

STREETS AND SIDEWALKS

CHAPTER 24.

STREETS AND SIDEWALKS¹

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Article I. In General.²

Sec. 24-1. Deposit, etc., of rubbish, etc., on streets and sidewalks, etc.³

(a) No person shall throw or deposit or permit, cause, allow or suffer any litter, garbage, refuse or rubbish to be thrown or deposited on any street, sidewalk or public place except in the receptacles provided for this purpose by the town unless such deposit is authorized by ordinance as in the case of leaves or recyclable materials. Persons placing litter, garbage, refuse or rubbish in receptacles so provided by the town shall do so in such a manner that it will not be blown onto the sidewalk or street. No person shall use such receptacles for the deposit of household or commercial refuse or rubbish.

(b) No person shall throw or deposit or permit, cause, allow or suffer any litter, garbage, refuse or rubbish to be thrown or deposited upon any private property owned by another, except with the permission of the owner or person in legal possession of said premises and except in receptacles provided for the collection and removal of such litter, garbage, refuse or rubbish in a manner permitted by law, regulation or ordinance.

(c) Except as otherwise provided herein, no person shall throw or deposit or permit, cause, allow or suffer any litter, garbage, refuse or rubbish to be thrown or deposited upon any private property owned by such person or to which such person has the legal right of possession, except in receptacles provided for the collection and removal of such litter, garbage, refuse or rubbish in a manner permitted by law, regulation or ordinance. Notwithstanding any provision of the town code to the contrary, an owner of private property or a person having the legal right of possession of same shall be permitted to deposit and/or dispose of vegetation waste generated on that property by composting or otherwise on the premises but not by burning.

(d) No person shall sweep, shake or throw litter of any sort including dirt or sweepings from a store or other place of business on to any public or private street or sidewalk, lot, place, air shaft, driveway, areaway, yard, court, drain or catch basin or permit, cause, or suffer such litter to be thrown or deposited on or in same.

(e) No person, whether a driver or passenger in a vehicle, shall throw or deposit litter upon any street, sidewalk, or other public or private property.

(1932 Revision, title 4, ch. 1, § 3; G.O. No. 999, § 1; G.O. No. 1457, § I.)

Sec. 24-2. Obstruction of gutters, sewers, catch basins, etc.

No person shall obstruct or close any gutter, sewer, drainage pipe, catch basin or watercourse. (1932 Revision, title 4, ch. 1, § 7.)

² For state law authorizing town to regulate use of streets, see R.S., § 40:67-1.

³ For authority of town to prevent depositing, etc., of dirt, ashes, etc., upon streets and highways, see R.S., § 40:67-1.

Sec. 24-3. Vehicles dropping or scattering contents thereof on streets.

No vehicle from which any of the contents thereof is being dropped or scattered on the roadway shall be driven or drawn along any street or highway. (1932 Revision, Title 4, ch. 1, § 9.)

Sec. 24-4. Playing, etc., in streets.

No person shall engage, in any street, in any practice, sport or exercise having a tendency to annoy passers-by. (1932 Revision, Title 4, ch. 1, § 10.)

Sec. 24-5. Removal of snow and ice from sidewalks.⁴

The owner or tenant of land abutting or bordering upon the sidewalk and gutters of public streets, avenues, and highways in the town shall remove all snow and ice from any laid sidewalk of any kind in front of such land within twelve hours of daylight after the same shall fall or be formed thereon. Where ice is frozen to the sidewalk it shall be removed or covered with sand or ashes. (1932 Revision, Title 4, ch. 1, § 13; G.O. No. 534; G.O. No. 621.)

Sec. 24-6. Obstruction, etc., of street signs, lampposts, etc.

No person shall injure, break or destroy any street or guide sign, lamppost, lamp or light bulb or appurtenances thereof standing on any public street or place. (1932 Revision, title 4, ch. 1, § 16.)

Sec. 24-7. Barriers and warning lights on obstructions, etc., in streets.

Any person who shall pile any material in any public street, or cause the obstruction thereof by any structure, excavation, embankment or rubbish heap in the prosecution of either private work for which the necessary permit may have been obtained or public work under the contract with the town or county or under any other circumstances shall erect and maintain about such obstruction proper barriers and guards by day and by night, and shall maintain a sufficient number of lights thereon every night from sunset to sunrise. (1932 Revision, title 4, ch. 1, § 24.)

Article II. Street Openings and Excavations.⁵

Sec. 24-8. Permit Required.

