

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 Montgomery

Introductory Local Law No. 3 of the year 2023

**A LOCAL LAW CREATING CHAPTER 79 OF THE VILLAGE OF MONTGOMERY
CODE ENTITLED “OUTDOOR DINING, SEASONAL”**

Be it enacted by the Board of Trustees of the Village of Montgomery as follows:

See attached.

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

VILLAGE OF MONTGOMERY

INTRODUCTORY LOCAL LAW NO. 3 OF 2023

Be it enacted by the Board of Trustees of the Village of Montgomery, in the County of Orange, as follows:

Section 1. Legislative Intent

During the pandemic, New York State allowed existing restaurants to establish outdoor eating areas as a means to continue operating while promoting recommended social distancing and safe health practices. The Board of Trustees believes that allowing restaurants to operate seasonal outdoor eating areas will promote local businesses and encourage both local residents and visitors to the Village to patronize our establishments. As such, the Board of Trustees deems it appropriate to create a new Village Code Chapter 79 entitled “Outdoor Dining, Seasonal” as set forth herein.

Section 2.

Chapter 79 of The Village of Montgomery Code entitled “Outdoor Dining, Seasonal” is hereby created as follows:

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The purpose of this chapter is to establish regulations to allow temporary (seasonal) outdoor dining and to permit same to encroach into the public right-of-way as an accessory component of an adjacent primary business which is located on private property. It is intended that such outdoor dining will not unduly restrict public access or detract from the character and appearance of the surrounding area.

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The following definitions shall apply in the interpretation of this chapter:

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Either a distinct piece of furniture designed to allow one person to sit upon the same, or when seating is provided on a bench or other similar structure, then every 20 inches of seating space shall be considered as the equivalent of one chair or seat for determining seating capacity.

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A temporary use of an adjacent, outside area by a restaurant defined in Section 122-2 of the Village Code for the same eating and drinking activities that occur within the establishment. However, nothing herein shall be construed to preclude curbside delivery or contactless service. The outdoor dining area may be located in a public right-of-way pursuant to this chapter.

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A designated area on the premises of a restaurant or take-out food store, but outside the principal building, and where patrons may sit at tables while consuming food and beverages served by a waiter or waitress or food and beverages purchased from the restaurant or take-out food store.

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A designated area of a public sidewalk or other Village property where patrons may sit at tables while consuming food and beverages ordered from and served by a waiter or waitress or purchased from an adjacent restaurant or take-out food store.

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- A. No person shall operate an outdoor eating area or a sidewalk cafe area unless a permit has been obtained from the Village of Montgomery.
- B. Applicants shall apply for permit approval in accordance with the provisions of this chapter. All such applications shall be approved by the Building Inspector and shall be referred to the Chief of Police and the Fire Inspector, who shall provide the Building Inspector with written reports of their opinions and recommendations regarding the application.
- C. Outdoor dining permits issued pursuant to this chapter shall be valid during the period of April 15 to November 15 of each year, and all equipment used for outdoor dining shall be removed by November 20 of each year.
- D. Applicants shall meet all general ordinance requirements and all other laws, rules, regulations and codes applicable to the proposed activity. Notwithstanding any of the provisions of this Code to the contrary, issuance of a temporary permit granted pursuant to this Chapter shall not trigger the site plan approval requirements of Village Code §122-61.
- E. Notwithstanding the provisions of this Code, granting of this temporary outdoor dining permit does not provide any vested right in outdoor dining. Any permanent or year-round outdoor dining shall be subject to site plan review as required pursuant to the Village Code §122-61.
- F. **Notwithstanding anything contained to the contrary in the Village Code, any local state or federal law or any other permit issued to the applicant, no alcoholic beverages may be sold, served or consumed in any outdoor eating area or sidewalk café area for which a permit is issued under this Chapter.**

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- A. Form. All permits required by this chapter shall be applied for and obtained from the office of the Building Inspector during normal business hours. Applications for such permits shall be in a form approved by the Village Board of Trustees and be accompanied by permit fees in the amounts established by this Chapter.
- B. Content of application. Applicants proposing to establish an outdoor eating area or sidewalk cafe area must provide satisfactory proof to the Building Inspector of the following:

