

TECHNICAL MEMORANDUM 001
PROPOSED CITY COUNCIL LEGISLATION
PERMANENT OPEN RESTAURANTS PROGRAM
CEQR No. 21DOT016Y
ULURP No.: N210434 ZRY
July 27, 2023

A. INTRODUCTION

In accordance with Local Law 114 of 2020 enacted by the New York City Council (“City Council”), the City proposed an amendment to the New York City Zoning Resolution (“ZR”) and a suspension, repeal, and amendment of certain laws and provisions of the Administrative Code of the City of New York (“Admin. Code”) and the Rules of the City of New York (“RCNY”) to establish and implement a Permanent Open Restaurants (“POR”) program to succeed the temporary program established by Local Law 77 of 2020 and Mayoral Emergency Executive Orders 126 and 128 (the “Proposed Action”).

New York City’s current Open Restaurants Program, as authorized by Mayoral Emergency Executive Orders 126 and 128, as amended, and Local Law 77 of 2020, was an emergency effort to implement a citywide program to expand outdoor seating options for food service establishments to maintain public health and safety, enhance social distancing, and help them rebound in difficult economic times during the COVID-19 pandemic. Under the temporary program, individual food service establishments may apply to the New York City Department of Transportation (“NYCDOT”) and self-certify to use the sidewalk or curb parking lane on the roadway adjacent to their business. Separate from the temporary program, the existing sidewalk café program, which involves a permit application and review process through the Department of Consumer and Work Protection (“DCWP”), formerly the Department of Consumer Affairs (“DCA”), was temporarily suspended by the executive orders. The Proposed Action would seek to establish the rules of a new permanent program consistent with Local Law 114’s authorization. This program would consist of both a roadway café seating program, and improvements to and transfer of authority for sidewalk cafés as a successor to the DCWP program.

The Proposed Action required discretionary approval from the CPC and City Council and was subject to a public review process that resembles the Uniform Land Use Review Procedure (“ULURP”). While zoning text amendments do not require ULURP, in practice the New York City Department of City Planning (“DCP”) follows those procedures including the production of ULURP documentation. As a discretionary approval, the Proposed Action was classified as Type 1 as defined under 6 NYCRR 617.4 and NYC Executive Order 91 or 1977, as amended, and was subject to an environmental review, as required by the State Environmental Quality Review Act (SEQRA), and in accordance with the City Environmental Quality Review (“CEQR”).

The Environmental Assessment Statement (“EAS”) for the Proposed Action was prepared and the NYCDOT, serving as “lead agency” for the environmental review issued a Negative Declaration for the EAS on June 18, 2021. The land use application was referred out to all New York City Community Boards and Borough Presidents for review, and a CPC public hearing was held on October 6, 2021. The CPC adopted the Proposed Action on October 20, 2021 and referred the application (the “Approved Action”) to City Council. The City Council provided modifications to the Approved Action on February 17, 2022 and referred it back to CPC for review and adoption.

Since the CPC’s adoption of the modified Approved Action, City Council has been deliberating the legislation for the POR program. The current proposal being contemplated by City Council (the

“Proposed Legislation”) is summarized below. This Technical Memorandum examines whether the Proposed Legislation would change the findings of the EAS.

As set forth below, this Technical Memorandum concludes that since the Proposed Legislation would not alter the development and operational assumptions in the Reasonable Worst Case Development Scenario (“RWCDs”) for the Approved Action evaluated in the EAS, they would not change the conclusions of the EAS, which found no significant adverse impacts as they pertain to the Approved Action. Additionally, analytical changes to the EAS due to the passage of time and updates to the *CEQR Technical Manual* since its publication would not meaningfully change the results of the EAS such that it would affect any of its findings. Therefore, as described below, this Technical Memorandum concludes that, similar to the EAS, the Proposed Legislation would not result in any significant adverse environmental impacts.

B. DESCRIPTION OF THE PROPOSED CITY COUNCIL LEGISLATION

The Proposed Legislation consists of the introduction, modification and repeal of certain laws and provisions of the Admin. Code and the New York City Charter (“City Charter”) to facilitate the establishment of the POR program and the transition from Temporary Open Restaurants (“TOR”) program to the POR. The Proposed Legislation is provided in **Appendix 1**. The following is a summary of the provisions of the Proposed Legislation:

1. ADMIN. CODE MODIFICATIONS

REPEAL OF PRE-COVID SIDEWALK CAFÉ REGULATIONS

The Proposed Legislation would repeal existing Admin. Code provisions (Admin. Code Title 20, Chapter 2-6) relating to granting licenses and consents for sidewalk cafes by DCWP.

ESTABLISHMENT OF THE POR PROGRAM

Requirements for Operation and Sidewalk Café Revocable Consent Process

The Proposed Legislation would establish requirements for operation of a sidewalk or roadway café including the licensing and revocable consent process as granted through the commissioner of NYCDOT. In addition to NYCDOT and Community Board review and optional City Council and Mayoral reviews, to participate in the POR, a restaurant would have to be visible from the ground floor and directly accessible to the public from the street and operated pursuant to a food service establishment permit issued by the Department of Health and Mental Hygiene (DOHMH).

New York City Landmarks Preservation Commission (LPC) Review

LPC review would be required for restaurants located in a historic district, on a landmark site or attached or adjacent to a landmark or improvement containing an interior landmark, provided such review is required pursuant to the Admin. Code. LPC has 10 business days to make a determination on an application, unless LPC determines that such café does have an effect on the exterior architectural features and a public hearing is required.

