

Proposed Local Law 9-2020

A Local Law amending Chapter 216 (Sidewalk Cafes) of the Village of Ossining Code.

BE IT ENACTED by the Board of Trustees of the Village of Ossining as follows:

Section 1. Chapter 216 (Sidewalk Cafes) is amended with new matter underlined and deleted matter in **[brackets]**.

§ 216-1 Purpose.

The sidewalk cafe regulations as established in this chapter are designed to allow sidewalk cafes on public property in locations in the VC, NC-1, NC-2, PC, GB, SP-S, SP-N and PW Districts where they are determined to be appropriate by the [Village Manager] Building Inspector or his/her designee and to promote and protect the public health, safety and general welfare. The general goals are to:

- A. Provide adequate space for pedestrians on the sidewalk adjacent to the sidewalk cafes and to ensure access to adjacent commercial and retail uses.
- B. Provide sidewalk cafes as a useful and properly planned visual amenity.
- C. Promote the most desirable use of land and buildings in the Village.

§ 216-3 Permit required.

A permit is required to operate a sidewalk cafe. The [Village Manager] Building Inspector or his/her designee is authorized to issue a permit for the operation of a sidewalk cafe, provided that all of the requirements of § **216-4**, Conditions for issuance of permit, and § **216-5**, Fees and deposits; failure to comply, have been complied with by the applicant. The permit to operate a sidewalk cafe shall be valid for a calendar year. This permit may be renewed annually, subject to the conditions in this chapter.

§ 216-4 Conditions for issuance of permit.

A permit for a sidewalk cafe may only be issued to the owner or tenant[,] with the owner's consent, [of a building] for the sale of cooked and prepared food and consumption of beverages, except for fast food restaurants, which are

located in a zoning district permitting such use which abut a public sidewalk adjacent thereto, provided that the following requirements are met:

- A. The sidewalk abutting the property must be at least eight feet in width as measured from the building line to the curblineline;
- B. Except as otherwise provided in this chapter, there shall be a minimum clear distance, exclusive of the area occupied on the sidewalk, free and clear of all obstructions, such as, but not limited to, trees, parking meters, utility poles, streetlights and Village benches or planters, in order to allow for adequate pedestrian movement of four feet; and
- C. Sidewalk cafes may only be located directly in front of the restaurant with which they are associated. These requirements may not be waived;
- D. No permanent structures may be affixed to the sidewalk **by the permittee** [are used for the café] and the area may be occupied only by chairs, tables, benches, umbrellas and planters, as approved by the Village, for the convenience of the patrons of the sidewalk cafe;
- E. The applicant shall be responsible for delineating the cafe area by setting up a barrier, such as a planter or movable rail fence, to physically separate patrons from pedestrian traffic;
- F. A clear and unobstructed space of not less than three feet in width must be provided from all entrances to the building abutting the sidewalk to the unoccupied portion of the public sidewalk;
- G. Neither outdoor lighting nor live or mechanical music may be used on or for the cafe area, except outdoor lighting may be provided in such cases where streetlighting is insufficient to so illuminate the dining area or prevent a hazard to those traveling the sidewalk;
- H. Prior to the issuance of the permit, the applicant shall file with the [Village Manager] **Building Inspector or his/her designee** an agreement executed by the owner and tenant of the building to indemnify and save harmless the Village, its officers and employees against any loss liability or damage, including expenses, costs, including attorneys' fees , for the bodily injury or property damage sustained by any person as a result of the operation, in

whole or in part, of the sidewalk cafe on public property;

- I. Prior to the issuance of the permit, the applicant shall also file **with the application** a certificate of general liability insurance issued to both the owner and tenant as insured and naming the Village, its officers and employees as additional insured in the principal amounts of \$1,000,000 per [individual] **occurrence** and \$[1]2,000,000 [per occurrence] **aggregate** for both personal injury and property damage; and
- J. A site development plan for the sidewalk cafe, drawn to scale, demonstrating compliance with the requirements set forth herein shall be submitted by the applicant to the [Village Planner or Planning Department] **Building Inspector or his/her designee who may forward the site development plan to the Director of Planning for review .**
- K. An applicant for a sidewalk cafe permit or the holder of an existing sidewalk cafe permit, issued by the [Village Manager] **Building Inspector or his/her designee** in accordance with this chapter, may make [an] **a** [appeal] **request** to the Village Board of Trustees for a waiver from the setback requirements set forth in § **216-4B** as follows:
 - (1) The [appellant] **applicant** shall provide an advanced written request for consideration addressed to the Board at the Village offices which request shall include at a minimum:
 - (a) A list with contact information and proof of written notice to the immediately adjacent property and business owners;
 - (b) The rationale for the [appeal] **request**, including details of the constraints on the strict compliance with the setbacks, photos or illustrations if appropriate, and an explanation of any unique or unusual circumstances prohibiting strict compliance; and
 - (c) A scaled drawing of the proposed sidewalk cafe which would not meet the strict setback requirements of § **216-4B** if installed;
 - (2) Such [appeal] **request** shall be placed on an agenda and discussed by the Village Board at a public meeting at which the [appellant] **applicant**,

having the burden of proof, shall appear to make a showing of equitable necessity for such waiver, meaning the benefit to the [appellant] **applicant** must outweigh the detriment or impacts, if any, to the Village, neighborhood or adjacent business or property owners; and

- (3) The adjacent business and property owners to whom the [appellant] **applicant** provided notice shall have an opportunity, but not a requirement, to be heard;
- (4) After having considered the application and comments at the public meeting, the Village Board may thereafter issue a waiver by formal resolution that may include conditions as may be reasonable under the circumstances, with such resolution setting forth specific details as to the waiver granted from the setback requirements set forth in § **216-4B**.

§ 216-5 Fees and deposits; failure to comply.

- A. A fee as adopted by resolution of the Board of Trustees shall be required upon issuance or annual renewal of the permit.
- B. In addition, a refundable cash deposit, as determined by resolution of the Board of Trustees, shall be retained by the Village until the expiration of the permit as security for the faithful performance by the permittee of all of the terms, conditions, agreements, covenants and conditions of the permit on the permittee's part to be done or performed. Upon failure or default of the permittee of any of the terms, condition agreements, covenants and conditions of the permit to be performed on the part of the permittee, who shall have no claim against the Village for loss of anticipated profits or any other loss by reason thereof, any balance left after the expense of such default, as determined by the [Village Manager] **Building Inspector or his/her designee**, shall be refunded to the permittee; any cost in excess of the deposit shall be charged to the permittee.

Section 2. Effective date.

This local law shall become effective upon filing with the Secretary of State pursuant to the Municipal Home Rule Law.

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