



Legislation Text

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Int. No. 31-C

By Council Members Velázquez, Powers, Menin, Brannan, Riley, Feliz, Brooks-Powers, Hanks, Gennaro, Krishnan and Abreu (by request of the Mayor)

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to granting licenses and revocable consents for sidewalk cafes and roadway cafes, to repeal subchapter 6 of chapter 2 of title 20 of such administrative code, relating to granting licenses and revocable consents for sidewalk cafes, to amend section 2 of local law number 114 for the year 2020, relating to the establishment of a permanent outdoor dining program, in relation to the commencement of such program, and to amend section 1 of local law number 77 for the year 2020, relating to establishing a temporary outdoor dining program, in relation to the expiration of such program

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 364 of the New York city charter, as added by a vote of the electors at a general election held on November 7, 1989, is amended to read as follows:

e. Notwithstanding any provision of this charter or the administrative code, revocable consents to construct and operate sidewalk cafes shall be reviewed pursuant to [subchapter six of chapter two of title twenty] sections 19-160 through 19-160.6 of the administrative code.

§ 2. Section 371 of the New York city charter, as amended by local law number 78 for the year 1990, is amended to read as follows:

§ 371. Public hearing on proposed agreement; publication of notice. The franchise and concession review committee in the case of a franchise, or the responsible agency in the case of a revocable consent, shall hold a public hearing on the proposed agreement memorializing the terms and conditions of each proposed franchise or revocable consent before final approval of the proposed franchise or consent. Any such public hearing conducted by the franchise and concession review committee shall be held within thirty days of the filing with the committee by the responsible agency of a proposed agreement containing the terms and

conditions of the proposed franchise. No hearing held by the franchise and concession review committee or by the responsible agency shall be held until after notice thereof and a summary of the terms and conditions of the proposed agreement shall have been published for at least fifteen days, except Sundays and legal holidays, immediately prior thereto in the City Record, nor until a notice of such hearing, indicating the place where copies of the proposed agreement may be obtained by all those interested therein, shall have been published at least twice at the expense of the proposed grantee in a print or online edition of a daily newspaper designated by the mayor which is published in the city of New York and having a circulation in the borough or boroughs in which the affected property of the city is located and a print or online edition of a weekly newspaper or newspapers designated by the mayor which are published in the city of New York and have a circulation in the community district or districts in which the affected property of the city is located. In the event a franchise or revocable consent relates to property of the city located in more than one borough, notice of hearing in a weekly newspaper shall not be required; however, in that event, notice of hearing in the print or online editions of two daily newspapers, and mailing by the grantee, no later than fifteen days immediately prior to the date of the public hearing, of such notice to the borough presidents and community boards and council members in whose districts the affected property of the city is located, shall be required. In the case of a franchise for a bus route which crosses one or more borough boundaries, notice of hearing in a weekly newspaper shall not be required; however, in that event, notice of hearing in the print or online editions of two daily newspapers, and mailing by the grantee, no later than fifteen days immediately prior to the date of the public hearing, of such notice to the borough presidents and community boards and council members in whose districts the bus route is located, and posting of such notice in the buses operating upon such route, shall be required.

§ 3. Paragraph 1 of subdivision c of section 17-503 of the administrative code of the city of New York, as amended by local law number 152 for the year 2013, is amended to read as follows:

1. Outdoor dining areas of restaurants [with no roof or other ceiling enclosure; provided, however, that smoking, or using electronic cigarettes, may be permitted in a contiguous outdoor area designated

for smoking, or using electronic cigarettes, so long as such area: (i) constitutes no more than twenty-five percent of the outdoor seating capacity of such restaurant; (ii) is at least three feet away from the outdoor area of such restaurant not designated for smoking, or using electronic cigarettes; and (iii) is clearly designated with written signage as a smoking area or an area for using electronic cigarettes] including but not limited to any area operated by a restaurant as a sidewalk cafe, or a roadway cafe, as those terms are defined in section 19-101.

§ 4. Section 19-101 of the administrative code of the city of New York, as amended by local law number 104 for the year 1993, subdivisions c and d as added by local law number 104 for the year 1993 and subdivisions e, f, g, and h as added by local law number 71 for the year 2011, is amended to read as follows:

§ 19-101 Definitions. Whenever used in this title[:

a. “Commissioner” shall mean] the following terms have the following meanings:

Asphalt. The term "asphalt" shall mean a dark brown to black bitumen pitch that melts readily and which appears in nature in asphalt beds or is produced as a by-product of the petroleum industry.

Asphaltic concrete or asphalt paving. The terms “asphaltic concrete” or “asphalt paving” shall mean a mixture of liquid asphalt and graded aggregate used as paving material.

