

§ 65-2. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meanings they have in common usage and to give this chapter its most reasonable application. As used in this chapter, the following shall have the meanings indicated:

OUTDOOR CAFE — Any eating establishment where food and other refreshments are served upon the public right-of-way, namely the sidewalks immediately in front of any restaurant, cafe or place of business where food and/or other refreshments are served or a public plaza immediately adjacent to any restaurant, cafe or place of business where food and/or other refreshments are served, or where permitted on private property pursuant to the Land Use and Zoning Ordinances. Said outdoor area shall be considered as part of the building structure and shall be limited in use by patrons of the eating establishment. Consumption of permitted alcoholic beverages in an outdoor cafe by patrons shall not be considered in violation of state regulations and/or local ordinances prohibiting the consumption of such beverages in open containers. ¹

PARKLET — A temporary concrete barrier curb extension provided by the applicant in a permitted area, directly in front of a restaurant or, in the event of a corner restaurant, directly adjacent to the side of a restaurant, approved by the Building Department and the Police Department as to safety, and designed to increase opportunities for outdoor dining. Parklets may extend beyond the area directly in front of a restaurant in the permitted area, provided there is written authorization from the owner and tenant of the adjoining property in front of which this extension is requested. **[Added 4-26-2021 by Ord. No. 3553-21]**

PERMITTED AREA — The area directly in front of a restaurant or, in the event of a corner restaurant, directly adjacent to the side of a restaurant, on Park Avenue between the southerly side of Ames Avenue to the northerly side of West Pierrepont Avenue, on Franklin Avenue, and Santiago Avenue as it relates to any corner restaurant on the corner of Santiago Avenue and Union Avenue. **[Added 4-26-2021 by Ord. No. 3553-21]**

PUBLIC PLAZA — That area of the Williams Plaza located within the former right-of-way of Sylvan Street.

SIDEWALK — That area of the public right-of-way reserved for pedestrian traffic from the curb to the front line of the building housing an eating establishment, but excluding that portion of the public right-of-way occupied by shade trees, fire hydrants, parking meters and utility poles.

§ 65-3. License required.

It shall be unlawful for any person, firm, partnership, corporation, association or organization (hereinafter collectively referred to as "person") to create, establish, operate, maintain or otherwise be engaged in the business of conducting an outdoor cafe upon the sidewalks or public plazas of the Borough of Rutherford, or on private property, unless such person shall hold a currently valid license issued pursuant to the terms of this

1. Editor's Note: See Ch. 7, Alcoholic Beverages.

chapter.

§ 65-4. General eligibility standards.

No license shall be issued hereunder unless the licensee shall demonstrate that a minimum of four feet of unobstructed paved surface will be available for pedestrian traffic around or through such outdoor cafe and that such outdoor cafe be directly in front of or behind an eating establishment as hereinabove defined. No food or drinks served at such outdoor cafe shall be prepared or stored other than in the interior of the eating establishment. The term "directly in front of" shall confine the cafe to the area represented by an extension of each side of the store occupied by the eating establishment projected directly to the curblin immediately in front thereof.

§ 65-5. Application for licensing. [Amended 5-19-1998 by Ord. No. 2839-98]

- A. Application for the license required hereunder shall be made to the Construction Code Official and be signed by the applicant. The application shall be in such form and shall contain the following information:
- (1) The full name, residence address and telephone number of each individual, owner or partner, or if a domestic corporation, the names, residence addresses and telephone numbers of the directors and officers owning a 10% or greater interest in the corporation and the chief operating executive of the corporation.
 - (2) A copy of the trade, corporate, business or fictitious name upon which the applicant intends to do business pursuant to this chapter.
 - (3) The address of each place where the applicant intends to establish or operate an outdoor cafe.
 - (4) The full name and address of the person owning the premises, if other than the applicant, and the consent of the owner of the premises to the application.
 - (5) Three sets of a proposed layout plan containing drawings clearly illustrating the number and location of all tables, chairs and umbrellas intended to be located in the outdoor cafe. The drawings shall also illustrate the following:
 - (a) The location of any doors leading from the eating establishment to the outdoor cafe. No such doors may be obstructed in any manner.
 - (b) The number of feet permitting free passage of pedestrian traffic around or through each outdoor cafe.
 - (6) If the applicant for a café license is also requesting a parklet or just a parklet, the applicant must submit plans showing the dimensions of the concrete barrier curb extensions and the layout of the tables within the parklet, and such other plans and specifications for said parklet as may be requested for review by the Police Department and the Building Department. **[Added 4-26-2021 by Ord. No. 3553-21]**

