

**TOWN OF WESTFIELD
WESTFIELD, NEW JERSEY
GENERAL ORDINANCE NO. 2023-10**

**AN ORDINANCE AMENDING THE SIDEWALK CAFÉ
ORDINANCE OF THE TOWN OF WESTFIELD**

WHEREAS, the Town of Westfield has long permitted sidewalk cafes in the CBD Zone and GB-1 zones within the Town; and

WHEREAS, from time to time the regulations of such sidewalk cafes requires amendment, as the Town’s needs dictate, in the service of the health, safety, and welfare of the residents of the Town;

WHEREAS, outdoor dining in the Town was expanded on a temporary basis to permit “parklets,” so as to assist area restaurants and retail food establishments during the Covid-19 pandemic, and such parklets proved popular and successful;

NOW, THEREFORE, BE IT RESOLVED, as follows:

SECTION I. Chapter 24, “Streets and Sidewalks,” Article VII, “Sidewalk Cafes,” shall be and is hereby amended in its title as “Sidewalk Cafes; Parklets,” and shall be amended further as follows:

§ 24-46 **Definitions.**

As used in this article, the following terms shall have the meaning indicated:

- (a) **PARKLET** – A specifically delineated curbside space in the public right-of-way limited to on-street parking spaces and lanes and cartways converted for seasonal occupation of outdoor dining facilities, which may include seating, tables, umbrellas, planters, safety barriers, lighting, space heaters and signs as permitted by the Town of Westfield to be operated and occupied for the sole use of the adjacent restaurant, retail food establishment, or other such business as contemplated in this Article having received a permit from the Town for such use.
- (b) **PARKING SPACE** – A delineated, on street space that is parallel to curbing, intended for on-street parking, and typically measuring 23 feet in length.
- (c) **PARKING SPACE EQUIVALANT** – An area or areas located in the lane or cartway of a public street, whether delineated as perpendicular or angled parking, no-parking or loading area, or other, similar area, measuring 23 feet in length parallel to the curb.
- (d) **PRINCIPAL BUILDING** — The building whose principal facade fronts on the sidewalk where the sidewalk cafe is, or is proposed to be located. The "principal facade" shall be the face of the principal building facing the street right-of-way.
- (e) **PERMITTED ZONE, SIDEWALK CAFES** — The CBD Zone and GB-1 Zone as defined in the Westfield "Land Use Ordinance" and as shown on the zoning map of the Town of Westfield. **PERMITTED ZONE, PARKLETS** – Parklets shall be

permitted only on the following streets in the CBD: (1) Elm Street from North Avenue to Orchard Street; (2) Quimby Street; (3) Prospect Street from North Avenue to East Broad Street; and (4) East Broad Street from North Avenue to Central Avenue.

- (f) PERSON — Any individual, partnership, corporation, limited liability company, association, or other entity.
- (g) RESTAURANT — An establishment actually located within the principal building, the primary activity of which is the preparation of food for consumption by the public on its premises.
- (h) SIDEWALK — The paved surface provided for the exclusive use of pedestrians and situated between and extending from any building line to the curb of any street (excluding therefrom any unpaved area).
- (i) SIDEWALK CAFE or CAFE — A restaurant as defined herein which also is characterized by the following:
 - (1) The consumption of food by the public at tables located within that more or less rectangular portion of the sidewalk which lies within the area bounded by the public street, the principal facade, and the imaginary perpendicular lines running from the outer edge of such principal facade to the public street; and
 - (2) Containing readily removable tables, chairs, temporary railings and/or planters; and
 - (3) Unenclosed by fixed walls or ceilings, fences, except for retractable awnings, removable barriers, umbrellas or other nonpermanent enclosures.
 - (4) The term "sidewalk cafe" shall also mean an operation ancillary to a principal building in accordance with Section **24-56**.
- (j) OBSTRUCTION — Any tree, trash receptacle, street curb, parking meter, newspaper box, street sign or basement entry hatch lying within the area of the sidewalk cafe.
- (k) SERVICE ITEMS — All dishes, utensils, containers, tablecloths, napkins, cutlery and other items used in the operation or decoration of the sidewalk cafe.

