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**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER and committee report OF THE**

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**COMMITTEE ON CONSUMER AFFAIRS AND BUSINESS LICENSING**

Hon. Andrew Cohen*, Chair*

**COMMITTEE ON TRANSPORTATION**

Hon. Ydanis Rodriguez, *Chair*

##### September 30, 2020

**Oversight – Outdoor Dining and the City’s Open Restaraunts**

**Program during COVID-19**

**INT. NO. 2096:** By Council Members Kallos, Powers and Dromm

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to authorizing the department of consumer and worker protection to issue temporary operating licenses to sidewalk café applicants if certain requirements are satisfied

**Preconsidered INT. NO.\_\_:** By Council Members Reynoso, Powers, Levine, Rodriguez, Rivera, Kallos, Van Bramer and Chin

**TITLE:** A Local Law to amend local law number 77 for the year 2020, the administrative code of the city of New York and the New York city fire code, in relation to outdoor dining

**Preconsidered INT. NO.\_\_:** By Council Member Salamanca and Dromm

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the preparation of plans in connection with petitions for revocable consents for sidewalk cafes

1. **INTRODUCTION**

On September 30, 2020, the Committee on Consumer Affairs and Business Licensing, chaired by Council Member Cohen, and the Committee on Transportation, chaired by Council Member Rodriguez, will hold an oversight hearing on outdoor dining in New York City and the City’s Open Restaurants program. The Committees will also hear three pieces of legislation: Introduction Bill Number 2096 (Int. 2096), in relation to authorizing the Department of Consumer and Worker Protection to issue temporary operating licenses to sidewalk café applicants if certain requirements are satisfied; a Preconsidered Bill, in relation to outdoor dining; and a Preconsidered Bill, in relation to the preparation of plans in connection with petitions for revocable consents for sidewalk cafes. The Committees have invited the Department of Transportation (DOT), the Department of Consumer and Worker Protections (DCWP), business and trade associations, worker groups, transportation advocates and other interested parties to testify at the hearing.

1. **BACKGROUND**

In late December of 2019, a new virus, SARS-CoV-2, was detected in Wuhan, China and by January 30, 2020, the World Health Organization (WHO) declared that COVID-19, the disease caused by the SARS-CoV-2 virus, was now a Public Health Emergency of International Concern (PHEIC).[[1]](#footnote-1) As of September 23, 2020, COVID-19 has infected nearly 32 million people across 213 countries and territories, and has killed over 978,000 people.[[2]](#footnote-2) In the United States alone, there have been nearly seven million infections and over 200,000 deaths.[[3]](#footnote-3) As of September 23, 2020, New York State has had over 451,000 infections and over 33,000 deaths, many of which took place in New York City.[[4]](#footnote-4)

The progressive nature by which the virus spreads has caused governments across the globe to shut down businesses, schools, religious and cultural institutions, and mandate various levels of social isolation. While this has seemingly helped to limit the spread of the virus, stay-at-home orders have had a catastrophic impact on economic markets, in particular small businesses such as restaurants and bars, which only thrive through regular patronage from their customers.

**The Impact on Restaurants and Bars Amid the COVID-19 Crisis**

 In New York, Governor Andrew Cuomo issued an executive order – New York State on PAUSE (PAUSE) – that closed all on-site, non-essential businesses, effective March 22, 2020, to help stop the spread of SARS-CoV-2.[[5]](#footnote-5) Restaurants and bars were permitted to operate statewide; however, they were only allowed to make sales through take-out and delivery.[[6]](#footnote-6)

As New Yorkers stayed home to stop the spread of the virus, consumer spending declined in the City. While restaurants were open for take-out and delivery, they experienced drastic revenue declines. According to an April 2020 report from the New York State Restaurant Association, sales declined 79 percent in the first ten days of April compared to the same period in 2019, and New York State restaurants were expected to lose $3.6 billion in sales revenue in April alone.[[7]](#footnote-7) Just over half (51 percent) of all restaurants had been able to move their operations online, yet unemployment rates in this sector skyrocketed, as 80 percent of restaurant workers lost their jobs.[[8]](#footnote-8)

The experiences of individual restaurant owners exemplify the challenges the industry faces to remain stable throughout the pandemic. For instance, business for all of the month of June at the Nugget Spot, a restaurant on East 14th Street in Manhattan, equaled “one good Thursday” before the pandemic.[[9]](#footnote-9) Meanwhile, Havana Central’s takeout and delivery business in Times Square equaled about three percent of its former revenue.[[10]](#footnote-10) Outdoor dining provided only a small boost to the restaurant industry, as revenue is up to ten percent of its pre-COVID total.[[11]](#footnote-11) According to Mark Fox, owner of The Ragtrader, a restaurant on 36th Street in the Garment District, 70 percent of his customer base were commuters on their way home from their jobs, 20 percent were tourists, and ten percent were those shopping at retail stores in the area.[[12]](#footnote-12) Notably, the number of commuters, tourists and those shopping has markedly declined during the pandemic. The future of this industry, after the impact of COVID-19 remains precarious and uncertain. According to Eater NY writer Tanay Warerkar, “This is definitely a life-altering situation for the restaurant industry in New York and I don’t think things will probably ever go back to the way they were, even though things may normalize to some extent.”[[13]](#footnote-13)

 Even as New York City has advanced through Governor Cuomo’s phased re-openings, restaurants continue to struggle. As restaurants have experienced drastic revenue declines, a majority of restaurant owners have been unable to pay their commercial rents. The Hospitality Alliance recently surveyed more than 450 New York City restaurants, bars and nightclubs about their rent obligations in August. The findings showed that 87 percent of respondents were unable to pay their full August rent and 34 percent were unable to pay any amount toward their rent burden.[[14]](#footnote-14) The survey also found that 90 percent of businesses were unable to renegotiate their lease agreements, which could explain why the percentage of those unable to pay full rent increased from 80 percent in June, to 83 percent in July and 87 percent in August.[[15]](#footnote-15)

 As restaurants continue to face challenges paying their fixed monthly expenses without their pre-COVID-19 revenues, many across the City have had to permanently close down. Although exact figures are difficult to calculate, according to an August 2020 report by the City Comptroller, 1,289 restaurants closed permanently between March 1 and July 10, 2020.[[16]](#footnote-16) These closures have affected restaurants of all sizes across the City, including Lucky Strike, a Soho “neighborhood institution,” and the four-story McDonald’s flagship store in Times Square.[[17]](#footnote-17) Iconic City restaurants that have been in business in their respective neighborhoods for many years have closed permanently, including: Sarabeth’s on the Upper East Side (20 years), the Copacabana (80 years), kosher deli Jay and Lloyd’s (28 years), La Caridad 78 (52 years) and the Irish Cottage (60 years).[[18]](#footnote-18)

