

ORDINANCE NO. 401

PLACES OF PUBLIC ASSEMBLY: LICENSING

Section 1 Definitions; interpretation.

A. Definitions

APPLICANT — Any "person" applying for a "license" under this ordinance.

APPROVED LICENSE — The permission granted by the "Mayor" for a "place of public assembly" to operate, only after receipt of information indicates that all applicable requirements of this chapter have been complied with.

CABARET — Any room, place or space wherein musical entertainment, singing, dancing in a designated area, or other form of amusement or entertainment is permitted in conjunction with the sale or service of food or drink to the public, except such places providing musical entertainment by mechanical means without dancing or by having musical entertainment of not more than three (3) musical instruments, consisting of a piano, organ, accordion, string instrument or any combination thereof, without any means of electrical amplification connected directly thereto.

CATERING ESTABLISHMENT — Any room, place or space which is used, leased or hired out in the business of serving food and drink for a particular function, occasion or event, and to which the general public is not invited and wherein music, entertainment and/or dancing may or may not be provided.

DANCE HALL — Any room, place or space in which dancing is carried on and to which the public may gain admission either with or without the payment of a fee.

LICENSE - Whenever the term "license" is used in this ordinance it shall also apply to the terms "temporary license" or "approved license".

MAYOR — Shall mean the legally elected Mayor of the Village of Island Park.

PERSON — An individual, partnership, club, corporation, association, society or any other organized group of "persons", and shall include the officers, directors,

stockholders and trustees thereof.

PLACE OF PUBLIC ASSEMBLY — Any room, place or space which is occupied or arranged to be occupied for recreational, amusement, social, sports, religious, patriotic, civic, travel and similar purposes, and shall include assembly halls, lecture rooms, exhibition halls, museums, auditoriums, instruction rooms, “dance halls”, or studios, “cabarets”, “nightclubs,” “restaurants”: any room or space used for private banquets, feasts, socials, card parties, bingo or weddings; lodge or meeting halls or rooms; skating rinks, gymnasiums, swimming pools, billiard rooms, bowling alleys, archery ranges, halls used for public or private catering purposes; funeral parlors, private and parochial schools, recreation rooms, concert halls, broadcasting studios, theaters, motion picture theaters; passenger stations and terminals of air, surface, underground and marine public transportation facilities; or any other building, shed or enclosure, whether indoor or outdoor, coming within the occupancy and other similar classifications of this section as determined by the officer charged with the enforcement of this section.

RESTAURANT — Shall mean a public eating place which is regularly used and kept open for the serving of food for compensation and which has suitable kitchen facilities connected therewith containing conveniences for cooking and kept in a sanitary condition.

TEMPORARY LICENSE — A “license” granted by the “Mayor” for a limited period of time, pending his determination on the grant or denial of an “approved license.”

B. Interpretation

In distinguishing between the terms “restaurant,” “dance hall” and “cabaret,” as above defined, such factors as the extent to which food is served on the premises, whether there is dancing or entertainment on the premises, and whether an admission fee is charged shall be determinative. These determinative factors shall apply to the enforcement of the provisions of this ordinance and of any companion statute, local law, ordinance, rule or regulation respecting the operation of restaurants.

Section 2 Jurisdiction

Under this ordinance, the Mayor shall have jurisdiction over, and in conjunction with, the following functions and duties regarding the regulation and licensing of places of

public assembly, namely.

- A. The issuance of licenses hereunder and the revocation or suspension thereof.
- B. The inspection of places of public assembly at reasonable times:
- C. The prescription of forms for applications or licenses under this ordinance and for all reports which he deems necessary to be made by any licensee, permittee or applicant.
- D. The holding of hearings, subpoenaing of witnesses, compelling their attendance, administering oaths, examining any person under oath and, in connection therewith, requiring the producing of any books or papers relative to the inquiry.
- E. The adoption of reasonable rules and regulations as may be necessary for the proper control, operation and supervision of places of public assembly.
- F. The recommendation to the Village Board of changes or amendments to this ordinance. Any recommendation received by the Village Board, or any revision, rule or regulation initiated by it, shall be approved by resolution prior to adoption.

