

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. OF 2020**

**A LOCAL LAW AMENDING CHAPTER 70 OF THE TOWN CODE  
ENTITLED “ZONING”**

**BE IT ENACTED** by the Town Board of the Town of North Hempstead, as follows:

**Section 1. Legislative Intent.**

The Board finds that it is in the best interest of the Town of North Hempstead to amend Chapter 70 of the Town Code entitled “Zoning” in order to further assist those establishments required to operate at reduced seating capacity by allowing outdoor dining in parking lanes when certain protective barriers and accessibility ramps are installed.

**Section 2.**

Chapter 70 of the Town Code is hereby amended as follows:

§ 70-103.1 COVID-19 Outdoor Accommodations; Temporary suspension of off-street parking requirements for certain restaurants and food service establishments.

- A. Purpose. The provisions of this section are designed to temporarily allow restaurants and food service establishments an additional way to expand their operations outdoors during the timeframe in which such establishments are 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. Notwithstanding any provision in Chapter 70 of the Town Code to the contrary, restaurants and food service establishments may expand their seating areas by up to 50% of the previously approved floor area devoted to seating without providing additional parking spaces, subject to compliance with the provisions of this section.
- C. No restaurant or food service establishment shall temporarily expand seating capacity under § 70-103.1 of the Town Code without first filing with the Building Commissioner an application for such temporary expanded seating capacity and obtaining a permit. To obtain a permit under this section, an applicant shall not be required to seek an amended site plan approval from the Town Board or an amended conditional use permit from the Zoning Board of Appeals.
- D. 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.
- E. Subject to the provisions of this section, temporary expanded seating capacity areas may be established entirely within the property boundaries, upon a sidewalk, **within a parking lane**, within a parking lot, or in a courtyard. An eligible restaurant or food service establishment may utilize one or more of the aforementioned locations as a temporary expanded seating area. This section of the Town Code only permits temporary expanded seating capacity areas in the locations referenced herein. Nothing in this section shall be construed to permit outdoor dining and service of beverages including alcohol in any other area including rooftops and roofs.
- F. A permit for a temporary expanded seating capacity area shall only be authorized where it is determined that the use will not create a hazard, a sight distance obstruction for motor vehicle operators, nor unduly

impede pedestrian traffic. The Building Commissioner shall determine when a hazardous condition exists.

**G. Application for permit.**

(1) Such application shall be made to the Building Commissioner on a form provided by him and shall contain a sworn statement that provides the following information:

- (a) A site plan showing the location of service and arrangement of tables and chairs;
- (b) The required certificate of insurance, if applicable;
- (c) Where applicable, a permit from the New York State Liquor Authority;
- (d) A statement affirming that the applicant shall comply with all requirements set forth in this section; and
- (e) A copy of this section signed by the applicant as recognition and acceptance of all of its terms.

(2) The Building Commissioner may require an applicant to provide such other information as may reasonably be required to establish compliance with the provisions of this section and other applicable building codes, ordinances and regulations.

**H.** Upon submission of a completed application, and a determination of compliance by the Building Department following a review of the application, the Building Commissioner shall issue a permit for a temporary expanded seating capacity area in one or more of the locations authorized in this section.

**I.** The following regulations are applicable to all temporary expanded seating capacity areas:

- (1) Where necessary, wind screens shall be provided to contain any loose objects that may otherwise be carried off-site by the wind.
- (2) All food and beverages shall be dispensed from the interior of the establishment. There shall be no outdoor bar or service counter.
- (3) 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 shall be provided to the Town prior to service of alcoholic beverages.
- (4) Except within a mixed-use zoning district or approved mixed-use development, no temporary expanded seating capacity area shall be established within 50 feet of a residential property.
- (5) Where necessary, sun shade may be provided either by individual umbrellas or an area-wide canopy.

- (6) Restaurants and food service establishments shall take all reasonable steps to control littering and shall dispose of all trash as otherwise required and shall keep the sidewalk, parking lot area, or other areas used for outdoor seating clean and free of litter, debris and putrescible waste.
- (7) Putrescible waste must be contained in a refrigerated compartment within the interior of the restaurant or food service establishment for future disposal.
- (8) 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.
- (9) A Town Building Inspector or Code Enforcement Officer may temporarily suspend a permit for a temporary expanded seating capacity area, at any time, due to violations of this section, threats to public safety, disorderly conduct, noise, disruption of other business operations or violations of other Town codes or other laws or regulations. The Building Inspector or Code Enforcement Officer may choose, but is not obligated, to reinstate a temporary expanded seating capacity area permit if he or she is satisfied that all violations have been remedied. An affected restaurant or food service establishment may appeal a decision to suspend a temporary expanded seating capacity area permit to the Town Board, which shall conduct an evidentiary hearing to determine whether to reinstate the permit or continue the suspension for a stated period of time.
- (10) Applicants shall provide a site plan for the premises for which the permit 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.
- (11) 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 must be removed from the sidewalk 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 cannot be set up earlier than a 1/2 hour before service begins.
- (12) Smoking or vaping is not permitted in any outdoor dining areas.
- (13) 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.
- (14) 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.

