

ORDINANCE #2021-06

AN ORDINANCE BY THE MUNICIPALITY OF PRINCETON CONTINUING THE TEMPORARY RELAXATION OR SUSPENSION OF CERTAIN REGULATIONS TO ENABLE LOCAL BUSINESSES TO OPERATE IN COMPLIANCE WITH COVID-19 RESTRICTIONS

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 (“COVID-19”), Governor Murphy issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, the Public Health Emergency declared in Executive Order No. 103 (2020) has since been extended multiple times, and continues to exist today; and

WHEREAS, as COVID-19 continued to spread across New Jersey and an increasing number of individuals required medical care or hospitalization, Governor Murphy issued a series of Executive Orders pursuant to his authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19; and

WHEREAS, those requirements were and continue to be modified in response to the rise and fall of reported new cases of COVID-19 in New Jersey; and

WHEREAS, in response to the State’s initial easing in mid-2020 of a number of the restrictions that were put in place to limit person-to-person contact and to establish a process that would enable Princeton’s businesses to reopen as authorized by the various executive orders issued by the State and to enable said businesses to comply with the social distancing and infection control measures required of them in the various executive orders, the Mayor and Council on June 15, 2020 adopted Ordinance No. 2020-14, which in recognition of the unprecedented challenges caused by the COVID-19 pandemic, temporarily relaxed or suspended certain requirements presently set forth in Princeton’s ordinances, and established a more streamlined process by which staff and officials could react and address issues as they arose; and

WHEREAS, Ordinance No. 2020-14 contained a “sunset” provision whereby its provisions will automatically become null and void on the 120th day after its effective date, unless further extended; and

WHEREAS, on August 24, 2020, the Mayor and Council adopted Ordinance No. 2020-27, which expanded the types of businesses covered by Ordinance No. 2020-14 and extended to December 31, 2020 the date on which the ordinance would expire; and

WHEREAS, on February 5, 2021, Governor Murphy signed into law legislation (*P.L. 2021, c. 15*) expanding outdoor dining opportunities for breweries, distilleries, restaurants, and bars in New Jersey during the ongoing pandemic, which law went into effect on March 7, 2021; and

WHEREAS, the new law allows restaurants, bars, distilleries, and breweries to operate in outdoor spaces and on public sidewalks as extensions of their business premises, subject to filing an application with the municipal zoning officer as well as other requirements; and

WHEREAS, the law also extends the duration of the special liquor licenses issued in 2020 pursuant to the Division of Alcoholic Beverage Control (ABC) Special Ruling 2020-10, which allows the holders of plenary consumption licenses to enlarge the premises where alcoholic beverages may be served to include outdoor spaces after obtaining a permit from the ABC; and

WHEREAS, the authorizations granted under the law will remain in effect until November 30, 2022 or the date on which indoor dining resumes without capacity limitations pursuant to an executive order issued by the governor, whichever is later; and

WHEREAS, in light of the ongoing pandemic, the need remains for the Mayor and Council as well as specific municipal officials to be able to react to the ever-evolving circumstances caused by the pandemic and to enable local businesses to continue to operate in compliance with State statutes, executive orders and administrative directives; and

WHEREAS, to that end, the Mayor and Council wish to continue the relaxation and/or suspension of certain of Princeton's motor vehicle and other requirements and to keep in place the process established in 2020 for staff and officials to efficiently implement additional measures as changing circumstances may warrant; and

WHEREAS, the Mayor and Council also wish establish certain requirements related to the implementation of *P.L. 2021, c. 15* pertaining to outdoor dining;

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of Princeton as follows:

1. Preamble. The findings set forth in the preamble to this ordinance are hereby incorporated as if fully restated.

2. COVID-19 Compliance Committee continued. The ad hoc committee known as the "COVID-19 Compliance Committee" established pursuant to Ordinance No. 2020-14 is hereby continued. Its duties and responsibilities shall continue to be as follows: identify issues related to or arising out of the various requirements and limitations imposed by Governor Murphy and/or the State legislature or administrative agencies; recommend solutions to the Mayor and Council for their approval by resolution or ordinance as appropriate; and grant certain administrative approvals in accordance with the terms of this ordinance and of *P.L. 2021, c. 15*. The members of the committee shall continue to comprise the Administrator, the Chief of Police

(or his designee), the Municipal Engineer (or her designee), the Zoning Officer, the Health Officer (or his designee), the Fire Official (or his designee), and the Municipal Planner. No approval shall be issued by the committee without prior confirmation from the Municipal Attorney that the approval is consistent with the terms and conditions of this ordinance.

