PLEASE TAKE NOTICE the following ordinance was introduced and passed on first reading at the June 1, 2020 meeting of the Mayor and Borough Council and will be considered for second reading and final passage during the meeting scheduled to begin at 7:00 p.m. on June 15, 2020 in the Municipal Building, located at 555 Brighton Avenue, Spring Lake Heights, at which time and place any person desiring to comment on this ordinance will be given the opportunity to be heard. A copy of the ordinance is available in the clerk's office.

Janine Gillis, Borough Clerk

ORDINANCE No. 2020-03

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER IV "GENERAL LICENSING" CREATING A NEW SECTION 4.7 ENTITLED "PERMITS FOR OUTSIDE DINING AREAS, OUTDOOR EATING AREAS AND SIDEWALK CAFÉ AREAS" OF THE REVISED GENERAL ORDINANCES OF THE BOROUGH OF SPRING LAKE HEIGHTS

Chapter IV Section 4-7 formerly reserved shall now be entitled "Permits for Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas" of the Revised General Ordinances of the Borough of Spring Lake Heights is hereby adopted with complete text as follows:

SECTION 1

4-7 Permits for Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas.

4-7.1 Definitions.

As used in this section, these terms shall have the following meanings:

a. *Outdoor Dining Area* shall mean a designated area on the premises of a retail food establishment or restaurant, but outside the principal building, and where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress.

b. *Outdoor Eating Area* shall mean a designated area on the premises of a retail food establishment, but outside the principal building, and where patrons may sit at tables while consuming foods, soft drinks, ice cream, and similar confections purchased from the retail food establishment.

c. *Sidewalk Cafe Area* shall mean a designated area of a public sidewalk where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress.

d. *Public Sidewalk Area* shall include, but not limited to that portion of a public sidewalk, public right-of-way or public plaza, which immediately abuts a commercial establishment.

e. *Required Pedestrian Passageway* shall mean an area of sidewalk, parallel to the principal structure's facade and the curbline, at least four (4) feet wide between the adjacent property and the adjacent curb, which shall be unobstructed by trees, tree wells, light poles, trash receptacles, sign poles and posts, utility poles, fire hydrants and similar structures. The pathway shall not meander around obstructions and should be aligned via a constant offset from the curbline.

4-7.2 Permit Required-Permitted Areas.

a. Areas in which Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafes Areas, collectively referred to as "area" or "areas," are permitted:

   1. Outdoor Eating Areas, as defined in this Section may be established as an accessory use to permitted restaurants and retail food establishments.

   2. Outdoor Dining Areas, as defined in this Section may be established as an accessory use to permitted restaurants and retail food establishments.

   3. Sidewalk Cafe Areas, as defined in this Section, may be established as an accessory use to permitted restaurants.

b. No person shall operate an Outdoor Dining Area, an Outdoor Eating Area or a Sidewalk Cafe unless a zoning permit has been obtained from the Borough of Spring Lake Heights.

c. Applicants shall apply for permit approval in accordance with the provisions of this Chapter. All such applications shall be approved by the Zoning Officer and shall be referred to the Chief of Police and the Fire Prevention Official, who shall provide the Zoning Officer with written reports of their opinions and recommendations regarding the application.

d. Applicants shall meet all general ordinance requirements and all other laws, rules, regulations and codes applicable to the proposed activity including setbacks for accessory structures or uses.

e. Applicants proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area must provide satisfactory proof to the Zoning Officer of the following:

   1. Applicants proposing to establish an Outdoor Eating Area or Outdoor Dining Area must provide an architectural barrier such as floral arrangements, landscaping and/or decorative fencing designed to enclose the eating area and limit the ability of litter to blow off the premises but not attached to a public sidewalk area. The Zoning Officer shall also require such architectural barriers for litter in any other locations or situations where the Zoning Officer determines that the litter would otherwise be likely to result from the accessory use. All other Outdoor Dining Areas and Sidewalk Cafe Areas shall be delineated by a decorative chain and bollards or other means approved by the Zoning Officer.

