

Proposed Local Law 3-2021

(Formerly 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 and Sidewalk Sales) is amended with new matter underlined and deleted matter in [brackets].

Chapter 216 Sidewalk Cafes, Outdoor Dining and Sidewalk Sales

§ 216-1 Purpose.

The sidewalk café, outdoor dining and sidewalk sales regulations as established in this chapter are designed to allow sidewalk cafes, outdoor dining and sidewalk sales on public property [in] at 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 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, outdoor dining and sidewalk sales and to ensure access to adjacent commercial and retail uses.
- B. Provide sidewalk cafes, outdoor dining and sidewalk sales as [a] useful and properly planned visual [amenity] amenities.
- C. Promote the most desirable use of land and buildings in the Village.

§ 216-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

SIDEWALK CAFE

An outdoor dining and drinking area located on a public sidewalk, which is public through dedication, easement or public right-of-way that provides waiter or waitress service and contains readily removable tables, chairs and railings and may contain planters. It is otherwise unenclosed by fixed walls and open to the air, except that it may have umbrellas.

OPEN SPACE

A location that has been approved by the Village Building Inspector or designee, including but not limited to a sidewalk, pedestrian plaza, street, parking lot, or other public or privately owned space; provided that a privately owned space shall be utilized only with the consent of the owner of such space.

Permittee

An individual or entity, including but not limited to a corporation, partnership, limited liability company to whom the permit to operate the sidewalk café, outdoor dining in an approved open space or conduct sidewalk sales is issued.

§ 216-3 Permit required.

- A. A permit is required to operate a sidewalk café. The [Village Manager] **Building Inspector or 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.
- B. **A permit is required to operate an outdoor dining location at an approved open space. The Building Inspector or designee is authorized to issue a permit for the operation of an outdoor dining location, provided that all of the requirements of section 216-4, Conditions for issuance of permit, section 216-5, Fees and deposits and section 250-3C, Schedules; adoption of regulations have been complied with. The permit to operate an outdoor dining location at an approved open space shall be valid from May 1 through October 31. The permit may be renewed annually, subject to the conditions of this chapter.**

§ 216-4 Conditions for issuance of permits and operating restrictions for sidewalk cafes and outdoor dining at approved open spaces.

A permit [for] **to operate** a sidewalk café **or outdoor dining at an approved open space** [may only] **shall** be issued **either** to the owner **of a building** or **a tenant**[,] with the owner's consent, [of a building] for the sale **and consumption** of cooked [and] **or** prepared food [and consumption of] **and** beverages, except for [fast food restaurants,] **Drive-in/Drive-through restaurants as defined in section 145-1 of the Village Code.** [which are] **Sidewalk cafes and outdoor dining at an approved open space shall be** located in [a] zoning districts permitting such use. **For a sidewalk café permit, the sidewalk shall abut the location where the permittee conducts its business.** [which abut a public sidewalk adjacent thereto, provided that the following requirements are met] **Sidewalk cafés and outdoor dining at approved open spaces must meet the following requirements :**

- A. The sidewalk abutting the property must be at least eight feet in width as measured from the building line to the curbline;
- B. Except as otherwise provided in this chapter, there shall be a minimum clear distance **of four feet**, 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. **No sidewalk café or outdoor dining at an approved open space may be operated**

except: a) As an accessory to a restaurant or retail food store lawfully operating on the first floor of a premises in the zoning district; b) For a sidewalk café, on the sidewalk in front of the principal place of business of such entity; c) For outdoor dining at an approved open space, the open space shall be in front of or adjacent to the principal place of business of the permittee. A permittee may not possess a sidewalk café and outdoor dining for an approved open space permit for the same location; and c) By the entity which operates the restaurant or retail food store.

[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 sidewalk café or outdoor dining at an approved open space shall operate when the entity with which it is associated is not open to the public. In no event shall the sidewalk café or outdoor dining at an approved open space operate after 10:00 pm Sunday through Thursday and 11:00 pm Friday and Saturday.