Even as phased reopenings continue, restaurants across the State are struggling. According to a survey of eateries by the NY State Restaurant Association (NYSRA), more than 60 percent of restaurants expect to close by the end of the year, unless they receive some form of financial assistance, with more than half saying they may have to close by November.[[19]](#footnote-19) Furthermore, barely ten percent of those surveyed by NYSRA felt that they would actually be profitable in the next six months.[[20]](#footnote-20)

As restaurants shut their doors, the livelihoods they generate for both the restaurant workers and business owners have disappeared. A May 2020 report from the New York City Independent Budget Office projected that a total of 115,000 leisure and hospitality jobs would be lost by October 2020,[[21]](#footnote-21) and that, even if distancing restrictions are relaxed, industries with “strong ties to tourism,” such as hospitality, would continue to lose jobs due to a decline in foreign tourists.[[22]](#footnote-22) The Partnership for New York City issued a report in July 2020 that classifies an estimated 679,000 accommodation and food service jobs as “vulnerable to loss”– the most of any sector in the city.[[23]](#footnote-23) Meanwhile, a report from the City Comptroller determined that 187,000 of the 758,000 private sector jobs that have been lost in the City through June came from the food services industry.[[24]](#footnote-24)

The closure of City businesses will leave households “struggling to feed their families and pay rent,” [[25]](#footnote-25) and the impact of job loss in the City may disproportionately fall on Black, Hispanic and Asian residents, with one report estimating that 40-50 percent of jobs held by people of color are at risk of loss, as opposed to 30 percent for white residents.[[26]](#footnote-26)

In addition to providing employment opportunities to New Yorkers, the restaurant industry generates tens of millions of dollars for the City through tax collection. In Fiscal Year 2019, the City gained over $21.95 million from general sales taxes at restaurants and other eating establishments.[[27]](#footnote-27) Twenty percent of the City’s revenue came from personal income tax, which may be significantly lower in future years than it was in FY19 due to the job losses caused by the closure of many City restaurants.[[28]](#footnote-28)

**The City’s COVID-19 Response and the Open Restaurants Programs**

Until restaurants can reopen to full-capacity indoor seating, they are unlikely to generate the revenue they produced pre-COVID-19, and therefore government action is necessary to help save the restaurant industry. In fact, if mandatory social distancing measures on restaurants continue, one model suggests that in 2021, revenue would be 53 percent lower than the same time in 2019.[[29]](#footnote-29) Meanwhile, less severe restrictions would result in a 43 percent reduction in revenue in 2021 for the industry as compared with 2019.[[30]](#footnote-30)

In response, the City has implemented several initiatives to assist the restaurant and hospitality industry make it through this pandemic. In May, the City Council enacted Local Law 54, which required the City to waive and refund consent fees related to sidewalk cafe licenses for the duration of the COVID-19 emergency. Just this month, the Council also passed Int. No. 823-B, which would allow food service establishments to charge a temporary surcharge (maximum ten percent) of a customer’s total bill during the COVID-19 emergency. This bill is currently at the Mayor’s desk waiting further action. The City Council has also passed a number of measures to limit the fees that third-party delivery platforms, such as GrubHub, can charge restaurants that use their services. Local Law 88 of 2020 restricts the fees that third-party food delivery services may charge restaurants during the emergency. Under this law, fees charged to restaurants for delivery orders are capped at 15 percent, while the apps are only permitted to charge restaurants up to five percent for other types of services. Local Law 87 of 2020, meanwhile, prohibits third-party platforms from charging restaurants for phone calls that did not result in a food order. This restriction applies during the period when restaurants are prohibited from operating at their maximum indoor capacity, plus 90 days after these restrictions are eased.

In June, the Mayor announced that the City would begin temporarily allowing restaurants to offer outdoor dining on city streets and sidewalk, a process normally requiring a sidewalk café license and several layers of bureaucratic approvals. In conjunction with the announcement, the City Council passed Local Law 77, which permitted restaurants to operate temporary outdoor dining areas during the COVID-19 emergency through a no-fee self-certification process. This came to be known as the Open Restaurants Program.

*Open Restaurants Program*

The City’s Open Restaurants program is an effort to implement citywide expanded outdoor seating options for food establishments, while ensuring that people are adequately social distancing.[[31]](#footnote-31) Currently, there are two options under this program for temporary expanded outdoor dining: “Open Restaurants” and “Open Streets: Restaurants.”[[32]](#footnote-32)

Open Restaurants allows for individual food establishments to utilize the sidewalk or curb lane adjacent to their business for outdoor seating.[[33]](#footnote-33) As part of this program, food establishments can apply and self-certify that they meet program requirements to utilize these spaces.[[34]](#footnote-34) In addition to this option, the Open Streets: Restaurants option allows community-based organizations, Business Improvement Districts or groups of three or more restaurants on a single block to apply for outdoor dining on streets closed to traffic, as part of the Open Streets program.[[35]](#footnote-35)

As of September 26, 2020, there were 10,365 Open Restaurants.[[36]](#footnote-36) Of these restaurants, 936 have only roadway seating, 3,708 have only sidewalk seating, and 5,373 have both roadway and sidewalk seating.[[37]](#footnote-37) In addition, 348 exist on Open Streets, as part of the Open Streets: Restaurants program.[[38]](#footnote-38) Establishments participating in the Open Restaurants program exist throughout the five boroughs. As of September 26, 2020, there are:[[39]](#footnote-39)

* 585 Open Restaurants in the Bronx, of which include 20 with roadway-only seating, 264 with sidewalk only seating, 289 with both roadway and sidewalk seating, and 12 being on Open Streets;
* 2,521 in Brooklyn, of which includes 212 with roadway-only seating, 991 with sidewalk-only seating, 1,227 with both roadway and sidewalk seating, and 91 being on Open Streets
* 4,936 in Manhattan, of which includes 535 with roadway-only seating, 1,571 with sidewalk-only seating, 2,637 with both roadway and sidewalk seating, and 193 being on Open Streets
* 2,149 in Queens, of which includes 161 with roadway-only seating, 796 with sidewalk-only seating, 1,144 with both roadway and sidewalk seating, and 48 being on Open Streets; and
* 174 in Staten Island, of which includes eight with roadway-only seating, 86 with sidewalk-only seating, 76 with both roadway and sidewalk seating, and 4 being on Open Streets.

Source: NYC Open Restaurants Portal.(Caption: The graph above shows the total number of Open Restaurants per borough.)

