

LOCAL LAW NO. __6__ OF 2020

**TOWN BOARD
TOWN OF NEW CASTLE**

**PROPOSED LOCAL LAW TO CREATE CHAPTER A142 OF THE CODE OF
THE TOWN OF NEW CASTLE**

A LOCAL LAW create Chapter A142 of the Code of the Town of New Castle concerning the creation and expansion of outdoor retail sales, gym operations, personal care services and dining areas during the COVID-19 Pandemic.

Section 1. Chapter A142 of the Code of the Town of New Castle entitled “Emergency Restriction and Regulations Regarding Restaurants, Personal Care Services, Gym Operations and Retail Establishments” is hereby created as follows:

Chapter A142: Emergency Restrictions and Regulations Regarding Restaurants, Personal Care Services, Gym Operations and Retail Establishments.

§ A142-1 Purpose and intent.

- A. On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern.
- B. On January 31, 2020, the United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the national healthcare community in responding to COVID-19.
- C. On March 7, 2020, pursuant to Section 28 of Article 2-B of the Executive Law, Governor Cuomo issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York. Thereafter, numerous additional Executive Orders were issued which prohibited in-person gatherings and required 100% of the workforce of non-essential businesses and services throughout the State to work remotely.

- D. It is evident that the COVID-19 pandemic has and will continue to have wide-ranging consequences for the Town's small businesses and economy, including but not limited to, retail businesses, gym operations, personal care services, and restaurants, their owners and employees located in the Town.
- E. The Centers for Disease Control and Prevention (CDC) and the State of New York have stated that social distancing and other health protective measures will continue to be required while the State relaxes mandated closures and begins to reopen the economy.
- F. There is growing consensus among experts that the risks of contracting or spreading the coronavirus while outdoors are acceptably low if precautions are taken.
- G. In order to further protect the public health, welfare and safety support the local economy and retail businesses, gym operations, personal care services and restaurants in their slow and difficult recovery, the Town deems it necessary to authorize the expansion of outdoor retail sales areas, gym operations, personal care services and restaurant dining areas until November 15, 2020 to allow retail businesses, gym operations, personal care services and restaurants to spread out and offer safe, socially distanced outdoor shopping, services and dining.

§ A142-2. Definitions

RESTAURANT

Restaurants already approved for interior seating and in-person dining. This definition shall not include restaurants that are takeout only and have not received approval for indoor seating. Takeout establishments shall not be permitted to establish or expand outdoor seating areas.

PERSON

Any individual person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including public agencies and municipal corporations.

OUTDOOR BUSINESS AREA

Any outdoor space utilized for outdoor retail sales, gym operations, outdoor personal care services or outdoor restaurant dining pursuant to an Outdoor Business Area Permit.

§ A142-3 Permit required.

- A. Retail businesses, gym operations, personal care services and restaurants in the Town of New Castle may seek approval to create and/or expand outdoor retail sales areas, gym operations, personal care service areas and outdoor restaurant dining areas, referred to in this Chapter as outdoor business areas. No person shall establish or expand an outdoor business area except upon the granting of an Outdoor Business Area Permit. Subject to

the approval of the proposed outdoor business area layout, at the sole and absolute discretion of the Building Inspector, businesses may be permitted to create and/or expand an outdoor business area into a private parking lot area or in a public property owned by the Town (public street, parking lot, sidewalk area, alley way park or other public area).

- B. Only businesses that have obtained a Certificate of Occupancy from the Town of New Castle may apply for an Outdoor Business Area Permit.
- C. The Town Administrator may modify any requirements set forth in this Chapter, unless required elsewhere by county or state law, and may develop additional rules and regulations for Outdoor Business Area Permits.
- D. The creation and/or expansion of any outdoor business area, in conformance with this Chapter shall not require site plan review. Outdoor business areas shall not be required to comply with any requirement set forth in Chapter 60, Zoning.
- E. To the extent any provision of this Chapter conflicts with any other requirement of the Town Code, the provisions of this Chapter shall supersede those other requirements to the extent of such inconsistency, unless otherwise determined to be applicable by the Building Inspector.
- F. Rules and regulations. The Building Inspector is hereby authorized to grant an Outdoor Business Area Permit for the use of outdoor areas upon the following terms and conditions:
 - (1) General Terms and Conditions
 - (a) The outdoor business area shall not be used for any purpose other than for the approved business use.
 - (b) The outdoor business area shall comply with any and all state and local health, fire, building, sanitation and maintenance codes applicable to the use of the establishment, including but not limited to the installation of tents, outdoor natural gas/propane patio heaters, fire pits/tables.
 - (c) Tables, displays, service stations, registers and any other equipment, furnishings or structures installed in the outdoor business area must comply with all applicable state and local building and fire code provisions, ADA Standards for Accessible Design and all applicable policies and practices.
 - (d) The outdoor business area plan must meet Fire Department standards, including points of egress, access to fire extinguishers, and tent and awning ratings, if applicable.