It shall be unlawful to excavate, dig in, tunnel or open any public street in the Town of Westfield for any purpose without a permit being first secured from the town engineer, and then only upon compliance with the provisions of this article. "Street" for the purpose of this article shall mean any road, thoroughfare, highway, public way, public alley, easement or other right-of-

⁴ For State law authorizing town to require removal of snow and ice from sidewalks, see R.S., § 40:65-12.

As to emergency snow regulations for vehicles, see §§ 13-9 to 13-16 of this Code.

⁵ For State law authorizing town to regulate the digging up of streets, see R.S., § 40:67-1. Prior ordinances codified herein include portions of Ordinance No. 685.

way accepted or maintained by the town as a public street, as well as any other state or county road or highway over which the town has acquired jurisdiction by agreement. (G.O. No. 1609.)

Sec. 24-9. Application procedures.

Any person, firm, or corporation desiring a permit for the opening of a street or tunneling therein shall make application to said town engineer setting forth the following information:

- (a) The name and address of the applicant.
 - (b) The name of the street where the opening is to be made and the street number, if any, of the abutting property.
 - (c) The Town Tax Map, block and lot number of the property for the benefit of which the opening is to be made.
 - (d) The nature of the surface in which the opening is to be made.
 - (e) The character and purpose of the work proposed.
 - (f) The time when the work is to be commenced and completed.
 - (g) The plan showing the exact location and dimension of all openings.
 - (h) The name and address of the workmen or the contractor who is to perform the work, if different from the applicant.
 - (i) A statement that the applicant agrees to replace, at his own cost and expense, in accordance with town specifications and details, the opening to the same state and condition as they were at the time of the commencement of the work, and further agrees to comply with all other applicable ordinances, regulations and laws relative to the work.
 - (j) Agreeing to indemnify and hold harmless the town from all loss, damage, claim or expense, including expenses incurred in the defense of any litigation arising out of injury to any person or property resulting from any work done by the applicant under the permit.
 - (k) Such other information as the town engineer may consider pertinent.
 - (l) The registration number from the underground location services [Supersnooper (800) 272-1000] indicating that they have been properly notified and will locate underground facilities in the area of the proposed opening or tunneling operation.
 - (m) Proof of insurance coverage as required by this article.
- (G.O. No. 1609)

Sec. 24-10. Authority to grant or refuse permit.

The town engineer is hereby authorized to refuse the issuance of any permit if such refusal is in the interest of public safety, public convenience or public health. If a permit is refused by the town engineer, an appeal may be taken to the town council. The town council, after hearing the applicant and the town engineer and such evidence as may be produced, may either direct the issuance of such permit or sustain the refusal of the town engineer. (G.O. No. 1609.)

Sec. 24-11. Requirements for compliance of the permit issuance.

All permits issued under this article shall require the applicant to comply with the following:

- (a) All excavations shall be kept properly barricaded at all times and, during the hours of darkness, shall be provided with the proper warning lights. The applicant shall provide such

signs, controls, barricades, warning lights and personnel necessary for safe operation and compliance with applicable federal and state laws.

(b) All excavations or tunneling shall be sheeted, shored or braced in accordance with applicable safety codes and Occupational Safety and Health Administration (OSHA) standards.

(c) All work shall be done in such a manner as to cause a minimum of interference with travel on the street affected. No street shall be closed to traffic, unless the closing is approved by the chiefs of the police and fire departments. The police and fire departments shall be notified of all street closings at least twenty-four hours in advance, except where the work is of an emergency nature, when notice shall be given to the police and fire departments when work commences.

(d) All refuse and material shall be removed within forty-eight hours.

(e) All excavations shall be completely backfilled and compacted using bank-run gravel or crushed stone.

(f) If tunneling operations are required, the tunnel shall be backfilled with rammed concrete composed of one part cement to ten parts sand.

(g) If blasting is required in the course of any excavation, it shall be done in strict compliance with all applicable and state laws and regulations.

(h) Restoration of any street foundation or surface shall not commence until the town engineer or his designated representative has determined that settlement of the subsurface is complete and the area properly prepared for restoration.

(i) The street surface shall be restored so as to extend six inches beyond the excavation on all sides, and the existing pavement shall be saw cut.

(j) The street surface shall be restored to the satisfaction of the town engineer.

(k) All materials and work shall be in accordance with town regulations, specifications and details in the office of the town engineer.

(G.O. No. 1609.)

Sec. 24-12. Other conditions applicable to permits.

The following conditions and regulations shall apply to all permits issued under the article:

(a) Transferability. A permit shall apply only to the person to whom it is issued and shall not be transferable.

