

**PUBLIC HEARING IS SCHEDULED FOR JUNE 15, 2020**

**Explanation: An Ordinance permitting outdoor dining, limited sales and exercise classes within certain Municipal Parks and areas adjacent to the fitness or wellness business during the COVID-19 pandemic.**

**TOWNSHIP OF WARREN  
ORDINANCE NO 20-19**

**AN ORDINANCE PERMITTING OUTDOOR  
DINING, LIMITED SALES AND EXERCISE CLASSES  
WITHIN CERTAIN MUNICIPAL PARKS AND AREAS ADJACENT TO THE  
FITNESS OR WELLNESS BUSINESS  
DURING THE COVID-19 PANDEMIC**

**WHEREAS**, as a result of Executive Order #103, on March 9, 2020, Governor Murphy issued a State of Emergency due to the COVID-19 pandemic (the “COVID-19 Pandemic”); and

**WHEREAS**, numerous Executive Orders have been issued by the Governor since that time to deal with a myriad of economic and social issues affecting New Jersey residents due to the COVID-19 pandemic; and

**WHEREAS**, the Township Committee desires to waive and/or modify various portions of the Revised General Ordinances of the Township of Warren, as heretofore supplemented and amended (hereinafter the “Township Code), by allowing (i) outdoor dining in non-residential zones where local food establishment, restaurants and bars are permitted or were granted use variances to allow such uses (as limited hereby), (ii) the outdoor sale of merchandise adjacent to a clothing boutique, florist shop, antique shop or other shops selling merchandise within non-residential zone districts (as limited hereby), and (iii) allowing certain municipal parks and areas adjacent to the fitness or wellness business to be open for fitness, exercise, yoga or martial arts classes (as limited hereby), during the period that Governor Murphy’s COVID-19 Executive Order #103 (and all associated Executive Orders) remains in effect.

**NOW THEREFORE, BE IT ORDAINED**, by the Township Committee of the Township of Warren, County of Somerset, State of New Jersey, as follows:

**Section 1: Purpose of Ordinance.**

The purpose of this Ordinance is to allow (i) outdoor dining in non-residential zones where local food establishment, restaurants and bars are permitted or were granted use variances to allow such uses (as limited hereby), (ii) the outdoor sale of merchandise adjacent to a clothing boutique, florist shop, antique shop or other shops selling merchandise within non-residential zone districts

(as limited hereby), and (iii) allowing certain municipal parks and other areas adjacent to the fitness or wellness business to be open for fitness, exercise, yoga or martial arts classes (as limited hereby), during the period that Governor Murphy's COVID-19 Executive Order #103 (and all associated Executive Orders) remains in effect.

It is the intention of the Township Committee to monitor and review the use of these facilities after the adoption of this Ordinance to determine its full impact upon the Township and the enjoyment of its citizens.

**Section 2: Applicability.**

This ordinance applies to all (i) food establishments, restaurants and bars in non-residential zones where such uses are permitted under the Township Code or were granted use variances to allow such use, (ii) all clothing boutiques, florist shops, antique shops or other shops selling merchandise within non-residential zone districts, and (iii) fitness, exercise, yoga or martial arts classes within certain municipal parks, during the period that Governor Murphy's COVID-19 Executive Order #103 (and all associated Executive Orders) remains in effect, or November 1, 2020, whichever shall be the first to occur (except as detailed in Section 12 below)

**Section 3: Outdoor Dining-Permitted Installations.**

A. Notwithstanding anything to the contrary contained in the Township Code, Outdoor tables, chairs, tents, umbrellas and benches shall be permitted within the property commonly owned and adjacent to the food establishment and service thereto for the patrons provided:

A. The layout of tables, chairs, tents, umbrellas, and benches does not in any way interfere with pedestrian or vehicular safety, or with necessary access for fire-fighting equipment and ambulances or personnel. Nothing in this Ordinance shall preclude the use of a portion of the parking lot for all or a portion of such tables, chairs, tents, umbrellas, and benches, provided the Zoning Officer is satisfied that public safety will not be impaired or affected.

B. The layout shall not cause irreparable damage to existing landscaping.

C. Unless approved in advance by the Division of Alcohol and Beverage Consumption with respect to a licensed premises, no alcoholic beverages of any kind shall be served or consumed in conjunction with the outdoor dining. With respect to a non-licensed premises, patrons of an unlicensed restaurant may be permitted by the ownership of the restaurant to bring only wine and beer for consumption at such outdoor tables.

D. The highest standards of cleanliness and proper social distancing (until further Executive Order of the Governor) of the outdoor area shall be maintained at all times, including frequent litter removal, within and around and beyond the subject property, the use of personal protective equipment ("PPE") by patrons and employees of the establishment (until further Executive Order of the Governor). A plan for litter removal, trash handling, and overall cleanliness and maintenance must be submitted together with the application.

