

Local Law Filing

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County City Village
(select one.)

of Ballston Spa

Local Law No. 7 of the year 2021

A LOCAL LAW AMENDING CHAPTER 174 STREETS AND SIDEWALKS OF THE VILLAGE CODE OF THE VILLAGE OF BALLSTON SPA

Be it enacted by the Village Board of the Village of Ballston Spa as follows:

**VILLAGE OF BALLSTON SPA
LOCAL LAW NO. 7 OF THE YEAR 2021
A LOCAL LAW AMENDING CHAPTER 174 OF THE CODE OF THE VILLAGE OF
BALLSTON SPA CODE ENTITLED "STREETS AND SIDEWALKS"**

Section 1. Name of Local Law

This local law shall be referred to as "A Local Law amending Chapter 174 of the Code of the Village of Ballston Spa entitled 'Streets And Sidewalks'"

Section 2. Findings and Intent

It is the intent of the Board of Trustees of the Village of Ballston Spa to modify sections 174-1 through 174-2 to update provisions pertaining to the care and maintenance of streets and sidewalks within the village, to renumber former section 174-23 Penalties for Offenses and to add new sections 174-23 through 174-24 pertaining to placement of items on sidewalks and sidewalk vending.

Section 3. Enactment

Be it enacted by the Village Board of the Village of Ballston Spa that Chapter 174 of the Code of the Village of Ballston Spa be hereby amended as follows:

§ 174-1 Construction and repair of sidewalks.

Sidewalks not less than four feet in width and constructed of concrete shall be constructed to Department of Transportation and Americans with Disabilities Act standards in the Village. The sidewalks shall be constructed by and all repairs to the sidewalks are to be made by the owners of the premises adjoining the walks. Failure to make any repairs or to provide sidewalks along village streets as required by this section after notice by the Village and within the time prescribed in the notice will be considered a violation. If the owner or owners shall thereafter neglect to make repairs or construct sidewalks after being noticed to do so, then the Village shall construct or repair such walks, and the expense thereof may be collected by the Village against such owner in the manner prescribed by law. All new construction and each property which has a transfer of ownership are required to construct, repair or replace sidewalks consistent with the standards of this Chapter within one year of transfer of title; this requirement does not apply to any properties located on streets where no sidewalks exist. No existing sidewalks can be removed from a property.

§ 174-2 Reimbursement for sidewalks.

Whenever sidewalks are constructed or repaired on the streets of said Village with the consent of the Building Inspector of approved material and of the width and standards required by law, the owner or occupant of the premises adjoining such walk who shall have constructed the same will be paid, with approval of the Board of Trustees, at a sum to be established by the Village Trustees. Receipts and bills of items of the cost thereof must accompany all claims submitted to the Village Clerk for such payment.

§ 174-3 Obstruction of streets.

It shall be unlawful for any person to obstruct the sidewalks, streets, alleys or lanes of the Village of Ballston Spa or to pile or store any item on any sidewalk, street, alley or lane unless the owner has a permit issued pursuant to §174-23 or §174-24 of this Chapter by the Village which allows items in these areas. Fines for violations of this Chapter will be set by the Village Trustees.

§ 174-4 Permission required.

No person or persons shall hereafter erect or cause to be erected any building or other fixture or place any encumbrance in or upon or which shall project into or over the line of any public square, street or alley within this Village without first securing a permit from the Village. Fines for violations of this Chapter will be set by the Village Trustees.

§ 174-5 Removal of snow, ice and dirt; enforcement; liability.

A. It shall be unlawful for any owner of any house or building in the Village of Ballston Spa to permit the sidewalks or gutters in front of the premises owned by him to become in any manner obstructed by the accumulation of snow, ice and dirt thereon. The owner shall remove the snow or ice from the length of the sidewalk along the entire property boundary and clear any gutters which may impact the sidewalk, driveways or other public space within eight hours after any snowfall that ends during daylight hours and before 12:00 noon of the day following any such evening snowfall. In addition, all sidewalks are required to be cleared before they obtain the depth of 12

inches or if any hazardous condition are created. If the snow and/or ice becomes so congealed that the same cannot be removed effectively, the sidewalks are to be sanded, salted or covered with other non-toxic substances. At all other times, owners are required to keep sidewalks free and clear from all dirt, debris, obstructions and/or encumbrances in order to allow and permit the public to have unencumbered use of the same.