(b) Commencement of work. Work under a permit shall commence within thirty days from the date of issuance of the permit, which shall be valid for thirty days therefrom. If work is not commenced within that time, the permit shall automatically terminate, unless extended in writing by the town engineer. The office of the town engineer shall be notified at least twenty-four hours prior to the work actually commencing.

(c) Possession of permit. A copy of the permit shall be kept in possession of the person actually performing the work and shall be exhibited on demand to any duly authorized employee or police officer of the town.

(d) Revocation of permit. The town engineer may revoke a permit for any of the following reasons:

(1) Violation of any provisions of the article or any other applicable rules, regulations, law or ordinance.

(2) Violation of any condition of the permit issued.

(3) Carrying on work under the permit in a manner which endangers life or property, or which creates any condition which is unhealthy, unsanitary or a nuisance.

(e) Modification of permit conditions. In a special case, the town council may, by resolution, impose special conditions to which the issuance of the permit may be subject, or may decide that any provision of this article shall not be applicable or may be modified.

(f) Rules and regulations. The town engineer may make any rules and regulations which he considers necessary for the administration and enforcement of this article, but no regulation shall be inconsistent with, alter or amend the intent of any provision of this article or impose any requirement which is in addition to those expressly or by implication imposed by the article. Copies of all current regulations shall be furnished each permittee at the time of the issuance of the permit. (G.O. No. 1609.)

Sec. 24-13. Fees to accompany applications.

(a) Prior to issuance of any permit pursuant to this article, the applicant or owner shall file an application for said permit at least forty-eight hours prior to the requested time of issuance and shall pay for said permit in accordance with the following schedule:

- (1) Application fee:
 - a. Normal: ten dollars.
 - b. Nonreported opening: fifty dollars.
- (2) Permit fee:
 - a. Up to twenty-five square feet: twenty-five dollars.
 - b. Between twenty-five and fifty square feet: fifty dollars.
 - c. Additional over fifty square feet: fifty dollars per square foot.
- (3) Cash bond:
 - a. First opening: five hundred dollars.
 - b. Second and subsequent openings: two hundred fifty dollars each.

(b) All application and permit fees are nonrefundable, and said application and permit, once issued, are valid for a period of sixty days.

(c) The fee and cash bond will be waived for work done by Union County, provided Union County shall be required to file an application prior to any work being done.

(d) Public utilities will be allowed to establish an escrow account with the Town of Westfield for the required cash bonds. A maximum of two thousand five hundred dollars shall be deposited in this account, unless a single project requires the posting of a larger amount as determined by the town engineer.

The Town of Westfield shall have the authority and right to use the escrow funds or cash bond to restore or maintain the work covered by the permit if the applicant fails to do so within twenty-four hours of notification by the town. (G.O. No. 1609.)

Sec. 24-14. Refund of cash bonds.

One year after the permanent restoration is completed, the town shall re-inspect the area. If the restoration is satisfactory, the cash bond or any remainder thereof shall be refunded; if additional restoration is required, the town shall notify the applicant of the additional work to be performed and will re-inspect the restoration area again one month after the corrective action. A refund shall then be made if restoration is satisfactory. (G.O. No. 1609.)

Sec. 24-15. Permit – Not required for work done by the town or under contract with the town.

Nothing in this article shall be construed as requiring the issuance of a permit for the performance of any work done by the town or under a contract with the town. (G.O. No. 1609.)

Sec. 24-16. Insurance.

No permit for a street opening shall be issued by the town engineer until the applicant therefor shall have placed on file with the town engineer satisfactory evidence of public liability insurance in the amount of not less than three hundred thousand dollars combined limit and property damage insurance in the amount of not less than twenty-five thousand dollars combined limit.

Such insurance must remain in force from the date of the permit until the cash bond is utilized by the town or returned. (G.O. No. 1609.)

Sec. 24-17. Protection of existing structures.

It shall be the duty of a permittee under this article to give notice of the proposed street opening to any companies or organizations whose pipes, conduits, wires, or other structures are laid in the portion of the street to be opened not less than twenty-four hours before commencing such opening. The permittee shall, at his own expense, carefully support, maintain in operation and protect from injury such pipes, conduits, wires, or other structures. If any damage is caused to such structures the permittee shall restore the same, at his own expense, to as good a condition as they were before the beginning of the work. (G.O. No. 1609.)

Sec. 24-18. Driving small pipes beneath pavement.

