



Legislation Details (With Text)

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Title: AN ORDINANCE AMENDING TITLE XXIX ENTITLED “STREETS AND SIDEWALKS” OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, TO CREATE A NEW CHAPTER TO ESTABLISH A LICENSE REQUIREMENT FOR OUTDOOR DINING PURPOSES IN THE CITY OF NEWARK’S PUBLIC RIGHT-OF WAY.

No Action Taken 6PSF-x (s) 081721

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
8/19/2021	1	Municipal Council	Close on Public Hearing and Adopt	Pass
8/17/2021	1	Municipal Council	No Action Taken	
8/4/2021	1	Municipal Council	Adopt on First Reading	Pass
7/14/2021	1	Municipal Council	Advance to First Reading	Pass

AN ORDINANCE AMENDING TITLE XXIX ENTITLED “STREETS AND SIDEWALKS” OF THE REVISED GENERAL ORDINANCES OF THE CITY OF NEWARK, NEW JERSEY, 2000, AS AMENDED AND SUPPLEMENTED, TO CREATE A NEW CHAPTER TO ESTABLISH A LICENSE REQUIREMENT FOR OUTDOOR DINING PURPOSES IN THE CITY OF NEWARK’S PUBLIC RIGHT-OF WAY.

No Action Taken 6PSF-x (s) 081721

WHEREAS, Coronavirus disease 2019 (“COVID-19”) is a contagious, and at times fatal, respiratory disease caused by the SARS-CoV-2 virus; and

WHEREAS, over one (1) year ago, on March 9, 2020 Governor Phillip D. Murphy of the State of New Jersey (“Governor Murphy”) issued Executive Order 103, declaring a Public Health Emergency and State of Emergency due to the spread of COVID-19; and

WHEREAS, Mayor Ras J. Baraka declared a State of Emergency in the City of Newark on March 12, 2020; and

WHEREAS, on March 14, 2020, the City of Newark (the “City”) had its first confirmed case of COVID-19; and

WHEREAS, on March 18, 2020, the City of Newark had its first confirmed death of a Newark

resident from COVID-19; and

WHEREAS, since March 18, 2020, Mayor Ras J. Baraka signed approximately eighteen (18) Executive Orders throughout 2020, which set forth restrictions and protocols in our effort to stem the spread of COVID-19, and to provide some economic relief to Newark businesses; and

WHEREAS, the United States Food and Drug Administration's Emergency Use Authorization has facilitated the availability and use of medical countermeasures to fight COVID-19, and vaccines are now available to prevent the severe effects leading to hospitalization and death that often resulted from COVID-19; and

WHEREAS, citizens are following the science, heeding the message of the doctors and medical experts and following the example set by President Biden, Governor Murphy, and others to get vaccinated; and

WHEREAS, due to all of these advancements and steps towards stemming the spread of COVID-19 and its mutations, the overall rate of positive COVID-19 cases in the State and in our City is slowly decreasing; and

WHEREAS, we continue to follow the science and the guidance provided by the Centers for Disease Control and health experts, and as the COVID-19 positivity rate decreases, we want to provide additional relief to our restaurants, businesses and overall local economy; and

WHEREAS, we seek to provide a range of alternatives that support new and expanded outdoor dining opportunities and other outdoor amenities to help stimulate the economic recovery while adhering to public health and safety protocols and maintaining social distancing; and

WHEREAS, the City wishes to allow restaurants, cafeterias, dining establishments, and food courts to apply to the City for a seasonal permit to operate a StrEatery and/or Parklet for outdoor dining purposes in the City of Newark's public right-of-way; and

WHEREAS, the City further wishes to allow restaurants, cafeterias, dining establishments, and food courts to apply to the City for a temporary permit to operate a Permanent/Semi-Permanent Structure for outdoor dining purposes by temporarily converting areas on private property and within the public right-of-way, which permit shall expire on October 31, 2021.

NOW, THEREFORE BE IT ORDERED BY MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY THAT:

SECTION 1. Title XXIX of the Revised General Ordinances of the City of Newark, New Jersey 2000 shall be amended and supplemented by adding a new Chapter to establish a license requirement for obtaining a permit to operate a StrEatery, Parklet, and/or Permanent/Semi-Permanent Structure for outdoor dining purposes in the City of Newark's public right-of-way that includes the following **underlined and bold** text:

1. PURPOSE; OBJECTIVE.

A. The Mayor and Council of the City of Newark recognizes the immense impact that the COVID-19 shutdown has had on our local economy, restaurants and small businesses and wishes to bring economic relief by adopting amendments to the City's Ordinance to allow for a range of alternatives that support new and expanded outdoor

dining opportunities and other outdoor amenities to help stimulate the economic recovery while adhering to public health and safety protocols and maintaining social distancing.