Source: NYC Open Restaurants Portal. (Caption: The graph above shows a breakdown of Open Restaurants per borough, by: having Roadway Seating only; having Sidewalk Seating only; having Both Roadway and Sidewalk Seating; or existing on an Open Street.)

 To ensure safety and accessibility, restaurants are required by the DOT to meet a number of criteria for sidewalk and roadway seating.[[40]](#footnote-40) Sidewalk seating is required:

[To] be placed against the wall of the business or as close as possible; not exceed the length of the front of the business; must provide a clear path measuring eight feet for pedestrians, with parking meters, traffic signs and tree pits with flush gratings being exempt from being categorized as obstructions to clear paths; must be at least three feet space from the adjacent business; not block subway grates, utility hardware, Siamese water connections and bus stop waiting areas; and must be provided by the food establishment.[[41]](#footnote-41)

Criteria has been put in place for roadway seating, with restaurants required to:

Create protective barriers that are at least 18 inches in width and 30 to 36 inches in height (excluding plantings) on all three sides of the seating perimeter that exist within the roadway; place barriers directly adjacent to each other and no more than 8 feet from the curb; ensure visibility of patrons and barriers at night by marking all barriers with yellow high intensity retro-reflective tape or reflectors; ensure roadway seating does not exceed the length of the front of the business; provide a ramp for persons with disabilities, in compliance with Americans with Disability Act (ADA) requirements and not made of non-permanent materials; ensure seating or barriers are not placed within 15 feet of a fire hydrant or within eight feet of a crosswalk; ensure that there is no provision of lighting that would be blinding to passing traffic; ensure that seating is not placed within a specific space; utilize umbrellas with a weighted base or tents or other shelters only, of which cannot exceed 400 square feet in total or fully enclose the seating area, following safe installation instructions from manufacturers; provide tables, chairs and barriers for outdoor seating; remove tables and chairs or secure them in place when they are not being used; and comply with NYC Fire Department Open Flame and other applicable Fire Codes.[[42]](#footnote-42)

[[43]](#footnote-43)

(Caption: The picture above shows the siting criteria for the NYC Open Restaurants program, including a detailed look at criteria for: business frontages; clear paths; umbrellas; ADA compliant ramps; barrier elements; and fire hydrant distancing, among other things.)

As part of the siting criteria, restaurant owners are required to:

Leave barriers in place within a metered zone, alternate side parking space, or “No Parking Anytime” zone only if the tables and chairs are removed or secured when not being utilized; install a platform behind the required barrier to height with curb to facilitate ADA compliance; prevent the curb from becoming a hazard; allow drainage under seating where seating is authorized along the curb; and ensure no obstructions to access utility covers.[[44]](#footnote-44)

In addition to the siting criteria, DOT has put out guidance regarding the City’s Open Restaurants program and making this a permanent, year-round program. For adjacent properties, the City will allow restaurants to:

Expand seating to the frontage of adjacent properties, as long as the adjacent property owners formally agree to the use of the space for a specified period of time and commit not to charge a fee for its use; work with the State Liquor Authority (SLA) on any requirements associated with extending alcohol service to the expanded seating in front of adjacent properties; be issued, by DOT in early October, a template agreement and instructions on how to file the agreements.[[45]](#footnote-45)

For heating requirements, official guidance on what will be considered approved installation of use of heating elements will be released before the end of September, however, restaurants will be allowed to incorporate heating elements into their outdoor dining setups with the following criteria, allowing:

Electrical heaters on both sidewalk and roadway; propane (if permitted from FDNY and in compliance with FDNY regulations for outdoor use, handling and secure outdoor storage overnight) and natural gas heaters on sidewalks only.[[46]](#footnote-46)

Restaurants will be allowed to use enclosures, such as tents or plastic domes, to keep diners warm, with both partial and full tent enclosures allowed to utilize electrical heaters.[[47]](#footnote-47) In partial tent enclosures, at least 50 percent of the tent’s side wall surface area must remain open, while in full tent enclosures, the tent’s side walls may be closed but occupancy limitations will be capped at 25 percent of capacity, and indoor dining guidelines must be followed.[[48]](#footnote-48) Other enclosed structures, like plastic domes, will be allowed for individual parties and must have adequate ventilation to allow for air circulation in an effort to ensure proper safety measures are taken.[[49]](#footnote-49) In addition, to ensure that roadway safety is maintained year-round, particularly during the winter months with snowy conditions, the City will engage the restaurant industry and other stakeholders to develop additional safety features to further strengthen roadway barriers, of which will be required by November 15, 2020.[[50]](#footnote-50) Notably, significant snow events may necessitate temporary removal of certain barriers from the roadway.[[51]](#footnote-51) Ultimately, the criteria in place by DOT looks to ensure that the safety and accessibility of pedestrians, including customers, is maintained, while allowing for cyclists, pedestrians and traffic to effectively and safely access roadways.

**Outdoor Dining, State Guidelines and the Consumption of Alcoholic Beverages**

 Prior to the COVID-19 pandemic, the State Liquor Authority (SLA) limited the ability of restaurants to utilize outdoor space to serve alcohol. In response to the emergency, the SLA has issued guidance to expand the use of outdoor areas by allowing restaurants to utilize “any contiguous outdoor, open-air part of its existing premises for which it has control by deed, lease, management agreement, or other agreement of control (e.g., a municipal sidewalk cafe permit)” to operate.[[52]](#footnote-52)  The law states that if a licensee’s existing license operates with stipulations restricting the use of outdoor areas, through a municipality or other entity, such licensee must submit a letter from such stipulating counter-party approving such additional outdoor use of premises.[[53]](#footnote-53)

On June 4, 2020, and effective thereafter, Governor Cuomo issued an order allowing for restaurants statewide that had entered phase 2 of reopening (New York City entered phase 2 on June 22, 2020) and which have the ability to operate on premise services, to resume outdoor, on-premises service of food and alcoholic beverages:

Should any municipality elect to make available to licensees any municipally owned lands (e.g. sidewalks, streets, etc.) which are beside, but not immediately adjacent to, the licensed premises for service of food and/or beverages (a “Municipal Extension”), and should such municipality want or expect the SLA to have jurisdiction over a licensee’s operations over such Municipal Extension, such municipality must submit to the SLA a plan for municipal outdoor dining areas and deliver to the SLA the written acceptance of responsibility for such Municipal Extension from each implicated licensee.[[54]](#footnote-54)

To ensure that the spread of COVID-19 was maintained and to assist businesses impacted by the pandemic, guidance was issued by the SLA to continue through October 4, 2020.[[55]](#footnote-55) Such guidance required that:

