



CITY OF MIDDLETOWN, NEW YORK APPLICATION FOR SIDEWALK/OUTDOOR CAFÉ PERMIT

I, the undersigned, do hereby make application for a Sidewalk and/or Outdoor Café Permit in the City of Middletown, New York, pursuant to Chapter 475 §28 of the Code of the City of Middletown

Name of Applicant _____

Address of Applicant _____

Phone Number of Applicant _____

Name of Business _____

Address of Business _____

Phone Number of Business _____

Days of the Week Café will Operate _____

Hours of Operation _____ Sidewalk Café Outdoor Cafe

Will Alcoholic Beverages be served outside? Yes No

If Yes: Do you have a license from the New York State Liquor Authority for serving outside
 Yes No

On a separate sheet of paper, please indicate the following information:

- The number of tables and chairs desired for the area of the outdoor or sidewalk cafe, and a drawing or rendering of positions of tables and chairs relative to entrances and exits of the outdoor or sidewalk cafe and the main establishment to which the outdoor or sidewalk cafe is appended, and relative to the sidewalk.
- A description of facilities and equipment to be used, including whether music is to be played and what devices are needed for the provision of such music, when applicable.
 - If live music, including DJ is going to be played applicant must adhere to live music resolution passed by the Common Council on May 16, 2017 attached to this application.
 - Live music is not allowed in Sidewalk Cafes at any time.

- A site plan and property survey map, drawn to scale and prepared by a licensed surveyor and/or engineer, showing proper clearance around ingress and egress to the building and to fire safeguards, and also showing proper amount of clearance on the sidewalk for pedestrian traffic. The map must also indicate property lines and which property is owned by the applicant (or by the applicant's landlord) and which property is owned by the City (and if the property is not owned by the applicant, then the landlord's consent to the application must be indicated on the application).
- An indication of all fixtures such as fencing, decking, awnings and/or planters to be used, and an indication of whether or not they will be removed when the outdoor or sidewalk cafe is closed.

Proof of insurance, indemnifying the City of Middletown in an amount no less than one million dollars, must be submitted with this application.

A non-refundable application fee of fifty (\$50.00) dollars must be submitted with this application. The application must be returned to the Office of the City Clerk, City Hall, 16 James Street, Middletown, NY 10940.

By signing this application, the applicant agrees to all the provisions of Chapter 475 §28, and the noise ordinance Chapter 332 which copies of which is attached to this application.

Signed: _____

Date: _____

If not owner of the property please have owner sign below:

Owner Name: _____

Signed _____

Date _____

**SIDEWALK/OUTDOOR CAFE PERMIT
CHECK LIST**
Chapter 478-28 of the Middletown City Code

- Hours 7:00 AM to 2:00 am only
- Application – Every Applicant must fill out application
- No live music allowed on Sidewalk Café
- Live Music only allowed in Outdoor Café - Resolution
- Site plan of the property survey map of the Cafe
- Proof of insurance which names the City as an additional insured
- NYS Liquor Authority License for outdoor serving when applicable
- Noise ordinance Code issued to applicant
- Sidewalk/Outdoor Café regulations and Code issued to applicant
- Corporation Counsel request for additional insurance
- Department of Public Works Building Permit or C/O when applicable
- Payment – Check
 - Annual fee \$50.00 per Café Permit

City of Middletown, NY
Friday, May 19, 2017

Chapter 475. Zoning

Article IV. General Regulations

§ 475-28. Sidewalk and outdoor cafes.

[Added 6-10-2002]

- A. The outdoor and sidewalk cafe regulations as set forth in this section are designed to permit those cafes in areas where they are appropriate and to promote and protect the public health, safety and general welfare. Specific purposes of this section are:
- (1) To ensure adequate space for pedestrians on the sidewalk adjacent to outdoor and sidewalk cafes.
 - (2) To preserve and enhance the character of neighborhoods through the City and to protect adjacent residential areas.
 - (3) To simplify administrative and strengthen enforcement procedures for outdoor and sidewalk cafes that are effective, efficient and enforceable.
 - (4) To promote the most desirable use of land and to provide compensation to the City for use of City-owned land for sidewalk cafe purposes.
- B. For the purposes of this section, the following terms shall have the following meanings:

CITY CLERK

The City Clerk, Registrar and Clerk of the Common Council or his/her designee.
[Amended 1-7-2008]

OUTDOOR CAFE

Those exterior facilities adjacent to and a part of establishments selling food and/or drink, located entirely on private property, open to the elements except for awnings and/or low walls or fences, temporary or permanent in nature, such as rooftop cafes and those at street level, not using any City-owned property.

PERMIT

Written authorization issued by the City Clerk pursuant to this section permitting the operation of either an outdoor or sidewalk cafe.

SIDEWALK CAFE

Those exterior facilities adjacent to and a part of establishments selling food and/or drink that require the use of some City-owned property for operation, open to the elements except for awnings and/or temporary low walls or fences.

