

ORDINANCE NO. 2017-18

ORDINANCE OF THE BOROUGH OF BELMAR AMENDING THE REVISED GENERAL ORDINANCE CHAPTER 25: "BUILDINGS" AND THE REVISED GENERAL ORDINANCE CHAPTER 40: "DEVELOPMENT REGULATIONS " TO ESTABLISH NEW REGULATIONS RELATING TO AWNINGS AND CANOPIES

BE IT ORDAINED by the Mayor and Council of the Borough of Belmar, County of Monmouth, State of New Jersey, that Chapter 25: "Buildings" of the Borough's Revised General Ordinances is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

25-1.7 Amendments to the State Uniform Construction Code.

The following sections and subsections of the State Uniform Construction Code are hereby amended by replacement with the following:

a. ~~3205.0~~ 3105.1 *Awnings and Canopies.*

~~1. Definitions.~~

(1)(a) ~~An~~ fixed awning as regulated by this section shall include any structure made of cloth, plastic or fabric with a frame attached to a building and projecting over a sidewalk or other public thoroughfare.

(2) A retractable awning as regulated by this section shall include any structure made of cloth, plastic or fabric with a frame that retracts against a building or other structure to which it is entirely supported.

~~(b)~~(3) A canopy as defined by this section shall include any structure, other than an awning, made of cloth, canvas, plastic or metal with ~~metal~~ frames attached to a building, projecting or nonprojecting, over a sidewalk or other public thoroughfare, and carried by a frame, supported by the ground. Canopies are hereby prohibited, except as may be permitted in connection with an Outdoor Dining Area, an Outdoor Eating Area or a Sidewalk Café pursuant to Code Section 40-7.32.

b. ~~3205.1~~ 3105.2 *Permit.* A permit shall be obtained from the Code Official for the erection, repair or replacement of any fixed awning, except as provided for in Code Section 3205.1.1 25-1.7(c), and for any retractable awning located at the first-story level and extending over the public street or over any portion of a court or yard beside a building serving as a passage from a required exit or exit discharge to a public street.

c. ~~3205.1.1~~ 3105.3 *Exemption from permit.* A permit under this section shall not be required: for canopies permitted under Code Section 40-7.32.2 for an Outdoor Dining Area, an Outdoor Eating Area, or a Sidewalk Café; for the erection, repair or replacement of fixed or retractable awnings installed on occupancies in Use Group R-3 unless such awnings project over ~~public property~~ a sidewalk or other public thoroughfare; for retractable awnings installed above the first story; or where the awning does not project over the public street or over any court or yard serving as a passage from a required exit to a public street.

d. ~~3205.2~~ 3105.4 *Retractable awnings.* There shall be a minimum clearance of seven (7') feet (2134 mm) from the sidewalk or other public thoroughfare to the lowest part of the framework or any fixed portion of any retractable awning, except that the bottom of the valance of canvas shall have a minimum clearance of six feet nine (6' 9") inches (2057 mm) above the sidewalk or other public thoroughfare. Retractable awnings shall be securely fastened to the building and shall not extend closer than twelve (12") inches (305mm) in from the any curb line or the edge of any public thoroughfare, as the case may be.

Retractable awnings shall be equipped with a mechanism or device for raising and holding the awning in a retracted or closed position against the face of the building.

- e. ~~3205.3~~ *Fixed or permanent awnings.* The clearance from the sidewalk or other public thoroughfare to the lowest part of any fixed or permanent awning shall be the same as required in Code Section ~~3205.2~~ 25-1.7(d) for retractable awnings. Fixed or permanent awnings installed above the first story shall not project more than four (4') feet (1219mm).
- f. ~~3205.4~~ *Canopies.* ~~deleted.~~ Requirements for canopies permitted in connection with an Outdoor Dining Area, an Outdoor Eating Area or a Sidewalk Café shall be governed by Code Section 40-7.32.
- g. *Awning signs.* An awning is considered a wall sign and only the bottom ten (10") inches of the drop-leaf or fringe may be used for the name of the business, logo, and street number, and occupying an area no greater than forty (40%) percent of the total bottom ten (10") inches known as the drop-leaf or fringe. No advertising shall be placed on any other portion of an awning, except the drop-leaf or fringe area, erected or maintained in the business, beachfront business and light manufacturing zones, as defined by the Zoning Ordinance.

