

**\*\*\*ADOPTED AUGUST 5, 2019\*\*\***

**TOWNSHIP OF DELANCO**

**ORDINANCE 2019-15**

**AMENDING THE TOWNSHIP CODE AT CHAPTER 213  
GOVERNING “OUTDOOR EATING FACILITIES”**

WHEREAS, the Township of Delanco (“Township”) has received a request from a restaurant owner to permit outdoor eating facilities; and

WHEREAS, the Township has reviewed the issue and desires to permit outdoor eating facilities subject to regulation; and

WHEREAS, the Township enacts this Ordinance in the best interests of public health, safety and welfare.

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Township Committee of the Township of Delanco that the Township Code be and hereby is amended to create Chapter 213 governing “Outdoor Eating Facilities”:

**Section 1.** Chapter 213 governing “Outdoor Eating Facilities” shall be created as follows:

**§213-1. Purpose.**

The purpose of this chapter is to permit certain outdoor eating facilities adjacent to existing restaurants and businesses selling prepared food in order to encourage the viability of restaurants and food-service establishments and to enhance the vitality of the Township of Delanco.

**§213-2. Applicability.**

A. The provisions of this chapter apply only to outdoor eating facilities on public property and/or within the public right-of-way.

B. Outdoor eating facilities regulated by this chapter shall only be operated by, and adjacent to, existing, approved, indoor restaurants and/or retail stores which sell food or drink that is ready to consume.

**§213-3. Operation, furniture, and littering regulations.**

All outdoor eating facilities permitted by this chapter must comply with the following:

A. A safe, continuous, and level path on the public right-of-way (sidewalk) shall be maintained for pedestrian traffic to pass in front of the property operating the outdoor eating facility. Such path must be not less than four feet in width between the most forward edge of any furniture or other items and any existing and proposed features, such as trees, tree wells, planters, benches,

trash cans, signs, hydrants, utility poles, curblines, and similar publicly installed fixtures or other item in the right-of-way.

B. No outside furniture or other item may be located within three feet of the curblines.

C. All trash and litter must be contained, cleaned up and/or removed for appropriate storage so that there is no blowing paper or other trash on or coming from the site.

D. Disposable items including, but not limited to dishes, cutlery, cups, table covers, and napkins:

(1) Shall not be used as part of any outdoor eating facilities where employees of the business serve patrons.

(2) May be used by patrons using outdoor furniture where food and drinks are obtained inside the business premises and there is a satisfactory plan to insure that these disposable items do not become litter. Businesses meeting this requirement must include appropriately located trash receptacles in their plan along with regular monitoring and cleanup by employees of the business.

E. Pedestrian traffic shall not be impaired due to the operations of serving food and drinks or during set up or removal of the outdoor furniture and items.

F. There must be a satisfactory operating plan that covers the following:

(1) Serving of food and drinks;

(2) Cleaning any accumulation of trash, garbage and/or litter;

(3) Ensuring that pedestrian traffic will not be impaired; and

(4) Removing all tables, chairs, storage items, and other items from the right-of-way when the operations cease each day.

#### **§213-4. Permit required.**

It shall be unlawful to place furniture and other items on the outside of any property to be used in connection with a proposed, or existing outdoor eating facility in the Township of Delanco without first making application for and obtaining an outdoor eating facility permit. Outdoor eating facilities must also meet any and all requirements imposed by any other applicable statutes, regulations and ordinances.

#### **§213-5. Application process; fee.**

A. All businesses desiring to operate an outdoor eating facility shall obtain permission therefor annually on a calendar-year basis from the Township of Delanco by submitting a written application to the Zoning Officer. All applications for outdoor eating facility permits shall be submitted on such forms and in such quantity and with such attachments as may be required by the Township of Delanco. The application will contain a hold-harmless provision, as determined by the Township Solicitor, that the applicant must agree to as part of the application.

B. The fee for an initial outdoor eating facility permit application shall be \$50. The fee for a renewal application for substantially the same arrangement shall be \$25 each year thereafter. For

an application to be considered a renewal application, it must include substantially the same information as was on the initial application.

C. Once an application for an outdoor eating facility permit is submitted, the Zoning Officer shall review it within 10 days in order to determine whether it is complete. A complete application for an outdoor eating facility permit shall consist of the following items:

(1) A scale drawing of:

(a) The entire right-of-way from the building facade to the curblin in front of the building (or other proposed outdoor location) where approval for an outdoor eating facility is desired.

(b) The location of all existing and proposed features such as trees, tree wells, planters, sidewalk materials and conditions, sidewalk width, benches, trash cans, signs, hydrants, utility poles and similar publicly installed fixtures.

(c) The location, size, layout, etc., of proposed tables, chairs, umbrellas, storage items, etc.

(2) Drawings, photographs, or catalog cuts of the proposed tables, chairs, umbrellas, storage items, including colors, fabrics, materials, etc.

(3) Details of the operational plan for serving of food and drinks, for cleaning any accumulation of trash, garbage and/or litter; for ensuring that pedestrian traffic will not be impaired; and for removing all tables, chairs, storage items, and other items which must be removed when the operations cease each day.