B. The Mayor and Council of the City of Newark further recognize that to maintain the health and safety of the public by continuing safety protocols such as social distancing, changes must be adopted that help local businesses remain viable.

2. TERM OF APPLICABILITY.

A. The provisions in this chapter shall take effect immediately upon adoption of the ordinance as provided by law.

3. STREATERIES.

A. Restaurants and Dining and Food Establishments are permitted to temporarily convert curbside parking space into an area specifically intended for outdoor dining where take-away food and beverages may be consumed, pursuant to the following guidelines. A StrEATERY may be sponsored or co-sponsored by more than one business on the block or by an entity supporting local businesses.

B. Definition of StrEATERY. A shared public space temporarily converting curbside parking space into an area specifically intended for outdoor dining where take-away food and beverages may be consumed. Examples of acceptable delineations of StrEATERIES are attached to this Ordinance as Exhibit A and made a part thereof.

C. **Licensed Required. No person shall operate a StrEATERY without having first obtained a license from the City of Newark and satisfying all the requirements of this chapter.**

D. **General Requirements; Design Standards are as follows:**

1. No parking space, parking lane or other portion of the public right-of-way shall be occupied, utilized and/or constructed as a StrEATERY without prior approval by the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes, the Department of Engineering including the Division of Traffic and Signals and Office of Uniform Construction Code, the City of Newark Department of Public Safety, including Alcohol Beverage Control Unit (ABC), Zoning and Land Use when applicable, and the Newark Parking Authority. Use of the right-of-way along a County roadway may require consent, approval or waiver by Essex County.

2. StrEATERIES shall not be located within 10 feet of a bus stop, within 25 feet of a crosswalk, 10 feet of hydrants or in handicap spaces or loading zones.

3. The area of the StrEATERY established by the application and approved by the City of Newark, shall be delineated from adjacent parking spaces and the travel lane of the adjacent street using temporary crowd control barriers, bollards, poles, planters or other approved means.

4. Temporary ADA curb ramps must be provided; for StrEATERIES up to 30 linear feet one ramp shall be required, for StrEATERIES over 30 linear feet two ramps shall be required.

5. The surface upon which StrEATERIES shall be placed shall be covered with synthetic turf, solid color indoor-outdoor carpeting, or other approved covering.

6. Easily removable tables, chairs or other seating shall be provided. Tables shall be 2-top or 4-top only, no tables accommodating more than 4 persons shall be permitted. Tables and chairs shall be spaced at least 6 feet apart measured from the backs of opposite facing chairs. Outdoor or patio type furniture must be used. Upholstered furniture is prohibited.

7. Shade coverings such as umbrellas or pop-up canopies may be included as part of the StrEATERY set up provided: there is no reduction in vehicular or pedestrian visibility; no part of the shade canopy extends into the travel lane or over the sidewalk; the shade covering is anchored securely against wind; and all coverings are removed overnight. Shade covering shall not contain advertising.

8. One 24 inch by 36 inch A-frame or similar movable sign shall be included for a StrEATERY up to 500

square feet in size. StrEATERIES over 500 square feet shall have two signs to be located at either end of the StrEATERY. Signs shall be positioned on the covered surface within the boundaries of the StrEATERY, not on the adjacent sidewalk.

- a. The sign(s) shall clearly state that the StrEATERY is open to the public;
 - b. The sign(s) may identify the sponsor(s) of the StrEATERY;
 - c. The sign(s) shall include guidance regarding social distancing; and
 - d. The sign shall state that there is a 90-minute time limit for occupants of the StrEATERY.
9. Hours of operation for a StrEATERY shall be between 8:00 a.m. and 12:00 a.m. daily in all City of Newark Zoning Districts unless otherwise authorized by an ordinance adopted by the Municipal Council; however, daily set-up of the StrEATERY shall follow the street-sweeping schedule and adjust accordingly.
 10. All furniture, street delineation, safety equipment and road covering shall be removed at the end of each day by the responsible party.
 11. No preparation of food or beverages shall take place outdoors but shall be restricted to the inside of the licensed establishment.
 12. The entire sidewalk area in front of the premises, including the entire area where the StrEATERY is located and 18 inches around it, must be maintained by sweeping or washing daily or more frequently by the licensee and as prescribed in Section 15:9-1 of these Revised General Ordinances.
 13. Signage including advertising signage for the StrEATERY is prohibited.
 14. The City reserves the right to limit the number of StrEATERIES per block based on available space and the need to maintain publicly accessible curbside space on each block for other uses.
 15. **Failure to comply with the terms of this section of the ordinance shall result in revocation of permit and those penalties set forth in Section 12 herein.**

