

Village of Ellicottville - Sidewalk Cafes - Permit/Regulations

Any person or corporation may operate a sidewalk cafe (hereinafter called cafe) within the Village of Ellicottville on the Village sidewalk immediately adjacent to the applicant's place of business upon obtaining a permit from the Village.

Definition. A sidewalk cafe is an area located on the Village sidewalk established in accordance with the requirements of this enactment for service of customers purchasing meals at tables located within the sidewalk cafe. Alcohol may be served but is limited to waited table service.

Permit criterion.

An applicant, upon presentation to the Village Code Enforcement Officer of an application for a permit to install a cafe and upon payment of any fee established by the Village Board and upon compliance with the rules and regulations which may be established shall be authorized to operate a sidewalk cafe. The sidewalk cafe permit will be issued upon compliance with the following application standards:

1. Applicant shall obtain the approval of the Code Enforcement Office. Applicant shall submit one copy of plans to the Code Enforcement Office, approval of which shall be conditional upon the following:
 - a. The cafe will allow the maintenance of at least 18 inches of hard surfaced sidewalk between the cafe and any planting strip or tree grate, bench, pole, post sign, flower bed, news rack, curb or other obstacle in the public right of way; umbrellas located within the sidewalk cafe need to have seven (7) feet of vertical clearance from the ground;
 - b. The cafe will not interfere with ingress or egress points, including pedestrian entrances and fire escapes, and will maintain a minimum of three feet of sidewalk clearance at all times;
 - c. No permanent structure will be erected;
 - d. A form of temporary enclosure to separate the seating area from the open portion of sidewalk will be installed during the time the cafe is open for business; In order to keep a uniform look to the village, 40" tall black retractable belt barriers should be used.
 - e. Any temporary enclosure or structure within the public right-of-way will be removed between November 1 and March 31;
 - f. No signs will be hung or attached to any portion of the cafe; with the exception of seating instruction signs and signs in regard to operational procedures of the sidewalk cafe; and clearly post a copy of valid permit viewable from cafe side, to include verbiage about alcohol not allowed beyond cafe area.
 - g. The facility can be located anywhere in the Village where operation of a restaurant is otherwise permitted.

2. The applicant must execute an agreement to repair, at the expense of the applicant, any damage caused to the sidewalk in the operation of the cafe.
3. The applicant shall execute a hold harmless agreement indemnifying the Village against loss, including costs and expenses resulting from injury to person or property as a direct result of operation of the cafe.
4. The applicant shall provide proof of liability insurance naming the Village as an additional insured and agreeing to be primary in coverage with minimum coverage of \$1,000,000.00 per occurrence.
5. If applicable, applicant shall provide proof of dram shop, liquor legal liability insurance.
6. If different than applicant, applicant shall provide consent of the owner(s) of the building to be used as a sidewalk cafe.
7. If alcoholic beverages are to be served at the sidewalk cafe, the license shall comply with all NYSLA regulations and shall be filed with the NYSLA pursuant to Chapter 165 of 2022 (SLA instructions attached).

Cafe regulations.

A cafe shall:

1. Comply with plans submitted and approved.
2. Not serve or permit consumption of alcoholic beverages on or at any sidewalk cafe after 11:00 PM or before 8:00 AM. Serving and consumption of alcohol must be compliant with hours established by New York State Liquor Authority.
3. Remove from the sidewalk all furniture and other materials used in operation of the cafe by no later than 30 minutes after closing and in no event later than 11:30 PM.
4. Not permit any music to be played outdoors that conflicts with the Chamber of Commerce music or, after 10:00 PM.
5. Obtain specific approval of the Village Board if other than waited service of customers at tables is intended.
6. Occupancy will be determined by the Code Enforcement Officer in accordance with current restaurant codes.
7. Permit shall not be transferable to another business or location.
8. Permit is valid from April 1 to October 31, excluding Saturday and Sunday of Fall Festival weekend.

Promulgation of rules pertaining to sidewalk cafes.

The Village Board is hereby empowered to adopt by resolution rules, regulations, permit fees and specification pertaining to sidewalk cafes. Such rules are hereby incorporated by reference, and compliance with this article shall require compliance with such rules, regulations, permit fees and specifications. Failure to comply with the rules and regulations may result in loss of permit.

Permit Fees.

Unless hereafter changed by resolution of the Village Board, the annual permit fee for operation of a sidewalk cafe shall be \$150.

Notice of Violation; Revocation of permit.

Upon finding by the Fire Chief, Officer in charge of the Police Department, DPW Superintendent or Code Enforcement Officer that an applicant has violated any provision of these regulations, he/she may give notice to the applicant to correct operations violations. Upon failure to correct, the Village Board may direct the Village Clerk to revoke the applicant's permit. The operator of the sidewalk cafe may request a hearing before the Village Board or its designee within five (5) days of receipt of the notice of revocation. Any such hearing shall be held after reasonable notice by the Village Board to the operator of the violations, and the operator shall have the right to be represented by counsel, present evidence on his or her behalf and confront evidence against him.