- (e) If the outdoor business area is not located on a sidewalk, the building inspector may require the applicant install a physical barrier or separation to protect patrons and employees from vehicular traffic, such as bollards, planter boxes or “jersey” barriers.
- (f) The outdoor business area shall at all times be kept free and clear of garbage, litter, refuse, rubbish and debris.
- (g) All furnishings shall be removed and stored indoors at closing in an approved manner when the outdoor business area is not in operation.
- (h) No permanent structure may be installed.
- (i) The permittee shall be responsible for any damage caused to any sidewalk or public property as a result of the business operations.
- (j) All outdoor business areas shall be closed to all lawful permitted activities, including cleanup, on or before 10 p.m. each day.

(2) Terms and Conditions Applicable to Outdoor Dining Areas

- (a) The seating capacity of the outdoor business area and the indoor seating area (combined) shall be limited to the maximum occupancy load set forth in the Certificate of Occupancy.
- (b) All food and beverages to be served or consumed in the outdoor business area shall be prepared within the existing restaurant. The restaurant shall not serve food or beverage to a patron unless that patron is seated at a table.
- (c) All alcoholic beverages to be served in the outdoor business area 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 restaurant with an outdoor business area shall not be construed as a violation of Chapter 97 of the Town Code or any ordinance controlling open containers in a public area. The operator of the restaurant shall procure the appropriate license from the State Liquor Authority if the restaurant intends to serve alcoholic beverages in the outdoor business area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages. The appropriate license must be submitted to the Town before the operator may serve alcoholic beverages in the outdoor business area.

G. Upon the expiration or earlier termination of the Outdoor Business Area Permit, the applicant shall restore the outdoor business area to the same condition it enjoyed prior to applicant’s use of the outdoor business area, including the removal of any personal

property, fixtures, improvements, or structures in the outdoor business area. In the event applicant has caused any damage to the outdoor business area, any improvements thereto, or any other facilities, the applicant shall immediately cause such damage to be repaired at its sole cost and expense.

- H. The Town's discretion over the location, scope, setbacks and size of outdoor business areas and related structures is absolute and the Town may condition approval based upon such requirements and any other consideration, including but not limited to, parking requirements, pedestrian safety, neighborhood concerns, and the public health, welfare and safety.
- I. All outdoor business operations shall comply with any applicable CDC, State or County guidance, rule, regulation or law concerning required measures to minimize the spread of COVID-19.

§ A142-4. Application procedures.

- A. Any retail business, gym operations personal care service business or restaurant shall be required to apply to the Town for approval to expand or establish an outdoor business area. All applications shall be approved or denied at the sole discretion of the Building Inspector and submitted to the Building Inspector in electronic file format. Such application shall contain the following information:
 - (1) The name address of the applicant.
 - (2) The name and address of the retail business, gym operations, personal care service business or restaurant. The proposed outdoor business area location.
 - (3) A signed License Agreement for the use of public property, if applicable.
 - (4) Approval from the New York State liquor authority to serve alcohol in the outdoor business area, if applicable.
 - (5) Insurance certificates, naming the Town of New Castle as an additional insured, pursuant to § A142-9, if applicable.
 - (6) A drawing showing the following:
 - (a) A proposed layout, including any proposed temporary awnings, tents, pergolas, the existing building, points of ingress and egress, proposed location of all tables, chairs, umbrellas, barriers, displays, service stations, registers and any other equipment, furnishing or structure installed in the outdoor business area.
 - (b) The proposed capacity of outdoor business area.
 - (c) A statement of the days and hours of intended operation.

(d) The applicant's entire property and adjacent properties on a location map and all property lines.

(7) If a tenant is seeking an Outdoor Business Area Permit, the tenant's application shall be signed by the landlord.