Section 3 Licenses: Requirements

- A. It shall be unlawful for any person to conduct, maintain or operate a place of public assembly within the Village who has not been issued a temporary license or any approved license under this ordinance, either of which is currently in effect for the premises wherein the place of public assembly is conducted, maintained or operated.
- B. An approved license shall be issued for a place of public assembly only after the Mayor shall have caused an inspection to be made of the premises to be licensed and is satisfied that the provisions of this ordinance and all other applicable laws, ordinances, codes, rules and

regulations, pertaining to fire and safety requirements contained therein have been complied with, together with all fees provided for herein being paid, and that the premises is a safe place in which to conduct, maintain or operate a place of public assembly.

- C. Upon the filling of the application and the payment of the stipulated fee under this ordinance, the Mayor shall issue a temporary license pending the issuance of an approved license, which shall remain in effect until such time as the applicant has been notified by the Mayor that the application for such approved license has been denied. Except as otherwise provided herein, a temporary license shall terminate upon the issuance or the denial of an approved license. In no event shall a temporary license exceed the time limitations as prescribed in Section 4 hereinafter set forth.

- D. Each application shall contain at least the following information and any additional information as may be required upon the request of the Mayor:
 - (1) The name, age and residence address of each applicant, and, if there is more than one (1) and they are partners, the partnership name and the age and residence address of each partner.

 - (2) If an applicant is a stock corporation, the name and residence address of each officer and director and, except in the discretion of the Mayor, the Stockholders, and the state under the laws of which the corporate applicant is organized.

 - (3) The premises to be licensed, stating the street and number, if any: otherwise such description as will reasonably indicate the location thereof.

 - (4) The name and residence address of the owner of the building or premises wherein or whereon the licensed premises is located.

- (5) Whether the applicant is a lessee and, if so, the name and residence of the lessor.
- (6) If the applicant does not reside in the Village of Island Park, he shall designate an agent, who shall be a natural person residing or having a place of business in the Village of Island Park. The agent shall be authorized and shall agree, by verified statement, to accept notices or summonses issued by the Mayor with respect to violations of any laws, ordinances, rules or regulations enforceable by the Mayor.
- (7) If there is any change, after the filing of an application for a license, in any of the facts required to be set forth in the application, a supplemental statement giving notice of the change or changes, duly verified, shall be filed with the Mayor within ten (10) days after any change. Failure to do so shall, if willful and deliberate, be cause for suspension or revocation of the license. In giving any notice or taking any action in reference to a license of licensed premises, the Mayor may rely upon the information furnished in any supplemental statement connected therewith, and the information contained therein shall be presumed to be correct and shall be binding upon a licensee or the licensed premises as bona fide information. This supplemental statement may be waived by the Mayor, at his discretion, whenever it applies to stockholders holding less than ten percent (10%) of the issued stock of a corporation.

E. In addition to the prerequisites set forth in Section 3 paragraph B of this ordinance, an approved license for a dance hall or cabaret shall be issued if the Mayor is satisfied that the applicant is a fit and proper person.

- (1) All applicants for a dance hall or cabaret license shall be fingerprinted. If the applicant is a business corporation, all officers, directors, stockholders and other persons interested in the licensed premises or entitled to a share of the income or profits therefrom shall be fingerprinted, unless the Mayor

deems such fingerprinting unnecessary, or, in lieu thereof, a valid liquor license has been issued to the applicant of the place of public assembly by the New York State liquor Authority and is currently in effect and in good standing.

F. In addition to the information required in Section 3 paragraph D and E of this ordinance, when application is made for a dance hall or cabaret license, the following information shall be given:

- (1) The name and residence address of each person interested or to become interested in the business covered by the license for which the application is made, together with the nature of such interest.
- (2) The nature of the applicant's interest in the business covered by the license for which application is made, and the name of any other person, either as principal or associate, interested in the licensed premises or in the business to be covered by the license applied for.
- (3) Whether the person applying for a license has ever been convicted of any offense, crime, misdemeanor, violation, or of any offense against any local law or municipal ordinance, and, if so, the nature of the conviction, the court where convicted and the date and penalty assessed.

