

**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Tobin

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Sec'd by Ald. Green

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Date of Adoption 04-16-19

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Index No: 79-19

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NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon				X
Ald. Tobin	X			
Ald. Kleiner	X			
Ald. Johnson	X			
Ald. Jean-Francois	X			
Ald. Burr	X			
Ald. Green	X			
Ald. Masi	X			
Pres. Rodrigues				X
TOTAL	7			2

Whereas, Section 475-28 (G) (4) of the Code of the City of Middletown prohibits live music and live music performances in outdoor and sidewalk cafes, and

Whereas, the Common Council in 2018 passed a resolution allowing live music and live music performances in outdoor and sidewalk cafes on a trial basis from May 18, 2018 until and including October 15, 2018, and

Whereas, the Legislative Committee of the Common Council has recommended that live music and live music performances in outdoor and sidewalk cafes be allowed for another one year trial period under the same terms as conditions as existed from May 18, 2019 until and including October 15, 2019.

Now, therefore, be it resolved by the Common Council of the City of Middletown that Section 475-28 (G) (4) of the Code of the City of Middletown is hereby repealed and replaced in its entirety by the following:

Section 475-28 (G). Miscellaneous provisions.

...

(4) Outdoor and sidewalk cafes may be allowed to provide music, so long as such music does not violate or does not conflict with any applicable law or ordinance such as the City's noise ordinance (except as may otherwise be provided below), or does not create a nuisance to surrounding residents or properties. Live music or live music performances are not permitted in

or at sidewalk cafes. With respect to outdoor cafes only (and only within the geographic area described below), live music or live music performances will be permitted from May 3, 2019 until and including October 21, 2019 during the hours of 12:00 noon until 10:00 p.m. on Thursday, Friday and Saturday, and 1:00 p.m. until 9:00 p.m. on Sunday, in such a manner as to generate an instantaneous sound pressure level not to exceed 90 decibels (DBA) as measured from any point along the boundary line of the real property on which the outdoor café is located and from which the sound pressure is generated.

For purposes of this subsection (4), live music or live music performances will be allowed in or at outdoor cafes only within the area contained within the City's Business Improvement District (except not in or on properties located south of Fulton Street) and in or on properties on either side of East Main Street from Academy Avenue to the west side of Railroad Avenue.

Live music or live music performances will be allowed in or at outdoor cafes as described above during a trial period lasting only until October 21, 2019, unless the ability and permission to have live music or live music performances in or at outdoor cafes is extended by action of the Common Council of the City. If the time period is not extended by action of the Common Council, then live music or live music performances will not be permitted after October 21, 2019 in or at outdoor cafes.

Lighting in outdoor and sidewalk cafes shall be minimal and shall not be allowed to disturb surrounding residents or properties. No outdoor cooking of any type is permitted in outdoor and sidewalk cafes.

Be it further resolved that Section 475-28 (H) of the Code of the City of Middletown is amended by adding the following as a second paragraph in Section 475-28 (H):

Notwithstanding the previous paragraph and in addition to any penalties imposed under the previous paragraph of this Section 475-28 (H), violations of Section 475-28 (G) (4) of the Code of the City of Middletown may be enforced by the Police Department, any code enforcement officer of the Department of Public Works or the Fire Inspector and disposed of as follows:

- (1) For the first violation of Section 475-28 (G) (4) of the Code of the City of Middletown by an outdoor café's operation, the owner and/or operator of the outdoor café shall be issued a verbal or written warning informing the owner and/or operator of the violation and directing that it be ceased immediately.
- (2) For the second violation and subsequent violations of Section 475-28 (G) (4) of the Code of the City of Middletown by an outdoor café's operation, the owner and/or operator of the outdoor café shall be issued a written violation notice and/or an appearance ticket ordering the owner and/or operator to appear in Middletown City Court to answer the violation(s).
- (3) At any time, the Police Department of the City, upon inspection and discovery of a violation of Section 475-28 (G) (4) of the Code of the City of Middletown by an outdoor café's operation, may immediately cause the offending outdoor cafe to be cleared of patrons, if such action is reasonably necessary to protect the public health, safety, welfare or convenience.

- (4) If the operation of an outdoor cafe is alleged to be in violation of Section 475-28 (G) (4) of the Code of the City of Middletown a second time, the outdoor café permit issued to the owner and/or operator of the outdoor café shall be revoked by the City Clerk.
- (5) Any person found guilty of violating Section 475-28 (G) (4) of the Code of the City of Middletown shall be guilty of a violation and shall be liable for a fine of not less than \$250.00 nor more than \$2,000.00 for the first occurrence, and such fines shall be increased to a fine of not less than \$500.00 nor more than \$4,000.00 for any subsequent occurrence(s).

Be it further resolved that this resolution shall take effect immediately.