

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.

FILED
STATE RECORDS

JUN 24 2020

County City Town Village
(Select one.)

of Bedford

DEPARTMENT OF STATE

Local Law No. 3 of the year 2020

A local law A local law to create Chapter 86 of the Code of the Town of Bedford allowing outdoor
(Insert Title)
retail sales, personal care services and dining areas during the COVID 19 Pandemic.

Be it enacted by the Town Board of the
(Name of Legislative Body)

County City Town Village
(Select one.)

of Bedford

as follows:

See attached.

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

(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. 3 of 2020 of the ~~(County)(City)(Town)(Village)~~ of Bedford was duly passed by the Town Board on June 16 2020, in accordance with the applicable provisions of law.
(Name of Legislative Body)

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

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)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20____. 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 town 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 November _____ 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 cities of said county as a unit and a majority of the qualified electors of the towns 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.


Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

Date: 6-17-2020

(Seal)

LOCAL LAW NO. 3 OF 2020

**TOWN BOARD
TOWN OF BEDFORD**

**LOCAL LAW TO CREATE CHAPTER 86
OF THE CODE OF THE TOWN OF BEDFORD**

A LOCAL LAW to create Chapter 86 of the Code of the Town of Bedford allowing outdoor retail sales, personal care services and dining areas during the COVID-19 Pandemic.

Section 1. Chapter 86 of the Code of the Town of Bedford entitled “Outdoor Emergency Restrictions and Regulations Regarding Restaurants, Professional Care Services and Retail Establishments” is hereby created as follows:

Chapter 86: Outdoor Emergency Restrictions and Regulations Regarding Restaurants, Professional Care Services and Retail Establishments.

§ 86-1 Purpose and intent.

- A. On January 30, 2020, the World Health Organization designated the novel coronavirus, COVID-19, outbreak as a Public Health Emergency of International Concern.
- B. On January 31, 2020, the United State Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the entire United States to aid the national healthcare community in responding to COVID-19.
- C. On March 7, 2020, pursuant to Section 28 of Article 2-B of the Executive Law, Governor Cuomo issued Executive Order Number 202, declaring a State disaster emergency for the entire State of New York.
- D. On March 13, 2020, the Town of Bedford Supervisor declared a State of Emergency within the Town of Bedford in response to the COVID-19 pandemic.
- E. It is evident that the COVID-19 pandemic has and will continue to have catastrophic consequences for the Town’s small businesses and economy, including but not limited to,

retail businesses, professional care services, and restaurants, their owners and employees located in the Town.

- F. The CDC and the State of New York have stated that social distance guidelines and other health measures will continue to be required while the State relaxes mandated closures and begins to reopen the economy.
- G. There is growing consensus among experts that the risks of contracting or spreading the coronavirus are acceptably low outdoors if precautions are taken.
- H. In order to further protect the public health, welfare and safety support the local economy and retail businesses, professional care services and restaurants in their slow and difficult recovery, the Town deems it necessary to authorize the expansion of outdoor retail sales areas, professional care services and restaurant dining areas until November 25, 2020, to allow retail businesses, professional care services and restaurants to spread out and offer safe, socially distanced outdoor shopping, services and dining.

§ 86-2. Definitions

RESTAURANT

Restaurants approved for interior seating and in-person dining. This definition shall not include restaurants that are takeout only and have not received approval for indoor seating.

PERSON

Any individual person, firm, partnership, association, corporation, company, organization or legal entity of any kind, including public agencies and municipal corporations.

OUTDOOR BUSINESS AREA

Any outdoor space utilized for outdoor retail sales, outdoor professional care services or outdoor restaurant dining pursuant to an outdoor business permit issued pursuant to this Chapter.

§ 86-3 Permit required.

- A. Retail businesses, professional care services and restaurants in the Town of Bedford may seek approval to create and/or expand outdoor retail sales areas, professional care service areas and outdoor restaurant dining areas, referred to in this Chapter as outdoor business areas.
- B. Except as set forth in Section 86-3.C below, no person, business or restaurant shall establish or expand an outdoor business area located on Town property except upon the granting of an outdoor business area permit. Notwithstanding any requirements elsewhere

in the Town Code, restaurants providing outdoor dining on private property shall be permitted to obtain a permit where an application is in compliance with this Chapter.