Small pipes or conduits may be driven beneath pavements in such a manner that the surface shall not be disturbed or injured; provided, that:

- (a) A permit is obtained as provided herein.
- (b) The application fee shall have been paid, provided there shall not be a requirement to pay a permit fee or cash bond.
- (c) In the event of damage to a pavement or subsurface pipe or structure caused by driving such pipe or conduit, the permittee under this article shall repair and make good the damage at the permittee's own expense.
- (d) Driving of pipes shall be prohibited at locations in the highways where there is existing underground construction of the New Jersey Bell Telephone Company or Public Service Electric and Elizabethtown Gas Company.

(G.O. No. 1609.)

Sec. 24-19. Emergencies.

In case of an emergency, such as would be occasioned by a leak of gas, or water, a sewer blockage or such other situation which poses an immediate hazard to public safety or interruption

of utility services, the town engineer may issue an emergency permit without the necessity of the applicant complying with the application process described herein, provided that after such emergency has been abated, a normal application will be filed on the next business day thereafter. (G.O. No. 1609.)

Sec. 24-20. Violations and penalties.

Any person, firm or corporation violating any of the provisions of this article shall be subject to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding ninety days, or both, in the discretion of the judge of the municipal court. (G.O. No. 1609.)

Sec. 24-21 – 24-22. Reserved.⁶

Article III. Sidewalks, Curbs and Gutters.⁷

Division 1. Generally.

Sec. 24-23. Riding bicycles, skateboards, etc., on sidewalks.⁸

No person shall ride or use any skateboard or similar device, or ride a bicycle, tricycle or similar vehicle or device upon any sidewalk within the central business district of the town as defined in the Municipal Land Use Ordinance; provided that this section shall not apply to the use of skateboards, or bicycles by persons under eighteen years of age on any sidewalk within any residence district, as designated in the Municipal Land Use Law, nor shall it apply to the use of velocipedes or other similar vehicles used by children under ten years of age, nor to children's carriers, nor to the vehicles used or occupied by persons with disabilities. (G.O. No. 1611, § I.)

Sec. 24-24. Encroachments.⁹

No post, store window, areaway or cellar opening shall be constructed or placed in any way so as to encroach upon the sidewalk or street, except by permission of the town engineer. No awning shall be maintained or constructed at a height of less than seven feet above the sidewalk. No bay window shall be less than ten feet above the sidewalk.

The town engineer shall remove all posts, awnings, signs or other obstructions which may erected or maintained by any person in violation of the provisions of this section, unless such awnings, signs or other obstructions shall be removed within five days after written notice shall have been served under direction of the chief of police upon the person who shall have erected or who shall maintain such awning, sign or other obstruction to remove the same.

⁶ Reserved by G.O. 1609, § II.

⁷ As to prohibition against signs on sidewalks, see § 3-7 of this Code. As to obstructing sidewalks near miniature golf courses, see § 5-39.

⁸ As to operation of bicycles generally, see § 7-13 of this Code.

⁹ For state law authorizing town to prevent or regulate the erection or construction of encroachments on or over streets and sidewalks, see R.S., § 40:67-1.

The chief of police shall enforce this section, except as regards the actual removal of the posts, awnings, signs or other obstructions by the town engineer. (1932 Revision, title 4, ch. 1, § 12.)

Sec. 24-25. Destruction, breaking, etc., of sidewalks.

No person shall negligently or willfully break, injure or destroy any curb or sidewalk upon any public street. (1932 Revision, title 4, ch. 1, § 17.)

Sec. 24-25.1. Loitering or obstructing traffic; use of loud, profane, etc., language.

It shall be unlawful for any person to:

(a) Loiter or assemble on any public street or public place or quasi-public place or on any public conveyance within the town so as to obstruct the free passage of pedestrians or vehicles or obstruct or molest or interfere with any person lawfully thereon or cause a disturbance thereon.

(b) Utter loud or offensive or profane or indecent language on any public street or public place or quasi public place or in any public conveyance within the town or to make any audible and offensive or indecent remark to or concerning any person lawfully thereon.

(G.O. No. 958, § 1.)

**Division 2. Construction and Repair of Sidewalks and Retaining Walls
Located in the Public Right of Way.**

Sec. 24-26. Permits.

No sidewalk or retaining wall located in the public right-of-way shall be constructed, altered, repaired, replaced or removed except pursuant to a permit issued by the town engineer or application and payment of an application fee of one dollar. Such application shall contain the name and address of the applicant and a plan showing the location, width and construction of the sidewalk or retaining wall.