- C. No outdoor or sidewalk cafe shall be allowed to operate unless a permit has been obtained from the City Clerk. The following procedures (which may be supplemented by the City Clerk as he/she deems necessary and appropriate) must be followed before the City Clerk can issue such permit:
- (1) Any request to operate an outdoor or sidewalk cafe must be in writing on such application form(s) as may be required or designated by the City Clerk.

- (2) Whenever the application provides for construction or alteration of existing premises, the applicant must also apply for and obtain a building permit from the Department of Public Works of the City before a permit can be issued by the City Clerk. The City Clerk's permit will be conditioned upon receipt of a certificate of occupancy or compliance from the City's Department of Public Works in connection with the building permit.
- (3) The application must be accompanied by a nonrefundable fee of \$50 and shall include at least the following information
 - (a) The name, address and telephone number of the applicant.
 - (b) The name, address and telephone number of the establishment which is the subject of the application.
 - (c) The days and hours for which the permit is requested.
 - (d) Whether alcoholic beverages are to be served, and whether a license for the same has been obtained from the New York State Liquor Authority.
 - (e) The number of tables and chairs desired for the area of the outdoor or sidewalk cafe, and a drawing or rendering of positions of tables and chairs relative to entrances and exits of the outdoor or sidewalk cafe and the main establishment to which the outdoor or sidewalk cafe is appended, and relative to the sidewalk.
 - (f) A description of facilities and equipment to be used, including whether music is to be played and what devices are needed for the provision of such music, when applicable.
 - (g) A site plan and property survey map, drawn to scale and prepared by a licensed surveyor and/or engineer, showing proper clearance around ingress and egress to the building and to fire safeguards, and also showing proper amount of clearance on the sidewalk for pedestrian traffic. The map must also indicate property lines and which property is owned by the applicant (or by the applicant's landlord) and which property is owned by the City (and if the property is not owned by the applicant, then the landlord's consent to the application must be indicated on the application).
 - (h) Proof of insurance, in such forms and amounts as required by the Corporation Counsel.
 - (i) An indication of all fixtures such as fencing, decking, awnings and/or planters to be used, and an indication of whether or not they will be removed when the outdoor or sidewalk cafe is closed.
 - (j) Any other information as the City Clerk may deem reasonably necessary or appropriate for the fair determination as to whether a permit should be issued.
- (4) Prior to making a decision with respect to the permit application, the City Clerk shall send a copy of the application to the Commissioner of Public Works, the Corporation Counsel, the Chief of Police and the Chief of the Fire Department for their comments.
- (5) The City Clerk shall issue a permit upon a finding that the proposed outdoor or sidewalk cafe will not unreasonably interfere with the pedestrian traffic or use of the City-owned portion of property to be used; that the applicant has complied with the requirements of the City's Department of Public Works with respect to the building permit and any issues under the New York State Uniform Fire and Building Code; that the applicant has complied with the requirements of the Corporation Counsel with respect to insurance; that if the application is for a sidewalk cafe, the applicant has obtained approval of the Common Council of the City for the use of City-owned property; and that the applicant has met all other applicable provisions of this chapter of the City, including site plan and special use permit approval, if required, for the use of the main building to which the outdoor or sidewalk cafe area is appended for an eating and drinking establishment. Notice of permit issuance shall be given to the Commissioner of Public Works, the Corporation Counsel, the Chief of Police and the Chief of the Fire Department. The permit holder must also post the permit in a conspicuous place in the outdoor or sidewalk cafe so that the permit is visible from the street.