- B. The application form, together with an application fee of \$100, shall be filed with the Borough of Rutherford Construction Code Official.
- C. Any applicant receiving a license for a parklet shall pay to the Borough, on the first of each month, the sum of \$300 per month, or any part thereof, for each parking space at which a parking meter exists, that is being occupied by the parklet, in order to compensate the Borough for the estimated loss of meter revenue. Failure to pay will result in revocation of license. **[Added 4-26-2021 by Ord. No. 3553-21; amended 3-28-2022 by Ord. No. 3604-22]**

§ 65-6. License investigations.

The Construction Code Official will review the application for completeness and compliance with the terms of this chapter. If the application is complete, the Construction Code Official will act upon the same within 10 business days of the submittal of the application or within 10 business days after the application becomes complete. If the application is not complete, the Construction Code Official will so notify the applicant within 10 business days of the submission and specifically detail the areas in which the application lacks compliance with the requirements of this chapter.

§ 65-7. License issuance.

If the application complies with the chapter, the Construction Code Official shall issue a license strictly subject to the terms and conditions of this chapter.

§ 65-8. Restriction on transfer.

The license is personal to the applicant and any change or transfer of ownership of the outdoor cafe shall terminate the license and shall require a new application and new license in conformance with all of the requirements of the this chapter.

§ 65-9. Consent to inspections.

Acceptance of the license by the applicant shall operate as a consent to the health, fire, police and building officials of the borough to inspect the outdoor cafe for continued compliance with the terms and conditions of this chapter and any federal, state, county or local law, ordinance or regulations affecting the same.

§ 65-10. Indemnification agreement.

No license required by this chapter shall be granted to any person to operate an outdoor cafe until such person shall have filed with the Construction Code Official a statement agreeing to indemnify and hold harmless the Borough of Rutherford, its agent, servants, representatives or employees, from any or all claims, damages, judgment costs or expenses, including attorneys fees, which they or any of them may incur or be required to pay because of any personal injury, including death, or property damage suffered by any person or persons as a result of or related in any way to the operation and maintenance of the outdoor cafe for which the license is issued. Said indemnification agreement shall be in a form acceptable to the Borough Attorney.

§ 65-11. Insurance requirements.

- A. No license required by this chapter shall be granted to any person to operate an outdoor cafe until such person shall have first filed with the Construction Code Official a comprehensive general liability policy issued to such person by a public liability insurance company authorized to do business in the State of New Jersey affording the overages set forth below in the amounts specified. Such insurance policy shall name the Borough of Rutherford, 176 Park Avenue, Rutherford, New Jersey, 07070, its agents, officers, servants, representatives and employees as additional insured with respect to the operation and maintenance of the outdoor cafe in the following amounts:

	Type	Amount
Bodily injury:		
	Each person	\$ 500,000
	Each accident	\$ 1,000,000
Property:		
	Each person	\$ 500,000
	Each accident	\$ 1,000,000

- B. The insurance coverage required by this section shall at all times be maintained for the full amount. The policy of insurance required by this section to be filed with the Construction Code Official shall contain an endorsement for 30 days' notice of cancellation or nonrenewal stating that the borough and licensee shall receive, in writing, 30 days, notice of cancellation or nonrenewal by certified mail, return receipt requested. The borough shall be named as an additional insured under the liability portion of the insurance coverage. Notice of cancellation shall not relieve the company issuing such policy of liability for any injury or claim arising before the cancellation becomes effective. The cancellation of any such policy shall have the immediate effect of suspending the license of such person to operate the outdoor cafe covered thereby until a new policy complying with the provisions of this section is filed with the Construction Code Official and a letter in writing confirming the new effective date of license is issued by the Construction Code Official.
- C. Every insurance policy required hereunder shall contain a provision for continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon, that the liability of the insured shall not be affected by the insolvency or the bankruptcy of the insured and that, until the policy is cancelled, the insurance company will not be relieved from liability on account of nonpayment of premium or of any act or omission by the named insured. Such policy of insurance shall be further conditioned for the payment of any and all judgments up to the limits of such policy.