License and Revocable Consent Terms and Fees

A license term is four years with a license fee (initial and renewal) of \$1,050 (separate fees for sidewalk and roadway cafes). Revocable consent terms (initial and renewal) are four years and fee rates ranging from \$5 to \$25 per square foot (sf) for sidewalk cafes and \$6 to \$31 per sf for roadway cafes depending on the sector of the City in which the restaurant is located.

Every four years, NYCDOT shall submit a report to City Council and the Mayor on the changes to median annual commercial rent, percent of land area for each sector, number of restaurants operating sidewalk and/or roadway cafes in each sector, and sf of each sidewalk and roadway café

in operation. The report may include a recommendation to increase or decrease the fee rate or adjust the sectors.

POR Sidewalk Cafes in Sidewalk Widening Areas

The legislation incorporates “sidewalk widening” areas into the legislation to provide that a sidewalk cafe may be located within a public sidewalk and/or within a sidewalk widening area. NYC Zoning Resolution 37-53(f) provides that “A sidewalk widening is a continuous, paved, open area along the front lot line of a zoning lot at the same elevation as the adjoining sidewalk and directly accessible to the public at all times.”

Sidewalk cafes established and operated upon the public sidewalk and sidewalk widening of such street will be reviewed pursuant to the sidewalk cafe review process set forth in the legislation and must obtain a license and revocable consent. Sidewalk cafes located entirely in the sidewalk widening of a street must obtain a license and “consent” (not a revocable consent) pursuant to rules established by DOT, which shall provide for notice to the affected Council Member and Community Board.

License Transfer and Temporary Authorization to Operate

The Proposed Legislation provides rules on the sale, lease and transfer of café licenses and revocable consent, including authorization of temporary operation during the revocable consent process by an applicant for a revocable consent that was lapsed or terminated by a previous operator, where the plans for the café are as the same as the previous café.

Violations and Enforcement

Violations of the Admin. Code, terms and conditions of a revocable consent, or any promulgated NYCDOT rules are subject to penalties and enforcement. Corrective action for first time violations and for a violation that has not been corrected are provided. NYCDOT may suspend or revoke a license and order the removal of such sidewalk or roadway cafe depending on the type of violation and number of times the license has been violated. NYCDOT may remove outdoor dining furniture or items that are inconsistent with the criteria or design for such setup, as set forth by promulgated NYCDOT rules. NYCDOT is also authorized to remove any obstruction determined to be a danger to public welfare, safety, or energy system reliability, including planned or emergency utility work.

Other Requirements for Sidewalk and Roadway Cafes

Locational Restriction: No license or consent shall be granted for sidewalk or roadway cafe that obstructs the means of egress from any portion of a building.

Cleanliness: Licensee must maintain tables to ensure good order and cleanliness.

Alcohol: Alcohol may be served to the extent permitted by state law. If alcohol is served, licensee must provide table service.

Boundary: Licensed area must be marked and separated pursuant the rules, and roadway cafes must be delineated and protected by barriers in accordance with the rules.

Smoking: Prohibit smoking and e-cigarette use in the outdoor dining areas of restaurants.

Advertising: While names, logos, and menus of the establishments are permitted to be displayed, other advertising signs are not permitted to be painted or affixed to any awning, screen, or other appurtenance.

Roadway Cafe Season: No rule shall authorize a roadway cafe to operate on any day from November 30 to March 31, inclusive. Therefore, the roadway dining season shall be April 1 to November 29.

Hours of Operation: No rule shall prevent a café from operating between 10am and 12am daily or allow a café, other than an enclosed sidewalk café, to operate before 10am on Sundays.

Rulemaking Authorization

NYCDOT shall promulgate rules relating to:

- (1) The granting, issuance, and administration of such licenses and revocable consents;
- (2) The design of a sidewalk or roadway cafe;
- (3) Priorities among applicants for a license covering the same area of a sidewalk or roadway; and

The operation and maintenance of any sidewalk or roadway cafe.

Preauthorized Enclosed Sidewalk Cafes

Licenses and revocable consents will not be issued for new enclosed sidewalk cafes. Existing enclosed sidewalk cafes may continue operating at locations that were permitted and operating legally on or prior to March 16, 2020. Revocable consent fees will be paid annually to the City at based on the prior agreed upon rates.

Definitions

Modification of the Admin. Code to include definitions of terms pertaining to the POR program.

2. TRANSITION FROM TOR PROGRAM TO POR PROGRAM – LOCAL LAW UNCONSOLIDATED PROVISIONS

Continuation of Temporary Open Restaurant Program

Outdoor dining may continue provided that such a restaurant submits a petition within the timeframe set forth by promulgated NYCDOT rules and such petition has not been denied. Such date in the rules shall not be less than three months after the effective date of such rules. Non-complying structures must be removed no later than 30 days after NYCDOT determines to grant or deny such a restaurant a revocable consent. However, all such non-complying structures shall be removed no later than November 1, 2024.

Local Law Effective Date

Sections 1-7 of the Local Law would take effect 160 days after it becomes law, or upon the expiration of Emergency Executive Order 126, whichever is earlier, provided that NYCDOT may adopt rules prior to that date. Sections 8-20 (the unconsolidated sections) take effect immediately.

Interagency Collaboration

Enforcement: NYCDOT shall collaborate with the New York City Department of Sanitation (“DSNY”), the New York City Police Department (“NYPD”), DOHMH, and the New York City Department of Homeless Services (“DHS”) with respect to enforcement.

Rulemaking/Outreach: NYCDOT shall consult with the agencies listed in this section with respect to the adoption of such rules, as well as outreach and education targeted at restaurants in relation to the process for obtaining a license and revocable consent, as well as relevant deadlines pertaining to application submission and removal of noncomplying structures in violation of promulgated rules. Such outreach shall be in the 6 most commonly spoken languages, according to DCP.