Section 4 Licenses: Terms

- A. An approved license shall expire one (1) year from the date of issuance.
- B. The date of issuance of an approved license shall be the same as the date of issuance of the temporary license immediately preceding.
- C. Renewal of an approved license shall be effective on the date following expiration of the one previously approved.

D. A temporary license may be granted for a period not in excess of sixty (60) days from date of issuance. However, the holder of a temporary license must submit a written request to the Mayor for each extension of a temporary license, outlining the reasons therefor. The Mayor may grant not more than a thirty day extension for each request, subject to the requirements of Section 5 paragraph E of this ordinance. No more than two (2) extensions of a temporary license shall be permitted.

Section 5 Licenses: Fees

A. Fees for public assembly licenses issued under this chapter shall be payable annually and shall be based on the number of persons each place is designed to accommodate as certified by the Mayor.

B. Annual fees for public assembly licenses shall be determined pursuant to the following table:

<u>Capacity in Persons</u>	<u>Fee Per Year or Fraction Thereof</u>
0 to 100	\$40.00
100 to 300	\$125.00
301 to 600	\$150.00
601 to 1,000	\$250.00

An additional fee of twenty-five dollars (\$25) shall be charged for each one hundred (100) persons or fraction thereof in excess of one thousand (1,000). The maximum fee shall not exceed five hundred dollars (\$500) per year.

C. Where there is more than one (1) place of public assembly in the same building and the applicant is the same for the several places of public assembly therein, the fee shall be determined on the basis of the sum of the combined occupancies.

D. The fee required for filing an application under this ordinance shall be twenty—five (\$25) dollars. If the application is disapproved, the filing fee shall be retained to cover the cost of processing. If the application is approved, the filing fee shall be credited and applied to the total fee.

E. The fee for the extension of a temporary license shall be ten dollars (\$10) for each thirty (30) days or fraction thereof and shall be payable upon application for each extension. Any fees paid for an extension of a temporary license shall be nonreturnable and shall not be applicable to the total fee required.

F. A fee of ten dollars (\$10) shall be charged for the replacement or substitute copy of a temporary or approved license.

G. The number of persons permitted to occupy a place of public assembly shall be certified by the Mayor and shall be determined pursuant to the following table:

SQUARE FEET OF USABLE FLOOR AREA PER PERSON*
(unless otherwise designated)

<u>Place of Public Assembly</u>	<u>Prior to October 23, 1963¹</u>	<u>October 23, 1964 and thereafter²</u>
Dance hall, cabaret, restaurant and catering establishment.....	10	15
Billiard rooms, golf schools and archery ranges.....	50	50
Designated waiting or standing space.....	3	3
Skating rinks.....	25	40
Bowling alleys.....	5 persons per alley**	50
Any other space containing portable seats.....	6	6***
Any other space containing seats permanently secured to the floor....	Total number of seats	Total number of seats
Other space not classified herein	40****	40****

¹ This column shall apply to those places of public assembly in lawful operation prior to October 23, 1963, with no change in classification or use after October 22, 1963

² This column shall apply to any other place of public assembly and to all additions, alterations or renovations, to places of public assembly made on or after October 23, 1963

*usable floor area shall mean the areas of those spaces generally used or occupied by the public for public assembly purposes.

** "Alley" shall include fifteen (15) feet of runway.

*** For floor area actually occupied by seats. If the entire floor area is considered, or if the seats exceed twenty-one (21) inches in width and the distance back to back of the seats is thirty—six (36) inches or more, use ten (10) square feet per person.

****Or as may be determined by the Mayor, based on construction, fire safety, use, and the health, safety and welfare of persons occupying the place of public assembly.

