



Town of Southampton  
 18 Jackson Avenue  
 Hampton Bays, NY 11946  
**DIVISION OF FIRE PREVENTION**  
 Telephone 631-702-2919  
 Fax 631-728-3688

**CHERYL KRAFT**  
 Chief Fire Marshal  
 631-702-2920

In an effort to facilitate the Outdoor Sidewalk Dining Application process as defined by Town Code Chapter 250, I am enclosing a copy of the application for your use. The Outdoor Sidewalk Dining Law was adopted May 26, 2009 by the Southampton Town Board. The applications will be submitted to and reviewed by the Chief Fire Marshal who shall have the authority to issue or deny a permit.

Please note some of the **important information** as follows:

This application form is required for a standard restaurant, as defined in Town Code Chapter 330-5, to use the public sidewalk to provide outdoor sidewalk dining

The business must be located in a building which directly abuts a sidewalk which is no less than ten (10) feet in width measured from the exterior wall of the building in which the business is located to the inside edge of the curb.

The sidewalk dining area shall be located directly in front of the building occupied by the licensed business, shall not extend more than six (6) feet from the exterior wall of the building, unless otherwise approved by the Chief Fire Marshal, and shall stay within the width of (shall not exceed beyond the width of) the building space occupied by the restaurant.

The sidewalk dining area shall be located so as to assure adequate space on the sidewalk for pedestrians utilizing the sidewalk. An unobstructed (such obstructions including, but not limited to, trees, signs, bicycle racks, utility poles, and planters) sidewalk width of at least six (6) feet shall be maintained for pedestrian use of the sidewalk.

All exits and means of egress from the business premises occupied by the licensed business shall be maintained and shall not be obstructed in any manner.

The sidewalk dining area shall be open to the sky, except that it may be covered only with a retractable awning. No advertising may be displayed on said awning other than the name of the licensed business.

The sidewalk dining area shall not be enclosed. No fencing, railing, or similar barrier shall be utilized to delineate the sidewalk dining area. The sidewalk dining area may be delineated by utilizing ropes. No objects shall be placed on the sidewalk dining area other than movable tables and chairs.

The sidewalk dining area may contain movable tables and chairs for outdoor dining. The number of outdoor dining seats within the sidewalk dining area shall not exceed 20% of the number of indoor dining seats lawfully provided by the licensed business on the business premises. During the period when outdoor dining seats are provided on the sidewalk dining area,

the number of indoor dining seats utilized by the licensed business shall be correspondingly reduced.

The term of such license shall be from May 1 to November 1. An Outdoor Sidewalk Dining License shall not be transferred or assigned by the licensed business.

The permitted hours of operation of a sidewalk dining area shall be from 7:00 a.m. to 11 p.m. Tables and chairs must be removed from the sidewalk by 11:30 p.m. and may not be placed on the sidewalk prior to 7:00 a.m. Tables and chairs must be removed from the sidewalk during inclement weather.

The sidewalk dining area shall not be used for any purpose other than the service of food and beverages (including alcoholic beverages) for consumption on the sidewalk at tables and chairs within the sidewalk dining area. The service of alcoholic beverages alone, without any food, shall be prohibited at the outdoor dining area.

The licensed business operating the sidewalk dining area shall be responsible for trash removal and shall maintain the public property on which they are located and surrounding 5 feet up to the road margin in a clean and litter-free manner during the hours of operation. Tables and chairs shall be maintained in good condition.

The applicant for an Outdoor Sidewalk Dining License 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, provided that such activity has been licensed by the State Liquor Authority pursuant to Town Code §89-4.

A sidewalk dining area shall not use any public amenities such as benches, seats, or trash receptacles provided for public use of the sidewalk.

Exterior lighting equipment that may present a tripping hazard is not permitted. Temporary electrical connections, such as extension cords, are not permitted. Exterior electrical lighting specifically designed for the sidewalk dining area is not permitted.

Outdoor music shall be prohibited in the outdoor dining area.

