

**THE MINUTES
FOR THE MARCH 18, 2009
MEETING OF THE BOARD OF TRUSTEES
OF THE INCORPORATED VILLAGE OF NORTHPORT
MEETING AT 6:00 P.M.**

Present: Mayor Doll, Trustees, Kehoe, McMullen, Maline and Tobin. Village Attorney James Matthews, Deputy Village Clerk Catherine Romanczyk, Superintendent Joseph Correia

Absent: Village Clerk Donna Koch

ANNOUNCEMENTS: Mayor Doll announced the East Northport Rotary was sponsoring a UN World Water day. Starting at the East Northport Train Station and ending in Cow Harbor Park. Where they will talk about water quality. The Mayor also announced the Court System received a grant to supply the Village at no extra cost with credit card machines. These machine can be used to pay fines and/or bail. Mayor Doll reported the passing of Trustee Malines father.

Mayor Doll asked the Clerk to read the notice of Public Hearing to wit:

PUBLIC HEARING(S)

PLEASE TAKE NOTICE: that a Public Hearing of the Village Board of Trustees will be held at the Village Hall, 224 Main Street, Northport, New York at 6:00 o'clock in the evening of the 18th day of March, 2009, to consider the following proposed local law:

RESOLUTION 2009 - ~PROPOSED LOCAL LAW "A" OF 2009

**LOCAL LAW "A" OF 2009
A LOCAL LAW OF
THE VILLAGE OF NORTHPORT
TO AMEND CHAPTER 306
OF THE CODE OF THE VILLAGE OF NORTHPORT**

BE IT ENACTED: By the Board of Trustees of the Village of Northport as follows:

Section 1. Legislative Intent

The Board of Trustees finds that amending the Zoning Code of the Village to permit outdoor sidewalk dining and to amend the existing provisions relating to outdoor dining will be an economic benefit to local business and will enhance the social and dining experience in the Village consistent with the character of the Village.

Section 2. Statutory Authority and Supersession

This Local Law is adopted pursuant to New York State Village Law, Municipal Home Rule Law, General Municipal Law and the State Environmental Quality Review Act and its implementing regulations and expressly supersedes inconsistent provisions of the Village Code.

Section 3. Applicability

The provisions of this Local Law shall apply as set forth in the amendments.

Section 4. Amendments

The code of the Incorporated Village of Northport shall be amended as follows:

CHAPTER 306: ZONING

§ 306-18.1. *Outdoor Dining*

A. *Outdoor sidewalk dining in the Central Business A and B, Central Business A and B, Highway Business and Neighborhood Business Districts only shall be permitted subject to compliance with the following:*

1. *Permitted only for the restaurants and deli-style businesses in the Central Business A and B, Highway Business and Neighborhood Business Districts (hereinafter referred to as "Applicants") during the period April 1 through November 1.*
2. *Applicants shall submit a sworn statement with a fee of \$50 that provides the following information and/or statements: where the service shall be provided; the number of tables and seats; that the applicant shall comply with all requirements set forth herein; that the restaurant is in compliance with all other governmental regulations, codes and/or laws; the sworn statement shall include a copy of this resolution signed by the applicant as recognition and acceptance of all the terms of this resolution, the required certificate of insurance and, where applicable, permit from the New York State Liquor Authority. Upon submission of a completed application, the Village Clerk shall issue a permit for the requested outdoor sidewalk dining.*
3. *Seating for sidewalk service shall not require any additional parking spaces or prompt other zoning requirements or need for variances.*
4. *The applicants shall provide for a pedestrian right-of-way on the sidewalk measured from the inside of the curb where it meets the sidewalk of at least 36 inches clearance; tables and chairs and other objects, such as menu signs shall be kept out of the pedestrian right-of-way. Clearance for the pedestrian right-of-way must be around obstacles such as signs, benches, garbage cans, handicap cuts and other impediments. Employees may temporarily be within the pedestrian right-of-way while performing their duties, such as serving, but may not place objects, such as tray stands in the pedestrian right-of-way. However, employees shall at all times yield to pedestrians within the pedestrian right-of-way.*
5. *Applicants shall provide with the above stated sworn statement a certificate of insurance with liability limits of at least \$2 million per occurrence and which names the Incorporated Village of Northport, 224 Main Street, Northport, New York as an additional insured and will be notified by the insurance company or agent in the event of a lapse of coverage. This insurance is required to remain in effect for the duration of the sidewalk dining activities and to cover claims arising out of said activities; the Village must be notified in the event of any threatened or actual lapse in insurance coverage. Any such lapse shall automatically revoke permission for sidewalk dining. In any event, the applicant shall be liable for all claims arising out of the operation of*

the dining services and shall defend, indemnify and hold the Village harmless from and against any such claims.