Barrier. The term “barrier” shall mean an object, as prescribed in rules of the department, placed on all sides of a roadway cafe, other than the side that fronts the restaurant, to protect patrons of a roadway cafe, that has a fully built interior wall and bottom to hold water or such other filler and that is removable.

Commissioner. The term “commissioner shall mean the commissioner of transportation.

[b. "Department"] Department. The term “department” shall mean the department of transportation.

[c. “Street” has the meaning ascribed thereto in subdivision thirteen of section 1-112 of this code.

d. "Sidewalk"] Enclosed sidewalk cafe. The term “enclosed sidewalk cafe” shall mean a sidewalk cafe that is constructed predominantly of light materials such as glass, slow-burning plastic or

lightweight metal pursuant to a permit issued by the department of buildings.

Fee rate. The term “fee rate” shall mean the compensation to be paid per square foot to the city during the continuance of the revocable consent in an amount equal to the applicable sector rate, reduced, as determined by the department, to account for factors including, but not limited to, the impact historical weather patterns may have on the operation of a sidewalk cafe or roadway cafe and any area of such roadway cafe occupied by barriers demarcating such cafe from the curb lane or parking lane.

Ground floor. The term “ground floor” shall mean visible from the street and directly accessible to the public from the street.

Ground floor restaurant. The term “ground floor restaurant” shall mean any ground floor premises that is operated pursuant to a food service establishment permit issued by the department of health and mental hygiene.

I-4 mix. The term “I-4 mix” shall mean a type of heavy duty asphaltic concrete mix containing 0.75 inch (19mm) nominal maximum size aggregate with 25% to 50% of the aggregate capable of passing through a No. 8 sieve and in which all sand contained in the mix is crushed.

Reclaimed asphalt pavement. The term “reclaimed asphalt pavement” shall mean asphalt pavement that has been processed for reuse in asphaltic concrete.

Roadway. The term “roadway” shall mean that portion of a street designed, improved or ordinarily used for vehicular travel, exclusive of the shoulder and slope.

Roadway cafe. The term “roadway cafe” shall mean an open-air portion of a ground floor restaurant containing readily removable tables, chairs and other removable decorative items, which is located in the curb lane or parking lane of a roadway fronting the restaurant and is designed and operated pursuant to rules of the department.

Sector. The term “sector” shall mean an area of the city, as determined by the department, where the median annual rent charged for a square foot of a ground floor commercial premises, in accordance with

information published by the department of finance pursuant to subdivision h of section 11-3101, is similar.

Sector rate. The term “sector rate” shall mean a dollar amount determined by the department for each sector, based on the median annual rent for a square foot of a ground floor commercial premises in such sector, as determined in accordance with information published by the department of finance pursuant to subdivision h of section 11-3101, or other similar data that the department determines accurately reflects such median annual rent in such sector.

Sidewalk. The term “sidewalk” shall mean that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

[e. "Asphalt" shall mean a dark brown to black bitumen pitch that melts readily and which appears in nature in asphalt beds or is produced as a by-product of the petroleum industry.

f. "Asphaltic concrete" or "asphalt paving" shall mean a mixture of liquid asphalt and graded aggregate used as paving material.

g. "I-4 mix" shall mean a type of heavy duty asphaltic concrete mix containing 0.75 inch (19mm) nominal maximum size aggregate with 25% to 50% of the aggregate capable of passing through a No. 8 sieve and in which all sand contained in the mix is crushed.

h. "Reclaimed asphalt pavement" shall mean asphalt pavement that has been processed for reuse in asphaltic concrete.]

Sidewalk cafe. The term “sidewalk cafe” shall mean a portion of a ground floor restaurant located on a public sidewalk or sidewalk widening fronting the restaurant that is designed and operated pursuant to rules of the department.

Sidewalk widening. The term “sidewalk widening” shall have the same meaning as such term is used in subdivision (f) of section 37-53 of the zoning resolution of the city of New York.

Street. The term “street” has the same meaning ascribed to such term in subdivision 13 of

section 1-112 of this code.

§ 5. The table of maximum civil penalties in section 19-150 of the administrative code of the city of New York is amended by adding two new rows in numerical order to read as follows:

| <b>Section of the Administrative Code</b> | <b>Maximum Civil Penalty (dollars)</b>   |
|---|--|
| <u>19-160(a)</u>                          | <u>500 (first violation); 1,000 (second and subsequent violations at the same place of business)</u> |
| <u>19-160.1 - 160.4, 160.6</u>            | <u>200 (first violation); 500 (second and subsequent violations at the same place of business)</u>   |

§ 6. Subchapter 1 of chapter 1 of title 19 of the administrative code of the city of New York is amended by adding eight new sections 19-160, 19-160.1, 19-160.2, 19-160.3, 19-160.4, 19-160.5, 19-160.6, and 19-160.7 to read as follows:

§ 19-160 Open restaurants; license and revocable consent required for sidewalk cafe and roadway cafe.