B. Notice to remedy; removal by Village; costs.

1. In the event of notification received for the failure of the owner to comply with Subsection A hereof, the Mayor or his designee shall direct that a notice be delivered to the owner of the premises that includes a copy of this section of the Village Code and notice that the condition must be remedied within 24 hours. Should the owner fail to comply, the Village shall then have the authority to perform the work and charge the owner four times the actual cost to the Village. In the event that the notice is not able, for whatever reason, to be delivered directly to the owner, the Village is authorized to affix a copy of said notice to the premises. The affixation of the notice to the premises shall have the same effect as if served on the owner.

2. In the event it is necessary for the Village to perform the work, the owner will be provided with a summary of cost and the amount due within 14 days of the Village performing the work. The owner shall then have 30 days to make payment directly to the Village. In the event that the owner does not remit payment to the Village, the Village is hereby authorized to make said amount a lien against the property and collect the amount due as an assessment against the property in a like manner as collection of taxes.

C. In the event that the owner of any property fails to comply with the provisions of this section and, by reason of such failure, injuries to persons and damage to property result, then in such event such owner shall be liable for all injuries or damages.

[NOTE § 174-6 through 174-22 remain unchanged.]

§ 174-23. Placement of merchandise on sidewalk regulated.

A. Purpose. The sidewalk vending regulations established in this article are designed to allow sidewalk vending on public property on the terms and conditions as specified in this article and as determined to be appropriate by the Village Building Inspector to promote and protect the public health, safety and general welfare. The general goals are to:

1. Promote sidewalk vending as useful and properly planned so as to relate harmoniously to the streetscape.
2. Provide adequate space for pedestrians on the sidewalk adjacent to sidewalk vending areas and to ensure access to adjacent commercial and retail uses.
3. Preserve and enhance the character of the Central Business District.

B. Definitions. As used in this article, the following terms shall have the meanings indicated:

CURBLINE — The point at which a curb stone meets a roadway.

SIDEWALK — Any area between the curblines and a permanent building or structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK VENDING — The use of the sidewalk area adjacent to a permitted indoor retail establishment for the sale of retail merchandise, the placement of sandwich board signs and the placement of items relating to the business and designed to attract customers to the business establishment.

C. Permit Required. No one shall engage in sidewalk vending without a permit issued under this article. The Village Building Inspector is authorized to issue a revocable permit for the use of sidewalks for sidewalk vending, provided that all of the requirements of this article have been complied with. The permit shall be valid from April 1 through December 31 of the calendar year. The permit may be renewed annually, subject to the conditions of this article.

D. Application for permit.

1. An application for a sidewalk vending permit shall state the name and address of the establishment where the sidewalk vending is proposed; the name and address of the applicant with phone number and e-mail address; proposed hours of the sidewalk vending; a complete list of equipment and description of the merchandise proposed to be placed on the sidewalk.
2. The application shall be accompanied by sketches, at a scale of at least 1/4 inch equals one foot: showing the sidewalk adjoining the establishment where the outdoor vending is proposed to take place, detailing the location of the curb, any trees and tree wells, mailboxes, streetlights, utility poles or other obstructions; and showing the location of all equipment to be used in the sidewalk vending and merchandise that will be sold.
3. If the applicant is not the owner of the premises in front of which the sidewalk vending is proposed to occur, (s)he must provide proof of the property owner's consent to the sidewalk vending.
4. The applicant must submit, prior to the issuance of the permit, in a form acceptable to the Village Building Inspector, an agreement to indemnify and save harmless the Village of Ballston Spa and its officers and employees against any loss or liability or damage, including expenses and costs for bodily injury and for property damage sustained by any person as a result of the applicant's sidewalk vending on public property.

5. The applicant must submit, prior to the issuance of the permit, a certificate of general liability insurance naming the Village of Ballston Spa, its officers, agents and employees as additional insureds, with the following limits: for personal injury, \$1,000,000 per individual and occurrence; and for property damage, \$1,000,000 per individual and occurrence, effective for the duration of the permit, and containing a provision prohibiting its cancellation except upon 20 days' notice to the Village of Ballston Spa.

6. A fee as fixed by resolution of the Board of Trustees is required upon the issuance or annual renewal of the sidewalk vending permit.

E. Decision. The Village Building Inspector shall grant or deny an application for a permit under this article within 30 days after submission of all required information and documents, and upon payment of the fee. The permit may include any conditions that the Village Building Inspector deems to be reasonable and necessary to protect the health, safety and welfare of the public.