- (1) A plan indicating an architectural barrier, such as floral arrangements, landscaping and/or decorative fencing designed to enclose the eating area and limit the ability of litter to blow off the premises. The Building Inspector shall also require such architectural barriers to litter in any other locations or situations where the Building Inspector finds that the litter would otherwise be likely to result from the temporary accessory use. All other outdoor eating areas and sidewalk cafe areas shall be delineated by a means approved by the Building Inspector.
- (2) An applicant proposing to establish an outdoor eating area or sidewalk cafe area shall submit to the Building Department a layout of the proposed seating areas, which shall include, but not be limited to, a depiction of all aisles, routes of ingress and egress; clearances between tables and between the seating area at the curb; the landscape plan; an illustration, rendering and/or photograph of all proposed furniture, umbrellas, signage and other furniture proposed. No picnic-style tables are permitted.
- (3) Physical design elements inclusive of, but not limited to, architectural barriers, tables, seating, planters and litter containers placed within the outdoor eating area or sidewalk cafe area, shall conform to design criteria established by the Building Department.
- (4) The Building Inspector shall review each application to ensure that the proposed operation of the outdoor eating area or sidewalk cafe area will not interfere with pedestrian or vehicular traffic. Six feet of unobstructed sidewalk should be provided with the exact width being determined by the Building Inspector as he or she deems it to be appropriate to promote pedestrian or vehicular safety or the visual harmony of the neighborhood, however, in no event shall the unobstructed sidewalk be less than six feet.
- (5) The Building Inspector shall require each applicant to submit a litter control plan which shall include, but not be limited to, a description of the number and location of trash receptacles for the areas and the frequency with which the tables, surrounding area and adjacent public and private properties will be policed for litter. Failure to abide by an established litter control plan shall constitute a violation of the permit approval of which it was made a condition and shall subject the applicant to a fine in an amount not less than \$100 per violation.
- (6) The Building Inspector shall establish the hours of operation for each outdoor eating area or sidewalk cafe area which utilizes the right-of-way. In establishing the hours, the Building Inspector shall take into consideration the nature of the restaurant or retail food establishment at issue, the character of the neighborhood adjacent to the premises, and the character and nature of other uses in the vicinity of the premises at varying times of day.
- (7) The seating contained in an outdoor eating area, outdoor dining area or sidewalk cafe area shall not be counted in determining any parking space requirement for a retail food establishment or restaurant use. The seating contained in an outdoor eating area, outdoor dining area, or sidewalk cafe shall be counted as part of the existing seating limitations for the subject parcel. In no event shall the seating contained in an outdoor eating area, outdoor dining area, or sidewalk cafe which utilizes public right-of-way areas result in increased overall seating with respect to the parcel or use.

- (8) All outdoor eating areas and sidewalk cafe areas must be properly maintained at all times, including complying with the litter control plan, complying with all applicable laws, rules, regulations and codes, properly securing and/or removing tables, chairs and other items during times of inclement weather and high wind; further, at no time shall chairs, tables or other items be stacked in the area.

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- A. The annual fee for each year for the operation of an outdoor eating area and/or sidewalk cafe shall be set by resolution by the Board of Trustees.
- B. No fees shall be prorated nor any part thereof refunded for any reason.

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- A. Outdoor dining shall be permitted to encroach into the public right-of-way pursuant to this chapter.
- B. Notwithstanding any provisions of this Code to the contrary, it is the express intent of this Chapter to recognize that curbside delivery, off-site and on-site catering, and outdoor dining shall be treated as customary accessory uses for restaurants and food service establishments. Any structure containing any restaurant use that has an existing certificate of occupancy for such use shall be permitted to have outdoor dining and all accessory uses as set forth hereinabove.
- C. Location.
- (1) Outdoor dining in the public right-of-way shall not extend beyond the boundaries of the primary business property to which such activity is subordinate.
- (2) Outdoor dining may not encroach more than six feet into the public right-of-way.
- (3) Notwithstanding that outdoor dining may extend into the public right-of-way, a clear pedestrian pathway shall be maintained the full width of the property. The pathway shall maintain a minimum unobstructed passageway of six feet as measured from the dining area to any obstruction, including, but not limited to, light standards, benches, street trees and garbage receptacles.
- (4) All tables and chairs and other items used in conjunction with outdoor dining in the public right-of-way shall be removed from the public right-of-way one hour after the time outdoor dining must cease at that particular location.
- (5) Insurance. The permittee shall maintain general liability insurance for the benefit of the Village of a type and amount as determined appropriate by the Board of Trustees. The permittee must also execute an indemnification/defense/release/waiver of liability agreement in favor of the Village, such document to be in a form acceptable to the Village Attorney.

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A. Development standards.

- (1) Facilities and equipment shall be of a quality and style that is consistent with any applicable design standards and policies. The design, quality, materials and colors used for chairs, tables, lighting and other fixtures shall complement the architectural style and colors used on the adjacent buildings.
- (2) Lighting will be required for outdoor dining areas where food will be eaten during the evening hours. All lighting shall be approved by the Building Inspector and shall be temporary in nature. The lighting fixtures must be decorative and complement the architectural character of the building and area. Lights shall not cause direct glare or other visual obstruction to pedestrians or vehicle drivers along the street and public walkway and should illuminate only the sidewalk area.
- (3) Portable umbrellas may be permitted, provided they do not obstruct the public right-of-way or walkway and do not contain advertising.