§ 24-47 License required.

No person shall operate a sidewalk cafe within the Town of Westfield without first obtaining a sidewalk cafe license and satisfying all the requirements of this article. The license shall be initially issued by the Town Clerk and may contain conditions. All renewals of a sidewalk cafe license issued shall also be issued by the Town Clerk.

§ 24-48 Application.

- (a) Each applicant for a sidewalk cafe or parklet license shall submit and file an

application with the Town Clerk, together with copies of a development plan (as defined below), and the appropriate fee. The application shall set forth:

- (1) The name and address of the applicant,
 - (2) The name and address of the owner of the principal building (if other than the applicant), and
 - (3) The name and address of the person who has prepared the development plan; and shall be accompanied by the written authorization and approval of the owner of the principal building (if other than the applicant).
 - (4) Written consent of the adjacent establishment for any sidewalk café or parklet that extends beyond the applicant's street frontage and in front of the adjacent establishment.
- (b) The term "development plan" shall mean a written plan setting forth the following information and such other additional information, if any, as may be subsequently requested by the Town.
- (1) A description of the principal building and a description of all properties immediately adjacent to such building; and
 - (2) A description of the proposed design and location of the sidewalk café or parklet, its dimensions and all temporary structures, equipment, and apparatus to be used in connection with its operation, including tables, temporary fences and barriers, planters, serving carts, chairs, awning, umbrellas (including any name to be displayed thereon), lighting and electrical outlets (if any); and
 - (3) A statement of the seating capacity of the proposed sidewalk cafe or parklet and of the existing restaurant actually operated by the applicant in the principal building; and
 - (4) A diagram demonstrating that pedestrian traffic along the sidewalk on which the sidewalk cafe or parklet is proposed to be located will in no way be impeded; and that the provisions of this Sections **24-50 and 24-55** be satisfied. Such diagram shall also include a drawing of the sidewalk cafe or parklet itself with all appurtenances and shall show all obstructions located within the area of the sidewalk café or parklet. The diagram shall be drawn to scale and shall include all dimensions of any and all items located or proposed to be located within the area of the sidewalk café or parklet. The development plan shall be referred to the chief of the Fire Department, or other appropriate official designated by the Town administration from time to time to review such plans, who shall thereupon recommend approval, disapproval or modification of the plan within 10 business days following its submission. The Fire Chief may also refer the development plan to Chief of Police, zoning officer, Construction Official, health officer and the Town Engineer, and the municipal planner for their review and recommendation; and

- (5) If any service items shall be made of disposable or non-reusable materials, the proposed means for disposal of such service items, together with a drawing of the design of the proposed trash receptacles to be utilized.
- (6) Specifications for any proposed heaters shall be provided for review. No heating or cooling elements shall be installed prior to the Town's approval for such installations. Space heaters and cooling equipment shall be properly positioned, maintained and anchored.
- (c) In the application to be submitted, the applicant may request that the Town Clerk grant the applicant a waiver from compliance with certain of the requirements of Section **24-56** of this article.

§ 24-49 Term of license: renewals.

All sidewalk cafe and parklet licenses shall be issued for the period commencing March 1 and ending October 31 of a particular year. Licenses may be renewed annually by filing of an application in accordance with the provisions of this Article.

