

Town of Eden
Proposed Local Law #1-2022

A local law regulating Amusements and Entertainments in the Town of Eden.

Be it enacted by the Town Board of the Town of Eden, Erie County, New York as follows:

SECTION I. Purpose.

The purpose of this article shall be to preserve the public safety, peace and good order in the Town of Eden, by regulating commercial or business-related amusements and entertainments as authorized by Town Law Section 130 (12) through regulating and licensing such uses in such a manner as to mitigate adverse impacts upon the community and neighboring properties caused by noise, traffic, parking and other factors which may be produced when amusements/entertainments are not properly conducted with due consideration for public safety and emergency services as well as the peace and good order of neighboring property owners and residents.

SECTION 2. Amusements/Entertainments Covered.

“Amusement or Entertainment” covered by this local law shall include, but not be limited to, theatrical, dramatic and operatic shows or entertainments, musical and non-musical shows or entertainments conducted at or in connection with a commercial or business establishment, including, but not limited to, live vocal and/or musical performances and playing and/or amplification of recordings and/or broadcasts in such locations which have or may have any of the following impacts:

- a. Cause such shows, entertainments, performances or exhibitions to be heard outside of enclosed structures and in such a manner as to impact the peace and good order of the community or neighboring properties.
- b. Cause parking or traffic problems which impact public safety, including, but not limited to, impacting area traffic and/or access by emergency vehicles or first responders.

SECTION 3. License Required; Fee.

No activity constituting an amusement or entertainment, as defined herein, shall be conducted, produced or presented in the Town of Eden without first procuring a license for that purpose issued by the Town Board following application to the Town Clerk and payment of the applicable fee, as established by the Town Board in the Schedule of Fees.

SECTION 4. Licensing Requirements.

- A. All licenses herein provided for shall be processed by application to the Town Clerk and are issued at the discretion of the Town Board.
- B. Each applicant shall, prior to the issuance of any license under this law, file with the Town Clerk a signed, written application and pay the required fee as may be determined from time-to-time by Town Board resolution and included in the Standard Schedule of Fees. The application shall give such information as may be required by the Town Board.
- C. The Town Board shall, prior to acting on such application, hold a public hearing to be held on at least ten (10) days prior legal notice to be published in the official town newspaper, posted on the town website and posted on the Town Clerk's notice board. No such public hearing shall take place unless applicant shall also provide to the Town Board proof that the legal notice was delivered in person or sent by First Class Mail at least seven (7) days in advance of such public hearing to the owners of neighboring properties (as shown on the latest records of the Town Assessor and determined on a front-footage basis) located within 500' of the lot containing the building or location at which the proposed amusements or entertainments are to take place.
- D. Following such public hearing, the Town Board may approve or deny such application and, in the case of approval, may set such conditions as may be appropriate to mitigate any adverse impacts to public safety and/or peace and good order that may result from such amusement or entertainment including, but not limited to, restricting the location, days and hours of operation of such amusements or entertainments, capacity limits, parking and traffic and similar conditions.
- E. The Town Board may also consider any history of complaints resulting from the licensee's operation of amusements or entertainments in making its decision to approve, conditionally approve or deny such application.
- F. The applicant shall be notified by First Class Mail to the address shown on the application of the determination of the Town Board and a copy of such determination shall be filed with the Town Clerk.

SECTION 5. Duration of License; Renewal

- A. All licenses issued under this law shall expire on the 31st day of December next succeeding the date of issuance, unless the Town Board determines that a license for a shorter duration or for a single event is more appropriate.
- B. Renewals of licenses issued under this law shall be considered by the Town Board following application for such renewal by the licensee, to be submitted at least sixty (60) days prior to such expiration. The Town Board must hold a public hearing on such renewal application upon legal notice published and posted at least ten (10) days prior to such public hearing. Prior to such public hearing, the Code Enforcement Officer shall provide a report to the Town Board on the licensee's compliance with existing conditions and may recommend changes to such conditions which meet the purposes of this law.

SECTION 6. Display of License.

