



**RESOLUTION NO. 2020-187**

**City of Asbury Park  
County of Monmouth  
State of New Jersey**

**RESOLUTION TEMPORARILY RELAXING EXISTING ORDINANCES AND  
PROCEDURES ASSOCIATED WITH REVIEW AND APPROVAL FOR EXISTING  
RESTAURANTS AND FOOD ESTABLISHMENTS AND RETAIL BUSINESSES TO  
OFFER OUTDOOR DINING AND OUTDOOR DISPLAYS**

**WHEREAS**, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the novel Coronavirus within the State of New Jersey; and

**WHEREAS**, on March 15, 2020, the Emergency Management Coordinator of the City of Asbury Park declared a State of Local Disaster Emergency in the City of Asbury Park; and

**WHEREAS**, on March 21, 2020, Governor Murphy issued Executive Order 107 which expanded the social distancing regulations set forth within Executive Order 104, including but not limited to, directing all New Jersey remain in their home or place of residence with specific limited exceptions, prohibiting gatherings of any size, closing all non-essential retail businesses and identifying essential businesses permitted to continue to operate subject to specific limitations, and reiterating and strengthening social distancing requirements when in public; and

**WHEREAS**, on June 3, 2020, Governor Murphy issued Executive Order 150 which relaxed the regulations, prohibitions, and social distancing requirements within the Governor's Executive Orders, specifically permitting bars, restaurants, food and dining establishments and other retail establishments to operate outdoors and permitting limited indoor retail and personal care establishments to operate subject to restrictions; and,

**WHEREAS**, on June 3, 2020, the NJ Department of Health issued Executive Directive 2020-014 which specified protocols related to ensuring the safety of dining patrons; and

**WHEREAS**, on June 3, 2020, the NJ Department of Law and Public Safety Division of Alcoholic Beverage Control issued SR 2020-010 creating a COVID-19 Expansion Permit which will allow licensees to expand their premises onto areas adjacent to or contiguous with the licensed premises, where they may provide for the sale and service of alcoholic beverages as on the primary licensed premises; and

**WHEREAS**, on June 9, 2020, Governor Murphy issued Executive Order 152 which permitted indoor gathering limited to 25% of the capacity of the room in which it takes place, but regardless of the capacity of the room, where such limit shall never be larger than 50 person; and

**WHEREAS**, various representatives of the City of Asbury Park, and its Boards, Commissions, and Committees have discussed methods to assist local businesses and promote economic growth during these extremely difficult times and have determined that the ability for local businesses to expand available space will economically assist the businesses in the reduction of capacity caused by the social distancing requirements; and

**WHEREAS**, the Mayor and Council have determined that it is in the best interest of the City to temporarily relax its Ordinances as they pertain to outdoor dining and outdoor retail display procedures and restrictions on local business establishments; and to extend outdoor dining and outdoor retail displays into public rights-of-way (including sidewalks and street); and to provide for additional space for outdoor dining and outdoor retail displays into designated public parking lot areas; and to allow for outdoor dining areas and outdoor retail displays to be established on private property and private parking lots under specific terms and conditions consistent with guidelines provided by the State of New Jersey and upon application and approval by the City Manager and/or her designee;

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the City of Asbury Park, County of Monmouth, State of New Jersey as follows:

Effective by way of Resolution of the Mayor and Council of the City of Asbury Park:

1. For the purposes of providing restaurants, food establishments and retail businesses the ability to set-up outdoor dining and outdoor retail display areas subject to the requirements, application and approval provided for below and for use by members of the community for recreational purposes, during the effective dates of this Resolution, the City Manager, in consultation with the Office of Emergency Management Coordinator, Chief of Police, and the Chief of the Fire Department, shall have the ability to wholly or partially open and close various streets to vehicular traffic and/or parking within the City of Asbury Park, during any days or hours deemed necessary. The following streets, or others as deemed necessary, may be closed:
  - a. Cookman Avenue
  - b. Emory Street
  - c. Mattison Avenue
  - d. Prospect Avenue
  - e. Comstock Avenue
  - f. Ocean Avenue
  - g. Third Avenue
  - h. Fifth Avenue
2. Effective June 15, 2020, businesses may also operate indoor food and beverage service at whichever number is lower - 25% of capacity or 50 people - following the directive of Executive Order 150 and Executive Order 152 regarding the use of indoor facilities.
3. Effective immediately, the City Manager, in consultation with the Office of Emergency Management Coordinator, Chief of Police, the Chief of the Fire Department, and the Monmouth County Board of Health, is hereby authorized to promulgate requirements, rules and regulations pertaining to the application for and the use of outdoor areas, both public and private, by local business establishments for outdoor dining and outdoor retail displays consistent with the guidelines established by the State of New Jersey including but not limited to all COVID-19 related safety precautions and measures during the effective dates of this Resolution.
4. Any and all business establishments in the City of Asbury Park who wishes to utilize, for outdoor dining or outdoor retail display, public rights-of-way (including sidewalks and streets) and/or private property, including private parking lots, prior to its use, shall complete and submit a 2020 Temporary Outdoor Dining and Outdoor Retail Sales Permit application to the City Clerk's Office for review and approval. In an effort to assist local businesses, the City has agreed to

