

Bill 2020E.1

A local law to amend the Code of the Village of Rockville Centre, in relation to temporary outdoor dining licenses.

Article one. Chapter 287 of the Code of the Village of Rockville Centre is hereby amended, by adding thereto a new Article, to be Article XII, to read as follows:

“Article XII. Temporary Outdoor Dining Licenses.

§287-53. Purpose and Intent.

A. It is the purpose and intent of the Board of Trustees in enacting this article to allow for the controlled utilization of certain outdoor spaces for dining activities, for a limited period of time, to assist business establishments in recovery from the effects of the COVID-19 pandemic emergency. The Board recognizes that the Village of Rockville Centre enjoys an attractive and thriving business community, including many restaurants in business and commercial districts. Occupancy of dining establishments may be limited to numbers less than those existing prior to the COVID-19 emergency, and such establishments may seek to provide additional areas for seating and service of patrons. In addition, patrons of local dining establishments may wish to patronize such establishments, and enjoy the benefits of dining outdoors. The Board finds that it is in the public interest to provide an opportunity for such establishments to provide outdoor dining space, on conditions which balance the public interest in maintaining the quality of life in the community, preserving the public health, safety and welfare of the community, and protecting the users, owners and occupants of surrounding properties. Accordingly, this article is enacted to provide a permitting and licensing procedure which would balance these needs and desires, encourage the orderly use of property and encourage the revitalization of these popular uses. Purpose. The provisions of this article are intended to temporarily allow lawfully existing restaurants

and food service establishments a means to enlarge or expand their operations outdoors during the period of time this article is in effect, in recognition that such establishments are or have been subject to reduced interior occupancy or density restrictions arising from the COVID-19 pandemic; and to protect the public health, safety, and general welfare of the community.

B. The permit and license criteria and conditions set forth herein are promulgated with these issues and concerns in mind, and with the intent to conditionally allow outdoor dining uses, including authorizing such uses on public property, while continuing to protect and promote the community and environment which make such dining desirable. This article is not intended to authorize, support or encourage the establishment of restaurant uses on properties other than those on which such uses lawfully exist at the time of adoption of this article, and is intended only to provide for certain outdoor uses in conjunction with existing lawful restaurant uses, for a period of time which will facilitate economic recovery.

§287-54. Definitions. The following definitions are set forth for the administration of this article:

BARRIER-- An object, natural or man-made, other than a bollard, which is used to obstruct the passage of motor vehicles and separate pedestrian and vehicular traffic. Natural objects may include large trees or boulders.

BOLLARD— A vertical post designed and used to obstruct the passage of motor vehicles and separate pedestrian and vehicular traffic.

RESTAURANT - A use as defined in Village Code 340-2(47), provided that such use may be limited or circumscribed by conditions include in this article or in any license issued pursuant to this article.

SUPERINTENDENT – The Village Superintendent of Buildings

PLATFORM— A flooring material, usually constructed of a wood or composite decking materials, which is flush mounted to the roadway surface so that tables and chairs are not placed directly onto the pavement.

VEHICLE IMPACT PROTECTION DEVICE-- A device that is designed, engineered, and sited so as to effectively separate areas of pedestrian and vehicular travel and prevent automobiles from encroaching into areas which are solely intended for pedestrian use and travel; vehicle impact protection devices shall be comprised of bollards or barriers.

VILLAGE PROPERTY - Streets, sidewalks, and parking lots which belong to, or are leased or licensed to, or otherwise under the control of the Village of Rockville Centre, or such portions thereof as may be permissible and appropriate locations for uses authorized pursuant to this article. .

§287-55. COVID-19 Outdoor Accommodations; Temporary suspension of off-street parking requirements for certain restaurants and food service establishments; use of Village property

A. Notwithstanding any provision in the Code of the Village of Rockville Centre to the contrary, with a permit or license issued pursuant to this article, lawfully existing restaurants and food service establishments may expand seating areas by up to 50% of the previously approved floor area devoted to seating, or 50% of the authorized occupancy of the premises prior to issuance of any Executive Order(s) of the Governor reducing such authorized occupancy, whichever is greater, without providing additional parking spaces.

