

**LOCAL LAW NO. 4 OF 2023**

**VILLAGE BOARD OF TRUSTEES  
VILLAGE OF PELHAM**

**LOCAL LAW TO AMEND CHAPTER 98 OF THE CODE OF THE VILLAGE OF PELHAM**

**Be It Enacted**, by the Village Board, as follows:

SECTION 1.

Intent and Purpose. It is the intent of the Village Board to permit by the Village Board special permit Outdoor Dining on areas other than a sidewalk as an accessory use in conjunction with and adjacent to a principal building used solely as a Food Service Establishment. The purpose of this ordinance is to provide, where appropriate in accordance with the regulations below, Food Service Establishments with the ability to use outside areas other than sidewalks for seasonal outdoor dining. The use of sidewalks for outdoor dining shall continue to be regulated by Chapter 75 of the Village Code.

SECTION 2.

**Chapter 98 (Zoning) of the Village of Pelham Code is hereby amended by the addition of the following:**

§ 98-73

- B. The following uses require a special permit by the Village Board:  
(1) Outdoor Dining, subject to the requirements in § 98-106.5.

§ 98-82

- B. The following uses require a special permit by the Village Board:  
(1) Any special permit use allowed in a Business-1 District, as listed in § 98-73(B).

§ 98-91

- B. The following uses require a special permit by the Village Board:  
(1) Any special permit use allowed in a Business-1 and Business-2 District, as listed in § 98-73(B) and 98-82(B).

**AND a new subsection 98-106.5 is added to Chapter 98 (zoning):**

§ 98-106.5. Outdoor Dining

A. Intent and Purpose.

It is the intent of the Village Board to permit by the Village Board special permit Outdoor Dining on areas other than a sidewalk as an accessory use in conjunction with and adjacent to a principal building used solely as a Food Service Establishment. The purpose of this ordinance is to provide, where appropriate in accordance with the regulations below, Food Service Establishments with the ability to use outside areas other than sidewalks for seasonal outdoor

dining. The use of sidewalks for outdoor dining shall continue to be regulated by Chapter 75 of the Village Code.

B. Definitions.

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

**FOOD SERVICE ESTABLISHMENT** – A location where food is prepared and intended for individual portion service and that either the Westchester County Department of Health or New York State Department of Agriculture and Markets regulates.

**OUTDOOR DINING** — An outdoor eating area that is:

- i. Located on private property, not including any sidewalks or any public right-of-way;
- ii. Adjacent to and operated as part of a Food Service Establishment;
- iii. Comprised solely of readily removable tables, chairs, umbrellas, seasonal heating, planters, and decorative accessories and trash receptacles (together, "furnishings"); and
- iv. Open to the air, except that retractable awnings or temporary structures with removable sides are permitted.

C. Location.

- (1) Outdoor Dining may be located on private property in the Village of Pelham Business-1 (B-1), Business-2 (B-2), and Business-3 (B-3) Districts used solely as a Food Service Establishment, as set forth in this Chapter.
- (2) Outdoor Dining areas regulated hereunder may be located on the property upon which the principal Food Service Establishment is located and immediately adjacent to the building within which the Food Service Establishment operates. This includes being able to use designated off-street parking areas, subject to Subsection (F) below.
- (3) Outdoor Dining regulated hereunder is prohibited on public rights-of-way, including all sidewalks.
- (4) Outdoor Dining regulated hereunder areas shall maintain the following minimum setbacks:
  - i. Rear yard: 4 ft from the property line
  - ii. Side Yard: 4 ft from the property line
  - iii. Side Yard (Corner Lot-Street Side): 4 ft from the property line

D. Standards.

- (1) The Outdoor Dining area shall not be used for any purpose other than for the approved use.
- (2) The Outdoor Dining area shall comply with any and all state and local health, fire, building, sanitation and maintenance codes applicable to the use of the establishment, including but not limited to the installation of tents, outdoor natural gas/propane patio heaters, fire pits/tables.
- (3) The number and location of all tables, displays, service stations, registers and any other equipment, furnishings or structures installed in the Outdoor Dining area are subject to review by the Building Inspector, in accordance with all applicable State Code and ADA requirements.