   2. An applicant proposing to establish an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall submit to the Zoning Officer a scaled survey of the proposed seating areas with accurate measurements, which shall include but not be limited to a depiction of all aisles, routes of ingress and egress; clearances between tables and between the seating area at the curb; the location of all food preparation and service areas; the landscape plan; location and description of all plumbing, electrical and other equipment and fixtures that will be utilized; an illustration, rendering and/or photograph of all proposed furniture, umbrellas, awnings, signage and other furniture proposed. No picnic-style tables are permitted.

   3. The Zoning Officer shall review each application to ensure that the proposed operation of the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area will not interfere with pedestrian or vehicular traffic. Four (4) feet of unobstructed non-meandering sidewalk shall be provided. The area shall be clearly demarcated through the placement of a temporary barricade which is reviewed and approved by the Zoning Officer

4. The Zoning Officer shall require each applicant to submit a litter control plan which shall include, but not be limited to, a description of the number and location of trash receptacles for the areas and the frequency with which the tables, surrounding area and adjacent public and private properties will be policed for litter.

5. The permit granted pursuant to this section shall allow the use of the Outdoor Dining Areas, Outdoor Eating Areas and Sidewalk Cafe Areas. However, the area must be properly maintained at all times including complying with the litter control plan, complying with all applicable laws, rules, regulations and codes, properly securing and/or removing tables, chairs and other items during times of inclement weather and high wind, further at no time shall chairs, tables or other items be stacked in the area.

6. Applicants receiving permit approval for an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall obtain a permit each year to continue operations in the years subsequent to the initial approval, provided that the operations are not changed and no violations of this ordinance have occurred.

7. No amplified sound is permitted. Additionally, music of any kind is not permitted outside of the principal building

8. Applicant shall indemnify and save harmless the Borough of Spring Lake Heights , its employees, agents or officers from all claims, losses, liens, expenses, suits and attorney fees (liabilities) arising from the placement, operation and maintenance of the applicant's Sidewalk Cafe/Outdoor Dining/Outdoor Eating Areas. Applicant agrees to name the Borough of Spring Lake Heights as an additional insured under the applicant's general liability insurance (minimum required limit of one million ($1,000,000.00) dollars, bodily injury, property damage and personal injury, and maintains such insurance for such time as the Sidewalk Cafe/Outdoor Dining/Outdoor Eating Area(s) exists. Owner shall provide the Zoning Officer with evidence of such insurance.

9. The Hours of Operation of any outdoor dining activities authorized by this ordinance shall be between 8:00 A.M. and 9:00 P.M. Outdoor Dining shall be permitted between April 15th and October 15th. These hours and dates may be modified by resolution of the Governing Body.

10. Alcoholic Beverages may be consumed in any outdoor dining area. provided that compliance with all ABC and Liquor License rules and regulations is still required.

11. The seating contained in an Outdoor Eating Area, Outdoor Dining Area or Sidewalk Cafe Area shall not be counted in determining any parking space requirement for a retail food establishment or restaurant use.

13. The Outdoor Eating Area, Outdoor Dining Area or Sidewalk Café Area shall be solely an extension of the permitted business use within the adjacent building or storefront with frontage on that public area. The exterior boundaries of the outdoor area shall be determined by the interior walls of the building or storefront which abuts the public or outdoor area and the exterior walls of the barricade.

14. No furniture, decorations or appurtenances used for the operation of the Outdoor Eating Area, Outdoor Dining Area or Sidewalk Café Area, shall pose a safety hazard to the general public or be located in such a way as to impede the safe and speedy ingress and egress to or from any building or structure.

