

# ASSEMBLY, No. 4389

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 27, 2022

**Sponsored by:**

**Assemblywoman MARILYN PIPERNO**

**District 11 (Monmouth)**

**Assemblywoman KIM EULNER**

**District 11 (Monmouth)**

**SYNOPSIS**

Permits use of tents and other fixtures for outdoor dining on certain property.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT permitting the use of tents and other fixtures for outdoor  
2 dining on certain property and supplementing P.L.1975, c.291  
3 (C.40:55D-1 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. As used in this P.L. , c. (C. ) (pending before the  
9 Legislature as this bill):

10 “Brewery” means a brewery operating under a brewery license  
11 pursuant to R.S.33:1-10.

12 “Distillery” means a distillery that has been issued, and is in  
13 compliance with, a distillery license pursuant to R.S.33:1-10.

14 “Food” means food that is cooked, prepared, sold, served, and  
15 consumed on the business premises.

16 “Outdoor space” means a patio or deck, whether covered or  
17 uncovered, a yard, a walkway, or a parking lot, or a portion of any  
18 such space, that is located on or adjacent to the business premises,  
19 which space is owned, leased, otherwise in the lawful control of the  
20 owner or operator of the business premises, or any space which is  
21 designated by a municipality or county for outdoor dining pursuant  
22 to P.L. , c. (C. ) (pending before the Legislature as this  
23 bill).

24 “Public sidewalk” means a sidewalk on the locally or county  
25 owned public right-of-way which is adjacent to the business  
26 premises, or a portion thereof.

27 “Special Ruling No. 2020-10” means Special Ruling No. 2020-  
28 10, issued by the acting director of the Division of Alcoholic  
29 Beverage Control on June 3, 2020.  
30

31 2. a. Notwithstanding the provisions of any law to the  
32 contrary, the owner or operator of a restaurant, bar, distillery, or  
33 brewery may use outdoor spaces which they own or lease and which  
34 are located either on, or adjacent to, their business premises, as an  
35 extension of their business premises for the purpose of conducting  
36 sales of food and beverages.

37 b. The owner or operator of a restaurant, bar, distillery, or  
38 brewery desiring to utilize outdoor spaces as an extension of their  
39 businesses shall file an application with the municipal zoning  
40 officer that includes: (1) a plan, sketch, picture, or drawing that  
41 depicts the design, dimensional boundaries, and placement of tents,  
42 canopies, umbrellas, tables, chairs, and other fixtures of the outdoor  
43 spaces; and (2) a plan for the control of litter, the removal and  
44 storage of garbage, and the cleaning of fixtures and grounds. If a  
45 business premises’ parking lot is used for the service and sale of  
46 either food or beverages, or both, the restaurant, bar, distillery, or  
47 brewery shall not encumber more than 75 percent of the lot’s total  
48 parking spaces for such service and sale, unless the parking lot

1 contains less than eight parking spaces, and shall maintain at least  
2 one handicapped parking space in the parking lot.

3 c. A municipality may require that an applicant provide one or  
4 more of the following: (1) written consent of the owner of the  
5 premises, if other than the applicant, (2) an insurance certificate  
6 naming the municipality as an additional insured, with general  
7 liability on an occurrence with a limit of liability of at least  
8 \$1,000,000, with respect to losses arising solely from the operation  
9 of the outdoor dining facility, or (3) an indemnification agreement  
10 with the municipality with respect to losses arising solely from the  
11 operation of the outdoor dining facility.

12 d. (1) The zoning officer shall issue an approval to the applicant  
13 within 15 business days of the application being submitted and  
14 deemed complete provided that the applicant meets and abides by  
15 all qualifications and requirements of P.L. , c. (C. )  
16 (pending before the Legislature as this bill), with the exception that  
17 the zoning officer may deny an application based on current  
18 violations of any other health, safety, fire, permitted use, or zoning  
19 regulation, or upon any applicable law permitting the denial of a  
20 zoning permit, that is not otherwise directly superseded by this  
21 section or Special Ruling No. 2020-10. An application under this  
22 section shall not be considered a variance under the "Municipal  
23 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

24 (2) A municipality may deny, revoke, or temporarily suspend  
25 the permit of any applicant or permittee that violates, or is not in  
26 compliance with, any provision of this act or any provision of a law,  
27 ordinance, or regulation related to health, safety, fire, permitted use,  
28 zoning, or the consumption or control of alcoholic beverages not  
29 otherwise under the jurisdiction of the Division of Alcoholic  
30 Beverage Control, and may also deny, revoke, or temporarily  
31 suspend the permit of any applicant or permittee based on any  
32 action taken against the applicant or permittee by the Division of  
33 Alcoholic Beverage Control related to the division's enforcement of  
34 any law or regulation related to the consumption or control of  
35 alcoholic beverages under its jurisdiction.