### **Application for license:**

An applicant for an outdoor sidewalk dining license shall submit the following information to the Chief Fire Marshal:

1. A plan showing the proposed design and layout of the sidewalk dining area, including the number of tables and chairs, with data and dimensions sufficient to show compliance with the provisions set forth in §250-2. No alterations or modifications shall be made with respect to an approved plan (the plan approved upon issuance of a license) unless and until a revised plan showing any proposed alterations or modifications has been submitted to and approved by the Chief Fire Marshal.

2. Information with respect to the business conducted by the applicant sufficient to show that the applicant is eligible for a license. Information includes a copy of the certificate of occupancy showing that the occupancy is a standard restaurant; a copy of the Suffolk County Health Department food establishment permit listing the maximum seating capacity; a copy of the New York State Liquor Authority license including a copy of the site plan submitted for their approval. Note: *a licensed premise “must” file and receive approval from the SLA when they extend the physical area of the establishment. This is done through an application form which includes new building plans to be submitted to New York State Liquor Authority.*

3. A copy of the certificate of insurance naming the “Town of Southampton” as the additional insured in the amount of \$1,000,000. If alcohol is being served, **Liquor Liability Insurance** naming the Town of Southampton as an additional insured will also be required.

4. An application fee of \$250.00 made payable to the Town of Southampton, certificate of insurance naming the Town of Southampton as an additional insured, and a signed and acknowledged indemnification.

Also, as a reminder, please be aware of the following requirements:

- The application and attached affidavits must all be completed and notarized.
- No Sidewalk Dining Permit shall be issued on a property that has outstanding violations issued by Southampton Town or pending in Justice Court, open building permits or structures without Certificates of occupancy/compliance. Nor will Permits be issued where there are unsatisfied conditions on an approval by a Town Agency such as the Town Planning Board, Zoning Board of Appeals or Conservation Board. **If you are unsure if you have any open permits or outstanding violations, please call the Building Department at 631-287-5700 PRIOR to filing your Side Walk Dining Application.**
- **No Sidewalk Dining Permit shall be issued on a property that does not have a current Public Assembly permit as required by Town Code 164-5A.**
- Other permits may be required and may include separate fees. All applications and permits may be found and printed from the Town’s website at <http://www.southamptontownny.gov/241/Applications-Forms>.

If you have any questions, please feel free to contact Cheryl Kraft at 631-702-2920 or Teri Kostuk at 631-702-2937. We are here to assist you with the Sidewalk Dining application.



Town of Southampton  
18 Jackson Avenue  
Hampton Bays, NY 11946  
**DIVISION OF FIRE PREVENTION**  
Telephone 631-702-2919  
Fax 631-728-3688

**CHERYL KRAFT**  
Chief Fire Marshal  
631-702-2920

**SIDEWALK DINING PERMIT APPLICATION**

The application and attached affidavits must all be completed and notarized. Attach additional pages as needed. Please note if application is for:

- Sidewalk Dining only                       Sidewalk Dining with alcohol service

1) NAME OF BUSINESS: \_\_\_\_\_

2) LOCATION OF PREMISES WHERE PERMIT IS REQUESTED:  
\_\_\_\_\_

3) MAILING ADDRESS if different:  
\_\_\_\_\_

Suffolk County Tax Map Number: 900-\_\_\_\_\_

4) TELEPHONE NUMBER: \_\_\_\_\_

5) MAILING ADDRESS (if different from above):  
\_\_\_\_\_

6) Is business a corporation? If so please list name of corporate officers:  
President: \_\_\_\_\_ Vice President: \_\_\_\_\_  
Secretary: \_\_\_\_\_ Treasurer: \_\_\_\_\_

7) Is business a partnership? If so please list type of partnership and names of partners:  
\_\_\_\_\_