- (4) No permanent structure may be installed without obtaining separate site plan approval for said permanent structure.
- (5) All food and beverages to be served or consumed in the Outdoor Dining area shall be prepared within the existing Food Service Establishment.
- (6) The operator of the Food Service Establishment shall procure the appropriate license from the New York State Liquor Authority if the Food Service Establishment intends to serve alcoholic beverages in the Outdoor Dining area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages. The appropriate license must be submitted to the Village before the operator may serve alcoholic beverages in the Outdoor Dining area.
- (7) Chairs and tables shall not be utilized for the display of merchandise or the advertising of goods or services.
- (8) During hours of daylight, alcoholic beverages may be served solely in conjunction with the service of food. Subsequent to sundown, alcoholic beverages may be served in the absence of service of food. All alcoholic beverages shall be prepared within the appurtenant Food Service Establishment and shall be served solely to patrons seated at tables. The consumption of alcoholic beverages by a member of the public, while a patron, within the confines of the area of the Outdoor Dining area, shall not be a violation of any local law, ordinance, rule or regulation relating to open alcoholic containers in a public area.
- (9) No patron at an Outdoor Dining area shall be served food or beverage unless said patron is seated at a table.
- (10) The Food Service Establishment is responsible, at all times, for the cleanliness of the Outdoor Dining area and the tables and chairs located therein, as well as the cleanliness of any abutting sidewalk and curb areas.
- (11) All Outdoor Dining areas shall be sufficiently screened from adjacent residential uses and residential zoning districts. Screening shall not be required on any boundary immediately adjacent to a public roadway. Notwithstanding any other provisions in this Chapter, the Village Board may, in its discretion, permit screening up to six feet in height where used to screen Outdoor Dining areas from adjacent properties and roadways.
- (12) Lighting shall be directed downward and inward to the site and Outdoor Dining area so that the light source is not visible from any adjacent property or land use. Shields and timing devices shall be utilized on light fixtures to control and direct the illumination pattern of said light fixtures and to prevent spillage of light emissions horizontally and/or across property lines.
- (13) Sound amplification and public address systems and equipment shall be prohibited. Areas approved for Outdoor dining shall not be utilized for live performance or recorded audio transmissions.
- (14) Furnishings
  - i. All Outdoor Dining furnishings shall be of durable commercial-grade materials; shall be uniform in style, color and material; and shall be reviewed by the Architectural Review Board for recommendation to the Village Board prior to special permit approval, such recommendation to be given within 60 days of the referral from the Building Inspector.
  - ii. Furnishings shall not be used for the display of merchandise or the advertising of goods or services.

- iii. Umbrellas must be secured in a device that the manufacturer of the umbrella designed to anchor the umbrella.
- iv. Portable umbrellas, heating units and other similar elements for the purpose of weather protection shall be properly maintained in a neat and good working condition and compliant with all applicable building, fire and health code standards and laws.
- v. During periods when the Food Service Establishment with which Outdoor Dining is associated is closed for business, all chairs and tables shall be covered and secured.

E. Seasonal Regulations and Hours of Operation.

- (1) Outdoor Dining may operate from April 15 to November 30.
- (2) Outdoor Dining shall not operate prior to 8:00 a.m. or subsequent to 10:00 p.m. on any day, or otherwise operate when the Food Service Establishment with which it is associated is not open to the public.
- (3) The actual hours of operation of the Outdoor Dining area shall be posted in a visible location.
- (4) No Food Service Establishment providing Outdoor Dining shall permit members of the public to congregate in the Outdoor Dining area after 10:00 p.m.

F. Parking.

- (1) Restaurants with Outdoor Dining shall maintain the minimum parking required for a Restaurant use as set forth in Section 98-113, which may be provided via a combination of the following:
  - i. Spaces available on the subject property;
  - ii. Public on-street parking within 500 feet of the boundary of the property upon which the Outdoor Dining use is located;
  - iii. Public parking lots within 500 feet of the boundary of the property upon which the Outdoor Dining use is located; and/or
  - iv. Designated private off-street parking on a non-adjacent property either: (i) owned by the permittee or the owner of the property upon which the Outdoor Dining use is located; or (ii) which the owner or permittee is granted permission to utilize such property for parking purposes, and where the Food Service Establishment associated with the Outdoor Dining provides a valet service to all patrons. Any non-adjacent parking area which is not upon the same lot as the main building or use, and its necessary accessways, shall be reserved for off-street parking use in accordance with an agreement between the owners of such adjoining lots, which agreement is to be filed with the Building Inspector upon the issuance of any special permit hereunder, including any renewals.

G. Application Procedure.

- (1) All applications for an Outdoor Dining special permit shall be on a form provided by the Village and shall contain the following information:
  - i. The name address of the applicant.
  - ii. The name and address of the Food Service Establishment.
  - iii. The business owner's name.
  - iv. Approval from the New York State Liquor Authority to serve alcohol in the Outdoor Dining area, if applicable.

- v. A drawing showing the proposed layout, including any proposed temporary awnings, tents, pergolas, the existing building, points of ingress and egress, proposed location of all tables, chairs, umbrellas, barriers, displays, service stations, registers and any other equipment, furnishing or structure to be installed in the Outdoor Dining area. The drawing shall be signed and sealed by a licensed professional unless such requirement is waived by the Village Board.
  - vi. A statement describing the proposed use of the Outdoor Dining area, including days and hours of intended operation and proposed capacity.
  - vii. If a tenant is seeking an Outdoor Dining area special permit, the application shall include written authorization from the landlord.
- H. Renewal. The approval of an Outdoor Dining special permit shall have a term of five years. An application for renewal shall be submitted to the Village Board a minimum of 60 days prior to the date of expiration.
- I. Expiration. An Outdoor Dining special permit shall expire and lapse automatically upon change of use of the related principal Food Service Establishment use.

SECTION 3. Severability:

The provisions of this local law are intended to be severable. If any provision of this Local Law is found by a Court of competent jurisdiction to be unconstitutional or otherwise invalid, such findings shall not be deemed to invalidate the local law as a whole, nor any other section or provision thereof, other than that which is found to be unconstitutional or otherwise invalid.

SECTION 4. Effective Date:

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