- (6) Notwithstanding the foregoing, the City Clerk may deny a permit upon a finding that the proposed outdoor or sidewalk cafe will have an undue adverse effect upon nearby property, the character of the neighborhood, vehicular traffic conditions, pedestrian traffic, parking, or other matters affecting the public health, safety, welfare or convenience.
- (7) In making the determination of whether or not to issue a permit, the City Clerk may hold an administrative hearing with the applicant for a permit and with any other interested persons to assist the City Clerk in making such a determination. Such hearing shall be upon five days' notice to the applicant, the Commissioner of Public Works, the Corporation Counsel, the Chief of Police, the Chief of the Fire Department and the President of the Common Council.
- (8) Any person or entity to whom or to which a permit is issued by the City Clerk shall be bound by all applicable federal, state and local rules, regulations, ordinances, local laws and statutes. The permit may be conditioned on the applicant making such modifications or conforming to such restrictions as may be necessary or appropriate to ensure compliance with the provisions of this section and to protect the public health, safety, welfare or convenience.
- D. The person, persons or entities to whom permits are issued under this section, by applying for and accepting such permit, understand and agree that such person, persons or entities shall be liable to and shall indemnify the City against, and hold the City harmless from, any and all losses, damages, injuries and claims, including attorney fees, sustained by any person whatever by reason of the negligence of the person, persons or entities to whom or to which the permit shall have been issued, or which may arise from or be attributable to the operation of the outdoor or sidewalk cafe by the person, persons or entities to whom or to which the permit shall have been issued and such person's, persons' or entities' employees, agents, contractors, guests and invitees. The applicant for a permit shall present to the City a certificate of insurance, prior to the opening and operation of the outdoor or sidewalk cafe and prior to the issuance of the permit, which names the City as an additional insured. The amount and form of the insurance must be acceptable to the Clerk and the Corporation Counsel of the City. The City Clerk may, in his/her discretion, waive the requirement for insurance when circumstances warrant.
- E. The City Clerk may revoke a permit issued under this section if the City Clerk finds that the person, persons or entities to whom or to which such a permit has been issued has violated any provision of this section or any other applicable federal, state or local rule, regulation, ordinance, local law or statute. In addition, the Police Department of the City, upon inspection and discovery of a violation of any provision of this section or other applicable federal, state or local rule, regulation, ordinance, local law or statute, may immediately cause the offending cafe to be cleared of patrons, if such action is reasonably necessary to protect the public health, safety, welfare or convenience. In such case, the Police Department shall, by the next business day, report such action to the City Clerk.
- F. Appeals from the issuance, denial, revocation or other condition of a permit may be taken to the Zoning Board of Appeals in accordance with the procedures established in this chapter for such Board.^[1]
- [1] *Editor's Note: See Art. VII, Zoning Board of Appeals.*
- G. Miscellaneous provisions.
- (1) The area of the outdoor or sidewalk cafe shall be cleaned on a daily basis and shall be kept free of refuse at all times. No large containers for trash shall be placed on the cafe premises.
- (2) For sidewalk cafes, at the expiration of the term of the permit, all City-owned property shall be delivered back to the City in good condition. City-owned property may not be altered in any way during the term of the permit without the express written approval of the Commissioner of Public Works and the Corporation Counsel.
- (3) Outdoor and sidewalk cafes may open for business no earlier than 7:00 a.m. and shall close by no later than 2:00 a.m.
[Amended 5-10-2004]
- (4) Outdoor and sidewalk cafes may be allowed to provide music, so long as it does not violate any applicable law or ordinance, or does not create a nuisance to surrounding residents or properties. In no event will

live music or live music performances be permitted. Lighting 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.

- (5) All fixtures and furnishings of a temporary nature must be secured if left outside and additionally any fixtures left outside after operational hours of the establishment are understood to be the personal property of the establishment and the City of Middletown is held harmless with relation to any claims resulting from said fixtures and furnishings being left outside of the establishment. No objects, except retractable awning(s) and lighting fixtures, may be permanently attached to the exterior. All planters, railings and fences must be temporary and not exceed a height of four feet. No additional signage shall be permitted to be affixed to a cafe's temporary structures or accessories. The provisions of this Subsection **G(5)** shall not apply to outdoor cafes unless determined to be necessary and a condition of the issuance of the permit by the City Clerk.

[Amended 5-10-2004]

- (6) For all cafes, there shall be a minimum of five feet or 50% of the total sidewalk width (whichever is greater) for clearance, to provide adequate and unobstructed pedestrian movement, such measurement being made from the outermost point of the cafe to the unobstructed inner edge of the curb. The City Clerk, in his/her sole discretion, may require a larger pedestrian right-of-way based on the proposed location and volume of pedestrian traffic typically experienced at that location.

H. Violations of this section shall be punishable in accordance with § 475-50 of this chapter. In addition, the City Clerk may revoke the permit (as set forth in Subsection **E** above) for any violation of this section.

I. This section is to be a permanent section of the Middletown Zoning Code, and any permits issued under the trial periods previously established by the Common Council may be continued in full force and effect, subject to the modification, revocation and other regulatory provisions of this section.

[Amended 4-22-2003]

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

THE FOLLOWING WAS PRESENTED

By Ald. Masi

Sec'd by Ald. Kleiner

Date of Adoption 05-16-17

Index No: 146-17

NAMES	AYES	NOES	ABSTAIN	ABSENT
Ald. Ramkissoon	X			
Ald. Johnson	X			
Ald. Jean-Francois		X		
Ald. Cid	X			
Ald. Witt		X		
Ald. Kleiner	X			
Ald. Burr	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, various business owners in the City have requested that the City amend Section 475-28 (G) (4) to allow live music and live music performances in outdoor and sidewalk cafes, and

Whereas, the City's Office of Economic and Community Development has conducted a public survey on the matter, and

Whereas, the City, and the Legislative Committee of the Common Council, have conducted public hearings on the matter, and all persons who wanted to be heard were given an opportunity to be heard, and

Whereas, the Legislative Committee of the Common Council, after due deliberation and after considering the results of the survey and the comments made and submitted at the public hearings, is willing to allow live music and live music performances in outdoor cafes, but not sidewalk cafes, in certain limited circumstances.

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 18, 2017 until and including October 15, 2017 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 15, 2017, 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 15, 2017 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.