- E. The hours for outdoor service shall be between 7:00 a.m. and 12:00 am (midnight). All tables, chairs, tents, umbrellas, and benches shall be properly secured at the end of the evening.
- F. No outdoor music or public address system shall be permitted.
- G. No outside lighting shall be permitted except small individual table lighting that is self-powered.
- H. Outdoor seating shall not be permitted if it will interfere in any way with the peace and quiet of nearby residences, as determined by the Zoning Officer in his or her sound discretion.
- I. Low barriers of a temporary nature (such as bollards) shall be placed at the edge of the seating area during business hours in order to protect the outdoor diners from interference with vehicle movements within parking areas or adjacent to streets of the establishment.
- J. No outside cooking of any kind shall be permitted.
- K. The number of chairs to be placed outdoors shall be as limited by the Zoning Officer in his or her sound discretion
- L. Outdoor heaters shall be allowed provided the Zoning Officer, in concert with the Fire Marshal, shall approve and/or limit their location and operation.
- M. The owner of the food establishment shall allow the use of bathroom facilities within the food establishment for the patrons thereof in accordance with the guidelines established by the State of New Jersey.

**Section 4: Approval of Outdoor Dining Plan by Zoning Department.**

Any local food establishment for which this Ordinance is applicable must make application to the Zoning Officer by way of a Zoning Permit prior to setting up any outside services, tables, umbrellas, chairs, tents, or benches. The application shall be on prescribed forms and shall be filled out completely and submitted to the Zoning Officer with the following attachments and exhibits:

- A. Scaled layout of tables, chairs, and tents, and low barriers if proposed (such as bollards), showing dimensions of tables, chairs, and tents, and overall area;
- B. A detailed narrative and plan of relevant information, describing method of service, proposed hours of service outdoors, use of PPE and proper social distancing, and method of litter control and trash handling for outdoor service;
- C. Photographs or diagrams of tables, chairs, tents, etc. to be utilized, showing style, design, materials, size and colors.
- D. A narrative as to how tables, chairs, tents, umbrellas and/or benches will be secured overnight;
- E. Proof of insurance in accordance with requirements of Section 8 below; and
- F. The written consent of the landlord in the event the applicant is a tenant of such establishment.

The Zoning Officer may approve each Zoning Permit application as submitted, or may approve the Zoning Permit application with amendments and conditions or may disapprove such application. It is expressly understood that the Zoning Officer shall have the right and power to

waive one or more of the above-referenced Zoning Permit application requirements, as determined in his or her sound discretion. Appeal of any disapproval, conditional or amended approval of a Zoning Permit may be made to the Township Committee.

**Section 5: Miscellaneous Provisions for Outdoor Dining.**

- A. Applicable food establishments as set forth in Section 3 are permitted to place chairs or benches for patrons awaiting seating, so long as a Zoning Permit application as set forth above is submitted and all other parameters of this Ordinance are satisfied.
- B. An amendatory Zoning Permit application is permitted, but changes to the approved plan shall not be permitted without receiving approval of an amended Zoning Permit application.
- C. There shall be no fee required for making application herein.

**Section 6: Sale of Merchandise Outdoors**

Notwithstanding anything to the contrary set forth in the Township Code, the outdoor display and sale of merchandise by a clothing boutique, florist shop, antique shop or other shops selling merchandise within non-residential zone districts shall be permitted during the period that Governor Murphy’s COVID-19 Executive Order #103 (and all associated Executive Orders) remains in effect. Any establishment for which this Ordinance is applicable must make application to the Zoning Officer by way of a Zoning Permit prior to setting up any outside tables, racks or other display fixtures. The application shall be on prescribed forms and shall be filled out completely and submitted to the Zoning Officer with the following attachments and exhibits:

- A. Scaled layout of tables, racks, tents, or other display fixtures showing dimensions of such tables, racks or other display fixtures;
- B. A detailed narrative and plan of relevant information, describing method of sale, proposed hours of sales outdoors, use of PPE and proper social distancing, and method of litter control and trash handling for outdoor sales;
- C. Photographs or diagrams of tables, racks, tents, and display fixtures to be utilized, showing style, design, materials, size and colors;
- D. A narrative as to how tables, racks, tents, or other display fixtures will be secured overnight;
- E. Proof of insurance in accordance with requirements of Section 8 of this Ordinance; and
- F. The written consent of the landlord in the event the applicant is a tenant of such establishment.

The Zoning Officer may approve each Zoning Permit application as submitted, or may approve the Zoning Permit application with amendments and conditions or may disapprove such application. It is expressly understood that the Zoning Officer shall have the right and power to waive one or more of the above-referenced Zoning Permit application requirements, as determined in his or her sound discretion. Appeal of any disapproval, conditional or amended approval of a Zoning Permit may be made to the Township Committee.