Any consumption of food and/or beverage must happen in outdoor, open-air areas, without a fixed roof (besides a temporary or seasonal awning or cover); food and/or beverages can only be consumed while seated at a table, bar, counter, or similar contrivance; all tables and seats at bars must be 6 feet apart; all staff of the licensed business must wear face masks at all times; all customers must wear face masks at any time they are not seated; any consumption shall be subject to all other relevant executive orders, guidance promulgated by the Department of Health, and/or any other relevant agency guidance; and licensees must comply with the SLA Guidance and the Department of Health’s Interim Guidance for Outdoor Service; if unable to comply, it is the licensee’s obligation to discontinue outdoor service.[[56]](#footnote-56)

Any licensed business found to be operating in violation of the Governor’s orders and with SLA Guidance, could face a monetary penalty (retail maximum of $10,000/manufacturer maximum of $100,000), and/or suspension, cancellation, or revocation of its license.[[57]](#footnote-57) Furthermore, effective July 17, 2020, the SLA required that all licensed establishments with on premises privileges (e.g. restaurants, taverns, manufacturers with tasting rooms, etc.) only serve alcoholic beverages if the beverage is accompanied by the purchase of a food item, which is consistent with the food availability requirement of the license under the ABC Law.[[58]](#footnote-58)

**Sidewalk Café Licenses**

While the formal sidewalk café licensing process is currently suspended due to the COVID-19 emergency, in normal times, these licenses were regulated by DCWP, and were a ubiquitous part of New York City’s urban landscape. These licensed cafes are a distinct legal creature from the City’s current Open Restaurants program and involve a lengthy approval process that, if successful, results in the granting of a revocable consent to a restaurant owner. A revocable consent is the grant of a right to an individual or organization to construct and maintain certain structures on, over, or under the inalienable property (streets and sidewalks) of the City.[[59]](#footnote-59)

According to DCWP, prior to the COVID-19 pandemic, there were approximately 1,416 licensed sidewalk cafes in New York City.[[60]](#footnote-60) The majority of these sidewalk cafes were located in Manhattan, which has 1,004 cafes, while 412 are located in the outer boroughs.[[61]](#footnote-61) The Administrative Code defines a sidewalk cafe as a “portion of a restaurant operated under permit from the department of health and mental hygiene, located on a public sidewalk that is either an enclosed or unenclosed sidewalk cafe.”[[62]](#footnote-62) There are three different types of sidewalk cafes: an enclosed sidewalk cafe, an unenclosed sidewalk cafe, and a small unenclosed sidewalk cafe.[[63]](#footnote-63) An enclosed cafe is one that “is constructed predominantly of light materials such as glass, slow-burning plastic or lightweight metal,” encompassing the seating area.[[64]](#footnote-64) An unenclosed sidewalk cafe has no such containing structure, though the seating area may be surrounded by a fence, railing or planters, and may be covered by an awning.[[65]](#footnote-65) A small unenclosed sidewalk cafe consists of a single row of tables and chairs extending no farther than 4.5 feet from the side of the business.[[66]](#footnote-66)

 Because sidewalk cafes by their nature obstruct pedestrian traffic, they are subject to a number of regulations, such as requiring pedestrian clearances, adequate spacing between tables, ADA compliance, and clearances from certain street fixtures.[[67]](#footnote-67) Sidewalk cafes are also subject to regulations that would limit the nuisance they might present to neighboring homes and restaurants. For example, unenclosed and small unenclosed sidewalk cafes may only operate between 10:00 a.m. and midnight on Sunday, 8:00 a.m. and midnight on Monday through Thursday, and between 8:00 a.m. and 1:00 a.m. on Friday and Saturday.[[68]](#footnote-68)

 Obtaining a sidewalk cafe license is a lengthy multi-step process. Prior to submitting a license application, the restaurant must first ensure that the proposed cafe meets the zoning requirements and that the sidewalk that will be used is at least 12 feet wide.[[69]](#footnote-69) The restaurant must also possess a current New York City Department of Health and Mental Hygiene food service establishment permit prior to beginning the application process.[[70]](#footnote-70) Prospective licensees must also submit numerous documents and certifications, and must obtain approval for a revocable consent to construct and operate a sidewalk cafe.[[71]](#footnote-71)

 There are also a number of fees associated with obtaining a sidewalk cafe license, including a two-year license fee of $510; a revocable consent application fee of $445; and an annual revocable consent fee for the street space being used, which varies based on the location, square footage, and type of sidewalk cafe.[[72]](#footnote-72) Consent fees typically amount to thousands of dollars annually per sidewalk café. Unenclosed and small unenclosed sidewalk cafes are also responsible for a $310 plan review fee and a $1,500 security deposit.[[73]](#footnote-73) Enclosed sidewalk cafes applicants must submit a $4,000 security deposit and a City Planning Fee of $55 per seat with a minimum of $1,360.[[74]](#footnote-74) Restaurants that modify their plans after they submit their license applications are subject to an additional $175 fee for modification of the revocable consent.[[75]](#footnote-75) Enclosed sidewalk cafe applicants that modify their plans after submission must again pay the City Planning Fee.

 A restaurant with a licensed sidewalk cafe must renew its license every two years and must not have any outstanding fines or consent fees prior to renewal.[[76]](#footnote-76) The paperwork involved in renewing a sidewalk cafe license is similar to that of the initial application process. Licensees must also continue to pay the annual revocable consent fees.

 Within five days of receiving an application, DCWP will forward copies of the petition for revocable consent for any enclosed sidewalk cafe to the Landmarks Preservation Commission, DPC and the Department of Environmental Protection for review, each of which has 21 days to submit any objections in writing to DCWP.[[77]](#footnote-77) If the agencies do not respond within the 21 days, they are deemed not to have any objections.[[78]](#footnote-78) DCWP will also forward the petition for any type of sidewalk cafe, for informational purposes, to the Speaker of the City Council and the Council Member in whose district the cafe is situated, and the Community Board, which corresponds to the location of the business, for comments.[[79]](#footnote-79) The Community Board may then hold a public hearing and issue its opinion to DCWP, recommending, either a denial, an approval, or an approval with modifications.[[80]](#footnote-80) The Community Board has 45 days within which to make this recommendation or waive its right to do so.[[81]](#footnote-81) Within the next 30 days, DCWP will hold a public hearing and then make a recommendation to the City Council for disapproval, approval, or approval with modifications.[[82]](#footnote-82) DCWP may also waive the public hearing. If DCWP does not make a determination within that time period than the petition will be considered denied.[[83]](#footnote-83) If the City Council does not call up the petition for a vote within 20 days of the date that the Council received a recommendation from DCWP, than the petition is considered approved.[[84]](#footnote-84) If the City Council calls up the application for a vote, it has 30 additional days to approve, approve with modifications or disapprove the petition.[[85]](#footnote-85) Once approved, DCWP forwards the application to the Comptroller, who has 30 days to register the consent. Finally, upon approval of the revocable consent, DCWP issues the license.

