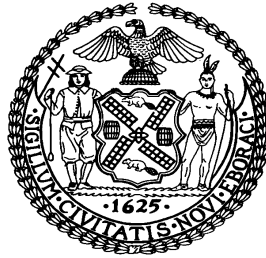


Staff: Committee on Consumer Affairs  
Rachel Cordero, Counsel  
Damien M. Butvick, Policy Analyst

Subcommittee on Zoning and Franchises  
Ann McCaughey, General Counsel  
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### SUBCOMMITTEE ON ZONING AND FRANCHISES

Hon. Mark S. Weprin, Chair

May 7, 2013

### **Oversight: Licensing and Regulation of Sidewalk Cafes in New York City**

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**Int. No. 875:** By Council Members Garodnick, Levin, Reyna, Brewer, Comrie, Dromm, Gentile, James, Koo, Koppell, Koslowitz, Lander, Recchia, Rose, Williams, Wills, Lappin and Halloran

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to permitting sidewalk cafes to operate on Sundays beginning at 10:00 a.m.

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**Proposed Int. No. 876-A:** By Council Members Garodnick, Brewer, Comrie, Gentile, James, Koo, Recchia Williams and Wills

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the operation of a sidewalk cafe.

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**Int. No. 1039:** By Council Reyna and Koo

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to the review and approval of petitions for revocable consents to operate sidewalk cafes.

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## **I. INTRODUCTION**

On Tuesday, May 7, 2013, the Committee on Consumer Affairs, chaired by Council Member Daniel R. Garodnick, and the Subcommittee on Zoning and Franchises, chaired by Council Member Mark S. Weprin, will hold an oversight hearing entitled, “Licensing and Regulation of Sidewalk Cafes in New York.” The Committee on Consumer Affairs will also hold its first hearing on Introductory Bill Number 875 (“Intro. 875”), a Local Law to amend the Administrative Code of the City of New York, in relation to permitting sidewalk cafes to operate on Sundays beginning at 10:00 a.m; Proposed Introductory Bill Number 876-A (“Intro. 876-A”), a Local Law to amend the Administrative Code of the City of New York, in relation to the operation of a sidewalk cafe; and Introductory Bill Number 1039 (“Intro. 1039”), a Local Law related to the review and approval of petitions for revocable consents to operate sidewalk cafes. Those invited to testify include the Administration, borough-wide chambers of commerce, various business improvement districts, community boards, representatives from the restaurant and hospitality industries, and other interested parties.

## **II. BACKGROUND**

Sidewalk cafes, which are licensed and regulated by the Department of Consumer Affairs (“DCA”), are a ubiquitous part of New York City’s urban landscape and popular draw for patrons of restaurants and bars throughout the five boroughs. According to DCA, there are currently 765 licensed sidewalk cafes in New York City.<sup>1</sup> 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

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<sup>1</sup> Dep’t of Consumer Affairs, *Instant License Check, Sidewalk Cafe*, at <https://a866->

sidewalk cafe.”<sup>2</sup> There are three different types of sidewalk cafes: an enclosed sidewalk cafe, an unenclosed sidewalk cafe, and a small unenclosed sidewalk cafe.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

Because sidewalk cafes by their nature obstruct pedestrian traffic, they are subject to a number of regulations. According to DCA, sidewalk cafes must leave a path on the sidewalk that is at least eight feet wide, and in the event that the entire sidewalk is greater than 16 feet, more than half of the sidewalk must be kept clear for pedestrians.<sup>7</sup> Furthermore, sidewalks must be free of anything that may cause a person to trip, such as a sandbag, and the sidewalk cafe must have a service aisle that is a minimum of three feet wide so that the server is not forced to deliver orders from the sidewalk.<sup>8</sup> Sidewalk cafes must also be a set distance from certain types of street furniture. For example, a sidewalk cafe must be at least ten feet from a fire hydrant, eight feet from a mailbox, and three feet from a subway grate.<sup>9</sup> Any structures that might contain a cafe, such as a fence or railing, must be self-supporting, a maximum of 30 inches tall, and easily removable, with the exception of small unenclosed cafes, where such structures are not

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[bcportal.nyc.gov/BCPortals/LicenseCheckResults.aspx?EntityName=&LicenseNumber=&Zip=&LicCat=013](http://bcportal.nyc.gov/BCPortals/LicenseCheckResults.aspx?EntityName=&LicenseNumber=&Zip=&LicCat=013), (accessed May 1, 2013).