**(15) Definitions. For the purposes of this section, the following words and phrases are defined as follows:**

**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.**

**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.**

**J. Outdoor Sidewalk Seating.**

- (1) Notwithstanding the provisions of Chapter 48 of the Town Code to the contrary, the Building Department may issue a temporary expanded seating capacity area permit for outdoor sidewalk seating in conjunction with a restaurant or food service establishment, subject to compliance with this §70-103.1.
- (2) The applicant shall provide for a pedestrian access area on the public sidewalk, measured from the inside of the curb where it meets the sidewalk, of at least 60 inches clearance; tables and chairs and other objects, such as menu signs, shall be kept out of the pedestrian access area. Clearance for the pedestrian access area must be around obstacles such as signs, benches, garbage cans, accessibility ramps, driveway access and other impediments. Employees 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 the pedestrian access area. However, employees shall at all times yield to pedestrians within the pedestrian access area.

**(a) Notwithstanding the above, on a Town roadway with an existing parking lane, an applicant may utilize the parking lane as a pedestrian walkway, provided that the applicant provides a vehicle impact protection device or steel barricade on all three sides of the parking lane and provides ramp access for ADA compliance, which can be made of non-permanent materials.**

- (3) The applicant shall provide a certificate of insurance with liability limits of at least \$2 million per occurrence and which names the Town of North Hempstead as an additional insured who will be notified by the insurance company or agent in the event of a lapse of coverage. This insurance is required to remain in effect for the duration of the outdoor sidewalk seating activities and to cover claims arising out of said activities. The Town must be notified in the event of any threatened or actual lapse in insurance coverage. Any such lapse in coverage shall automatically revoke the permit authorizing a temporary expanded seating area for outdoor sidewalk seating. In any event, the applicant shall be liable for all claims arising out of the operation of a temporary expanded seating area for outdoor sidewalk seating and shall defend, indemnify and

hold the Town harmless from and against any such claims.

- (4) Notwithstanding the provisions of § 70-197, permittees under this section may display menu signs only within the timeframes set forth in § 70-103.1(I)(11) and only as authorized by the Building Department. The Building Department is hereby authorized and directed to establish a preapproved menu sign form, including size and display specifications, which permittees may display without obtaining a sign permit.
- (5) Sidewalk service may be provided in front of up to two adjoining businesses, i.e., one on either side of the permittees' premises, with the permission of those businesses and their landlords. Permission shall be given in writing, a copy of which shall be given to the Building Department before sidewalk service in front of an adjoining premises is provided. Permission may be withdrawn by the adjoining business or landlord at any time. The business or landlord withdrawing permission shall notify the Town, in writing, within two business days of the withdrawal. Any adjoining business and landlord that gives such permission shall be covered by the permittees' insurance in the same way the Town is and at no less a coverage level. Confirmation of such coverage and notice of any lapse, etc., shall be provided to the Town in the same manner as such notice is made to the Town regarding coverage extended to the Town. Copies of all such notices shall also be given to the permitting businesses and landlords.
- (6) Notwithstanding any provisions of this section, outdoor sidewalk 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.

#### **K. Outdoor Parking Lane Seating.**

**(1) Notwithstanding any traffic ordinance or local law to the contrary, the Building Department may issue a temporary expanded seating capacity area permit for outdoor parking lane seating in conjunction with a restaurant or food service establishment, subject to compliance with this §70-103.1.**

**(2) The applicant shall comply with the following:**

- (a) Provide a vehicle impact protection device on all three sides of the seating perimeter located in the roadway to separate seating from the travel lane. The vehicle impact protection device must be at least 18" in width and 30-36" in height (excluding plantings) on all three sides. All vehicle impact protection devices shall be engineered and determined to be in compliance with ASTM Publication F3016.**
- (b) Parking lane seating may not exceed the length of the business frontage, except as authorized herein.**
- (c) Ensure visibility of patrons and vehicle impact protection devices at night by clearly marking such devices with yellow high intensity retro-reflective tape or reflectors.**
- (d) Provide ramp access for ADA compliance, which can be made of non-permanent materials.**

- (e) Seating or vehicle impact protection devices shall not be located within 15' of a fire hydrant, or within 8' of a crosswalk, or within a No Stopping Anytime or No Standing Anytime zone, bike lane, bus lane/stop, or taxi stand.
- (f) No outdoor lighting shall be installed in a manner that will impair passing traffic.
- (g) Tables and chairs must be removed or secured in place when not in operation.
- (h) All applicable Building and Fire Codes shall be complied with.