a. Any person owning, leasing, managing or operating a ground floor restaurant upon property which abuts upon any street may establish and operate a sidewalk cafe upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises, or a roadway cafe upon the roadway adjacent to the curb in front of such ground floor restaurant, or both, provided that such sidewalk cafe or roadway cafe shall be granted a license and a revocable consent by the commissioner, and provided further that a sidewalk cafe located entirely on a sidewalk widening shall be granted a license and consent for the use of such sidewalk widening as a sidewalk cafe by the commissioner. Notwithstanding the preceding sentence, no such license shall be granted or renewed for the operation of an enclosed sidewalk cafe at any location other than a location where: (i) an enclosed sidewalk cafe had been constructed pursuant to a permit issued by the department of buildings and in accordance with section 3111 of the New York city building code prior to March 16, 2020; and

(ii) an enclosed sidewalk cafe was lawfully operated as such on March 16, 2020 or at any time within 4 years prior to such date. Granting or renewal of any such license at such a location for the operation of an enclosed sidewalk cafe shall be in accordance with this section and section 19-160.2 of this code.

b. 1. The department, consistent with chapter 14 of the charter and the provisions of this subchapter, shall promulgate rules relating to (i) the granting of such licenses and revocable consents, and the administration of such licenses and revocable consents; (ii) the design of a sidewalk cafe or roadway cafe; (iii) priorities among applicants for a license covering the same area on a sidewalk or a roadway; and (iv) the operation and maintenance of any sidewalk cafe or roadway cafe to prevent undue obstruction of the street, to ensure good order, public safety and the general welfare and to secure the beneficial purpose of opening streets to outdoor dining.

2. A sidewalk cafe, other than an enclosed sidewalk cafe, shall be open-air and shall contain only readily removable tables, chairs and other removable decorative items as set forth in such rules.

c. No rule promulgated by the department in relation to the license granted to a sidewalk cafe or a roadway cafe in accordance with subdivision b of this section shall: (i) prevent a sidewalk cafe or a roadway cafe from operating during the hours of 10:00 a.m. through 12:00 a.m. daily; (ii) allow a sidewalk cafe, other than an enclosed sidewalk cafe, or a roadway cafe to operate before 10:00 a.m. on Sundays; or (iii) authorize a roadway cafe to operate on any day from November 30 to March 31, inclusive.

d. A license to operate a sidewalk cafe shall be granted after the review and approval of a petition for a revocable consent to establish and operate such cafe pursuant to the provisions of this subchapter and the rules of the department, except that a license to operate a sidewalk cafe located entirely on a sidewalk widening shall be granted after review and approval of a petition for a consent to operate such sidewalk cafe in accordance with the rules of the department, which shall provide for notice of such petition to the affected community board and council member. A license to operate a roadway cafe shall be granted after the review and approval of a petition for a revocable consent to establish and operate such cafe pursuant to chapter 14 of

the charter, the provisions of this subchapter, and the rules of the department. An operator of a sidewalk cafe shall cause the boundary of the area licensed as a sidewalk cafe to be marked and separated in a manner prescribed pursuant to rules of the department. An operator of a roadway cafe shall cause the boundary of the area licensed as a roadway cafe to be delineated and protected by barriers in a manner prescribed in rules of the department.

e. No license shall be granted for a sidewalk cafe or roadway cafe located in a historic district, on a landmark site or attached or adjacent to a landmark or an improvement containing an interior landmark without the applicant for such license having obtained the approval of the landmarks preservation commission, provided that the petition for a revocable consent to establish or operate a sidewalk cafe or a roadway cafe or the petition to operate a sidewalk cafe located entirely on a sidewalk widening includes work or improvements for which such approval is required pursuant to chapter 3 of title 25 of this code. The landmarks preservation commission shall make a determination on such application no later than 10 business days after the date of receipt of a complete application, unless the landmarks preservation commission determines that such sidewalk cafe or roadway cafe may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district and a public hearing is required.

f. No license or revocable consent or consent with respect to a sidewalk cafe located entirely on a sidewalk widening shall be granted for a sidewalk cafe or roadway cafe which obstructs the means of egress from any portion of a building.

g. There shall be separate fees for a sidewalk cafe license and a roadway cafe license. The fee for a license to establish and operate a sidewalk cafe, and for the renewal of such a license, shall be \$1,050 for each license period. The fee for a license to establish and operate a roadway cafe, and for the renewal of such a license, shall be \$1,050 for each license period. Such license and renewal fees shall be in addition to the amount required to be paid upon approval of a petition for a revocable consent, or renewal thereof, to establish and operate a sidewalk cafe or roadway cafe.



h. The term of a license granted pursuant to this subchapter shall be 4 years.

i. A licensee must provide adequate service to maintain the tables in the sidewalk cafe or roadway cafe and the adjacent street in a manner that ensures good order and cleanliness.

j. The license to establish and operate a sidewalk cafe or a roadway cafe shall be personal to the applicant and may not be sold, leased or transferred. Such license shall not be deemed revoked by the sale or transfer of the lease or of title to the building or structure to which the sidewalk cafe or roadway cafe is related unless such sale or transfer materially alters the plans submitted for the license application or the revocable consent.