§ 65-12. Revocation or suspension of license.

- A. Any license issued hereunder is issued solely as a revocable license, which shall be subject to revocation or suspension by the Mayor and Council for failure of any licensee to comply with this chapter or for violation of any other applicable federal, state, county or municipal law, regulation or ordinance. Any license issued hereunder is issued upon the express understanding that the licensee obtains no property right thereunder nor any interest in the continuation of said license. It shall be considered a violation of this chapter for any person to operate an outdoor cafe after the suspension or termination of the applicable license.
- B. In addition to the powers of suspension or revocation as set forth above, the borough reserves the right to modify, suspend or revoke any license on five days' written notice if the borough determines that pedestrian traffic is, in fact, impeded or made unsafe because of the operation of the outdoor cafe or because of any other safety issue which the borough determines adversely affects the borough because of such operation. The license may also be suspended or revoked on five days' written notice in the event the borough determines that it is necessary to utilize the area or any part thereof for the maintenance or installation of underground utilities. In the event of any emergency, which emergency is certified by the Borough Administrator, the license may be suspended or revoked without notice.

§ 65-13. Responsibilities of licensee.

- A. Each licensee is responsible for keeping the area of the outdoor cafe and the adjacent walks, plazas and streets free and clear of any debris or litter occasioned by the cafe. Areas must be cleaned as needed at the time the business is closed and at the beginning of each business day, but not later than 9:00 a.m.
- B. No vending machines of any kind are permitted on the exterior of any building operating an outdoor cafe.
- C. No signs shall be permitted in the area of the outdoor cafe except signs on the awnings complying with the Zoning Ordinance of the Borough of Rutherford Code.²

§ 65-14. Period of operation.

Outdoor cafes shall be permitted to operate from April 1 to October 31 in any calendar year. The license, when issued, shall be valid for one season.

§ 65-15. Restrictions on use. [Amended 5-19-1998 by Ord. No. 2839-98]

- A. No tables, chairs or other equipment in the outdoor cafe shall be attached, chained or in any manner affixed to any tree, post, sign, curb or sidewalk or property of the Borough of Rutherford within or near the licensed area.
- B. Any umbrellas or awnings used in connection with an outdoor cafe shall provide a minimum clearance of seven feet from its lowest point to the sidewalk grade.

2. Editor's Note: See Ch. 131, Zoning.

- C. The licensee agrees at the end of the license period, or in the event that the license is temporarily or permanently suspended or revoked, that the licensee will at his own cost and expense vacate the sidewalk space and promptly remove any property placed thereon. Failure to do so on five days' written notice shall grant to the borough the right to remove any property on the sidewalk and the licensee agrees to reimburse the borough for the cost of removing and storing the same.
- D. The licensee shall not direct or permit to be directed to or from the area occupied by the outdoor cafe any bell, chime, siren, whistle, loudspeaker, public address system, radio, sound amplifier or similar device.
- E. No outdoor cafe shall open for business prior to 7:00 a.m. nor remain open for business after 11:00 p.m. All persons occupying the outdoor cafe shall vacate the same no later than 11:30 p.m.

§ 65-16. Violations and penalties.

Any person who shall violate any of the provisions of this chapter shall, upon conviction, be punished by a fine not to exceed \$500 or by imprisonment in the county jail for a period not to exceed 30 days, or by both such fine and imprisonment; and each violation of any of the provisions of this chapter and each day there is a violation thereof shall be deemed and taken to be a separate and distinct offense.