8) NAME OF BUSINESS OWNER: \_\_\_\_\_

BUSINESS OWNER'S LEGAL ADDRESS \_\_\_\_\_

BUSINESS OWNER'S LOCAL ADDRESS \_\_\_\_\_

\_\_\_\_\_ E-MAIL: \_\_\_\_\_

BUSINESS OWNER'S TELEPHONE NUMBER: \_\_\_\_\_

9) NAME OF PROPERTY OWNER: \_\_\_\_\_

OWNERS LEGAL ADDRESS: \_\_\_\_\_

OWNER'S TELEPHONE NUMBER: \_\_\_\_\_

10) In case of emergency list contact person and telephone number:  
Person: \_\_\_\_\_ Phone #: \_\_\_\_\_

- 11) If owner of property is different from applicant, in case of an emergency list contact person and #:  
 Person: \_\_\_\_\_ Phone #: \_\_\_\_\_
- 12) Has applicant ever declared bankrupt or bankruptcy application pending? Yes \_\_\_ No \_\_\_
- 13) Has applicant had a permit ever denied, suspended or revoked? Yes \_\_\_ No \_\_\_
- 14) Has applicant ever been convicted of a crime? If so, please provide dates of convictions along with a brief statement setting forth the penalties imposed. Yes \_\_\_ No \_\_\_
- 
- 15) List the name and telephone number of at least one individual who resides in Suffolk County and is authorized to accept service on behalf of the owner of the property.  
 Person: \_\_\_\_\_ Phone # \_\_\_\_\_
- 16) List the name and telephone number of at least one individual who resides in Suffolk County and is authorized to accept service on behalf of the owner of the business.  
 Person: \_\_\_\_\_ Phone # \_\_\_\_\_
- 17) If the premises are leased, list the names and addresses (business, current residence and legal residence) of all lessees, subleases, assignees and tenants, and the name and address (business, current residential and legal residence) of at least one individual within Suffolk County who is authorized to accept service on behalf of the lessee, sublease, assignee or tenant. Use separate pages as necessary.
- 18) **Attach a valid certificate of occupancy** for all buildings, structures and uses on the property.
- 19) **Attach the fire safety and evacuation plan** for the premise.
- 20) **Attach a copy of the Suffolk County Health Department food establishment permit** listing the maximum seating capacity.
- 21) **Attach a copy of the New York State Liquor Authority license** including a copy of the site plan submitted for their approval.
- 22) **Attach a copy of the certificate of insurance** naming the "Town of Southampton" as the additional insured in the amount of \$1,000,000. If alcohol is being served, attach a copy of the **Liquor Liability Insurance** naming the Town of Southampton as an additional insured.
- 23) **Attach a scale drawing show the proposed set up, including the width of the sidewalk in front of the portion of the building occupied by the restaurant. Designate the area where the six (6) foot minimum sidewalk area will be maintained unobstructed. Remember, the maximum area occupied by dining is six (6) feet. This area can not at any time extend into the required six (6) feet of open passageway.**
- 24) **Attach the notarized Town of Southampton Indemnity Agreement.**
- 25) **Sign the owner/business authority forms.**
- 26) **Attach application fee of \$250.00** made payable to the Town of Southampton.

Pursuant to Section 175.35 of the New York State Penal Code, a person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with the intent to defraud the state or political subdivision thereof, he offers or presents it to a public office or public servant with the

knowledge or belief that it will be filed with, registered or recorded or otherwise become a part of the records of such public office or public servant. Offering a false instrument for filing in the first degree is a class E felony.

If the application is deemed incomplete, the Chief Fire Marshal shall notify the applicant as to the specific information or documentation required to complete the application and that the applicant has thirty (30) days from the date of notice to submit the additional required information. No sidewalk dining shall be initiated prior to issuance of a permit.

**CHANGES TO PERMIT**

- 1) Permits shall not be transferable or assigned.
- 2) Any changes in the activity, operation, location or ownership shall require that a new permit be issued.
- 3) A copy of this permit shall be posted or otherwise readily accessible at each place or operation or carried by the permit holder.
- 4) No permit issued shall be interpreted to justify a violation of Town Code 164 or any other applicable law or regulation.
- 5) Application is hereby made to the Division of Fire Prevention for issuance of a permit to Town Code 250 and all amendments thereto, for the regulated activity as herein described.