36 (3) An appeal to any approval, denial, revocation, or suspension  
37 may be filed through the municipal clerk with the governing body  
38 of the municipality. The governing body, or its designee, shall  
39 conduct a hearing and render a decision within 30 days of the filing  
40 of the appeal. The governing body may designate a municipal  
41 official or an attorney licensed in the State of New Jersey to serve  
42 as a hearing officer in place of the governing body for the purpose  
43 of conducting a hearing pursuant to this subsection and rendering a  
44 decision.

45 Nothing in P.L. , c. (C. ) (pending before the Legislature  
46 as this bill) shall be construed to restrict the right of any party to  
47 obtain a review by any court of competent jurisdiction, according to  
48 law.

1       3. a. Notwithstanding the provisions of any law to the  
2 contrary, the owners and operators of restaurants, bars, distilleries,  
3 and breweries may use public sidewalks as an extension of their  
4 business premises for the purpose of conducting sales of food and  
5 beverages.

6       b. The owner or operator of a restaurant, bar, distillery, or  
7 brewery desiring to utilize public sidewalks as an extension of their  
8 businesses shall file an application with the municipal zoning  
9 officer that includes: (1) a plan, sketch, picture, or drawing that  
10 depicts the design, dimensional boundaries, and placement of tents,  
11 canopies, umbrellas, tables, chairs, and other fixtures of the public  
12 sidewalks; and (2) a plan for the control of litter, the removal and  
13 storage of garbage, and the cleaning of fixtures and public  
14 sidewalks.

15       c. A municipality may require that an applicant provide one or  
16 more of the following: (1) written consent of the owner of the  
17 premises, if other than the applicant, (2) an insurance certificate  
18 naming the municipality as an additional insured, with general  
19 liability on an occurrence with a limit of liability of at least  
20 \$1,000,000, with respect to losses arising solely from the operation  
21 of the outdoor dining facility located on public sidewalks, or (3) an  
22 indemnification agreement with the municipality with respect to  
23 losses arising solely from the operation of the outdoor dining  
24 facility on public sidewalks.

25       d. (1) The zoning officer shall issue an approval to the applicant  
26 within 15 business days of the application being submitted and  
27 deemed complete provided that the applicant meets and abides by  
28 all qualifications and requirements of P.L. , c. (C. )  
29 (pending before the Legislature as this bill), with the exception that  
30 the zoning officer may deny an application based on current  
31 violations of any other health, safety, fire, permitted use, or zoning  
32 regulation, or upon any applicable law permitting the denial of a  
33 zoning permit that is not otherwise directly superseded by this  
34 section or Special Ruling No. 2020-10. An application under this  
35 section shall not be considered a variance under the "Municipal  
36 Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.).

37       (2) A municipality may deny, revoke, or temporarily suspend  
38 the permit of any applicant or permittee that violates, or is not in  
39 compliance with, any provision of P.L. , c. (C. ) (pending  
40 before the Legislature as this bill) or any provision of a law,  
41 ordinance, or regulation related to health, safety, fire, permitted use,  
42 zoning, or to the consumption or control of alcoholic beverages not  
43 otherwise under the jurisdiction of the Division of Alcoholic  
44 Beverage Control, and may also deny, revoke, or temporarily  
45 suspend the permit of any applicant or permittee based on any  
46 action taken against the applicant or permittee by the Division of  
47 Alcoholic Beverage Control related to the division's enforcement of

1 any law or regulation related to the consumption or control of  
2 alcoholic beverages under its jurisdiction.

3 (3) An appeal to any approval, denial, revocation, or suspension  
4 may be filed through the municipal clerk with the governing body  
5 of the municipality. The governing body, or its designee, shall  
6 conduct a hearing and render a decision within 30 days of the filing  
7 of the appeal. The governing body may designate a municipal  
8 official or an attorney licensed in the State of New Jersey to serve  
9 as a hearing officer in place of the governing body for the purpose  
10 of conducting a hearing pursuant to this subsection and rendering a  
11 decision.

