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**Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate a new matter.**

County  
City of Port Chester, New York  
Town  
Village

Local Law No. 6 of the year 2009

**A local law amending the CODE OF THE VILLAGE OF PORT CHESTER, by adding a new Chapter, CHAPTER 155 entitled “Catering and Events Establishments”, and amending CHAPTER 175 entitled “Fees”.**

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

County  
City of Port Chester, New York as follows:  
Town  
Village

A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER TO  
ADOPT CHAPTER 155: CATERING AND EVENTS ESTABLISHMENTS  
AND AMENDING CHAPTER 175: FEES

BE IT ENACTED by the Board of Trustees of the Village of Port Chester as follows:

**SECTION 1:** The Code of the Village of Port Chester is hereby amended by adding a new chapter, Chapter 155, entitled “Catering and Events Establishments”, to read as follows:

**Chapter 155: Catering and Events Establishments**

**§ 155–1. Purpose.**

The purpose of this chapter is to establish licensing requirements and operational regulations for catering and events establishments, to protect the health, safety, and welfare of the community, and to provide demarcation between establishments that are leased or hired out for private events and establishments where events are open to the general public.

**§ 155–2. Definitions.**

For the purpose of this chapter, the following words shall have the following meanings:

**CATERING AND EVENTS ESTABLISHMENT**—Any non-residential room, place or space in the Village that is regularly leased or hired out, where food and beverages are available for consumption, for a particular function, occasion or event, to which the general public is not invited or admitted, and wherein music or entertainment is provided.

**EMPLOYEE**—Any person who performs any service on the premises of a catering and events establishment, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. Employee does include any security guard employed by a catering and events establishment or whose services are performed on the premises of a catering and events establishment.

**HEARING OFFICER**—An attorney, not employed by the Village other than as a hearing officer, who is licensed to practice law in the State of New York and is retained to serve as an independent tribunal to conduct hearings under this chapter.

**INFLUENTIAL INTEREST**—(1) The actual power to operate the catering and events establishment or control the operation, management or policies of the catering and events establishment or legal entity which operates the catering and events establishment, (2) ownership of a financial interest of thirty percent (30%) or more of the catering and events establishment or of any class of voting securities of the catering and events establishment, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the catering and events establishment.

**LICENSEE**—A person in whose name a license to operate a catering and events establishment has been issued, as well as the individual or individuals listed as an applicant on the application for a catering and events establishment license.

**MANAGER**—A person on the premises of the catering and events establishment who is authorized to exercise, or who in fact exercises, control of the business premises. A person may be a manager regardless of whether that person is an owner of the business or a licensee under this Chapter.

**PUBLIC RIGHT-OF-WAY**—A public highway, road, street, avenue, alley, driveway, path, sidewalk, roadway or any other public place or public way.

**RECEIVING PROPERTY**—Real property, including but not limited to buildings, grounds, offices and dwelling units, from which sound levels from sound sources outside such property may be measured. For the purposes of this definition, individual offices or dwelling units within a building may constitute a receiving property.

**REGULARLY**—The consistent and repeated doing of an act on an ongoing basis.

**SPECIFIED CRIMINAL ACTIVITY**—Any of the following offenses, for which less than five years have elapsed since the date of conviction of a felony or the date of release from confinement for the conviction of a felony, whichever is the later date, or for which less than two years have elapsed since the date of conviction of a misdemeanor or the date of release from confinement for the conviction of a misdemeanor, whichever is the later date:

- (1) An offense within Sections 120.00 through and including 120.12 of the Penal Law relating to assault;
- (2) An offense within Article 200 of the Penal Law relating to bribery involving public servants;
- (3) An offense within Article 210 of the Penal Law relating to perjury;
- (4) An offense within Article 220 of the Penal Law relating to controlled substances;
- (5) An offense within Article 221 of the Penal Law relating to marihuana;
- (6) An offense within Article 225 of the Penal Law relating to gambling;
- (7) An offense within Article 230 of the Penal Law relating to prostitution;
- (8) An offense within Article 245 of the Penal Law relating to offenses against public sensibilities;
- (9) An offense within Sections 260.20 and 260.21 of the penal law relating to unlawfully dealing with a child;
- (10) An offense within Article 460 of the Penal Law relating to enterprise corruption;
- (11) An offense within Article 470 of the Penal Law relating to money laundering;
- (12) Any other crime committed in violation of the laws of any other jurisdiction which if committed in this state would constitute one of the foregoing offenses;

- (13) Any offense which is a misdemeanor or felony involving the catering and events establishment premises.