(4) A certificate of insurance or written commitment from the applicant's insurer that a certificate of insurance will be issued upon approval of the permit, providing for a minimum of \$1,000,000 of general liability coverage applicable to the outdoor eating facility and including a written provision including the Township of Delanco as an additional named insured to cover any claims related to the outdoor eating facility, in order to safeguard and protect the public.

(5) Signature of the applicant or the owner of the proposed outdoor eating facility (who is presumed to be the applicant).

(6) Signature of the owner, or designated representative, of the tax lot for which the application is made.

**§213-6. Approval process.**

A. Once the Zoning Officer deemed the application complete, such Officer shall review the application to determine if it conforms to the appropriate sections of this chapter. The Zoning Officer shall then issue a written decision indicating whether the proposed outdoor eating facility is in conformance and what aspects, if any, of the proposed facility are not in conformance.

B. All applications for an outdoor eating facility permit that are deemed complete and in conformance by the Zoning Officer will be submitted within seven days to the designated

representative(s) of the Township Committee to determine the appropriateness of the outdoor furniture and items.

C. All outdoor eating facilities permitted by this chapter in the public right-of-way must ultimately be authorized annually by resolution of the Township Committee.

(1) The Zoning Officer shall transmit a request to the Township Committee for approval at their next meeting when all aspects of the application are determined to be in conformance with the ordinance.

(2) The Committee has the discretion to approve or deny the application, as submitted, but may not change the terms or conditions.

(3) The Committee may deny the application or revoke an existing permit previously approved, if there is a verified record that the applicant has violated prior approvals for an outdoor eating facility, operated an outdoor eating facility without prior approval, or has a violation of any provision of the Code of the Township of Delanco for which they have been properly notified.

**§213-7. Appeals.**

A. Any applicant whose application for an outdoor eating facility permit has been deemed incomplete by the Zoning Officer; or has been deemed to be nonconforming by the Zoning Officer; or has been approved with conditions by the designated representative(s) of the Township Committee, may appeal such decision, in writing, to the Delanco Township Committee.

B. All such appeals shall be made within 30 days of the date of the written decision upon which the appeal is based, and shall be on such forms as may be required by the Township Committee. The Township Committee will seek to hear appeals within thirty (30) days of the date of filing.

C. The Township Committee may, in its review of a written appeal, consider the Zoning Officer's written denial and any other information deemed to be relevant to the Committee's review.

D. The decision of the Township Committee shall be transmitted, in writing, to the applicant.

**§213-8. Maintenance, compliance and enforcement.**

A. All outdoor eating facilities shall be maintained and operated by the permit holder according to the approved permit. This maintenance shall include keeping the furniture and other items clean and in good repair, as necessary.

B. If the Zoning Officer or Township Committee designee determines that any outdoor eating facility is in a state of disrepair, unclean or not in compliance with the operating plan, layout and approved items per the permit, the Zoning Officer or Township Committee designee shall give written notice to the permit holder of the unsatisfactory condition of the facility and/or the violation of the terms of the permit.

C. The permit holder shall thereafter have five days to correct the unsatisfactory condition or permit violation. If the unsatisfactory condition or violation is not so corrected within the five-day period, the Township may thereafter suspend the permit, and the outdoor eating facility must

cease operation. No furniture or other items may be placed in the right-of-way until the Township, either as a governing body or through one of its officials, agrees that the violation is corrected.

D. The Administrative Officer shall also report the violation to the Township Committee who may, at its discretion, revoke the permit, continue the suspension or lift the suspension, pursuant to the provisions of this chapter.

E. The Administrative Officer may, in addition to suspending the permit or, as an alternative, file a Municipal Court complaint against the permit holder.

F. The Administrative Officer may file a complaint in Municipal Court against any individual or entity that places furniture or other items in the right-of-way for the purpose of operating an outdoor eating facility as provided for in this chapter, without obtaining a permit pursuant to this chapter.

**§213-9. Violations and penalties.**

Any person that shall violate any part of this chapter, or do any act or thing prohibited, or refuse to do any act required to be done, or refuse or fail to comply with an order of the Township or one of its officials shall, upon conviction thereof before any judicial officer authorized to hear and determine the matter, be subject to the penalties provided in Chapter 1, General Provisions, § 1-14. Whenever such person shall have been officially notified by the Township or one of its officials, or by service of a summons in a prosecution, or in any other official manner, that such person is committing a violation, each day's continuance of such violation after such notification shall constitute a separate offense punishable by a like fine or penalty.

**Section 2. Repealer, Severability, and Effective Date.**

**Repealer.** Any and all Ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of any such inconsistencies.

**Severability.** In the event that any clause, section, paragraph or sentence of this Ordinance is deemed to be invalid or unenforceable for any reason, then the Township Committee hereby declares it's intent that the balance of the Ordinance not affected by said invalidity shall remain in full force and effect to the extent that it allows the Township to meet the goals of the ordinance.

**Effective Date.** This Ordinance shall take effect upon proper passage and approval in accordance with the law.