- C. Notwithstanding Section 86-3.B above, if any business, restaurant or person currently has obtained the required approvals or is otherwise permitted to operate an outdoor business area, such business, restaurant or person shall be permitted to continue to operate such outdoor business area. Any expansion of an existing outdoor business area for a temporary period of time shall require a permit under this Chapter.
- D. No business, restaurant or person that is operating as a legal non-conforming use shall be eligible for an outdoor business area permit pursuant to this Chapter.
- E. Subject to the approval of the proposed outdoor business area layout, at the sole and absolute discretion of the Town Clerk, in consultation with the Town Building Inspector, Town Director of Planning; Commissioner of the Department of Public Works, Police and Fire Departments, businesses may be permitted to create and/or expand an outdoor business area within private property, a private parking lot or on public property owned by the Town (public street, parking lot, sidewalk area, alley way, park or other public area).
- F. The creation and/or expansion of any outdoor business area pursuant to this Chapter shall not require site plan review or approval. Outdoor business areas pursuant to this Chapter shall not be required to comply with any requirements set forth in Chapter 125, Zoning.
- G. To the extent any provision of this Chapter conflict with any other requirement of the Town Code, the provisions of this Chapter shall supersede those other requirements to the extent of such inconsistency, unless otherwise determined to be applicable by the Building Inspector or Director of Planning.
- H. Rules and regulations. The Town Clerk is hereby authorized to grant an outdoor business area permit for the use of outdoor areas upon the following terms and conditions:
 - (1) General Terms and Conditions
 - (a) The outdoor business area shall not be used for any purpose other than (1) an outdoor retail sales or service area; (2) for tables for the consumption of food served for take out purposes; and (3) the service of food and beverage provided by wait staff for consumption at tables and chairs in the outdoor dining area
 - (b) The outdoor business area shall comply with any and all state and local health, fire, building, sanitation and maintenance codes applicable to the use of the establishment, including but not limited to the installation of tents, outdoor natural gas/propane patio heaters, fire pits/tables.
 - (c) Tables, displays, service stations, registers and any other equipment, furnishings or structures installed in the outdoor business area must not block entrances, exits,

fire lanes, hydrants, sprinkler connection points, drive aisles, back-up areas, pedestrian or handicapped access.

- (d) Physical barriers or separation to protect customers from vehicle and/or pedestrian traffic, such as bollards, planter boxes, fencing or other device, should be included wherever practical and may be required at the discretion of the Town Clerk, in consultation with other Town officials.
 - (e) The outdoor business area plan must meet Fire Department standards, including points of egress, access to fire extinguishers, and tent and awning ratings, if applicable.
 - (f) Furnishings may be required to be removed and stored indoors when the outdoor business area is not in operation.
 - (g) No permanent structure may be installed except for safety purposes, if required. In such event, the structure would need to be removed upon expiration of the permit.
 - (h) All outdoor business areas shall be required to have a time to stop all lawful permitted activities and to complete all cleanup of the area, which time shall be subject to approval and modification by the Town Clerk, in consultation with other Town officials.
 - (i) All applications shall be required to specify any lighting, electrical devices or irrigation systems to be used in the outdoor service area, which must be approved by the Town Clerk, in consultation with other Town officials.
 - (j) All approved drawings and plans shall be posted in a manner visible to the public and to any officers responsible for enforcement of this Chapter.
 - (k) The applicant shall be responsible for any damage caused to any sidewalk or public property as a result of the business operations.
- (2) Terms and Conditions Applicable to Outdoor Dining Areas
- (a) All food and beverages to be served or consumed in the outside business area shall be prepared within the existing restaurant. The restaurant shall not serve food or beverage to a patron area unless that patron is seated at a table.
 - (b) All alcoholic beverages to be served in the outside business area shall be prepared within the existing restaurant, and alcoholic drinks shall only be served to patrons seated at tables. If alcohol is sold or consumed, the area where alcohol is being consumed may be required to be enclosed a barrier. The type of barrier shall be at the discretion of the appropriate Town officials. The drinking of alcoholic beverages by a member of the public while a patron at restaurant with an outdoor

business area shall not be construed as a violation of any other provision of the Town Code or any ordinance controlling open containers in a public area. The operator of the restaurant shall take whatever steps are necessary to procure the appropriate approvals or licenses the State Liquor Authority, to the extent required, if the restaurant intends to serve alcoholic beverages in the outdoor business area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in New York State.

