

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County City Town Village
(Select one:)

of SOUTHEAST

Local Law No. 5 of the year 2020

A local law amending Chapter 138 of the Town Code to impose a moratorium on enforcement of
(Insert Title)
certain provisions of the Zoning Code regarding Site Plan Approval and Chapter 54 by
adding a new section 54-12A entitled Temporary Permits for Outdoor Dining

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

County City Town Village
(Select one:)

of SOUTHEAST

as follows:

SECTION 1. TEMPORARY MORATORIUM ON ENFORCEMENT OF CERTAIN PROVISIONS OF CHAPTER 138 "ZONING"

Enforcement of Section 138-4, "Definitions" relating to the requirement that "temporary structures" as defined in the zoning code in place for more than one (1) month obtain site plan approval shall be suspended to allow temporary structures erected in connection with Temporary Outdoor Dining Permits authorized pursuant to Section 2 of this Local Law may remain in place so long as the temporary Outdoor Dining Permit is in effect.

Enforcement of Section 138-45 "Site plan approval" shall be suspended, in part, and only to the extent that it would permit the temporary establishment of an outdoor seating area for restaurant and related food uses during the COVID-19 pandemic, and while the New York State reopening plan and executive orders are in effect.

The foregoing moratorium on enforcement shall be expire the earlier of six (6) months from the effective date hereof; or upon the expiration of the Executive Orders issued by the New York State Governor relating to restrictions on indoor dining in restaurants and food service establishments.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 5 of 2020 of the (County)(City)(Town)(Village) of SOUTHEAST TOWN BOARD was duly passed by the (Name of Legislative Body) on June 4, 2020, in accordance with the applicable provisions of law.

~~**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)**~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.~~

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____ 20____.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the (Name of Legislative Body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

SECTION 2. TEMPORARY PERMITS FOR OUTDOOR DINING

Chapter 54 of the Code of the Town of Southeast entitled "Building Construction and Fire Prevention" is hereby amended to add a new Section 54-12A as follows:

§54-12A. Temporary Permits for Outdoor Dining.

- A. Establishment. There is hereby established a Temporary Permit for Outdoor Dining to be administered by the Town Building Department. The purpose of the Temporary Permit is to allow fast casual restaurants, fast-food restaurants, bakeries, delicatessens, ice cream/yogurt parlors and similar types of retail establishments offering food or beverages for onsite consumption (hereinafter referred to collectively as a "food service establishment") in existence on the effective date hereof to establish a temporary outdoor seating area or expand or temporarily expand an outdoor seating area subject to an Outdoor Dining Permit issued by the Town of Southeast Building Inspector pursuant to the following regulations.
- B. Regulations.
- (1) Term. An Outdoor Dining Permit shall commence upon issuance by the Building Inspector and shall be for a term of no more than six (6) months or may expire earlier upon the lifting of any Executive Order of the Governor of the State of New York which restricts or prohibits indoor dining in establishments due to the continued Covid-19 Pandemic of 2020. Upon termination of Outdoor Dining Permit, all areas used and utilized for such outdoor dining activities shall be restored to the pre-existing conditions. Failure to comply with such removal and restoration requirements may subject the permittee to fines and penalties as set forth in this Chapter.
 - (2) Location. Eligible locations for outdoor dining and sidewalk cafes include existing parking lots, decks, patios, terraces, lawn, sidewalks, and gardens which are adjacent to or within a reasonably proximate distance from the food service establishment to allow for safe and efficient service to patrons from the food service establishment
 - (3) General operating rules.
 - i. No outdoor dining operation can occur without meeting the minimum State standards, as well as applicable federal requirements, including but not limited to such minimum standards of the Americans with Disabilities Act (ADA), Centers for Disease Control (CDC), Environmental Protection Agency (EPA), and the United States Department of Labor's Occupational Safety and Health Administration (OSHA). Outdoor Dining Permit holders shall be required to observe and meet all requirements of the Interim Guidance for Outdoor and Public Take-Out / Deliver Food Service During the Covid-19 Public Health Emergency dated as of June 3, 2020 issued by the New York State Department of Health, as the same may be amended from time to time.
 - ii. All outdoor dining operations must meet social distancing requirements and follow all applicable health guidelines and guidance as set forth by the CDC, New York State (including Executive Orders) and Putnam County Department of Health.

