

TOWN OF NORTH CASTLE

Local Law No. 2 For The Year 2010 (Adopted April 14, 2010)

A local law to eliminate Outdoor Dining as a Special Use Permit and create a new Chapter 142 to regulate Outdoor Dining within the Town of North Castle.

Section 1. Create the following new Chapter 142 entitled "Outdoor Dining" in the Town of North Castle Town Code:

§ 142-1 Purpose.

The outdoor dining regulations as established in this chapter are designed to allow outdoor dining or sidewalk cafes on public and private property, in locations where they are determined to be appropriate by the Building Inspector and to promote and protect the public health, safety and general welfare. These general goals include, among others, the following specific purposes:

- A. To provide adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes and to ensure access to adjacent commercial and retail uses.
- B. To promote outdoor dining areas as useful and properly planned visual amenities for the Town of North Castle.
- C. To promote the most desirable use of land and buildings and thereby protect the Town's tax revenues.

§ 142-2 Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

PUBLIC SERVICE FACILITY -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

SIDEWALK -- Any area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public.

OUTDOOR DINING AREA -- An outdoor dining area located on a sidewalk or on any portion of the property of a food service establishment.

§ 142-3 License required.

- A. No person shall engage in the operation of an outdoor dining area except upon the granting of a license therefor by the Building Inspector pursuant to this chapter and in accordance with the terms and conditions of such license.
- B. Rules and regulations. The Building Inspector is hereby authorized to grant revocable licenses for the use of an outdoor dining area upon the following terms and conditions:
 - (1) The license shall be valid only during a single calendar year, and shall be renewed each year thereafter on application of the licensee specifying any change from the information originally set forth pursuant to § 142-3C unless the Building Inspector, for cause, or the licensee does not renew said license. In the event the Building Inspector determines not to renew a license, he shall give notice to licensee of said intention, by certified mail return receipt requested, not later than 30 days after receipt of an application for renewal of said license, and the reason therefor. The licensee may seek review of the Building

Inspector's determination by appealing to the Town Board. Such review shall be requested by the licensee in writing and not later than 15 days from the receipt of the denial of the application by the Building Inspector of said license. Upon appeal, the Town Board shall give notice to the licensee of the meeting at which the appeal will be considered, which notice shall be delivered personally or by certified mail and addressed to the licensee's address as shown on the application. Such licensee shall be entitled to attend the meeting before the Town Board and shall be afforded a full opportunity to be heard. The Town Board shall render a final determination within 30 days of the said meeting.

- (2) No outdoor dining area may be operated except:
 - (a) As an accessory use to a restaurant, carry-out restaurant, accessory cafe or retail food store lawfully operating on the first floor of the premises;
 - (b) On the sidewalk in front of the principal place of business of such entity or on the side or rear of the principal place of business of such entity so long as the outdoor dining area is located on the same property as the principal place of business; and
 - (c) By the entity which operates the restaurant, carry-out restaurant, accessory cafe or retail food store.
 - (d) The number of outdoor dining seats shall not exceed the total maximum permitted number of seats within the premises to which the outdoor dining area is accessory.
- (3) No outdoor dining area shall operate after midnight or when the entity with which it is associated is not open to the public.
- (4) Furnishing of an outdoor dining area shall consist solely of readily removable tables, chairs, umbrellas, seasonal heating, planters (containing only live plants), and decorative accessories and trash receptacles (together "furnishings") of a design, type, size and color approved by the Building Inspector and all of which shall be uniform in style, color, and material. All furnishings shall be removed from the outdoor dining area and stored indoors at closing in an approved manner when the outdoor dining area is not in operation. The advertising of products or brands on any furnishings shall be prohibited.
- (5) No furnishings may be permanently affixed to the sidewalk or any building. The licensee shall be responsible for any damage caused to any sidewalk or public property as a result of the licensee's operations under this chapter.
- (6) Signage shall be limited to small, nonilluminated identification signs attached to the physical barrier or base wall of the outdoor dining area. Said signage shall not exceed four square feet in area.
- (7) Outdoor dining areas, the public property on which they are located and the surrounding area shall at all times be kept free and clear of litter and debris.
- (8) An outdoor dining area shall be delineated by a removable physical barrier or base wall separating patrons from pedestrian traffic no larger than 30 inches in height. Acceptable delineators shall be paneled flower boxes, flower box posts and chains, wrought iron fencing, wooden fencing, picket fencing (with blunt pickets) and posts and chains.
- (9) The licensee shall dispose of all refuse and shall recycle appropriate materials in accordance with their designated and customary place of disposal and shall have the affirmative obligation to maintain the outdoor dining area and surrounding premises free

of litter at all times. Licensees may maintain receptacles for the disposal of waste and recyclable materials on the property or sidewalk in a design, type, size and color approved by the Building Inspector. Licensees shall not use Town receptacles for disposal of garbage or recyclable material.