§ 19-160.1 Review and approval of petitions to establish and operate roadway cafes.

a. It shall be unlawful for any person to establish or operate a roadway cafe without a revocable consent granted pursuant to chapter 14 of the charter, this section and any rules adopted by the commissioner pursuant thereto.

b. The petition shall be in such form as prescribed by rules of the department and shall include an accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and other permitted objects; provided, however, that the department shall not require that such drawing be developed, reviewed or approved by an architect, engineer, or other professional third party. The petition shall be reviewed by the department and other relevant agencies as determined by the department.

c. A revocable consent for a roadway cafe shall provide for compensation to be paid annually to the city during the continuance of the consent. Such annual compensation shall be equivalent to the product of the fee rate and the square footage of a roadway cafe. There shall be 4 sectors, as described on the website of the department, provided that sectors 3 and 4 shall only include the area south of and including 125th Street in the borough of Manhattan and the fee rate for sector 1 shall apply to a minimum of 80 percent of the city. The fee rate for each sector shall be as follows:

| Sector | Fee Rate |
|--------|----------|
|--------|----------|

|          |             |
|----------|-------------|
| <u>1</u> | <u>\$5</u>  |
| <u>2</u> | <u>\$8</u>  |
| <u>3</u> | <u>\$14</u> |
| <u>4</u> | <u>\$25</u> |

d. A roadway cafe may not be operated prior to the approval of a petition for a consent therefor by the department pursuant to chapter 14 of the charter, this section and any rules promulgated by the department, except as otherwise provided by section 19-160.6.

e. The department shall provide notice of a petition for a revocable consent for a roadway cafe to the affected community board and council member, and, to the extent practicable, provide an opportunity for both the community board and council member to submit comments to the department related to each petition in a manner prescribed in rules of the department.

f. The term of a revocable consent, and the term of a renewal of such revocable consent, granted pursuant to this section shall be 1 license period and shall be concurrent with such license period.

§ 19-160.2 Review and approval of petitions to establish and operate sidewalk cafes. A petition for a revocable consent to establish and operate a sidewalk cafe shall be reviewed and approved in the following manner:

a. The petition shall be in such form as prescribed by the department. The petition shall include an accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and other permitted objects. Such drawing may be developed by an architect, engineer, or other professional third party, or by the petitioner. The petition filed with the department shall be complete and accurate, as determined by the department, and the department shall, within 5 days of the filing of such complete and accurate petition, forward such petition by electronic mail 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.

b. The community board shall, not later than 40 days after receipt of such petition, either (i) notify the public of the petition, conduct a public hearing thereon and submit a written recommendation to the department and to the council or (ii) waive by a written statement its public hearing and recommendation on such petition and submit such statement to the department and to the council. The petitioner shall amend the petition if both the community board and the petitioner agree to modifications in writing. Such modifications shall be reflected in the written recommendations of the community board to the department and the council. If the community board submits a recommendation on a petition after the 40 day time period has expired, such recommendation may be accepted by the department at the sole discretion of the department.

c. 1. Except as provided in paragraphs 2 and 3 of this subdivision, within 20 days after the expiration of the period allowed for the filing of a recommendation or waiver by the community board pursuant to subdivision b of this section, the department shall (i) approve the petition for a sidewalk cafe, disapprove it or approve it with modifications; and (ii) file with the council any such decision to approve or approve with modifications, together with the petition. Such approval or approval with modifications shall be final approval of the revocable consent unless the council and mayor act pursuant to subdivision e and f of this section.

2. The department shall hold a public hearing on a petition for a sidewalk cafe if (i) a community board has submitted a recommendation to deny the petition; (ii) a community board has submitted a recommendation to approve such petition with substantial modifications or conditions and the petitioner does not agree to adopt such modifications; or (iii) the department has determined that such a hearing would be beneficial to address a concern about the effect of a sidewalk cafe at the proposed location. If the department holds such a public hearing, within 30 days after the expiration of the period allowed for the filing of a recommendation or waiver by the community board pursuant to subdivision b of the section, or within 45 days after the expiration of such period when the department plans to combine the public hearing on the petition with the public hearing required on 1 or more additional petitions pursuant to paragraph 3 of this subdivision, the

department shall (i) hold a public hearing on the petition pursuant to subdivision d of this section, (ii) approve the petition, disapprove it or approve it with modifications, and (iii) file with the council any such decision to approve or approve with modifications, together with the petition. Such approval or approval with modifications shall constitute final approval of the revocable consent subject to review by the council or mayor pursuant to subdivisions e and f of this section.

