

**RESOLUTION No. 2022-013**

**Introducing Local Law No. 3 of 2022 Amending Article X of Chapter 230 of the Village Code by Creating a New Section 230-75 Containing Regulations for Outdoor Dining on Village Sidewalks**

At a meeting of the Village Board of Trustees of the Village of Millbrook (“Village Board”), held at the Village Fire House, 20 Front Street, Millbrook, New York on the 12<sup>th</sup> day of October, 2022, at 6:00 p.m., Village Mayor, Tim Collopy called the meeting to order, and \_\_\_\_\_, seconded by Trustee \_\_\_\_\_, moved the following resolution, to introduce the following proposed local law, to be known as Proposed Local Law No. 3 of 2022, entitled “A Local Law Amending Article X of Chapter 230 of the Village Code to Establish a New Section 230-75 Setting Forth the Rules and Regulations to apply to Outdoor Dining on Village sidewalks” as follows:

BE IT ENACTED by the Board of Trustees of the Village of Millbrook as follows:

Section 1. Legislative intent: The novel coronavirus (Covid-19) pandemic has been a public health emergency throughout the United States, and the world, since early in 2020. Several local businesses, in particular restaurants, have suffered tremendously since that time as a result of the executive orders prohibiting public gatherings and requiring social distancing as well as the staff shortages as a result of employees becoming infected with the disease or having to quarantine as the result of exposure. The Village Board is aware that some restaurants do not have the ability to offer outdoor dining on premises and that in some cases the adjacent public sidewalk is the only available space to offer outdoor dining. The Village Board has determined it is in the best interest of the Village and its residents to allow restaurants located in the Village to provide outdoor dining on the adjacent Village sidewalk and to impose regulations to ensure the safety, attractiveness, and convenience of such Village sidewalks is maintained for diners and pedestrians.

Section 2. Article X of Chapter 230 of the Village Code entitled “Zoning” is hereby amended by adding a New Section 230-75 to contain the following language.

## **“§230-75 Outdoor Dining on adjacent Village Sidewalks.**

### **A. Definitions.**

#### **FOOD ESTABLISHMENT**

Any establishment which serves made-to-order food or beverages for dine-in, takeout, or delivery. Food establishments shall include, but are not limited to, restaurants, cafes, delicatessens, fast-food establishments and food establishments within grocery stores.

#### **OUTDOOR DINING AREA**

A Village sidewalk space utilized for outdoor dining by the adjacent Food Establishment pursuant to an Outdoor Dining Area permit.

#### **PERSON**

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

- B. No Person operating a Food Establishment shall establish, operate or expand an Outdoor Dining Area on a Village sidewalk except upon the granting of an Outdoor Dining Area Permit by the Village of Millbrook Building Inspector. This Section shall only permit Outdoor Dining on Village Sidewalks. The use of any streets or roads within the Village for Outdoor Dining shall be prohibited.
- C. The Outdoor Dining Area shall not require land use approvals such as site plan, special permit, subdivision, variances or any other discretionary review or approval by any board within the Village.
- D. All applications for an Outdoor Dining Area Permit shall be on a form provided by the Village Building Department and shall contain the following information:
  - (1) The name and address of the applicant.
  - (2) The name and address of the Food Establishment.
  - (3) Approval from the New York State Liquor Authority to serve alcohol in the Outdoor Dining Area, if the Food Establishment will be serving alcohol in the Outdoor Dining Area.
  - (4) Insurance certificates, in compliance with the requirements set forth in subparagraph F below.
  - (5) A drawing showing the proposed layout of the Outdoor Dining Area.

- (6) A statement describing the proposed use of the Outdoor Dining Area, including days and hours of intended operation and proposed capacity.
- (7) If a tenant is seeking an Outdoor Dining Area permit, the tenant/application shall include written authorization from the property owner.
- (8) The Application Fee in the amount determined each year by resolution of the Village Board.
- (9) Outdoor Dining Area Permits expire after one (1) season. Applicants must apply for this permit each year.