BE IT FURTHER ORDAINED by the Mayor and Council of the Borough of Belmar, County of Monmouth, State of New Jersey, that Chapter 40: "Development Regulations" of the Borough's Revised General Ordinances is hereby amended as follows (~~stricken text~~ indicates deletions, underlined text indicates additions):

**40-7.32 OUTDOOR DINING AREAS, OUTDOOR EATING AREAS,
 AND SIDEWALK CAFÉ AREAS.**

40-7.32.1 Definitions.

As used in this section, these terms shall have the following meanings:

- a. *Outdoor Dining Area* shall mean a designated area on the premises of a retail food establishment or restaurant, but outside the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress.
- b. *Outdoor Eating Area* shall mean a designated area on the premises of a retail food establishment, but outside the principal building, and where patrons may sit at tables while consuming foods, soft drinks, ice cream, and similar confections purchased from the retail food establishment.
- c. *Sidewalk Cafe Area* shall mean a designated area of a public sidewalk where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress.

40-7.32.2 Permit Required.

- a. Areas in which Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafes Areas, collectively referred to as "area" or "areas," are permitted:
 - 1. Outdoor Eating Areas, as defined in this Section may be established as an accessory use to permitted restaurants and retail food establishments in the BC Zone and Seaport Village Redevelopment Area.
 - 2. Outdoor Dining Areas, as defined in this Section may be established as an accessory use to permitted restaurants and retail food establishments in the BC, CB-1, MC-1 Zones and Seaport Village Redevelopment Area.
 - 3. Sidewalk Cafe Areas, as defined in this Section, may be established as an accessory use to permitted restaurants in the CB-1, CB-2 Zones and Seaport Village Redevelopment Area zones.
- b. No person shall operate an Outdoor Dining Area, an Outdoor Eating Area or a Sidewalk Cafe unless a permit has been obtained from the Borough of Belmar.