3. Where the department holds a public hearing pursuant to paragraph 2 of this subdivision, the department may hear 1 or more petitions at the same public hearing upon a determination that doing so is in the public interest.

d. At least 15 days prior to the date of a hearing held pursuant to paragraph 2 of subdivision c of this section, the department will give notice to the community board for the district in which the cafe is proposed to be located, to the president of the borough in which the cafe is proposed to be located and to the council member in whose district the cafe is proposed to be located. Not less than 5 calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in the print or online edition of 1 newspaper of local circulation in the community where the cafe is proposed to be located.

e. At the next stated meeting after the date the petition is received by the council pursuant to subdivision c of this section the council may resolve by majority vote of all the council members to review the petition, except that if such meeting is scheduled to occur less than 3 days after such date, the council may so resolve at the following stated meeting. If the council does not so resolve, the approval or approval with modifications of the petition by the department shall be forwarded to the mayor pursuant to subdivision f of this section, unless, in accordance with subdivision g of this section, the petition, or the category of such petition, is one for which the mayor has determined that separate and additional mayoral approval is not required.

f. If the council resolves to review a petition pursuant to subdivision e of this section, the council shall hold a public hearing, after giving public notice not less than 5 days in advance of such hearing. The council shall take final action on the petition and shall file with the mayor its resolution, if any, with respect to

the petition, except that if, in accordance with subdivision g of this section, the petition, or the category of such petition, is one for which the mayor has determined that separate and additional mayoral approval is not required, the council shall file its resolution with the department. Such filing of the resolution shall take place within 45 days of the filing of the petition with the council pursuant to subdivision c of this section. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove the petition. Any modification by the council shall not affect the terms of any proposed revocable consent agreement which relate to term, compensation, revocability, exclusivity, security, insurance, indemnification, erection, operation, maintenance or removal of any structure, right of access by the city and rights of abutting property owners. If within the time period provided for in this subdivision, the council fails to act or fails to act by the required vote on a petition, the council shall be deemed to have approved the petition. If within the time period provided for in this subdivision, the council approves the petition with modifications, the petitioner shall accept such modifications within 15 days of such approval, or the council shall be deemed to have denied the petition.

g. (1) The term of the revocable consent, and the term of a renewal of such consent, shall be 1 license period and shall be concurrent with such license period.

(2) The consent shall be upon such conditions as may be provided in the approval of the petition by the department, as such approval may be modified by action of the council pursuant to subdivision f of this section, but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be necessary to its validity, unless the mayor has determined that separate and additional mayoral approval is not required for such petition or any category of such petitions.

h. A revocable consent for a sidewalk cafe, or a consent to operate a sidewalk cafe located on a sidewalk widening, shall provide for compensation to be paid annually to the city during the continuance of the consent. Compensation shall be equivalent to the product of the fee rate and the square footage of a sidewalk cafe. There shall be 4 sectors, as described on the website of the department, provided that sectors 3 and 4 shall

only include the area south of and including 125th Street in the borough of Manhattan, and the fee rate for sector 1 shall apply to a minimum of 80 percent of the city. The fee rate for each sector shall be as follows:

| <u>Sector</u> | <u>Fee Rate</u> |
|---------------|-----------------|
| <u>1</u>      | <u>\$6</u>      |
| <u>2</u>      | <u>\$10</u>     |
| <u>3</u>      | <u>\$18</u>     |
| <u>4</u>      | <u>\$31</u>     |

i. 1. Notwithstanding subdivision h of this section, a revocable consent for an enclosed sidewalk cafe shall provide for compensation to be paid annually to the city during the continuance of the consent at the rate required to be paid for such cafe as of March 16, 2020 pursuant to the rules of the department of consumer and worker protection in effect prior to the date this section takes effect.

2. On January 1, 2028 and every 4 years thereafter, the department may increase or decrease such compensation for an enclosed sidewalk cafe in accordance with increases or decreases in the sector rate.

j. Notwithstanding subdivision a through g of this section, a petition for a consent to establish a sidewalk cafe located entirely on a sidewalk widening, as demonstrated to the satisfaction of the department, shall be reviewed and approved in accordance with the rules of the department.

k. Except as otherwise provided by section 19-160.6, a sidewalk cafe may not be operated prior to the approval of the consent therefor by the department pursuant to this section.

§ 19-160.3 Alcohol consumption in a sidewalk or roadway cafe. Notwithstanding any other provision of this code, beer and alcoholic beverages may be served in a sidewalk cafe or roadway cafe to the extent permitted by state law.