- 6. Applicants may display menu signs only while there is sidewalk dining service, but only as authorized by the Board of Architectural and Historic Review, which Board is hereby authorized and directed to establish pre-approved menu sign form, including size and display specifications, which applicants may display without obtaining a sign permit.*
- 7. Alcohol may only be served in conjunction with food that is otherwise available for purchase without alcohol. All businesses serving alcoholic beverages must be in compliance with all state laws and regulations, including those of the New York State Liquor Authority. Copies of permits shall be provided to the Village prior to service of alcoholic beverages.*
- 8. Sidewalk service may be provided in front of up to two adjoining business, i.e.: one on either side of the applicant's premises, with the permission of the that/those businesses and their landlords. Permission shall be given in writing, a copy of which shall be given to Village hall before sidewalk service in front of an adjoining premise is provided. Permission may be withdrawn by the adjoining business(es) or landlord(s) at any time. The business or landlord withdrawing permission shall notify the Village in writing within one week of the withdrawal. Any adjoining business and landlord that gives such permission shall be covered by the applicant's insurance in the same way the Village is, and at no less a coverage level. Confirmation of such coverage and notice of any lapse, etc., shall be provided to the Village in the same manner as such notice is made to the Village regarding coverage extended to the Village. Copies of all such notices shall also be given to the permitting businesses and landlords.*
- 9. The businesses with outdoor sidewalk dining shall take all reasonable steps to control littering and shall dispose of all trash as otherwise required and must clean the sidewalk and all areas with debris and other garbage at the time the tables are removed each evening.*
- 10. The businesses with outdoor sidewalk dining shall take all steps necessary to maintain safety and to immediately remedy any unsafe situation.*
- 11. A village police officer or code enforcement officer may temporarily suspend sidewalk service at anytime due to violations of this resolution, threats to public safety, disorderly conduct, noise, disruption of other business operations or violations of other village codes or other laws or regulations. The police or code enforcement officer may choose but is not obligated to allow sidewalk service to resume if he or she is satisfied that all violations have been remedied. An affected business may appeal a decision to suspend outdoor sidewalk dining to the Board of Trustees, which shall conduct an evidentiary hearing to determine whether to reinstate the permit or continue the suspension for a stated period of time.*
- 12. Outdoor sidewalk dining service shall be permitted no later than 10 p.m. weekdays and 12 midnight on Friday and Saturday nights. Tables and chairs and menu signs must be removed from the sidewalk no later than 10:30 p.m. on weekdays and 12:30 a.m. on Friday and Saturday nights. In the Neighborhood Business District, outdoor*

sidewalk dining shall cease no later than 9:00 P.M. except on Friday and Saturday nights when it shall cease no later than 10:00 P.M. In all districts, tables and chairs cannot be set up earlier than one half hour before service begins.

13. *The courtyard area located between the stores located on the south side of Main Street and the building known as 24 Woodbine Avenue may also be used for outdoor dining provided the written permission of the owner of the property on which tables are placed is obtained and other requirements of this resolution are complied with and an unobstructed pedestrian right-of-way of at least 36 inches is maintained between the rear entrances of the existing outdoor dining facilities and other ingress and egress points.*
14. *The terms of this code provision and the right to provide sidewalk service shall be subservient to any regulation of or ruling by any superior jurisdiction and the Village shall not be responsible for any disruption or termination of sidewalk service caused by any superior jurisdiction.*
15. *No variances for parking or other permissions from the Zoning Board of Appeals shall be required for outdoor sidewalk dining in compliance with this resolution.*
16. *Smoking is not permitted on any outside dining tables or within twenty (20) feet of any outside tables.*
17. *The premises on which the service is to be offered must have a valid certificate of occupancy or letter in lieu and a certificate of permitted use.*
18. *Outdoor dining service shall be subject to the prohibitions set forth in §306-11B of the Village Code.*
19. *It is the intention of the Board that no variances from any of the dimensional and other requirements of this code provision be granted by the Board of Zoning Appeals as Outdoor Sidewalk Dining involves the use of public property and/or right of way and the Board intends to allow such use only if strictly in accordance with these code provisions. Furthermore, the dimensional requirements are necessary for public safety and access for all persons, including those with disabilities and the Board intends that all legal requirements for this access be complied with.*
20. *The installation, use or maintenance of radios, speakers, televisions or like apparatus and live entertainment shall be prohibited in outdoor sidewalk dining areas.*
21. *Notwithstanding any provisions of this code amendment, outdoor dining facilities shall be in all respects compliant with all applicable provisions of the Americans with Disability Act of 1990 as amended from time to time.*