<sup>2</sup> N.Y.C. Admin. Code §20-223.

<sup>3</sup> Dep’t of Consumer Affairs, *Sidewalk Café Design and Regulations Guide*, at [http://www.nyc.gov/html/dca/downloads/pdf/swc\\_design\\_regulations\\_guide.pdf](http://www.nyc.gov/html/dca/downloads/pdf/swc_design_regulations_guide.pdf), (Accessed May 2, 2013).

<sup>4</sup> N.Y.C. Admin. Code §20-223(b).

<sup>5</sup> *Supra* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

permitted.<sup>10</sup> Any overhead structure, such as a canopy or umbrella, must remain within the footprint of the sidewalk cafe.<sup>11</sup> Additionally, licensed sidewalk cafes may not deviate from the number of tables and the types of items that were approved by DCA upon issuance of the license.<sup>12</sup>

Sidewalk cafes are also subject to a number of other regulations that would limit the nuisance they might present to neighboring homes and businesses. For example, unenclosed and small unenclosed sidewalk cafes may only operate between noon 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.<sup>13</sup> Enclosed sidewalk cafes may not be open more than 20 hours a day and may only operate between 8:00 a.m. and 4:00 a.m.<sup>14</sup> Additionally, businesses must take steps to minimize noise when removing tables and chairs at the end of the night or risk incurring a penalty.<sup>15</sup> Businesses licensed by the State Liquor Authority to serve alcohol on the premises must provide waiter service and maintain a tidy sidewalk cafe area.<sup>16</sup> Finally, licensees must conspicuously display both their DCA sidewalk cafe license and a sign indicating whom a person could contact to register a complaint.<sup>17</sup>

Obtaining a sidewalk cafe license is a multi-step process. Prior to submitting a license application, the business 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.<sup>18</sup> The business must also possess a current New York City Department of Health and Mental Hygiene food service establishment

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Dep't of Consumer Affairs, *License Application Checklist*, at 2, at

permit prior to beginning the application process.<sup>19</sup> A business is responsible for submitting a number of documents when applying for a sidewalk cafe license. In addition to the basic license application, prospective licensees must also submit numerous documents and certifications.<sup>20</sup> Depending on the location of the sidewalk cafe, applicants may also be required to submit proof of approval from the New York City Landmarks Preservation Commission (“LPC”).<sup>21</sup>

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.<sup>22</sup> Unenclosed and small unenclosed sidewalk cafes are also responsible for a \$310 plan review fee and a \$1,500 security deposit.<sup>23</sup> 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.<sup>24</sup> Businesses that modify their plans after they submit their license applications are subject to an additional \$175 fee for modification of the revocable consent.<sup>25</sup> Enclosed sidewalk cafe applicants that modify their plans after submission must again pay the City Planning Fee.

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[http://www.nyc.gov/html/dca/downloads/pdf/swc\\_license\\_app\\_materials.pdf](http://www.nyc.gov/html/dca/downloads/pdf/swc_license_app_materials.pdf), (accessed on May 2, 2013).

<sup>19</sup> *Id.*, at 1.

<sup>20</sup> *Id.*, at 2-4 (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).

<sup>21</sup> *Id.*, at 3.