F. Conditions for issuance of permit.

1. Sidewalk vending shall be permitted only as accessory to a business establishment lawfully operating on the first floor of premises in the Central Business District or Commercial District, on the sidewalk abutting the principal place of business of such establishment, and by the entity that operates such establishment.

2. No person shall place any merchandise or obstruction of any kind upon any sidewalk within the Village which shall extend more than 30 inches from the building. There shall be a minimum of four feet of clear distance free of all obstructions to allow adequate pedestrian movement. The minimum distance shall be measured from the portion of the sidewalk vending area nearest either the curblineline or the nearest obstruction (such as tree wells, utility poles, streetlights, etc.).

3. A clear, unoccupied space must be provided, not less than five feet in width, from all entrances of the building abutting the sidewalk to the unoccupied portion of the public sidewalk.

4. No permanent structures may be affixed to the sidewalk area used for vending or affixed to the building abutting the area for purposes of vending, and the area may be occupied only by readily removable equipment and merchandise.

G. Operating restrictions.

1. All sales shall be conducted within the establishment to which the sidewalk vending is accessory. No cash register or other facility for the exchange of currency or otherwise receiving payment for goods and services shall be permitted on the sidewalk.

2. No sidewalk display shall be higher than five feet in height.

3. No sidewalk vending may take place after 8:30 p.m., nor may it take place when the establishment to which it is accessory is not open to the public.

4. All items placed on the sidewalk for vending purposes shall be removed from the sidewalk at the closing time of the establishment to which it is accessory.
5. No outdoor lighting may be used in connection with sidewalk vending.
6. No live or mechanical music may be operated or used in connection with sidewalk vending.
7. No sidewalk vending shall be permitted when there is snow on the sidewalk on any area in front of the establishment for which the sidewalk vending is permitted. The sidewalk and public property on which the sidewalk vending is located and the surrounding area shall be kept neat and clean at all times and free from any substance that may damage the sidewalk or cause pedestrian injury.
8. No waste receptacles used in connection with sidewalk vending are permitted outdoors unless they are used in connection with special events and emptied regularly.
9. Any person seeking to display merchandise on a public right-of-way shall only be permitted to display merchandise that is sold in its normal course of business. No individual shall allow another vendor to use their property.

H. Reservation of rights. Neither the adoption of this article nor the granting of any permit pursuant to this article shall be construed as a waiver of any right, privilege or immunity that the Village of Ballston Spa may have with respect to streets and sidewalks, whether express or implied.

I. Violations; penalties for offenses. Upon learning that any permittee engaged in sidewalk vending has violated any provision of this article or the terms and conditions of a sidewalk vending permit or has engaged in any practice in conjunction with sidewalk vending that constitutes a danger to the health or safety of any patron or pedestrian, the Village Building Inspector shall give notice to the permittee to correct such violation or cease such practice within 24 hours. If the permittee fails to comply with such notice, the Village Building Inspector may suspend the permit for a period not in excess of 30 days, during which time the permittee shall be entitled to a hearing before the Village Justice, at which the permittee may be represented by counsel, to present evidence in his or her behalf and confront the evidence against the permittee. Within 48 hours after the hearing is closed, the Village Justice must either revoke the permit or reinstate the permit. In reinstating the permit, the Village Justice may impose additional conditions related to the violation or improper practice that has been found. If the permittee does not request a hearing, the permit shall be revoked for the remainder of the year or permanently.

§ 174-24. Sidewalk cafes and vending.

A. Purpose. The sidewalk cafe regulations as set forth in this section are designed to allow sidewalk cafes on public sidewalks, between the primary structure on the property and the public road it abuts, and to promote the public health, safety and general welfare.

1. To provide adequate space for pedestrians on the sidewalk adjacent to sidewalk cafe areas and to ensure access to adjacent commercial and retail uses.

2. To preserve and enhance the character of neighborhoods through the Village and to protect adjacent residential areas.
3. To simplify administrative and strengthen enforcement procedures for outdoor and sidewalk cafes that are effective, efficient and enforceable.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

CURBLINE — The point at which a curb stone meets a roadway.

SIDEWALK — Any area between the curblines and a permanent building or structure, whether publicly or privately owned, which is used by the public or open to use by the public.

SIDEWALK CAFE — An outdoor dining area, located on a private sidewalk or public property, which is public through dedication or easement, or public right-of-way and contains readily removable tables, chairs, railings and may contain planters. It is otherwise unenclosed by fixed walls and open to the air, except that it may have a retractable awning or umbrellas, or other nonpermanent covers.