12 Nothing in P.L. , c. (C. ) (pending before the Legislature  
13 as this bill) shall be construed to restrict the right of any party to  
14 obtain a review by any court of competent jurisdiction, according to  
15 law.

16 e. Owners and operators of restaurants, bars, distilleries, or  
17 breweries desiring to utilize public sidewalks are subject to the  
18 following conditions: (1) a walking path not less than four-feet  
19 wide must be maintained on the public sidewalk at all times so as to  
20 not obstruct pedestrian traffic; (2) all fixtures shall be removed  
21 from public sidewalks at the conclusion of each day, if so required  
22 by the municipality; and (3) the municipality reserves the right to  
23 order the temporary suspension of outdoor dining and the removal  
24 of all fixtures from public sidewalks due to road or utility  
25 construction, predicted high winds or severe weather, predicted  
26 snow or ice storms, the need to remove snow or ice from the  
27 sidewalks, or any other public emergency that may arise.

28  
29 4. Notwithstanding any provision of law to the contrary, the  
30 installation and continuous use of tents, canopies, umbrellas, tables,  
31 chairs, and other fixtures on private property or public property or  
32 right of way designated by a municipality pursuant to P.L.2021,  
33 c.15 and P.L. , c. (C. ) (pending before the Legislature as  
34 this bill), shall be a permitted use provided that the tent, canopy,  
35 umbrella, table, chairs, or other fixture conforms to all applicable  
36 provisions of the State Uniform Construction Code and Fire  
37 Prevention Subcode, which have been adopted by the  
38 Commissioner of Community Affairs pursuant to P.L.1975, c.217  
39 (C.52:27D-119, et seq.). The permitted use of tents, canopies,  
40 umbrellas, tables, chairs, and other fixtures allowed by this section  
41 shall be limited to the timeframe encompassing the first day of  
42 April through the first day of December each year. Any  
43 administrative rule or regulation which limits the use of tents,  
44 canopies, umbrellas, tables, chairs and other fixtures to 180 days or  
45 less during the time frame encompassing the first day of April  
46 through the first day of December shall be inapplicable.  
47 Notwithstanding the foregoing, any administrative rule or  
48 regulation which governs the use of tents, canopies, umbrellas,

1 tables, chairs, and other fixtures on private or public property or  
2 right of way designated by a municipality pursuant to P.L.2021,  
3 c.15 or P.L. , c. (C. ) (pending before the Legislature as this  
4 bill) for the time period encompassing the second day of December  
5 through the last day of March of the subsequent year shall not be  
6 impacted by P.L. , c. (C. ) (pending before the Legislature  
7 as this bill).

8  
9 5. A public sidewalk or an outdoor space that is considered as an  
10 extension of a business premises for the purpose of conducting sales  
11 of food and beverages pursuant to P.L. , c. (C. ) (pending  
12 before the Legislature as this bill) shall be considered a portion of  
13 the premises which is open to the public for the purposes of section  
14 5 of P.L.1999, c.90 (C.2C:33-27).

15  
16 6. a. Notwithstanding any provision of P.L. , c. (C. )  
17 (pending before the Legislature as this bill) to the contrary, all other  
18 municipal ordinances pertaining to sanitation, property  
19 maintenance, noise, business days and hours of operation, and days  
20 and hours of service of alcoholic beverages shall apply, unless  
21 specifically suspended or modified by the municipality or  
22 specifically prohibited by the provisions of this section.

23 b. With respect to restaurants, bars, distilleries, and breweries  
24 operating in outdoor spaces pursuant to section 2 of P.L. ,  
25 c. (C. ) (pending before the Legislature as this bill),  
26 municipalities shall not prohibit or limit the days and hours of the  
27 outdoor service of food and beverages, including alcoholic  
28 beverages, except that municipalities may prohibit or limit  
29 operations for the hours after 10:00 p.m. and between 12:00 a.m.  
30 and 11:00 a.m. on Sundays through Wednesdays, and between  
31 12:00 a.m. and 11:00 a.m. on Thursdays through Saturdays, with  
32 the exception that a municipal ordinance prohibiting or limiting the  
33 days and hours of indoor service of food and beverages, including  
34 alcoholic beverages, which was in effect prior to March 1, 2020  
35 may be applied to the outdoor service of food and beverages,  
36 including alcoholic beverages, as a condition of the zoning approval  
37 pursuant to section 2 of P.L. , c. (C. ) (pending before the  
38 Legislature as this bill).