<sup>22</sup> *Id.*, at 5.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

A business 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.<sup>26</sup> The paperwork involved in renewing a sidewalk cafe license is similar to that of the initial application process. Applicants for renewal would also need to submit a notarized certification by broker affirming the accuracy of the insurance certificate, a notarized letter detailing changes to sidewalk since the last application submission (including street furniture and sidewalk cafe area), and certified or registered mail receipts of the notification sent to residents.<sup>27</sup> Applicants must pay a license renewal fee of \$510 and a revocable consent renewal fee of \$455.<sup>28</sup> If the square footage of an unenclosed sidewalk cafe has changed since its last application or renewal, the applicant will be required to pay an additional \$310 plan review fee.<sup>29</sup> Enclosed sidewalk cafes are also required to pay the New York City Department of City Planning (“DCP”) a renewal fee of \$27.50 per seat (with a minimum of \$680) or, if changes have been made, \$55 per seat (with a minimum of \$1,360).<sup>30</sup> Licensees continue to be responsible for paying the annual revocable consent fee.

Within five days of receiving an application, DCA will forward copies of the petition for revocable consent to LPC, DPC and the Department of Environmental Protection for review, each of which then has 21 days to submit any objections in writing to DCA.<sup>31</sup> If the agencies do not respond within the 21 days, they are deemed not to have any objections.<sup>32</sup> DCA will also forward the petition, for informational purposes, to the Speaker of the City Council and the

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<sup>25</sup> *Id.*

<sup>26</sup> Dep’t of Consumer Affairs, *License and Revocable Consent Renewal Requirements for Unenclosed Sidewalk Cafe*, at [http://www.nyc.gov/html/dca/html/licenses/renew\\_sidewalk\\_cafe.shtml](http://www.nyc.gov/html/dca/html/licenses/renew_sidewalk_cafe.shtml), (Accessed on May 2, 2013).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Dep’t of Consumer Affairs, *License and Revocable Consent Renewal Requirements for Enclosed Sidewalk Cafe*, at [http://www.nyc.gov/html/dca/html/licenses/renew\\_sidewalk\\_cafe2.shtml](http://www.nyc.gov/html/dca/html/licenses/renew_sidewalk_cafe2.shtml), (Accessed on May 2, 2013).

<sup>31</sup> N.Y.C. Admin. Code §20-225(a) and (b).

<sup>32</sup> N.Y.C. Admin. Code §20-225(b).

Council Member in whose district the cafe is situated.<sup>33</sup> If the aforementioned agencies do not have any objections, DPC will then forward the petition to the Community Board that corresponds to the location of the business.<sup>34</sup> The Community Board will then hold a public hearing and issue its opinion to DCA, recommending, either a denial, an approval, or an approval with modifications.<sup>35</sup> The Community Board has 45 days within which to make this recommendation or waive its right to do so.<sup>36</sup> Within the next 30 days, DCA will hold a public hearing and then make a recommendation to the City Council for disapproval, approval, or approval with modifications.<sup>37</sup> If DCA does not make a determination within that time period than the petition will be considered denied.<sup>38</sup> 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 DCA, than the petition is considered approved.<sup>39</sup> 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.<sup>40</sup> DCA then sends the approved petition to the Mayor's Office of Contract Services ("MOCS") for approval for revocable consent, a process that may take up to ten days. Finally, upon approval of the revocable consent, DCA issues the license.

Sidewalk cafe operators must revisit this process again prior to the expiration of their license. Once DCA has received all the applications and fees, and has confirmed that the applicant's license is in good standing, it will provide the applicant with a temporary operating letter,<sup>41</sup> which allows sidewalk cafes to continue operating while the renewal for revocable

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<sup>33</sup> N.Y.C. Admin. Code §20-225(a).

<sup>34</sup> N.Y.C. Admin. Code §20-225(c).

<sup>35</sup> *Supra* note 18, at 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> N.Y.C. Admin. Code §20-225(f).

<sup>39</sup> *Supra* note 18, at 6.