- c. Applicants shall apply for permit approval in accordance with the provisions of this Chapter. All such applications shall be approved by the Zoning Officer and shall be referred to the Chief of Police and the Fire Code Official, who shall provide the Zoning Officer with written reports of their opinions and recommendations regarding the application.
- d. Applicants shall meet all general ordinance requirements and all other laws, rules, regulations and codes applicable to the proposed activity.
- e. Applicants proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area must provide satisfactory proof to the Zoning Officer of the following:
 1. Applicants proposing to establish an Outdoor Eating Area or Outdoor Dining Area in the BC Zone and/or Seaport Village Redevelopment Area must provide an architectural barrier such as floral arrangements, landscaping and/or decorative fencing designed to enclose the eating area and limit the ability of litter to blow off the premises. The Zoning Officer shall also require such architectural barriers to litter in any other locations or situations where the Zoning Officer determines that the litter would otherwise be likely to result from the accessory use. All other Outdoor Dining Areas and Sidewalk Cafe Areas shall be delineated by a decorative chain and bollards or other means approved by the Zoning Officer.
 2. An applicant proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall submit to the Zoning Officer a layout of the proposed seating areas, which shall include but not be limited to a depiction of all aisles, routes of ingress and egress; clearances between tables and between the seating area at the curb; the location of all food preparation and service areas; the landscape plan; location and description of all plumbing, electrical and other equipment and fixtures that will be utilized; an illustration, rendering and/or photograph of all proposed furniture, umbrellas, awnings, canopies, signage and other furniture proposed. No picnic-style tables are permitted.
 3. Physical design elements inclusive of but not limited to: architectural barriers, tables, seating, planters and litter containers placed within the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall conform to Section 8, Design Criteria, of the Seaport Redevelopment Plan.
 - (a) Freestanding umbrella(s) and base(s) and/or devices to secure umbrella(s) shall be permitted within an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Café subject to the following:
 - (1) One (1) umbrella shall be permitted for each table within the seating area.
 - (2) Umbrella shall be adequately secured by a center base, arm base and/or otherwise adequately secured by a wind resistant structure.
 - (3) The umbrella, when in an open position shall not overhang beyond the designated seating area; maximum height of the umbrella from base to finial shall not exceed nine (9') feet.
 - (4) Umbrellas placed within the seating area shall be uniform as to color and design to create a pleasant aesthetic affect and shall at all times be properly maintained in good working orders and aesthetic condition including but not limited to being clean and without tears.
 - (5) Maximum graphic content of the umbrella shall not exceed twenty (20%) percent of the umbrella's exterior coverage; graphic content shall relate to the use of the property.
 - (6) Graphic content on the umbrella shall conform to the requirements of 40-7.24, Schedule 40.7-1 and Zone District Requirements. If illuminated, umbrellas shall conform to the standards set forth within 40-7.24c,4.
 - (b) Canopies shall be permitted within an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Café subject to the following:
 - (1) The clearance from the sidewalk or other public thoroughfare to the lowest part of any canopy covering shall be the same as required in Code Section 25-1.7(d) for retractable awnings.
 - (2) All canopy frame components supported by the ground must be clearly visible to pedestrians and other passersby so as not to constitute a safety

hazard and the Zoning Officer may require a decorative chain or other means to ensure visibility of frame components supported by the ground.

- (3) Graphic content on the canopy shall conform to the requirements of 40-7.24, Schedule 40.7-1 and Zone District Requirements. If illuminated, canopies shall conform to the standards set forth within 40-7.24c.4.
- (4) From November 1st through March 1st, all canopies, including all frame components, shall either be removed and properly stored by the property owner, or the entire canopy, with covering, shall remain year-round.
- (5) Except for permitted construction or repair of a canopy, at no time shall property owners be permitted to remove the canopy covering and leave bare frame components visible.
4. The Zoning Officer shall review each application to ensure that the proposed operation of the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area will not interfere with pedestrian or vehicular traffic. Six (6') feet of unobstructed sidewalk should be provided with the exact width being determined by the Zoning Officer as he deems it to be appropriate to promote pedestrian or vehicular safety or the visual harmony of the neighborhood, however, in no event shall the unobstructed sidewalk be less than four (4') feet.
5. The Zoning Officer shall require each applicant to submit a litter control plan which shall include, but not be limited to, a description of the number and location of trash receptacles for the areas and the frequency with which the tables, surrounding area and adjacent public and private properties will be policed for litter. Failure to abide by an established litter control plan shall constitute a violation of the permit approval of which it was made a condition, and shall subject the applicant to a fine in an amount not less than one hundred (\$100.00) dollars per violation.
6. The Zoning Officer shall establish the hours of operation for each Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area. In establishing the hours, the Zoning Officer shall take into consideration the nature of the restaurant or retail food establishment at issue, the character of the neighborhood adjacent to the premises, and the character and nature of other uses in the vicinity of the premises at varying times of day.
7. BYOB privileges for wine or malt alcoholic beverages are allowed in Outdoor Dining Areas and Sidewalk Cafe Areas subject to N.J.S.A. 2C:33-7 and the restrictions in Belmar Code subsection 17-7.8. The service of other alcoholic beverages in Outdoor Dining Areas and/or Sidewalk Cafe Areas is permitted only if the operator's liquor license specifically allows for such service.
8. The seating contained in an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall not be counted in determining any parking space requirement for a retail food establishment or restaurant use.
9. The permit granted pursuant to this section shall allow the use of the Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas at any time of year. However, the area must be properly maintained at all times including complying with the litter control plan, complying with all applicable laws, rules, regulations and codes, properly securing and/or removing tables, chairs and other items during times of inclement weather and high wind, further at no time shall chairs, tables or other items be stacked in the area.
10. Applicants receiving permit approval for an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area may obtain a permit each year without further Zoning Officer approval to continue operations in the years subsequent to the initial approval, provided that the operations are not changed.
11. Notwithstanding anything contained in this section, any use falling within the definitions of "Outdoor Eating Area," "Outdoor Dining Area" or "Sidewalk Cafe Area" that was in operation as of September 1, 1993 may continue without further approval by the Zoning Officer or be required to obtain a yearly permit as required herein; provided, however, permit approval in accordance with this section shall be required in the event (i) the premises are conveyed to a new owner; (ii) the use is expanded or substantially changed, or (iii) the owner of the premises makes any alteration or