E. Application; Approval; Fees

1. **An application for a StrEATERY shall be made to the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes on a form so provided by the department and made available upon request. The applicant must be the owner or registered agent of a permitted retail food establishment in the City. StrEateries must be actually operated and maintained by the same person who operates and maintains the related restaurant of which the StrEatery is a part and extension.**
2. The application shall include, at minimum:
 - a. Designation of the responsible party by name, address, a 24-hour phone number and email.
 - b. A detailed description of the proposed location; including the start and end point of the proposed StrEATERY related to some fixed or easily identifiable street marker;
 - c. The length of the proposed StrEATERY both in feet and number of parking spaces;
 - d. The location of fire hydrants, handicap parking spaces, and loading zones and the distance from each where the StrEATERY will be located;

- e. A detailed description of the street area where the StrEATERY is proposed including metes and bounds for the proposed area of encroachment;
 - f. Detailed specifications for all materials to be used to delineated the StrEATERY from adjacent parking and the travel lane;
 - g. Drawings providing: construction details; length, width, and height measurements; drainage accommodations, specifications for all materials to be used; and details for accessibility and safety measures. Drawings shall be submitted in digital format, plus three hard-copies;
 - h. The days of the week that the proposed StrEATERY would operate.
 - i. Proof of insurance. A certificate of liability insurance that fully complies with those requirements set forth in Section 8 of this ordinance.
3. Upon receipt of an application for a StrEATERY, Department of Finance, Manager of the Office of Tax Abatement and Special Taxes shall review the application, with other City Departments, and the Newark Parking Authority, for proposed setup for consistency with the design standards established herein. The Director of Engineering shall take into consideration the location, potential interference with pedestrian or vehicular traffic, appropriateness of design, business record of the applicant, and safety, health and welfare considerations. Based upon the investigation, the Director of the Department of Engineering shall recommend approval, disapproval or modification of the license. Based upon the recommendation of the Director of the Department of Engineering, the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes shall be responsible for approving or denying the application within 10 business days.
4. No StrEATERY located in the public right-of-way be constructed without prior approval by the Department of Engineering and/or his designee, the Manager of the Division of Traffic & Signals. No StrEATERY shall be constructed without the required permits or installed without prior approval of the Director of Engineering and/or his designee, the Manager of Traffic & Signals in accordance with the provisions stated herein. Any StrEATERY construction over the right-of-way of a County roadway shall require consent, approval or waiver by Essex County.
5. All local property taxes and water and sewer charges must be current prior to the issuance of a license for a permit for a StrEATERY.
6. Fees.
- a. Any person submitting an application for a StrEATERY shall pay an application fee of \$100.00.
 - b. Any successful applicant for a StrEATERY shall pay an annual license fee of \$100.00.
 - c. Upon Obstruction of Streets and Public Places by Building Material and Other Articles; Permits, Fees, Deposits. Any successful application for a StrEATERY shall pay the following permit fees as set forth in the City's Municipal Code 29:5-21:

	<u>Fee</u>	<u>Deposit</u>
<u>1.</u>	<u>To occupy up to 100 square feet of</u>	<u>\$250</u>
	<u>street area including sidewalks for</u>	<u>\$300</u>
	<u>each 30-day period or fraction</u>	
	<u>thereof</u>	

2. To occupy any area more than 100 square feet of street area including sidewalk for each 30-day period or fraction thereof **\$350 \$400**

F. Emergencies.

1. The City of Newark, by order of the Director of Public Safety or his designee and/or the Department of Engineering, Division of Code Enforcement and Inspection may require a StrEATERY to be the removed or restrict the set-up of StrEATERIES in the case of an emergency or imminent hazard, or for reasons of public safety or for failing to comply with any provision contained within this ordinance.
2. The City of Newark reserves the right to require the removal or temporary relocation of any StrEATERY, within 14 days of written notice to the sponsor, for purposes of street repairs or other municipal work in or around the location of the StrEATERY.

G. Responsibility for Restoration of the Right-of-Way. Upon the expiration or revocation of the permit between the sponsor of a parklet and the City of Newark, the sponsor, at his/her own expense, shall remove the StrEATERY and any accessories or appurtenances associated with it from the public right-of-way, and shall restore the right-of-way as practicable to its original condition acceptable to the City. If the sponsor does not remove the aforementioned improvements, the City may remove such improvements and make such repairs as may be necessary to secure the property, at the sole cost and expense of the sponsor, and the cost of removal, repair and/or replacement shall be a municipal lien against the sponsor.