<sup>40</sup> *Id.*

<sup>41</sup> *Supra* note 26.

consent is being reviewed. DCA will only renew the license once the revocable consent petition has been approved.<sup>42</sup>

The penalty for operating a sidewalk cafe without the appropriate DCA license is a fine of no less than \$200 and no more than \$1,000 for the first violation and subsequent violations issued on the same day, and a fine of no less than \$500 and no more than \$2,000 for subsequent violations issued on separate days within two years of the first violation.<sup>43</sup> Similar fines can be issued to licensed cafes operating in violation of any Administrative Code provisions, and DCA may seal a cafe upon repeated violations of the Code or of terms and conditions of the cafe's license or revocable consent.<sup>44</sup>

### **III. ISSUES AND CONCERNS**

The Committees are interested in hearing from cafe owners, community members and the Administration on the regulation and licensing of, and the enforcement of laws related to, sidewalk cafes. The licensing process, specifically the revocable consent approval process, is time consuming and involves many participants. It is also costly for the applicant, as are the fees that must be paid to maintain the cafe and the fines that can be issued for operating without the appropriate license. The Committees hope to explore ways to improve the process and to hear from community members on how sidewalk cafes affect their neighborhoods.

### **IV. INTRODUCTORY BILLS**

#### **a. Intro. 875**

Intro. 875 would allow sidewalk cafes to open for business at 10:00 a.m. on Sundays and

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<sup>42</sup> *Id.*



would prohibit sidewalk cafes from opening earlier than 10:00 a.m. on Sundays. The Administrative Code instructs DCA to promulgate rules with respect to sidewalk cafe licenses and revocable consents, including rules related to operation—specifically hours of operation.<sup>45</sup> Currently, DCA rules prohibit sidewalk cafes from opening before 12:00 p.m. on Sundays.<sup>46</sup>

**b. Intro. 876-A**

Intro. 876-A would clarify that a sidewalk cafe license term is two years and would ensure that the revocable consent term for sidewalk cafes is at least four years. Further, it would provide that the expiration date for the revocable consent shall be at least six months later than the expiration date of the license. Currently, the Administrative Code sets the license term at two years and is silent on the term of the revocable consent. DCA rulemaking, however, set the revocable consent term to two years as well.<sup>47</sup> As a result, the license and revocable consent generally expire at the same time.<sup>48</sup> but. Intro. 876-A would lengthen the term of the revocable consent to at least four years and would ensure that the license and revocable consent do not expire simultaneously. Therefore, applicants to renew a sidewalk cafe license and/or revocable consent will not have to apply for both the license and the revocable consent renewals at the same time.

Intro. 876-A would also ensure that a sidewalk cafe would not be treated as an unlicensed sidewalk cafe if a petition for revocable consent is pending for the sidewalk cafe and the operator of such cafe: (i) submitted a timely and complete petition to renew a revocable consent that has not yet been approved or denied by DCA; (ii) held a valid license to operate a sidewalk cafe at

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<sup>43</sup> N.Y.C. Admin. Code § 20-227.1(a).

<sup>44</sup> N.Y.C. Admin. Code § 20-227.1.

<sup>45</sup> N.Y.C. Admin. Code § 20-224(b).

<sup>46</sup> R.C.N.Y § 2-57(a).

<sup>47</sup> *Id.*

<sup>48</sup> *See* N.Y.C. Admin. Code § 20-224(d); R.C.N.Y § 1-02(d) and (e).

the time they submitted their petition to renew the revocable consent; and (iii) is currently in compliance with all terms and conditions of the previous revocable consent to construct and operate their sidewalk cafe. This would prevent operators from being fined for operating a sidewalk cafe without a license while their petition to renew their revocable consent is pending.

**c. Intro. 1039**

Intro. 1039 would streamline the application and renewal process for a revocable consent to operate a sidewalk cafe. First, Intro. 1039 would decrease, from 45 to 30 days, the time a community board has to either hold a hearing and submit comments to DCA on a revocable consent petition or waive its right to do so. The bill would also provide that if a community board fails to act within 30 days than it will be deemed to have waived its right to hold a hearing and submit comments on a petition.

Second, Intro. 1039 would shorten the time period during which DCA must approve, approve with modifications or deny a revocable consent petition by permitting DCA to waive its public hearing on the petition. Further, if the hearing is waived, Intro. 1039 would require DCA to submit all decisions to approve or approve with modifications to the Council within ten days of the expiration of the community board's 30 day period to review the petition. Additionally, Intro. 1039 would permit DCA to have an additional 60 days to review the petition if, within 30 days of the date that the community board either submits comments or waives its right to do so, DCA notifies the petitioner that it needs more time.