Mapping and Reporting

Within 12 months of the effective date of the Admin. Code provisions, NYCDOT shall develop a map on its website that shows: location and name of each restaurant in the POR; a copy of the approved drawing and a history of inspection of such café. Within 12 months of the effective date

of the Admin. Code provisions, and annually thereafter for four years, NYCDOT shall submit a report specifying: the number of cafes by borough, and the total number of inspections performed, and summonses issued in the preceding 12-month period.

Task Force

NYCDOT shall convene a working group to facilitate the transition of the program from DCWP. Such task force shall contain members of NYCDOT, DCWP, and DCP. Such task force shall hold its first meeting no later than 30 days after the effective date and shall thereafter meet no less than quarterly until March 31, 2025, after which it shall be disbanded. The task force will consult with representatives of the restaurant industry, and other interested community groups.

3. CITY CHARTER MODIFICATIONS

Citation Update

Update the City Charter references to refer to new Admin Code. Provisions in Title 19.

Notice Requirements

Amendment of City Charter provisions to clarify that the Franchise and Concession Review Committee hearing notification requirements may be satisfied by the print or online editions of newspapers.

C. ENVIRONMENTAL ASSESSMENT OF THE PROPOSED CITY COUNCIL LEGISLATION

As described in the EAS, because of the generic nature of the Proposed Action, there are no known or projected sidewalk or roadway dining sites identified as part of the Proposed Action's RWCDs. To produce a reasonable analysis of the likely effects of the Proposed Action, six representative prototypical analysis configurations ("prototypes" or "prototype corridors") were identified to demonstrate the wide range of proposed implementation configurations for streets and corridors that may experience expanded outdoor dining as a result of the Proposed Action (With Action condition).

As described above, the Proposed Legislation would provide amendments to the Admin. Code and City Charter necessary to institute the POR program. The Proposed Legislation is primarily focused on requirements relating to the establishment, implementation, and administrative oversight of the program as well as requirements related to application process for licenses and revocable consent. As such, with the exception of the specific provisions evaluated below, the Proposed Legislation would not be relevant to the operational and development assumptions of the RWCDs analyzed in the EAS.

The following is an assessment of the requirements that are relevant to the development assumptions in the RWCDs analyzed in the EAS:

ADMIN. CODE MODIFICATIONS

LPC REVIEW

The Proposed Legislation would include a provision requiring LPC review for any proposed sidewalk or roadway dining seating in a historic district, on a landmark site or attached or adjacent to a landmark or an improvement containing an interior landmark. This provision is consistent with what was assumed for the historic and cultural resources analysis in the EAS, which stated that seating within a New York City Historic District ("NYCHD") would be subject to LPC review through LPC's FasTrack Service or a similar program. In addition, LPC would issue guidance on what kinds of sidewalk or roadway restaurant seating perimeters would be approved for installation.

The EAS also stated that, with LPC approval, it is not expected that sidewalk and roadway seating within a NYCHD (or within the Landmark site of an individual New York City Landmark (“NYCL”) in the unusual case where a Landmark site includes the sidewalk) would result in adverse impacts on the historic district (or individual NYCL). Therefore, this provision would not affect the RWCDs analyzed in the EAS.

LICENSE AND REVOCABLE CONSENT TERMS AND FEES

The Proposed Legislation would include a provision that applicants seeking to establish and operate either a sidewalk café or roadway café would need to be granted by NYCDOT (1) a license to operate the café for a period of four years, and (2) a revocable consent, also for a four-year term. The license fee (initial and for renewal) would be \$1,050 for either a sidewalk café or a roadway café. The revocable consent fees (see table below) would range from \$5 to \$25 per square foot (sf) for roadway cafés and \$6 to \$31 per sf for sidewalk cafes, depending on the sector of the City in which the restaurant is located.

<u>POR Revocable Consent Fees (Per SF)</u>		
<u>Fee Sector</u>	<u>Sidewalk Cafes</u>	<u>Roadway Cafes</u>
<u>1</u>	<u>\$6</u>	<u>\$5</u>
<u>2</u>	<u>\$10</u>	<u>\$8</u>
<u>3</u>	<u>\$18</u>	<u>\$14</u>
<u>4</u>	<u>\$31</u>	<u>\$25</u>

The overall fee levels reflect the inability to use outdoor seating during inclement weather and with no walls or roofs permitted in either area under the POR program. Roadway seating fees also account for the Roadway Café Season (see below within the “Other Requirements” section) that requires removal of all roadway seating during four winter months. The difference in fee levels among the proposed fee sectors reflect differences in ground floor commercial rents across the city, based on rent data from the New York City Department of Finance (“DOF”). As shown in the fee sector maps in Appendix 2 and noted in the Proposed Legislation, restaurants within 80 percent of the city would qualify for the lowest sector fee, and those within the two highest fee areas would fall within Manhattan along or south of 125th Street.

The EAS indicated the Proposed Action would not directly affect population, housing, or economic activity. It also analyzed whether potential indirect socioeconomic effects related to the loss of on-street parking could adversely affect residences or business, and whether the Proposed Action could alter the composition of businesses within retail corridors by making restaurants a more favorable use due to increased revenue potential. Overall, the EAS found that the Proposed Action would not have any significant adverse impacts on socioeconomic conditions.

The proposed fees are consistent with the overall goals of the POR program to make it easier and more equitable for restaurants, especially in the outer boroughs, thereby increasing restaurant participation rates above the relatively low levels under the previous DCWP program. The EAS analysis considered future conditions with the city-wide implementation of the proposed POR program. The number of restaurants with on-sidewalk and in-street outdoor seating expanded tremendously under the emergency temporary outdoor restaurant program, driven by the need to replace indoor seating prohibited by health regulations and avoided by customers. The number and geographic distribution of restaurants under this emergency program was therefore assumed to be a conservatively high, worst case estimate of the share of restaurants that would participate in the

proposed POR program. This benchmark level was therefore selected as a highly conservative utilization rate for the purpose of the EAS analyses.