 The penalty for operating a sidewalk cafe without the appropriate DCWP license is a fine of $200 to $1,000 for the first violation and subsequent violations issued on the same day, and a fine of $500 to $2,000 for subsequent violations issued on separate days within two years of the first violation.[[86]](#footnote-86) Similar fines can be issued to licensed cafes operating in violation of any Administrative Code provisions, and DCWP may seal a cafe upon repeated violations of the Code or of terms and conditions of the cafe’s license or revocable consent.[[87]](#footnote-87)

1. **ISSUES AND CONCERNS**

 *Open Restaurants Program*

Since its inception, the number of restaurants enrolled in the Open Restaurants Program has grown substantially. However, the program was set to expire at the end of October, leading to many in the industry to call for an extension of the program with modifications. Initially, the Mayor indicated that he would like to see the program become a permanent seasonal program. However, after much pressure, the Mayor announced on September 25 that the City’s outdoor dining program, along with the Open Streets program, would be made permanent.[[88]](#footnote-88)

The lack of certainty over the program and conflicting statements and advice from City agencies has been another frustrating aspect of the program for business owners. This was especially true during the early summer months of Open Restaurants. For example, when the original June order was delivered by the Mayor, New York City owners acted quickly to jump on the opportunity. Many of them spent thousands of dollars to install barriers to protect customers and be in compliance with the new rules.[[89]](#footnote-89) A few weeks later, however, the rules were amended by DOT and any newly erected barrier that was not 18 inches thick had to be altered.[[90]](#footnote-90) Establishments were only given 24 hours to come into compliance so some businesses were forced to close while they struggled to bring back their contractors to make the changes.[[91]](#footnote-91) One restaurant owner in the East Village reported that they had received visits from three different City and State officials, over four days, who all provided conflicting information on whether the restaurant’s outdoor space was suitable for dining.[[92]](#footnote-92) Adding to the confusion, the restaurant owner also received four separate emails from DOT with different ways of building the outdoor space.[[93]](#footnote-93) In addition to being frustrating and time consuming, this conflicting information is financially costly to businesses who are already operating on the thinnest of margins.

For food establishments who are in compliance, and for customers seeking a sense of normalcy the Open Restaurants program has been largely successful; however, not all restaurants are able to participate. While 10,365 restaurants are participating in the program, that number represents only about one third of the total restaurants in the City.[[94]](#footnote-94) Even with the City’s expansion of outdoor dining options, the number of seated diners at restaurants is down 88 percent compared to before the pandemic hit New York.[[95]](#footnote-95) The allowance for indoor dining at 25 percent capacity beginning September 30 is likely to improve these numbers only modestly.

*Winter Heating*

While outdoor dining makes sense during warmer weather, winter will pose new challenges for restaurant owners. Outdoor heating is a dire necessity, and restaurateurs have called upon the City to modify existing regulations that severely restrict such heating. Clear and concise regulations will alleviate some of the uncertainty regarding outdoor dining in winter, and give confidence to business owners who need to invest in this new equipment. As outdoor dining picks up in other parts of the Country, there have been upticks in outdoor heating sales, which are already causing shortages.[[96]](#footnote-96)

In New York City, outdoor space heaters are only authorized if fueled by electricity or piped natural gas.[[97]](#footnote-97) The specific Fire Code (FC) provisions related to portable space heaters are contained within FC 313.3(2) which prohibits the “[s]tor[ing], handl[ing] or us[ing] for space heating . . .any portable fueled equipment that utilizes a flammable liquid as a fuel, or . . . that utilizes a combustible liquid as a fuel.”[[98]](#footnote-98) An exception to this general prohibition is included to allow for the outdoor use of portable heaters fueled with piped natural gas,[[99]](#footnote-99) permanent installations that are further regulated by safety precautions and installation requirements contained within the Fire and Building Codes.[[100]](#footnote-100)

Propane, a form of Liquefied Petroleum Gas (LP Gas or LPG), can be used to fuel portable heaters. However, as a highly flammable liquid under high pressures, the use of propane for space heating is prohibited by the above-mentioned Fire Code provisions. Additionally, Fire Code regulations generally governing the handling and use of LP Gas explicitly prohibit its use as fuel for space heating purposes.[[101]](#footnote-101)

There are two main safety concerns related to the use of LPG space heaters are: 1) emission of unsafe Carbon Monoxide (CO) levels, which can ultimately result in asphyxia; and 2) compromised tanks resulting in combustion/explosion. Propane space heaters are generally prohibited for *indoor* use in all Fire Codes examined, in part due to concerns with CO emissions. In an outdoor environment, however, the risk of CO poisoning is strongly mitigated. The most serious concern related to asphyxia is that a flameout (where the LPG consistently expels in the environment without proper burn-off) could occur during high winds.

The second concern is with regard to the combustibility and failure of propane tanks; however, these events are extremely uncommon. On these rare occasions where this does occur, explosions have usually transpired in an indoor setting, caused by tank failure resulting in leaked gas, which was subsequently inadvertently ignited by a lit cigarette. Reports of outdoor explosions of propane tanks that cause serious damage to life or property appear to be highly infrequent.

The International Fire Code (IFC), adopted by the International Code Council, establishes widely accepted standards for fire safety and serves as the model for New York City’s Fire Code, and that of many other jurisdictions. The 2018 version of the IFC, as well as previously published editions, authorizes the outdoor use of gas fueled heaters, including propane, and includes detailed regulations on safe operations of such devices.[[102]](#footnote-102) This provision is adopted without amendment in the Fire Code for both Philadelphia[[103]](#footnote-103) and Washington DC.[[104]](#footnote-104) Boston’s Fire Prevention Code similarly authorizes outdoor use of gas fueled heaters,[[105]](#footnote-105) as does Chicago.[[106]](#footnote-106) Ultimately, while the NYC Fire Code has generally adopted the IFC provisions without amendment, the regulations authorizing the outdoor use of gas fueled portable heaters are omitted.[[107]](#footnote-107) New York City is an outlier in prohibiting LPG space heaters in outdoor portions of restaurants.

