

**BOROUGH OF BEACH HAVEN
COUNTY OF OCEAN**

ORDINANCE #2025-15C

**AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER
137, “OUTDOOR DINING,” OF THE CODE OF THE BOROUGH OF
BEACH HAVEN TO COMPORT WITH P.L. 2024, C. 95**

WHEREAS, on February 24, 2022, the Borough adopted Ordinance No. 2022-01C regulating safety, health and welfare concerns related to outdoor dining in the Borough; and

WHEREAS, on November 25, 2024, the Governor signed into law P.L. 2024, c. 95 (the “Law”), which amended the Municipal Land Use Law, specifically N.J.S.A. 40:55D-164 to -171; and

WHEREAS, the Law also amended Section 4 of P.L. 2021, c. 15, extending the expiration date of COVID-19 Liquor Licensed Premises Expansion Permits; and

WHEREAS, the Law does not preempt the field as it specifically allows for certain local regulation at N.J.S.A. 40:55D-166(d)(1), N.J.S.A. 40:55D-166(d)(2), N.J.S.A. 40:55D-168(a), and N.J.S.A. 40:55D-168(b); and

WHEREAS, the Law specifically provides that a municipality may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of P.L.2024, c. 95 (C.40:55D-164 et al.) or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control and may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction; and

WHEREAS, the Law also provides that, notwithstanding any other provision thereof to the contrary, all other municipal ordinances pertaining to sanitation, property maintenance, noise, business days and hours of operation, and days and hours of service of alcoholic beverages shall apply; and

WHEREAS, the Borough finds that the provisions of these amendments to Chapter 137 are consistent with maintaining and preserving the health, safety, sanitation, property maintenance, and noise within the Borough and at the Establishments, and therefore, these provisions are not preempted by the Law.

NOW, THEREFORE, BE IT ORDAINED by the governing body of the Borough of Beach Haven as follows:

SECTION I. Chapter 137, “Outdoor Dining,” shall be repealed in its entirety and replaced with the following:

Chapter 137 Outdoor Dining

137-1 Outdoor Dining Permitted. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, and all holders of a liquor license with retail consumption privileges, (hereinafter collectively referred to as “Establishment(s)”) are permitted to offer in-person service in outdoor areas, provided the Establishment obtains an Outdoor Dining Permit from the Borough in accordance with the requirements of this Chapter and N.J.S.A. 40:55D-164 to -171.

137-2 Permit Required.

A. No outdoor food or beverage service shall be permitted without issuance of an outdoor dining permit pursuant to the regulations set forth herein and in N.J.S.A. 40:55D-164 to -17. All holders of alcoholic beverage manufacturer licenses or retail consumption licenses and the owners of all Establishments seeking to sell and serve food in outdoor spaces as an extension of their business premises shall file an application for an outdoor dining permit with the Zoning Officer. Such permits are valid for one (1) year and shall require annual renewal.

B. The Outdoor Dining Permit Application shall include a completed application, signed and dated by the owner of the Establishment, or such owner's authorized agent, together with:

1. A site plan, plan, sketch, picture, or drawing that depicts the existing and proposed design, dimensional boundaries, and placement of tents, canopies, umbrellas, tables, chairs, and other fixtures of the outdoor spaces, including confirmation of the number of existing approved tables and chairs;

2. A depiction of all aisles, routes of ingress and egress, clearances and distances between tables and between the seating area of any curb line, trash, and recycling receptacles;

3. A plan for the control of litter, the removal and storage of garbage, and the cleaning of fixtures and grounds;

4. Any proposed lighting, additional wiring, heating, and/or electrical changes that are proposed within this new outdoor seating area, provided that no permanent structures shall be permitted under this chapter;

5. If the owner of the Establishment is not the owner of the property, the property owner must also sign the application, which shall indicate the owner's written consent;

6. An insurance certificate naming the Borough as an additional insured, with general liability on an occurrence with a limit of liability of at least \$1,000,000, with respect to losses arising solely from the operation of the outdoor dining facility; and

7. When the dining takes place in the Borough right of way, an indemnification agreement with the Borough with respect to losses arising solely from the operation of the outdoor dining facility.

