

Village of Ballston Spa

Local Law 1 of 2022

Chapter 175 Sidewalk Cafes, Outdoor Dining and Sidewalk Sales

§175-1 Purpose and Intent.

The purpose of this section is to establish regulations to allow temporary (seasonal) sidewalk cafes, outdoor dining and retail sidewalk sales and to permit same to encroach into the public right-of-way as an accessory component of an adjacent primary business which is located on private property. It is intended that such sidewalk cafes, outdoor dining and retail sidewalk sales will not unduly restrict public access or detract from the character and appearance of the surrounding areas. 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 useful and properly planned visual amenities.
- C. Promote the sidewalk cafes, outdoor dining and sidewalk sales as useful and properly planned so as to relate harmoniously to the streetscape.

§175-2 Definitions.

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

CHAIR or SEAT – either a distinct piece of furniture designed to allow one person to sit upon the same, or when seating is provided on a bench or other similar structure, then every 20 inches of seating space shall be considered as the equivalent of one chair or seat for determining seating capacity

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

OUTDOOR DINING – A temporary use of an adjacent, outside area by a restaurant or take-out food store as defined in Chapter ____ of the Village Code for the same eating and drinking activities that occur within the establishment. The outdoor dining area may be located in a public right-of-way pursuant to this chapter.

OUTDOOR EATING AREA – A designated area on the premises of a restaurant or take-out food store, but outside the principal building, and where patrons may sit at tables while consuming food and beverages served by a server or food and beverages purchased from the restaurant or take-out food store.

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, or limited liability company, to whom the permit to operate the sidewalk café or outdoor dining in an approved open space or conduct sidewalk sales is issued.

SIDEWALK — Any area between the curblin 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.

SIDEWALK CAFÉ AREA – A designated area of a public sidewalk or other Village property where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress or purchased from an adjacent restaurant or take-out food store.

SIDEWALK SALES — 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.

§175-3 Permit required.

A permit issued by the Village Building Inspector is required to operate a sidewalk café, outdoor dining, and sidewalk sales under this chapter. Such permit shall only be issued if all of the requirements of this chapter have been complied with. The permit shall be valid from April 1 through October 31 of the calendar year. The permit may be renewed annually, subject to the conditions of this chapter.

§175-4 Application for permit.

- A. An application for a sidewalk café, outdoor dining, or sidewalk sales permit shall be made on a form prepared by the Village and maintained in the Village Building Inspector's Office. The application shall state the name and address of the establishment where the sidewalk café, outdoor dining, or sidewalk sales is proposed; the name and address of the applicant with phone number and e-mail address; proposed hours of operation of the sidewalk café, outdoor dining, or sidewalk sales; a complete list of equipment proposed to be placed on the sidewalk.
- B. The application shall be accompanied by sketches, at a scale of at least 1/4 inch equals one foot:
 - 1. Showing the sidewalk adjoining the establishment where the sidewalk café, outdoor dining, or sidewalk sales outdoor cafe is proposed, detailing the location of the curb, any trees and tree wells, mailboxes, streetlights, utility poles or other obstructions; and
 - 2. Showing the location of all tables, chairs, benches, merchandise, and other equipment proposed to be located on the sidewalk.
- C. If the applicant is not the owner of the premises in front of which the sidewalk café, outdoor dining, or sidewalk sales is proposed, the applicant must provide written proof of the property owner's consent to the sidewalk café, outdoor dining, or sidewalk sales.
- D. 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 sidewalk café, outdoor dining, or sidewalk sales on public property.
- E. 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.
- F. A permit to operate a sidewalk café, outdoor dining, or sidewalk sales shall be issued only to the owner of the business which operates the sidewalk café, outdoor dining, or sidewalk sales. Permits are not transferable. In the event of a change of ownership of a business which operates sidewalk café, outdoor dining, or sidewalk sales, or if the applicant is not the owner of the property and ownership of the property changes during the duration of the permit, the applicant must notify the Village Building Inspection immediately and a new permit must be obtained prior to the continued operation of the sidewalk café, outdoor dining, or sidewalk sales.

- G. 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 County, State or Federal laws or regulations.
- H. Application for a permit shall be subject to a fee set by resolution of the Village Board.

§175-5 Permitted use.

Sidewalk café, outdoor dining, or sidewalk sales shall be permitted only as accessory to a business or commercial establishment or restaurant lawfully operating on the first floor of the premises in the Central Business District or Commercial District, 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.

§175-6 Conditions for Operating Sidewalk Cafes, Outdoor Dining and Sidewalk Sales.

- A. No permanent structures may be affixed to the sidewalk area or building.
- B. 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.
- C. No live or mechanical music may be operated or used in connection with sidewalk sales.
- D. No sidewalk cafes, outdoor dining or sidewalk sales shall be permitted when there is snow on the sidewalk on any area in front of the establishment.
- E. The sidewalk and public property on which the sidewalk cafes, outdoor dining or sidewalk sales 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.
- F. No waste receptacles used in connection with sidewalk cafes, outdoor dining or sidewalk sales are permitted outdoors.
- G. The sidewalk cafes, outdoor dining or sidewalk sales areas 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 County, State or Federal laws or regulations.
- H. The sidewalk cafes, outdoor dining or sidewalk sales areas shall not block FDC connection.

§175-7 Special Conditions for Sidewalk Sales.

- A. There shall be a minimum of five feet of clear distance free of all obstructions to allow adequate pedestrian movement, which shall be four feet where there is a permanent or fixed obstruction. The minimum distance shall be measured from the portion of the sidewalk vending area nearest either the curbline or the nearest obstruction (such as tree wells, utility poles, streetlights, etc.).
- B. 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.
- C. No sidewalk display shall be higher than five feet in height.
- D. No sidewalk sales 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.
- E. All items placed on the sidewalk for sale purposes shall be removed from the sidewalk at the closing time of the establishment to which it is accessory.
- F. No outdoor lighting may be used in connection with sidewalk sales.
- G. 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.

§175-8 Special Conditions for Sidewalk Cafes and Outdoor Dining.

- A. All food and beverages to be served or consumed at sidewalk cafes and outdoor dining 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 or outdoor dining area unless the patron is seated at a table.
- B. All alcoholic beverages to be served at a sidewalk cafes and outdoor dining 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 Village Building Inspector. Such barrier shall be made of steel or iron, and weighted to prevent movement from the designated area.

- C. All alcoholic beverages must be served by an employee of the restaurant. The drinking of alcoholic beverages by a member of the public while a patron at a sidewalk café or outdoor dining, within the confines of the sidewalk café or outdoor dining 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 café or outdoor dining 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 café or outdoor dining 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 café or outdoor dining shall be prohibited.
- D. No sidewalk cafe shall operate after 10:00 p.m. or when the establishment for which it is associated is not open to the public.

§175-9 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.

§175-10 Violations, penalties for offenses.

- A. 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.
- B. The Village Building Inspector shall have the power to revoke a permit for violation of any provision contained herein.
- C. In addition, upon learning that any permittee operating sidewalk cafes, outdoor dining or sidewalk sales has violated any provision of this article or the terms and conditions of its permit or has engaged in any practice in conjunction with a sidewalk cafes, outdoor dining or sidewalk sales 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 Building Inspector, 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 Building Inspector must either revoke the permit or reinstate the permit. In reinstating the permit, the Village Building Inspector 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.
- D. Any person who violates any provision of this article shall be subject to a penalty of not more than \$500 per day. Each day constitutes a separate violation.