H. The City, at the request of the Sponsor(s) as set forth in their application, shall issue a License to operate a StrEATERY for outdoor dining on a seasonal basis from April 15 through October 31, which must be renewed annually.

4. PARKLETS.

A. Restaurants and Dining and Food Establishments are permitted to install a Parklet for outdoor dining where take-away food and beverages may be consumed, pursuant to the following guidelines. A Parklet may be sponsored or co-sponsored by more than one business on the block or by an entity supporting local businesses.

B. Definition. Built as an extension of the sidewalk and designated as public space, a platform or similar level surface in the public right of way with amenities designed to incorporate seating, tables, greenery, bike parking, and umbrellas. Parklets are located in or on the public right-of-way or resting on, or projecting into, the sidewalk and parking area, which are not physically or structurally attached to a building, retaining wall or fence. Examples of acceptable delineations of Parklets are attached to this Ordinance as Exhibit B and made a part thereof.

C. Licensed Required. No person shall operate a Parklet without having first obtained a license from the City of Newark and satisfying all the requirements of this chapter.

D. General Requirements; Design Standards.

1. No parking space, parking lane or other portion of the public right-of-way shall be occupied, utilized and/or constructed as a Parklet without prior approval by the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes, the Department of Engineering including the Division of Traffic and Signals and Office of Uniform Construction Code, the City of Newark Department of Public Safety including Alcohol Beverage Control Unit (ABC), Zoning and Land Use when applicable, and the Newark Parking Authority. Use of the right-of-way along a County roadway may require consent, approval or waiver by Essex County.

2. Parklets shall not be located within 10 feet of a bus stop, within 25 feet of a crosswalk, 10 feet of hydrants, or in handicap spaces or loading zones.

3. The parklet shall consist of a platform designed to be level with the top of the curb line and the adjacent

sidewalk. The platform shall be designed in such a way as to not impede rainwater sheet-flow of curbside drainage. The parklet platform shall also be anchored in such a way as to prevent flotation displacement.

4. The parklet design shall include a safety barrier at the leading end of the platform facing oncoming traffic. The safety barrier may be in the form of a built-in planter, bench, iron bollards, or similar.
5. The three street-facing sides of the platform shall be enclosed by built-in planters, benches, a wall or railings. Constructed elements shall be, but shall not exceed, 42 inches in height above the surface of the platform.
6. Removable or retractable umbrellas or awnings may be included as part of the parklet design provided: there is no reduction in vehicular or pedestrian visibility; no part of the shade canopy extends into the travel lane; the shade canopy is anchored securely against wind; and all coverings are closed or removed overnight. Shade coverings shall not contain advertising. Outdoor or patio type furniture must be used. Upholstered furniture is prohibited.
7. One permanent sign identifying the sponsor of the parklet may be installed or painted on the parklet. Sign should not exceed 3 square feet in size unless incorporated as an integral part of the design and approved by the review committee and zoning officer.
8. **Where movable furniture is part of the parklet set up, that furniture must be able to be stored securely within the platform design and/or removed to a safe location nightly.**
9. Refuse containers for trash and recycling shall be built into the design or provided and shall be emptied daily by the various respective Special Improvement Districts. The various respective Special Improvement Districts shall also be responsible for cleaning in and around the parklet. The City of Newark shall not be responsible for cleaning or maintenance.
10. Hours of operation for a Parklet shall be between 8:00 a.m. and 12:00 a.m. daily in all City of Newark Zoning Districts unless otherwise authorized by an ordinance adopted by the Municipal Council.
11. Lighting, if any, incorporated into the design of the parklet shall be low voltage, low-lumen and indirect with screening to prevent light shed onto adjacent properties and the vehicular travel lane. Any overhead lighting shall be turned off when the parklet is not in use. An exception may be made for security lighting at floor or bench height, such an exception may be approved by the Department of Engineering on a case by case basis.
12. The City reserves the right to limit the number of Parklets per block based on available space and the need to maintain publicly accessible curbside space on each block for other uses.
13. **Failure to comply with the terms of this section of the ordinance shall result in revocation of permit and those penalties set forth in Section 12 herein.**

