

AN ORDINANCE TO AMEND SECTION 136-33 ARTICLE IV OF CHAPTER 136 OF THE CODE OF THE CITY OF SARATOGA SPRINGS, NY, ENTITLED “LODGING AND EATING AND DRINKING ESTABLISHMENTS – ARTICLE IVA - TEMPORARY OUTDOOR SEATING AREA PERMITS ”

BE IT ORDAINED by the City Council of the City of Saratoga Springs, NY, as follows:

SECTION 1. Article IVA of Chapter 136 of the Code of the City of Saratoga Springs, entitled “Lodging and Eating and Drinking Establishments”- Temporary Outdoor Seating Area Permits” is hereby amended to read (new material underlined, old material in brackets):

ARTICLE IVA
TEMPORARY OUTDOOR SEATING AREA PERMITS

136-33. 1 Purpose and Intent

The [recent] ongoing COVID-19 pandemic has caused countless unforeseeable difficulties in municipalities across our nation. It is in the public interest at this time for every municipality to make reasonable accommodations and allowances for persons and businesses who have received municipal licenses, particularly when the licensed activities provide services to the public. This article establishes rules and regulations under which the holder of a valid license for an eating and drinking establishment under Article II of this Chapter may apply for a permit to use, for a temporary period of time as stated herein, certain specified public property of the City of Saratoga Springs as a temporary outdoor seating area for said eating and drinking establishment.

136-33. 2 Construction with other laws

The rules and regulations established in this article shall be in addition to and not in limitation of the other articles in this chapter. If any rule or regulation in this article shall be in conflict with any other rule or regulation elsewhere in this chapter, as said rules or regulations may be applicable to a temporary outdoor seating area permit as herein described, the rules and regulations of this article shall have priority.

136-33. 3 Establishment of temporary outdoor seating areas

The City Council hereby designates [the Battalion Chief of the Fire Department, the Director of Risk and Safety, and the Department of Public Works Business Manager] the Commissioner of Accounts, with the advice and consent of the Commissioner of Public Works as the officials who together shall have authority to establish areas of public property, including but not limited to sidewalks, for use by licensed eating and

drinking establishments as temporary outdoor seating areas. Temporary outdoor seating areas shall operate in compliance with the New York State Uniform Codes, the Americans with Disabilities Act, and the applicable provisions of the Code of the City of Saratoga Springs.

136-33.4 Application for permit

Any person or legal entity who is the holder of a valid license for an eating and drinking establishment issued pursuant to Article II of this chapter may make application to operate a temporary outdoor seating area, in connection with said eating and drinking establishment. The application shall be in writing on forms provided by the Department of Accounts, and shall contain the following:

- A. Name, physical address, mailing address, email address, and telephone number of the eating and drinking establishment.
- B. Name, physical address, mailing address, email address, and telephone number of the applicant.
- C. An accurate drawing showing the location, dimensions, and barriers of the temporary outdoor seating area requested, location of tables, location of seats, distance between tables and seats, aisles, entrances and exits, and location and specification of emergency fire equipment.
- D. A narrative summary of the services to be provided.
- E. Verification of any required submission to the State Liquor Authority for the expanded area, including but not limited to a supervision and control plan.
- F. Proof of insurance as set forth in 136-33.6

136.33.5 Review of Applications

Applications shall be submitted to the Department of Accounts for review. Upon receipt, the Department of Accounts shall refer the application to [the Department of Public Safety, The Department of Public Works, and the Office of Risk and Safety] the Committee on Outdoor Dining for comments and recommendations. The Committee on Outdoor Dining shall be constituted by the following members: The Battalion Chief of the Fire Department, the Director of Risk and Safety, and the Department of Public Works Business Manager, a representative from the Mayor's Office, and a representative from the Finance Department. The Department of Accounts may then issue a permit, conditioned upon such reasonable limitations and requirements as it may deem necessary in the interest of public health, safety and welfare. [Final approval of permits shall be authorized by the City Council upon motion and vote.]

136-33.6 Insurance and Indemnification

No permit shall be issued until the following insurance has been provided therefor:

- A. A certificate of insurance for commercial general liability insurance, including personal injury liability insurance, in the amount of \$1,000,000

per occurrence and \$2,000,000 aggregate, naming the City of Saratoga Springs as an additional insured on a primary and non-contributory basis. The City of Saratoga Springs must be listed as the certificate holder with the physical address of Office of Risk and Safety, 474 Broadway, Saratoga Springs, NY 12866.