§ 24-50 Special Conditions Applicable to Parklets

- (a) Qualifying restaurants and retail food establishments located in the Permitted Parklet Zone shall be permitted a maximum of one (1) parklet facility not to exceed two (2) contiguous parking stalls or parking space equivalent. This shall not be interpreted to indicate that any parklet permit application is guaranteed approval. The Town reserves the right to limit the number and size of parklets per block based on the location, potential interference with pedestrian or vehicular traffic, appropriateness of design, business record of the applicant as well as safety, health, and welfare considerations.
- (b) Restaurants and retail food establishments may be permitted to obtain a permit to operate both a sidewalk café and a parklet, if it is determined in the sole discretion of the Town Clerk that the area adjacent to the use cannot safely or functionally accommodate either a sidewalk café or a parklet as regulated by this Article.
- (c) The Town reserves the right to order the temporary suspension of outdoor dining and the removal of all fixtures associated with any parklet at the permit holder's expense, from the public sidewalk or roadway because of road or utility construction or repairs, severe weather, public emergency, or any other similar public purpose that may arise.
- (d) Soft white or amber string lighting, lamps and other fixed lighting fixtures are permitted in, around, or over parklets to the extent that they do not generate excessive or unsafe glare to surrounding uses, vehicles, or pedestrian traffic. Bright white or blue LED lighting is prohibited. Parklet lighting control shall be at the discretion of the Town and may require adjustment at any time to protect public safety and the general welfare. Flashing, neon and colored lights are prohibited. Parklet lighting is permitted ½-hour prior to the parklet opening and ½-hour after parklet close.
- (e) Parklets must be installed in the parking space, parking lane or other approved

location within the Town right-of-way located directly in front of the establishment with the parklet permit. Parklets may occupy areas of the street other than striped parking stalls upon approval of the Town Clerk. Parklets may not extend further than the frontage of the establishment with the approved parklet permit, unless written consent is provided by the adjacent establishment in front of which the parklet will extend.

- (f) In no case shall a parklet occupy more than two (2) parking stalls and may be limited to one (1) parking stall.
- (g) Unless expressly authorized by the Town Clerk, parklets are prohibited in public alleyways, parking lots and any established prohibited parking zones.
- (h) Parklets shall be contained within the area of the approved space and shall not extend into the adjacent travel lane, parking stall or sidewalk. Parklets shall not be wider than the parking lane. If no parking lane is striped in the vicinity of an approved parklet, applicants shall consult with the Town Engineer to obtain the official parking lane width.
- (i) Access to utilities shall be maintained in accordance with the following:
 - (1) Parklets shall have at least 5 feet of unobstructed clearance to utilities, loading zones or handicapped parking spaces.
 - (2) Parklets shall be located a minimum of 15 feet from any fire hydrant.
 - (3) Parklets shall be located a minimum of 20 feet from any marked crosswalk or 30 feet from the block corner at intersections without a marked crosswalk.
- (j) Only the sidewalk-facing side of a parklet shall be open to pedestrians. All sides facing a street shall be enclosed with an acceptable barrier or decorative element as approved by the Town Clerk. Parklet openings shall be placed so as to avoid tree wells, poles, parking meters, signs, and other obstacles that may pose hazards to pedestrians.
- (k) Although parklet decking is not required, any parklet decking must be flush with the curb and may not have more than a ½-inch gap from the adjacent curb and shall be designed to allow for the flow of stormwater.

§ 24-51 Insurance required.

No sidewalk cafe or parklet license shall be issued unless the licensee shall have first filed with the Town Clerk a copy of an insurance policy or certificate of insurance, issued by a company duly authorized to transact business under the laws of this State, providing for the payment of not less than \$1,000,000 to satisfy all claims for damage by reason of bodily injuries to, or the death of, any person as a direct or indirect result of the operation of the sidewalk cafe or parklet, or for injury to any person occurring on the premises occupied by such café or parklet, and further providing for the payment of not less than \$10,000 to satisfy all claims for property damage occurring as a direct or indirect result of the operation of such cafe or parklet and naming the Town of Westfield as an additional insured.

§ 24-52 Indemnification agreement required.

No sidewalk cafe or parklet license shall be issued unless the licensee shall have first executed and filed with the Town Clerk an indemnification agreement pursuant to which the licensee, in further consideration of the issuance of the license, shall agree to forever defend, protect, indemnify and save harmless the Town of Westfield, its officers, agents and employees, from, and against, any and all claims, causes of action, injuries, losses, damages, expenses, fees and costs arising out of, or which may arise out of, the licensee's operation of such sidewalk café or parklet.

§ 24-53 Maintenance agreement required.