§ 19-160.4 No advertising in a sidewalk or roadway cafe. No advertising sign, picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign, shall be placed or painted on or affixed to any awning, screen or other appurtenance used in connection with a sidewalk cafe or roadway

cafe, except that the name of the restaurant, the logo of the restaurant, the menu and information on the services provided by the restaurant may be painted, imprinted or otherwise displayed in a manner prescribed by rules promulgated by the department.

§ 19-160.5 Violations; penalties for a sidewalk or roadway cafe. a. Any person found to be operating an unlicensed sidewalk cafe or unlicensed roadway cafe shall be subject to civil penalties as described in section 19-150 and enforcement pursuant to section 19-151. For purposes of this section, any violation for operating an unlicensed sidewalk cafe or unlicensed roadway 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 d 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.

b. Any holder of a license to operate a sidewalk cafe or a roadway cafe license shall be subject to the civil penalties described in section 19-150 and enforcement pursuant to section 19-151 where such holder is found to be operating such cafe in violation of: (i) any provision of section 19-160 through 19-160.6 or any rule promulgated thereunder, (ii) the terms or conditions of such license, or (iii) the terms or conditions of a revocable consent to operate such cafe.

c. In addition to any other enforcement procedures authorized by this subchapter, the department may, after providing notice and an opportunity to be heard, suspend or revoke a license to operate a sidewalk or roadway cafe and order the removal or sealing of such sidewalk or roadway cafe for 3 or more violations of the same provision of this subchapter or rules of the department promulgated under this subchapter within a 2 year period; or any 6 or more violations of any provision of this subchapter or rules of the department promulgated under this chapter within a 2 year period.

d. For purposes of this section, a subsequent license holder shall be liable for violations by a

prior license holder 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 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. For purposes of this subdivision, the term "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property, lease or business in the open market between 2 informed and willing parties, where neither party is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

(1) a sale between relatives;

(2) a sale between related companies or partners in a business; or

(3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises.

e. Corrective action request. Notwithstanding subdivision b of this section, if the department finds that any holder of a license to operate a sidewalk cafe or roadway cafe has violated for the first time (i) any provision of section 19-160 through 19-160.6 or any rule promulgated thereunder, or (ii) the terms or conditions of such license, the department shall notify such license holder of such violation and request that action be taken to correct such violation within 30 days and shall afford such licensee an opportunity to contest the department's finding in a manner set forth in rules of the department. Nothing in this subdivision prohibits



the department from issuing a notice of violation for any such violation that has not been corrected within such 30 days.

f. Notwithstanding any inconsistent provision of this section, the decision to suspend or revoke a license shall be waived if, upon the submission of satisfactory proof, the department determines that the person or persons who committed the violations which are the basis for the suspension or revocation acted against the licensee's instructions in committing such violations.

g. The commissioner may order the removal of any furniture, equipment, structure or other obstruction used in connection with the operation of an outdoor dining area on the sidewalk or in the roadway by a person that is not licensed to operate a sidewalk cafe or roadway cafe pursuant to this subchapter and has no other lawful right to operate an outdoor dining area on such sidewalk or in such roadway or where any furniture, equipment, structure or other obstruction placed on the sidewalk or roadway by a licensee is inconsistent with criteria or design for such area as set forth in the rules of the department. Such order shall be served in the manner provided by the rules of the department and shall afford the person to whom such order is directed an opportunity to be heard in accordance with such rules. Where such order has not been complied with within a reasonable period of time as set forth in such order, officers or employees of the department or the police department may remove such furniture, equipment, structure or other obstruction from the sidewalk or the roadway and convey them to a place of safety. Where the department has an address for the person to whom such order was directed, within 30 days of removal, the department shall mail to such person notice of such removal and the manner in which such furniture, equipment, structure or other obstruction may be claimed. Such furniture, equipment, structure or other obstructions shall not be released until all removal charges and storage fees have been paid or a bond or other security for such amount has been posted. Any furniture, equipment, structure or other obstructions that are not claimed shall be disposed of in accordance with applicable law and the rules of the department. Nothing in this section is intended to alter or affect the power of the commissioner to immediately remove any obstruction from the sidewalk or roadway that the commissioner

determines is a danger to public welfare, safety, or energy system reliability, including planned or emergency utility work.