B. Outdoor Dining on Private Property, meaning that such dining is not located on a sidewalk or other public property or right of way, shall be permitted in the Central Business A and B Districts and in the Highway Business District subject to compliance with the following:

1. *All of the requirements for outdoor sidewalk dining shall be applicable and are hereby incorporated herein by reference thereto, except for subsections 2, 4, 6, 8 and 9.*
2. *The permit for outdoor dining on private property is a required permit for outdoor dining that is located on private property and not on a sidewalk or other public property or right of way.*

A eligible business may hold both permits provided they satisfy the requirements for each such permit.

3. Outdoor dining areas shall not be enclosed or maintained for year round use unless all required building, zoning and other applicable permits for a permanent structure and/or use have first been obtained.

4. The installation, use or maintenance of radios, speakers, televisions or like apparatus and live entertainment shall be prohibited in outdoor dining areas, unless separately authorized by resolution of the Board of Trustees.

5. No variance shall be required from the Board of Zoning Appeals for outdoor dining in compliance with this code.

6. Applicants shall provide a survey for the premises for which the permit is requested showing all structures thereon, a sketch showing the proposed number of tables and chairs and the approximate area to be used for outside dining with a proposed seating plan for same.

C. Permit revocation. The permit for outdoor sidewalk dining and outdoor dining may be revoked by the Board of Trustees as follows:

1. Upon conviction, by plea or otherwise, of three separate violations of Chapter 200 of the Code of the Village of Northport, if the violations occur within any twelve-month period of time; or

2. Upon conviction, by plea or otherwise, of two violations of selling or serving alcoholic beverages to minors, if the violations occur within any twelve-month period of time; or

3. Upon conviction, by plea or otherwise, of two separate violations of the New York State Uniform Fire Prevention and Building Code, including but not limited to the absence of a valid public assembly permit and exceeding the maximum number of occupants permitted within tile assembly space as established by the Code Compliance Director, if the violations occur within any twelve-month period of time, and for two separate violations of this code section or because of a single violation section 306-11(B) or for a threat to public safety.

4. Nothing contained herein shall be construed to limit the right of the Village of Northport to pursue enforcement of this section by an action in law or equity and to recover the cost of attorneys' fees in any enforcement proceedings.

5. Failure to attend at least one annual meeting called by the Village regarding these code provisions and compliance with other requirements applicable to permit holders and restaurants generally.

D. Revocation hearing.

1. The Village Board may revoke a permit issued hereunder only after a public hearing on notice to the permit holder. Such notice shall contain the time, date and place of the public hearing and written notice of the charges. Service of the notice shall be deemed proper if personally delivered to the permit holder, or delivered to the person in charge at the subject premises, or mailed by certified mail, return receipt requested, to the last known address of the permit holder, within 10 days of the public hearing. The permit holder may present testimony and question opposing witnesses during the hearing.

2. Notice of revocation. In the event that a permit is revoked by the Village Board, notice of revocation shall be mailed to the permit holder by regular mail and certified mail. Such notice shall state in writing the reasons for the revocation.

3. No permit shall be revoked under this section unless a resolution is passed by a concurring majority vote of the Village Board of Trustees. The decision of the Board shall be filed with the Village Clerk and becomes file upon such filing.

~~§306-39-B(2)(g) Temporary Permit for Outdoor Dining on Private Property~~
Is deleted in its entirety.

Section 5. Severability

If any clause, sentence, paragraph, subdivision, section or other part of this Local Law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this Local Law, and it shall be construed to have been the legislative intent to enact this Local Law without such unconstitutional, or invalid parts therein.

Section 6. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State.