Section 6 License: Denial Of

- A. The following persons shall be prohibited from receiving a license for a cabaret or dance hall:
- (1) Any person, partnership or corporation and each member, principal officer and director thereof, as the case may be, who has been convicted of a felony or any of the misdemeanors mentioned in Section 1146 of the former Penal Law as in force and effect immediately prior to September 1, 1967, or of an offense defined in Sections 230.20 or 230.40 of the Penal Law, unless such person shall have received an executive pardon thereafter effecting the removal of the conviction, or unless a certificate of good conduct has been granted by the Board of Parole pursuant to the provisions of the Executive Law, thus removing the disqualification resulting from such conviction.
 - (2) Any person who has had any license, issued under this ordinance revoked for cause during a one year period from the date of such revocation.
- B. Disapproval of an application for a license by the Commissioner shall automatically cancel any temporary license previously issued after notice of

cancellation has been duly received pursuant to this ordinance and continuance of operation as a place of public assembly shall be considered an offense hereunder.

Section 7 License: Suspension or Revocation

The Mayor, upon notice and after a hearing at which the licensee shall be given an opportunity to be heard, may suspend or revoke any license issued, for any of the following causes:

- A. When a person licensed hereunder makes any false material statement in the application for a license.
- B. When a person licensed hereunder suffers or knowingly permits any gambling, sale or use of narcotics or sale of use of dangerous, hallucinatory drugs on the premises, or suffers or knowingly permits such premises to become disorderly.
- C. For an offense against any provision of this chapter.
- D. For failure, refusal or neglect of any person, officer or director of any corporation, holding a license for a place of public assembly under this ordinance, to appear and/or testify under oath at an inquiry or hearing held by the Mayor with respect to any matter bearing upon the conduct of the place of public assembly or the fitness of the person, as applicable.
- E. For failure, refusal or neglect to provide for the health, safety, or welfare of persons frequenting the licensed premises.

Section 8 Notice

Any notice to be given by the Mayor under this chapter, unless otherwise provided for herein, shall be deemed to have been duly given when:

- A. Served personally upon the applicant or licensee or sent by registered or certified mail to the applicant or licensee, addressed to his residence.
- B. In the case of personal service upon an officer of a corporate licensee or of service upon him by registered or certified mail and dressed to his residence, together with a copy of the notice by regular mail to the address of the licensed premises.
- C. Served personally upon or sent by registered or certified mail to the agent designated under Section 3D (6) of this ordinance.

Section 9 Appeals

- A. Any person who has been refused the issuance of a public assembly license or has had a previously issued public assembly license revoked or suspended by the action of the Mayor shall have the right to review the action of the Mayor as hereinafter provided:
 - (1) An application for such review shall be in writing, signed and acknowledged by the applicant, and shall state the ground or grounds on which the applicant claims that the determination of the Mayor was erroneous.
 - (2) Such application shall be filed with the Village Clerk by the applicant within twenty (20) days after notice of denial of his application by the Mayor has been mailed to him or delivered to him in person.
 - (3) Upon the filing of such application, a hearing shall be held thereon pursuant to the provisions of Section 10 hereof.
 - (4) At such hearing the Review Board shall consider the record upon which the Mayor based his determination and, in its discretion, may receive new or additional evidence in support thereof or in opposition thereto.

- B. The Review Board, after such hearing, may affirm the action of the Mayor or direct the Mayor to issue a proper license pursuant to this ordinance.

Section 10 Hearings

Whenever it shall be provided herein that a hearing shall or may be held in connection with an application or license:

- A. If an applicant or licensee requests a hearing, the Mayor shall designate two (2) or more members of the Village Board to conduct said hearing at a Review Board.
- B. Such bearing shall be held on a date, at place and hour designated by the Chairman thereof.
- C. The Mayor shall give notice thereof, stating the name and address of the applicant or licensee concerned, the subject matter of the hearing and the date, place and hour thereof designated therefor, by mailing a copy thereof to the applicant or licensee concerned, at the address shown upon the most recent application of such applicant or licensee, at least ten (10) days prior to such hearing.
- D. The applicant or licensee involved shall be entitled to be represented by legal counsel and to present such competent and material testimony or other evidence in his own behalf as may be relevant to the subject matter of the hearing.
- E. All witnesses shall be sworn and examined under oath.