E. Application; Approval: Fees

1. An application for a Parklet shall be made to the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes on a form so provided by the department and made available upon request. The applicant must be the owner or registered agent of a permitted retail food establishment in the City. Parklets must be actually operated and maintained by the same person who operates and maintains the related restaurant of which the Parklet is a part and extension.
2. The application shall include, at minimum:
 - a. Designation of the responsible party by name, address, a 24-hour phone number and email.
 - b. A detailed description of the proposed location; including the start and end point of the proposed Parklet related to some fixed or easily identifiable street marker;

- c. The length of the proposed Parklet both in feet and number of parking spaces;
 - d. The location of fire hydrants, handicap parking spaces, and loading zones and the distance from each where the Parklet will be located;
 - e. A detailed description of the street area where the parklet is proposed including metes and bounds for the proposed area of encroachment;
 - f. Detailed specifications for all materials to be used to delineate the Parklet from adjacent parking and the travel lane;
 - g. Drawings providing: construction details; length, width, and height measurements; drainage accommodation for platform and street, specifications for all materials to be used; and details for accessibility and safety measures. Drawings shall be submitted in digital format, plus three hard-copies;
 - h. The days of the week that the proposed Parklet would operate; and
 - i. Proof of insurance. A certificate of liability insurance that fully complies with those requirements set forth in Section 8 of this ordinance.
3. Upon receipt of an application for a Parklet, Department of Finance, Manager of the Office of Tax Abatement and Special Taxes shall review the application, with other City Departments, and the Newark Parking Authority for proposed setup for consistency with the design standards established herein. The Director of Engineering shall take into consideration the location, potential interference with pedestrian or vehicular traffic, appropriateness of design, business record of the applicant, and safety, health and welfare considerations. Based upon the investigation, the Director of the Department of Engineering shall recommend approval, disapproval or modification of the license. Based upon the recommendation of the Director of the Department of Engineering, the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes shall be responsible for approving or denying the application within 10 business days.
4. All local property taxes and water and sewer charges must be current prior to the issuance of a license for a permit for a Parklet.
5. Fees.
- a. Application Fee. Any person submitting an application for a Parklet shall pay an application fee of \$100.00.
 - b. Annual License Fee. Any successful applicant for a Parklet shall pay an annual license fee of \$100.00.
 - c. Obstruction of Streets and Public Places by Building Material and Other Articles; Permits, Fees, Deposits. Any successful application for a Parklet shall pay the following permit fees as set forth in the City's Municipal Code 29:5-21:

	<u>Fee</u>	<u>Deposit</u>
<u>1. To occupy up to 100 square feet of street area including sidewalks for each 30-day period or fraction thereof</u>	<u>\$250</u>	<u>\$300</u>

<u>2.</u>	<u>To occupy any area more than 100 square feet of street area including sidewalk for each 30-day period or fraction thereof</u>	<u>\$350</u>	<u>\$400</u>
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F. Emergencies.

1. The City of Newark, by order of the Director of Public Safety or his designee and/or the Department of Engineering, Division of Code Enforcement and Inspection may require a Parklet to be the removed or restrict the set-up of Parklets in the case of an emergency or imminent hazard, or for reasons of public safety or for failing to comply with any provision contained within this ordinance.

2. The City of Newark reserves the right to require the removal or temporary relocation of any parklet, within 14 days of written notice to the sponsor, for purposes of street repairs or other municipal work in or around the location of the parklet.

G. Responsibility for Restoration of the Right-of-Way.

Upon the expiration or revocation of the permit between the sponsor of a parklet and the City of Newark, the sponsor, at his/her own expense, shall remove the Parklet and any accessories or appurtenances associated with it from the public right-of-way, and shall restore the right-of-way as practicable to its original condition acceptable to the City. If the sponsor does not remove the aforementioned improvements, the City may remove such improvements and make such repairs as may be necessary to secure the property, at the sole cost and expense of the sponsor, and the cost of removal, repair and/or replacement shall be a municipal lien against the sponsor.

H. The City, at the request of the Sponsor(s) as set forth in their application, shall issue a License to operate a Parklet for outdoor dining on a seasonal basis from April 15 through October 31, which must be renewed annually.

5. PERMANENT/SEMI-PERMANENT STRUCTURES.

A. Businesses that wish to utilize Permanent/Semi-Permanent Structures as intended for outdoor dining must adhere to all requirements of the New Jersey Uniform Commercial Code (N.J.A.C. 5:23-1.1, et seq.) and the New Jersey Uniform Fire Code (N.J.A.C. 5:70-1, et seq.). Failure to do so will be a violation of this ordinance. Violations are subject to revocation of a City issued license and fines as set forth in Section 8 below.