The POR program presented in the Proposed Legislation would expand eligibility of open restaurants citywide, with both easier application procedures and lower fees than under the DCWP program. However, the conservatively high restaurant participation rates described above and reflected in the RWCDs already assumed a substantially more accessible and equitable program. The revocable consent rates in the Proposed Regulations are therefore consistent with those projections and therefore would not affect the RWCDs analyzed in the EAS.

OTHER REQUIREMENTS FOR SIDEWALK AND ROADWAY CAFES

Locational Restriction: This provision restricting open restaurant setups from obstructing the means of egress from any building was part of the siting criteria assumed for the open restaurant prototypes in the EAS and would not affect the RWCDs analyzed in the EAS.

Boundary: This provision stipulates that a licensed area must be marked and separated pursuant the rules, and roadway cafes must be delineated and protected by barriers in accordance with the rules. The delineation of boundaries for licensed areas would not change the permitted café area or required minimum sidewalk width and obstruction clearances. Protective barriers for roadway seating were included as part of the siting criteria in the EAS. Therefore, these provisions would not affect the RWCDs analyzed in the EAS.

Advertising: While names, logos, and menus of the establishments are permitted to be displayed, other advertising signs are not permitted to be painted or affixed to any awning, screen, or other appurtenance. As described in the EAS, each of the prototype corridors analyzed for the RWCDs is assumed to contain streetscape features characteristic of block faces with ground floor retail, including signage, awnings, and a mix of street furniture. Therefore, the inclusion of permitted name, logo and menu displays of a restaurant establishment would not alter the findings of the EAS that there would be no significant adverse urban design and visual resource impacts as a result of the Proposed Actions.

Roadway Cafe Season: This provision stipulates that the roadway dining season shall be April 1 to November 29. The EAS assumed that the roadway dining would be seasonable and would only be permitted for months when roadway snow plowing activities are generally not required. In addition, the mobile sources air quality analysis for roadway dining conservatively assumed year-round operation in the calculation of annual average incremental fine particulate matter (PM 2.5) concentrations. Therefore, the proposed April 1 to November 29 roadway café season is consistent with the EAS and would not alter the RWCDs analyzed in the EAS.

Hours of Operation: No rule shall prevent a café from operating between 10am and 12am daily or allow a café, other than an enclosed sidewalk café, to operate before 10am on Sundays. This provision would contribute to limiting excessive noise during late night and early morning hours and is consistent with the general restrictions assumed in the assessment of noise in the EAS, which assumed that NYCDOT would promulgate new rules that incorporate and enhance the existing DCWP sidewalk café controls, including prohibitions on amplified sounds, excessive congregation, exceedance of maximum occupancy and party noise, and disorderly conduct within open restaurant spaces. NYCDOT would also implement education and outreach such as an explicit “Code of Conduct” for potential licensees and referrals to the Mediating Establishment and Neighbor Disputes NYC (MEND) program to address noise complaints that may not be violations of the Noise Code but cause community conflict. The NYCDOT compliance and enforcement program will address Noise Code violations. Therefore, this provision would not alter the RWCDs or analysis assumptions in the EAS.

The proposed provisions related to cleanliness, alcohol service, and smoking would not affect the RWCDs analyzed in the EAS.

PREAUTHORIZED ENCLOSED SIDEWALK CAFES

The provision allowing existing enclosed sidewalk cafes to continue operating at locations that were permitted and operating legally prior to the TOR is consistent with what was assumed for the future No Action and With Action conditions in the EAS. In addition, as cited in the EAS, as of March 2020 there were only approximately 102 enclosed cafes operating under such licenses in New York City, so their effect on the citywide streetscape is limited. Therefore, this provision would not alter the RWCDs analyzed in the EAS.

TRANSITION FROM TOR PROGRAM TO POR PROGRAM

CONTINUATION OF TEMPORARY OPEN RESTAURANT PROGRAM

This provision would allow TOR licensees to apply for continuation under the POR contingent that the sidewalk and roadway seating would comply with design and siting criteria of the POR. Any non-complying structures would have to be removed. Since the continuation of any TOR seating would comply with the POR's siting criteria, rules, and regulations, such configurations are already captured in the RWCDs prototypes analyzed in the EAS, and this provision would not affect the RWCDs analyzed in the EAS.

D. CHANGES TO ANALYSIS METHODOLOGY

The EAS was prepared in accordance with the guidelines set forth in the *2020 CEQR Technical Manual*, which were the current guidelines at the time. Since that time (in December 2021), the City has published updates to the *CEQR Technical Manual*. The *2021 CEQR Technical Manual* provides the latest guidance and should be used for current environmental reviews. The *2021 CEQR Technical Manual* includes several revisions to the guidance for environmental review and changes to methodologies for various technical analyses as compared to the *2020 CEQR Technical Manual*. Additionally, the EAS assumed a 2022 analysis year, which at the time was the anticipated first full year of operation of the proposed POR program; however, it is currently anticipated that the POR program would not be implemented until 2024.

Most of the technical areas assessed in the EAS were not affected by the updated guidance and methodologies in the *2021 CEQR Technical Manual* or by the change in analysis year; however, the transportation analysis (specifically the pedestrian analysis), which was performed for a 2022 analysis year (or "horizon year") and conducted pursuant to *2020 CEQR Technical Manual* methodologies are evaluated below to determine the potential changes to the outcome of that analysis as a result of these updates.