- I. The number and location of all displays, service stations, registers and any other equipment, furnishing or structure installed in the outdoor business area shall be approved by the Town in accordance with fire and building code requirements and policies and sound practice.
- J. The Town's discretion over the location, scope, setbacks and size of outdoor business areas and related structures is absolute and the Town may condition approval based upon such requirements and any other consideration, including but not limited to, parking requirements, pedestrian safety, neighborhood concerns, social distancing requirements and any other public health, welfare and safety purpose.
- K. Any approval may be subject to additional conditions of approval, including the type or scope of structures or the location and layout of the proposed outdoor areas, etc.
- L. All outdoor business operations shall comply with any applicable CDC, State or County guidance, rule, regulation or law concerning required measures to minimize the spread of COVID-19.
- M. Notwithstanding any other provisions of this Chapter, no outside business permit area shall be required for the use of Town property where such use is limited to a single table located on Town property no greater than 4' x 8' solely for the purpose of allowing curbside retail or food pick-up.

§ 86-4. Application procedures.

- A. Except as set forth herein, any retail business, professional care service business or restaurant shall be required to apply to the Town Clerk for approval to expand or establish an outdoor business area. All applications shall be approved or denied at the sole discretion of the Town Clerk, in consultation with the Town Building Inspector, Town Director of Planning; Commissioner of the Department of Public Works, Police and Fire Departments,.
- B. Applications submitted under this Chapter shall be submitted to the Town Clerk electronically and contain the following information:
 - (1) The name address of the applicant.

- (2) The name and address of the retail business, professional care service business or restaurant.
 - (3) The proposed outdoor business area location.
 - (4) A signed License Agreement for the use of public property, if applicable.
 - (5) Approval from the New York State liquor authority to serve alcohol in the outdoor business area, if applicable.
 - (6) Insurance certificates, naming the Town of Bedford as an additional insured.
 - (7) A drawing showing the following:
 - (a) A proposed layout, including any proposed temporary awnings, tents, pergolas, the existing building, points of ingress and egress, proposed location of all tables, chairs, umbrellas, barriers, displays, service stations, registers and any other equipment, furnishing or structure installed in the outdoor business area.
 - (b) The proposed capacity of outdoor business area.
 - (c) A statement of the days and hours of intended operation.
 - (d) The applicant's entire property and adjacent properties on a location map and all property lines.
 - (8) Barriers for any outdoor business area.
 - (9) All tenants must provide written consent from the landlord agreeing to permit the use of the outdoor area.
 - (10) Any intention to use areas not located in front of a store front must be accompanied by permission from the neighboring property owner and/or tenant(s).
- C. The Town Director of Planning or the Town Clerk, or their designees, shall use good faith efforts to provide notice of any application to the adjacent neighbors by providing, either by personal delivery, overnight mail or other appropriate form of delivery, the permit application form and plan to the adjacent neighbor, and shall allow any adjacent neighbor three days to provide a response before issuing the permit. The Town Clerk shall have the discretion to waive this notice requirement in the event that after good faith efforts are made to effect service of notice any adjacent neighbor cannot be provided with notice.
- D. Applications may be referred by the Town Clerk to the Director of Planning, Building Inspector, Commissioner of the Department of Public Works, Police Department and Fire Department for review prior to the issuance of an outdoor business area permit.

E. Notwithstanding anything to the contrary, if determined to be appropriate and necessary in the sole discretion of the Town Clerk, in consultation with Town Clerk to the Director of Planning, Building Inspector, Commissioner of the Department of Public Works, Police Department and Fire Department, the provisions of this Section concerning required provisions may be waived.

F. No fee shall be required for a permit granted pursuant to this Chapter.

§ 86-5 Approval or disapproval of an application.

The Town Clerk, or his or her designee, shall grant or deny an application for an outdoor business area permit pursuant to this Chapter, in his or her sole discretion, in consultation with other Town staff and officials.

§ 86-6 Notice of violation and enforcement.