E. All Outdoor Dining Area permits shall be subject to the following terms and conditions:

- (1) The Outdoor Dining Area shall not be used for any purpose other than for the approved dining use. No outdoor cooking or preparation of alcoholic beverages of any type is permitted in the Outdoor Dining Area.
- (2) The Outdoor Dining Area shall comply with any and all state and local health, fire, building, sanitation and maintenance codes applicable.
- (3) Sidewalk clearances must be sufficient to ensure a straight pedestrian path free of obstructions along the entire length of the public sidewalk. There must be a minimum clear path of at least thirty (30) inches wide for the pedestrian path.
- (4) Obstructions to entryways, emergency exits, fire hydrants, and any other public utility are prohibited. Entrances to the sidewalk dining area must maintain a minimum thirty (30) inch wide access way from the public sidewalk to building entryway.
- (5) No permanent structures may be affixed to the sidewalk used for the Outdoor Dining Area.
- (6) The number and location of all chairs, tables, benches, umbrellas, heaters, and planters in the Outdoor Dining Area are subject to approval by the Building Inspector, in accordance with all applicable New York State, Dutchess County and Village of Millbrook laws and codes and Americans with Disabilities Act requirements.
- (7) Tables and chairs shall be constructed of durable materials such as metal. No folding tables are permitted.
- (8) The Outdoor Dining Area shall at all times be kept free and clear of garbage, litter, refuse, rubbish and debris.
- (9) Music of any sort is expressly prohibited.
- (10) Any exterior lighting shall not unreasonably illuminate beyond the boundaries of the Outdoor Dining Area.

- (11) The Outdoor Dining Areas shall be closed to customers and all furnishings shall be removed and stored indoors on or before 10:00 p.m. each day.
- (12) The applicant shall be responsible for any damage caused to any sidewalk or public property as a result of the Outdoor Dining operations.
- (13) The operator of the Food Establishment shall procure the appropriate approval from the State Liquor Authority if the food establishment intends to serve alcoholic beverages in the Outdoor Dining Area and shall comply with all other laws, regulations and guidelines concerning the serving of alcoholic beverages. All alcoholic beverages to be served in the Outdoor Dining Area shall be prepared within the existing Food Establishment, and alcoholic drinks shall only be served to patrons seated at tables.
- (14) Upon the expiration or earlier termination of the Outdoor Dining Area Permit, the applicant shall restore the Outdoor Dining Area to the same condition it was in prior to the applicant's use of the Outdoor Dining Area.
- (15) The Building Inspector may impose any reasonable conditions on the approval of an Outdoor Dining Area Permit related to the Outdoor Dining Area's size, location, impact on available parking, pedestrian safety, noise, and the public health, safety and welfare.
- (16) All outdoor dining operations shall comply with any applicable United States Centers for Disease Control, New York State or Dutchess County guidance, rule, regulation or law concerning required measures to minimize the spread of COVID-19.
- (17) Outdoor Dining shall only be allowed between April 1<sup>st</sup> and November 1<sup>st</sup>.
- (18) Modification. The Building Inspector may modify an Outdoor Dining Area Permit at any time and for any reason.
- (19) Revocation. The Building Inspector shall have the authority to revoke or suspend a Permit for any of the following grounds:
  - (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 Dining Area creates a hazard, 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 of the applicant to comply with any provision of this Section or any other applicable law or regulation or term or condition of the Permit.
  - (d) The determination of the Village Board by Resolution to suspend Outdoor Dining on Village sidewalks pursuant to subparagraph H below.