**Section 7: Outdoor Use of Municipal Parks and Areas Adjacent to the Fitness or Wellness Business for Certain Recreational and Leisure Uses.**

Notwithstanding anything to the contrary contained in the Township Code, and recognizing the need to support the Township's local fitness businesses (limited to fitness businesses, yoga studios, dance studios, and martial arts studios), the Township does hereby allow the use of municipal parks (identified on **Schedule A** to this Ordinance) as well as areas adjacent to the fitness or wellness business for group lessons or classes of no more than 25 persons (including the instructor), subject to the following conditions:

- A. Fitness classes shall not consist of heavy weights, but solely of cardiovascular, yoga, Zumba, martial arts, and resistant exercises;
- B. Social distancing of at least six (6) feet must be maintained and there shall be no sharing of equipment, all of which must be cleaned after each use;
- C. The group lessons shall be limited to (i) those municipal parks set forth on **Schedule A** hereto (it being understood that the other municipal parks not listed on Schedule A shall be used solely for leisure, walking and hiking), and (ii) grass areas, parking areas and/or sidewalks adjacent to the fitness or wellness business ;
- D. Any fitness and wellness related businesses interested in using those municipal parks listed on **Schedule A** must complete the Warren Township Recreation Facility Use Application found on the Township's website. The procedures set forth in Section 2-20.7 of the Township Code shall control the issuance of a Recreation Use Permit prior to conducting any fitness, exercise, yoga or martial arts classes;
- E. Any fitness and wellness related business interested in using grass areas, parking areas and/or sidewalks adjacent to the fitness or wellness related business shall secure a Zoning Permit from the Zoning Officer identifying:
  - a. The area to be used for group lessons;
  - b. A consent letter from the landlord if the business leases the space to conduct such group lessons;
  - c. The nature and of such group lessons;
  - d. The time or times when such group lessons will occur;
  - e. The equipment to be used, if any, with such group lessons;
  - f. Proof of insurance in accordance with requirements of Section 8 below;
  - g. Such other matters as the Zoning Officer, in his or her sound discretion shall require.

### **Section 8: Insurance Requirements**

Any Applicant under Sections 3 through 7 of this Ordinance must have liability insurance in effect at the time of application to either the Zoning Officer or the Recreation Director, as the case may be. If the food establishment under Sections 3 through 5 hereof, or the merchandise operator under Section 6 hereof is not the property owner, then the property owner must likewise have insurance in effect at the time of application. Any business owner under Section 7 hereof desiring to conduct any fitness, exercise, yoga or martial arts classes, shall provide the Recreation Director proof of insurance prior to conducting any classes in the coverage amounts and as detailed in the Warren Township Recreation Facility Use Application found on the Township's website. With respect to food establishments under Sections 3 through 5 hereof, a merchandise operator under Section 6 hereof, or a fitness or wellness establishment intending to conduct group lessons on areas adjacent to the business establishment, the Township of Warren must be named as an additional insured on the operator's policy as well as on the property owner's policy with limits of liability required as follows: (i) a minimum of \$500,000 combined single limit bodily injury and property damage, or (ii) a split limit of \$500,000 bodily injury liability and \$100,000 property damage liability.

### **Section 9: Amendatory Zoning Permits; Fees Waived:**

- A. An amendatory Zoning Permit or Recreation Use Permit application is permitted, but changes to the approved plan shall not be permitted without receiving approval of an amended Zoning Permit or Recreation Use Permit application.
- B. There shall be no fee required for making any application herein. For the avoidance of doubt, all fees are hereby waived while this Ordinance remains in effect.

### **Section 10. Other Business Establishment-Continuing Prohibition.**

Under no circumstances shall tattoo parlors, hair salons, barber shops, shave shops, massage parlors or nail or other salons be permitted to conduct business outdoors.

### **Section 11. Validity of Ordinance.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason deemed to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 12. Effective Date.** This Ordinance shall take effect upon the last to occur of (i) final passage and publication as required by law, or (ii) the date the Governor (or an authorized State agency) issues a directive or Executive Order allowing (i) food establishments, restaurants and bars to consume food and/or drink outdoors, and (ii) the sale of merchandise under Section 6 hereof outdoors. Notwithstanding the foregoing, this Ordinance shall take effect with respect to outdoor fitness, exercise, yoga or martial arts classes under Section 7 hereof immediately upon final

passage and publication of this Ordinance . This Ordinance shall automatically have no further legal force or effect (without further action of the Township Committee) on November 1, 2020, unless this Ordinance is further extended by Resolution of the Township Committee.

ATTEST:

TOWNSHIP OF WARREN

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Cathy Reese, RMC  
Township Clerk

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Michael C. Marion, Mayor

INTRODUCED: June 3, 2020

ADOPTED: June 15, 2020

EFFECTIVE: June 18, 2020

**SCHEDULE “A”**  
**LIST OF MUNICIPAL PARKS**  
**FOR FITNESS, EXERCISE, YOGA**  
**OR MARTIAL ARTS CLASSES**

1. Town Hall Park; and
2. The Wagner Farm Arboretum