8. Check or money order from the applicant in the amount of \$250.00 for administrative review.

C. **Liquor licensed establishments.**

1. In addition to the requirements of Chapter 137-2(B), above, the holder of an alcoholic beverage manufacturer license or retail consumption license shall apply to the Director of the Division of Alcoholic Beverage Control for a premises expansion permit.

2. The permit shall entitle the license holder to sell alcoholic beverages in outdoor spaces as an extension of their business premises that they own or lease and that are located either on their business premises, contiguous to the business premises, or in a non-contiguous location, provided the property is in reasonable proximity to the licensed premises and the license holder has established safeguards to ensure that alcoholic beverages will be sold and served in accordance with Title 33 of the Revised Statutes.

3. A license holder who obtains a premises expansion permit for a contiguous and non-contiguous property shall demonstrate that the license holder has a possessory interest and control over the property and shall be entitled to exercise the same privileges afforded on the existing licensed premises. A license holder shall immediately notify the Borough if it loses possessory interest or control over the property.

4. Upon receipt of an application for a premises expansion permit from the Director, the municipal clerk and police chief shall review the application. For licensed premises located on property owned by or under the control of the Borough, the application shall be reviewed and approved by the Borough Manager and police chief. In either case, if the Borough approves or endorses the application, it shall submit its endorsement to the Director of the Division of Alcoholic Beverage Control pursuant to section 2 of P.L.2024, c. 95 (C.40:55D-165). The Director shall not approve or deny an application until it receives an endorsement or approval by the appropriate officials.

5. Following the initial issuance, the renewal date of a premises expansion permit issued pursuant to this section shall be the same as the renewal date of the retail consumption license or manufacturer license.

6. (a) A license holder who held a temporary expansion permit issued pursuant to the Director's special ruling prior to the effective date of P.L. 2024, c. 95 shall be entitled, upon notice to the Director and payment of a fee as shall be fixed by the Director, to convert the permit to a premises expansion permit established pursuant to N.J.S.A. 40:55D-165. A license holder who held the temporary expansion permit prior to the effective date P.L. 2024, c. 95 and converts the permit pursuant to N.J.S.A. 40:55D-165 shall not be required to submit to the Director or Borough an additional application pursuant to P.L.2024, c. 95 (C.40:55D-164 et al.). Following the initial issuance, the renewal date of a premises expansion permit shall be the same as the renewal date of the retail consumption license or manufacturer license.

(b) A temporary expansion permit issued pursuant to the Director's special ruling prior to the effective date P.L. 2024, c. 95 shall remain in effect pending the Director's issuance of a special ruling or adoption of regulations until either November 30, 2025 or until the license holder is issued a premises expansion permit pursuant to N.J.S.A. 40:55D-165.

D. A permit issued to an Establishment without an alcoholic beverage retail or manufacturer's license shall be subject to annual renewal. Liquor Licensed Establishments shall submit an application pursuant to Section 137-2(B) annually, and shall otherwise be bound by the provisions of this Chapter; however, licensed establishments are not required to submit an annual expansion of premises permit application with the Director pursuant to Section 137-2(C). Notwithstanding, any licensee shall immediately notify the Borough if it loses possessory interest or control over the property, as required by Section 137-2(C)(3).

E. The owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license who held a temporary permit issued by the Borough prior to the effective date P.L. 2024, c. 95 shall be entitled to convert the permit to an outdoor dining permit established pursuant to N.J.S.A. 40:55D-166 to be used in 2025 for purposes other than selling alcoholic beverages in such spaces as authorized pursuant to section 2 of P.L.2024, c. 95 (C.40:55D-165) and this Chapter, provided that there are no changes to the outdoor space previously

approved and the documents required by this Chapter are on file with the Borough. In the event such documents are not on file, required documents shall be submitted as a condition of the permit, but no fee shall apply for 2025. Commencing January 1, 2026, applications must be filed annually and shall be subject to review and approval.