Permit may be revoked by Code Enforcement Officer if there is determined to be an exceedance of any Village Noise Ordinance. Permit may be revoked by Code Enforcement Officer pending an Administrative Determination.

Effective Date.

These permit/regulations were adopted as amended at the monthly meet of the Board of Trustees held at the Town Hall on Tuesday June 15, 2021.



**TOWN AND VILLAGE OF ELLICOTTVILLE
BUILDING / CODE ENFORCEMENT DIVISION**

PO BOX 600, ELLICOTTVILLE, NY 14731

PHONE: (716) 699-4773

E-MAIL: kelly.fredrickson@evlengineering.com

APPLICATION FOR SIDEWALK CAFÉ PERMIT

The applicant agrees to comply with all applicable laws, ordinances and regulations.

Business Name: _____ Date: _____

Business Address: _____

Dimensions – Front: _____ Ft. Side(s): _____ Ft. Back: _____ Ft.

Number of Chairs or Estimated seating: _____

Insurance Co. Listing Village of Ellicottville as additional insured: _____

Copy of Insurance attached.

Will Liquor be served? YES NO

NYS Liquor Authority Certificate #: _____ Serial #: _____

Hours of operation for Sidewalk Café: _____

Will customers be served outside by waiter/waitress? YES NO

Business Owner: _____

Business Owner Signature: _____

Address: _____

Phone: _____ Cell Phone: _____

E-mail: _____

Fee: \$ 150.00 Occupancy #: _____ Date Issued: _____

Permit Expires: October 31st of year issued. Permit # _____



Liquor Authority (/)

Use of Outdoor Municipal Property under Recent Change in Law

Guidance as of June 30, 2022:

From June of 2020 until June of 2021, a Governor's Executive Order allowed for the service of alcoholic beverages on contiguous and non-contiguous outdoor municipal property by SLA licensees with on premises retail privileges, subject to SLA guidance.

Under a law signed by the Governor on July 6, 2021, that service permission was extended for one year, until July 5, 2022.

Subsequently, a law signed by the Governor on June 30, 2022, extended that permission for three more years until July 5, 2025, as explained in this guidance.

Municipalities should take note that it shall be the responsibility of each municipality that makes municipal property available for these purposes to ensure that any structure thereon is built in compliance with all applicable local legal and other requirements, that reasonable and adequate traffic safety, public safety, access and other measures necessary to protect the public have been taken,

and that the municipality is providing for enforcement of the foregoing.

Applicants for Use of Municipal Property:

- All licensees* wishing to use municipal property pursuant to Chapter 165 of 2022, must take the following steps to incorporate the municipal property into their licensed premises:
 - A municipal notice must be sent by registered mail or hand delivered to the appropriate municipal entity pursuant to section 110-B of the ABC Law. The notice may also be made via email (<https://sla.ny.gov/municipalcommunity-board-30-day-advance-notices-premises-applicants>), provided the municipality or community board elects to accept notices via email. The form and instructions can be found **here** (https://sla.ny.gov/system/files/documents/2021/07/standardizednoticeform-municipal-expansion_0.pdf).
 - After 30 days have passed from the date of the municipal notice, or if a municipality has waived notice, licensees should send an email to municipalexpansion@sla.ny.gov (<mailto:municipalexpansion@sla.ny.gov>) with their main license serial number in the subject line.** The email should include the following attachments:
 - (1) proof of receipt of the municipal notice or waiver thereof; and
 - (2) a copy of the municipal permit or other written authorization providing permission to use the municipal property; and
 - (3) a block plot diagram showing the municipal property that has been incorporated into your licensed premises

* Licensees that have as a condition of their SLA license a prohibition against the use of outdoor space are not eligible for use of outdoor municipal property. In order to utilize such space, such a licensee must apply for a change in method of operation and be approved.

** Licensees should wait for 5 calendar days for a response to their application from the SLA, if an email disapproval is not issued within such 5 day period, your application is deemed approved. Note that this does not apply to licensees that are ineligible as described above.

Chapter 165 of 2022:

Section 1. Legislative intent. The intent of this act is to provide relief to holders of licenses issued under the alcoholic beverage control law with retail on-premises consumption privileges by allowing for the exercise of such privileges on contiguous and non-contiguous municipal public space.

§ 2. For purposes of this act:

(a) "Licensee" shall mean the holder of a retail on-premises license issued under the alcoholic beverage control law or a manufacturing license issued under the alcoholic beverage control law that includes a privilege to sell and/or serve alcoholic beverages at retail for on-premises consumption on the licensed premises.