B. Restaurants and Dining and Food Establishments are permitted to apply for a permit to temporarily convert areas on private property and within the public right-of-way by utilizing Permanent/Semi-Permanent Structures, specifically intended for outdoor dining where take-away food and beverages may be consumed, pursuant to the following guidelines. A Permanent/Semi-Permanent Structure may be sponsored or co-sponsored by more than one business on the block or by an entity supporting local businesses.

C. Licensed Required. No person shall construct and/or operate a Permanent/Semi-Permanent Structure without having first obtained a license from the City of Newark and satisfying all the requirements of this chapter.

D. General Requirements; Design Standards.

1. No Permanent/Semi-Permanent Structures shall be constructed without prior approval by the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes, the Department of Engineering including the Division of Traffic and Signals and Office of Uniform Construction Code, the City of Newark Department of Public Safety including Alcohol Beverage Control Unit (ABC), Zoning and Land Use when applicable, and the Newark Parking Authority. Use of the right-of-way along a County roadway may require consent, approval or waiver by Essex County.

2. Permanent/Semi-Permanent Structures shall not be located within 10 feet of a bus stop, 25 feet of a

crosswalk, 10 feet of hydrants, or in handicap spaces or loading zones.

3. The City may require that the Permanent/Semi-Permanent Structures to include a safety barrier, in a form required by the City, at the leading end of the structure facing oncoming traffic, as determined on a case-by-case basis by the Department of Engineering and/or Division of Uniform Construction Code.
4. Permanent/Semi-Permanent Structures may be installed in areas specifically intended for outdoor dining where there is no reduction in vehicular or pedestrian visibility; no part of structure extends into the travel lane; the structure is properly anchored securely against wind. The Department of Engineering may require additional measures to ensure the safety of patrons, pedestrians, and motorists.
5. One permanent sign identifying the sponsor of the Permanent/Semi-Permanent Structure may be installed or painted. Sign should not exceed 3 square feet in size unless incorporated as an integral part of the design and approved by the review committee and zoning officer.
6. Where movable furniture is part of the Permanent/Semi-Permanent Structure set up, outdoor or patio type furniture must be used. Upholstered furniture is prohibited. All furniture must be able to be stored securely within the area specifically intended for outdoor dining and/or removed to a safe location nightly.
7. Hours of operation for a Parklet shall be between 8:00 a.m. and 12:00 a.m. daily in all City of Newark Zoning Districts unless otherwise authorized by an ordinance adopted by the Municipal Council.
8. No preparation of food or beverages shall take place outdoors but shall be restricted to the inside of the licensed establishment.
9. Failure to comply with the guidelines stated herein shall be shall result in revocation of the permit for Permanent/Semi-Permanent Structure and those fines set forth in Section 8 below.

E. Application; Approval; Fees

1. An application for a Permanent/Semi-Permanent Structure shall be made to the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes on a form so provided by the department and made available upon request. The applicant must be the owner or registered agent of a permitted retail food establishment in the City. Permanent/Semi-Permanent Structures must be actually operated and maintained by the same person who operates and maintains the related restaurant of which the Permanent/Semi-Permanent Structure is a part and extension.
2. The application shall include, at minimum:
 - a. Designation of the responsible party by name, address, a 24-hour phone number and email.
 - b. A detailed description of the proposed location; including the start and end point of the proposed Permanent/Semi-Permanent Structure;
 - c. The length of the proposed Permanent/Semi-Permanent Structure both in feet and number of parking spaces;
 - d. The location of fire hydrants, handicap parking spaces, and loading zones and the distance from each where the Permanent/Semi-Permanent Structure will be located;
 - e. A detailed description of the area where the Permanent/Semi-Permanent Structure is proposed including metes and bounds for the proposed area of encroachment;
 - f. Detailed specifications for all materials to be used to delineate the Permanent/Semi-Permanent Structure;

- g. Drawings providing: construction details; length, width, and height measurements; drainage accommodation for platform and street, specifications for all materials to be used; and details for accessibility and safety measures. Drawings shall be submitted in digital format, plus three hard-copies;
- h. The days of the week that the proposed Parklet would operate; and
- i. Proof of insurance. A certificate of liability insurance that fully complies with those requirements set forth in Section 8 of this ordinance.
- j. The Department of Engineering, Office of Uniform Commercial Code may require additional details and permits required by the New Jersey Uniform Commercial Code (N.J.A.C. 5:23-1.1, et seq.).

3. All local property taxes and water and sewer charges must be current prior to the issuance of a license for a permit for a Parklet.