- (10) The licensee shall have the consent of the owner and lessee, if any, of the premises which the licensed activity is to be conducted.
- (11) No outdoor lighting (except for candles) or live or mechanical music shall be permitted.
- (12) All food and beverages to be served or consumed at outdoor dining areas shall be prepared within the existing restaurant, carry out restaurant, accessory cafe or retail food store. The restaurant, carry-out restaurant, accessory cafe or retail food store shall not serve food or beverage to a patron at an outdoor dining area unless that patron is seated at a table.
- (13) All alcoholic beverages to be served at outdoor dining areas shall be prepared within the existing restaurant, and alcoholic drinks shall only be served to patrons seated at tables. The drinking of alcoholic beverages by a member of the public while a patron at an outdoor dining area, within the confines of the sidewalk area, shall not be construed as a violation of any ordinance controlling open containers in a public area. The operator of the outdoor dining area shall take whatever steps are necessary to procure the appropriate license from the state liquor authority if he/she intends to serve alcoholic beverages in the outdoor dining area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in this state.
- (14) Operation of an outdoor dining area shall not adversely impact on adjacent or nearby residential, religious, educational or commercial properties and shall be in accordance with all applicable codes and regulations.
- (15) Restaurants, carry out restaurants, accessory cafes or retail food stores located next to each other, without intervening uses or entranceways to buildings, may have outdoor dining areas that abut each other.
- (16) At all times a four-foot walking area between the cafe table area and the curb must be maintained. Furnishings or other property must not be allowed to intrude upon the four-foot walking area.
- (17) The licensee shall at all times maintain free and clear from all obstruction an aisle not less than four feet in width providing access to any establishment fronting on a sidewalk.
- (18) The outdoor dining area shall not interfere with access to any public service facility.
- (19) The number and location of tables shall comply with the maximum occupancy and aisle width standards for dining facilities set forth in the New York State Uniform Fire Prevention and Building Code.

C. Application. Application for a license pursuant to this section shall be made on a form designed by the Building Inspector. Such form shall contain at least the following information:

- (1) The name and address of the licensee.
- (2) The proposed site for the activity.
- (3) A site plan showing the following:
 - (a) A proposed layout.

- (b) The capacity of the existing facility and capacity of proposed outdoor dining area.
- (c) A statement of the months, days and hours of intended operation.
- (d) The licensee's entire property and adjacent properties on a location map with streets for a distance of at least 25 feet, at a scale of one inch equals 10 feet.
- (e) A plan at a scale of 1/2 inch equals one foot showing the design and location of all furnishings.

§ 142-4 Approval or disapproval of application.

The Building Inspector shall grant or deny an application for a license pursuant to this chapter within 30 days of its complete submission.

§ 142-5 Notice of violation; revocation or suspension of license; hearing; administrative sanctions.

Upon a finding by the Building Inspector that the applicant has violated any provision of this chapter or the terms and conditions of the license or has engaged in any practice in conjunction with the regulated activity which constitutes a danger to the health or safety of any patron or pedestrian, the Building Inspector shall give notice to the applicant to correct such violation or cease such practice within 24 hours. If the applicant fails to comply with such notice, the Building Inspector may suspend the license for a period not in excess of 30 days, during which time the applicant shall be entitled to a hearing, at which the licensee may be represented by counsel, to present evidence in his behalf and confront the evidence against him. If, upon considering the evidence presented at the hearing, the Building Inspector adheres to the finding, the Building Inspector may reinstate the license with additional conditions related to the violation or improper practice which has been found, or revoke the license and forfeit the applicants cash deposit. In addition to, or in substitution for, the suspension or revocation of the license, the Building Inspector may impose an administrative sanction in an amount determined by him to be the cost to the Town of the applicant's failure to comply with the terms of this chapter or the permit issued to the applicant pursuant hereto, which such sanction shall be deducted by the Town Board from the applicant's cash deposit. The suspension, revocation or other action taken pursuant to this section shall not relieve the applicant or any other person from any liability which may be imposed pursuant to §§ 142-9 and 142-10 of this chapter.

§ 142-6 Reservation of rights by Town.

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

§ 142-7 Indemnification.

The applicant shall agree, on a form approved by the Town Attorney, to indemnify and save harmless the Town of North Castle, its officers, agents, attorneys and employees, from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the outdoor dining area.

§ 142-8 Insurance.

The applicant shall obtain, and maintain in full force and effect throughout the term of the license, a policy of general liability insurance, which such policy shall:

- A. Name the Town of North Castle, its officers, agents, attorneys and employees as additional insureds;
- B. Have a combined single limit of not less than \$1,000,000; and

- C. Contain a provision prohibiting its cancellation except upon a minimum of 10 days' notice to the Town of North Castle. The applicant shall file with the Town Board, prior to the issuance of the license, a certificate evidencing the requisite insurance and setting forth the actual cancellation notice provision contained in the policy.

§ 142-9 Penalties for offenses.

Any person who shall violate any of the provisions of this chapter shall be liable to prosecution in the Town Justice Court and shall, upon conviction thereof, be liable to a fine that shall not exceed \$500. If a fine imposed pursuant to this section or resulting from the maintenance, use or operation of an outdoor dining area is not paid within five business days after the fine is imposed, except as otherwise ordered by the Court, the Town may immediately revoke the license for any such licensee.