**§ 155-3. License required.**

- A. It shall be unlawful for any person to conduct, maintain or operate, or engage in the business of conducting, maintaining or operating a catering and events establishment without a valid catering and events establishment license.
- B. An applicant for a catering and events establishment license shall file at the office of the Village Clerk a complete application made on a form provided by the Village Clerk. If an individual seeks a catering and events establishment license, he or she shall sign and certify the application for a license as applicant. If a person who seeks a catering and events establishment license is other than an individual, each person with an influential interest in the catering and events establishment or in a legal entity that controls the catering and events establishment shall sign and certify the application as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.
- C. An application for a catering and events establishment license shall be considered complete when it is notarized and contains, for each person required to sign the application, the information and/or items required in this subsection (C), accompanied by the appropriate licensing fee:
- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years. The application shall also include the name of the legal entity(ies) intending to operate the catering and events establishment as well as the doing business as name of the catering and events establishment.
  - (2) Current business address or another mailing address for the applicant.
  - (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
  - (4) The catering and events establishment name, street address, legal description, mailing address, and phone number.
  - (5) The name and business address of the statutory agent or other agent authorized to receive service of process for the operator of the catering and events establishment.
  - (6) A statement whether an applicant has been convicted of or has pleaded guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable. If

an applicant has been convicted of, or has pled guilty or nolo contendere to, a specified criminal activity as defined in this Chapter, the applicant shall include a statement of whether the conviction or plea is subject to a certificate of relief from disability or a certificate of good conduct pursuant to New York State Correction Law §§ 701-703-b.

- (7) Four copies of a schematic, certified as accurate by a professional engineer or architect, showing the configuration of the catering and events establishment premises and the location of off-street truck loading spaces for the establishment, including a statement of the total floor area occupied by the establishment and a statement of the number of off-street truck loading spaces for the establishment. The schematic shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The Village Clerk may waive the requirements of this subsection (7) for a renewal application if the applicant adopts a schematic that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  - (8) Four copies of a diagram showing the catering and events establishment premises and adjacent public rights-of-way, which depicts the pedestrian and vehicular traffic patterns that relate to the operation of the catering and events establishment. This diagram shall be a separate document from the schematic required in subsection (7) above. The Village Clerk may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a diagram that was previously submitted and certifies that the catering and events establishment premises, adjacent public rights-of-way, and related pedestrian and vehicular traffic patterns have not been altered since the diagram was prepared.
  - (9) A copy of the valid permit to operate a food service establishment at the catering and events establishment issued by the Westchester County Health Department.
  - (10) A copy of the current certificate of occupancy.
- D. The information provided pursuant to this section shall be supplemented in writing to the Village Clerk within ten (10) working days of a change in circumstances which would render the information previously submitted false or incomplete.

#### **§ 155-4. Issuance and renewal of license.**

- A. An applicant may obtain an annual license which expires twelve (12) months from the date of issuance. An annual license may be renewed only by making application and payment of a fee as set forth in Village Code § 175-4.
- B. Application for renewal of an annual license should be made no more than sixty (60) days prior to the expiration of the current annual license, and when made less than thirty (30) days before the expiration date, the expiration of the current license will not be affected.

C. Within twenty (20) days of the filing of a complete catering and events establishment license application, the Village Clerk shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The applicant shall allow Village officials access to the floor area of the premises, during regular business hours, for the limited purpose of verifying compliance with the specific standards set forth in this Chapter. The Village Clerk shall issue or renew a license unless:

- (1) An applicant is less than eighteen (18) years of age.
- (2) An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
- (3) The applicant does not possess a valid permit from the Westchester County Health Department to operate a food service establishment at the catering and events establishment.
- (4) The applicant does not possess a current certificate of occupancy.
- (5) The license application fee required by this chapter has not been paid.
- (6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter, provided that a specified criminal activity that is subject to a certificate of relief from disability or a certificate of good conduct pursuant to New York State Correction Law §§ 701-703-b shall not disqualify an applicant from receiving a license, nor shall an applicant be denied a license if such a denial would violate New York State Correction Law §§ 751-753.
- (7) An applicant has suffered or permitted the catering and events establishment premises, through improper or inadequate maintenance and supervision, to be used for the commission of any specified criminal activity as defined in this chapter.
- (8) Within the prior twenty-four-month period, two or more of any of the following have occurred on the premises of the establishment due to the knowing, reckless, or negligent conduct of an applicant:
  - (a) Occupancy limits applicable to the establishment have been exceeded.
  - (b) Exit doors have been locked while the premises are occupied.
  - (c) Exits and/or aisles have been obstructed in violation of the fire code or building code.
  - (d) Centralized fire alarm system or fire hood suppression system as required by the NYS Building and Fire Code has been inoperable or lacking from required locations.