F. Uniform Construction Code Permit; Approval: Fees

1. Permit Application and fees for Permanent/Semi-Permanent Structures are governed by fees established by New Jersey Uniform Commercial Code (N.J.A.C. 5:23-1.1, et seq.).

G. Emergencies.

1. The City of Newark, by order of the Director of Public Safety or his designee and/or the Department of Engineering, Division of Code Enforcement and Inspection may require a Permanent/Semi-Permanent Structure(s) to be the removed or restrict the set-up of Permanent/Semi-Permanent Structure(s) in the case of an emergency or imminent hazard, or for reasons of public safety or for failing to comply with any provision contained within this Ordinance.

2. The City of Newark reserves the right to require the removal or temporary relocation of any Permanent/Semi-Permanent Structure(s), within 14 days of written notice to the sponsor, for purposes of street repairs or other municipal work in or around the location of the Permanent/Semi-Permanent Structure(s).

H. Responsibility for Restoration of the Right-of-Way.

1. Upon the expiration or revocation of the permit between the sponsor of a Permanent/Semi-Permanent Structure(s) and the City of Newark, the sponsor, at his/her own expense, shall remove the Permanent/Semi-Permanent Structure(s) and any accessories or appurtenances associated with it from the public right-of-way, and shall restore the right-of-way as practicable to its original condition acceptable to the City. If the sponsor does not remove the aforementioned improvements, the City may remove such improvements and make such repairs as may be necessary to secure the property, at the sole cost and expense of the sponsor, and the cost of removal, repair and/or replacement shall be a municipal lien against the sponsor.

I. Term of License for Permanent/Semi-Permanent Structures; Sunset.

1. All permits issued for permanent/semi-permanent structures shall expire on October 31, 2021 and are not renewable.

2. Section 5 of this ordinance entitled "Permanent/Semi-Permanent Structures" shall sunset on October 31, 2021, unless extended by amending ordinance approved by the City of Newark Municipal Council, upon the recommendation of the Business Administrator.

6. ALCOHOLIC BEVERAGES.

A. No retail food establishment may sell, serve, deliver or allow consumption of alcoholic beverages in or upon any premises or upon any StrEatery, Parklet, and/or Permanent/Semi-Permanent Structure as defined under this chapter without having first obtained the necessary approval by the City of Newark Alcohol Beverage Control Board in accordance with all applicable State and Municipal regulations. Such approval is separate from and must be obtained in addition to a license to operate a sidewalk cafe.

B. A Sponsor of a StrEatery, Parklet, and/or Permanent/Semi-Permanent Structure that does not have a license to sell alcoholic beverages in the area upon which the StrEatery, Parklet, and/or Permanent/Semi-Permanent Structure has been authorized to operate pursuant to these regulations shall not be permitted to carry onto or consume any alcoholic beverages on or within such StrEatery, Parklet, and/or Permanent/Semi-Permanent Structure area.

7. NEWARK PARKING AUTHORITY FEES.

A. The Newark Parking Authority (NPA) should have the final approval on the location of StrEATERIES, Parklets and/or Permanent/Semi-Permanent Structures if it proposes obstructing a metered space.

B. If any proposed StrEATERIES, Parklets and/or Permanent/Semi-Permanent Structure area should include removal of parking meters, the merchant shall absorb the cost. The cost for removal of a parking meter shall be up to \$1000.00 to cover equipment and labor.

C. If the StrEATERIES, Parklets and/or Permanent/Semi-Permanent Structure area are utilizing any portion of a parking space, the business will be charged for the whole space.

D. The cost to be paid to NPA is \$12.50 per day/per space, and

E. Non-metered spaces should be the first option for the business.

8. NON-TRANSFERRABLE LICENSE.

A. The StrEATERY Parklet and/or Permanent/Semi-Permanent Structure license for outdoor dining purposes shall be personal to the applicant and may not be sold, leased or transferred and shall be deemed revoked by the sale or transfer of lease or of title to the building to which the sidewalk cafe is related.

9. INSURANCE REQUIREMENTS.

A. A Provider shall procure and keep in full force and effect no less than the insurance coverage required by this Section through a policy or policies written by an insurance company or companies authorized to do business in New Jersey, who are rated A- (V) or better per A.M. Best's Key Rating Guide.

B. The insured provisions of the policy or policies must list the City and the Parking Authority when applicable as additional insureds, and the coverage provisions must provide coverage for any loss or damage that may arise to any person or property by reason of the operation of a StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining.

C. The City, its elected/appointed officials, employees, and agents shall be covered, by endorsement as additional insureds on Permit Holder's commercial general liability and commercial automobile liability policies, as respects to liability arising out of activities performed by or on behalf of Permit Holder in connection with permit holder's operation of a StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining.

