

LOCAL LAW No. \_\_\_ of 2022

Introductory No. \_\_\_ of 2022

A LOCAL LAW amending Chapter 255 (Zoning) Article XI (Uses and Dimensions) to amend "Outdoor dining at restaurants" providing for an Administrative Permit for the transfer of indoor restaurant dining seating to outdoor seating.

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

**SECTION 1.** Town Code Amended.

A. Chapter 200 {Downtown Montauk Outdoor Right-of-Way Dining Pilot Program" is repealed in its entirety.

B. Chapter 255 (Zoning) Article XI, (Uses and Dimensions) Section 255-11-88 (Additional rules for particular principal and accessory uses), "Outdoor Dining at Restaurants" is hereby amended as follows:

***\*Amendments are represented by Italicized, bold text.***

255-11-88. Additional rules for particular principal and accessory uses.

**OUTDOOR DINING AT RESTAURANTS, *AND TAKE-OUT FOOD STORES***

A. Outdoor Dining at Restaurants.

(1) Outdoor dining at restaurants pursuant to site plan review. Outdoor dining may be allowed at a legally existing restaurant by site plan review pursuant to § 255-6-30B. In such case outdoor dining need not be limited to 30% of the approved indoor seating but is limited by the property owner's compliance with any increases in site parking requirements which are necessitated by the additional seating, by total coverage limitations or setback requirements applicable to the outdoor dining area, or by the requirement for approval of the wastewater disposal system by the Suffolk County Department of Health Services. When approval for outdoor dining is allowed pursuant to site plan review, reduction of indoor dining is not necessarily required, but a seating plan for both indoor and outdoor seating must be filed with the Planning Board. Outdoor dining, as a use, is limited to the service of restaurant food and beverages incidental to the service of food.

(2) Outdoor dining at restaurants with Fire Marshal approval. The Fire Marshal may approve the transfer of up to 30% of a restaurant's indoor dining capacity to an outdoor dining area under this Subdivision (2). The Fire Marshal may only approve outdoor dining for restaurants that are

legally existing. Outdoor dining, as a use, is limited to the service of restaurant food and beverages incidental to the service of food. Outdoor dining is allowed by permission of the Fire Marshal without additional site plan review only if the following conditions are met:

(a) Outdoor seating is limited to 30% of the approved indoor seating capacity (number of seats), with the indoor seating capacity reduced by the outdoor seating so that the total approved seating remains the seating capacity allowed by the site plan or, if no site plan exists, the seating capacity determined by the Fire Marshal as part of the restaurant's place of assembly permit pursuant to § 141-9D(19).

(b) A seating plan for both indoor and outdoor seating must be filed with the Fire Marshal as part of the restaurant's place of assembly permit pursuant to § 141-9D(19), and the Fire Marshal must approve the location of the outdoor seating as consistent with health and safety concerns addressed in the Town Code as well as the New York State Uniform Fire Prevention and Building Code as defined by New York State Codes, Rules and Regulations Title 19, Section 1219.1.

(3) Outdoor dining at restaurants with Planning Department approval, as a Pilot Program ("Transfer of Outdoor Dining Area Administrative Permit").

(a) General rules. Restaurants may transfer some or all of their legally existing indoor dining area to outdoor space, in accordance with a renewable annual administrative permit issued by the Planning Department (hereinafter, "Department") pursuant to this Subdivision. This permit shall be known as the Transfer of Outdoor Dining Area Administrative Permit. As allowed hereunder, outdoor dining is limited only to tables and chairs for the service of restaurant food and beverages incidental to the service of food, and for passageway between those tables and chairs. Structural improvements shall be limited to relatively removable improvements such as gravel, flagstone, or other ground surfacing materials which do not have concrete footings.

(b) Procedure. The Planning Department shall be responsible for the issuance of a renewable Transfer of Outdoor Dining Area Administrative Permit upon application made to the Department on the appropriate form.

[1] The proposed outdoor dining area shall be clearly depicted on a survey or site plan (based on a survey) such that the boundaries of the outdoor dining area can be clearly delineated and such that all other features (e.g., landscaping) are properly and clearly shown and/or described. Seating plans shall be consistent with approved occupancy limits, shall indicate required egress, and shall be clearly marked or labeled as to the circumstances under which such plan will be utilized.

[2] There shall be no reduction or displacement of off-street parking required for the existing restaurant use.

[3] Health and safety. The Department shall consult with the Fire Marshal for confirmation that the applicant's proposed outdoor seating area meets Town, County, and State health and safety requirements as well as the requirements of the New York State Uniform Fire Prevention and Building Code as defined by New York State Codes, Rules and Regulations Title 19, § 1219.1 or any successor regulation.

[4] Lighting. An applicant for a Transfer of Outdoor Dining Area Administrative Permit shall also submit to the Planning Department an application for Administrative Lighting Permit under § 255-1-84 of this Chapter. The Department shall review the applicant's application and lighting plan in order to ensure that they comply with the provisions of § 255-1-80, et seq., of the Town Code and. A non-compliant lighting plan shall be grounds for disapproving the requested Transfer of Dining Area permit.