1. Any permit or license issued pursuant to this article for outdoor dining on private property shall be considered a permit, regardless of any other name or designation given to such approval.

2. Any permit or license issued pursuant to this article for outdoor dining use on Village property, or other public property, shall be deemed to be a revocable license, regardless of any other name or designation given to such approval. Each license issue pursuant to this article shall be revocable by the Village at any time, pursuant to procedures provided in this article. The issuance of a license pursuant to this article shall not be deemed to have created any property right or any vested right in or to the licensee.
- B. No restaurant or food service establishment may temporarily expand seating capacity pursuant to this article without first filing with the Superintendent an application for such temporary expanded seating capacity, and obtaining a permit or license as provided in this article. Such permit or license may be issued as provided herein, without any requirement that the applicant obtain any site plan, zoning variance, conditional use permit, or other approval from the Village or any of its boards or agencies, except as otherwise provided in this article.
- C. Temporary expanded seating capacity areas are not required to be located within the original confines of the establishment, but must comply with applicable public assembly, accessibility and fire safety regulations, and all applicable federal, State, County and Village laws, rules orders, codes and regulations..
- D. Subject to the provisions of this article, temporary expanded seating capacity areas may be established entirely within the property boundaries of the dining establishment, on contiguous private property or upon a contiguous Village Property (including a public street, sidewalk or, parking lot), provided that the area in which the expanded seating is being provided is under the ownership or control of the applicant. If the area to be used for the expanded seating is in public ownership or under the control of a public entity, the applicant must first obtain a license from the public entity as provided in this article. A permit or license pursuant to this article shall only permit

temporary expanded seating capacity areas in the locations referenced herein. Nothing in this article shall be construed to authorize outdoor dining and/or service of beverages, including alcohol, in any other area including rooftops and roofs.

E. A permit or license for a temporary expanded seating capacity area shall only be authorized where it is determined by the Superintendent that the use will not create a hazard, a sight distance obstruction for motor vehicle operators, nor unduly impede pedestrian traffic.

F. Application for permit or license.

1. Application for a permit or license pursuant to this article shall be made to the Superintendent on a form provided by such Superintendent, which shall include a sworn statement as to the following information. For good cause shown, the Superintendent may waive the requirement for submission of any or all of the required information and documentation:

a. The full legal name, and address of the owner of the establishment for which the license or permit is being requested, and the full name and address of the owner of any property on which the use is proposed to be operated.

b. If any part of the proposed use is to take place on property not owned by the owner of the establishment for which the license or permit is being requested, written documentation that such owner has control over such property, or the written consent of the owner of such property, duly acknowledged in the same manner as required for a deed to be recorded.

c. A description of the nature and extent, and location, of the proposed use;

- d. A site plan or diagram satisfactory to the Superintendent showing the location of service and arrangement of tables and chairs;
 - e. A valid certificate of insurance, if applicable;
 - f. Where applicable, a valid license or permit from the New York State Liquor Authority;
 - g. A statement affirming that the applicant shall comply with all requirements set forth in this article; and
 - h. A copy of this article signed by the applicant as recognition and acceptance of all of its terms.
2. The Superintendent may require an applicant to provide such other information as may reasonably be required to establish compliance with the provisions of this article and other applicable laws, codes, rules, orders and regulations.
3. Upon submission of a completed application, and a determination by the Superintendent of compliance with the requirements of this article, the Superintendent may issue a permit or license for a temporary expanded seating capacity area in one or more of the locations authorized in this article.
- a. The authority of the Village to consent to the use of Village Property for the purposes set forth in this article, and the authority to make application on behalf of the Village to any State agency in furtherance of such use, is hereby delegated to the Superintendent, The Board of Trustees, acting by resolution at any time and without public hearing or other notice, may limit or rescind such delegation and authority.