39 c. A municipality may either prohibit or limit the days and hours  
40 of any live performances, including musical performances, and the  
41 playing or projection of any content from a recording, streaming  
42 service or television, cable or internet broadcasting service in  
43 outdoor spaces or on public sidewalks as a condition of the zoning  
44 approval pursuant to sections 2 and 3 of P.L. , c. (C. and  
45 C. ) (pending before the Legislature as this bill).

46  
47 7. Nothing in P.L. , c. (C. ) shall be interpreted or  
48 construed as permitting or mandating the opening, expansion, or

1 resumption of unlimited operations of a restaurant, bar, or brewery  
2 that is closed, whether permanently or temporarily, or operating  
3 subject to limitations on its operations, service, or hours, as a result  
4 of disciplinary or legal sanctions imposed by, or entering into a  
5 settlement agreement with, a court of the State of New Jersey, a  
6 municipal court, the New Jersey Department of Law and Public  
7 Safety, the New Jersey Division of Alcoholic Beverage Control, or  
8 a municipal governing body acting as a local alcoholic beverage  
9 control board, as applicable.

10  
11 8. Nothing in P.L. , c. (C. ) (pending before the  
12 Legislature as this bill) permits the use of State-owned right of way  
13 for the purposes of outdoor dining. Permits for the use of the State  
14 right of way may be issued upon application and approval of the  
15 New Jersey Department of Transportation. For the purposes of  
16 locally-owned roads that intersect the State highway system,  
17 setbacks from the State right of way line will be 50 feet from April  
18 1 to October 31, and 100 feet from November 1 to March 31.

19  
20 9. This act shall take effect immediately or upon the expiration  
21 of sections 1 through 8 of P.L.2021, c.15, whichever is later.

#### 22 23 24 STATEMENT

25  
26 This bill would permit the use of tents and other fixtures for  
27 outdoor dining on certain property.

28 The bill would allow the owners and operators of restaurants,  
29 bars, distilleries, or breweries to use outdoor spaces which they own  
30 or lease and which are located on, or adjacent to, their business  
31 premises, as an extension of their business premises for the purpose  
32 of conducting sales of food and beverages, including alcoholic  
33 beverages if so licensed. The bill defines outdoor spaces as  
34 including patios and decks, both covered and uncovered, yards,  
35 walkways, and parking lots, or a portion thereof. The bill would  
36 also allow the owners and operators of those establishments to use  
37 public sidewalks, as defined in the bill, as an extension of their  
38 business premises for that purpose, as well.

39 The bill requires owners and operators of those establishments  
40 seeking to utilize outdoor spaces or public sidewalks as extensions  
41 of their business premises pursuant to the provisions of the bill to  
42 file an application with the municipal zoning officer, including  
43 information concerning the use of the outdoor spaces or public  
44 sidewalks, as appropriate, pursuant to the requirements set forth in  
45 the bill.

46 The bill allows the use of tents, canopies, umbrellas, tables,  
47 chairs, and other fixtures on these premises as long as the tent,  
48 canopy, umbrella, table, chairs, or other fixture conforms to all

1 applicable fire safety and construction code provisions. The bill  
2 specifies that these tents, canopies, umbrellas, tables, chairs, and  
3 other fixtures would be deemed a permitted use for the time period  
4 encompassing the first day of April through the first day of  
5 December of each year. The bill further clarifies that any  
6 administrative rule or regulation which governs the use of tents,  
7 canopies, umbrellas, tables, chairs, and other fixtures during the  
8 winter, specifically the time period encompassing the second day of  
9 December through the last day of March, would not be impacted by  
10 the provisions of the bill.

11 The bill is to take effect immediately or upon the expiration of  
12 sections 1 through 8 of P.L.2021, c.15, whichever is later.  
13 P.L.2021, c.15 was enacted on February 5, 2021, in part, to  
14 temporarily expand opportunities for restaurants, bars, distilleries,  
15 and breweries to provide outdoor dining in response to the COVID-  
16 19 public health emergency, and is to expire by its own terms. This  
17 bill would make several provisions of that law permanent.