Section 11 Posting

- A. Each license issued under this chapter shall be kept conspicuously posted at the main entrance of every place of public assembly, and it shall be unlawful to conceal, remove, deface or alter such license.

- B. A temporary or approved license that has been issued for a place of public assembly, which is lost, stolen, altered, mutilated or missing, shall be replaced immediately and the prescribed fee shall be paid for its replacement.

Section 12 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 or displayed at any location other than the location stated in such license.

Section 13 Exemptions

All places of public assembly, as defined in Section 1 of this ordinance, shall be subject to all provisions of this ordinance, except that the fee may be waived for: .

- A. Premises owned, occupied and used by a nonprofit membership, corporation, society or association, or religious, charitable, eleemosynary or educational corporation or institution which is chartered as such by the State of New York.
- B. Any luncheonette, soda fountain, stationery store or similar occupancy, the use of which is incidental to the prime occupancy, providing there are no more than twelve (12) seats available for the patrons. it is provided, however, that if any of the premises enumerated in Subdivision A of this section is rented or leased to a caterer or concessionaire or as a place of public assembly, the tenant or lessee shall be require to obtain such license as may be required under this ordinance.

Section 14 General Provisions

Every person holding a license under this ordinance as a place of public assembly shall comply with the following provisions. Any offense against these provisions shall be unlawful.

- A. No light or any part of a premises licensed hereunder shall be permitted to shine beyond the property line of the premises. All exterior lights on such premises shall be equipped with shielding devices so that the glow emanating therefrom shall be directed only on and toward such premises.
- B. All garbage, rubbish and other refuse shall be stored, until removed, at the rear of the premises in watertight receptacles securely covered and screened from view. Such receptacles shall be maintained in a sanitary condition and shall be cleaned, flushed and deodorized at least three (3) times weekly. No garbage, rubbish or other refuse shall be removed from the premises between the hours of 6:30 p.m. and 6:30 a.m.
- C. No soot, cinders, smoke, noxious acids, fumes, gases or disagreeable or unusual odors shall be permitted to emanate from the premises in such manner as to be detrimental to any person or which annoys, disturbs, injures, endangers or which may have a tendency to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of any person or persons constituting the general public.
- D. No music shall be played in any place of public assembly either by mechanical device or live performance in such a manner that the sound emanating therefrom shall be audible beyond the property line of the premises whereon the place of public assembly is located. At no time shall music be played either by mechanical device or live performance in a manner which either annoys, disturbs, injures, endangers or tends to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of other persons or the public.
- E. No loud, unnecessary or unusual noise or any noise shall be permitted to be made, continued or caused to be made or continued, which either annoys, disturbs, injures or tends to annoy, disturb, injure or endanger the comfort, repose, health, peace or safety of other persons or the public.
- F. Female exposure.
 - (1) No female shall appear in a public place at any time, or in a play, exhibition, show or entertainment, clothed or costumed in

such a manner that the portion of her breast below the top of the areola is not covered with a fully opaque covering.

- (2) No person shall knowingly conduct, maintain, own, manage, operate or furnish any public premises or places where a female appears in public at any time or in a play, exhibition, show or entertainment, clothed in such a manner that the portion of her breast below the top of the areola is not covered with a fully opaque covering.

Section 15 Presumption of Compliance; Prosecution

- A. Issuance of a license under this ordinance shall cause no presumption that the licensee or the licensed premises are in compliance with any other laws, ordinances, rules or regulations enforceable by any governmental authority, as may be applicable to the said licensee or said licensed premises.
- B. Issuance of a license under this ordinance shall not be a bar to prosecution under any provision of this ordinance or under any other ordinance, law, rule or regulation applicable to the licensed premises or licensee.

Section 16 Penalties for Offenses

- A. Any person or persons, association or corporation committing an offense against any provision of this ordinance or any of the rules and regulations adopted by the Mayor pursuant to this ordinance shall be guilty of a misdemeanor, punishable by a fine not exceeding two hundred fifty dollars (\$250) or imprisonment for a period not exceeding six (6) months for each such offense, or by both such fine and imprisonment. Each day's continued offense against this ordinance shall constitute a separate additional offense.