Lastly, Intro 1039 would allow the mayor to waive what is currently separate and necessary approval of the revocable consent.

Int. No. 875

By Council Members Garodnick, Levin, Reyna, Brewer, Comrie, Dromm, Gentile, James, Koo, Koppell, Koslowitz, Lander, Recchia, Rose, Williams, Wills, Lappin and Halloran

A Local Law to amend the administrative code of the city of New York, in relation to permitting sidewalk cafés to operate on Sundays beginning at 10:00 a.m.

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 20-224 of subchapter six of chapter two of title 20 of the administrative code of the city of New York is amended to read as follows:

b. The commissioner, consistent with the provisions of this subchapter and the applicable provisions of the zoning resolution, shall establish such rules, regulations, terms and conditions as the commissioner deems proper in respect to the granting and issuance of such licenses and revocable consents, priorities or rights between applicants for a license covering the same space, and operation (including hours of operation, provided that no such rule, regulation, term or condition prevents licensed sidewalk cafes from operating during the hours of 10:00 a.m. through 12:00 a.m. daily or allows licensed sidewalk cafes to operate before 10:00 a.m. on Sundays) and maintenance of any sidewalk cafe, to ensure good order and to prevent undue obstruction of the sidewalk, which shall have the force and effect of law. A license to operate a sidewalk cafe shall be issued after the review and approval of a petition for a revocable consent to construct and operate such sidewalk cafe pursuant to the provisions of section 20-225, 20-226 or 20-227 of this subchapter. The operator of a sidewalk cafe under license from the commissioner shall cause the boundary of the area licensed as a sidewalk cafe to be marked in a manner prescribed under rules promulgated by the commissioner.

§ 2. This local law shall take effect immediately upon enactment.

5/24/12

Proposed Int. No. 876-A

By Council Members Garodnick, Brewer, Comrie, Gentile, James, Koo, Recchia, Williams and Wills

A Local Law to amend the administrative code of the city of New York, in relation to operation of a sidewalk cafe.

Be it enacted by the Council as follows:

Section 1. Subdivision d of section 20-224 of title twenty of the administrative code of the city of New York is amended to read as follows:

d. The license shall expire two years after the date it was issued and the fee for such two-year license shall be [at the rate of] five hundred and ten dollars [for a two-year license]. Such license fee shall be in addition to any fee imposed, pursuant to rules of the commissioner, upon approval of a petition for a revocable consent, or a renewal of such revocable consent, to construct and operate a sidewalk cafe or any other applicable fee.

§ 2. Subdivision i of section 20-225 of title twenty of the administrative code of the city of New York is amended to read as follows:

i. The consent shall be for [such] a term of no less than four years and 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 h 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. The expiration date for the consent term shall be at least six months after the date the license expires.

§ 3. Subdivisions g and i of section 20-226 of title twenty of the administrative code are amended to read as follows:

g. The consent shall be for [such] a term of no less than four years and 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 addition approval of the mayor shall be necessary to its validity. The expiration date for the consent term shall be at least six months after the date the license expires.

§ 4. Section 20-277.1 of subchapter six of chapter two of title twenty of the administrative code of the city of New York is amended by adding a new subdivision h to read as follows:

h. For purposes of this section a person shall not be deemed to be operating an unlicensed sidewalk cafe if such person's petition for revocable consent is pending and such person:

i) submitted a timely and complete petition to renew a revocable consent pursuant to section 20-225 or 20-226 that has not yet been approved or denied by the Department;

ii) held a valid license to operate a sidewalk cafe pursuant to section 20-224 of this subchapter at the time such petition to renew a revocable consent was submitted; and

iii) is currently in compliance with all terms and conditions of the previous revocable consent to construct and operate such sidewalk cafe.

§2. This local law shall take effect one hundred and twenty days after its enactment.