F. Insurance requirements for use of Outdoor Dining Area.

- (1) No Outdoor Dining Area Permit shall be issued by the Village Building Inspector until the applicant provides satisfactory evidence of the following types of coverage and limits of liability:
  - (a) Statutory workers' compensation and employers' liability policy, with policy limits equal to New York State requirements.
  - (b) General liability coverage with limits of insurance of not less than \$1,000,000 for each occurrence and \$2,000,000 annual aggregate.
  - (c) The Village of Millbrook and its agents, officers, volunteers, directors and employees shall be named as additional insureds and included in a waiver of subrogation endorsement.
  - (e) The applicant shall maintain these insurance requirements for itself and all additional insureds for the duration of the Outdoor Dining operations.
  - (f) The applicant's policy must be primary and noncontributory to any insurance the Village of Millbrook maintains.
  - (g) Certificates of insurance shall provide that thirty (30) days' written notice prior to cancellation or modification be given to the Village of Millbrook. Policies that lapse and/or expire during the term of the Outdoor Dining Area Permit shall be recertified and received by the Village of Millbrook no fewer than 30 days prior to cancellation or renewal.

G. Indemnification. As a condition of accepting the Outdoor Dining Area Permit, the applicant agrees to indemnify and save harmless the Village of Millbrook, its officers, agents, attorneys and employees, from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the Outdoor Dining Area.

H. Suspension by Village Board. The Village Board shall have the authority to suspend Outdoor Dining on Village sidewalks at any time by resolution. Upon adoption of such a resolution of the Village Board, the Village Building Inspector shall immediately revoke all Outdoor Dining Area Permits issued in accordance with subparagraph E.(19) above.

I. Reservation of rights by Village. Neither the adoption of this Section nor the granting of any Permit pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the Village of Millbrook concerning its public easement over the streets and sidewalks, or of any requirement of law concerning the liability of the Village of Millbrook with respect to streets and sidewalks, whether expressed or implied.

J. Enforcement. A violation of any provision of this Section shall be subject to the enforcement provisions set forth in Article VII of the Village Code.”

Section 3. This local law shall take effect as of the date of filing with the New York Secretary of State.

Mayor, Tim Collopy, advised the Board of Trustees that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this proposed local law. Trustee \_\_\_\_\_ offered the following resolution which was seconded by Trustee \_\_\_\_\_, who moved its adoption:

WHEREAS, on November 9<sup>th</sup>, 2022, Trustee \_\_\_\_\_ introduced this local law for the Village of Millbrook, to be known as “A Local Law Amending Article X of Chapter 230 of the Village Code to Establish a New Section 230-75 Setting Forth the Rules and Regulations to apply to Outdoor Dining on Village sidewalks.”

RESOLVED, that a public hearing be held in relation to the proposed local law as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Village Fire House, 20 Front Street, Millbrook, New York, on November 9<sup>th</sup>, 2022, at 6:00 o’clock, p.m., Prevailing Time, and that notice of said hearing shall be published in the official newspaper of general circulation in the Village of Millbrook, by the Village Clerk, at least ten (10) days before such hearing and that such notice shall be in the following form:

#### **NOTICE OF PUBLIC HEARING**

TAKE NOTICE, that the Board of Trustees of the Village of Millbrook will hold a public hearing at the Village Fire House, 20 Front Street, Millbrook, New York, on November 9<sup>th</sup>, 2022, at 6:00 o’clock, p.m., Prevailing Time, on Proposed Local Law No. 3 of the Year 2022, entitled

“A Local Law Amending Article X of Chapter 230 of the Village Code to Establish a New Section 230-75 Setting Forth the Rules and Regulations to apply to Outdoor Dining on Village sidewalks.”

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Village of Millbrook, at the Village Hall, 35 Merritt Avenue, Millbrook, New York between the hours of 8:00 a.m. to 12:00 p.m. and then between 1:00 p.m. to 3:00 p.m. on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all persons interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED: Millbrook, New York  
October 12<sup>th</sup>, 2022

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SARAH J. WITT, VILLAGE CLERK

The foregoing resolution was duly put to a vote which resulted as follows:

Mayor Collopy \_\_\_\_\_

Trustee Herzog \_\_\_\_\_

Trustee Contino \_\_\_\_\_

Trustee Arbogast \_\_\_\_\_

Trustee Doro \_\_\_\_\_

DATED: Millbrook, New York  
October 12<sup>th</sup>, 2022

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SARAH J. WITT, VILLAGE CLERK  
Village of Millbrook