Propane-fueled space heaters are preferred over electric or piped natural gas heaters by restaurant operators due to both practical and economic considerations. Practically, propane-fueled heaters provide restaurants with greater flexibility than heating devices with other fuel sources that are currently authorized in New York City. First, heaters fueled by piped natural gas and electricity tend to need professional installation with permanent hardwiring or piping. This in turn, limits the flexibility in placement of such heaters. In contrast, propane heaters can be easily and temporary placed and moved.

Economically, the use of propane fuel, in addition to potential installation costs, tends to be less expensive and it produces a more efficient heat when compared to using electric space heaters. Depending on electrical cost per kilowatt, cost per gallon of propane, size of the heating area, and upkeep/storage, propane-fueled space heaters can be up to four times cheaper than using electrical space heaters.

*Customer and Pedestrian Safety in Outdoor Dining Areas*

While the Open Restaurants program has largely been a success, there have been several instances of motor vehicles crashing into the outdoor dining areas and, in some cases, causing injuries to patrons and employees. In late August within the span of one week, there were two instances of cars crashing into the outdoor dining areas. One accident occurred in Manhattan[[108]](#footnote-108) and the other one in Brooklyn.[[109]](#footnote-109) Fortunately, no one was seriously injured in either accident.

*ADA Compliance*

The ADA prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.[[110]](#footnote-110) As the law requires that most businesses and facilities provide reasonable access and accommodation for all disabled customers, clients, and members of the public, this has been an issue regarding the City’s outdoor dining program. At a recent Committee on Transportation hearing regarding the City’s Open Streets program, concerns were shared regarding ADA compliance and capacity issues for outdoor dining establishments.[[111]](#footnote-111) Existing wheelchair accessible ramp requirements can take up a full table’s worth of space in what amount to already limited outdoor areas.[[112]](#footnote-112) It was suggested that these requirements be altered to allow for alternative designs that can still ensure safety and accessibility but do not reduce capacity.[[113]](#footnote-113)

*Sidewalk Café Licensing*

Over the past few years, restaurant owners have complained that the process for sidewalk café licenses has become too lengthy. According to DCWP, since 2017, enclosed sidewalk cafes applications took an average of 467 days from the filing of the application to approval of the license, and unenclosed sidewalk cafes applications took an average of 177 days.[[114]](#footnote-114) While each application can vary, and up to 180 additional days can be requested by applicants to make necessary amendments,[[115]](#footnote-115) the average processing times appear to indicate that there are significant delays in the overall process. DCWP has some discretion to shorten the process, by for example, waiving its public hearing or issuing temporary operating licenses in the case of already existing enclosed sidewalk cafes that are under new ownership and have applications pending;[[116]](#footnote-116) however, these avenues are not always available. As such, if passed, Int. 2096 would permit DCWP to issue temporary operating licenses to petitioners for an unenclosed sidewalk café license where a previous identically laid out sidewalk café existed at the same location. DCWP would also be permitted to issue temporary operating licenses once an application is approved, but where registration with the Comptroller is still pending. These changes would, at a minimum, shorten the process by 30 days, and potentially hundreds of days for certain license applications.

While the sidewalk café licensing process is costly overall, certain requirements in particular can be unnecessarily burdensome. For example, plans for sidewalk cafes are currently required to be drawn up by a licensed architect or engineer.[[117]](#footnote-117) Such a requirement can result in thousands of dollars’ worth of fees, while the renderings are usually fairly simple, often depicting an arrangement of tables and chairs that meet DCWP’s placement and spacing requirements. Such renderings do not necessarily require the specialized knowledge of a licensed professional and can be generated by the petitioners themselves, as is proposed by Preconsidered Int.\_\_\_ sponsored by Council Member Salamanca.

1. **CONCLUSION**

Given the challenges that restaurants will face in colder months as well as the dangers associated with socializing indoors posed by COVID-19, the Committees would like to hear from the administration and those who have been invited to testify to understand possible next steps for the operation of the City’s outdoor dining programs. As the outdoor dining program will be a permanent program in New York City, the Committees would like to gauge plans for the future of the program. The hearing will also focus on the concerns that have arisen regarding outdoor dining, including: restaurant capacity issues, outdoor heating concerns during the colder months, accessibility compliance, and issues related to ensuring safety of workers, customers and pedestrians. Finally, looking ahead to the post-COVID era, the Committees look forward to hearing about how the City could improve the overall sidewalk café licensing process to make it easier for restaurants to take advantage of outdoor dining opportunities and contribute to a vibrant hospitality scene.

1. **LEGISLATIVE ANALYSIS**

**Int. No. 2096**

Section one of this bill amends § 20-227.1 to add a title: “Violations and penalties.” Section two of the bill creates a new § 20-227.2. Subdivision a of § 20-227.2 codifies § 2-44(d) of Title 6 of the Rules of the City of New York which allow DCWP to issue temporary operating licenses to a new petitioner for an enclosed sidewalk café license where the plans for the sidewalk café are identical to the existing structure and the petitioner acquired the restaurant in an arm’s length transaction as defined in section § 20-227.1. Subdivision a goes farther than § 2-44(d) by allowing DCWP to issue temporary operating licenses to petitioners for an unenclosed sidewalk café that meets the same requirements, so long as the previous sidewalk café at that location was in operation within the preceding three years.

Subdivision b of the bill allows DCWP to issue temporary operating licenses to petitioners for a sidewalk café license who have been approved but whose revocable consents are pending registration by the Comptroller.

If passed, this bill would take effect immediately.

**Pre Considered Int.\_\_\_** (By Council Member Reynoso)

Section one of this bill amends Local Law 77 for the year 2020 to extend the expiration date of the City’s outdoor dining program from September 8, 2020 to December 31, 2020. Section two of the bill codifies the City’s outdoor dining program and makes it permanent by adding a new section 19-157.1 to Title 19 of the Administrative Code titled “Outdoor dining.” Subdivision b of this new section requires the DOT to establish an outdoor dining program. Subdivision c permits the operation of the program of roadway seating by food service establishments in the City. It also permits DOT to establish a process that allows for the use of other types of open space as outdoor dining areas. Open space is defined as “any location of roadway seating, or any other public outdoor location, including but not limited to a pedestrian plaza, roadway, or public parking lot, that may be used by a food service establishment for outdoor dining and that has been approved for such use by the department.”

The bill also stipulates that community-based organizations and groups of at least three food service establishments may apply for full block street closures to allow for outdoor dining. It also establishes that there is no fee for participating in the outdoor dining program, and allows applicants to self-certify their compliance with the program’s requirements. The self-certification is valid until terminated or suspended by the Department. Upon notice and an opportunity to be heard, DOT may suspend or terminate a self-certification for non-compliance with the requirements of the program or as necessary to protect health or safety. Subdivision f sets a civil penalty of $250 for violations, except that a food service establishment may avoid a penalty by curing the violation within seven days of the issuance of the violation and prior to any adjudication.