- b. In granting a permit or license pursuant to this article, the Superintendent is authorized and directed to include reasonable and appropriate conditions to protect the safety and well-being of persons and property, maintain public order, permit safe and reasonable passage for pedestrians and vehicles, and otherwise promote the general welfare. Such conditions may include, without limitation, restrictions as to days and times of permitted usage, number of persons authorized to be on any licensed site, and number and location of tables and seating, and any other conditions which, in the reasonable judgment of the Superintendent, are necessary to foster compliance with any applicable law, rule, order or regulation.
- 4. Temporary expanded seating areas authorized by this article shall be subject to the following regulations:
 - a. Every use pursuant to this article shall be conducted and operated in compliance with all applicable federal, State, County and Village laws, rules, orders, regulations, ordinances, and codes, and with all applicable permits and licenses or other approvals issued by any other governmental agency, unless specifically provided otherwise in the permit or license issued pursuant to this article.
 - b. No food may be cooked or prepared in any area used for outdoor seating pursuant to this article, provided, however that nothing in this paragraph shall prevent the mixing of ingredients or presentation of a menu item.
 - c. Permits shall be obtained for all structures erected in furtherance of or in relation to an outdoor dining use as may otherwise be required by law, and in compliance with all applicable fire, safety and building codes.

- d. Where necessary, wind screens shall be provided to contain any loose objects that may otherwise be carried off-site by the wind.
- e. All food and beverages shall be dispensed from the interior of the establishment. There shall be no outdoor bar or service counter.
- f. Alcohol may only be served in conjunction with food that is otherwise available for purchase without alcohol. All businesses serving alcoholic beverages must be in compliance with all State laws and regulations, including those of the New York State Liquor Authority. Copies of permits or licenses shall be provided to the Superintendent prior to any service of alcoholic beverages.
- g. No temporary expanded seating capacity area shall be established within 50 feet of a one or two family residential property.
- h. Where necessary, sun shade may be provided either by individual umbrellas or an area-wide canopy.
- i. Putrescible waste must be contained in a refrigerated compartment within the interior of the restaurant or food service establishment for future disposal.
- j. Restaurants and food service establishments with temporary expanded seating capacity areas shall take all steps necessary to maintain safety and to immediately remedy any unsafe situation.
- k. Applications shall include a site plan for the premises for which the permit or license is requested showing all

structures thereon, a sketch showing the proposed number of tables and chairs and the area to be used for temporary expanded seating capacity with a proposed seating plan for same.

- l. The authorized hours of service at any temporary expanded seating capacity area shall be stated in the permit or license, provided, however, that service at any temporary expanded seating capacity area shall be permitted no later than 10:00 p.m. on Sunday through Thursday and 11:00 p.m. on Friday and Saturday. Tables and chairs and menu signs, and other objects, shall be removed from any public property no later than 10:30 p.m. on Sunday through Thursday and 11:30 p.m. on Friday and Saturday. Tables and chairs and menu signs, and other objects, shall not be set up earlier than thirty (30) minutes before service begins.
- m. Smoking or vaping is not permitted in any outdoor dining areas.
- n. The premises on which the temporary expanded seating capacity service is to be offered must have a valid certificate of occupancy and a public assembly license or place of assembly license, as applicable.
- o. There shall be no sound amplification or public address system permitted in any temporary expanded seating capacity area. The installation, use or maintenance of radios, speakers, televisions or like apparatus and live entertainment shall be prohibited in any temporary expanded seating capacity areas. No live music or amplified sound shall be audible off the premises.