3. Outdoor dining; sidewalk cafés. Pursuant to *P.L. 2021, c. 15*, and notwithstanding any provisions of Princeton's land use regulations to the contrary, the owner or operator of any retail food establishment, restaurant, bar, distillery, or brewery in Princeton shall be permitted to use any outdoor space that it owns or leases and that is located either on, or adjacent to, the business premises, and shall be permitted to use any municipal sidewalk or outdoor space, as an extension of the business premises for the purpose of conducting sales of food and beverages, subject to the requirements set forth hereinbelow.

- a. Any such owner or operator shall first file an application with Princeton's zoning officer that includes:
 - (1) a plan, sketch, picture, or drawing that depicts the design, dimensional boundaries, and placement of tents, canopies, umbrellas, tables, chairs, and other fixtures of the outdoor spaces and/or public sidewalk;
 - (2) a plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures, grounds, and/or public sidewalk;
 - (3) the written consent of the owner of the premises, if other than the applicant; and
 - (4) an insurance certificate naming Princeton as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility;
 - (5) with respect to outdoor dining facilities on any publicly-owned property, including sidewalks and other rights-of-way, a defense and indemnification agreement holding Princeton harmless from any liability for injuries or losses arising solely from the operation of the sidewalk café or other outdoor dining facility on said public property.

In accordance with *P.L. 2021, c. 15*, an application filed pursuant to the above provisions shall not be considered a variance under the Municipal Land Use Law.

- b. Additional requirements applicable to outdoor dining on private property: If the business premises' parking lot is to be used for the service and sale of either food or beverages or both, the business shall not encumber more than seventy-five percent of the lot's total parking spaces for such service and sale, unless the parking lot contains less than eight parking spaces, and the business shall maintain at least one handicapped parking space in the parking lot.

- c. Additional requirements applicable to sidewalk cafés and other outdoor dining areas on municipal property:
 - (1) The area occupied by the sidewalk café or other outdoor dining area may be expanded into the portion(s) of the sidewalk abutting neighboring buildings, but only with the prior written consent of the owner or operator of said neighboring building(s) and subject to the review and approval of the Zoning Officer.
 - (2) A walking path not less than five feet wide shall be maintained on the public sidewalk at all times so as to not obstruct pedestrian traffic.
 - (3) If so ordered by the Princeton Engineer, the Public Works Director, and/or the COVID-19 Compliance Committee, all fixtures shall be removed from the public sidewalks or other rights-of-way at the conclusion of each day.
 - (4) Princeton through its staff at all times shall have the right to order the temporary suspension of outdoor dining and the removal of all fixtures from the public sidewalks or other rights-of-way due to road or utility construction, predicted high winds or severe weather, predicted snow or ice storms, the need to remove snow or ice from the area, or any other public emergency that may arise.
- c. No sidewalk café or outdoor dining area shall be located in a State-owned right-of-way without the express approval of the New Jersey Department of Transportation.
- d. No sidewalk café or other outdoor dining area located on a municipal sidewalk or in a municipal right-of-way that intersects with a State highway shall be located less than fifty feet from the State right-of-way line from April 1 to October 31, or less than 100 feet from the State right-of-way line from November 1 to March 31 without the express approval of the New Jersey Department of Transportation.
- e. All protocols promulgated by the Commissioner of Health or Executive Order of the Governor in response to the COVID-19 public health emergency concerning social distancing and use of personal protective equipment shall be followed, maintained, and enforced during the period those protocols are in effect.
- f. The zoning officer shall issue an approval to the applicant within fifteen business days of the application being submitted and deemed complete provided that the applicant meets and abides by all the qualifications set forth herein and in *P.L. 2021, c. 15*, except as follows:
 - (1) 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, that is not otherwise directly superseded by *P.L. 2021, c. 15* or the Division of Alcoholic Beverages Special Ruling No. 2020-10.