- B. Proof of New York State statutory workers' compensation and employer's liability insurance for all employees.
- C. If alcoholic beverages are consumed in the temporary outdoor seating area, A certificate of insurance for liquor legal liability insurance in the amount of \$1,000,000 bodily injury and property damage per each occurrence. Such insurance must contain a provision that the Commissioner of Accounts of the City of Saratoga Springs be notified if the policy is cancelled or if there has been a material change in coverage and/or conditions. The City of Saratoga Springs must be listed as the certificate holder with the physical address of Office of Risk and Safety, 474 Broadway, Saratoga Springs, NY 12866.
- D. The certificate of insurance must name the City of Saratoga Springs as an additional insured on a primary and non-contributory basis and [should] shall be addressed to the attention of:

Department of Accounts
City of Saratoga Springs
474 Broadway
Saratoga Springs, NY 12866
Attention: City Clerk's Office

- E. The permit holder shall acknowledge that failure to obtain such insurance on behalf of the municipality constitutes a material breach of the contract and subjects the permit holder to liability for damages, indemnification and all other legal remedies to the City of Saratoga Springs. The permit holder shall provide the City with a certificate of Insurance naming the City as an additional insured on a primary and non-contributory basis prior to the issuance of any permit under this article. The failure to object to the contents of the certificate of insurance or the absence of same shall not be deemed a waiver of any and all rights held by the municipality.
- F. The permit holder shall indemnify and save harmless the City of Saratoga Springs, its agents and employees (hereinafter referred to as "City") from and against all claims, damages, losses and expenses (including, but not limited to, attorneys' fees) arising out of or resulting from the permitted activity, sustained by any person or persons, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to any injury or destruction of property caused by the tortuous act or negligent act or omission of the permit holder or the permit holder's employees, agents or subcontractors.

136-33.7 Regulations

A temporary outdoor seating area permitted under this article shall be subject to the following regulations:

- A. The permit holder shall accept the temporary outdoor seating area as is, and shall maintain the area and keep it clean and free of debris [, decoration] and impediments
- B. The permit holder shall clean up and dispose of all garbage and debris throughout the use of the allocated space and at the end of each business day.
- C. The permit holder shall immediately notify the City of any defects or deficiencies in the surface of the temporary outdoor seating area and adjacent curbs and walkways.
- D. Alcoholic beverages shall be served only during the hours allowed by the license for the eating and drinking establishment.
- E. All persons must vacate the temporary outdoor seating area no later than the close of business each evening, and, if so required by the terms of the permit, all furniture, barriers, utensils, and other material and equipment used for the temporary outdoor seating area must be removed from the area or properly secured no later than the close of business each evening.
- F. [At the end of the season] Upon expiration of the permit, all elements of a temporary outdoor seating area shall be removed and the area shall be returned to its original state.
- G. No music from any source shall be played at any time.
- H. No smoking shall be allowed at any time.
- I. Copies of all certificates held by the permit holder from the New York State Department of Health, The New York State Liquor Authority, and the City of Saratoga Springs shall be prominently displayed in the seating area.

136-33.8 Status of Permit; revocation

A permit issued pursuant to this article shall constitute a revocable license to temporarily occupy a designated area of public property during a period of emergency. It confers no vested rights of any kind and it may be revoked at any time upon action of the City Council repealing this article or upon a finding of the designated permit issuing official, after due process, for any of the following reasons:

- A. That the permit holder has violated any provision of this article or this chapter.
- B. That the permit holder has violated any provision of the New York State Building and Fire Codes.
- C. That the permit holder has not maintained required insurance.
- D. That the permit holder has not complied with an imposed requirement, condition, or regulation.

- E. Any other conduct which evidences the inability of the permit holder to safely occupy the temporary outdoor seating area.
- F. That, regardless of any conduct on the part of the permit holder, the temporary outdoor seating area cannot be safely occupied.

136-33.9 Duration of Permit; Duration of Article

[All permits issued under this article shall expire at midnight on September 7, 2020, except that such date may be extended from time to time by resolution of the City Council.]

A. All permits issued under this article shall expire at midnight on November 1 in the year the permit is issued.

B. This article shall remain in effect until midnight on November 1, 2024, except that such date may be extended from time to time by resolution of the City Council.

136.33.10 Fees

[There shall be no fee for each permit issued under this article] A schedule of fees shall be developed prior to each season. Such schedule shall be adopted by resolution of the City Council.

136-33.10 When Effective

This article shall take effect immediately upon enactment by the City Council.

SECTION 2. This Ordinance shall take effect the day after publication as provided by the City Charter of the City of Saratoga Springs, NY.

ADOPTED: 3/15/2022

VOTE: 4 - 0

CITY COUNCIL OF THE CITY OF
SARATOGA SPRINGS, NEW YORK

By: Dillon Moran, City Clerk