Repairs of a minor nature shall be exempt from the requirement for the filing of a plan and from the fee requirement.

No sidewalk or retaining wall removal permits shall be issued by the town engineer if the location is such that the sidewalk would be required under any other provision of this Code, other ordinances or determinations by the planning board or board of adjustment or if such sidewalks could not be removed without creating a safety hazard. (G.O. No. 1010, § 1; G.O. No. 1462, § II.)

Sec. 24-27. Standards and specifications; grades.

All sidewalks and retaining walls in the public right-of-way shall be constructed, repaired or altered in accordance with the standard specifications on file in the office of the town engineer, entitled "Town of Westfield – Standard Specifications Pavement, Sewer, Curb, Sidewalk and Retaining Wall Construction."

All new sidewalks shall be constructed or replaced with Portland cement concrete of natural color to lines and grades approved by the town engineer and in the manner and under the conditions hereinafter specified in this division.

All repairs or alterations to existing sidewalks may be constructed of the same material used in the existing sidewalk.

Upon the approval of the town engineer the retaining walls may be constructed of Portland cement concrete, pressure treated, ground contact railroad tie-type lumber, brick or stone or a combination of the above. (G.O. No. 1010, § 1; G.O. No. 1462, § III, G.O. No. 1748, § I.)

Sec. 24-28. Construction, alteration and repair to be at expense of abutting landowner; procedure for construction, etc.

Sidewalks and retaining walls located in the public right-of-way shall be constructed, altered, repaired, replaced or removed at the expense of the abutting landowner.

The town engineer may, from time to time, inform the town council that there is need for particular sidewalks or retaining walls to be constructed, altered, repaired, replaced or removed.

The town council may, by ordinance, designate the sidewalks or retaining walls to be constructed, altered, repaired, replaced or removed and the specific work to be performed. Such ordinance shall direct the town engineer to serve notice on the owner or owners of all abutting land, which notice shall contain a description of the work to be done and a statement that unless the owner or owners complete the same within ninety days after service thereof, the town will do the work and the cost thereof will be assessed against the owners. Such notice shall be served in accordance with law.

In the event the owner or owners of the abutting land shall not comply with the requirements of such notice, such ordinance shall provide that the town shall cause the required work to be done and paid for out of money of the town available for that purpose, and the entire cost thereof assessed upon the property of the abutting owner or owners as provided by law.

Nothing herein contained shall be construed to relieve any property owner from the obligation of inspecting and maintaining any sidewalks or retaining walls located in the public right-of-way abutting his property, nor be construed as an assumption by the town of any responsibility to inspect sidewalks. (G.O. No. 1010, § 1; G.O. No. 1462, § IV.)

Sec. 24-29. New buildings or structures – Construction of sidewalks required.

Sidewalks shall be required on any lot where a building or structure is being installed or erected along such portion of the lot as abuts the following:

- (a) An arterial street, as defined in section 25-1.
- (b) A collector street, as defined in section 25-1, when an existing sidewalk has already been installed on the same side, within the same block and within a distance in either direction of three hundred feet.
- (c) Neither of the above if, on application to the planning board, for site plan or subdivision approval, the board determines that sidewalk installation is a necessary condition for such approval. (G.O. No. 1010, § 1.)

Sec. 24-30. Same – Construction, bond or cash deposit prerequisite to issuance of certificate of occupancy.

No certificate of occupancy for any building or structure shall be granted by the building official unless and until construction of the sidewalk, where required by section 24-29, shall have been completed and approved by the building official or until cash or a performance bond in an amount specified by the town engineer as sufficient to cover the cost of such installation has been deposited with the town. Cash or a performance bond shall be acceptable only where it is impractical to install such sidewalk due to seasonal weather conditions or other temporary physical factors. Any bond shall be conditioned on completion of the sidewalk within a period of six months and any cash shall be held as a guarantee of performance within such period. If the sidewalk is not installed within such six-month period, the funds shall be used by the town for the completion of such sidewalk, and any unused portion shall be returned to the depositor. (G.O. No. 1010, § 1.)

Article IV. Building Operations and Materials in Streets.

Sec. 24-31. Obstructing streets, etc., prohibited.

No person shall encumber or obstruct any street, highway, public lane or alley, or other public place in the town by placing thereon any building materials or any article or thing whatsoever. (1932 Revision, title 4, ch. 4, § 1.)

Sec. 24-32. Mixing of cement, etc., on streets and sidewalks.

