

**CODE OF THE VILLAGE/TOWN OF MOUNT KISCO, NEW YORK, v78 Updated  
10-01-2005 / PART II GENERAL LEGISLATION / Chapter 93, STREETS AND  
SIDEWALKS / ARTICLE I, General Regulations [Adopted 4-2-1962 as Ch. 14, Art.  
I, of the 1962 Code] / § 93-4. Sidewalk sales and displays and sidewalk cafes. EN  
[Amended 7-15-1991 by L.L. No. 8-1991]**

§ 93-4. Sidewalk sales and displays and sidewalk cafes. <sup>EN(1)</sup> [Amended 7-15-1991 by L.L. No. 8-1991]

A. Generally. No person shall engage in the selling or display for sale of merchandise of any kind on, over or upon any sidewalk or in the operation of a sidewalk cafe or outdoor dining area except upon the granting of a permit pursuant to this section therefor and in accordance with the terms and conditions of this section. [Amended 9-20-1993 by L.L. No. 8-1993]

B. Definitions. For purposes of this section, the following terms shall have the following meanings: [Amended 9-20-1993 by L.L. No. 8-1993]

**OUTDOOR DINING AREA** -- A restaurant, cafe or other for-profit dining facility located outside of any building.

**PERMITTING AUTHORITY** -- The board or official of the Village/Town of Mount Kisco authorized to issue a license or permit pursuant to this section.

**PUBLIC SERVICE FACILITY** -- A public telephone, mailbox, bench or other facility provided for the use of the general public.

**SIDEWALK** -- Any area between the curblin and a structure, whether publicly or privately owned, which is used by the public or open to use by the public for pedestrian purposes.

**SIDEWALK CAFE** -- An outdoor dining area located on a sidewalk.

C. Sidewalk displays. The Village Manager is hereby authorized to grant revocable licenses for the use of the sidewalk for the display for sale of flowers, floral arrangements and ornamental shrubbery upon the following terms and conditions:

- (1) The license shall be valid only during a single calendar year and shall permit the regulated activity only during the period from April 1 to September 30 of such year.
- (2) The licensed activity shall be conducted only as an accessory to a business establishment lawfully operating on the first floor of premises in the CB-1 or CB-2 Zoning District, on the sidewalk in front of the principal place of business of such establishment and by the entity which operates such establishment. All sales shall be conducted within such

- establishment. No cash register or other facility for the exchange of currency or otherwise receiving payment for goods and services shall be permitted on the sidewalk.
- (3) The applicant shall have the consent of the owner and lessee, if any, of the premises in front of which the licensed activity is to be conducted.
  - (4) There shall be no less than 10 feet from the curbline to the front of the nearest structure.
  - (5) No sidewalk display shall be nearer than seven feet to the curb, except that if the sidewalk is 24 feet or more in width, then the distance from the curb shall be not less than one-third (1/3) of the width of the sidewalk.
  - (6) The applicant shall at all times maintain free and clear from all obstruction an aisle not less than four feet in width providing access to any establishment fronting on said sidewalk.
  - (7) No permanent structure may be affixed to the sidewalk or any building. The applicant shall be responsible for any damage caused to any sidewalk or public property.
  - (8) The sidewalk use shall not interfere with access to any public service facility.
  - (9) No outdoor lighting or live or mechanical music shall be permitted.
  - (10) No sidewalk display shall be permitted after 9:00 p.m. or when the entity with which it is associated is not open to the public.
  - (11) The applicant shall agree, on a form approved by the Village Attorney, to indemnify and save harmless the Village/Town of Mount Kisco, its officers, agents, attorneys and employees, from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the sidewalk use.
  - (12) The applicant shall obtain and maintain in full force and effect throughout the term of the license a policy of general liability insurance, which such policy shall name the Village/Town of Mount Kisco, its officers, agents, attorneys and employees as additional insureds, have a combined single limit of not less than \$1,000,000 and contain a provision prohibiting its cancellation except upon 20 days' notice to the Village/Town of Mount Kisco. The applicant shall file with the Village Manager prior to the issuance of the license a certificate evidencing the requisite insurance.
  - (13) The applicant shall file with the Village Treasurer, prior to the issuance of the license, a cash deposit in the amount of \$500 as security for the faithful performance by the applicant of the terms and conditions of the license. Said deposit shall be maintained by the Village Treasurer in a separate interest-bearing account for the benefit of the applicant and shall be returned to the applicant with interest, but less any administrative

sanctions imposed by the Village Manager pursuant to Subsection H of this section, within 30 days of the termination of the license.