B. Operational standards.

- (1) The owner and/or tenant of the property is responsible for proper operation of the outdoor dining area. Outdoor dining shall be continuously supervised by management or employees. Any behavior that disturbs customers or passersby on the sidewalk or in the right-of-way will constitute grounds for revocation of any permit(s) to operate an outdoor dining area.
- (2) Establishments are required to maintain all outdoor dining areas and sidewalk cafe areas in a manner which is clean and free of litter and debris.
- (3) All plans and permits for the outdoor dining area approved by the Village must be kept on the premises for public inspection at all times during which the associated establishment is open for business.
- (4) Outdoor dining areas shall be operated in a manner that meets all requirements of the Orange County Health Department and all other applicable laws, rules, regulations, ordinances and standards promulgated by the United States of America, State of New York, County of Orange, Village of Montgomery, or any body or agency thereof having jurisdiction over such matters.

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A. Review authority. The Building Inspector shall have administrative authority to review and approve permits issued under this chapter.

B. Conditions of approval. The Building Inspector may impose reasonable conditions of approval to ensure that outdoor dining areas operate in a manner that is not detrimental to the public health, safety and welfare, is consistent with all applicable codes, policies and guidelines, and enhances the image, appearance and vitality of the area in which the use is

located. This includes, but is not limited to, authority to regulate the design, layout, materials, colors, quality and appearance of outside dining and display areas; to require security deposits, insurance and other reasonable financial guarantees and to prescribe operating terms which the permittee must follow.

C. Appeal.

- (1) The decision of the Building Inspector may be appealed to the Zoning Board of Appeals.
- (2) The decision of the Zoning Board of Appeals may be appealed to the Village Board of Trustees.
- (3) The above decisions must be appealed, in writing, to the Village Clerk's office within 10 days after the decision is made.

D. When filing an application for an outdoor dining or display permit or any related appeals, a uniform nonrefundable fee shall be paid for the purposes of defraying the costs incidental to the proceedings. The fees shall be determined by the Village Board of Trustees and adopted by resolution which may be amended from time to time.

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A permit must be obtained from the Village before any outdoor dining is permitted.

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A permit for an outdoor dining area may be approved for the period of April 15 to November 15 of each year. The Village may temporarily suspend the permit upon seven days' notice because of anticipated or actual conflicts in the use of sidewalk areas due to street repairs, parades, festivals and other similar events. The Village may create a renewal application for outdoor dining permits, which shall be in a form approved by the Board of Trustees and be accompanied by permit fees in the amounts established by this chapter.

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- A. Penalties. Each violation of the provisions of this chapter shall constitute a separate offense punishable by a fine not to exceed \$500 for the first offense and \$1,000 for each subsequent offense. In addition, the Village may seek civil remedies for any violation, including, but not limited to, injunctive relief and the recovery of reasonable costs for the enforcement and correction of the violation.
- B. Revocation. Violation of any of the standards in this code or any of the conditions imposed by the Building Inspector under shall be grounds for revocation of the permit to operate an outdoor dining area. Such revocation shall require a majority vote of the Zoning Board of Appeals at a regular meeting to which the permittee has been given at least 10 calendar days' notice. The decision of the Zoning Board of Appeals may be appealed to the Village Board of Trustees.

Section 3. Separability

If any provision of this local law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this local law or the application thereof to other persons or circumstances, and the Board of Trustees of the Village of Montgomery hereby declares that it would have passed this local law or the remainder thereof had such invalid application or invalid provision been apparent.

Section 4. Statutory Authority {tc "Section 7. Statutory Authority " \14}

This local law is enacted in accordance with the powers granted to the Board of Trustees pursuant to the provisions of Article 10 of the Municipal Home Rule Law of the State of New York, pursuant to which the Board of Trustees has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the Village of Montgomery and for the protection and enhancement of its physical environment.

Section 5. Repeal

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

Section 6. Effective Date

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

(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. ___ of 2023 of the ~~(County)(City)(Village)(Village)~~ of Montgomery was duly passed by the Board of Trustees of the Village of Montgomery on _____, 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)(Village)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20____ in accordance with the applicable provisions of law.~~

~~_____
(Name of Legislative body)~~

~~_____
(Elective Chief Executive Officer*)~~

~~**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)(Village)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.~~

~~_____
(Name of Legislative body)~~

~~_____
(Elective Chief Executive Officer*)~~

~~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)(Village)(Village)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____.~~

~~_____
(Name of Legislative body)~~

~~_____
(Elective Chief Executive Officer*)~~

~~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 Village where such officer is vested with the power to approve or veto local laws or

ordinances.

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 _____ 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 Villages 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.

Monserrate Rivera-Fernandez, Clerk, Village of Montgomery,
Clerk of the county legislative body, City, Village or Village
Clerk or officer designated by local legislative body

(Seal)

Date: _____