In no case shall mortar, cement or other materials be mixed upon the pavement of any street or sidewalk, unless such pavements shall be protected by first laying planks thereon and a watertight box for mixing mortar or other like materials. (1932 Revision, title 4, ch. 4, § 6.)

Sec. 24-33. Removal of material placed on street.

Whenever any wood, timber, stone, bricks, iron or other building material shall be put or placed in or upon any street, the town engineer may forthwith cause the same to be taken up and removed to the town yard, and all expense of such removal and storage shall be paid by the person owning or claiming to own such material. (1932 Revision, title 4, ch. 4, § 7.)

Article V. Numbering of Houses and Parcels of Land.¹

Sec. 24-34. Numbers required; numbers to be same as indicated on official assessment map.

The parcels of real estate fronting on the streets, lanes and alleys of the town shall be numbered. Each parcel shall be known and designated by the numbers indicated on the official assessment map. (1932 Revision, title 4, ch. 7, § 1.)

Sec. 24-35. Numbering of buildings.

The owner of each house or building which fronts upon any of the public streets, lanes or alleys of the town shall cause the proper number of such house or building to be placed in figures in some substantial manner in some conspicuous place on the front part of such house or building so as to be plainly visible from the sidewalk.

The owner of every house or building that may hereafter be erected within the town, shall, within thirty days after the completion thereof, cause the proper number of such house or building to be placed in figures in some substantial manner in some conspicuous place on the front part of such dwelling house or store so as to be plainly visible from the sidewalk. (1932 Revision, title 4, ch. 7, §§ 2, 3.)

Sec. 24-36. Town engineer to furnish certificate of number upon request.

To enable the owner of any parcel of real estate fronting on any of the streets, lanes or alleys of the town to ascertain the correct number thereof, it shall be the duty of the town engineer, upon application made to him, to furnish his certificate in writing giving the necessary information, to be derived from the official maps. The official maps shall also at all proper times be open to the inspection of the public at the office of the town engineer. (1932 Revision, title 4, ch. 7, § 4.)

Article VI. Personal Property Left on Street, Sidewalk, etc.

Sec. 24-37. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them in this section:

Person. A natural person of either sex, corporations, partnerships, associations, joint stock companies, societies and all other entities capable of being sued.

Street. A street, avenue, road, alley, lane, highway, boulevard, concourse, driveway, culvert, sidewalk and crosswalk and every class of road, square, place or municipal parking field used by the general public. (G.O. No. 956, § 1.)

¹ For state law authorizing town to adopt a system of numbering of buildings in lots of land in the town, see R.S., § 40:67-1.

Sec. 24-38. Leaving certain property on street, etc., prohibited.

It shall be unlawful for any person, his agent or employee to leave or to suffer or permit to be left, any vehicle, cart, wagon, box, barrel, bale of merchandise or other movable property, either owned by him or in his possession, custody or control, upon any street, sidewalk or municipal parking field or lot, excepting, however, that this section shall not apply to materials lawfully placed at the curbs or sides of streets for collection by the garbage or rubbish remover. (G.O. No. 956, § 2.)

Sec. 24-39. Impounding of property left on street, etc., by police.

The chief of police of the town shall remove or cause to be removed any cart, wagon, box, barrel, bale of merchandise or other movable property found upon any street, sidewalk or municipal parking field or lot and shall take same or cause the same to be taken to the property or premises of the town where the same shall be held until redeemed or sold as hereinafter provided. (G.O. No. 956, § 3.)

Sec. 24-40. Notice to owner of property impounded by police; redemption fees; delivery of redeemed property to owner.

Whenever the chief of police shall receive any property containing identification of ownership or right to possession, a notice shall be sent by ordinary mail to such person advising that such property is held by the chief of police and advising the amount necessary to redeem.

Such property may be redeemed by the owner thereof at any time prior to the sale, dismantling, destruction or disposal thereof, and he shall be entitled to receive such property upon the tendering of the sum of five dollar plus the sum of one dollar per day commencing the third day after the property is removed to the date of redemption. In addition, the person seeking to redeem shall be required to pay the cost of advertising the sale thereof, if any. No property shall be delivered to the person seeking to redeem unless proof establishing to the satisfaction of the chief of police such person's ownership or right to possession is submitted. Any delivery to a person apparently entitled thereto shall be a good defense to the town against any other person claiming to be entitled thereto, but if the person to whom delivery is made is in fact not entitled thereto, the person to whom the same ought to have been made may recover the same with interest and costs from the person to whom the same shall have been delivered. (G.O. No. 956, §§ 5, 6.)

Sec. 24-41. Sale at auction of unredeemed property.