- (e) Fights, assaults, or other disturbances of a similar nature have occurred on the premises.
  - (f) Violations of the Alcoholic Beverage Control laws of the State of New York.
- (9) Within the prior sixty-month period, any of the following have occurred due to the knowing, reckless, or negligent conduct of an applicant:
- (a) A fire on the catering and events establishment premises resulting in death or serious physical injury, as defined in Penal Law § 10.00, Subdivision 10, where one or more Fire Code violations existed on the premises at the time of the fire.
  - (b) Death or serious physical injury, as defined in Penal Law § 10.00, Subdivision 10, arising out of an incident on the catering and events establishment premises.
  - (c) A riot, as defined in Penal Law § 240.05, taking place upon the premises or arising out of an incident on the premises and taking place, in whole or in part, within 200 feet of the catering and events establishment premises.
- (10) The catering and events establishment does not have the number of off-street truck loading spaces that are required for the establishment under Section 345-14D of the Village Zoning Code.
- D. The Village Clerk shall not issue or renew a license if an applicant has not paid any fine, penalty or judgment duly imposed in connection with or arising from the use, occupation or operation of the catering and events establishment.

**§ 155–5. Fees.**

- A. The application fee for each annual catering and events establishment license is set forth in Village Code § 175-4.
- B. The applicable license fee shall be paid upon filing of an application for a license herein prescribed, in order to defray the cost of administering and enforcing this Chapter, and shall not be refundable.

**§ 155–6. Posting of license.**

Each catering and events establishment license issued under this chapter shall be posted and prominently displayed at the main entrance of the catering and events establishment.

**§ 155–7. Manager required.**

A licensee shall provide a manager or other responsible party on the premises throughout the entire time that the catering and events establishment is occupied by any event attendee.

**§ 155-8. License not transferable.**

No license issued under the provisions of this chapter shall be transferred or assigned to any person, or used by any person other than the licensee to whom it was issued, nor shall such license be used on any location other than the location stated in such license.

**§ 155-9. Inspection.**

Catering and events establishments and their employees shall permit employees of the Village to inspect, from time to time on an occasional basis, the portions of the catering and events establishment where event attendees are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the catering and events establishment is occupied by employees or event attendees. This section shall be narrowly construed by the Village to authorize reasonable inspections of the licensed premises pursuant to this Chapter.

**§ 155-10. Changes in corporate licenses.**

If, during the term of the licensing period, one or more persons with an influential interest in the licensed catering and events establishment is substituted or added, such substituted or added person with an influential interest shall, within ten (10) days of such substitution or addition, file with the Village Clerk an application for an approval of the change of licensees on such forms as are prescribed by the Village Clerk. Within ten (10) days of such a submission, the Village Clerk shall approve the application in writing if the application meets the standards set forth in § 155-4. If the application does not meet the standards set forth in § 155-4, the Village Clerk shall, within ten (10) days of the submission, issue a written notice of intent to deny the license and shall follow the procedures set forth in § 155-14.

**§ 155-11. Rules and regulations.**

- A. A catering and events establishment and its licensees shall comply with and enforce the following:
  - (1) No employee of the establishment shall knowingly or intentionally touch or make physical contact with the clothed or unclothed buttocks, breast, lap, groin area, or pubic area of an event attendee on the premises of the establishment; and
  - (2) No event attendee at the establishment shall knowingly or intentionally touch or make physical contact with the clothed or unclothed buttocks, breast, lap, groin area, or pubic area of an employee on the premises of the establishment.
- B. *Alcohol.* No catering and events establishment shall knowingly or recklessly allow the distribution of alcoholic beverages on its premises in violation of the Alcoholic Beverage Control laws of the State of New York and State Liquor Authority rules and regulations.



C. *Hours of events.*

- (1) No catering and events establishment shall allow any function, occasion, or event held at the establishment to continue after 1:00 a.m., unless the service of alcoholic beverages at the function, occasion, or event is authorized by a permit or license issued by the New York State Liquor Authority, in which case the establishment shall not allow the function, occasion, or event to continue past 4:30 a.m.
- (2) No catering and events establishment shall allow any function, occasion, or event held at the establishment to commence between 4:30 a.m. and 6:00 a.m.