E. All food and beverages to be served or consumed at sidewalk cafes and outdoor dining at an approved open space shall be prepared within the existing restaurant or retail food store. The restaurant or retail food store shall not serve food or beverage to a patron at a sidewalk café or outdoor dining at an approved open space unless that patron is seated at a table.

F. Patrons at sidewalk cafes and outdoor dining at approved open spaces are subject to all applicable laws and regulations concerning smoking including Article XX of the Westchester County Sanitary Code, which prohibits smoking in all dining areas of restaurants, including outdoor service areas of a restaurant, patios, decks and sidewalks.

G. No later than the closing time referenced in 216-4D, all tables, chairs and other equipment used for the sidewalk café and outdoor dining at an approved open space shall be safeguarded or stowed appropriately to ensure safety of the public and property from any hazard including a weather event.

[D.]H. No permanent structures may be affixed to the sidewalk or the outdoor dining at approved open spaces 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] Building Inspector, for the convenience of the patrons of the sidewalk café and the outdoor dining at approved open spaces;

[E.]I. The applicant shall be responsible for delineating the sidewalk café and outdoor dining at approved open space areas by setting up a barrier, such as a planter or movable rail fence, to physically separate patrons from pedestrian traffic;

[F.]J. 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 for a sidewalk cafe;

[G.]**K.** Neither outdoor lighting nor live or mechanical music may be used on or for the sidewalk café or outdoor dining at approved open space areas, 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;

L. Sidewalk cafes, outdoor dining in approved open spaces and the property on which such cafes and outdoor dining are located, and the surrounding areas, shall be kept neat and clean at all times and free from debris and any substance that may damage the sidewalk and approved open spaces or cause injury to pedestrians or property.

[H.]**M.**[Prior to the issuance of the permit, the] **The** applicant shall file with the application [Village Manager] 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 café and outdoor dining at approved open space on public property. The agreement and insurance certificate referenced in section 214-4N shall be reviewed by the Corporation Counsel;

[I.]**N.** [Prior to the issuance of the permit,] [t]The applicant shall [also] file with the application a certificate of general liability insurance issued to both the owner and tenant as insureds and naming the Village, its officers and employees as additional insureds in the principal amounts of \$1,000,000 per [individual] occurrence and \$[1]2,000,000 [per occurrence] aggregate for [both] personal injury, automobile liability and property damage; [and]

O. Where the applicant filed an application for outdoor dining an approved open space which space is on private property, the applicant shall include with the application, where applicable, a written agreement between the applicant and private property owner allowing the private property to be used for outdoor dining. The applicant shall include with the application a Certificate of General Liability Insurance naming the property owner and the Village of Ossining, its officers and employees as additional insureds in the principal amounts or \$1,000,000 per occurrence and \$2,000,000 aggregate for personal injury, property damage and automobile liability.

[J.]**O.** A site development plan for the sidewalk café and outdoor dining at approved open space, 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 designee who may forward the site development plan to the Director of Planning for review.

[K.]P. An applicant for a sidewalk café permit or the holder of an existing sidewalk cafe permit, issued [by the Village Manager] in accordance with this chapter, may make [an] a [appeal] request to the Village [Board of Trustees] Manager for a waiver from the setback requirements set forth in § **216-4B** as follows:

- (1) The [appellant] applicant shall provide [an advanced] a written request for consideration addressed to the [Board] Village Manager 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, with 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 considered by the Village Manager who shall afford the applicant an opportunity to present the application with the assistance of counsel. The applicant shall have the burden of showing the [placed on an agenda and discussed by the Village Board at a public meeting at which the appellant 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] the Village Manager shall within seven calendar days issue a decision waiving the aforementioned setback requirements which decision [may thereafter issue a waiver by formal resolution that] may include conditions as may be reasonable under the circumstances, with such [resolution] decision 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 initial 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 designee**, shall be refunded to the permittee; any cost in excess of the deposit shall be charged to the permittee.