137-3 Review of Permit Application.

A. The Zoning Officer shall issue an approval to the applicant within 15 business days of the application being submitted and deemed complete provided that the applicant meets and abides by all qualifications and requirements of P.L.2024, c. 95 (C.40:55D-164 et al.), with the exception that the zoning officer may deny an application based on current violations of any other health, safety, fire, permitted use, or zoning regulation or upon any applicable law permitting the denial of a zoning permit. The Zoning Officer shall seek input from Chief of Police, Fire Official, Construction Official, and Borough Clerk to determine whether the applicant is subject to any current violations of any other health, safety, fire, permitted use, or zoning regulation or upon any applicable law permitting the denial of a zoning permit. Noncompliance with the provisions of this Chapter shall constitute a violation of health, safety, and fire regulations.

B. The Borough may deny, revoke, or temporarily suspend the permit of any applicant or permittee that violates, or is not in compliance with, any provision of P.L.2024, c. 95 (C.40:55D-164 et al.) or any provision of a law, ordinance, or regulation related to health, safety, fire, permitted use, zoning, or the consumption or control of alcoholic beverages not otherwise under the jurisdiction of the Division of Alcoholic Beverage Control. The Borough may also deny, revoke, or temporarily suspend the permit of any applicant or permittee based on any action taken against the applicant or permittee by the Division of Alcoholic Beverage Control related to the division's enforcement of any law or regulation related to the consumption or control of alcoholic beverages under its jurisdiction.

C. An appeal to any approval, denial, revocation, or suspension may be filed through the municipal clerk with the governing body. The governing body, or its designee, shall conduct a hearing and render a decision within 30 days of the filing of the appeal. The governing body may designate a municipal official or an attorney licensed in the State of New Jersey to serve as a hearing officer in place of the governing body for the purpose of conducting said hearing and rendering said decision.

137-4 Standards for Permits. The following standards are established for the health, safety, welfare, sanitation and property maintenance of outdoor dining areas. Failure to comply or existence of an offending condition below shall constitute cause to deny, revoke or suspend an outdoor dining permit:

A. Outdoor dining areas must be designated and operated in accordance with the State of New Jersey, Department of Health and any applicable County Health Department requirements.

B. If the contiguous area is located in a County Right of Way, approval from the County must be obtained.

C. Lighting will be required if the outdoor dining area is proposed to be utilized after dusk and there is inadequate existing lighting.

D. A non-enclosed tent, awning, or umbrellas may be utilized within an outdoor dining area provided they do not restrict pedestrian access.

E. Serving stations and a host podium may be located within an outdoor dining area. Outdoor cooking shall not be allowed.

F. No change in grading will be permitted in order to create an outdoor dining area.

G. Establishments with existing outdoor dining areas may seek to expand the existing area in accordance with P.L. 2024, c. 95 and this Chapter.

H. The operator of an outdoor dining area shall be responsible to provide, maintain, and empty an adequate amount of outdoor trash and recycling receptacles for the outdoor dining area, and shall not be permitted to dispose of trash or recycling into municipal receptacles.

I. The operator of an outdoor dining area shall be responsible for maintaining a sanitary, safe, litter-free, and well-kept appearance of the property at all times.

J. Adequate provision for pedestrian safety must be provided. To allow for pedestrian circulation, a minimum of six feet of sidewalk between the curb and the entrance of the establishment shall be maintained and free of tables and other encumbrances.

K. Planters, posts with ropes, wrought iron railings, or other removable enclosures are encouraged and shall be used as a way of defining the area occupied by the outdoor dining area. The Establishment may be required to install physical barriers, delineators, or other protective measures around the perimeter of the outdoor dining area if deemed necessary by the Borough to ensure the safety of patrons and the general public. Such protective measures may be required in areas adjacent to vehicular traffic, pedestrian walkways, or other conditions presenting potential hazards. All barriers or safety devices must comply with applicable Borough standards and shall be maintained in good condition for the duration of the permit.