- iii. Applicants must provide a floor plan diagram indicating the total square footage of property to be used for the outdoor dining area; the location of all tables and chairs; pedestrian and dining areas; width and length of dining area; fire access; ADA access; the location of any tents or awnings, and permanent obstructions (signs, utility poles, hydrants, etc.).
- iv. Applicants must provide the existing indoor capacity of the food service establishment based on the current certificate of occupancy and/or Putnam County Department of Health approvals. A permit for Outdoor Dining shall not exceed the current occupancy limits of the indoor establishment.
- v. Applicants must provide a parking table that includes the existing and proposed number of parking spaces, number of employees, and proposed number of patron seats. The parking table should also indicate if a designated curbside pickup space is provided.
- vi. Entryways, emergency exits, and fire hydrants shall not be obstructed.
- vii. No outdoor entertainment, music or public address system, nor any other forms of noise generation, shall be permitted within the outdoor dining area.
- viii. No outdoor dining shall be permitted after 9:00 p.m. on weekdays and 10:00 p.m. on Fridays and Saturdays.
- ix. No exterior lighting which unreasonably illuminates beyond the boundaries of the outdoor dining area shall be permitted.
- x. Where the Outdoor Dining area occupies sidewalks, parking areas or other space which is not owned by the applicant or specifically occupied by the applicant pursuant to a written lease agreement, the applicant shall provide a written, signed and notarized consent of the owner of the property or properties upon which an Outdoor Dining Area is proposed to be operated. If the owner(s) of such area are a different party than the applicant, prior to the issuance of the permit, there shall be an agreement executed by the owner and applicant to defend and save harmless the Town of Southeast, its officers and employees against any loss, liability or damages sustained by any person or to any property as a result of the operation of the Outdoor Dining Area, together with a certificate of insurance issued to both the owner and tenant as insureds and naming the Town, its officers, and employees as additional insureds, in the minimum amount of \$1,000,000 single-limit general liability coverage approved by the Town Attorney.
- xi. For restaurant operations on a public or private sidewalk, or public right-of-way -
 - (a) Sidewalks fronting the entire property must be in good condition, without violations or illegal encroachments.
 - (b) No permanent structures may be affixed to the sidewalk area used for the Outdoor Dining Area and the area may only be occupied by chairs, tables, benches, umbrellas and planters for the convenience of the patrons. However, the sidewalk area used for the outdoor dining must be marked off and the boundaries of the approved areas clearly delineated by railings, ropes, plants or similar enclosures.

(c) Sidewalk clearances must always be sufficient to ensure a pedestrian path free of obstructions. There must be a minimum clearance of four feet from the curb to the sidewalk area used for the Outdoor Dining Area.

xii. For restaurant operations in parking lots -

(a) The parking lot area used for the outdoor dining must be marked off and the boundaries of the approved areas clearly delineated by railings, ropes, planters or similar enclosures.

(b) The dining area must be a safe distance from parked vehicles and vehicular traffic. Distance should be indicated on the floor plan diagram submitted herewith.

(c) Walkway clearances must always be sufficient to ensure an accessible path free of obstructions.

(d) In shared parking lots (i.e. a shopping center), hours of operation shall be approved by the landlord and shall be based on the current tenant mix but shall not exceed the hours of operation limit set by section (3)(viii) above.

(4) Insurance requirements. Every business must secure and maintain throughout the term of the Temporary Outdoor Dining Permit liability insurance issued by a company duly authorized to do business in the State of New York, insuring the business and the Town of Southeast and to hold them harmless from and against any claim, injury, or damage caused or alleged to be caused by or as a result of the construction, operation or use of the outdoor dining area and any structure hereby authorized in the following minimum amounts:

- i. For bodily injury, including death, in the minimum amount of \$100,000 for any one person and the minimum amount of \$300,000 for any one accident; and
- ii. For property damage in the minimum amount of \$25,000. Failure to maintain insurance coverage in the foregoing amounts shall cause the immediate revocation of the permit.
- iii. The permit to operate outdoor dining shall be immediately revoked if the holder of such license fails to maintain the insurance coverage required pursuant to this subsection of the section, except that such license may be reinstated if such holder presents proof satisfactory to the Town Attorney that the required insurance coverage is in full force and effect.

5. Modification / Suspension / Revocation. The Town, through its Code Enforcement and Building Inspector shall have the right, upon inspection of the permit application or the Outdoor Dining Area, to require modifications of the outdoor dining facility and/or to terminate outdoor dining operations if it is determined that such existing conditions present a harm to public health and safety.

SECTION 3. VALIDITY

The invalidity of any word, section, clause, paragraph, sentence, part, provision of this Local Law shall not affect the validity of any other part of this Local Law that shall be given effect without such invalid part or parts.

SECTION 4 EFFECTIVE DATE

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

~~5. (City local law concerning Charter revision proposed by petition.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 _____, became operative.~~

~~6. (County local law concerning adoption of Charter.)~~

~~I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20 _____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.~~

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1 above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: Musica Stancati