waive square footage usage fees for this license for the life of the Resolution. All applicants must pay the normal application fee of \$50.00. Any businesses that have already paid the application and/or square footage fees for 2020 will have their payment credited to the following year.

5. The City Manager and/or her designee are hereby granted the authority and discretion to approve 2020 Temporary Outdoor Dining and Outdoor Retail Sales Permit applications, in order to permit establishments outdoor dining or outdoor retail display activities subject to the following requirements and restrictions:
  - a. Applicants may be permitted to relocate existing, or locate newly acquired, tables/chairs (seating) or retail displays to other locations onsite, including the City rights-of-way (including sidewalks and streets) and/or private property, including private parking lots,, subject to the review and approval of the City Manager and/or her designee. Notwithstanding the provision of the Resolution, no seating, outdoor retail displays or signage (including sandwich boards) shall encroach on or obstruct the free flow of pedestrian traffic on the pedestrian walkways or any of its approaches.
  - b. Applicants may be permitted to utilize the public rights-of-way (including sidewalks and streets) in front of adjacent properties for outdoor dining and/or outdoor retail sales activities with the express written consent and approval by the adjacent property owner/business, which must be submitted with the Application.
  - c. Businesses establishments located on the Asbury Park Boardwalk may not expand outdoor dining or outdoor retail sales beyond areas previously approved in prior years.
  - d. Seating and/or retail displays may be permitted to be located in the City rights-of-way (including sidewalks and streets) provided a minimum 6 feet pedestrian walkway is maintained and provided for the general public, subject to applicable ADA requirements. Applicants requesting use of both sidewalk and street space must provide an ADA ramp from raised curb to street level. Seating and outdoor retail sales displays must not obstruct access to Fire Department Connections (FDCs).
  - e. Applicants must provide a drawing depicting the proposed layout and location of seating or retail displays outside of said establishment; a depiction of all aisles, routes of ingress and egress, clearances/distances between tables and between the outside seating area and the curb-line (as applicable). Drawings MUST provide exact dimensions of proposed layout.
  - f. Applicants must provide a security plan detailing how alcoholic beverage service will be regulated. The City Manager reserves the right to require businesses to provide additional security and/or Asbury Park Police Department resources should any issues occur.
  - g. The use of umbrellas is permitted. The use of all other shade coverings is prohibited.
  - h. Food and beverage preparation outdoors is prohibited.
  - i. Music in outdoor areas is prohibited.
  - j. Applicants must already have a current Mercantile License on file with the City Clerk's Office.

- k. Approved seating and retail displays may be permitted to be utilized between the hours of 7:00 A.M. and 10:00 P.M each day.
- l. Applicants must submit a Litter Control Plan, which shall include a description of the number and location of trash receptacles proposed to service the outdoor dining/sales area, when trash and the frequency with which the outdoor dining/sales area will be policed for litter in order to control the accumulation of trash/recycling. All businesses are responsible for disposing of their own waste and for maintaining the cleanliness of any City rights-of-way (sidewalks and streets) approved for use.
- m. The sale/service of alcoholic beverages in these locations shall be permitted, subject to compliance with any and all applicable ABC regulations/statutes, including but not limited to a COVID-19 Expansion of Premises Permit, and subject to the review and approval of the City Clerk and Chief of Police. The approval of any extension of premises application to permit the sale/consumption of alcoholic beverages in outdoor dining areas shall be temporary and shall automatically terminate upon the State of New Jersey rescinding Executive Order 107, and/or the elimination of all social distancing regulations, and/or the expiration of the within Resolution and/or by way of Resolution of the Mayor and Council. Businesses serving alcohol will be required to rope off serving areas as per ABC requirements.
- n. Applicants shall indemnify, defend and hold harmless the City of Asbury Park, its employees, elected officials, volunteers, and its insurance fund (the NJIIF) from and against any and all liability or claims, including but not limited to death, bodily injury, and property damage, arising from the Applicant's implementation, operation and utilization of the 2020 Temporary Outdoor Dining and Outdoor Retail Sales Permit.
- o. All applicants must submit evidence that they have obtained general liability insurance coverage on an occurrence-based form that is applicable to the operations contemplated under this permit application. Applicants shall provide with this application a certificate of insurance (COI) demonstrating coverage for bodily injury and property damage with minimum limits of one million (\$1,000,000) dollars per claim and one million (\$1,000,000) dollars in the aggregate. The City of Asbury Park shall be named on the COI as an additional insured on a non-contributory basis and the subject policy shall be endorsed to reflect that coverage has been so amended.