E. No catering and events establishment shall use or maintain any of the following:

- (1) Exterior spotlighting, floodlighting, or other illumination with beams that are directed into residential areas;
- (2) Intermittent, moving, or flashing exterior lights; or
- (3) Any sign that violates the applicable provisions of the Village Code.

**§ 155-12. Suspension of license.**

- A. The Village Clerk may issue a written notice of intent to suspend a catering and events establishment license for a period not to exceed thirty (30) days if the licensee has knowingly violated this chapter or has knowingly allowed an employee or any other person to violate this chapter.

**§ 155-13. Revocation of license.**

- A. The Village Clerk shall issue a written notice of intent to revoke a catering and events establishment license if the licensee knowingly violates this chapter or has knowingly allowed an employee or any other person to violate this chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.
- B. The Village Clerk shall issue a written notice of intent to revoke a catering and events establishment license if:
  - (1) A licensee has knowingly given false information in the application for the catering and events establishment license;
  - (2) A licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the catering and events establishment;
  - (3) A licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the catering and events establishment;

- (4) A licensee knowingly or recklessly operated the catering and events establishment during a period of time when the catering and events establishment license was finally suspended or revoked;
  - (5) A licensee is convicted of any specified criminal activity as defined in this chapter;
  - (6) Any condition(s) exist which would require denial of the license under the standards set forth in section 155-4 (Issuance and renewal of license.).
- C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- D. When, after the notice and hearing procedure described in this chapter, the Village revokes a catering and events establishment license, the revocation shall continue for one (1) year and the licensee shall not be issued any catering and events establishment license for one (1) year from the date revocation becomes effective.

**§ 155-14. Hearing; license denial, suspension, revocation; appeal.**

- A. When the Village Clerk issues a written notice of intent to deny, suspend, or revoke a license, the Village Clerk shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Village Clerk for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the Hearing Officer shall conduct a hearing on the Village Clerk's written notice of intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Village Clerk's witnesses. The Village Clerk shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Village Clerk to immediately withdraw the intent to

deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Village Clerk shall contemporaneously therewith issue the license to the applicant.

- B. If any court action challenging a licensing decision is initiated, the Village shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Village shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any licensee that possesses a valid annual catering and events establishment license on the date on which the complete application is filed with the Village Clerk: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Village's enforcement of the denial, suspension, or revocation, the Village Clerk shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operating a catering and events establishment under this chapter and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Village's enforcement.

**§ 155-15. Penalties and enforcement.**

- A. Any person who violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be guilty of a violation and, upon conviction, be subject to fine no less than \$750 nor greater than \$900 for each offense. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- B. The Village Attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including suit for an injunction, shall be brought in the name of the Village, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this chapter, or any of the laws in force in the Village or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

**§ 155-16. Scienter required to prove violation.**

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation shall be imputed to the catering and events establishment licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

**§ 155-17. Applicability of Chapter to existing establishments.**

All preexisting establishments operating as catering and events establishments, as that term is defined in this Chapter, that are lawfully operating in the Village in compliance with all state and local laws prior to the effective date of this Chapter, are hereby granted a *De Facto* Temporary License to continue operation for a period of ninety (90) days following the effective date of this Chapter. By the end of said ninety (90) days, all catering and events establishments must conform to and abide by the requirements of this Chapter.

**§ 155-18. Severability.**

This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.

**§ 155-19. Conflicting code provisions.**

Any provision(s) in the Village code, including the provisions of Chapter 206 (Licensed Occupations), specifically in conflict with any provision in this chapter is hereby deemed inoperative as to catering and events establishment licenses.

**SECTION 2.** The Code of the Village of Port Chester, Chapter 175, § 175-4, is hereby amended to add language as follows:

**Chapter 155, Catering and Events Establishments** (note fees changed 12-16-13)

<b>License or Activity</b>	<b>Code Reference</b>	<b>Annual Fee</b>
Annual catering and events establishment license	§ 155-4A	\$530.00 (1-74 occupancy) \$640.00 (75-299 occupancy) \$750.00 (300-599 occupancy) \$850.00 (600+ occupancy)

**SECTION 3. Effective Date.**

This Local Law shall take effect immediately upon filing with the Secretary of State, as provided by law.

BY ORDER OF THE BOARD OF TRUSTEES OF  
THE VILLAGE OF PORT CHESTER, NEW YORK  
DENNIS PILLA, Mayor  
JOAN MANCUSO, Village Clerk

Adopted: June 1, 2009