improvement to the property that would otherwise require either major or minor site plan approval. However, the business owner shall comply with regulations in Section 40-7.32 et seq.

12. Notwithstanding anything contained in this section, any Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area that was approved by the Planning Board or Zoning Board of Adjustment prior to the effective date of this section, April 13, 2011, may continue without further approval by the Zoning Officer or be required to obtain a yearly permit as required herein; provided, however, permit approval in accordance with this section shall be required in the event (i) the premises are conveyed to a new owner; (ii) the use is expanded or substantially changed; or (iii) the owner of the premises makes any alteration or improvement to the property that would otherwise require either major or minor site plan approval. However, the business owner shall comply with the regulations in Section 40-7.32 et seq. and in the Board's approval, whichever is less stringent as determined by the Zoning Officer.
13. Applicant shall indemnify and save harmless the Borough of Belmar, its employees, agents or officers from all claims, losses, liens, expenses, suits and attorney fees (liabilities) arising from the placement, operation and maintenance of the applicant's Sidewalk Cafe/Outdoor Dining/Outdoor Eating Areas. Applicant agrees to name the Borough of Belmar as an additional insured under the applicant's general liability insurance (minimum required limit of one million (\$1,000,000.00) dollars, bodily injury, property damage and personal injury, and maintains such insurance for such time as the Sidewalk Cafe/Outdoor Dining/Outdoor Eating Area(s) exists. Owner shall provide the Zoning Officer with evidence of such insurance.

40-7.32.3 Application—Form.

All permits required by this Section shall be applied for and obtained from the Office of the Zoning Officer during normal business hours. Applications for such permits shall be in a form approved by the Borough Administrator and be accompanied by permit fees in the amounts established by this Section and Section 40-7.32.4.

40-7.32.4 Fees Set by Resolution.

- a. The annual fee for each year for the operation of an Outdoor Dining Area, Outdoor Eating Area and/or Sidewalk Cafe shall be set by resolution by the Mayor and Borough Council.
- b. No fees shall be pro-rated nor any part thereof refunded for any reason.

40-7.32.5 Appeals.

The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged by the appellant that there is error in any requirement, decision or refusal made by the Zoning Officer in the enforcement of this section. Additionally, the Planning Board or Zoning Board of Adjustment, as appropriate, shall have the power to hear and request for a variance from the regulations and conditions of this Section.

BE IT FURTHER ORDAINED that should any section, paragraph, sentence, clause, or phase of this ordinance be declared unconstitutional or invalid for any reason, the remaining portion of this ordinance shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this ordinance are hereby declared to be severable.

BE IT FURTHER ORDAINED that all ordinances or parts of ordinances inconsistent with this amending ordinance are hereby repealed to the extent of their inconsistencies only.

BE IT FURTHER ORDAINED that this ordinance shall be in full force and take effect twenty (20) days after final passage and publication, as required by law.