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Title: A Local Law to amend the administrative code of the city of New York, in relation to sidewalk cafes, and to repeal subdivisions (c), (d) and (l) of section 20-226 of such code.

Sponsors: Melinda R. Katz, Philip Reed, Tony Avella, Michael C. Nelson, David I. Weprin, Alan J. Gerson, Eva S. Moskowitz, (by request of the Mayor)

Indexes:

Attachments: 1. Committee Report 12/12/02, 2. Hearing Transcript 12/12/02, 3. Committee Report 1/22/03, 4. Hearing Transcript 1/22/03, 5. Hearing Transcript - Stated Meeting - 1/29/03, 6. Fiscal Impact Statement, 7. Local Law

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| 10/23/2002 | * | City Council | Referred to Comm by Council | |
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| 12/12/2002 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
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| 12/12/2002 | * | Committee on Consumer Affairs | Hearing Held by Committee | |
| 1/14/2003 | * | Subcommittee on Zoning and Franchises | Hearing Held by Committee | |
| 1/14/2003 | * | Subcommittee on Zoning and Franchises | Approved by Subcommittee | Pass |
| 1/16/2003 | * | Committee on Land Use | Approved by Committee with Companion Resolution | Pass |
| 1/16/2003 | * | Committee on Land Use | Hearing Held by Committee | |
| 1/22/2003 | * | Committee on Consumer Affairs | Hearing Held by Committee | |
| 1/22/2003 | * | Committee on Consumer Affairs | Approved by Committee | Pass |
| 1/29/2003 | * | City Council | Approved by Council | Pass |
| 1/29/2003 | * | City Council | Approved by Council | Pass |
| 1/29/2003 | * | City Council | Sent to Mayor by Council | |
| 2/10/2003 | * | Mayor | Signed Into Law by Mayor | |
| 2/10/2003 | * | City Council | Recved from Mayor by Council | |

Int. No. 294

By Council Members Katz, Reed, Avella, Nelson, Weprin, Gerson and Moskowitz (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to sidewalk cafes, and to repeal subdivisions (c), (d) and (l) of section 20-226 of such code.

Be it enacted by the Council as follows:

Section 1. Subdivision a of section 20-223 of the administrative code of the city of New York is amended to read as follows:

a. “Sidewalk café” shall mean a portion of [an eating or drinking place] a restaurant operated under permit from the department of health and mental hygiene, located on a public sidewalk, that is either an enclosed or unenclosed sidewalk café.

§ 2. Subdivisions a and b of section 20-224 of the administrative code of the city of New York, subdivision b as amended by local law number 70 for the year 1990, are amended to read as follows:

a. Any person owning, leasing, managing or operating [an apartment house, apartment hotel, store, café,] a restaurant under permit from the department of health and mental hygiene [or hotel] upon property which abuts upon any street within the city may maintain or operate upon the sidewalk of such street in an area immediately adjacent to its premises, a sidewalk café, provided that such sidewalk café shall be [licensed] granted a license and a revocable consent by the commissioner.

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) and maintenance of any sidewalk café, 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 café shall be issued after the review and approval of a petition for a revocable consent to construct and operate such sidewalk café pursuant to the provisions of section 20-225, 20-226 or 20-227 of this subchapter. The operator of a sidewalk café under license from the commissioner shall cause the boundary of the area licensed as a sidewalk café to be

marked in a manner prescribed under rules promulgated by the commissioner.

§ 3. Subdivision d of section 20-224 of the administrative code of the city of New York, as amended by local law number 70 for the year 1990, is amended to read as follows:

d. The fee for such license shall be at the rate of [twenty-seven dollars for each table; provided; however, that in no case shall there be a fee of less than one hundred thirty-five dollars for each such license] five hundred and ten dollars for a two-year license. [Each table shall be designed to seat no more than six persons.] 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 café or any other applicable fee.

§ 4. Subdivision e of section 20-224 of the administrative code of the city of New York is amended to read as follows:

e. A licensee must provide waiter or waitress service to patrons in the sidewalk café if alcohol is served. If no alcohol is served at the restaurant, a licensee must provide adequate service to maintain tables in the sidewalk cafe and the adjacent sidewalk in a manner that ensures good order and cleanliness.

§ 5. Subdivision a of section 20-225 of the administrative code of the city of New York, as amended by local law number 70 for the year 1990, is amended to read as follows:

a. The petition shall be in such form as prescribed by the department [after consultation with the department of city planning, the department of transportation, the department of environmental protection, and the landmarks preservation commission]. 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 transportation,] 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 café is proposed to be located, for informational purposes.