**OFFICE USE ONLY:**

*Tax Map #* \_\_\_\_\_ *Check/Cash (\$250)* \_\_\_\_\_ *Late Fee(\$30)* \_\_\_\_\_  
*Receipt#* \_\_\_\_\_ *Permit#* \_\_\_\_\_  
*Chief Fire Marshal* \_\_\_\_\_ *Date* \_\_\_\_\_

- Certificate of Insurance**
- SC Health Department Permit**
- Liquor Liability**
- NYS Liquor Authority License**

**( ) Approved ( ) Denied/Reason** \_\_\_\_\_

If property owner is not the business owner, both sections must be completed.

**For the property owner:**

State of New York) ss:  
County of Suffolk)

\_\_\_\_\_ being duly sworn, deposes and says that

he/she resides at \_\_\_\_\_ and that he/she is the agent for the owner/tenant of the premises described in the within application, and states that the proposed regulated activity had been authorized by the owner/tenant and that the aforesaid applicant has been authorized to make the application as the owner's/tenant's agent. The owner/tenant authorizes the applicant to consent to permit any employee of the Division of Fire Prevention to enter upon the premises without a search warrant for the purpose of inspecting the proposed regulated activity.

Sworn this date of \_\_\_\_\_

**Read and Check Box**

**False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the New York State Penal Law**

**SIGNATURE:** \_\_\_\_\_

State of New York) ss:  
County of Suffolk)

\_\_\_\_\_ being duly sworn, deposes and says that he/she resides

at \_\_\_\_\_ and that he/she is the owner in fee officer in the corporation which is the owner in fee/tenant described in the within application, and that he/she has authorized \_\_\_\_\_ to make the foregoing application for a permit as described herein.

Sworn this date of \_\_\_\_\_

**Read and Check Box**

**False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the New York State Penal Law**

**SIGNATURE:** \_\_\_\_\_

**For the business owner:**

State of New York) ss:  
County of Suffolk)

\_\_\_\_\_ being duly sworn, deposes and says that he/she

resides at \_\_\_\_\_ and that he/she is the agent for the owner/tenant of the business described in the within application, and states that the proposed regulated activity had been authorized by the owner/tenant and that the aforesaid applicant has been authorized to make the application as the owner's/tenant's agent. The owner/tenant authorizes the applicant to consent to permit any employee of the Division of Fire Prevention to enter upon the premises without a search warrant for the purpose of inspecting the proposed regulated activity.

Sworn this date of \_\_\_\_\_

**Read and Check Box**

**False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the New York State Penal Law**

**SIGNATURE:** \_\_\_\_\_

State of New York) ss:  
County of Suffolk)

\_\_\_\_\_ being duly sworn, deposes and says that he/she

resides at \_\_\_\_\_ and that he/she is the owner in fee officer in the corporation which is the owner in fee/tenant described in the within application, and that he/she has authorized \_\_\_\_\_ to make the foregoing application for a permit as described herein.

Sworn this date of \_\_\_\_\_

**Read and Check Box**

**False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the New York State Penal Law**

**SIGNATURE:** \_\_\_\_\_

\_\_\_\_\_ has read the Rules and Regulations for use of Public Sidewalk for  
Applicant

Outdoor Sidewalk dining as defined by Town Code 250 and agrees to comply with same.

\_\_\_\_\_  
(Signature of Owner/Manager)

\_\_\_\_\_  
(Date)

Town of Southampton  
Authorization for Inspection  
And Indemnity Agreement

If there is more than one owner, a separate page must be signed by each owner

I, \_\_\_\_\_

Please print name

Deposes and says: I am the owner/person in control of the business located at

\_\_\_\_\_, described in the foregoing

application and that I have authorized Officials and Employees of the Town of Southampton to enter my property to make all necessary inspections in connection with the Side Walk Dining permit.