B. All applications shall be submitted to the Building Inspector and the application shall be referred, by the Building Inspector, to the Commissioner of Public Works, Police Chief, Town Engineer (ADA Coordinator) and Fire Chief for review and comment.

§ A142-5 Approval or disapproval of an application.

The Town Building Inspector or his or her designee shall grant or deny an application for an Outdoor Business Area Permit pursuant to this Chapter in his or her sole discretion.

§ A142-6 Modification or Revocation of the Permit.

A. Modification. The Building Inspector may modify an Outdoor Business Area Permit at any time and for any reason, including but not limited to, modifying the location of any structure or furnishing, the size of the permitted outdoor business area or permitted capacity of the outdoor business area. The Building Inspector shall provide written notice to the applicant. Such written notice shall be personally served on the applicant.

B. Revocation of a permit.

(1) The grounds upon which a permit may be revoked at the Building Inspector's sole discretion shall include but shall not be limited to:

(a) The permit was issued in error, or issued in whole or in part as a result of a false, untrue, or misleading statement on the permit application or other document submitted for filing.

(b) Use of the property for an outdoor business area creates a hazard or public nuisance, threat to public safety, or other condition which negatively impacts the use and/or enjoyment of surrounding properties, or threatens the peace and good order, or quality of life in the surrounding community.

(c) Failure to comply with any provision of this Chapter or any other applicable law or regulation or term or condition of the permit.

(2) The Building Inspector shall give notice to the applicant to correct any violation or cease such practice within 24 hours. Written notice shall be served by registered or certified mail, return receipt requested, and by regular mail, to the applicant at the address shown on the application. If the applicant fails to comply with such notice, the Building Inspector may revoke the Outdoor Business Area Permit. Any permit issued pursuant to this Chapter may be revoked or suspended by the Building Inspector.

§ A142-7 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 New Castle concerning its public easement over the streets and sidewalks, or of any requirement of law concerning the liability of the Town of New Castle with respect to streets and sidewalks, whether expressed or implied.

§ A142-8 Indemnification.

The applicant shall agree, on a form approved by the Town Attorney, to indemnify and save harmless the Town of New 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 business area.

§ A142-9 Insurance requirements for use of public property.

A. No permit for any outdoor business area located on public property shall be issued by the Building Inspector until the applicant therefor shall have first placed on file with Town satisfactory evidence of the following types of coverage and limits of liability:

(1) General liability coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

(a) If the coverage contains a general aggregate limit, such general aggregate shall apply separately to each project.

(b) The Town of New Castle and its agents, officers, volunteers, directors and employees shall be named as additional insureds and included in a waiver of subrogation endorsement.

(c) The applicant shall maintain the general liability coverage for itself and all additional insureds for the duration of the outdoor business operations.

(d) The applicant's policy must be primary and non-contributory to any insurance the Town of New Castle maintains.

B. Certificates shall provide that 30 days' written notice prior to cancellation be given to the Town of New Castle. Policies that lapse and/or expire during the term of permit shall be recertified and received by the Town of New Castle no fewer than 30 days prior to cancellation or renewal.

C. Such insurance hereinabove referred to shall remain in force throughout the effective period of the permit and/or any authorized extension or extensions thereof and shall carry an endorsement to the effect that the insurance company will give at least 10 days' prior written notice to the Town of New Castle of any modification or cancellation of any such

insurance and shall contain a clause to the effect that termination of said insurance shall be without prejudice to the right of the Town of New Castle to make claim or claims thereafter for any loss or damage sustained as a result of any act or acts committed or omitted during the term of said insurance.

§ A142-10 Penalties for offenses.

Any person committing an offense against the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$250. The continuation of an offense against the provisions of this chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

§ A142-11 Fees.

An administrative fee as set forth by resolution of the Town Board in the Master Fee Schedule, which may be amended, is required upon the issuance of an application. An additional license fee shall also be required for the use of any public property and shall be paid upon the issuance of the license.

§ A142-12 Severability.

Should any section or provision of this chapter be determined by any court of competent jurisdiction to be unconstitutional or invalid, then such section or provision shall be null and void and shall be deemed separable from the remaining section of this chapter, and such determination shall in no way affect the validity of the remaining sections or provisions of this chapter.

Section 2. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, the Code of the Town of New Castle is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 3. Numbering for Codification

It is the intention of the Town of New Castle and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of New Castle; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 4. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. Effective Date

This local law shall take effect immediately filing with the Office of the Secretary of State.