No sidewalk cafe or parklet license shall be issued unless the licensee shall have first executed and filed with the Town Clerk a maintenance agreement pursuant to which the licensee, in further consideration of the issuance of a license, shall agree, at the option of the Town, to either repair at its sole cost and expense, any damage caused to the sidewalk or any part of the Town right-of-way by the operation of the café or parklet, or to reimburse the Town in full for all costs and expenses incurred by it in making any such repairs.

The Town Clerk may require a bond to be filed by the licensee in an amount to be fixed by the Town.

§ 24-54 License fee.

The fees for a sidewalk cafe license shall be as follows:

Type	Fee	
Sidewalk Café	1-10 seats, no more than 2 tables	\$100
	11-25 seats	\$250
	26-50 seats	\$350
	Over 50 seats	\$425
Parklet	\$2,500 per parking space/parking space equivalent	

§ 24-55 Requirements and specifications.

A sidewalk cafe or parklet authorized and operating pursuant to this article shall comply with all of the following regulations and specifications and such others as may be adopted from time to time by resolution of the Town Council of the Town of Westfield:

- (a) The cafe and parklet shall be operated and maintained in accordance with the development plan as finally approved.
- (b) No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk café or parklet shall be placed within 50 feet of any fire hydrant, plug or standpipe without the specific written authorization of the chief of the Fire Department.

- (c) No furniture, apparatus, decoration, or appurtenance used in connection with the operation of the sidewalk cafe or parklet shall be located in such a way as to impede the safe and speedy ingress and egress to or from any building or structure. At least six feet of unobstructed walkway shall be provided for access from any door or opening on the business facade to the street.
- (d) No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe or parklet shall be located in such a way that less than six feet of paved sidewalk unobstructed by any obstructions remains for the exclusive use of pedestrians (the "required pedestrian passageway"), nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above, the required pedestrian passageway. All sidewalk cafes shall have portable barriers or planters not less than three feet nor more than four feet in height which shall be placed around the sidewalk cafe area on the sidewalk to define the cafe area and the unobstructed pedestrian passageway area.
- (e) Service items shall be made of non-disposable and reusable materials; provided, however, that upon a showing of need by the applicant and of adequate provision of outdoor waste receptacles for the disposal of disposable and nonreusable materials, a sidewalk cafe or parklet license may provide for the use of disposable and nonreusable service items. The furniture to be used in the operation of the sidewalk café or parklet shall be made of durable material, such as sturdy vinyl/plastic, wrought iron or wood. Tables shall have a diameter not larger than 24 inches.
- (f) The sidewalk area utilized by the café or parklet area shall be kept clean and free of litter. Sidewalks shall be washed daily, and trash receptacles shall be provided as required and approved from time to time by the Town.
- (g) Noise shall be kept at such a level as to comply in all respects with the provisions of the Union County Noise Control Ordinance.
- (h) Sidewalk cafes and parklets shall be permitted to operate only within the permitted zone and only from 10:00 a.m. until 10:00 p.m. from March 1 through October 31 of a particular year.
- (i) Within 30 minutes after the closing of a sidewalk cafe, the operator shall have all furniture, apparatus, decorations, barriers, planters and appurtenances and any other items used in connection with the operation of such cafe removed from the sidewalk. All such materials shall be stored in a safe and secure interior location.
- (j) The operator shall comply with all the requirements of N.J.S.A.C. 8:24-1 et seq. (also known as Chapter XII of the New Jersey State Sanitary Code) and N.J.S.A. 24:15-1 et seq.
- (k) The sidewalk café or parklet shall be actually operated and maintained by the same person who operates and maintains the related restaurant of which the café or parklet is a part and an extension.
- (l) The operator shall comply with all other ordinances of the Town of Westfield.
- (m) Notwithstanding anything to the contrary in this article or any other laws and

ordinances of the Town but subject to the review and approval of the Town Clerk, a person may be permitted to display the name of the establishment operating a sidewalk cafe or parklet on umbrellas to be used at the sidewalk café or parklet.