[5] Building Permit. A building permit shall be issued prior to implementation of an approved transfer of indoor restaurant seating to an outdoor dining area.

(c) Nature of permit. The Transfer of Outdoor Dining Area Permit issued pursuant to this subsection shall be deemed an administrative permit, temporary in nature, in which no permanent or vested rights accrue to the applicant. This permit must be renewed annually, upon application for renewal submitted to the Planning Department. For so long as this permit process is authorized in the Town Code, the Planning Department shall grant each annual renewal request unless the applicant has failed to meet one or more conditions of the original approval or a prior renewal.

[1] Expiration of permit. Upon the expiration of an administrative permit issued pursuant to this subsection, or the cancellation of this permit process by amendment to the Town Code, an applicant can only retain any changes made to its restaurant use hereunder by applying for and obtaining site plan approval from the Planning Board pursuant to Article XI hereof. ***This Pilot Program shall expire 12/31/2024 unless extended by the Town Board.***

(d) Standards of review. The transfer of indoor dining area at restaurants to on-premises outdoor space is allowed by administrative permit under this Subdivision (3), and without the necessity of site plan review under Article VI hereof, only if the following conditions and requirements are met:

[1] Limitation of Use to Dining.

(i) Only indoor restaurant dining area, which is that existing space used for serving food and incidental beverages to seated patrons, may be transferred to outdoor space pursuant to this Subdivision.

(ii) No outdoor food preparation is permitted in the outdoor space.

(iii) No bar use is permitted in the outdoor space.

(iv) No new use may be introduced into the previously utilized indoor space without site plan approval, although vacated space may be used to facilitate take-out food service.

(v) No features or conditions of a previously approved site plan, such as required landscaping or designated parking areas, may be removed, changed, or altered to create new outdoor dining space under this subsection. Only conversions of outdoor space to dining use that are not in conflict with an approved site plan for the property or, if a preexisting restaurant use, with the historic preexisting use as determined by the Building Inspector, may be made without site plan approval pursuant to Article VI of this chapter.

(e) Occupancy that May be Transferred.

[1] The transfer of indoor restaurant dining area to an outdoor space pursuant to this Subdivision may be seasonal or weather related.

[2] The combined occupancy of patrons, indoor and outdoor, may not exceed 100% of the preexisting approved indoor seating capacity (number of seats) without site plan review pursuant to Article VI hereof. Approved indoor seating capacity is determined by site plan or, if no site plan exists, by the seating capacity - for indoor dining, and not bar use - as determined by the Fire Marshal.

[3] In the following zoning or zoning overlay districts the maximum percentage of approved indoor seating capacity that may be transferred from indoors to outdoors is 100% - Central Business, Waterfront, Recreational Overlay, Resort, Commercial Industrial and Commercial Service. In all other zoning or zoning overlay districts the maximum percentage of approved indoor seating capacity that may be transferred from indoors to outdoors is 75% - Neighborhood Business, and Limited Business Overlay.

[4] Notwithstanding the foregoing, restaurants which are preexisting non-conforming uses in a residential use district are not eligible for the issuance of a Transfer of Outdoor Dining Area Administrative Permit hereunder.

(f) Location and Configuration of Outdoor Dining Space.

[1] The outdoor dining area utilized under this Subdivision (3) may be on the same property as is occupied by the legal restaurant use, or, ***if the restaurant is permitted or specially permitted in the zoning district in which it is located, and if the adjoining property also permits or specially permits a restaurant use***, it may be on adjoining private property owned by a different person (e.g., an adjoining alleyway) and which private property is situated in a use district where restaurants are a permitted or specially-permitted use, or it may be on property within an East Hampton Town or New York State road right-of-way. However, if the outdoor dining space will not be on the applicant's property the applicant

must furnish the Department with written permission from the actual owner of the land on which the transferred outdoor dining is to be placed. If that land is privately owned, the Department shall consult with the Town Fire Marshal and must find and determine that use of adjoining private property for the proposed outdoor dining will not unreasonably restrict vehicular or pedestrian traffic or unduly jeopardize the safety and well-being of the proposed occupants of the space. If the land proposed for outdoor dining is owned by the Town or State the Planning Department does not have to make any additional findings. The use of private property or government property for transferred outdoor dining shall not obviate any limitations or requirements imposed hereby.

[2] Such space must be configured such that the noise, light, and other effects generated by the outdoor dining use will be reasonably screened from adjacent properties. To this end, the Department may require fencing, landscape screening, and other noise attenuation measures as a condition of any permit.

[3] Each and every outdoor dining area allowed under this Subdivision (3) must be compliant with the Americans With Disabilities Act (ADA) and shall meet ADA requirements for accessibility. The Department may refer an application hereunder to the Fire Marshal or Building Inspector in order to ensure it meets ADA standards.