Furthermore, in consideration of issuance by the Town of a Side Walk Dining permit, the Owner voluntarily agrees to indemnify and hold the Town of Southampton and its officers, employees, and its agents harmless from and against any and all losses, liabilities, damages, or costs sustained by any person for personal injury, death, or property damage arising out of, or as a consequence to the Side Walk Dining Permit.

The undersigned further agrees to indemnify and hold harmless the Town, its officers, employees, and agents from and against any and all losses, liabilities, damages, or costs which may be imposed upon, incurred by or asserted against the Town by reason of any act of omission of the undersigned, which results in damage or injury of any kind to any person or any property and which arises out of or in any way connected with the issuance of this permit.

\_\_\_\_\_  
Signature of owner/agent

If owner is a corporation, please indicate the name of the corporation and title of corporate officer whose signature appears above.

**Resolution of Adoption Enacting Town Code Chapter 250  
to Allow Outdoor Sidewalk Dining Within the Town**

WHEREAS, the Town Board is considering enacting Chapter 250 of the Southampton Town Code to allow outdoor sidewalk dining within the Town; and WHEREAS, a public hearing was held on May 26, 2009, at which time all persons either for or against said enactment were heard; and WHEREAS, the Division of Fire Prevention has advised the Town Board that this proposed local law is considered a "Type II Action" under 6 NYCRR Part 617.5, provisions of the New York State Environmental Quality Review Act (SEQRA) and Chapter 157 of the

Town Code, and that no further review under New York Conservation Law, Article 8, is necessary; now therefore be it RESOLVED, that Local Law No. 20 of 2009 is hereby adopted as follows: LOCAL LAW NO. 20 OF 2009 Southampton Town Board - Agenda Board Meeting of May 26, 2009 Page 25 A LOCAL LAW enacting Town Code Chapter 250 to allow outdoor sidewalk dining within the Town. BE IT ENACTED by the Town Board of the Town of Southampton as follows:

**SECTION 1. Legislative Intent.**

The Town Board of the Town of Southampton recognizes the value, both economic and aesthetic, that outdoor dining provides to a resort community such as the Hamptons. Thus, by this local law, the Town Board seeks to allow outdoor sidewalk dining within the Town from May through October of each year, subject to a license issued annually by the Chief Fire Marshal. In this way, the Town hopes to allow local businesses to take advantage of the beautiful scenery and streetscapes within the Town when serving their patrons.

**SECTION 2. Amendment.**

The Southampton Town Code is hereby amended by adding the underlined words as follows:

**Chapter 250**

**OUTDOOR SIDEWALK DINING**

**§ 250-1. Definitions.**

CHIEF OF POLICE - The Chief of Police of the Town of Southampton, or designee.

CHIEF FIRE MARSHAL- The Chief Fire Marshal of the Town of Southampton, or designee. DIVISION OF FIRE PREVENTION - As defined in Chapter 19 (Department of Police) of the Town Code.

**§ 250-2. Outdoor sidewalk dining; conditions of license.**

A. Upon obtaining a license to do so from the Chief Fire Marshal, a standard restaurant, as defined in Town Code Chapter 330-5, may use the public sidewalk to provide outdoor sidewalk dining in accordance with the following provisions.