C. Permit required. No one shall operate a sidewalk cafe without a permit issued under this article. The Village Building Inspector is authorized to issue a revocable permit for the seasonal operation of a sidewalk cafe, provided that all of the requirements of this article have been complied with. The permit shall be valid from April 1 through December 31 of the calendar year. The permit may be renewed annually, subject to the conditions of this article.

D. Application for permit.

1. An application for a sidewalk cafe permit shall state the name and address of the establishment where the sidewalk cafe is proposed; the name and address of the applicant with phone number and e-mail address; proposed hours of operation of the sidewalk cafe; a complete list of equipment proposed to be placed on the sidewalk.
2. The application shall be accompanied by sketches, at a scale of at least 1/4 inch equals one foot:
 - a. Showing the sidewalk adjoining the establishment where the outdoor cafe is proposed, detailing the location of the curb, any trees and tree wells, mailboxes, streetlights, utility poles or other obstructions; and
 - b. Showing the location of all tables, chairs, benches and other equipment proposed to be located on the sidewalk.
3. If the applicant is not the owner of the premises in front of which the sidewalk cafe is proposed, (s)he must provide proof of the property owner's consent to the sidewalk cafe.
4. The applicant must submit, prior to the issuance of the permit, in a form acceptable to the Village Building Inspector, an agreement to indemnify and save harmless the Village of Ballston Spa, its officers and employees against any loss or liability or damage, including expenses and costs for bodily injury and for property damage sustained by any person as a result of the applicant's operation of a sidewalk cafe on public property.

5. The applicant must submit, prior to the issuance of the permit, a certificate of general liability insurance naming the Village of Ballston Spa, its officers, agents and employees as additional insureds, with the following limits: for personal injury, \$1,000,000 per individual and occurrence; and for property damage, \$1,000,000 per individual and occurrence, with a total of \$2,000,000 combined, effective for the duration of the permit, and containing a provision prohibiting its cancellation except upon 20 days' notice to the Village of Ballston Spa.

6. A permit to operate a sidewalk cafe or vending shall be issued only to the owner of the business which operates the proposed sidewalk cafe or vending. Sidewalk cafe or vending permits are nontransferable. In the event of a change of ownership of a business which operates a sidewalk cafe, a new permit must be obtained prior to the continued operation of the sidewalk cafe.

7. A permit may be revoked at any time for any violation of this chapter, any other violation of the Code of the Village of Ballston Spa, or any violation of applicable New York State or federal regulations.

8. Application for a permit shall be subject to a fee set by resolution of the Village Board.

E. Permitted use. Sidewalk cafes and vending shall be permitted on the sidewalk in front of the principal place of business. The front of the principal place of business shall be defined as to space extending from the primary front of the building and the public street it abuts.

F. Special provisions for sidewalk cafes. Sidewalk cafes shall be permitted uses in the Central Business District (CBD) and Commercial (C) Zoning Districts under the following conditions:

1. It is an accessory use to a food service establishment, restaurant, bar establishment lawfully operating on the first floor of premises.

2. It is operated by the entity which operates the food service, restaurant or bar establishment.

3. It shall be located adjacent to the primary structure on the premises and may not be separate from the primary structure by normal pedestrian use.

4. All food and beverages to be served or consumed at sidewalk cafes shall be prepared within the existing food service establishment. The food service establishment shall not serve food or beverages to a patron at a sidewalk cafe area unless the patron is seated at a table.

5. All alcoholic beverages to be served at a sidewalk cafe shall be prepared within the existing restaurant, and alcoholic drinks shall be served only to patrons seated at chairs, benches and/or tables separated from the rest of the public sidewalk by an appropriate barrier which shall include weighted stanchions and fencing with a minimum height of 36 inches and a maximum height of 42 inches. Such barrier shall be of a type of material that is consistent with the aesthetic of the neighborhood as determined by the Code Enforcement Officer. Such barrier shall be made of steel or iron and weighted to prevent movement from the designated area.

6. All alcoholic beverages must be served by a waiter, who brings the beverage to the outdoor cafe. The drinking of alcoholic beverages by a member of the public while a patron at a sidewalk cafe, within the confines of the sidewalk cafe area, shall not be construed as a violation of any local law controlling consumption of alcoholic beverages in a public area. The operator of a sidewalk cafe shall be in full compliance with the licensing requirements of the State Liquor Authority, as may exist, and shall comply with all other laws 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's laws, rules and regulations, then the serving and consumption of alcoholic beverages in the sidewalk cafe shall be prohibited.