D. To the extent of Permit Holder's negligence, Permit Holder's insurance coverage shall be primary insurance as respects the City, its elected and appointed employees and agents. Any insurance and/or self-insurance maintained by the City with its elected appointed officials, employees and agents shall not contribute to Permit Holder's insurance or benefit it in any way.

E. A Permittee shall maintain the following insurance coverages:

1. Commercial general liability with limits of \$1,000,000 per occurrence, \$2,000,000 policy aggregate

affording coverage for claims resulting from bodily injury (including death) and property damage. The policy shall be written on a primary and noncontributory basis, and should insure against premises and operations, personal injury, and contingent and contractual exposures.

2. The City retains the right to require additional insurance coverage in connection with the activities performed by the Permittee under this Article as may be determined by the City's Risk Management, considering the size of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining and other liability insurance related factors.
3. Failure to maintain required insurance coverage is cause for immediate revocation of the Permit by the Administrator and all outdoor dining facilities shall be removed. Should the licensee fail to remove all outdoor dining facilities, the Director of Engineering shall have the same removed and charge the cost to the licensee which shall exist as a lien against the property.

F. Any insurance policy required by this Section must be on file with the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes, in an acceptable form prior to the issuance of a Permit under this Article.

G. Insurance required under this Section must include a cancellation provision in which the insurance company is required to notify both the Permittee and the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes in writing not fewer than thirty (30) days before cancelling any insurance policy or before making a reduction in coverage. A Permittee, upon receiving said notice, shall file with the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes, in an acceptable form to the Department of Finance, Manager of the Office of Tax Abatement and Special Taxes, any and all replacement insurance policies prior to the cancellation or reduction of the same.

H. A Permittee may not be self-insured

10. HOLD HARMLESS AGREEMENT.

In addition to obtaining the insurance coverage, the applicant/owner of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining who receives a permit pursuant to this chapter shall execute a hold harmless agreement in which the applicant/owner of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining agrees to save, defend, keep harmless and indemnify the City and all of its officials and employees from and against any and all claims, loss, damages, injury cost, liability or exposure arising out of the granting of this license for the operation of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining.

11. REVOCATION OF LICENSE.

If the applicant/owner of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining who receives a permit pursuant to this chapter is found to be in violation of this chapter, the Manager, Division of Tax Abatement/Special Taxes shall conduct a hearing after providing written notice of same at least 10 days in advance thereof to all affected parties. At the request of the Manager, Division of Tax Abatement and Special Taxes, a representative of the Department of Engineering and a representative from the Office of Inspections and Enforcement of the Department of Engineering shall conduct an investigation of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining and report their findings to the Manager at the hearing which he/she shall conduct. If found to be in violation of this or any other chapter, he/she shall revoke the license of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining.

Upon revocation of any license by the Manager, Division of Tax Abatement and Special Taxes, he shall order the removal of the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining within 10 days of written notice. Should the licensee fail to remove the StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining, the Director of Engineering shall have the same removed and charge the cost to the licensee which shall exist as a lien against the property.

Any applicant/establishment which has had its license for StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining revoked under the terms of this chapter may be prohibited from operating a StrEATERY, Parklet and/or Permanent/Semi-Permanent Structure for outdoor dining for a period of two years.

12. PENALTIES.

Pursuant to N.J.S.A. 40:49-5, any violation of the provision of this ordinance shall be subject to a fine of \$2,000.00. Any person who is convicted of violating an ordinance within one year of the date of the previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for the violation of the ordinance, but shall be calculated separately from the fine imposed for the violation of the ordinance.

13. RESERVATION OF RIGHTS.

The City of Newark reserves all rights, privileges and immunities concerning its public easement over all streets and sidewalks within the City whether or not any projection or encumbrance has been permitted to be erected on same without any waiver of such rights, privileges or immunities whether expressed or implied.

SECTION 2: Any prior ordinances or parts thereof inconsistent herewith shall be amended and supplemented to conform to the provisions contained herein.

SECTION 3: If any part of this ordinance is declared unconstitutional or illegal, the remaining provisions shall not be affected and shall continue in full force and effect.

SECTION 4: This ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey.

STATEMENT

This Ordinance amends and supplements Title XXIX, entitled "Streets and Sidewalks," of the Revised General Ordinances of the City of Newark, New Jersey, 2000, by creating a new chapter establishing a license requirement for outdoor dining purposes in the City of Newark's public right-of-way.