D. Sidewalk cafes and outdoor dining areas. [Amended 9-20-1993 by L.L. No. 8-1993]

(1) Permitting authority.

(a) The Village Manager is hereby authorized to grant revocable permits for the use of the sidewalks in nonresidential zoning districts for sidewalk cafes upon the terms and conditions set forth in Subsection D(2).

(b) The Building Inspector is hereby authorized to grant revocable permits for outdoor dining areas providing seating for 10 customers or fewer on privately owned property in nonresidential zoning districts upon the terms and conditions set forth in Subsection D(2) and renewal permits for outdoor dining areas permitted by the Planning Board pursuant to Subsection (1)(c) hereof, provided that the outdoor dining area is not in violation of any provision of this chapter at the time of such renewal.

(c) The Planning Board is hereby authorized to grant permits for outdoor dining areas on privately owned property in all nonresidential districts, other than the CB-1 and CB-2 Zoning Districts, and for outdoor dining areas in the CB-1 and CB-2 Zoning Districts providing seating for 11 customers or more, subject to the requirements of § 110-46 of this code and upon the terms and conditions set forth in Subsection D(2).

(2) Terms and conditions.

(a) Clear path. There shall be a minimum of six feet of clear distance or 50% of the sidewalk width, whichever is greater, free of all obstructions to allow adequate pedestrian movement. The minimum distance shall be measured from the portion of the sidewalk cafe/outdoor dining frontage which is nearest either the curbline or the nearest obstruction. In the case of an area for which a specific plan or area plan has been adopted, the clear path requirements pursuant to this subsection shall be deemed satisfied if there is not less than a six-foot clear path.

(b) Furnishings. The furnishings of a sidewalk cafe or outdoor dining area shall consist solely of readily removable umbrellas, covers, tables, chairs, seasonal heating, ventilating and air-conditioning (HVAC) units, planters containing live plants, waste receptacles and decorative accessories. The number and location of tables shall comply with the maximum occupancy and aisle width standards for dining facilities set forth in the New York State Uniform Fire Prevention and Building Code. No furnishing or other object may be attached, even in a temporary manner, to the sidewalk or other public property or to any building or structure, and no furnishing or

other object shall extend beyond the area delineated pursuant to Subsection D(2)(f). All furnishings shall be removed from the sidewalk and stored in an approved manner when the sidewalk cafe is not in operation.

- (c) Signage. Signage shall be limited to small, nonilluminated identification signs attached to the physical barrier or base wall of the eating area. Said signage shall not exceed four square feet in area.
- (d) Waste receptacles. The applicant shall maintain a sufficient number of receptacles for the disposal of waste properly covered to prevent infestation by insects and rodents. Such receptacles shall be emptied as often as is necessary, but in no event less than once per day. No structure or enclosure to accommodate the storage of garbage may be erected or placed adjacent to the sidewalk cafe or outdoor dining area.
- (e) Outdoor entertainment. Musical instruments or sound reproduction devices shall not be operated or used within a sidewalk cafe or outdoor dining area for any purpose.
- (f) Delineation of dining area.
  - [1] A sidewalk cafe or outdoor dining area shall be delineated by a removable physical barrier or base wall separating patrons from pedestrian traffic. The delineation and layout of the cafe areas shall be consistent with the plan submitted by the applicant and shall conform to the following requirements:
    - [a] Paneled flower boxes: 24 inches in height.
    - [b] Flower box post and chain: 30 inches in height.
    - [c] Wrought iron fencing: 30 inches in height.
    - [d] Wooden fencing: 30 inches in height.
    - [e] Picket fencing with blunt pickets no wider than 1/2 inch: 30 inches in height.
    - [f] Post and chain: 30 inches in height.
  - [2] For purposes of this subsection, the height of the physical barrier or base wall shall be measured from the finished floor level.
- (g) Accessory use only. No sidewalk cafe or outdoor dining area may be operated except as an accessory to a restaurant or retail food store lawfully operating on the first floor of a premises, abutting the principal place of business of such entity and by the entity which operates the restaurant or retail food store. The number of tables shall not exceed one-third (1/3) of the total number of tables within the premises to which the

sidewalk cafe or outdoor dining area is accessory.