TRANSPORTATION – PEDESTRIAN ANALYSIS

The methodology for applying a standard annual growth rate has not changed in the *2021 CEQR Technical Manual*, so an additional two years of background growth would be applied to 2022 pedestrian volumes to estimate 2024 analysis year conditions. The two years of additional growth to estimate pedestrian volumes for a 2024 analysis year (based on when the original data was collected) would result in a low-end range of 0.5 percent growth (according to the standard annual background growth rate beyond 5 years) for Manhattan, the Bronx, Downtown Brooklyn, Long Island City, Queens, and St. George, Staten Island; it would result in a high-end range of 2 percent growth for areas of Staten Island outside of St. George. However, as discussed in the EAS, aggregated pre-COVID (2016 to 2019) volumes were used to present existing volumes before being increased according to applicable standard annual growth rates to estimate 2022 conditions.

Based on NYCDOT's biannual pedestrian data collection, pedestrian volumes have not fully recovered to pre-COVID levels. As such, if new pedestrian counts were collected in 2023 and one year of standard annual growth rates were to be applied, the 2024 analysis year volumes would be lower than the 2022 volume projections in the EAS. Therefore, the 2022 horizon year analysis presented in the EAS represents a more conservative estimate of future pedestrian volumes than would be based on 2023 pedestrian counts increased to 2024, and no additional pedestrian analysis is necessary.

The *2021 CEQR Technical Manual* has updated the methodology for analyzing pedestrian operations in that it provides additional guidance on the shy distances to be assumed for calculating the effective width of sidewalks. However, the different methodologies result in the same total shy distance assumed in the previous EAS, so there would be no change in results from the previous conclusions based on the refined methodology on shy distance widths. There are no other differences in pedestrian sidewalk methodologies that would affect the EAS. Per the above discussion, the results presented in the EAS for 2022 conditions analyzed pursuant to *2020 CEQR Technical Manual* methodologies would be similar to 2024 conditions analyzed pursuant to *2021 CEQR Technical Manual* methodologies. Therefore, it can be concluded that there would be no changes to the findings of the EAS and no significant adverse pedestrian impacts would occur if the EAS assumptions were to be applied to methodologies in the *2021 CEQR Technical Manual* for a 2024 analysis year.

E. CONCLUSION

The Proposed Legislation being considered by City Council would not alter the development and operational assumptions in the RWCDs for the Approved Action evaluated in the EAS; therefore, like the Approved Action, the Proposed Legislation would not result in any significant adverse environmental impacts. In addition, neither the change from a 2022 to a 2024 implementation year nor the methodology updates provided in the *2021 CEQR Technical Manual* issued subsequent to the publication of the EAS would alter the findings of the EAS.

**TECHNICAL MEMORANDUM 001
PROPOSED CITY COUNCIL LEGISLATION
PERMANENT OPEN RESTAURANTS PROGRAM**

**APPENDIX 1
PROPOSED POR PROGRAM LEGISLATION**

Proposed Int. No. 31-C

By Council Members Velázquez, Powers, Menin and Brannan (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:

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

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

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

9 § 371. Public hearing on proposed agreement; publication of notice. The franchise
10 and concession review committee in the case of a franchise, or the responsible agency in the case
11 of a revocable consent, shall hold a public hearing on the proposed agreement memorializing the
12 terms and conditions of each proposed franchise or revocable consent before final approval of the
13 proposed franchise or consent. Any such public hearing conducted by the franchise and concession
14 review committee shall be held within thirty days of the filing with the committee by the
15 responsible agency of a proposed agreement containing the terms and conditions of the proposed
16 franchise. No hearing held by the franchise and concession review committee or by the responsible

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

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

4 1. Outdoor dining areas of restaurants [with no roof or other ceiling enclosure;
5 provided, however, that smoking, or using electronic cigarettes, may be permitted in a contiguous
6 outdoor area designated for smoking, or using electronic cigarettes, so long as such area: (i)
7 constitutes no more than twenty-five percent of the outdoor seating capacity of such restaurant;
8 (ii) is at least three feet away from the outdoor area of such restaurant not designated for smoking,
9 or using electronic cigarettes; and (iii) is clearly designated with written signage as a smoking area
10 or an area for using electronic cigarettes] including but not limited to any area operated by a
11 restaurant as a sidewalk cafe, or a roadway cafe, as those terms are defined in section 19-101.

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

16 § 19-101 Definitions. Whenever used in this title[:

17 a. "Commissioner" shall mean] the following terms have the following meanings:

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

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

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

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

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

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

15 [c. “Street” has the meaning ascribed thereto in subdivision thirteen of section 1-
16 112 of this code.

17 d. "Sidewalk"] Enclosed sidewalk cafe. The term “enclosed sidewalk cafe” shall
18 mean a sidewalk cafe that is constructed predominantly of light materials such as glass, slow-
19 burning plastic or lightweight metal pursuant to a permit issued by the department of buildings.

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

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

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

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

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

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

15 Sector. The term “sector” shall mean an area of the city, as determined by the
16 department, where the median annual rent charged for a square foot of a ground floor commercial
17 premises, in accordance with information published by the department of finance pursuant to
18 subdivision h of section 11-3101, is similar.

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

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

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

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

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

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

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

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

19 Street. The term “street” has the same meaning ascribed to such term in subdivision
20 13 of section 1-112 of this code.

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

Section of the Administrative Code	Maximum Civil Penalty (dollars)
<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>

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§ 6. Subchapter 1 of chapter 1 of title 19 of the administrative code of the city of New York is amended by adding seven 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

1 any such license at such a location for the operation of an enclosed sidewalk cafe shall be in
2 accordance with this section and section 19-160.2 of this code.