B. In order to be eligible for a license, a business must meet the following requirements:

1. The business must be a standard restaurant which lawfully serves food for consumption on the business premises at indoor dining seats.
2. The business must be located in a building which directly abuts a sidewalk which is no less than ten (10) feet in width measured from the exterior wall of the building in which the business is located to the inside edge of the curb.
3. The sidewalk dining area shall be located directly in front of the building occupied by the licensed business, shall not extend more than six (6) feet from the exterior wall of the building, unless otherwise approved by the Division of Fire Prevention Southampton Town Board - Agenda Board Meeting of May 26, 2009 Page 26. The sidewalk dining area shall stay within the width of (shall not exceed beyond the width of) the building space occupied by the restaurant.
4. The sidewalk dining area shall be located so as to assure adequate space on the sidewalk for pedestrians utilizing the sidewalk. An unobstructed (such obstructions including, but not limited to, trees, signs, bicycle racks, utility poles, and planters) sidewalk width of at least six (6) feet shall be maintained for pedestrian use of the sidewalk.
5. All exits and means of egress from the business premises occupied by the licensed business shall be maintained and shall not be obstructed in any manner.
6. The sidewalk dining area shall be open to the sky, except that it may be covered only with a retractable awning. No advertising may be displayed on said awning other than the name of the licensed business.
7. The sidewalk dining area shall not be enclosed. No fencing, railing, or similar barrier shall be utilized to delineate the sidewalk dining area. The sidewalk dining area may be delineated by utilizing ropes. No objects shall be placed on the sidewalk dining area other than movable tables and chairs.
8. The sidewalk dining area may contain movable tables and chairs for outdoor dining. The number of outdoor dining seats within the sidewalk dining area shall not exceed 20% of the number of

indoor dining seats lawfully provided by the licensed business on the business premises. During the period when outdoor dining seats are provided on the sidewalk dining area, the number of indoor dining seats utilized by the licensed business shall be correspondingly reduced.

9. The term of such license shall be from May 1 to November 1. An Outdoor Sidewalk Dining License shall not be transferred or assigned by the licensed business.

10. The permitted hours of operation of a sidewalk dining area shall be from 7:00 a.m. to 11 p.m. Tables and chairs must be removed from the sidewalk by 11:30 p.m. and may not be placed on the sidewalk prior to 7:00 a.m. Tables and chairs must be removed from the sidewalk during inclement weather.

11. The sidewalk dining area shall not be used for any purpose other than the service of food and beverages (including alcoholic beverages) for consumption on the sidewalk at tables and chairs within the sidewalk dining area. The service of alcoholic beverages alone, without any food, shall be prohibited at the outdoor dining area.

12. The licensed business operating the sidewalk dining area shall be responsible for trash removal and shall maintain the public property on which they are located and surrounding 5 feet up to the road margin in a clean and litter-free manner during the hours of operation.

Tables and chairs shall be maintained in good condition.

13. The applicant for an Outdoor Sidewalk Dining License 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 Southampton Town Board - Agenda Board Meeting of May 26, 2009 Page 27 regulation for the serving of food and beverages, including alcoholic beverages, provided that such activity has been licensed by the State Liquor Authority pursuant to Town Code §89-4.

14. A sidewalk dining area shall not use any public amenities such as benches, seats, or trash receptacles provided for public use of the sidewalk.

15. Exterior lighting equipment that may present a tripping hazard is not permitted.

Temporary electrical connections, such as extension cords, are not permitted. Exterior electrical lighting specifically designed for the sidewalk dining area is not permitted.

16. Outdoor music shall be prohibited in the outdoor dining area.

**§ 250-3. Application for license.**

A. An applicant for an outdoor sidewalk dining license shall submit the following information to the Chief Fire Marshal:

1. A plan showing the proposed design and layout of the sidewalk dining area, including the number of tables and chairs, with data and dimensions sufficient to show compliance with the provisions set forth in §250-2 herein. No alterations or modifications shall be made with respect to an approved plan (the plan approved upon issuance of a license) unless and until a revised plan showing any proposed alterations or modifications has been submitted to and approved by the P Chief Fire Marshal.

2. Information with respect to the business conducted by the applicant sufficient to show that the applicant is eligible for a license.

3. Such other information, including the number of indoor dining seats provided by the applicant on the business premises, as may be reasonably necessary to show compliance with the provisions set forth in §250-2 herein.

4. An application fee, as set forth by Town Board resolution, certificate of insurance, and a signed and acknowledged indemnification.

5. The Chief Fire Marshal shall approve or deny a license application within 10 days from the submission of a complete application, and shall file a copy of the license or notice of denial with the Office of the Town Clerk.