(h) Hours of operation. No sidewalk cafe or outdoor dining area shall operate other than between 7:00 a.m. and 11:00 p.m. or when the entity with which it is associated is not open to the public.

(i) Preparation of food and beverages. All food and beverages to be served at sidewalk cafes or outdoor dining areas shall be prepared within the existing restaurant or retail food store.

(j) Alcoholic beverages. The applicant shall be responsible for obtaining, maintaining in full force and effect and complying with the terms and conditions of any permit which may be required under any other law or regulation for the serving of food and beverages, including alcoholic beverages, at a sidewalk cafe or outdoor dining area.

(k) Operation. Sidewalk cafes and the public property upon which they are located and the surrounding area and outdoor dining areas shall at all times be kept free and clear of litter, debris and any substance that may damage the sidewalk or cause pedestrian injury. A sidewalk cafe or outdoor dining area shall not be used as a waiting area for the restaurant or retail food store to which it is an accessory.

(l) Design guidelines.

[1] All tables and chairs shall be uniform in color, material and style.

[2] All physical barriers shall be uniform in color, material and style. The advertising of products or brands on any portion of the base wall shall be prohibited.

[3] All umbrellas shall be uniform in size, color, material and style.

[4] Table coverings should be consistent in style and color. Fluorescent colors shall not be allowed.

[5] Signage shall be consistent with the architecture and design of the outdoor dining area.

(m) Additional requirements. The applicant for a sidewalk cafe permit shall, in addition to the foregoing, comply with all of the terms and conditions for a sidewalk display license set forth in Subsection C(3), (8), (11), (12) and (13) of this section.

(n) Term. Each permit granted pursuant to this Subsection D shall expire on the 31st day of December in the year in which it is granted.

E. Special sidewalk sales. Anything in this section to the contrary notwithstanding, the Board of

Trustees may permit the selling and display for sale of merchandise on, over or upon the sidewalk at any location within the village for a period not to exceed seven days in conjunction with organized sidewalk sales days open to participation by all retail merchants within the village.

F. Application.

- (1) Application for a license or permit pursuant to this section shall be made on a form designated by the Village Manager and approved by the Village Attorney. [Amended 9-20-1993 by L.L. No. 8-1993]
- (2) The application shall be accompanied by an application fee in the amount set forth in Chapter A112, Fees.

G. Determination on application. The Village Manager shall grant or deny an application for a license pursuant to this section within 60 days of its complete submission.

H. Notice of violation; revocation or suspension of license or permit; imposition of administrative sanctions. Upon a finding by the permitting authority that the licensee or permittee has violated any provision of this section or the terms and conditions of the license or permit or has engaged in any practice in conjunction with the licensed or permitted activity which constitutes a danger to the health or safety of any patron or pedestrian, the permitting authority shall give notice to the licensee or permittee to correct such violation or cease such practice within 24 hours. If the licensee or permittee fails to comply with such notice, the permitting authority may suspend the license for a period not in excess of 30 days, during which time the licensee or permittee shall be entitled to a hearing at which the licensee or permittee may be represented by counsel to present evidence in his behalf and confront the evidence against him. If, upon considering the evidence presented at the hearing, the permitting authority adheres to the finding, the permitting authority may reinstate the license or permit with additional conditions related to the violation or improper practice which has been found or revoke the license or permit and forfeit the licensee's or permittee's cash deposit. In addition to or in substitution for the suspension or revocation of the license or permit, the permitting authority may impose an administrative sanction in an amount determined by the permitting authority to be the cost to the village of the licensee's or permittee's failure to comply with the terms of this section or the license or permit issued pursuant hereto. The suspension, revocation or other action taken pursuant to this subsection shall not relieve the licensee or permittee or any other person from any liability which may be imposed pursuant to § 93-12 of this Article. [Amended 9-20-1993 by L.L. No. 8-1993]

I. Reservation of rights. Neither the adoption of this section nor the granting of any license pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the Village/Town of Mount Kisco concerning its public easement over the streets and sidewalks

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or of any requirement of law concerning the liability of the Village/Town of Mount Kisco with respect to streets and sidewalks, whether express or implied.

**Endnotes**

**1 (Popup - Popup)**

Editor's Note: For related provisions, see Ch. 83, Peddling and Soliciting.