§ 19-160.6. Temporary authorization to operate. a. Where an applicant for a license to operate a sidewalk cafe or a roadway cafe submits a petition for a revocable consent to operate a sidewalk cafe or roadway cafe for which a revocable consent granted to another person has lapsed or was terminated, the commissioner may authorize such applicant to operate the sidewalk cafe or roadway cafe at such premises pending the approval of a revocable consent for operating such cafe, provided that the plans for the cafe are the same as the cafe for which a revocable consent to operate had previously been granted and, if it is an enclosed sidewalk cafe, that the structure is the same for which consent was previously granted, and, provided further that such applicant makes a good faith effort to be granted a revocable consent to operate such sidewalk cafe or roadway cafe. For the purposes of this section, the commissioner may not authorize an applicant to operate a sidewalk cafe or a roadway cafe if the original consent has been expired for more than 2 years from the date of the submission of the petition of such applicant.

b. Where the department has approved a petition for a revocable consent to operate a sidewalk cafe or roadway cafe pursuant to chapter 14 of the charter, the rules of the department and sections 19-160.1 or 19-160.2 of this code, as applicable, the commissioner may authorize such applicant to operate such cafe pending the registration of such revocable consent by the comptroller, provided that: (i) the comptroller has consented to such authorization by the commissioner; and (ii) where the petition is for a revocable consent to operate a sidewalk cafe, the time for council to resolve to review such petition pursuant to subdivision e of section 19-160.2 of this code has expired, or the council has resolved to review such petition and has either approved such petition pursuant to subdivision f of such section, or has approved such petition with modifications and the petitioner has accepted such modifications in accordance with such subdivision.

§ 19-160.7. Report on compensation for revocable consent to operate sidewalk and roadway cafes. No later than May 1, 2027, and every 4 years thereafter, the commissioner shall submit a report to the

speaker of the council and the mayor on the changes to the median annual rent charged for a ground floor commercial premises for each sector, the corresponding percent land area for each sector, the number of restaurants operating sidewalk and/or roadway cafes in each sector, and the square footage of each sidewalk and roadway cafe in operation. The commissioner may include with any such report a recommendation to increase or decrease the fee rate or adjust the sectors.

§ 7. Subchapter 6 of chapter 2 of title 20 of the administrative code of the city of New York is REPEALED.

§ 8. Subdivision b of section 2 of local law number 114 for the year 2020 is amended to read as follows:

b. [By September 30, 2021, the] The department of transportation [and any other agency designated by the mayor] shall establish a permanent open restaurants program to succeed the temporary program established by local law number 77 for the year 2020[, provided that any additional legislation necessary to authorize such program has been enacted]. Such program shall include but not be limited to the following elements:

1. The use of roadway seating for outdoor dining; and
2. [The use of a pedestrian plaza, or other public outdoor location for outdoor dining; and
- 3.] Accessibility for people with disabilities in compliance with applicable federal, state and local law.

§ 9. Subdivision f of section 1 of local law number 77 for the year 2020, as amended by local law number 114 for the year 2020, is amended to read as follows:

f. Expiration. The outdoor restaurants program established pursuant to this local law shall remain in effect until [September 30, 2021] section 6 of a local law for the year 2023 amending the New York city charter and the administrative code of the city of New York, relating to a permanent outdoor dining program, as proposed in introduction number 31-C, takes effect.

§ 10. Any restaurant operating outdoor dining pursuant to emergency executive order number 126, dated June 18, 2020, as amended, continued or superseded by subsequent executive orders, may continue in operation after the effective date of this section without the license and consent of the commissioner of transportation required by sections 19-160, 19-160.1 and 19-160.2 of the administrative code of the city New York, as added by section six of this local law, pending the granting of any such license and consent, provided that such restaurant submits a petition for such consent on or before a date set forth in the rules of the department of transportation regarding the application for such consent, and such petition has not been denied. Such date shall be within a reasonable period of time, but not less than three months, after the effective date of such rules.

§ 11. Any restaurant that had operated outdoor dining pursuant to emergency executive order number 126, dated June 18, 2020, as amended and continued by subsequent executive orders, whose outdoor dining is located within or adjacent to a structure that does not comply with rules of the department of transportation relating to the design of roadway cafes and sidewalk cafes shall remove such structure no later than 30 days after the determination of the department to grant or deny such revocable consent for such sidewalk cafe or roadway cafe. Notwithstanding the preceding sentence, all such structures shall be removed no later than November 1, 2024.

§ 12. Interagency cooperation. Agencies including, but not limited to, the department of sanitation, the police department, the department of health and mental hygiene, and the department of homeless services, shall cooperate with the department of transportation in the enforcement of this local law and any rules adopted by the department of transportation pursuant to this local law. Further, the department of transportation shall consult with agencies, commissions and offices including, but not limited to, the department of consumer and worker protection, the department of city planning, the department of environmental protection, the department of buildings, the department of design and construction, the department of health and mental hygiene, the department of parks and recreation, the department of sanitation,

the fire department, the department of small business services, the landmarks preservation commission, the art commission, the office of emergency management, the mayor's office of media and entertainment, the mayor's office of people with disabilities, and the mayor's office of citywide event coordination and management, with respect to the adoption of such rules, as well as outreach and education targeted at food service establishments throughout the city in relation to the process for obtaining a license and revocable consent for sidewalk and roadway cafes, as well as relevant deadlines pertaining to application submissions and removal of any street furniture or materials in violation of rules promulgated pursuant to this local law. Such outreach and education shall be made available in the 6 most commonly spoken languages in the city pursuant to city planning.