§ 6. Subdivisions e, f and g of section 20-225 of the administrative code of the city of New York, subdivision e as amended and subdivisions f and g as added by local law number 70 for the year 1990, are amended to read as follows:

e. The community board shall, not later than [sixty] forty-five 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 [of transportation] 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 [of transportation] and to the council.

f. Within [sixty] thirty days after the expiration of the [sixty-day] forty-five day period allowed for the filing of a recommendation or waiver by the community board, the department [of transportation] 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. If within the time period provided, the department [of transportation] fails to take the actions on a petition provided for in the preceding sentence, the petition shall be deemed to have been denied. 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 café. At least fifteen days prior to the date of such hearing, the department [of transportation] shall give notice to the community board for the district in which the café is proposed to be located, to the president of the borough in which the café is proposed to be located and to the council member in whose district the café 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 café 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 [of transportation] shall be forwarded to the mayor for approval pursuant to subdivision i of this section.

§ 7. Subdivisions i and j of section 20-225 of the administrative code of the city of New York, subdivision i as amended and subdivision j as added by local law number 70 for the year 1990, are amended to read as follows:

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 [of transportation], 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 [of transportation]. The separate and additional approval of the mayor shall be necessary to its validity.

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. [On or before May 1, 1991, the] The department [of transportation] shall file with the council a written recommendation for a formula to be used to calculate such fees.

§ 8. Subdivisions a and b of section 20-226 of the administrative code of the city of New York are amended to read as follows:

a. The petition shall be in such form as prescribed by the department [after consultation with the department of city planning, the department of transportation, the department of environmental protection, and the landmarks preservation commission. 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 transportation, the department of environmental protection and the landmarks preservation commission for review pursuant to subdivision c of this section]. The department shall forward copies of the petition, within five days of the filing of such petition, to the speaker of council and the council member in whose district the

café is proposed to be located, for information purposes, and to the community board for the community district in which the café is proposed to be located, for review pursuant to subdivision b of this section.

b. The community board shall, not later than [sixty] forty-five 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 [of transportation] 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 [of transportation] and to the council. The petitioner shall amend the petition if both the community board and the petitioner agree to modifications in writing. Such modifications shall be reflected in the written recommendations of the community board to the department and the council.

§ 9. Subdivisions c, d and l of section 20-226 of the administrative code of the city of New York are REPEALED.

§ 10. Subdivisions e, f, g, h, j and k of section 20-226 of the administrative code of the city of New York, subdivisions f, g, h, i and j as added by local law number 70 for the year 1990 and subdivision k as amended by local law 10 for the year 1991, are amended to read as follows:

[e. If any agency objections to the petition exist, other than an objection of the community board, review of the petition shall be stayed until the objections are resolved, and the department shall inform the petitioner of the objections and of the stay. If the objections are not resolved within thirty days 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] c. The department [of transportation] shall hold a public hearing pursuant to subdivision [f] d of this section and approve the petition, disapprove it or approve it with modifications within [sixty] thirty days [after the last to occur] of [(i)] the expiration of the [sixty-day] forty-five-day period allowed for the filing of a recommendation by the community board[or (ii) the date on which the agency objections are resolved pursuant to this section]. If

within the time period provided, the department [of transportation] fails to take the actions on a petition provided for in the preceding sentence, the petition shall be deemed to have been denied. Within the [sixty-day] thirty-day time period provided for in this subdivision, the department [of transportation] shall file with the council any such decision to approve or approve with modifications, together with the petition.

[f.] d. The department [of transportation] 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 café. At least fifteen days prior to the date of the hearing, the department [of transportation] will give notice to the community board for the district in which the café is proposed to be located, to the president of the borough in which the café is proposed to be located and to the council member in whose district the café 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 café is proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

[g.] e. Within twenty days of the date the petition is received by the council pursuant to [subdivisions d or e] 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 [of transportation] shall be forwarded to the mayor for approval pursuant to subdivision [1] g of this section.

[h.] f. If the council resolves to review a petition pursuant to subdivision [g] 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 within fifty days of the filing of the petition with the council pursuant to subdivision [d or e] 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.

[i.] 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 [of transportation], as such approval may be modified by action of the council pursuant to subdivision [h] f of this section, but shall be revocable at any time by the department [of transportation]. The separate and additional approval of the mayor shall be necessary to its validity.