G. Outdoor Seating on Village Property.

1. Notwithstanding any other provision of this Code to the contrary, but in compliance with this article, the Superintendent may issue a temporary expanded seating capacity area license for outdoor seating on public property owned or controlled by the Village of Rockville Centre in conjunction with a lawful restaurant or food service establishment.
2. Subject to the approval of the Superintendent, the applicant for such license shall provide for appropriate and reasonable pedestrian access on any public property being used for temporary expanded outdoor seating, including clearances for tables, chairs and other objects, such as menu signs. All such tables, chairs, menus signed and other objects shall be kept out of any pedestrian access area. Clearance for pedestrian access areas must be around obstacles such as signs, benches, garbage cans, accessibility ramps, driveway access and other impediments. Employees of the licensed establishment may temporarily be within the pedestrian access area while performing their duties, such as serving, but may not place objects, such as tray stands, in pedestrian access areas. Employees shall at all times yield to pedestrians within the pedestrian access area.
3. Where the public property to be used pursuant to license as authorized by this article consists of a parking lot, or street, or portion thereof, or other area where vehicles are customarily operated or parked, the Superintendent may grant a license for use of such areas pursuant to this article, upon approval of requirements for appropriate and reasonable protection of pedestrians and vehicular traffic, clearances for tables, chairs and other objects, such as menu signs. Approval of the Superintendent shall be required for location, operation and management of all such public property, to the end that pedestrian and vehicular traffic shall be managed and conducted safely, and patrons and other persons on such

property shall be protected. The Superintendent may impose reasonable requirements to protect the public health, safety and general welfare, and to secure and protect such areas for occupancy, and pedestrian and vehicular traffic.

4. The applicant shall provide a certificate of insurance, and/or an endorsement to such insurance policy in form satisfactory to the Village, with liability limits of at least \$2 million per occurrence and which names the Village of Rockville Centre, its officers, agents and employees as additional named insureds. This insurance is required to remain in effect for the duration of the outdoor sidewalk seating activities and to cover all claims arising out of, or in relation to, said activities. The Village must be notified in the event of any threatened or actual lapse in insurance coverage. Any such lapse in coverage shall automatically revoke the license authorizing a temporary expanded seating area on public property. Regardless of the available insurance coverage, the applicant shall be liable for any and all claims, damages and expenses (including the Village's costs of defense) arising out of or in relation to the operation of a temporary expanded seating area for outdoor seating on public property. The submission of an application for a license for use of public property pursuant to this article shall constitute an agreement by the applicant to defend, indemnify and hold the Village harmless from and against any such claims, damages and expenses (including attorneys' fees).
5. Licensees for use of public property pursuant to this article may display menu signs only within time periods, and only on conditions, as authorized by the Superintendent. The Superintendent is authorized and directed to establish a preapproved menu sign form, including size and display specifications, which licensees may display without obtaining a sign permit.

6. Restaurants and food service establishments authorized to have outdoor seating on public property shall take all reasonable steps to control littering and shall dispose of all trash as otherwise required and must clean all areas of such public property being used pursuant to a license issued under this article.
7. The Superintendent may require a platform or ground cover at any location where outdoor seating is provided within a parking lot or street. Such seating area must be protected by a barricade, bollard or other suitable vehicle impact protection device approved by the Superintendent. A minimum distance of eight feet must be maintained between the seating area and the closest vehicular parking stall or access lane.
 - a. All platforms and ground coverings shall provide for accessibility. Notwithstanding any provisions of this article, outdoor parking lot or street seating shall be in all respects compliant with all applicable provisions of the Americans with Disability Act of 1990 as amended from time to time. Ramps and wheelchair edge protection shall be provided where required.
 - b. Installation of any platform within a parking area or street shall be in compliance with the New York State Building Code relative to structural strength, fire safety, means of egress, accessibility, light, ventilation, and sanitary requirements.
8. No temporary expanded seating capacity area located within a parking lot or street may occupy, encroach or impede into any New York State required accessible spaces or fire lanes.
9. Vehicle Impact Protection Devices Required.

- a. Vehicle impact protection devices shall be required to protect a temporary expanded seating capacity area located within a parking lot or on a public street.
- b. Performance Standard. All vehicle impact protection devices shall be engineered and determined to be in compliance with ASTM Publication F3016.
- c. Location. Vehicle impact protection devices shall be located
 - i. between any area designated for parking spaces and the beginning of the adjacent, converted parking area to be used as the outdoor seating area; and
 - ii. to the extent practicable, between the means of egress from the restaurant or food service establishment and the designated outdoor seating area. Barriers and bollards may be offset and staggered in terms of relative distance to provide protection.