Where any such property remains in the custody of the chief of police for a period of fifteen days after removal and with respect to which no person has presented to the chief of police proof establishing to his satisfaction such person's ownership or right to possession as stated in this article, the chief of police shall give public notice in the official newspaper of the town, advising that at a specified place and time, not less than five days after such notice is published, such property will be sold at public auction for the best price he can obtain. A general description in such notice of the property to be sold shall be sufficient. Such sale shall be conducted by the

chief of police or by any employee of his department designated by him or by an auctioneer designated by the chief of police. (G.O. No. 956, § 7.)

Sec. 24-42. Disposition of unredeemed property not sold at auction.

In the event that any property shall remain unsold at public auction, the chief of police may reoffer such property for sale at a subsequent public auction held pursuant to this article, or he may dismantle, destroy or otherwise sell or dispose of such property. Any such sale or other disposition of such property pursuant to this article shall be without liability on the part of the town to the owner of such property or other person lawfully entitled thereto or having an interest therein. (G.O. No. 956, § 8.)

Sec. 24-43. Disposition of redemption fees, auction proceeds, etc., collected under article.

Immediately after property is redeemed, the chief of police shall pay over to the treasurer of the town the amount received for redemption, costs and expenses of this article redeemed, together with an itemized statement thereof. Immediately after a sale or other disposition of such property, the chief of police shall pay over to the treasurer the proceeds of sale or other disposition of such property, with an itemized statement of the article sold, the price received and the costs and expenses of the sale, and the treasurer shall retain and credit the general surplus fund with so much of the proceeds as equals the costs and expenses of such sale plus the sum of five dollars for such other vehicle sold to cover the cost of removing and storing the property. The remainder of the monies realized from such sale shall be paid without interest to the lawful owner thereof. (G.O. No. 956, § 9.)

Sec. 24-44. Article inapplicable to certain property in possession of police department.

The provisions of this article shall not apply to any property which may come into the possession or custody of the police department pursuant to any other ordinance, law or regulation. (G.O. No. 956, § 10)

Sec. 24-45. Violation of article.

Any person violating any of the provisions of this article shall be liable for the forfeit and pay a penalty of not more than fifty dollars for each violation, and it is further ordained that the violation of any provisions of this article shall constitute disorderly conduct, and the person so violating the same shall be and is hereby declared a disorderly person. This is in addition to any fees for redemption of impounded property or costs of sale chargeable to an owner or person entitled to possession of impounded property as hereinafter provided. (G.O. No. 956, § 4; G.O. No. 1477, § I.)

Article VII. Sidewalk Cafes

Sec. 24-46. Definitions.

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

(a) The term “principal building” shall mean the building whose principal façade fronts on the sidewalk where the sidewalk café is, or is proposed to be located. The “principal façade” shall be the face of the principal building facing the street right-of-way.

(b) The term “permitted zone” shall mean the B-1 Business Zone all as defined in the Westfield “Land Use Ordinance” and all as shown on the zoning map of the Town of Westfield.

(c) The term “person” shall mean any individual, partnership, corporation, limited liability company, association, or other entity.

(d) The term “restaurant” shall mean 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.

(e) The term “sidewalk” shall mean 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).

(f) The term “sidewalk café” or “café” shall mean 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 façade, and the imaginary perpendicular lines running from the outer edge of such principal façade 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.

The term “sidewalk café” shall also mean an operation ancillary to a principal building in accordance with section 24-54A.

(g) The term “obstruction” shall mean any tree, trash receptacle, street curb, parking meter, newspaper box, street sign or basement entry hatch lying within the area of the sidewalk café.

(h) The term “service items” shall mean all dishes, utensils, containers, tablecloths, napkins, cutlery and other items used in the operation or decoration of the sidewalk café.

(G.O. No. 1631, § I; G.O. No. 1702, §§ I-IV.)

Sec. 24-47. License required.

No person shall operate a sidewalk café with the Town of Westfield without first obtaining a sidewalk café license and satisfying all of the requirements of this article. The license shall be initially issued by the town council and may contain conditions. All renewals of a sidewalk café license issued shall also be issued by the town council. (G.O. No. 1631, § I; G.O. No. 1702, § V.)

Sec. 24-48. Application.

(a) Each applicant for a sidewalk café license shall submit and file an application with the town clerk, together with three 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).

(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, 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 café 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 café is proposed to be located will in no way be impeded; and that the provisions of section 24-54 be satisfied. Such diagram shall also include a drawing of the sidewalk café itself with all appurtenances and shall show all obstructions located within the area of the sidewalk café. 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. 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 ten business days following its submission. The fire chief may also refer the development plan to chief of police, zoning officer, construction official, health officer, 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.

