



Legislation Text

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Preconsidered Int. No. 31

By Council Members Velázquez, Powers and Menin (by request of the Mayor)

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

Be it enacted by the Council as follows:

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

e. Notwithstanding any provision of this charter or the administrative code, revocable consents to construct and operate sidewalk cafes shall be reviewed pursuant to [subchapter six of chapter two of title twenty] sections 19-160 through 19-160.5 of the administrative code.

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

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

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

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

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

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

§ 4. Section 19-101 of the administrative code of the city of New York is amended by adding new subdivisions i through n to read as follows:

i. “Enclosed sidewalk cafe” shall mean a sidewalk cafe that is constructed predominantly of light materials such as glass, slow-burning plastic or lightweight metal pursuant to a permit issued by the department of buildings.

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

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

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

m. “Roadway cafe” shall mean a portion of a ground floor restaurant that is located in the curb lane or parking lane of a roadway adjacent to the curb fronting the restaurant and is designed and operated pursuant to rules of the department.

n. “Sidewalk cafe” shall mean a portion of a ground floor restaurant that is located on a sidewalk in front of the restaurant and is designed and operated pursuant to rules of the department.

§ 5. Subchapter 1 of chapter 1 of title 19 of the administrative code of the city of New York is amended by adding new sections 19-160, 19-160.1, 19-160.2, 19-160.3, 19-160.4 and 19-160.5 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 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 be granted a license and a revocable consent by the commissioner. Notwithstanding the preceding sentence, no such license shall be granted or renewed, or revocable consent be granted, 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 four years prior to such date. Granting or renewal of any such license or granting of any such revocable consent at such location for the operation of an enclosed sidewalk cafe shall be in accordance with section 19-160 and section 19-160.2 of this code.

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

c. A license to operate a sidewalk cafe shall be granted after the review and approval of a petition for a revocable consent to establish and operate such cafe pursuant to the provisions of this subchapter

and the rules of the department. A license to operate a roadway cafe shall be granted after the review and approval of a petition for a revocable consent to establish and operate such cafe pursuant to chapter 14 of the charter, the provisions of this subchapter, and the rules of the department. An operator of a sidewalk cafe or roadway cafe who is licensed by the commissioner shall cause the boundary of the area licensed as a sidewalk cafe or roadway cafe to be marked in a manner prescribed pursuant to rules of the department.

d. No license or revocable consent shall be granted for a sidewalk cafe or roadway cafe located in a historic district, on a landmark site or attached or adjacent to a landmark or an improvement containing an interior landmark without the applicant for such license or revocable consent having obtained the approval of the landmarks preservation commission.

e. No license or revocable consent shall be granted for a sidewalk cafe or roadway cafe which obstructs the means of egress from any portion of a building.

f. There shall be separate fees for a sidewalk cafe license and a roadway cafe license. The fee for a license to establish and operate a sidewalk cafe shall be \$1,050, and the fee for a renewal of such license shall be \$525, for each license period. The fee for a license to establish and operate a roadway cafe shall be \$1,050, and the fee for a renewal of such license shall be \$525, for each license period. Such license and renewal fees shall be in addition to the amount required to be paid upon approval of a petition for a revocable consent, or renewal thereof, to establish and operate a sidewalk cafe or roadway cafe.

g. The terms of a license and renewal thereof shall be established by rules of the department.

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

i. Where in accordance with applicable law alcohol may be served at a ground floor restaurant, a licensee must provide table service to patrons seated in the sidewalk cafe or roadway cafe.

j. The license to establish and operate a sidewalk cafe or a roadway cafe shall be personal to the applicant and may not be sold, leased or transferred and shall be deemed revoked by the sale or transfer of the

lease or of title to the building or structure to which the sidewalk cafe or roadway cafe is related.

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

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

b. The petition shall be in such form as prescribed by the department and established by rule and shall be reviewed by the department and other relevant agencies as determined by the department.

c. Revocable consents for roadway 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, which shall apply uniformly to all revocable consents for roadway cafes.

d. A roadway cafe may not be opened or operated prior to the approval of a petition for a consent therefor by the department pursuant to this section and any rules promulgated by the department.

e. The department shall provide notice of a petition for a revocable consent for a roadway cafe to the affected community board, in a manner prescribed in the department's rules.

f. A revocable consent granted pursuant to this section may be renewed pursuant to rules of the department.

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

a. The petition shall be in such form as prescribed by the department. The department shall forward copies of the petition, within five days of the filing of such petition, to the president of the borough in which the cafe is proposed to be located, the speaker of the council and the council member in whose district the cafe is proposed to be located, for information purposes, and to the community board for the community

district in which the cafe is proposed to be located, for review pursuant to subdivision b of this section.

b. The community board shall, not later than 30 days after receipt of such petition, either (i) notify the public of the petition, conduct a public hearing thereon and submit a written recommendation to the department and to the council or (ii) waive by a written statement its public hearing and recommendation on such petition and submit such statement to the department and to the council. The petitioner shall amend the petition if both the community board and the petitioner agree to modifications in writing. Such modifications shall be reflected in the written recommendations of the community board to the department and the council. If the community board submits a recommendation on a petition after the 30-day time period has expired, such recommendation may be accepted by the department at the sole discretion of the department.

c. Within 30 days after the expiration of the period allowed for the filing of a recommendation or waiver by the community board pursuant to subdivision b of this section, the department shall (i) hold a public hearing on the petition, provided that such hearing is required pursuant to subdivision d of this section, (ii) approve the petition, disapprove it or approve it with modifications, and (iii) file with the council any such decision to approve or approve with modifications, together with the petition.