RC  
3/15/13  
LS# 1887

By Council Members Reyna and Koo

A Local Law to amend the administrative code of the city of New York, in relation to the review and approval of petitions for revocable consents to operate sidewalk cafes.

Be it enacted by the Council as follows:

Section 1. Section 20-225 of the administrative code of the city of New York, subdivisions e, f, g, and i as amended by local law number 8 for the year 2003 and subdivision h as added by local law number 70 for the year 1990, is amended to read as follows:

§20-225 Review and approval of petitions for revocable consents to construct and operate enclosed sidewalk cafes which do not require special permits. A petition for a revocable consent to construct and operate an enclosed sidewalk cafe which does not require a special permit modification pursuant to the zoning resolution 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 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.

b. The agencies to which the petition has been forwarded shall review the petition and shall indicate any objections to such petition, including any determination by the landmarks preservation commission that the petition requires a certificate of appropriateness, by filing written comments with the department of city planning within twenty-one days of the receipt

thereof. The failure of an agency to indicate its objections within the prescribed time to the department of city planning shall be construed to mean that such agency has no objections.

c. If no objections to such petition are filed within the twenty-one day period prescribed in subdivision b of this section, the department of city planning shall forward the petition within five days after the close of such period to the president of the borough in which 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, and such board shall review such petition pursuant to subdivision e of this section.

d. If any objections exist, including any objections by the department of city planning, the department of city planning shall inform the petitioner of the objections and that review of the petition has been stayed until the objections indicated are resolved. If the objections are not resolved within six months from the date the petitioner is informed that review of the petition has been stayed, such petition shall be deemed to have been withdrawn. If the objections are resolved within the prescribed time, the department of city planning shall forward the petition within five days of such resolution to the council member in whose district the cafe is proposed to be located and to the community board for the community district in which the cafe is proposed to be located, and such board shall review the petition pursuant to subdivision e of this section.

e. The community board shall, not later than [forty-five] thirty days after receipt of such petition, either (i) notify the public of the petition in a manner specified by the city planning commission, 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. If the community board fails to take the actions on a petition provided for in the preceding sentence within the time period provided, the community board shall be deemed to have waived its public hearing and recommendation on such petition.

f. Within thirty days after the expiration of the [forty-five day] period allowed for the filing of a recommendation or waiver by the community board pursuant to subdivision e of this section, the department shall (i) hold a public hearing on the petition, (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, except that if the department waives its public hearing, the department shall file with the council a written statement of such waiver and any decision to approve or approve with modifications, together with the petition, within ten days after the expiration of the period allowed for the community board filing of a recommendation or waiver pursuant to subdivision e of this section. If [within the time period provided,] the department fails to [take the actions on a petition] file with the council any decision to approve or approve with modifications, together with the petition, as provided [for] in the preceding sentence, the petition shall be deemed to have been denied, unless the department notifies the petitioner within the thirty-day period that an additional period of time, which shall not exceed sixty days, is required for further review of the petition. If the department fails to file with the council any decision to approve or approve with modifications, together with the petition, prior to or upon the expiration of any such additional period of time, the petition shall be deemed to have been denied. [For] Unless the department waives its public hearing, for a period of not less than fifteen calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk cafe. At least fifteen days prior to the date of such hearing, the department

shall 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 five calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in one newspaper of local circulation in the community where the cafe is proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

g. Within twenty days of the date the petition is received by the council pursuant to subdivision f of this section, the council may resolve by the majority vote of all council members to review the petition. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision i of this section, unless, in accordance with that subdivision, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required.

h. If the council resolves to review a petition pursuant to subdivision g of this section, the council shall hold a public hearing, after giving public notice not less than five 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 i of this section, the 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 fifty days of the filing of the petition with the council pursuant to subdivision f 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 modifications 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, 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.

i. The consent shall be for such term and 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 h 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 such approval is not required for petitions reviewed and approved pursuant to subdivisions a through h of this section, or any category of such petitions.

j. Consents for sidewalk cafes shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law, which shall apply uniformly to all consents for enclosed sidewalk cafes. The department shall file with the council a written recommendation for a formula to be used to calculate such fees.