4-7.3 Additional Design Standards

The following Additional design standards shall apply:

1. Where curbside abuts on-street parking, curbside dining is limited to 2-top tables placed parallel to the street. A minimum 2-foot setback should be maintained from the curb edge.
2. Additional sidewalk clearance may be required where pedestrian traffic or other circumstances warrant.
3. An unobstructed pedestrian corridor of a minimum of 4 feet in width straight out must be maintained between any restaurant entrance and the pedestrian corridor space.
4. Clear unobstructed height of 7 feet must be maintained between the sidewalk surface and overhead objects including umbrellas.
5. A minimum clearance of 5 feet must be maintained between the outdoor dining space and edge of parking lots, driveways, alleys, and handicapped ramps.
6. The outdoor dining space must not block access to public amenities like street furniture, trash receptacles, and way finding, or directional signs.
7. Dining areas at corners must not extend within sight triangles at street intersections.
8. An unobstructed pedestrian corridor of a minimum of 4 feet in width must be maintained parallel to the street at all times.
9. Furniture must be made of durable material. No plastic, or unfinished or pressure treated wood furniture is permitted.
10. Planters or pots may be used to define the outdoor dining space but are not required.
11. Perimeter fences are discouraged. Fences must not be solid or opaque, made of plastic or unfinished or pressure treated wood, or affixed to the ground.
12. Tabletop signage is limited to menus and must not exceed 4 square feet in area.
13. There can be no more than 2 umbrellas per table.
14. The umbrellas must be fixed so as to leave a clear height of 7 feet from the sidewalk surface.
15. Umbrellas are not allowed on tables located within 10 feet of block corners.
16. Lighting must not cause glare to pedestrians or vehicular traffic.
17. Lighting must not be affixed to trees, bushes and any natural growth.
18. Tables, chairs, planters, and pots may remain in the designated outdoor dining area throughout the permit period. All umbrellas, signage, and other accessories, however, must be removed from the dining area at the close of business each day.
19. The outdoor dining operation must comply with all State and Local sanitary and health regulations.
20. A host stand and tabletop candles are allowed within the approved dining area. However, these accessories have to be removed from the dining area at the close of business.
21. No tents or cash registers are permitted within the outdoor dining area.
22. Outdoor dining areas cannot run electrical cords from the restaurant building or the city power receptacles.
23. The applicant is responsible for keeping the outdoors dining area and the permittee's property clean of garbage, food debris, paper, cups, or cans associated with the operation of the outdoor

dining space on a daily basis. All waste and trash must be properly disposed of by the applicant.

24. Sidewalks within and adjacent to the outdoor dining area must be washed down and cleaned on a daily basis. Any stains from spills must be removed. Soiled pavement not able to be cleaned must be replaced by the permit holder, under the supervision of the Borough Engineer and detergents used for cleaning must not drain into tree pits.

25. Signage — A-Frame, Sandwich Signs and Menu signs are prohibited outside. All signs attached to poles, fences, or trees are prohibited. All signage must be approved by the Zoning Officer.

4:7.4 Application—Form.

All permits required by this Section shall be applied for and obtained from the Office of the Zoning Officer during normal business hours. Applications for such permits shall be in a form approved by the Borough Administrator and be accompanied by a permit fee of $250.00 unless a different fee is established by resolution of the Governing Body. Applications for renewal of permits annually shall pay $125.00.

4:7.5 Fees Set by Resolution.

a. The annual fee for each year for the operation of an Outdoor Dining Area, Outdoor Eating Area and/or Sidewalk Cafe may be set by resolution by the Mayor and Borough Council.

b. No fees shall be pro-rated, nor any part thereof refunded for any reason.

4:7.6 Appeals.

The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged by the appellant that there is error in any requirement, decision or refusal made by the Zoning Officer in the enforcement of this section.

4:7.7 VIOLATIONS AND PENALTIES.

Each person violating any of the provisions of this section shall, upon conviction thereof, be liable for a fine not less than $500.00 for the first offense. For second or subsequent offenses the penalty shall be the maximum penalty as provided by law and as authorized in the Revised General Ordinances of the Borough of Spring Lake Heights.

In addition to any penalty as noted above, any conviction for violation of this Section shall operate to immediately revoke the permit issued and preclude the issuance of a renewal permit for one year.

SECTION 2

All ordinances or parts of ordinances inconsistent herewith are repealed to the extent of such inconsistency.

SECTION 3

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 4

This Ordinance shall take effect after final adoption and publication in accordance with law.

Janine Gillis, RMC
Borough Clerk