g. Princeton may at any time deny, revoke or suspend the permit of any applicant or permittee who violates or is not in compliance with any provision of *P.L. 2021, c. 15* or any law, regulation or ordinance related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages, or 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. Any such denial, revocation or suspension may be appealed to the Mayor and Council through the Princeton Clerk. The Mayor and Council or such municipal official or licensed attorney as the Mayor and Council may designate to serve in its place shall conduct a hearing and render a decision within thirty days of the filing of the appeal.

4. Retail establishments and personal service establishments. During the effective period of this ordinance only, and notwithstanding any provisions to the contrary in Princeton's land use regulations, retail establishments and personal service establishments shall continue to be permitted to conduct a portion of their operations outdoors in order to comply with applicable social distancing or other COVID-19 related requirements imposed by the State, and subject to the prior approval of the COVID-19 Compliance Committee.

5. Closure of streets and sidewalks; suspension or alteration of parking regulations; blocking, reservation or re-designation of parking spaces and loading zones. During the effective period of this ordinance, and notwithstanding any provisions to the contrary in Princeton's motor vehicle and parking regulations, the Mayor and Council by resolution shall continue to be authorized to close all or parts of sidewalks, close all or parts of streets, suspend or alter parking regulations, block off parking spaces and loading areas, and/or reserve or re-designate parking spaces and loading areas as may be needed to enable all legitimate right-of-way users, retail businesses, restaurants and other food establishments, and personal service establishments to comply with any COVID-19 related requirements and limitations imposed by the State, including safe distancing recommendations and requirements for curbside pick-up.

6. Unattended vehicles in designated curbside pick-up areas. During the effective period of this ordinance, it shall continue to be a violation of Princeton's motor vehicle laws set forth in sections 19-18 and 19-19 of the "Code of the Borough of Princeton, New Jersey 1974" for anyone to leave a vehicle unattended in a municipally-designated curbside pick-up zone that is identified as such through proper signage or other means.

7. Waiver of fees. All permit and other administrative fees that would otherwise apply in connection with the activities authorized by this ordinance are hereby waived.

8. Effective date; sunset provision; extension by resolution. This ordinance shall take effect immediately upon its passage and publication and as otherwise provided for by law and shall be retroactive to January 1, 2021. The provisions set forth in section 3 of this ordinance pertaining to outdoor dining and sidewalk cafés shall remain in effect until November 30, 2022 or the date on which indoor dining resumes without capacity limitations pursuant to an executive order issued by the Governor, whichever is later; all other provisions shall remain in effect until

the 90th day following the lifting of the COVID-19 public health emergency unless extended by ordinance duly adopted by the Mayor and Council.

9. Repealer. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of Princeton or Code of the Township of Princeton inconsistent with the provisions of this ordinance is hereby repealed to the extent of such inconsistency.

10. Severability. If any section, paragraph, subsection, clause, or provision of this ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause, or provision so adjudged, and the remainder of this ordinance shall be deemed valid and effective.

Delores A. Williams, Municipal Clerk

Hon. Mark Freda, Mayor

Ordinance Introduced: March 8, 2021

Ordinance Adopted: March 22, 2021

NEWSPAPER PUBLICATIONS:

First Insertion: March 12, 2021

Final Insertion: March 26, 2021

STATEMENT OF PURPOSE: The purpose of this ordinance is to enable the Mayor and Council as well as specific municipal officials to continue to react to the ever-evolving circumstances related to the COVID-19 pandemic and to enable local businesses to operate in compliance with State statutes, executive orders and administrative directives, by continuing to temporarily relax or suspend certain requirements presently set forth in Princeton's ordinances related to retail and personal service establishments, sidewalk cafés, outdoor dining, and motor vehicles, and to keep in place the process established in 2020 for staff and officials to efficiently implement additional measures as changing circumstances may warrant. The ordinance also establishes certain requirements in connection with *P.L. 2021, c. 15* pertaining to outdoor dining and sidewalk cafés.