

Local Law of 2020

Local Law Filing

**NEW YORK STATE DEPARTMENT OF STATE
41 State Street, Albany NY 12231**

**VILLAGE OF Flower Hill
Proposed Local Law H of the Year 2020**

A Local Law adding a new Chapter 241 to the Village Code of the Incorporated Village of Flower Hill entitled “Temporary Waiver of Certain Requirements Under Chapter 240 Prior to the Issuance of Special Exception Permits for Outdoor On-Site Seating at Restaurants and Bars” as follows:

Be it enacted by the Board of Trustees of the Incorporated Village of Flower Hill, New York as follows:

Section 1. Intent:

- A. The Board of Trustees (Board) recognizes the ongoing health concerns created by the pending health crisis within the State of New York as a result of the COVID-19 pandemic. The Board is also aware of efforts being made at the State level as expressed through a series of Executive Orders issued by the Governor to grapple with the health crisis and bring the citizens of the State through it in safety. The Village supports these efforts and wants to ensure that the Village moves ahead in accord with the intent found in the Executive Orders.

Toward that end the Board has become aware of the Governor's recent Executive Order 202.38 under which on-site outdoor dining is to be permitted at restaurants and bars in accord with the pertinent portion of the Executive Order which follows below:

Upon the resumption of on-premises outdoor service of food and beverages at the licensed premises of restaurants and bars, to facilitate compliance with social distancing requirements in connection with such service, notwithstanding any provision of the Alcoholic Beverage Control law, restaurants or bars in the state of New York shall be permitted to expand the premises licensed by the State Liquor Authority to use (a) contiguous public space (for example, sidewalks or closed streets) and/or (b) otherwise unlicensed contiguous private space under the control of such restaurant or bar, subject to reasonable limitations and procedures set by the Chairman of the State Liquor Authority and, with respect to (a) the use of public space, subject to the reasonable approval of the local municipality, and all subject to the guidance promulgated by the Department of Health.

However, the Board is also aware that in the Village Code, commercial applications-- including an application for outdoor seating-- are subject to site plan review by the Board of Trustees, and would require approval after a public hearing. As the code likely never considered a situation of temporary outdoor seating during a pandemic applying this process would take weeks preventing residents and businesses from being able to benefit from this type of operation. The relevant portions of the Code follow:

§ 240-15 Business District.

[Amended 4-3-1972; 12-2-1975 by L.L. No. 2-1975; 12-5-1983 by L.L. No. 3-1983; 11-7-1991 by L.L. No. 12-1991; 7-6-1992 by L.L. No. 6-1992]

A. Permitted uses. No building or structure shall be erected, altered, used or maintained and no lot or premises shall be used except for the following purposes. All commercial applications shall be subject to site plan review by the Board of Trustees. Once an approval of a site plan review or a special exception use has been granted by the Board of Trustees after a public hearing, construction must begin within six months of the date of approval or the approval may be revoked at the discretion of the Board of Trustees following a notice of hearing....

C. Supplementary use provisions.

(1) Operations indoors. All uses shall be conducted entirely within an enclosed building, except where specifically permitted by special exception pursuant to Use 8.

It is the intention of this Board to allow local restaurants to begin to function more fully and arrange for outdoor seating. In order to facilitate doing so on a more immediate basis in accord with the determinations of the above-mentioned Executive Order it is the Board's belief that the best interest of the Village will be met by temporarily waiving the site plan review and public hearing requirements under section 240 – 15 as identified above.

Nonetheless, the Board believes that it remains essential that any establishment providing for outdoor seating does so in a fashion that also maintains the safety of the Village of residents. Therefore, while the within Local Law will temporarily waive the requirements of site plan review and a public hearing prior to the issuance of a permit for outdoor seating, alternative requirements will be in place prior to the issuance of any temporary permit so that safety and the best interest of the Village residents will be maintained.

Section 2. Temporary waiver of section 240-15 to the extent it requires site plan review and a public hearing before the Board of Trustees prior to the issuance of a permit for outdoor on-site seating at restaurants and bars.

A. The requirements under section 240-15 as identified above which require a site plan review and public hearing before the Board of Trustees before the issuance of a permit for outdoor on-site seating at a restaurant or bar are hereby temporarily waived.

Section 3. Temporary regulations to be observed by any restaurant or bar before the issuance of a temporary permit for outdoor on-site seating at a restaurant or bar.

- A. Any commercial establishment that will have outdoor seating will submit a proposed plan to the Building Inspector for his review and approval;
- B. Any such establishment must comply with all other applicable codes and rules, including those of the New York State and Nassau County Department of Health;
- C. Any permit issued will be temporary and renewable every two weeks;
- D. The Village may revoke the permit at any time;
- E. Any grant must be accompanied by the establishment providing documentation that the Village is added as an additional insured on its policy;
- F. The Village will notify adjacent residential homeowners of the temporary permit request.

Section 4. Power of the Board to vacate or modify by resolution.

- A. The Board may vacate any, or all of the above requirements at such time as it deems appropriate by resolution.
- B. The Board may amend any, or all of the above requirements at such time as it deems appropriate by resolution.

Section 5. Severability.

If any clause, sentence, paragraph, section, word or part of this chapter is adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder of this chapter but shall be confined in its operation to the clause, sentence, paragraph, section, word or part of this chapter directly involved in the controversy in which judgment is rendered.

Section 6. Exercise of supersession authority. The Village hereby exercises the power of supersession granted to it pursuant to Municipal Home Rule Law 10(1)(ii)(e)(3) with respect to the within local law and hereby supersedes Village Law section 7-706(2) to the extent it requires notice for publication other than has been, or will be, provided as to the within local law.

Section 4. Effective Date. This law shall take effect immediately.

Final adoption by the Board of Trustees of the Incorporated Village of Flower Hill.

I hereby certify that the local law annexed hereto, designated as Local Law of 2019 of the Village of Flower Hill was duly passed by the Board of Trustees on , in accordance with the applicable provisions of law.

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 thereof and of the whole of such original local law, and was finally adopted by the Board of Trustees of the Incorporated Village of Flower Hill

RONNIE SHATZKAMER
VILLAGE ADMINISTRATOR
Village of Flower Hill
Date: June , 2020

Seal

Certification by the Village Attorney

STATE OF NEW YORK
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Leventhal, Mullaney & Blinkoff, LLP
By Jeffrey Blinkoff
Village Attorney
Village of Flower Hill
Date: June 25, 2019