§ 24-56 Sidewalk cafes or Parklet outside permitted zone; other ad hoc variations.

Notwithstanding anything to the contrary contained in this article or any other laws and ordinances of the Town of Westfield, the Town Clerk may issue licenses to operate sidewalk cafes or parklets which may otherwise vary from certain of the other requirements of this article. The issuance of such licenses shall be on terms and conditions as the Town Clerk may deem fit and may include, but shall not be limited to, the following situations: (a) the issuance of licenses to establishments that are not situated in the permitted zone; (b) the issuance of licenses to establishments which may not be deemed to be restaurants under this article; (c) the inclusion of certain private property as part of a particular sidewalk café or parklet; and (d) the establishment of hours of operation which may differ from the requirements otherwise set forth in this article. All renewals of such licenses shall also be issued by the Town Clerk.

§ 24-57 Temporary suspension by Town of license.

Notwithstanding anything to the contrary contained in this article or any other laws and ordinances of the Town of Westfield, the Town may temporarily suspend a sidewalk cafe or parklet license in the event of emergency or for other reasons or purposes including, but not limited to, the facilitation of Town-sponsored events.

§ 24-58 Alcoholic beverages.

The sidewalk café or parklet area of an establishment that holds a Class C Plenary Retail Consumption license (license holder), a Restricted Brewery license, a Theater license, or a State Annual Permit (Concessionaire Permit) upon which a sidewalk café or parklet permit has been authorized to operate pursuant to this article may constitute premises for the sale and consumption of alcoholic beverages, provided that the license holder or permit holder otherwise complies with the applicable requirements of State law

An establishment that does not hold a Class C Plenary Retail Consumption license may permit patrons, as provided by N.J.S.A. 2C:33-27, to consume wine and beer on the sidewalk area upon which the sidewalk café or parklet has been authorized to operate. All restrictions placed on establishments pursuant to N.J.S.A. 2C:33-27 will be strictly enforced.

§ 24-59 Enforcement officer; notice of violation; failure to comply.

The chief of the Fire Department of the Town of Westfield (or his designee) shall be charged with the responsibility for enforcing the provisions of this article. Upon a determination by the Fire Chief (or his designee) that a licensee has violated one or more of such provisions, the Fire Chief shall give written notice to the licensee to correct such violation within 24 hours of the receipt of such notice by the licensee. In the event that the licensee fails or refuses to correct such violation within such period, the licensee's sidewalk cafe or parklet license shall thereupon, and automatically, be revoked.

Upon the revocation of such license, the licensee, upon written request, shall be entitled to a

hearing before the Town Council of the Town of Westfield within 14 days of the date of its request.

§ 24-60 Penalties.

Any person convicted of a violation of this article shall be subject to a fine not to exceed \$500 or 90 days imprisonment, or both. Each violation of a section or subsection of this article, and each day that a violation continues shall constitute a separate offense.

SECTION II. Chapter 24, “Streets and Sidewalks,” Article VIII, “Sidewalk Signs,” shall be and is hereby amended in its section numbering, from sections 24-58 – 65, to 24-61 – 68.

in its title as “Sidewalk Cafes; Parklets,” and shall be amended further as follows:

SECTION III. Chapter 24, “Streets and Sidewalks,” Article IX, “Establishment of Open Container Areas, shall be and is hereby amended in its section numbering, from section 24-66 to 24-69.

SECTION IV. All ordinances or parts of ordinances in conflict or inconsistent with any part of this Ordinance are hereby repealed to the extent that they are in conflict or inconsistent.

SECTION V. If any section, provision, or part of provision of this Ordinance shall be held to be unenforceable or invalid by any court, such holding shall not affect the validity of this Ordinance, or any part thereof, other than the part so held unenforceable or invalid.

SECTION IV. This Ordinance shall take effect after passage and publication in the manner provided by law.

NOTICE

Notice is hereby given that the foregoing ordinance was approved for final adoption by the Town Council of the Town of Westfield at a Regular Meeting held on March 28, 2023.

Maureen Lawshe, RMC
Town Clerk