L. To the extent possible, all elements of the outdoor dining area shall be compatible with the architectural character of the building where the establishment is located.

M. Outdoor dining areas may have outdoor heaters, provided same are in locations identified on the plan and subject to inspection by the Borough Zoning Officer and/or the Fire Department.

N. Establishments with outdoor dining areas shall not be entitled to additional signage, over and beyond what is permitted for the restaurant use.

O. Liquor Licensed Establishments are responsible for compliance with the New Jersey Alcoholic Beverage Control Commission.

P. An Outdoor Dining Permit may be suspended or revoked if the Borough Manager or his/her designee identifies a safety issue that may involve but not be limited to traffic, fire, pedestrian safety or trash management, or if the Establishment fails to comply with any other statute, law, rule, regulation or ordinance.

Q. No additional seating may encroach on dunes or natural areas.

R. Unless otherwise limited, restricted, prohibited or regulated by Chapter 212 of the Code of the Borough of Beach Haven or by applicable Land Use Board Resolution, if a business premises' parking lot is used for the service and sale of either food or beverages, or both, the owner or operator of a restaurant that does not sell alcoholic beverages and the holder of an alcoholic beverage manufacturer license or retail consumption license shall not encumber more than 75 percent of the lot's total parking spaces for service and sale and shall maintain at least one handicapped parking space in the parking lot. In the event the

parking lot contains less than eight parking spaces, none of the parking lot's spaces shall be encumbered as contemplated herein.

S. The installation and continuous use of tents, canopies, umbrellas, tables, chairs, and other fixtures on private property or public property or right of way designated by a municipality pursuant to P.L.2024, c. 95 (C.40:55D-164 et al.) shall be a permitted use provided that the tent, canopy, umbrella, table, chairs, or other fixture conforms to all applicable provisions of the State Uniform Construction Code and Uniform Fire Code, which have been adopted by the Commissioner of Community Affairs pursuant to P.L.1975, c. 217 (C.52:27D-119, et seq.) and P.L.1983, c. 383 (C.52:27D-192 et seq.), respectively. The Outdoor Dining Permit does not replace, or eliminate the need for, any construction permit required for any structure or improvement at the Establishment's outdoor dining area. A tent or other temporary structure erected pursuant to this section shall not be subject to the requirement that it be dismantled within 48 hours of the conclusion of the event contained in Section 212-20(J)(2).

T. The total amount of seats available to patrons, both inside and out, shall not exceed the permitted occupancy of the Establishment or such other occupancy that can reasonably and safely be accommodated.

U. Any area proposed for outdoor seating and dining must be accessible from the Establishment, or be located in a non-contiguous location, provided the property is in reasonable proximity to the licensed premises and shall not obstruct the free flow of pedestrian traffic, and shall provide a safe location for patrons.

V. Outdoor music must comply with all Borough noise ordinances and be considerate of businesses and residential neighbors.

W. Establishments must comply with Borough Ordinances or Land Use approvals applicable to the Establishment for hours of operation and service, including service of alcoholic beverages. Outdoor dining areas authorized by an Outdoor Dining Permit shall be conducted during the same hours of operation currently applicable to the establishment.

X. No new impervious cover shall be proposed or result from the expansion.

Y. No outdoor bar, alcohol service station, or similar structure dedicated to the preparation or dispensing of alcoholic beverages shall be established or operated within the outdoor dining area. All alcoholic beverage service in the outdoor area shall be provided exclusively through table service by waitstaff or servers. Bartenders shall not prepare or serve drinks directly to patrons in the outdoor area. This standard is intended to ensure orderly alcohol service and promote public safety and compliance with applicable liquor control regulations.