[j.] 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. [On or before May 1, 1991, the] The department [of transportation] shall file with the council a written recommendation for a formula to be used to calculate such fees.

[k.] i. An unenclosed sidewalk café may not be opened or operated prior to the approval of the consent therefor by the department [of transportation] pursuant to this section.

§ 11. Section 20-227 of the administrative code of the city of New York, as amended by local law 10 for the year 1991, 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 café 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 [of transportation]. The consent shall be for such term and upon such conditions as may be provided in the approval of the department [of transportation] but shall be revocable at any time by the department [of transportation]. The separate and additional approval of the mayor shall be necessary to its validity. 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[(j)](h).

§ 12. Subchapter 6 of chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new section 20-227.1 to read as follows:

§ 20-227.1. a. Any person found to be operating an unlicensed sidewalk café shall be liable for a civil penalty of at least two hundred and not more than one thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a two-year period. For purposes of this section, any violation for operating an unlicensed sidewalk café shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises.

b. Any holder of a license found to be operating a sidewalk café in violation of this subchapter, the terms and conditions of such license and/or a revocable consent or rules promulgated by the commissioner pursuant to this subchapter, shall be liable for a civil penalty of at least two hundred and not more than one

thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation, and at least one thousand and not more than four thousand dollars for each subsequent violation at the same place of business within a two-year period. In addition, for a third violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a two-year period, any person licensed to operate a sidewalk cafe at such place of business shall be subject to suspension or revocation of his or her sidewalk café license for such place of business. For purposes of this section, any such violation by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises. A sidewalk café license shall be suspended or revoked at the same hearing at which a person is found liable for a third violation or subsequent violations at the same place of business within a two-year period.

c. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivisions a or b of this section shall be commenced by service of a notice of violation which shall be returnable to the adjudication division of the department. Such notice shall contain a statement that any hearing for a third violation or subsequent violations of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner under this subchapter at the same place of business within a two-year period shall also constitute a hearing for the suspension or revocation of a license.

d. The penalties provided by subdivisions a and b of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

e. In addition to any other enforcement procedures authorized by this subchapter or any other

provision of law or rule, the commissioner after notice and a hearing shall be authorized to order that any sidewalk café and the restaurant of which it is a portion be sealed for a period not to exceed thirty consecutive days. Such notice may be included with notice of any hearing for a second violation for operating an unlicensed sidewalk café as provided in subdivision a of this section, or a third violation of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner, as provided in subdivision b of this section. For purposes of this subdivision, any such violations at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises. The procedures provided for in subdivisions c and e through j of section 20-105 of this title shall apply to an order by the commissioner for sealing of a sidewalk café and the restaurant of which it is a portion.

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

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

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

g. Notwithstanding the provisions of subdivisions a or b of this section, the suspension or revocation of a license for a subsequent offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the suspension or revocation acted against the licensee's will in committing such violations.

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

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

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

§ 16. No action or proceeding, civil or criminal, pending at the time when this local law shall take effect, brought by or against the city or any agency or officer, shall be affected or abated by the adoption of

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

§ 17. Any license, permit or other authorization in force on the effective date of this local law, and issued by an agency, where the power of such agency to issue such license, permit or authorization is assigned by or pursuant to this local law to another agency or officer, shall continue in force as the license, permit or authorization of such other agency, or officer, except as such license, permit or authorization may expire or be altered, suspended or revoked by the appropriate agency or office pursuant to law. Such license, permit or authorization shall be renewable in accordance with the applicable law by the agency or officer with such power pursuant to law, including this local law.

§ 18. The provisions of this local law shall be severable and if any phrase, clause, sentence, paragraph, subdivision or section of this local law, or the applicability thereof to any person or circumstance shall be held invalid, the remainder of this local law and the application thereof shall not be affected thereby.

§ 19. This local law shall apply to all licenses, permits or other authorizations in force as of its effective date.

§ 20. This local law shall take effect on the later of the date 45 days after its enactment into law or the date upon which amendments to Chapter 4 of Article I of the Zoning Resolution, relating to sidewalk cafe regulations, are adopted, whichever date is later, provided that the City agencies affected, including, but not limited to, the department of consumer affairs and the department of transportation, may take any actions necessary to effectuate the provisions of this local law prior to its effective date, including promulgation of rules prior to such effective date.