Village Attorney James Matthews, explained this local law is to allow food establishments to place table and chairs on the sidewalks in front of their businesses.

Comments: Several Village residents were on hand to support the proposed law as well as several business owners. Lynn Usher, of Einstein's Attic said she has

received nothing but positive support for the outdoor dining. Artie Glad of Pumpnickels stated it would be a "real crime to turn this down". Leah Fink of 487 Main St. lives right next to Nina's Pizza, stated her rights were being taken away. She can hear everything that goes on right outside her window. "I lived here way before there was a restaurant there. Mr. Fink was concerned about the increase of garbage. Trustee Kehoe explained that there will be a meeting to discuss the garbage on Thursday March 26, 2009. Sally Wadsworth of Bayview Ave. felt that the ADA requirement of 36 inches was not enough for people to be able to get around the tables. Arlene Handel expressed concern about the added stress on garbage and the sewer system. Ms. Handel stated that maybe the highway can paint a "yellow brick road" on the sidewalks as the pedestrian right of way. Trustee Tobin stated that the most important issue is that of public safety and in the areas where we cannot provide proper pedestrian passage no outdoor dining will be permitted. Permits for the sidewalk dining will be on a year to year basis so we can look at the effect, if any it is having on our budget, sewer, code enforcement or anything else that might come up. Two petitions were handed in, one in favor of the outdoor dining, one against.

PRESENTATIONS: There were no presentations this evening.

PUBLIC PARTICIPATION: There was no public participation this evening.

COMMISSIONER REPORTS: In the interest of time commissioner reports were waived this evening.

CHIEF OF POLICE REPORT: In the interest of time there was no Police report this evening.

SUPERINTENDENT REPORT:

1. Sanitary System Rehabilitation Program. On the motion of Trustee McMullen and seconded by Trustee Tobin the Board authorized an additional expenditure of \$936.00 to Gannett Fleming.
2. Multi Modal #4 Main Street Grant. A resolution will be put on for the next meeting awarding the job to Ferrandino & Sons. On the motion of Trustee Tobin and seconded by Mayor Doll with Trustee Kehoe opposing the Board approved \$2500.00 in addition to the \$50,000 project cost for unanticipated expenditures

BOARD APPROVAL OF WARRANT:

On the motion of Mayor Doll and seconded by Trustee Tobin the following bills were approved for payment.

Fiscal Year 2008/2009 General Fund bills in the amount of \$ 105,775.86

On the motion of Trustee Kehoe and seconded by Trustee Tobin the following bills were approved for payment.

Fiscal Year 2009/2010 General Fund bills in the amount of \$ 13,785.95

On the motion of Trustee Kehoe and seconded by Trustee McMullen the following bills were approved for payment.

Fiscal Year 2008/2009 Capital Fund bills in the amount of \$ 19,660.36

On the motion of Mayor Doll and seconded by Trustee Tobin the following bills were approved for payment.

Fiscal Year 2009/2010 Capital Fund bills in the amount of \$ 121.84

On the motion of Trustee Tobin and seconded by Trustee Kehoe the following bills were approved for payment.

Fiscal Year 2008/2009 Fire Department bills in the amount of \$ 21,397.94

On the motion of Trustee Kehoe and seconded by Mayor Doll the following bills were approved for payment.

Fiscal Year 2009/2010 Fire Department bills in the amount of \$ 264.95

NEW BUSINESS:

OLD BUSINESS:

REQUESTS:

CORRESPONDENCE:

RESOLUTIONS:

The following resolution was put on hold until the next meeting.

RESOLUTION 2009 – 30 ~ APPROVAL OF THE MARCH 3, 2009 MINUTES

WHEREAS: Copies of the minutes of the March 3, 2009, meeting were sent to the Board for approval, therefore,

BE IT RESOLVED that said minutes are approved without reading, at this time.

On the motion of Trustee Kehoe and seconded by Trustee McMullen the following resolution was unanimously approved.

RESOLUTION 2009 – 31 ~ APPROVAL OF THE MARCH 11, 2009 MINUTES

WHEREAS: Copies of the minutes of the March 11, 2009, meeting were sent to the Board for approval, therefore,

BE IT RESOLVED that said minutes are approved without reading, at this time.