(3) The applicant may comply with the following:

- (a) Vehicle impact protection devices may be left in place within a metered zone, alternate side parking, or No Parking Anytime zone, provided that that tables and chairs are removed or secured when not in operation.
- (b) Where seating is authorized along a curb, install a platform behind the required vehicle impact protection devices to flush height with curb to facilitate ADA compliance, prevent the curb from becoming a tripping hazard, and allow drainage to underpass seating. Such platforms shall not block rain water drainage getting to the curb or flowing along the curb. Such platforms shall not obstruct access to or ventilation of utility covers. Installation of any platform within a parking lane 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.

(4) The applicant shall provide a certificate of insurance with liability limits of at least \$2 million per occurrence and which names the Town of North Hempstead as an additional insured who will be notified by the insurance company or agent in the event of a lapse of coverage. This insurance is required to remain in effect for the duration of the outdoor parking lane seating activities and to cover claims arising out of said activities. The Town must be notified in the event of any threatened or actual lapse in insurance coverage. Any such lapse in coverage shall automatically revoke the permit authorizing a temporary expanded seating area for outdoor parking lane seating. In any event, the applicant shall be liable for all claims arising out of the operation of a temporary expanded seating area for outdoor parking lane seating and shall defend, indemnify and hold the Town harmless from and against any such claims.

(5) Notwithstanding the provisions of § 70-197, permittees under this section may display menu signs only within the timeframes set forth in § 70-103.1(I)(11) and only as authorized by the Building Department. The Building Department is hereby authorized and directed to establish a preapproved menu sign form, including size and display specifications, which permittees may display without obtaining a sign permit.

(6) Parking lane seating service may be provided in front of up to two adjoining businesses, i.e., one on either side of the permittees' premises, with the permission of those businesses and their landlords. Permission shall be given in writing, a copy of which shall be given to the Building Department before parking lane seating service in front of an adjoining premises is provided.

**Permission may be withdrawn by the adjoining business or landlord at any time. The business or landlord withdrawing permission shall notify the Town, in writing, within two business days of the withdrawal. Any adjoining business and landlord that gives such permission shall be covered by the permittees' insurance in the same way the Town is and at no less a coverage level. Confirmation of such coverage and notice of any lapse, etc., shall be provided to the Town in the same manner as such notice is made to the Town regarding coverage extended to the Town. Copies of all such notices shall also be given to the permitting businesses and landlords.**

**(7) Notwithstanding any provisions of this section, outdoor parking lane 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.**

**L. Outdoor Seating in Parking Lot Areas.**

- (1) Outdoor seating within parking lots shall conform to the following:
  - (a) Seating areas must be protected by a barricade, bollard or other vehicle impact protection device. A minimum distance of eight feet must be maintained between the seating area and the closest vehicular parking stall or access lane.
  - (b) Paved surfaces in parking lot areas must be kept in a clean and sanitary condition.
- (2) 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.
  - (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.
- (3) No temporary expanded seating capacity area located within a parking lot shall occupy, encroach or impede into any New York State required accessible spaces or fire lanes.
- (4) All platforms and ground coverings shall provide for accessibility. Notwithstanding any provisions of this section, outdoor parking lot 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.
- (5) Installation of any platform within a parking area 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.
- (6) The Town may request a parking analysis to ensure that adequate parking for the location is provided.

**M.** Outdoor seating in courtyard areas or within property boundaries.

- (1) Courtyard areas and locations within the boundaries of the property may be used as a temporary expanded seating capacity area, provided the written permission of the owner of the property on which tables and chairs are placed is obtained and the requirements of this section are complied with and an unobstructed pedestrian access area of at least 60 inches is maintained and there is no obstruction of ingress and egress points.
- (2) All platforms and ground coverings shall provide for accessibility. Notwithstanding any provisions of this section, 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.

**N.** Canopies and tents; table umbrellas.

- (1) 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 section.
- (2) Installation of individual table umbrellas shall be in compliance with the New York State Fire Code.

**O.** Permit revocation. The Building Commissioner shall have the authority to revoke any permits issued pursuant to this section in the following instances:

- (1) Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based.
- (2) Where he finds that the permit was issued in error and should not have been issued in accordance with the applicable law.
- (3) Where he finds that the expanded seating capacity authorized under the permit is not executed in accordance with the provisions of the application, plans or specifications.
- (4) Where the person to whom a permit has been issued fails or refuses to comply with a stop order issued by the Building Commissioner.

**P.** Any temporary expanded seating capacity area permit issued under this section shall terminate on December 1, 2020. All items located within the temporary expanded seating capacity area shall be removed no later than December 8, 2020.

**Section 3.**

This Local Law shall take effect immediately upon filing with the Secretary of State.

By affixing my signature below I affirm that I have read the above (proposed) Town of North Hempstead Local Law (Chapter 70 – Outdoor Seating) and accept all of its terms.

Applicant’s Name (Print): \_\_\_\_\_

Applicant’s Signature: \_\_\_\_\_

Property Address: \_\_\_\_\_