B. The issuance of an outdoor dining license is a privilege and not a right and may be denied in the event applicant fails to comply with any applicable provision of this chapter or for any other reason not prohibited by law, including, but not limited to, outstanding violations against the premises proposed to be licensed.

**§ 250-4. Rescission or termination of license.**

A. If, after an outdoor dining license is issued, the Chief Fire Marshal or Chief of Police determines that any of the representations and/or statements contained in the application or any of the conditions or requirements of the license or this chapter have not been met, the Chief Fire Marshal or Chief of Police may rescind, Southampton Town Board - Agenda Board Meeting of May 26, 2009 Page 28 suspend, or modify such license.

B. If conditions exist that endanger the health, safety, or welfare of the public or the patrons of the licensed business, the Chief Fire Marshal or Chief of Police may suspend the

license until such danger is corrected.

**§ 250-5. Appeals from denial, rescission or termination of a license.**

A. If the Chief Fire Marshal denies an application for an outdoor dining license, written notice of such denial or rescission, and the reasons for such determination, shall be mailed by the Chief Fire Marshal, by certified mail, return receipt requested, to the applicant at the address provided in the application.

B. The denial, or rescission or suspension of a license, may be appealed to the Division of Fire Prevention pursuant to Town Code Chapter 19. All requests for an appeal hearing shall be made in writing and shall be filed with the Town Clerk within 10 days from the date of receipt of the written denial or rescission notification. Such request for an appeal shall set forth the grounds for the appeal, and shall be accompanied by the appeal fee in the amount established by the Town Board, which may be amended from time to time.

C. The Division of Fire Prevention shall conduct a public hearing or hearings with respect to any appeal. The Division of Fire Prevention shall fix a time and place for such hearing and shall provide for the giving of notice at least 10 days prior to the date of the hearing as follows:

1. By publishing a notice in the official newspaper;
2. By requiring the applicant to erect a white-and-black lettering sign or signs measuring not less than two feet long and one foot wide, which shall be prominently displayed on the premises facing each public street on which the property abuts, giving notice that an application for an outdoor dining license is pending and the date, time, and place where the public hearing will be held. The sign shall not be set back more than 10 feet from the street line and shall not be less than two feet nor more than six feet above the grade at the street line. The sign shall be made of durable material and shall be furnished by the Town Clerk. It shall be displayed for a period of not less than 10 days immediately preceding the public hearing date. No additional posting shall be required for any adjournment date. The applicant shall file an affidavit stating that there has been compliance with the provisions of this section.

3. If the business involved in an application is within 500 feet of the boundary of any other municipality, notice of the public hearing shall also be mailed to the municipal clerk of such other municipality by the applicant.

4. By requiring the applicant to mail written notice of the date, time, and place of the hearing, together with a copy of the application, by certified mail, return receipt requested, to every property owner, as shown on the current Town of Southampton assessment rolls, of parcels abutting and directly opposite (by extension of lot lines through a street or right-of-way) of the property which is the subject of the application, proof of which shall be Southampton Town Board - Agenda Board Meeting of May 26, 2009 Page 29 submitted to the Division of Fire Prevention on or before the commencement of the public hearing in the form of an affidavit with postal receipts annexed to it confirming mailing of the notices at least 10 days prior to the hearing date.

D. At the public hearing, the Chief Fire Marshal shall give the appealing party and any other interested party a reasonable opportunity to be heard, in order to show cause why the determination of the Chief Fire Marshal, or the Chief of Police as the case may be, should not be upheld. The applicant shall provide any relevant information in response to that set forth in the written notice of denial or rescission. A written report and/or testimony from the Chief Fire Marshal, or the Chief of Police if applicable, detailing the reason(s) for denial or rescission, shall be made part of the public hearing's record.

E. In determining the appeal, the Chief Fire Marshal shall consider all of the information provided at the hearing, with all other available information.