Upon a finding by the Building Inspector or the Chief of Police, or their designees, that the applicant has violated any provision of this Chapter or the terms and conditions of the permit, is not in compliance with any approved drawing or has engaged in any practice in conjunction with the regulated outdoor business activity which constitutes a danger to the health or safety of any patron or pedestrian, the Building Inspector or Chief of Police, or their designees, shall give notice to the applicant to correct such violation or cease such practice within 24 hours, and may take action to suspend the outdoor business activity if determined to be a public health or safety concern. If the applicant fails to comply with such notice, the Town Clerk, or his or her designee, in consultation with the Building Inspector, the Chief of Police, and any other Town officials, may revoke the outdoor business area permit or authorize the issuance a violation subject to the fines as set forth in Section 86-10 below.

§ 86-7 Reservation of rights by Town.

Neither the adoption of this Chapter nor the granting of any license pursuant hereto shall be construed as a waiver of any right, privilege or immunity of the Town of Bedford concerning its public easement over the streets and sidewalks, or of any requirement of law concerning the liability of the Town of Bedford with respect to streets and sidewalks, whether expressed or implied.

§ 86-8 Indemnification.

The applicant shall agree, on a form approved by the Town Attorney, to indemnify and save harmless the Town of Bedford, its elected officials, officers, agents, attorneys and employees, from and against any claim of loss, liability or damage by any person arising as a result of the applicant's operation of the outdoor business area.

§ 86-9 Insurance.

A. No permit for any outdoor business area located on Town Property shall be issued by the Town Clerk until the applicant therefor shall have first placed on file with Town satisfactory evidence of the following types of coverage and limits of liability:

(1) General liability coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

(a) If the coverage contains a general aggregate limit, such general aggregate shall apply separately to each project.

(b) The Town of Bedford and its agents, officers, volunteers, directors and employees shall be named as additional insureds and included in a waiver of subrogation endorsement.

(c) The applicant shall maintain the general liability coverage for itself and all additional insureds for the duration of the outdoor business operations.

(d) The applicant's policy must be primary and non-contributory to any insurance the Town of Bedford maintains.

(e) The applicant's policy must address alcohol consumption on the outdoor business area in the event alcohol is served or consumed in the outdoor business area.

B. Certificates shall provide that 30 days' written notice prior to cancellation be given to the Town of Bedford. Policies that lapse and/or expire during the term of permit shall be recertified and received by the Town of Bedford no fewer than 30 days prior to cancellation or renewal.

C. Such insurance hereinabove referred to shall remain in force throughout the effective period of the permit and/or any authorized extension or extensions thereof and shall carry an endorsement to the effect that the insurance company will give at least 10 days' prior written notice to the Town of Bedford of any modification or cancellation of any such insurance and shall contain a clause to the effect that termination of said insurance shall be without prejudice to the right of the Town of Bedford to make claim or claims thereafter for any loss or damage sustained as a result of any act or acts committed or omitted during the term of said insurance.

§ 86-10 Penalties for offenses.

Any person committing an offense against the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$250. The continuation of an offense against the provisions of this article shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

§ 86-11 Appeal.

In the event any applicant wishes to appeal the denial of an application for a permit, or contest the inclusion of any conditions included in any approval, the applicant may file an appeal with Town Supervisor within thirty (30) days of the date of any determination on such application and the Supervisor shall render a final written determination with respect to such appeal within tens (10) days of the receipt of the appeal. In determining such appeal, the Supervisor may obtain input from the Town Clerk and any other Town officials and staff to determine whether the denial of the permit or inclusion of any condition in the permit was arbitrary and capricious or unconscionable.

§ 86-12 Severability.

Should any section or provision of this chapter be determined by any court of competent jurisdiction to be unconstitutional or invalid, then such section or provision shall be null and void and shall be deemed separable from the remaining section of this chapter, and such determination shall in no way affect the validity of the remaining sections or provisions of this chapter.

Section 2. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, the Code of the Town of Bedford is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 3. Numbering for Codification

It is the intention of the Town of Bedford and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of Bedford; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "Chapter," "Section" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 4. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability

shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. Effective Date

This local law shall take effect immediately filing with the Office of the Secretary of State and any outdoor service permits shall remain in effect through November 25, 2020.