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

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

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

19 d. A license to operate a sidewalk cafe shall be granted after the review and approval
20 of a petition for a revocable consent to establish and operate such cafe pursuant to the provisions
21 of this subchapter and the rules of the department, except that a license to operate a sidewalk cafe
22 located entirely on a sidewalk widening shall be granted after review and approval of a petition for
23 a consent to operate such sidewalk cafe in accordance with the rules of the department, which shall

1 provide for notice of such petition to the affected community board and council member. A license
2 to operate a roadway cafe shall be granted after the review and approval of a petition for a
3 revocable consent to establish and operate such cafe pursuant to chapter 14 of the charter, the
4 provisions of this subchapter, and the rules of the department. An operator of a sidewalk cafe shall
5 cause the boundary of the area licensed as a sidewalk cafe to be marked and separated in a manner
6 prescribed pursuant to rules of the department. An operator of a roadway cafe shall cause the
7 boundary of the area licensed as a roadway cafe to be delineated and protected by barriers in a
8 manner prescribed in rules of the department.

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

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

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

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

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

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

16 § 19-160.1 Review and approval of petitions to establish and operate roadway
17 cafes.

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

21 b. The petition shall be in such form as prescribed by rules of the department and
22 shall include an accurate drawing depicting required clearances, the space to be occupied, and the
23 locations of tables, chairs, barriers and other permitted objects; provided, however, that the

1 department shall not require that such drawing be developed, reviewed or approved by an architect,
2 engineer, or other professional third party. The petition shall be reviewed by the department and
3 other relevant agencies as determined by the department.

4 c. A revocable consent for a roadway cafe shall provide for compensation to be paid
5 annually to the city during the continuance of the consent. Such annual compensation shall be
6 equivalent to the product of the fee rate and the square footage of a roadway cafe. There shall be
7 4 sectors, as described on the website of the department, provided that sectors 3 and 4 shall only
8 include the area south of and including 125th Street in the borough of Manhattan and the fee rate
9 for sector 1 shall apply to a minimum of 80 percent of the city. The fee rate for each sector shall
10 be as follows:

<u>Sector</u>	<u>Fee Rate</u>
<u>1</u>	<u>\$5</u>
<u>2</u>	<u>\$8</u>
<u>3</u>	<u>\$14</u>
<u>4</u>	<u>\$25</u>

11
12 d. A roadway cafe may not be operated prior to the approval of a petition for a
13 consent therefor by the department pursuant to chapter 14 of the charter, this section and any rules
14 promulgated by the department, except as otherwise provided by section 19-160.6.

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

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

4 § 19-160.2 Review and approval of petitions to establish and operate sidewalk
5 cafes. A petition for a revocable consent to establish and operate a sidewalk cafe shall be reviewed
6 and approved in the following manner:

7 a. The petition shall be in such form as prescribed by the department. The petition
8 shall include an accurate drawing depicting required clearances, the space to be occupied, and the
9 locations of tables, chairs, barriers and other permitted objects. Such drawing may be developed
10 by an architect, engineer, or other professional third party, or by the petitioner. The petition filed
11 with the department shall be complete and accurate, as determined by the department, and the
12 department shall, within 5 days of the filing of such complete and accurate petition, forward such
13 petition by electronic mail to the president of the borough in which the cafe is proposed to be
14 located, the speaker of the council and the council member in whose district the cafe is proposed
15 to be located, for information purposes, and to the community board for the community district in
16 which the cafe is proposed to be located, for review pursuant to subdivision b of this section.

17 b. The community board shall, not later than 40 days after receipt of such petition,
18 either (i) notify the public of the petition, conduct a public hearing thereon and submit a written
19 recommendation to the department and to the council or (ii) waive by a written statement its public
20 hearing and recommendation on such petition and submit such statement to the department and to
21 the council. The petitioner shall amend the petition if both the community board and the petitioner
22 agree to modifications in writing. Such modifications shall be reflected in the written
23 recommendations of the community board to the department and the council. If the community

1 board submits a recommendation on a petition after the 40 day time period has expired, such
2 recommendation may be accepted by the department at the sole discretion of the department.

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

10 2. The department shall hold a public hearing on a petition for a sidewalk cafe if (i)
11 a community board has submitted a recommendation to deny the petition; (ii) a community board
12 has submitted a recommendation to approve such petition with substantial modifications or
13 conditions and the petitioner does not agree to adopt such modifications; or (iii) the department
14 has determined that such a hearing would be beneficial to address a concern about the effect of a
15 sidewalk cafe at the proposed location. If the department holds such a public hearing, within 30
16 days after the expiration of the period allowed for the filing of a recommendation or waiver by the
17 community board pursuant to subdivision b of the section, or within 45 days after the expiration
18 of such period when the department plans to combine the public hearing on the petition with the
19 public hearing required on 1 or more additional petitions pursuant to paragraph 3 of this
20 subdivision, the department shall (i) hold a public hearing on the petition pursuant to subdivision
21 d of this section, (ii) approve the petition, disapprove it or approve it with modifications, and (iii)
22 file with the council any such decision to approve or approve with modifications, together with the
23 petition. Such approval or approval with modifications shall constitute final approval of the

1 revocable consent subject to review by the council or mayor pursuant to subdivisions e and f of
2 this section.

