

New York State Continues to Reopen

Reopening Guidance for Town Officials



Recent Executive Orders (June 8, 2020)

Virtual Board Meetings Authorized through July 6, 2020.

Executive Order 202.28 issued on June 6, 2020 extends executive orders 202.1-202.14 as extended by executive orders 202.27 and 202.28 until July 6, 2020. Executive Order 202.1 allows municipal boards to hold virtual meetings providing the public is provided the opportunity to listen/watch in real-time and the meeting is transcribed and recorded.

Virtual Public Hearings Authorized through July 7, 2020.

Executive Order 202.39, issued on June 7, 2020, extends executive orders 202.15-202.21 as extended by 202.29 to allow towns to hold virtual public hearings through July 7, 2020. It also appears to extend the prohibition on in-person public hearings as set forth in EO 202.15 until July 7, 2020. We recommend working with the town attorney regarding scheduling and holding public hearings in accordance with EO 202.15 and its extensions.

Municipal In-Person Workforce Restrictions Modified

Executive Order 202.39 has modified the 202.4 directive to reduce a town's in-person work force to apply only to local governments that have not met the prescribed public health and safety metrics to be eligible for Phase Two reopening, provided such local governments in Phase Two regions may bring non-essential employees back to work beginning two weeks after such region meets the metrics to reopen Phase Two.

Executive Orders Extended

Executive Order 202.38 extends Executive orders 202 through 202.14 as continued and contained in Executive Order 202.27 and 202.28 through July 6, 2020 and Executive Order 202.39 extended Executive Orders 202.15-202.21 and 202.29 through July 7, 2020. To read all the executive orders please see <https://www.governor.ny.gov/executiveorders>

Temperature Checks and Facemasks to enter Commercial Businesses and Buildings

In addition, the Executive Order 202.38 authorizes the owners/managers of commercial building and retail store to require individuals to undergo temperature checks prior to being allowed admittance. This authority also allows owners and managers to deny admittance to (i) any individual who refuses to undergo such a temperature check and (ii) any individual whose temperature is above that proscribed by New York State Department of Health Guidelines. This authority prohibits claims against owners and managers regarding violations of the covenant of quiet enjoyment, or frustration of purpose, solely due to their enforcement of this directive. This authority must be administered in a manner consistent with the guidance from the Center for Disease Control and the New York State Department of Health as well as the American with Disabilities Act and any provision of either New York State or New York City Human Rights Law. Pursuant to Executive Order 202.34t the Governor authorized business operators and building owners to deny entrance to people who were not wearing facemasks as required by EO 202.17.

Outdoor Dining authorized under Executive Order 202.38 and EO 202.39

In accordance with the phased reopening plans for those regions in Phase 2, Executive Order 202.38 allows bars and restaurants to serve patrons food or beverage on-premises in outdoor space, provided such restaurant or bar is in compliance with Department of Health guidance promulgated for such activity.

Interim Guidance for Outdoor and Take-Out/Delivery Food Services during the Covid-19 Public Health Emergency

www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/OutdoorTakeoutDeliveryFoodServicesMasterGuidance.pdf

Alcohol and Beverage Control Law and Liquor Licenses

Executive Order 202.38 also addressed modifications needed to the ABC Law and liquor licenses to accommodate outdoor dining. “Upon the resumption of on-premises outdoor service of food and beverages at the licensed premises of restaurants and bars, to facilitate compliance with social distancing requirements in connection with such service, notwithstanding any provision of the Alcoholic Beverage Control law, restaurants or bars in the state of New York are permitted to expand the premises licensed by the State Liquor Authority to use (a) contiguous public space (for example, sidewalks or closed streets) and/or (b) otherwise unlicensed contiguous private space under the control of such restaurant or bar, subject to reasonable limitations and procedures set by the Chairman of the State Liquor Authority and, with respect to (a) the use of public space, subject to the reasonable approval of the local municipality, and all subject to the guidance promulgated by the Department of Health”.

New York State Liquor Authority Guidance on Outdoor Expansion of Licensed Premises in Response to COVID-19 Outbreak

<https://sla.ny.gov/new-york-state-liquor-authority-guidance-outdoor-expansion-licensed-premises-response-covid-19>

Licensee Certification for Temporary Extension of Licensed Premises onto Municipal Property

<https://sla.ny.gov/system/files/documents/2020/06/licensee-certification-for-temporary-extension.pdf>

Accommodating Outdoor Dining in Towns

Each town board should consult with their town attorney for guidance regarding options the town could pursue to accommodate outdoor dining in accordance with the town’s code or needed modifications/suspensions. In addition, towns that do not have existing franchise programs should consult with the town attorney regarding the development of a franchise program and/or the issuance of individual franchises under Town Law §64(7) to accommodate outdoor dining on town property (e.g. sidewalks, parks etc). Here’s what some towns are doing:

- **Town of North Hempstead Nassau County**

<https://www.northhempsteadny.gov/content/16253/16261/16263/31660.aspx#gsc.tab=0>

- **Town of Smithtown Suffolk County**

Announcement www.smithtownmatters.com/town-matters/2020/6/3/tos-is-issuing-temporary-outdoor-dining-permits.html

Application www.smithtownny.gov/DocumentCenter/View/4420/COVID-Accomodations-Application

- **Town of Riverhead Suffolk County**

General Information www.townofriverheadny.gov/newsview.aspx?nid=11316&cimage=2

Press Release www.townofriverheadny.gov/files/documents/PressReleasenews1131615053020-083249AMa.pdf

Application

www.townofriverheadny.gov/files/documents/TemporaryOutdoorDiningApplicationnews113161505053020-083249AMb.pdf

Guidance

www.townofriverheadny.gov/files/documents/TemporaryOutdoorDiningGuidancenews113161505060320-093508AMc.pdf

- **Town of Babylon Suffolk County**

Press Release www.townofbabylon.com/civicalerts.aspx?aid=887

Outdoor Dining Resolution (scroll through minutes to see outdoor dining resolution

www.townofbabylon.com/AgendaCenter/ViewFile/Agenda/_06022020-48

Application Requirements www.townofbabylon.com/DocumentCenter/View/4569/Outdoor-Dining-Application-Info

- **Town of Islip Suffolk County**

Tent and Outdoor Dining Applications <https://islipny.gov/news/announcements/709-temporary-outdoor-dining-permit-tent-permit-application>

Special Education instruction and services allowed this summer

The Governor issued two new executive orders. Executive Order 202.37 issued on June 5th, 2020, allows school districts to provide in-person special education services this summer. School districts that provide special education summer services will need to develop programs and protocols to address social distancing and exposure mitigation.