On the motion of Trustee Kehoe and seconded by Trustee Tobin the following resolution was put to a roll call vote:

Trustee Maline ~ Yes

Trustee Kehoe ~ Yes

Trustee McMullen ~ Yes

Mayor Doll ~ Yes

Trustee Tobin ~ Yes

RESOLUTION 2009-32 LOCAL LAW No.1

WHEREAS; a Public Hearing of the Village Board of Trustees was held at the Village Hall, 224 Main Street, Northport, New York at 6:00 o'clock in the evening of the 18th day of March, 2009, to consider the following local law:

**LOCAL LAW No.1 OF 2009
A LOCAL LAW OF
THE VILLAGE OF NORTHPORT
TO AMEND CHAPTER 306
OF THE CODE OF THE VILLAGE OF NORTHPORT**

On the motion of Trustee Kehoe and seconded by Trustee Tobin the following resolution was unanimously approved.

RESOLUTION 2009-33 INTERMUNICIPAL AGREEMENT:

BE IT RESOLVED: The Mayor is hereby authorized to execute an intermunicipal agreement with the Incorporated Village of Asharoken relating to coordination and sharing of services in the areas of Marine Patrol, Police Dispatching, Public Works and Village Justices in a form to be approved by the Village Attorney.

On the motion of Trustee Kehoe and seconded by Trustee Tobin the following resolution was unanimously approved.

PLEASE TAKE NOTICE: that a Public Hearing of the Village Board of Trustees will be held at the Village Hall, 224 Main Street, Northport, New York at 6:00 o'clock in the evening of the 7th day of April, 2009, to consider the following proposed local law:

**LOCAL LAW "B" OF 2009
A LOCAL LAW OF
THE VILLAGE OF NORTHPORT
TO AMEND CHAPTER 215
OF THE CODE OF THE VILLAGE OF NORTHPORT**

BE IT ENACTED: By the Board of Trustees of the Village of Northport as follows:

Section 1. Legislative Intent

The Board of Trustees finds that amending the Village Code to permit the Police Chief to determine the expiration dates for peddling and solicitation permits issued pursuant to Chapter 215 to coordinate regulation with other applicable laws and regulations will promote the public safety and welfare of the Village residents.

Section 2. Statutory Authority and Supersession

This Local Law is adopted pursuant to New York State Village Law, Municipal Home Rule Law, General Municipal Law and the State Environmental Quality Review Act and its implementing regulations and expressly supersedes inconsistent provisions of the Village Code and Village Law.

Section 3. Applicability

The provisions of this Local Law shall apply as set forth in the amendments.

Section 4. Amendments

The code of the Incorporated Village of Northport shall be amended as follows:

CHAPTER 215: Peddling and Soliciting

§215-9 Permit Expiration

All permits issued under the provisions of this chapter shall expire one year from the date of issuance unless an earlier expiration date is noted on the permit. *The Police Chief may set a fixed termination date for any category of permits if necessary to coordinate regulation and/or enforcement with other applicable laws or regulations. Provided due notice is given to all permit holders, the Police Chief may reduce the length of existing permits if necessary to coordinate regulation and/or enforcement with other applicable laws or regulations. No refunds or pro-rata adjustments of permit fees shall be authorized as a result of any action by the Police Chief under this section.*

Section 5. Severability

If any clause, sentence, paragraph, subdivision, section or other part of this Local Law shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect, impair or invalidate the remainder of this Local Law, and it shall be construed to have been the legislative intent to enact this Local Law without such unconstitutional, or invalid parts therein.

Section 6. Effective Date

This local law shall take effect immediately upon filing in the Office of the Secretary of State.

On the motion of Trustee Kehoe and seconded by Trustee McMullen the following resolution was unanimously approved.

RESOLUTION 2009-35

BE IT RESOLVED: authorizing the payment of an amount in total not to exceed \$110,000 to be paid from the funds of the service award program of the Northport Fire Department for volunteers who accrued service credits from January 1, 2000 to the present but who did not receive LOSAP service award payments that included credit for such service, said payments to be without interest in amounts certified by the board of fire commissioners and provided that the volunteer provides the Village and the fire department with a release in a form approved by the Village Attorney.

A RESOLUTION FOR AN EXECUTIVE SESSION: if necessary, for personnel and/or litigation matters.

The next regular meeting of the Board of Trustees will be April 7, 2009 at 6:00 PM.

Respectfully submitted,

Donna M. Koch,
Village Clerk