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

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

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

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

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

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

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

1 h. A revocable consent for a sidewalk cafe, or a consent to operate a sidewalk cafe
 2 located on a sidewalk widening, shall provide for compensation to be paid annually to the city
 3 during the continuance of the consent. Compensation shall be equivalent to the product of the fee
 4 rate and the square footage of a sidewalk cafe. There shall be 4 sectors, as described on the website
 5 of the department, provided that sectors 3 and 4 shall only include the area south of and including
 6 125th Street in the borough of Manhattan, and the fee rate for sector 1 shall apply to a minimum
 7 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>

8
 9 i. 1. Notwithstanding subdivision h of this section, a revocable consent for an
 10 enclosed sidewalk cafe shall provide for compensation to be paid annually to the city during the
 11 continuance of the consent at the rate required to be paid for such cafe as of March 16, 2020
 12 pursuant to the rules of the department of consumer and worker protection in effect prior to the
 13 date this section takes effect.

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

17 j. Notwithstanding subdivision a through g of this section, a petition for a consent
 18 to establish a sidewalk cafe located entirely on a sidewalk widening, as demonstrated to the

1 satisfaction of the department, shall be reviewed and approved in accordance with the rules of the
2 department.

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

5 § 19-160.3 Alcohol consumption in a sidewalk or roadway cafe. Notwithstanding
6 any other provision of this code, beer and alcoholic beverages may be served in a sidewalk cafe or
7 roadway cafe to the extent permitted by state law.

8 § 19-160.4 No advertising in a sidewalk or roadway cafe. No advertising sign,
9 picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign,
10 shall be placed or painted on or affixed to any awning, screen or other appurtenance used in
11 connection with a sidewalk cafe or roadway cafe, except that the name of the restaurant, the logo
12 of the restaurant, the menu and information on the services provided by the restaurant may be
13 painted, imprinted or otherwise displayed in a manner prescribed by rules promulgated by the
14 department.

15 § 19-160.5 Violations; penalties for a sidewalk or roadway cafe. a. Any person
16 found to be operating an unlicensed sidewalk cafe or unlicensed roadway cafe shall be subject to
17 civil penalties as described in section 19-150 and enforcement pursuant to section 19-151. For
18 purposes of this section, any violation for operating an unlicensed sidewalk cafe or unlicensed
19 roadway cafe shall be included in determining the number of violations by any subsequent license
20 holder at the same place of business unless the subsequent license holder provides the department
21 with adequate documentation demonstrating that the subsequent license holder acquired the
22 premises or business through an arm's length transaction as defined in subdivision d of this section

1 and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the
2 original license holder to avoid the effect of violations on the premises.

3 b. Any holder of a license to operate a sidewalk cafe or a roadway cafe license shall
4 be subject to the civil penalties described in section 19-150 and enforcement pursuant to section
5 19-151 where such holder is found to be operating such cafe in violation of: (i) any provision of
6 section 19-160 through 19-160.6 or any rule promulgated thereunder, (ii) the terms or conditions
7 of such license, or (iii) the terms or conditions of a revocable consent to operate such cafe.

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

15 d. For purposes of this section, a subsequent license holder shall be liable for
16 violations by a prior license holder unless the subsequent license holder provides the department
17 with adequate documentation demonstrating that the subsequent license holder acquired the
18 premises or business through an arm's length transaction and that the sale or lease was not
19 conducted, in whole or in part, for the purpose of permitting the original license holder to avoid
20 the effect of violations on the premises. For purposes of this subdivision, the term "arm's length
21 transaction" means a sale of a fee or all undivided interests in real property, or lease of any part
22 thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair
23 market value of such real property, lease or business in the open market between 2 informed and

1 willing parties, where neither party is under any compulsion to participate in the transaction,
2 unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was
3 made for the purpose of permitting the original licensee to avoid the effect of violations on the
4 premises. The following sales or leases shall be presumed not to be arm's length transactions unless
5 adequate documentation is provided demonstrating that the sale or lease was not conducted, in
6 whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations
7 on the premises:

8 (1) a sale between relatives;

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

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

13 e. Corrective action request. Notwithstanding subdivision b of this section, if the
14 department finds that any holder of a license to operate a sidewalk cafe or roadway cafe has
15 violated for the first time (i) any provision of section 19-160 through 19-160.6 or any rule
16 promulgated thereunder, or (ii) the terms or conditions of such license, the department shall notify
17 such license holder of such violation and request that action be taken to correct such violation
18 within 30 days and shall afford such licensee an opportunity to contest the department's finding in
19 a manner set forth in rules of the department. Nothing in this subdivision prohibits the department
20 from issuing a notice of violation for any such violation that has not been corrected within such 30
21 days.

22 f. Notwithstanding any inconsistent provision of this section, the decision to
23 suspend or revoke a license shall be waived if, upon the submission of satisfactory proof, the

1 department determines that the person or persons who committed the violations which are the basis
2 for the suspension or revocation acted against the licensee's instructions in committing such
3 violations.

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

1 sidewalk or roadway that the commissioner determines is a danger to public welfare, safety, or
2 energy system reliability, including planned or emergency utility work.

3 § 19-160.6. Temporary authorization to operate. a. Where an applicant for a license
4 to operate a sidewalk cafe or a roadway cafe submits a petition for a revocable consent to operate
5 a sidewalk cafe or roadway cafe for which a revocable consent granted to another person has lapsed
6 or was terminated, the commissioner may authorize such applicant to operate the sidewalk cafe or
7 roadway cafe at such premises pending the approval of a revocable consent for operating such
8 cafe, provided that the plans for the cafe are the same as the cafe for which a revocable consent to
9 operate had previously been granted and, if it is an enclosed sidewalk cafe, that the structure is the
10 same for which consent was previously granted, and, provided further that such applicant makes a
11 good faith effort to be granted a revocable consent to operate such sidewalk cafe or roadway cafe.
12 For the purposes of this section, the commissioner may not authorize an applicant to operate a
13 sidewalk cafe or a roadway cafe if the original consent has been expired for more than 2 years
14 from the date of the submission of the petition of such applicant.