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that Section 4-9 of the Code of the City of Asbury Park, entitled, "Display of Merchandise in Public Areas; Outdoor/Sidewalk Cafes" shall not apply to the specific outdoor tables, chairs and retail sales displays approved by the City Manager and/or her designee consistent with, and for the life of the within Resolution; and

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that it hereby reserves the right to amend, terminate, or repeal this Resolution and/or any approvals granted herein at any point in time, if it determines that it is in the best interest of the health safety and welfare of the City, and accordingly no property rights are granted to any person(s) or entities by virtue of this Resolution and/or approval hereunder and any person(s) or entities electing to pursue temporary relief in accordance with the provisions of this Resolution are hereby given notice that the expenditure of any funds, or the incurrence of any costs, in reliance

upon this Resolution and any approval hereunder shall be at their sole and exclusive risk and expense. All persons and/or entities are hereby given notice that the risk of loss for any expenditure and/or costs incurred shall be their sole and exclusive responsibility; and **BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that with the exception of the temporary relief and application process set forth herein relating to outdoor dining and outdoor retail displays, existing and proposed retail businesses must comply with any and all other federal, state, county, and local laws and regulations, including any and all other existing zoning ordinances and/or general ordinances governing the operation of bars/restaurants and retail businesses; and

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that in the event the City Manager, Zoning Officer, Code Enforcement Office and/or Police Department determines that a business establishment or person is in violation of the conditions of any 2020 Temporary Outdoor Dining and Outdoor Retail Sales Permit approved in relation to this Resolution, the City Manager is hereby authorized to immediately revoke the approval received in relation to this Resolution; and

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that the City Manager, Zoning Officer Code Enforcement Office and Police Department are hereby authorized and empowered to enforce this Resolution and the several provisions hereof as well as the conditions of approval for the use of outdoor dining and outdoor retail sales displays; and

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that that the City Manager is hereby further empowered to enforce the discretionary powers which are considered necessary in order to make the provisions hereof properly effective and useful for the benefit of the City and its businesses, including but not limited to the separation of the commencement of the application and approval process for outdoor dining and outdoor retail sales displays; and

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that this Resolution shall take effect immediately and the provisions herein shall expire on November 30, 2020

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that, upon the effective date of this Resolution, all requirements of prior ordinances inconsistent with this temporary Resolution are hereby temporary suspended to the extent of their inconsistencies only; and

**BE IT FURTHER RESOLVED**, by the Mayor and Council of the City of Asbury Park, that the within Resolution and all authorizations contained herein, and the delegation of authority and any and all approvals to allow for outdoor dining and outdoor retail displays permitted herein on public and private property shall remain in effect until further Resolution of the Mayor and Council of the City of Asbury Park; and

**BE IT FURTHER RESOLVED** by the Mayor and City Council of the City of Asbury Park that, except as provided for above pertaining to the promulgations of rules and regulations and the acceptance and approval of application, all City officials, employees and agents shall take all necessary actions to in order to effectuate the within Resolution; and

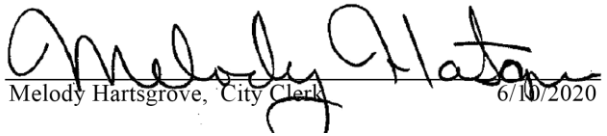
**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park that should any section, paragraph, sentence, clause or phrase of this Resolution be declared unconstitutional or invalid for any reason, or not approved by the State of New Jersey, the remaining portions of this Resolution shall not be affected thereby and shall remain in full force

and effect, and to that end the provisions of this Resolution are hereby declared to be severable;  
and

**BE IT FURTHER RESOLVED** by the Mayor and Council of the City of Asbury Park, upon adoption of this Resolution the City Clerk shall forward copies, electronically or otherwise, to the New Jersey Director of the Division of Alcoholic Beverage Control.

I, MELODY HARTSGROVE, City Clerk of the City of Asbury Park, Monmouth County, New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of RESOLUTION NO. 2020-187 which was finally adopted by the City Council at a meeting held on the 10th day of June, 2020

CERTIFIED BY ME THIS 11th DAY OF June, 2020.

  
Melody Hartsgrove, City Clerk 6/10/2020

MELODY HARTSGROVE  
CITY CLERK