d. The public hearing described by subdivision c of this section shall be held when (i) the community board has submitted a recommendation to deny such petition or (ii) the community board has submitted a recommendation to approve such petition with modifications or conditions. Such hearing may also be held when the department determines that such hearing would be beneficial to address a concern with the effect of the proposed sidewalk cafe at the proposed location. One or more petitions may be heard at the same public hearing upon a determination that doing so is in the public interest. For a period of not less than 15 calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk cafe. At least 15 days prior to the date of the hearing, the department will give notice to the community board for the district in which the cafe is proposed to be located, to the president of the borough in which the cafe is proposed to be located and to the

council member in whose district the cafe is proposed to be located. Not less than five calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in the print or online edition of one newspaper of local circulation in the community where the cafe is proposed to be located.

e. Within 20 days of the date the petition is received by the council pursuant to subdivision c of this section, the council may resolve by majority vote of all the council members to review the petition. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision g of this section, unless, in accordance with such subdivision, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required.

f. If the council resolves to review a petition pursuant to subdivision e of this section, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing. The council shall take final action on the petition and shall file with the mayor its resolution, if any, with respect to the petition, except that if, in accordance with subdivision g of this section, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required, the council shall file its resolution with the department. Such filing of the resolution shall take place within 35 days of the filing of the petition with the council pursuant to subdivision c of this section. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove the petition. Any modification by the council shall not affect the terms of any proposed revocable consent agreement which relate to term, compensation, revocability, exclusivity, security, insurance, indemnification, erection, operation, maintenance or removal of any structure, right of access by the city and rights of abutting property owners. If within the time period provided for in this subdivision, the council fails to act or fails to act by the required vote on a petition, the council shall be deemed to have approved the petition. If within the time period provided for in this subdivision, the council approves the petition with modifications, the petitioner shall accept such modifications within 15 days of such approval, or the council shall be deemed to have denied the petition.

g. (1) The term of the revocable consent shall be one license period and shall be concurrent with

such license period. The term of the renewal of such revocable consent shall be two consecutive license periods and shall be concurrent with such license periods.

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

h. 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, which shall apply uniformly to all consents for sidewalk cafes.

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

j. A revocable consent granted pursuant to this section may be renewed pursuant to rules promulgated by the department.

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

§ 19-160.4 No advertising in a sidewalk or roadway cafe. No advertising sign, picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign, shall be placed or painted on or affixed to any awning, screen or other appurtenance used in connection with a sidewalk cafe or roadway cafe, except that the name of the establishment may be painted, imprinted or otherwise displayed in a manner prescribed by rules promulgated by the department.

§ 19-160.5 Violations; penalties for a sidewalk or roadway cafe. a. Any person who violates the provisions of section 19-160, 19-160.1, 19-160.2, 19-160.3 or 19-160.4 or any rule of the department adopted

pursuant to such section shall be subject to penalties and enforcement pursuant to sections 19-150 and 19-151.

b. In addition to any other enforcement procedures authorized by this subchapter, the department may, after providing notice and an opportunity to be heard, suspend or revoke a license to operate a sidewalk or roadway cafe and order the removal or sealing of such sidewalk or roadway cafe for three or more violations of this subchapter or rules of the department within a two year period

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

(1) a sale between relatives;

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

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

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

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

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

REPEALED.

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

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

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

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

f. Expiration. The outdoor restaurants program established pursuant to this local law shall remain in effect until [September 30, 2021] revocation or expiration of authorization for an outdoor dining program pursuant to mayor's emergency executive order number 126, as amended and continued by subsequent emergency executive orders, or an earlier date determined in accordance with the rules of the department of transportation adopted in accordance with section 19-160 of the administrative code of the city of New York, as added by section five of a local law for the year 2022 amending the New York city charter and the administrative code of the city of New York, relating to a permanent outdoor dining program, as proposed in introduction number XXX.

§ 9. Any restaurant operating outdoor dining pursuant to emergency executive order number 126, as amended and continued by subsequent executive orders, may continue in operation after the effective

date of this local law without the license and revocable consent of the commissioner of transportation required by sections 19-160 and 19-160.1 of the administrative code, as added by section five of this local law, provided that such restaurant submits a petition for such revocable consent within a period of time after such effective date, as set forth in the rules of the department of transportation, and further provided that upon the expiration of such emergency executive order, any restaurant operating outdoor dining pursuant to such emergency executive order that has not been issued a license and revocable consent by the commissioner of transportation must cease the operation of such outdoor dining and must remove from the sidewalk and roadway all structures, equipment and other obstructions used for the operation of such outdoor dining.

§ 10. Any restaurant operating outdoor dining pursuant to emergency executive order number 126, as amended and continued by subsequent executive orders, whose outdoor dining is located within or adjacent to a structure that does not comply with rules of the department of transportation relating to the design of roadway cafes and sidewalk cafes shall remove such structure within 90 days after the date such rules take effect.

§ 11. 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.

§ 12. 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.

§ 13. 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.

§ 14. 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.

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

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

§ 17. This local law takes effect on the later of the date 180 days after it becomes law or the date upon which amendments to chapter 4 of article I of the New York city zoning resolution, relating to sidewalk cafe regulations, are adopted, provided that the city agencies affected, including, but not limited to, the department of consumer and worker protection 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 and, provided further that upon the determination of the effective date pursuant

to this section, the commissioner of transportation shall notify the corporation counsel, who shall notify the New York state legislative bill drafting commission, in order that the commission may maintain an accurate and timely effective database of the official text of the New York city charter and administrative code of the city of New York in furtherance of effectuating the provisions of section 70-b of the public officers law, and the corporation counsel shall notify relevant publishers in furtherance of effectuating the provisions of section 7-111 of the administrative code, and provided further that failure to provide the notifications described in this section shall not affect the effective date of any section of this local law.