Section three of the bill amends the New York City Fire Code to authorize the outdoor use of portable heaters fueled by liquefied petroleum gas. Currently, the Fire Code strictly regulates gas fueled heating devices by limiting the permitted operation of such equipment to temporary use during construction or emergency circumstances; or when operated outdoors and fueled by piped natural gas. This bill amends the Fire Code to expand authorized use of portable gas fueled heaters to such devices operator outdoors and fueled by liquefied petroleum gas. The authorized use of liquefied petroleum gas fueled portable heaters is regulated under the bill by existing fire safety provisions that guide the current operation of piped natural gas heaters, including required certificate of fitness and mandated clearance from buildings, as well as additional provisions relating to the handling and storage of gas canisters.

If enacted, this bill takes effect immediately except that the new, permanent outdoor dining portion of the bill takes effect on January 1, 2021.

**Preconsidered Int.\_\_\_** (By Council Member Salamanca)

 This bill dispenses with the requirement that drawings for sidewalk cafés, both enclosed and unenclosed, be developed, reviewed, or approved by an architect, engineer, or other professional third party. Instead, the bill permits such drawings to be developed by the petitioner themselves. If passed, this bill would take effect 60 days after it becomes law.

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| Int. No. 2096 By Council Members Kallos, Powers and Dromm A Local Law to amend the administrative code of the city of New York, in relation to authorizing the department of consumer and worker protection to issue temporary operating licenses to sidewalk café applicants if certain requirements are satisfied Be it enacted by the Council as follows:Section 1. Subdivision a of section 20-227.1 of the administrative code of the city of New York is amended to read as follows:   § 20-227.1. Violations and penalties. a. Any person found to be operating an unlicensed sidewalk cafe shall be liable for a civil penalty of at least two hundred and not more than one thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a two-year period. For purposes of this section, any violation for operating an unlicensed sidewalk cafe shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises.§ 2. Chapter 2 of title 20 of the administrative code of the city of New York is amended to add a new section 20-227.2 to read as follows:§ 20-227.2. Temporary sidewalk café licenses. a. Where an applicant for a sidewalk café license submits a petition to operate an enclosed or unenclosed sidewalk café for which a consent issued to another person has lapsed or was terminated, the commissioner may authorize such applicant to operate the sidewalk café at such premises pending the approval of consent for operating such café, provided that the plans for the café are the same as the café for which a consent to operate a sidewalk café had previously been granted, if it is an enclosed sidewalk café that the structure is the same for which consent was previously granted, and provided further that the applicant has acquired his or her interest in the restaurant to be operated at such premises in an arm's length transaction as specified in subdivision f of section 20-227.1. For the purposes of this section, the commissioner may not authorize an applicant to operate an unenclosed sidewalk café if the original consent has been expired for more than three years from the date of the submission of an applicant’s petition.b. Where the department has approved a petition to operate an enclosed or unenclosed sidewalk café pursuant to sections 20-225 or 20-226, the commissioner may authorize such applicant to operate a sidewalk café pending the registration of the revocable consent by the comptroller.§ 3. This local law takes effect immediately.   BAMLS #149159/17/2020 6:08 p.m. |

Preconsidered Int. No.

By Council Members Reynoso, Powers, Levine, Rodriguez, Rivera, Kallos, Van Bramer and Chin

A Local Law to amend local law number 77 for the year 2020, the administrative code of the city of New York and the New York city fire code, in relation to outdoor dining

Be it enacted by the Council as follows:

Section 1. Subdivision f of local law number 77 for the year 2020 is amended to read as follows:

 f. Expiration. The outdoor restaurants program shall remain in effect until [September 8, 2020 or until such later date as the department of transportation shall determine; provided however that such program shall not remain in effect after] December 31, 2020. [The department of transportation shall provide the speaker of the council notice five days prior to the termination of such the program.]

§ 2. Subchapter two of chapter one of title 19 of the administrative code of the city of New York is amended by adding a new section 19-157.1 to read as follows:

§ 19-157.1 Outdoor dining. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Food service establishment. The term “food service establishment” has the same meaning as set forth in subdivision s of section 81.03 of the health code of the city of New York.

Food vendor. The term “food vendor” has the same meaning as in section 17-306.

Outdoor dining area. The term “outdoor dining area” means a portion of any food service establishment operated under permit from the department of health and mental hygiene that is located in an open space.

Open space. The term “open space” means any location of roadway seating, or any other public outdoor location, including but not limited to a pedestrian plaza, roadway, or public parking lot, that may be used by a food service establishment for outdoor dining and that has been approved for such use by the department.

Pedestrian plaza. The term “pedestrian plaza” has the same meaning as set forth in section 19-157.

Roadway seating. The term “roadway seating” means seating located in the roadway adjacent to the curb in front of the business frontage of a food service establishment in accordance with guidelines established by the department.

b. Outdoor dining program. 1. The department shall establish an outdoor dining program pursuant to which a food service establishment may operate an outdoor dining area.

2. A food service establishment shall be permitted to operate roadway seating after the completion of an online self-certification application, which shall be in a form and manner as determined by the department of transportation. The department of transportation may establish a process to allow for the use of other types of open space as outdoor dining areas.

3. The department shall accept applications from community-based organizations and groups of at least three food service establishments for full block street closures to allow for the operation of outdoor dining areas on such blocks.

4. There shall be no fee for participation in such program.

c. Compliance with other laws. Nothing in this section shall relieve a food service establishment from their obligation to adhere to all emergency executive orders issued pursuant to section 24 or 29-a of the executive law, and to all local, state, and federal requirements relating to health and safety, except as modified by any such emergency executive order or this section. Any food service establishment participating in the outdoor dining program shall adhere to all applicable guidance issued by the department of transportation, the department of health and mental hygiene, the New York state department of health, and the New York state liquor authority.

e. Self-certification. 1. A self-certification submitted pursuant to the outdoor dining program shall remain valid until terminated or suspended by the department. The department may terminate or suspend a self-certification for non-compliance with the requirements of such program or as necessary to protect health or safety upon notice and an opportunity to be heard.

f. Penalties. 1. Any person who violates that violates this section or any rules promulgated pursuant to such section shall be liable for a civil penalty of no more than $250; provided, however, that any person that violates this section or any rules promulgated pursuant to such section shall not be subject to a civil penalty for a first-time violation if such person proves to the satisfaction of the department, within seven days of the issuance of the notice of violation and prior to the commencement of an adjudication of the violation, that the violation has been cured. The submission of proof of a cure shall be deemed an admission of liability for all purposes. The option of presenting proof that the violation has been cured shall be offered as part of any settlement offer made by the department to a person who has received, for the first time, a notice of violation of this section or any rules promulgated pursuant thereto. The department shall permit such proof to be submitted electronically or in person. A person may seek review, in the department's administrative tribunal, of the determination that the person has not submitted proof of a cure within 15 days of receiving written notification of such determination.