(b) "Non-contiguous municipal public space" shall mean space that:

(i) is located in front of, behind, or to the side of the licensed premises;

(ii) is within the property boundaries of the licensed premises as extended out; or within the property boundaries of the two nearest adjacent properties;

(iii) does not extend further than the midline of any public roadway;

(iv) is separated from the licensed premises only by a pedestrian thoroughfare; and

(v) otherwise complies with all applicable federal, state and local requirements.

(c) "Contiguous municipal public space" shall mean space that:

(i) is located in front of, behind, or to the side of the licensed premises;

(ii) is within the property boundaries of the licensed premises as extended out; or within the property boundaries of the two nearest adjacent properties;

(iii) otherwise complies with all applicable federal, state and local requirements.

§ 3. Upon application to the state liquor authority and with the authority's approval of such application, a licensee, in accordance with its license, may exercise its privilege to sell and/or serve alcoholic beverages at retail for on-premises consumption on contiguous municipal public space or non-contiguous municipal public space provided:

(a) the municipality in which the licensed premises is located issues a permit or the responsible municipal regulatory body or agency issues written authorization to the licensee to sell and/or serve food and beverages on such contiguous municipal public space or non-contiguous municipal public space;

(b) the licensee submits notice to the state liquor authority in the form of a copy of such permit or other written authorization;

(c) the licensee submits notice to the state liquor authority in the form of a diagram depicting both the licensed premises and the contiguous municipal public space or non-contiguous municipal public space to be used by the licensee;

(d) all new applicants for use of non-contiguous municipal space shall provide community notification to the municipality, including municipalities outside the city of New York, in a manner consistent with or required by subdivision 2 of section 110-b of the alcoholic beverage control law as required for the city of New York; and

(e) use of any such space meets all applicable federal, state or local laws, rules, regulations, guidance, conditions or requirements.

§ 4. (a) Notwithstanding the provisions of section three of this act, a licensee, previously approved by the municipality, exercising its privilege to sell and/or serve alcoholic beverages at retail

for consumption on contiguous municipal public space or non-contiguous municipal public space upon the effective date of this act shall be allowed to continue such use pursuant to this act.

(b) Within ninety days, the licensee must provide notice to the state liquor authority pursuant to subdivisions (b) and (c) of section three of this act to indicate that the licensee will continue exercising its privilege to sell and/or serve alcoholic beverages at retail for consumption on such contiguous municipal public space or non-contiguous municipal public space.

§ 5. If at any time the municipality revokes, cancels or suspends or otherwise terminates the licensee's authorization to use such contiguous municipal public space or non-contiguous municipal public space, the licensee shall cease exercising its privilege to sell and/or serve alcoholic beverages at retail for consumption on such municipal public space.

§ 6. Violations of the provisions of section three, four or five of this act, or a violation of any provision of the alcoholic beverage control law or the rules of the state liquor authority taking place on contiguous municipal public space or non-contiguous municipal public space being used by such licensee shall be subject to the provisions of sections 118 and 119 of the Alcoholic Beverage Control Law.

OFFICE USE ONLY		
<input type="radio"/> Original	<input type="radio"/> Amended	Date _____

Standardized NOTICE FORM for Providing 30-Day Notice to a Local Municipality or Community Board for Expansion onto Municipal Property

1. Date Notice was Sent: 1a. Method of Delivery:

This 30-Day Advance Notice is Being Provided to the Clerk of the Following Local Municipality or Community Board:

2. Name of Municipality or Community Board:

3. Applicant/Licensee Name:

4. Licensee Serial Number: Expiration Date:

5. Trade Name (if any):

6. Street Address of Establishment:

7. City, Town or Village: , NY Zip Code:

8. Business Telephone Number of Applicant/Licensee:

9. Business Email of Applicant/Licensee:

I am the applicant and/or the licensee, or a principal of the entity that is an applicant and/or licensee, for the premises indicated above. I have reviewed the information and representations set forth in this form personally, and carefully, and hereby confirm that such information and representations are accurate and consistent with the information and representations provided to the Authority in connection with the granting of the license. I understand that, like prior information and representations provided to the Authority, the information and representations made in this form will also be relied upon by the Authority, and that false or incomplete representations may result in disapproval of the application and/or cancellation or revocation of the license.

Name of Licensee or Principal of the entity (Printed):

Title:

Signature of Licensee or Principal as noted above: _____ Date: _____

NOTE: Licensees utilizing this notice form must obtain approval in the form of a permit or other written device from the municipal entity that is allowing the use of the public municipal space. Such permit or other written device may be obtained before or after this municipal notice form is sent. At least 30 days after the filing of this notice, you may apply to the SLA to incorporate the public municipal space into your premises by sending an email to municipalexpansion@sla.ny.gov with your serial number as the subject line and the following items as attachments:

- The completed Standardized Notice Form with proof of receipt as described in Section 110-b of the Alcoholic Beverage Control Law
- A block plot diagram detailing the municipal space the licensee will expand to
- Documentation that supports the municipality's approval to use the space

