole or primary activity is the sale of prepared foods, or non-alcohol beverages, for consumption off premises. The term does not include a supermarket or grocery, or an establishment providing service primarily from vending machines.

“**Restaurant**” shall mean any business whose sole or primary activity is the on premises preparation, and the serving by wait staff, of meals indoors at not less than eight (8) tables with an aggregate table seating capacity of not less than thirty-six (36) persons, and which business derives more than fifty percent (50%) of its gross receipts from such meal service.

C. At any nonresidential building located in the B, the B-1, or the B-2 District, and also fronting on South Livingston Avenue, North Livingston Avenue, East Mount Pleasant Avenue, West Mount Pleasant Avenue, East Northfield Road, or West Northfield Road, any duly licensed restaurant, or other occupant of the building which occupant is a purveyor on the premises of food or refreshments, as permitted in the applicable zoning district, may apply to the Administrative Officer for a seasonal permit to provide temporary outdoor seating in the front yard of the premises, as an integral part of that business, for consumption of food and/or refreshments by patrons. If the building on such a street is on a corner, the building shall be deemed to have a front yard both on such street and on the intersecting street. A seasonal permit shall be issued only if the following requirements are met:

(1) The applicant shall have submitted to the Administrative Officer, with ten (10) copies to the Architectural Review Board of the Livingston Partnership Management Corporation (“the BID”), the following:

- (a) Address of property and names of applicant and property owner;
- (b) Contact name and phone number;
- (c) Consent of property owner and other consents required by (9) below;
- (d) Color photograph of the property;
- (e) Scaled drawing/rendering of the proposed project showing compliance with the design standards of this Section; and
- (f) Description of proposed furnishings and equipment.

(2) The area for such seating shall have a minimum front setback of one-and-one-half (1.5) feet from the front property line. It shall have a minimum side setback of one-and-one-half (1.5) feet from any driveway or off-street parking. The area for outdoor seating shall not impinge upon a public sidewalk or right-of-way. If the establishment is on a corner, no area for outdoor seating shall be closer than 25 feet from the intersection of the two roadway right-of-way lines nor shall it in any manner interfere with traffic visibility across the street corner.

(3) The seating in an outdoor seating area may be additional to the establishment's existing interior seating and shall not exceed the greater of twenty (20) seats or 15% of such interior seating. No food or refreshment preparation or storage shall be permitted within the outdoor seating area; and all persons shall be seated when consuming food or refreshments within the area.

(4) Permitted outdoor seating areas may be delineated at their sides and front, and always without intrusion upon required setbacks, by planters, or by a fence which is not taller than thirty-six (36) inches at its highest point, is not less than fifty percent (50%) open, is not made of chain link or similar materials, and does not have sharp spikes or points or jagged or sharpened surfaces or other components that may cause injury. Any gates shall not open in such a way as to intrude upon any right-of-way, sidewalk, foot path, driveway or off-street parking area. The planters or fence shall define the seating area without creating a full barrier to viewing the seating area or the street and shall not bear any advertising or signage. Walls, partitions, trellises, roofs, canopies, awnings, arbors, or any permanent structures other than a permitted fence, which cover, enclose or delineate the outdoor seating area are prohibited.

(5) The outdoor seating area, including planters or fence, shall not physically displace or impinge upon required parking spaces or public sidewalks or rights-of-way and shall not increase the impervious coverage on the lot. The outdoor seating capacity shall not be included when making the calculation of required off-street parking spaces pursuant to Section 170-94.E.

(6) A clear pedestrian passageway, through the outdoor seating area, between the building and the public sidewalk or a driveway or off-street parking area shall be provided and shall not be impeded or obstructed. Such clear passage way shall have a width not less than the greater of (i) four (4) feet or (ii) the width of any building entrance which abuts the outdoor seating area.

(7) Tables, chairs and other furniture must be of wood or metal, strong, durable, and of sufficient mass as to not be easily blown about. Dark and non-reflective colors are preferred. Umbrellas shall be designed with mechanisms to secure them against the effects of wind, and shall not display any advertising. One (1) portable menu sign not exceeding four (4) square feet overall, including the base, is permitted within the outdoor seating area. Such sign shall not be placed upon a public sidewalk or right-of-way or any driveway or off-street parking area.