§ 13. Map. Within 12 months of the effective date of section 19-160 of the administrative code of the city of New York, as added by section six of this local law, the department of transportation shall develop a map on its website that shows the location and name of each restaurant that has obtained a license and revocable consent to operate a sidewalk cafe or a roadway cafe; a copy of the drawing required to be submitted with the petition for a revocable consent for a roadway cafe pursuant to the rules of the department; a copy of the drawing required to be submitted with the petition for a revocable consent for a sidewalk cafe pursuant to subdivision a of section 19-160.2 of the administrative code of the city of New York, as added by section six of this local law, and a history of any inspections of such sidewalk cafe or roadway cafe by such department.

§ 14. Annual report. Within 12 months of the effective date of section 19-160 of the administrative code of the city of New York, as added by section six of this local law, and annually thereafter for 4 years, the department of transportation shall submit to the mayor and to the speaker of the council a report. Such report shall specify the total number of sidewalk cafes and roadway cafes licensed by such department, disaggregated by borough, and the total number of inspections performed and summonses issued by such department in the preceding 12-month period.

§ 15. Task force. The department of transportation shall convene a working group task force to facilitate the transition of authority from the department of consumer and worker protection to the department

of transportation for the granting of licenses and revocable consents for sidewalk cafes. Such task force shall consist of members of the department of transportation, the department of consumer and worker protection, and the department of city planning, as designated by the commissioner of each such department. Such task force shall hold its first meeting no later than 30 days after the effective date of this section, and shall thereafter meet no less than quarterly until March 31, 2025, after which date it shall be disbanded. Such task force shall consult with representatives of the restaurant industry and other interested community groups.

§ 16. Any agency or officer to which are assigned by or pursuant to this local law any functions, powers and duties shall exercise such functions, powers and duties in continuation of their exercise by the agency or officer by which the same were heretofore exercised and shall have power to continue any business, proceeding or other matter commenced by the agency or officer by which such functions, powers and duties were heretofore exercised. Any provision in any law, rule, regulation, contract, grant or other document relating to the subject matter of such functions, powers or duties, and applicable to the agency or officer formerly exercising the same shall, so far as not inconsistent with the provisions of this local law, apply to the agency or officer to which such functions, powers and duties are assigned by or pursuant to this local law.

§ 17. Any rule or regulation in force on the effective date of this section, and promulgated by an agency or officer whose power to promulgate such type of rule or regulation is assigned by or pursuant to this local law to some other agency or officer, shall continue in force as the rule or regulation of the agency or officer to whom such power is assigned, except as such other agency or officer may hereafter duly amend, supersede or repeal such rule or regulation.

§ 18. No existing right or remedy of any character accruing to the city shall be lost or impaired or affected by reason of the adoption of this local law.

§ 19. No action or proceeding, civil or criminal, pending at the time when section 19-160 of the administrative code of the city of New York, as added by section six of this local law, takes effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of this local law or by

anything herein contained; but all such actions or proceedings may be continued notwithstanding that functions, powers and duties of any agency or officer party thereto may by or pursuant to this local law be assigned or transferred to another agency or officer, but in that event the same may be prosecuted or defended by the head of the agency or the officer to which such functions, powers and duties have been assigned or transferred by or pursuant to this local law.

§ 20. Any license or revocable consent granted pursuant to a provision of the administrative code repealed by section seven of this local law in force on the effective date of such section shall continue in force in accordance with its terms and conditions until it expires or is suspended or revoked by the appropriate agency or officer pursuant to this local law. Such license or revocable consent shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to this local law.

§ 21. This local law shall apply to all licenses, permits or other authorizations in force as of the effective date of this section.

§ 22. This local law takes effect as follows:

(i) Sections one through seven of this local law take effect 160 days after it becomes law, or upon the expiration of emergency executive order number 126, dated June 18, 2020, as amended, continued or superseded by subsequent executive orders, whichever is earlier, provided, however, that the department of transportation may adopt rules relating to applications for licenses and revocable consents pursuant to such sections which may take effect prior to such date. Upon the determination of the effective date of sections one through seven of this local law, the commissioner of transportation shall notify the corporation counsel, who shall notify the New York state legislative bill drafting commission, in order that the commission may maintain an accurate and timely effective database of the official text of the New York city charter and administrative code of the city of New York in furtherance of effectuating the provisions of section 70-b of the public officers law, and the corporation counsel shall notify relevant publishers in furtherance of effectuating the provisions of section 7-111 of the administrative code, provided that failure to provide the notifications described in this

section shall not affect the effective date of any section of this local law; and

(ii) Sections eight through twenty-one of this local law take effect immediately.