

**BOROUGH OF PENNINGTON  
Ordinance 2008-4**

**AN ORDINANCE PROVIDING FOR OUTDOOR DINING  
AREAS AS A PERMITTED ACCESSORY USE FOR ALL  
RESTAURANTS IN THE TOWN CENTER ZONING  
DISTRICT, AMENDING CHAPTER 215 OF THE CODE OF  
THE BOROUGH OF PENNINGTON**

**WHEREAS**, the Borough of Pennington seeks to promote interest in the downtown area by encouraging a mixture of small-scale businesses which complement and are compatible with each other and together create a pedestrian-oriented shopping environment;

**WHEREAS**, Borough Council recognizes that there exists in the downtown area a demand for outdoor dining in connection with restaurants of various kinds;

**WHEREAS**, current zoning for the Town Center Zoning District, as set forth in Section 215-71.C. of the Code of the Borough of Pennington, permits as an accessory use only “[o]utdoor dining contiguous to full-service restaurants;”

**WHEREAS**, Borough Council determines that, to promote the viability and vitality of the Town Center area, permitting outdoor dining contiguous to all restaurants, subject to proper regulation, is desirable;

**NOW, THEREFORE, BE IT ORDAINED**, by the Borough Council of the Borough of Pennington, as follows:<sup>1</sup>

1. Section 215-71, subsection C, of the Code of the Borough of Pennington (“Code”), delineating permitted accessory uses in the Town Center Zoning District, is amended to delete the requirement that outdoor dining be permitted only when contiguous to a “full-service” restaurant, so that outdoor dining shall be permitted when contiguous to any restaurant in the Town Center, as follows:
  - C. Permitted accessory uses. The accessory uses permitted in the Town Center Zone are the following:
    - (1) Off-street parking facilities for the use of customers and employees;
    - (2) Private garage space for the storage of commercial vehicles used in conjunction with a permitted business use;
    - (3) Sidewalk sales by adjacent retail merchandise stores when authorized by a permit issued by the Borough Clerk;
    - (4) Outdoor dining contiguous to [full-service] restaurants;
    - (5) Storage sheds related to the primary use, limited to one in number;
    - (6) Garages for residential uses;
    - (7) Other accessory uses which the Planning Board acting as a Board of Adjustment finds are clearly incidental and subordinate to the primary use and enhance the character of the town center as depicted in the master plan and in this section.
2. Section 215-94 of the Code, pertaining to the regulation of outdoor dining otherwise permitted by the Code, is amended to read:

Outdoor dining shall be subject to the following:

  - A. The outdoor dining area shall be part of a permitted restaurant use as defined in § 215-8.
  - B. The outdoor dining area may be located within a required front yard area. Encroachment within a Borough right-of-way may be permitted only with the revocable approval of Borough Council [approval,] or its designated representative, which must be obtained annually.
  - C. The outdoor dining area shall meet the side and rear yard setback requirements for the zone in which it is located. When abutting the R-80, R-100, R-A and O-R Zones, the minimum yard requirements for the abutted zones shall be met.
  - D. The outdoor seating capacity of the facility shall conform to off-street parking requirements.
  - E. Site plan review and approval is required unless there are no permanent physical

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<sup>1</sup>As used herein, brackets [ ] denote language to be deleted; underlining indicates language to be added.

changes to the site.

F. The outdoor dining area shall be designed to preserve circulation on the site and any affected Borough right-of-way while also protecting the safety of patrons and pedestrians.

G. The owner shall police the area to ensure that it is clean and free of litter and complies with applicable noise standards.

H. The owner of an approved outdoor dining area which is located wholly or in part in the Borough right-of-way shall indemnify and hold harmless the Borough of Pennington and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, arising out of the operation of the outdoor dining area. No such dining area shall be approved, or once approved, permitted to operate, unless the owner has on file with the Borough Clerk a current Certificate of Insurance which certifies that:

(1) the owner's obligation to indemnify and hold harmless the Borough as provided herein is insured by an insurance carrier authorized to do business in the State of New Jersey;

(2) the Borough of Pennington is named as an additional insured under this insurance with respect to claims, damages, losses and expenses arising out of operation of the outdoor dining area;

(3) the insurance in effect provides at least the following types and amounts of incurred liability coverage:

a. General Liability - one million dollars (\$1,000,000.) per occurrence;

b. Premises Liability - one million dollars (\$1,000,000.) per occurrence;

c. Products and Completed Operations Liability - one million dollars (\$1,000,000.);

d. Personal and Advertising Injury - one million dollars (\$1,000,000.) per occurrence;

e. Property Liability - fifty thousand dollars (\$50,000.) per occurrence;

f. Medical Expense - five thousand dollars (\$5,000.) per person;

g. Workers' Compensation - statutory limits;

h. Employers' Liability - five hundred thousand dollars (\$500,000.) per person/ per occurrence.

(4) the Borough shall be provided ten (10) days' written notice of any cancellation of this insurance.

3. This Ordinance shall take effect upon its passage and publication as provided by law.

Introduced: June 2, 2008

Advertised: June 13, 2008

Public Hearing: July 7, 2008

Adoption: July 7, 2008

Advertised: July 17, 2008

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Elizabeth Sterling, Borough Clerk

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Anthony J. Persichilli, Mayor