(8) The outdoor seating area and its furnishings and equipment shall be kept clean. If table wait and bus services are not provided, covered receptacles shall be provided for deposit of garbage or trash and shall be emptied before overflowing. No equipment, dumpster, structure or enclosure for the storage of garbage or trash for collection shall be placed upon or adjacent to the outdoor seating area. Electronically-generated or amplified music or sound are prohibited. Hours of operation of the outdoor seating area shall not be earlier or later than the hours of operation of the restaurant or purveyor. However, if the outdoor seating area is within two hundred (200) feet of a lot on which a residence is located the outdoor seating area shall not operate between the hours of 10:00 p.m. and 7:30 a.m.

(9) If the outdoor seating area would extend beyond the frontage of the applicant's enterprise so as to be in the frontage of some other business(es), the applicant shall have obtained the

written consent of the owner of the building and of the tenants(s) or owner(s) of the other business(es).

(10) The BID shall have reviewed the documents provided under “(1)” above and shall have submitted its recommendations in writing to the Administrative Officer. Such recommendations shall not be binding upon the Administrative Officer.

(11) No alcoholic beverage, as defined in the Alcoholic Beverage Control Law (R.S. 33:1-1) as amended, is permitted in an outdoor seating area except:

- (i) under a license, duly issued pursuant to said law, permitting the serving of such beverage in that seating area; or
- (ii) if the outdoor seating is utilized exclusively by a restaurant following a “bring your own” policy for consumption of alcoholic beverages within the interior premises of the restaurant.

(12) The Administrative Officer may, in his sole discretion, deny, suspend, or revoke a seasonal permit if he finds that the location, sidewalk width, volume of pedestrian traffic, existing or prior violation(s) of provisions of this Ordinance, or any other factor affecting public order, convenience or safety warrants such action.

(13) Every application for a seasonal permit for outdoor seating shall be accompanied by a filing fee as shall be set by the Township Council by resolution. A seasonal permit shall take effect upon issuance or on March 1 of the year for which issued, whichever shall be the later, and shall expire on October 30 of that year. When reviewing any application for a seasonal permit, the Administrative Officer may deny the application upon finding that requirements of this section were violated by the applicant during the prior outdoor seating season.

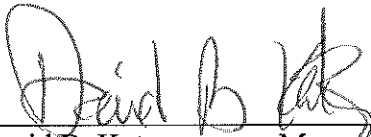
(14) Seasonal permits are temporary authorizations which expire on a specified date or upon earlier termination of the permit holder’s business. Even if renewed, or if one or more subsequent permit(s) be issued, they do not create any permanent rights or vested interests and shall not be deemed or construed as to grant any waiver or deviation in regard to the Land Use Ordinance or zoning regulations in force when the permit was issued or subsequent thereto.

(15) If a restaurant or purveyor who provided an outdoor seating area pursuant to permit ceases to do business, or to offer such seating, and is not replaced by another enterprise to which a permit for such area has been issued, any fence erected under authority of this Section 170-92.1 shall be removed and the area shall be restored to its prior condition.

Section 5. Other than as expressly provided in Section 2 above, outdoor seating for food or beverage consumption by patrons shall not be provided unless specific site plan approval that includes such seating has been granted by the Planning Board or Zoning Board of Adjustment after proper hearing and notice.

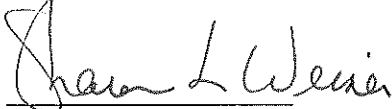
Section 6. Except as hereby amended, revised and supplemented, the Revised General Ordinances of the Township of Livingston shall remain in full force and effect.

Section 7. This Ordinance shall take effect upon final passage and publication in accordance with law.

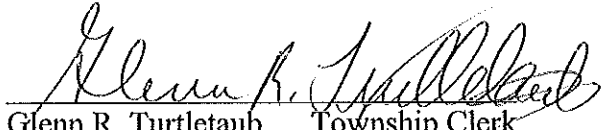


David B. Katz, Mayor

Approved as to form:



Sharon L. Weiner, Township Attorney



Glenn R. Turtleaub, Township Clerk

Adopted: 4-4-05