10. All platforms and ground coverings shall provide for accessibility. Notwithstanding any provisions of this article, outdoor courtyard seating shall be in all respects compliant with all applicable provisions of the Americans with Disability Act of 1990 as amended from time to time. Ramps and wheelchair edge protection shall be provided where required.

11. Canopies and tents; table umbrellas.

- a. Installation of a canopy or tent shall be in compliance with the New York State Fire Code and the Nassau County Fire Ordinance. Proof of approval from the Nassau County Fire Marshal shall be provided to the Building

Department prior to issuance of a permit under this article.

- b. Installation of individual table umbrellas shall be in compliance with the New York State Fire Code.

H. Permit Revocation. The Superintendent shall have the authority to suspend or revoke any permits or licenses issued pursuant to this article upon a finding that:

- a. there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the permit or license was based;
- b. the permit or license was issued in error and should not have been issued in accordance with the applicable law.
- c. the expanded seating capacity authorized under the permit or license is not executed or operated in accordance with the provisions of the application, plans or specifications.
- d. the permittee or licensee fails or refuses to comply with a lawful order issued by the Superintendent.

I. Duration of Permit or License.

- a. Any permit issued pursuant to this article for use of private property for expanded outdoor dining shall expire sixty (60) days after issuance, and all structures, fixtures or other items located within the temporary expanded seating capacity area authorized by such permit shall be removed no later than five (5) days after permit revocation, suspension or expiration. Any permit issued pursuant to this article may be renewed by the Superintendent for successive periods not to exceed sixty (60) days each.

b. Any license issued pursuant to this article for use of Village property shall remain in effect for sixty (60) days unless sooner terminated, suspended or revoked pursuant to this article. Any such license may be revoked by the Superintendent at any time. All structures, fixtures or other items located within the temporary expanded seating capacity area authorized by such license shall be removed no later than five (5) days after license revocation, suspension, or expiration. Any license issued pursuant to this article may be renewed by the Superintendent for successive periods not to exceed sixty (60) days each, provided however that any such license may be revoked at any time.

J. Fee. No license or permit shall be issued or renewed pursuant to this article except upon payment of a permit or license fee as may be established, or amended, from time to time by resolution of the Board of Trustees.

§287-56. Suspension, revocation or non-renewal.

- A. To the extent any license issued pursuant to this article authorizes any use of Village Property, such license is revocable by the Superintendent or the Board of Trustees at any time, with or without cause.
- B. Each license or permit issued pursuant to this article may be revoked, or suspended in whole or in part, by the Superintendent or the Board of Trustees at any time upon a determination of violation of law or of any terms or conditions applicable to the license.
- C. Any person aggrieved by the suspension or revocation of, or denial of or refusal to renew, any license or permit pursuant to this article, or any condition imposed by the Superintendent in issuing or enforcing any license or permit, may appeal to the Village Board of

Trustees in writing, within ten (10) days after notice of any such suspension, revocation or denial. The Board of Trustees shall consider and determine any such appeal expeditiously.

- D. Filing of an appeal pursuant to this section shall not constitute or create a stay of the determination being appealed. Any person seeking such a stay shall make written application to the Mayor, who may, in the sole exercise of discretion, grant such stay, with or without conditions, and determine the duration of such stay, provided that no such period shall extend beyond the date the Board of Trustees issues a decision on any appeal.
- E. A decision of the Board of Trustees with respect to any appeal may reverse, affirm, or modify the Superintendent's determination being appealed, and in doing so may impose any reasonable conditions which, in the sole discretion of the Board, may be appropriate."

Section two. Severability. If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances. The Board of Trustees of the Village of Rockville Centre hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

Section three. Effective Date. This law shall take effect immediately upon filing pursuant to the Municipal Home Rule Law, and shall remain in effect until December 31, 2020, provided, however, that the Board of Trustees, by resolution, may extend the term of this law for one or more additional periods of time, none of which shall continue in effect after December 31, 2021.