F. The Chief Fire Marshal may sustain the determination of the Chief Fire Marshal, or the Chief of Police, to deny or rescind a license, or may reverse the determination, with or without additional conditions. A resolution of a majority vote of the Chief Fire Marshal is required for any such action. The Chief Fire Marshal shall render its findings in writing, no later than 10 days from the close of the public hearing. The Division of Fire Prevention shall notify the applicant of its determination by certified mail, return receipt requested, to the address provided in the application, within 5 days after such determination. A copy of the determination shall be filed with the Office of the Town Clerk and forwarded to all involved Town departments.

G. The decision of the Division of Fire Prevention shall be final and shall constitute the exhaustion of applicant's administrative remedy.

**§ 250-6. Insurance, indemnification and waiver.**

A. The licensed business shall indemnify the Town and hold the Town harmless from and against any and

all claims, causes of action, liability, damage, loss, cost or expense (including reasonable attorney's fees) arising out of or related to the use, maintenance, or operation of the sidewalk dining area or arising out of or related to the license.

B. Prior to the issuance of an outdoor sidewalk dining license, and subject to review by the Town Attorney's Office, the applicant shall furnish the Town with a comprehensive liability insurance policy, insuring the applicant and/or property owner against liability for damage to persons or property, with limits as established by resolution of the Town Board, which policy shall name the Town as an additional insured and shall not be cancelable without at least 30 days prior written notice to the Town. Additional comprehensive liability insurance policies, naming the Town as an additional insured, may be required.

C. Notwithstanding anything to the contrary set forth in this chapter, the Town Board may waive or modify any of the requirements set forth herein.

**§ 250-7. Other approvals.**

The provisions of this chapter are not exclusive, and the licensed business must have and remains subject to all other applicable permits as may be required.

B. The use and operation of the sidewalk dining area shall be conducted in compliance with the provisions enumerated within this chapter, including any amendments thereto. Use and operation of the sidewalk dining area shall be conducted in compliance with all other applicable governmental laws and regulations, including, but not limited to, the Southampton Town Code, the Suffolk County Department of Health Services, and the New York State Liquor Authority.

C. Specifically, applicant shall provide proof of compliance with State Liquor Authority regulations governing service of alcohol in outdoor dining areas.

**§ 250-8. Penalties for Offenses.**

A. Any business which shall cause, permit, or allow outdoor sidewalk dining without a license as described herein shall be guilty of a violation of this chapter.

B. Any business which shall fail to comply with the provisions of this chapter shall be guilty of a violation of this chapter.

C. A violation of the provisions of this chapter or of Town conditions, approvals, or restrictions issued herein shall be a misdemeanor punishable by a fine not to exceed \$500 for the first offense, and not to exceed \$1,000 for each subsequent offense.

D. Each day the violation continues shall constitute a separate offense. A separate penalty may be imposed for each separate offense.

**SECTION 3. Authority.**

The proposed local law is enacted pursuant to Town Law §§136 and 137, and Municipal Home Rule Law §§10(1)(ii)(a)(11) and (12) and §10(1)(ii)(d)(3).

**SECTION 4. Severability.**

If any section or subsection, paragraph, clause, phrase, or provisions of this law shall be judged invalid or held unconstitutional by any court of competent jurisdiction, any judgment made thereby shall not affect the validity of this law as a whole or any part thereof other than the part or provision so adjudged to be invalid or unconstitutional.

**SECTION 5. Effective Date.**

This Local Law shall take effect after filing with the Secretary of State pursuant to Municipal Home Rule Law. AND BE IT FURTHER RESOLVED, that the Town Clerk is hereby directed to publish the following Notice of Adoption:

**NOTICE OF ADOPTION**

TAKE NOTICE that, after a public hearing was held by the Town Board of the Town of Southampton on May 26, 2009, the Town Board, at their meeting of May 26, 2009, adopted LOCAL LAW NO. 20 OF 2009 as follows: "A LOCAL LAW enacting Town Code Chapter 250 to allow outdoor sidewalk dining within the Town."