Every license issued under this law shall at all times, for the term for which it is issued, be posted at a conspicuous place at or near the principal entrance of the premises described in such license so as to be easily seen and read by any person passing in and out of such premises.

SECTION 7. Enforcement, Suspension or Revocation of Licenses.

- A. The Code Enforcement Officer is authorized to investigate any complaints, document same and issue appropriate process for enforcement actions.
- B. Any license issued pursuant to this law may be suspended or revoked by the Town Board upon a finding of good cause following the licensee being provided a right to a public hearing as provided in Section 8 herein.
- C. Notwithstanding the foregoing, in the event of an egregious, intentional or repeated violation of any conditions of a license issued under this law, a license may be immediately suspended by order of the Code Enforcement Officer delivered to the licensee, pending the hearing provided for herein to further suspend or revoke the license. In such event, the Code Enforcement Officer shall immediately notify the Town Board which shall promptly commence the process for holding the hearing described in Section 8.

SECTION 8. Suspension, Revocation of License; Right to Hearing; Process

- A. The Town Board may revoke or suspend an amusement license for good cause after first conducting a public hearing pursuant to these provisions. Failure of the licensee to appear or respond to the Notice provided for herein shall constitute a waiver of licensee's right to such a hearing and shall provide the basis for the Town Board to take action that may result in suspension or revocation of the license.
- B. "Good cause" shall include a failure of the licensee to comply with all provisions of this law and/or failure to comply with any conditions contained in the amusement license.
- C. Notice.
 - (1) Notice of a possible suspension or revocation of a license for good cause shall be deemed valid if sent by First Class Mail to the licensee at the address provided in the licensee's application. Proof of actual receipt of such mailing shall not be required.
 - (2) Such notice shall provide details reasonably designed to inform the licensee of the date, time and place of the charges which serve as the basis for the possible suspension or revocation. Such notice shall also identify any complainants.
 - (3) The notice shall provide a date not less than ten (10) days from the date of mailing of a date, time and place at which the licensee will be given an opportunity to

show cause before the Town Board why the license should not be suspended or revoked.

- (4) The licensee shall have the following rights at the hearing before the Town Board:
 - (a) The right to have the matter heard at a public hearing by impartial members of the Town Board.
 - (b) The right to be represented by legal counsel.
 - (c) The right to cross-examine and confront any witnesses against licensee and the right to present witnesses on behalf of the licensee, which witnesses shall be subject to cross-examination by the Town Board or its duly-authorized representative.
 - (d) The right to request copies of documents which support the charges lodged.
 - (e) The right to have the charges proved by substantial evidence.
- (5) At any public hearing held pursuant to this law, the technical rules of evidence shall not apply.
- (6) The Decision of the Town Board shall be effective immediately and written notice of such decision shall be mailed to licensee by First Class Mail to the address provided in licensee's application.

SECTION 8. Applicability/Exceptions.

The provisions of this law is intended to only apply to commercial or business establishments which offer amusements or entertainments, as defined herein, to patrons and shall not apply to or include festivals, picnics, bazaars, fairs and kindred amusements or entertainments operated by or at locations owned by organizations established exclusively for the benefit of charity, a religious, social or benevolent society or for public benefit, churches, organizations of churches, organized fire departments or United States veterans of any and all former wars, including auxiliaries of such organizations.

SECTION 9. Penalties for Offenses/Violations.

In addition to any other penalties that may be invoked under this local law, any violation by a person, firm or entity of any provision of this local law shall be deemed to be an offense punishable by a fine not to exceed two hundred and fifty dollars (\$250.00) or imprisonment for a period not to exceed fifteen (15) days, or both. Each day that a violation exists, occurs or continues shall constitute a separate offense.

SECTION 10: Severability.

If any article, section, subdivision, paragraph or prevision of this local law is adjudged to be invalid, such adjudication shall apply only to such portion thereof so expressly adjudged invalid, and the remainder of this local law shall be deemed in all respects valid and effective.

SECTION 11: Effective Date.

This local law shall take effect immediately upon adoption.