137-5 General Permit Conditions. Outdoor Dining Permits shall be subject to the following general conditions:

A. All expenses and expenditure of any funds in reliance on the provisions of the Outdoor Dining Permit shall be at the Establishment's sole and exclusive cost and expense.

B. Any change to a permit granted hereunder shall require the submission of a new permit application.

C. Unless otherwise provided by law or Land Use Board approval, the permitted hours of operation for outdoor areas subject to an Outdoor Dining

Permit shall be between 11:00 am and 10:00 pm (Sunday through Wednesday) and between 11:00 am and 12:00 am (Thursday through Saturday).

D. Outdoor Music. Live performances, including musical performances, and the playing or projection of any content from a recording, streaming service, or television, cable, or Internet broadcasting service in outdoor spaces or on public sidewalks shall be permitted only between 12:00 pm and 9:00 pm (Sunday through Wednesday) and 11:00 am and 10:00 pm (Thursday through Saturday).

E. Notwithstanding any provision of P.L.2024, c. 95 (C.40:55D-164 et al.) to the contrary, all other Borough ordinances pertaining to sanitation, property maintenance, noise, business days and hours of operation, and days and hours of service of alcoholic beverages shall apply, unless specifically suspended or modified by this Chapter. Failure to comply with any other such ordinance shall be cause to revoke, suspend, or deny an Establishment's Outdoor Dining Permit.

137-6 Existing Approvals. Nothing herein shall prevent the use of outdoor dining areas at any establishment authorized by Land Use Board approval.

137-7 Violations and Penalties. Any person or entity who violates any provisions of this Chapter shall be fined as set forth in Borough Code Section 1-16, "General penalty provisions." Every day that a violation continues shall constitute a separate and distinct offense. Each and every specific violation shall be considered a separate violation. Additionally, violations of this Chapter may result in the suspension, revocation, or denial of an outdoor dining permit.

SECTION II. Repealer. All Ordinances or parts of Ordinances inconsistent herewith are repealed to the extent of such inconsistency. The Clerk of the Borough is authorized to renumber and/or re-codify any sections affected by such repeal to the extent consistent with this Ordinance.

SECTION III. Severability. If any word, phrase, clause, section or provision of this Ordinance shall be found by any Court of competent jurisdiction to be unenforceable, illegal or unconstitutional such word, phrase, clause, section or provision shall be severable from the balance of the Ordinance and the remainder of the Ordinance shall remain in full force and effect.

SECTION IV. Effective Date. This Ordinance shall take effect upon publication thereof after final passage according to law.

NOTICE

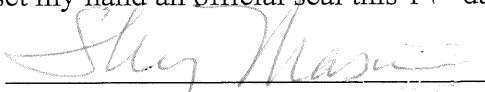
Public Notice is hereby given that the foregoing Ordinance was introduced and passed on the first reading at a public meeting of the Borough Council of the Borough of Beach Haven, County of Ocean, State of New Jersey, held on July 14, 2025 at 6:00 p.m. A copy of the ordinance can be obtained, without cost, by any member of the general public at the Office of the Municipal Clerk, 300 Engleside Avenue, Beach Haven, NJ 08008 Monday through Friday, 9:00 a.m. to 4:00 p.m., on our website at www.beachhaven-nj.gov or via email smason@beachhaven-nj.gov.

Further public notice is hereby given that said ordinance shall be considered for final passage and adoption at a public meeting of the Borough Council to be held on August 11, 2025 at 6:00 p.m.

CERTIFICATION

I, Sherry Mason, RMC, Municipal Clerk of the Borough of Beach Haven, do hereby certify that the foregoing Ordinance was duly adopted by the Borough Council of the Borough of Beach Haven at a public meeting held on the 14th day of July 2025, a quorum being present and voting in the majority.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 14th day of July 2025.


Sherry Mason, RMC, Borough Clerk

First Reading: ***July 14, 2025***
First Publication: ***July 24, 2025***
Second Reading: ***August 11, 2025***
Second Publication: ***August 21, 2025***
Effective Date: ***August 31, 2025***