7. No permanent structure maybe a fixed to the sidewalk or any building.

8. The sidewalk cafe area shall not violate the minimum sidewalk clearance required for a public sidewalk under the Americans with Disabilities Act, the regulations of the New York State Department of Transportation, or any other applicable New York State or federal statutory requirements.

9. Sidewalk cafe area shall not block Fire Department Connection.

10. No sidewalk cafe shall operate after 11:00 p.m. or when the establishment for which it is associated is not open to the public.

11. The public property on which sidewalk cafes are located and the surrounding area shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk and surrounding premises free of litter at all times.

12. No live or mechanical music shall be permitted outdoors in the sidewalk cafe area.

13. No waste receptacles for the sidewalk cafe are permitted outdoors.

14. No sidewalk cafe may be operated when there is snow on the sidewalk on any area in front of the food establishment.

G. Reservation of rights. Neither the adoption of this article nor the granting of any permit pursuant to this article shall be construed as a waiver of any right, privilege or immunity that the Village of Ballston Spa may have with respect to streets and sidewalks, whether express or implied.

H. Violations, penalties for offenses.

1. The applicant shall be responsible for any damage caused to any sidewalk or public property as a result of the applicant's operations under this chapter.

2. The Building Inspector shall have the power to revoke a permit for violation of any provision contained herein.

3. In addition, upon learning that any permittee operating a sidewalk cafe has violated any provision of this article or the terms and conditions of a sidewalk cafe permit or has engaged in any practice in conjunction with a sidewalk cafe that constitutes a danger to the health or safety of any patron or pedestrian, the Village Building Inspector shall give notice to the permittee to correct such violation or cease such practice within 24 hours. If the permittee fails to comply with such notice, the Village Building Inspector may suspend the permit for a period not in excess of 30 days, during which times the permittee shall be entitled to a hearing before the Village Justice, at which the permittee may be represented by counsel, to present evidence in his or her behalf and confront the evidence against the permittee. Within 48 hours after the hearing is closed, the Village Justice must either revoke the permit or reinstate the permit. In reinstating the permit, the Village Justice may impose additional conditions related to the violation or improper practice that has been found. If the permittee does not request a hearing, the permit shall be permanently revoked.

§ 174-25. Penalties for offenses.

Any person violating any provision of this chapter shall be punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or both.

Section 4. Authority

This Local Law is enacted pursuant to the authority of Section 10 of the New York State Municipal Home Rule Law.

This Local Law supersedes and replaces portions of Chapter 174 entitled “Streets and Sidewalks” as set forth above which is hereby amended. This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law. All provisions of the Code of the Village of Ballston Spa regarding legal requirements for the enactment of this Local Law to the extent inconsistent with the Municipal Home Rule Law are hereby superseded.

Section 5. Severability

If any part or provision of this local law is judged invalid by any Court of competent jurisdiction, such judgment shall be confined in application to the part of provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this law or the application thereof to other persons or circumstances. The Village hereby declares that it would have enacted the remainder of this law even without such part of provision or application.

Section 6. Effective Date

This local law shall take effect immediately upon filing with the New York State Secretary of State pursuant to the New York State Municipal Home Rule Law.

[HISTORY: Adopted by the Village Board of the Village of Ballston Spa on _____, 2021 as L.L. No. 7 of 2021

Editor’s Note: This local law amends former Ch.174, entitled Streets and Sidewalks.]

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 7 of 2021 of the (County)(City)(Village) of Ballston Spa was duly passed by the Village Board of the Village of Ballston Spa on _____, 2021, in accordance with the applicable provisions of law.

~~**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)**~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____ in accordance with the applicable provisions of law.

(Name of Legislative body)
(Elective Chief Executive Officer)*

~~**3. (Final adoption by referendum.)**~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.

(Name of Legislative body)
(Elective Chief Executive Officer)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

~~**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Village)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.

(Name of Legislative body)
(Elective Chief Executive Officer)*

Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a Village where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____, 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 20____ of the County of _____, State of New York, having been submitted to the electors at the General Election of _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the Villages of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Teri O'Connor, Clerk, Village of Ballston Spa
Clerk of the county legislative body, City, Village or Village
Clerk or officer designated by local legislative body

(Seal)

Date: _____