§ 3. Section 313.5.2.1 of the New York City fire code is amended to read as follows:

**313.5.2.1 Portable [natural] gas heaters**. Portable space heaters fueled by piped natural, or liquified petroleum, gas may be stored, handled and used for outdoor use when designed, installed, operated and maintained in accordance with this code, including FC 313.6, the rules and the construction codes, including the Building Code.

§ 4. Section 313.6 of the New York City fire code is amended to read as follows:

**313.6 Portable [natural] gas heaters**. Portable space heaters fueled by piped natural, or liquefied petroleum, gas shall be designed, operated and maintained in accordance with FC 313.6.1 through [313.6.5] 313.6.7.

**313.6.1 Clearance to buildings**. Heaters shall be located outdoors and at least 5 feet (1524 mm) from any building or structure.

**313.6.2 Clearance to combustible materials**. Heaters shall not be located beneath, or closer than 5 feet (1524 mm) to combustible decorations and combustible overhangs, awnings, sun control devices or similar combustible attachments to buildings or structures.

**313.6.3 Proximity to exits**. Heaters shall not be located within 5 feet (1524 mm) of exits or exit discharges.

**313.6.4 Tip-over switch**. Heaters shall be equipped with a tilt or tip-over switch that automatically shuts off the flow of gas if the appliance is tilted more than 15 degrees (0.26 rad) from the vertical.

**313.6.5 Guard against contact**. The heating element or combustion chamber of heaters shall be permanently protected so as to prevent accidental contact by persons or material.

**313.6.6 Installation and maintenance.**Liquefied petroleum-fueled heaters shall be installed and maintained in accordance with the manufacturer's instructions.

**313.6.7 Gas containers.** Fuel gas containers for portable outdoor gas-fired heaters shall comply with FC 313.6.7.1 through 313.6.7.4.

**313.6.7.1 Approved containers**. Only approved DOTn or ASME gas containers shall be used.

**313.6.7.2 Container replacement.** Replacement of fuel gas containers in portable outdoor gas-fired heaters shall not be conducted while the public is present.

**313.6.7.3 Container capacity.** The maximum individual capacity of gas containers used in connection with portable outdoor gas-fired heating appliances shall not exceed 20 pounds (9 kg).

**313.6.7.4 Indoor storage prohibited.** Gas containers shall not be stored inside of buildings.

§ 5. Item 12 of section 3805.3 of the New York city fire code is amended to read as follows:

12. store, handle or use LPG for [space heating or] water heating, except as authorized by the commissioner.

§ 6. This local law takes effect immediately; except that section 19-157.1 of the administrative code of the city of New York, as added by section two of this local law, takes effect January 1, 2021.

JDK

LS 15807

9/16/20 6:04PM

Preconsidered Int. No.

By Council Members Salamanca and Dromm

A Local Law to amend the administrative code of the city of New York, in relation to the preparation of plans in connection with petitions for revocable consents for sidewalk cafes

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 20-225 of the administrative code of the city of New York is amended to read as follows:

a. The petition shall be in such form as prescribed by the department[.] and shall include an accurate drawing of required clearances, space to be occupied, and the locations of tables and chairs; provided, however that the department shall permit such drawings to be developed by the petitioner and shall not require that such drawings be developed, reviewed, or approved by an architect, engineer, or other professional third party. The petition shall be filed with the department which, within five days of the filing of such petition shall forward copies thereof to the department of city planning, the department of environmental protection and the landmarks preservation commission for review pursuant to subdivision b of this section. The department shall forward copies of the petition, within five days of the filing of such petition, to the speaker of the council and to the council member in whose district the cafe is proposed to be located, for informational purposes.

§ 2. Subdivision a of section 20-226 of the administrative code of the city of New York is amended to read as follows:

a. The petition shall be in such form as prescribed by the department[.] and shall include an accurate drawing of required clearances, space to be occupied, and the locations of tables and chairs; provided, however that the department shall permit such drawings to be developed by the petitioner and shall not require that such drawings be developed, reviewed, or approved by an architect, engineer, or other professional third party.  The department shall forward copies of the petition, within five days of the filing of such petition, to the president of the borough in which the cafe is proposed to be located, the speaker of the council and the council member in whose district the cafe is proposed to be located, for information purposes, and to the community board for the community district in which the cafe is proposed to be located, for review pursuant to subdivision b of this section.

§ 3. This local law takes effect 60 days after it becomes law.

LS #9698

9/23/20 11:09AM

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48. *Id.* [↑](#footnote-ref-48)
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66. *Id.* [↑](#footnote-ref-66)
67. *Id.* [↑](#footnote-ref-67)
68. *Id.* [↑](#footnote-ref-68)
69. Department of Consumer Affairs “License Application Checklist,” Accessed on September 25, 2020, available at:: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Compliance-Checklist.pdf> and <https://www1.nyc.gov/site/dca/businesses/license-checklist-sidewalk-cafe.page>. [↑](#footnote-ref-69)
70. *Id*. [↑](#footnote-ref-70)
71. *Id*. (a sales tax identification number or a certificate of authority application confirmation number; a sidewalk cafe compliance checklist, a form that, when completed, will “demonstrate that the proposed cafe meets City requirements;” a copy of the insurance certificate for the business’s premises naming DCA as the certificate holder; a petition for revocable consent, the permission a business must be granted by the City before using the sidewalk space; a substitute form W-9; a copy of a notification letter sent to all residents who live within 50 feet of either direction from the proposed sidewalk cafe; an original, notarized affidavit confirming the fact that the notification letter has been sent; scale drawings of the proposed sidewalk cafe; photographs of the property on which the proposed sidewalk cafe will be situated; a completed copy of the landowner’s consent to operate a sidewalk cafe; a copy of a completed zero tolerance police affirmation, which affirms the business will not attempt to engage in any form of bribery with a governmental entity; a completed child support certification form; and a completed copy of the granting authority to act affirmation, which enables someone appointed by the applicant to file the application in his or her place). [↑](#footnote-ref-71)
72. *Id.* [↑](#footnote-ref-72)
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