(g) Hours of Outdoor Use.

[1] Utilization of any outdoor dining space approved under this Subdivision (3) shall be limited to the hours between 8:00 AM and 11:00 PM daily.

[2] Music in outdoor dining spaces approved hereunder shall be allowed only with a valid Music Entertainment Permit issued pursuant to Chapter 117 of the Town Code.

[3] All amplified music in outdoor dining spaces approved hereunder shall limited to the hours between 1:00 PM and 9:00 PM daily, unless part of a catered affair for which a Special Event Permit has been issued pursuant to Chapter 151 of the Town Code.

[4] All music and noise levels must comply with Chapter 185 of the Town Code, which lowers allowable decibel levels between the hours of 7:00 PM and 7:00 AM.

(h) Lighting. Applicants that want or need outdoor lighting in connection with a Transfer of Outdoor Dining Area permit shall apply for an administrative lighting permit pursuant to § 255-1-84 hereof. See Subparagraph (3) (b) [4] above. ***Any lighting granted by way of an Administrative Permit shall be turned off no later than 12 midnight each night.***

(i) Heating. The use of outdoor heating devices must be fully compliant with the New York State Uniform Fire Prevention and Building Code as defined by New York State Codes, Rules and Regulations Title 19, Section 1219.1, or any successor regulation. The

use of such devices must be approved by the Fire Marshal, and the placement thereof must be included on all submitted seating plans that may include heating device use.

(j) Umbrellas. Umbrellas may be placed over tables in the outdoor dining area. Any such umbrellas must be shown on the submitted seating plans for an outdoor dining area.

(k) Tents. Areas approved for outdoor dining under this permit may utilize one or more “temporary tents,” **erected for a period of two-weeks or less**, provided that a permit for any such tents is first obtained from the Fire Marshal in accordance with the provisions of Chapter 141 of the Town Code. **Tents to be erected for more than a two-week period require a building permit issued by the Building Inspector and Site Plan approval.**

## **B. Take-Out Food Stores.**

### **OUTDOOR SEATING AT TAKE-OUT FOOD STORES**

1. **A qualifying take-out food store as defined in Section 255-1-20 of this Code shall be permitted seating of up to 16 seats on premises, which may be located inside or outside the premises, or a combination thereof, for their patrons to consume take-out food at their establishment. Such seating shall be located subject to all provisions of the New York State Building and Fire Code and in a manner which does not block pedestrian or vehicular traffic or parking.**

(a). **A qualifying take-out food store is a property which is deemed to legally operate as a take-out food store as evidenced by a valid certificate of occupancy which includes a permitted use of the property as a take-out food store, or which has otherwise been determined by the Building Inspector to include such use.**

(b). **In the event that seating is proposed to be placed, in whole or part in an adjoining public right-of-way directly adjacent to the premises, and such public rights-of-way can accommodate such seating safely, an Administrative Permit shall be required, which shall be issued by the Town Planning Department, subject to the following:**

(i). **Permission of the public right-of-way landowner must be obtained**

(ii). **No table service dining shall be permitted at a take-out food store.**

2. **Application and issuance of administrative permit:**

(a). **Applications for an administrative permit for seating utilizing a public right or way may be obtained from the Office of the Town Planning Department. The permit application shall require the following information, and such other information, if**

*requested by the Planning Department, as may be reasonably required to review the application:*

- (i). name of property owner; name of tenant;*
- (ii.) name of business;*
- (iii). copy of certificate of occupancy;*
- (iv). copy of most recent survey;*
- (v). description and sketch of the outdoor seating area(s), within the rights-of way.*
- (vi). a certificate of insurance that evidences a public liability insurance policy covering the Town as an additional insured in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 aggregate together with an indemnification agreement on the form prescribed by the Town.*
- (vii). the required permit fee, as established and/or amended by Resolution of the Town Board, if any.*

*(b). The administrative permit for outdoor seating within a public right-of-way issued pursuant to this provision shall be valid for the balance of the calendar year in which it is granted, expiring 12/31 of each year. Permits shall be renewable annually for the duration of this pilot program. The Planning Department shall grant each annual renewal request unless the applicant has failed to meet one or more conditions of the original approval or a prior renewal. This Pilot Program shall expire 12/31/2024 unless extended by the Town Board.*

**SECTION 2.** Authority.

The proposed local law is enacted pursuant to Municipal Home Rule Law §10(1)(ii)(d)(3) and Town Law §261.

**SECTION 3.** Severability.

If any section of subsection, paragraph, clause, phrase or provision of this law shall be adjudged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provisions so adjudged to be invalid or unconstitutional.

**SECTION 4.** Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State pursuant to Municipal Home Rule Law.

Dated: June 21, 2022

BY ORDER OF THE TOWN BOARD  
TOWN OF EAST HAMPTON  
CAROLE A. BRENNAN  
TOWN CLERK

DRAFT