- C. Upon a finding by the Building Inspector or designee that the permittee has violated any provision of this chapter or the terms and conditions of the permit or has engaged in any practice in conjunction with the permitted activity which constitutes a danger to the health or safety of any patron or pedestrian, the Building Inspector or designee shall give notice to the permittee to correct such violation or cease such practice within twenty-four hours. If the permittee fails to comply with such notice, the Building Inspector or designee may suspend the permit for a period not in excess of thirty days, during which time the permittee shall be entitled to a hearing before the Village Manager or designee at which the permittee may be represented by counsel to present evidence and confront the evidence against it. If, upon considering the evidence presented at the hearing, the Village Manager or designee adheres to the determination of the Building Inspector, the Village Manager or designee may reinstate the permit with additional conditions related to the violations or improper practice which has been found or revoke the permit and forfeit the permittee's cash deposit. In addition to or in substitution for the suspension or revocation of the permit, the Village Manager may impose an administrative sanction in an amount to be determined to be the cost to the village of the permittee's failure to comply with this chapter or the permit issued.**

§ 216-6 [Operating restrictions.] Service of alcoholic beverages.

- [A. All sidewalk cafes shall cease operations by 10:00 p.m. Sunday through Thursday and 11:00 p.m. Friday and Saturday.]
- [B.] All alcoholic beverages to be served at sidewalk cafes **and outdoor dining at an approved open space** shall be prepared within the [existing] **lawfully operating** restaurant and shall only be served to patrons while seated at tables. The drinking of alcoholic beverages by a member of the public while a patron of the sidewalk café **or outdoor dining at an approved open space** within the confines of the sidewalk café **or outdoor dining** area shall not be construed a violation of any local law prohibiting the consumption of alcoholic beverages in a public place or area. The operator of a sidewalk café **or outdoor dining in an approved open space** [should] **shall** be in full compliance with the licensing requirements of the State Liquor Authority, as the same

may exist, and shall comply with all other law and regulations concerning the sale of alcoholic beverages in the state. In the event that said sidewalk cafe is not in full compliance with the State Liquor Authority laws and rules and regulations concerning the sale of alcoholic beverages, then serving alcoholic beverages in the sidewalk café or outdoor dining in approved open space areas shall be prohibited[; and].

- [C. The restaurant shall not serve food or beverages to a patron at a sidewalk cafe unless that patron is seated at a table; and
- D. Sidewalk cafes and the public property on which they are located shall be kept neat and clean at all times and free from any substance which might damage the sidewalk or cause injury to pedestrians.]

§ 216-7 Penalties for offenses.

[Added 8-3-1999 by L.L. No. 2-1999]

Any person, firm or corporation who or which shall violate any of the provisions of this chapter or any rule or regulation made pursuant thereto shall, upon conviction thereof, be subject to the penalties as set forth in Chapter 1, General Provisions, Article III. Each day during or on which a violation of this chapter shall occur shall be deemed to be a separate and distinct offense.

216-8 Reservation of Rights

Neither the adoption of this chapter nor the granting of any permit pursuant to hereto shall be construed as a waiver of any right, privilege or immunity of the Village of Ossining concerning its public easement over the streets and sidewalks or of any requirement of law concerning the liability of the Village of Ossining with respect to streets and sidewalks, whether express or implied.

216-9 Special sidewalk sales

Anything in this section to the contrary notwithstanding, the Village Manager may permit the selling and display for sale of merchandise on, over or upon the sidewalk at any location within the village for a period not to exceed seven days in conjunction with organized sidewalk sales days open to participation by all retail merchants within the village.

Section 2. Effective date.

This local law shall become effective upon filing with the Secretary of State pursuant to section 27 of the Municipal Home Rule Law.

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