§ 2. Section 20-226 of the administrative code of the city of New York, subdivisions a and b as amended by local law number 8 for the year 2003 and subdivisions c, d, e, f, and g as amended and renumbered by local law number 8 for the year 2003, is amended to read as follows:

§ 20-226 Review and approval of petitions for revocable consents to operate unenclosed sidewalk cafes which do not require special permits. A petition for a revocable consent to operate an unenclosed sidewalk cafe which does not require a special permit modification shall be

reviewed and approved in the following manner:

a. The petition shall be in such form as prescribed by the department. 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 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 [forty-five] thirty 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. If the community board fails to take the actions on a petition provided for in the preceding sentence within the time period provided, the community board shall be deemed to have waived its public hearing and recommendation on such petition. 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.

c. [The] Within thirty 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) hold a public hearing on the petition pursuant to subdivision d of this section [and], (ii) approve the petition, disapprove it or approve it with modifications [within thirty days of the expiration of the forty-five-day period allowed for the filing of a recommendation by the community board], and (iii) file with the council any such decision to approve or approve with

modifications, together with the petition, except that if the department waives its public hearing, the department shall file with the council a written statement of such waiver and any decision to approve or approve with modifications, together with the petition, within ten days after the expiration of the period allowed for the community board filing of a recommendation or waiver pursuant to subdivision b of this section. If [within the time period provided,] the department fails to [take the actions on a petition] file with the council any decision to approve or approve with modifications, together with the petition, as provided [for] in the preceding sentence, the petition shall be deemed to have been denied, unless the department notifies the petitioner within the thirty-day period that an additional period of time, which shall not exceed sixty days, is required for further review of the petition. If the department fails to file with the council any decision to approve or approve with modifications, together with the petition, prior to or upon the expiration of any such additional period of time, the petition shall be deemed to have been denied. [Within the thirty-day time period provided for in this subdivision, the department shall file with the council any such decision to approve or approve with modifications, together with the petition.]

d. [The] Unless the department waives its public hearing, the department shall hold a public hearing on each petition prior to approving, approving with modifications or disapproving the petition. For a period of not less than fifteen calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk cafe. At least fifteen days prior to the date of the hearing, 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 [five-calendar] five calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in one newspaper of local circulation in the community where the cafe is proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

e. Within twenty days of 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. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision g of this section, unless, in accordance with that subdivision, the 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 five 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 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 fifty 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, 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 fifteen days of such approval, or the council shall be deemed to have denied the petition.

g. The consent shall be for such term and 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 such approval is not required for petitions reviewed and approved pursuant to subdivisions a through f of this section, or any category of such petitions.

h. Consents for sidewalk cafes shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law, which shall apply uniformly to all consents for unenclosed sidewalk cafes. The department shall file with the council a written recommendation for a formula to be used to calculate such fees.

i. An unenclosed sidewalk cafe may not be opened or operated prior to the approval of the consent therefor by the department pursuant to this section.

§3. Section 20-227 of the administrative code of the city of New York, as amended by local law number 8 for the year 2003, is amended to read as follows:

§20-227 Review and approval of petitions for revocable consents to construct and operate sidewalk cafes which require special permits. Notwithstanding the provisions of any other section of the charter or code, a petition for a revocable consent to construct and operate a

sidewalk cafe which requires a special permit modification pursuant to the zoning resolution shall be reviewed and approved in accordance with the provisions of sections one hundred ninety-seven-c and one hundred ninety-seven-d of the charter and shall require the approval of the department. The consent shall be for such term and upon such conditions as may be provided in the approval of the department 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 such approval is not required for petitions reviewed and approved pursuant to this section, or any category of such petitions. The consent shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law pursuant to section 20-225(j) or section 20-226(h).

§4. This local law shall take effect one hundred twenty days after it shall have become a law, provided, however, that the commissioner shall take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

R.C.  
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