(c) In the application to be submitted, the applicant may request that the town council grant the applicant a waiver from compliance with certain of the requirements of section 24-54 of this article.

(G.O. No. 1631, § I; G.O. No. 1702, §§ VI, VII; G.O. No. 1814, § I.)

Sec. 24-49. Insurance required.

No sidewalk café 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 one million dollars 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 café or for injury to any person occurring on the premises occupied by such café, and further providing for the payment of not less than ten thousand dollars to satisfy all claims for property damage occurring as a direct or indirect result of the operation of such café and naming the Town of Westfield as an additional insured. (G.O. No. 1631, § I.)

Sec. 24-50. Indemnification agreement required.

No sidewalk café 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. (G.O. No. 1631, § I.)

Sec. 24-51. Maintenance agreement required.

No sidewalk café 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 by the operation of the café, 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. (G.O. No. 1631, § I.)

Sec. 24-52. License fee.

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

- 1-10 seats, no more than two tables - \$100.00
- 11-25 seats - \$250.00
- 26-50 seats - \$350.00
- Over 50 seats - \$425.00

(G.O. No. 1631, § 1; G.O. No. 1874, § II.)

Sec. 24-53. Term of license: renewals.

All sidewalk café licenses shall be issued for the eight-month period commencing April 1 and ending November 30 of a particular year. Licenses may be renewed annually by filing of an application in accordance with the provisions of section 24-48. (G.O. No. 1631, § I; G.O. No. 1727.)

Sec. 24-54. Requirements and specifications.

A sidewalk café 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 café 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 shall be placed within fifty feet of any fire hydrant, plug or standpipe without the specific written authorization of the chief of the fire department; and

(c) No furniture, apparatus, decoration, or appurtenance used in connection with the operation of the sidewalk café 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 façade to the street.

(d) No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk café 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 café area on the sidewalk to define the café 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 non-reusable materials, a sidewalk café license may provide for the use of disposable and non-reusable service items. The furniture to be used in the operation of the sidewalk café shall be made of durable material, such as sturdy vinyl/plastic, wrought iron or wood. Tables shall have a diameter not larger than twenty-four inches.

(f) The sidewalk area utilized by the café 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 shall be permitted to operate only within the permitted zone and only from 10:00 A.M. until 10:00 P.M. during the months of April to November inclusive.

(i) Within thirty minutes after the closing of the café, the operator shall have all furniture, apparatus, decorations, barriers, planters and appurtenances and any other items used in connection with the operation of such café 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 café shall be actually operated and maintained by the same person who operates and maintains the related restaurant of which the café 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 council, a person may be permitted to display the name of the establishment operating the café on umbrellas to be used at the café.

(G.O. NO. 1631, § I; G.O. No. 1702, §§ VIII-X.)

Sec. 24-54A. Sidewalk cafes 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 council may issue licenses to operate sidewalk cafes 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 council 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; 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 council. (G.O. No. 1702, § XI.)

Sec. 24-54B. 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 café license in the event of an emergency or for other reasons or purposes including, but not limited to, the facilitation of town-sponsored events. (G.O. No. 1702, § XII.)

Sec. 24-55. Alcoholic beverages.

The sidewalk area of an establishment that holds a Class C Plenary Retail Consumption license (license holder) upon which a café has been authorized to operate pursuant to this article may constitute premises for the sale and consumption of alcohol beverages provided that the license holder of the restaurant of which the café is a part obtains a place to place transfer of its existing liquor license to include the café area pursuant to the applicable provisions of Chapter 4 of the Code of the Town of Westfield and N.J.S.A. 33:1 et seq. Such approval shall be separate from, and must be obtained in addition to, the license to operate a sidewalk café pursuant to this article.

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 café has been authorized to operate. All restrictions placed on establishments pursuant to N.J.S.A. 2C:33-27 will strictly be enforced. (G.O. No. 1631, § I; G.O. No. 1874, § I.)

Sec. 24-56. 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 twenty-four 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 café license shall thereupon, and automatically, be revoked.

Upon 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 fourteen days of the date of its request. (G.O. No. 1631, § I; G.O. No. 1702, § XIII; G.O. No. 1814, § II.)

Sec. 24-57. Penalties.

Any person convicted of a violation of this article shall be subject to a fine not to exceed five hundred dollars or ninety 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. (G.O. No. 1631, § I.)