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

1 modifications and the petitioner has accepted such modifications in accordance with such
2 subdivision.

3 § 19-160.7. Report on compensation for revocable consent to operate sidewalk and
4 roadway cafes. No later than May 1, 2027, and every 4 years thereafter, the commissioner shall
5 submit a report to the speaker of the council and the mayor on the changes to the median annual
6 rent charged for a ground floor commercial premises for each sector, the corresponding percent
7 land area for each sector, the number of restaurants operating sidewalk and/or roadway cafes in
8 each sector, and the square footage of each sidewalk and roadway cafe in operation. The
9 commissioner may include with any such report a recommendation to increase or decrease the fee
10 rate or adjust the sectors.

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

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

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

- 20 1. The use of roadway seating for outdoor dining; and
21 2. [The use of a pedestrian plaza, or other public outdoor location for outdoor
22 dining; and

1 3.] Accessibility for people with disabilities in compliance with applicable federal,
2 state and local law.

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

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

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

19 § 11. Any restaurant that had operated outdoor dining pursuant to emergency
20 executive order number 126, dated June 18, 2020, as amended and continued by subsequent
21 executive orders, whose outdoor dining is located within or adjacent to a structure that does not
22 comply with rules of the department of transportation relating to the design of roadway cafes and
23 sidewalk cafes shall remove such structure no later than 30 days after the determination of the

1 department to grant or deny such revocable consent for such sidewalk cafe or roadway cafe.
2 Notwithstanding the preceding sentence, all such structures shall be removed no later than
3 November 1, 2024.

4 § 12. Interagency cooperation. Agencies including, but not limited to, the
5 department of sanitation, the police department, the department of health and mental hygiene, and
6 the department of homeless services, shall cooperate with the department of transportation in the
7 enforcement of this local law and any rules adopted by the department of transportation pursuant
8 to this local law. Further, the department of transportation shall consult with agencies,
9 commissions and offices including, but not limited to, the department of consumer and worker
10 protection, the department of city planning, the department of environmental protection, the
11 department of buildings, the department of design and construction, the department of health and
12 mental hygiene, the department of parks and recreation, the department of sanitation, the fire
13 department, the department of small business services, the landmarks preservation commission,
14 the art commission, the office of emergency management, the mayor's office of media and
15 entertainment, the mayor's office of people with disabilities, and the mayor's office of citywide
16 event coordination and management, with respect to the adoption of such rules, as well as outreach
17 and education targeted at food service establishments throughout the city in relation to the process
18 for obtaining a license and revocable consent for sidewalk and roadway cafes, as well as relevant
19 deadlines pertaining to application submissions and removal of any street furniture or materials in
20 violation of rules promulgated pursuant to this local law. Such outreach and education shall be
21 made available in the 6 most commonly spoken languages in the city pursuant to city planning.

22 § 13. Map. Within 12 months of the effective date of section 19-160 of the
23 administrative code of the city of New York, as added by section six of this local law, the

1 department of transportation shall develop a map on its website that shows the location and name
2 of each restaurant that has obtained a license and revocable consent to operate a sidewalk cafe or
3 a roadway cafe; a copy of the drawing required to be submitted with the petition for a revocable
4 consent for a roadway cafe pursuant to the rules of the department; a copy of the drawing required
5 to be submitted with the petition for a revocable consent for a sidewalk cafe pursuant to subdivision
6 a of section 19-160.2 of the administrative code of the city of New York, as added by section six
7 of this local law, and a history of any inspections of such sidewalk cafe or roadway cafe by such
8 department.

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

16 § 15. Task force. The department of transportation shall convene a working group
17 task force to facilitate the transition of authority from the department of consumer and worker
18 protection to the department of transportation for the granting of licenses and revocable consents
19 for sidewalk cafes. Such task force shall consist of members of the department of transportation,
20 the department of consumer and worker protection, and the department of city planning, as
21 designated by the commissioner of each such department. Such task force shall hold its first
22 meeting no later than 30 days after the effective date of this section, and shall thereafter meet no

1 less than quarterly until March 31, 2025, after which date it shall be disbanded. Such task force
2 shall consult with representatives of the restaurant industry and other interested community groups.

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

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

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

19 § 19. No action or proceeding, civil or criminal, pending at the time when section
20 19-160 of the administrative code of the city of New York, as added by section six of this local
21 law, takes effect, brought by or against the city or any agency or officer, shall be affected or abated
22 by the adoption of this local law or by anything herein contained; but all such actions or
23 proceedings may be continued notwithstanding that functions, powers and duties of any agency or

1 officer party thereto may by or pursuant to this local law be assigned or transferred to another
2 agency or officer, but in that event the same may be prosecuted or defended by the head of the
3 agency or the officer to which such functions, powers and duties have been assigned or transferred
4 by or pursuant to this local law.

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

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

13 § 22. This local law takes effect as follows:

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





1 70-b of the public officers law, and the corporation counsel shall notify relevant publishers in
2 furtherance of effectuating the provisions of section 7-111 of the administrative code, provided
3 that failure to provide the notifications described in this section shall not affect the effective date
4 of any section of this local law; and

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

**TECHNICAL MEMORANDUM 001
PROPOSED CITY COUNCIL LEGISLATION
PERMANENT OPEN RESTAURANTS PROGRAM**

**APPENDIX 2
PROPOSED POR PROGRAM REVOCABLE CONSENT
FEE SECTOR MAP**

Draft Fee Zones

	Fee per square foot	
	Sidewalk	Roadway
	\$6	\$5
	\$10	\$8
	\$18	\$14
	\$31	\$25