§ 142-10 Fees.

A cash deposit of \$500 shall be required. The deposit shall be returned upon expiration of the license. The fee for outdoor dining shall be \$100.

Section 2. Amend Section 213-33.F of the Town Code to remove reference to outdoor service as follows:

- F. Outside display and sales. In specified Business Districts and in Residential Districts where directly related to a permitted principal nonresidential use, outdoor display and sales shall be permitted as an accessory use, provided that the Town Board finds that such a use is essential to the permitted principal use on the lot and provided that the following standards are met:

- (1) Location. Merchandise shall not be displayed, nor shall any tables, chairs or other furnishings be placed in such a way so as to interfere with ingress and egress by pedestrian and/or vehicular traffic. Where sidewalk areas are to be used, there shall be a clear, unobstructed path for pedestrians no less than four feet in width measured from the edge of the curb. In the CB-A District, in addition to the above, merchandise shall not be displayed nor shall tables, chairs or other furnishings be located outside of the building area for the particular lot. In all cases, the area to be used shall be entirely on the same lot as the principal use. Outdoor display and sales shall not be located in any yard adjacent to or across the street from a residential district nor shall such use be located within any yard adjacent to an occupied residence located within nonresidential district where the Town Board determines that such residence would be negatively impacted.

- (2) Area.

- (a) The total area for outdoor display and sales shall not exceed the following:

Business Districts

CB, CB-B, GB, RB and SC

25% of the unused portion (i.e., the area of the lot not used for buildings, required parking spaces, aisles, access drives and

any required buffer areas) of the lot

CB-A District 25% of the unused portion of the building area

Residential Districts 5% of the lot area

- (b) The Town Board may waive the above requirements for fairs, tag sales or other events of a short-term duration not exceeding five days. The Town Board shall reduce the allowable area where it finds that the effects of the use would negatively impact on areawide traffic conditions, that noise levels would exceed levels permitted in the North Castle Noise Control Law or that any adjacent uses would be negatively impacted.
- (3) **Parking.** The Planning Board shall review the parking needs of both the principal use and the proposed special permit accessory use and shall provide a recommendation to the Town Board with regard to the adequacy of the existing parking and any additional parking that should be provided to serve the use. If the Town Board determines, based on the Planning Board's recommendation, that additional parking is needed, the Town Board shall not grant the special permit unless such spaces can be provided and shall require the improvement of such spaces either prior to or as a condition of the issuance of the special permit.
- (4) **Materials and landscaping.** Materials shall be displayed and tables, chairs and other furnishings shall be placed on a paved surface that shall be located and designed so as to provide for cleanliness and ease of maintenance and to prevent any disturbance to landscaping. Areas shall be suitably landscaped to provide attractive and effective buffering and screening. The Town Board shall refer the design to the Architectural Review Board for its review and report regarding the proposed type and arrangement of outdoor furnishings, the relationship to existing structures uses and other aesthetic considerations.
- (5) **Application.** Application procedures shall be as stated in § 213-27 of this chapter. However, the Town Board may waive the submission of a detailed development plan required in § 213-27C where it deems appropriate. In such cases, the applicant shall submit a drawing of an appropriate scale with details and dimensions sufficient to be easily discernible in the field. Where the proposed use is a seasonal activity so that such use may be temporarily discontinued for a period not to exceed 12 months and where not precluded by the Town Board, the special permit application may be renewed by application to the Town Building Inspector prior to the display of merchandise or placement of tables and chairs outside, provided that the location and arrangement is the same as that approved by the Town Board. The fee for such renewal shall be \$20.

Section 3. Amend Section 213-23(B)(3)(e) of the Town Code to state the following:

- (e) Outside display and sales subject to the requirements of § 213-33F.

Section 4. Create the following new Section 213-23(B)(3)(i) of the Town Code as follows:

- (i) Outside dining subject to the requirements of Chapter 142.

Section 5. Amend Section 213-19 permitted Accessory Uses *20 as follows:

*20. Outdoor display and sales where accessory to a permitted principal nonresidential use.

Section 6. Amend Section 213-19 permitted Accessory Uses to create a new number 21 as follows:

21. Outdoor dining pursuant to Chapter 142 where accessory to a permitted principal nonresidential use.

Section 7. Amend Section 213-20 permitted Accessory Uses as follows:

SC District *8. Outside display and sales subject to the requirements of § 213-33F.

CB-A District *5. Outside display and sales and service subject to the requirements of § 213-33F.

CB-A District 9. Outdoor dining pursuant to Chapter 142.

CB-B *5. Outside display and sales and service subject to the requirements of § 213-33F.

Section 8. Add the following new permitted Accessory Uses to Section 213-20 as follows:

SC District 9. Outdoor dining pursuant to Chapter 142.

CB-B 10. Outdoor dining pursuant to Chapter 142.

NB 11. Outdoor dining pursuant to Chapter 142 and the more restrictive requirements of § 213-23.G(7) and the definition of accessory cafe.

Section 9. Conflicting Standards.

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

Section 10. Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 11. Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

Dated: _____, 2010