



Legislation Text

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Proposed Int. No. 31-A

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 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. Section 13-e of the New York city charter, as added by local law number 18 for the year 2021, is amended to read as follows:

§ 13-e Office of street [vendor] commerce enforcement. There shall be an office of street [vendor] commerce enforcement, which shall consist of enforcement agents who are specially trained in local laws and rules related to sidewalk cafes, roadway cafes and vending on the streets and sidewalks of the city of New York. The office of street [vendor] commerce enforcement shall be fully operational on or before September 1, 2021 and shall commence enforcement activities on or before such date, except that enforcement activity related to sidewalk and roadway cafes shall begin no later than January 1, 2023. Such enforcement activities shall, at a minimum, include a sufficient number of street patrols to inspect or examine the vending and cafe activities of at least 75 percent of applicable permittees or licensees on an annual basis. For the purposes of this section, the term "applicable permittees or licensees" means persons issued full-term or temporary permits pursuant to section 17-307 of the administrative code, or persons issued licenses to vend or operate a sidewalk or roadway café pursuant to sections 17-307, [or] 17-307.1, 20-456 or subchapter 6 of chapter 2 of title 20 of the administrative code], or licenses issued pursuant to section 20-456 of the

administrative code]. [The mayor may establish such office in the executive office of the mayor, within any other office in the executive office of the mayor, or within any department, the head of which is appointed by the mayor.] Such office shall be established within the department of consumer and worker protection, but may be assisted by any office or department designated by the mayor. Such office shall have the power and duty to:

a. enforce all local laws and rules related to sidewalk and roadway cafes and vending on the streets and sidewalks of the city of New York, other than such local laws and rules related to food safety, including, but not limited to: section 16-118, subchapter 2 of chapter 3 of title 17, [subchapter] subchapters 6 and 27 of chapter 2 of title 20 and chapter 1 of title 24 of the administrative code; article 89 of the health code; and any rules of the city of New York implementing such laws;

b. focus its enforcement efforts with respect to vendors on areas including, but not limited to, areas adjacent to retailers that dedicate substantial floor area to the sale of fresh fruits and vegetables, and any other areas identified by the department of transportation as excessively congested and featuring a high level of complaints about vendor activity, if any;

c. collaborate with the department of small business services to provide training, outreach and education to all street vendors, sidewalk and roadway cafe licensees on entrepreneurship and compliance with all applicable local laws and regulations, as well as solicit feedback from the street vendor and restaurant community;

d. receive all complaints related to sidewalk cafes, roadway cafes and street vending on the streets and sidewalks of the city of New York from the 311 service center or from any other means; [and]

e. engage in such other activities related to enforcement of laws related to sidewalk cafes, roadway cafes and vending on the streets and sidewalks of the city of New York, or related to improving compliance with such laws, as may be designated by the mayor. For the purposes of this section, "excessively congested" areas include, but are not limited to, areas where pedestrian volume regularly approaches or exceeds the capacity of the sidewalk[.]; and

f. collaborate with the department of sanitation to provide guidance on best practices for removing and disposing of sidewalk or roadway café structures erected pursuant to emergency executive order number 126, as amended and continued by subsequent executive orders, which do not comply with rules of the department of consumer affairs or other department relating to the design of sidewalk cafes and roadway cafes. Such guidance shall include methods for recycling and reusing these materials.

§ 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 20-223.

§ 4. Section 20-223 of the administrative code of the city of New York, as amended by local law 8 for the year 2003, is amended to read as follows:

§ 20-223 Definitions. Whenever used in this subchapter:

[b.] a. "Enclosed sidewalk cafe" shall mean a sidewalk cafe [which] 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.

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

c. “Roadway cafe” shall mean an open-air portion of a restaurant containing readily removable tables, chairs and other removable decorative items, which 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.

[a.] d. “Sidewalk cafe” shall mean a portion of a restaurant [operated under permit from the department of health and mental hygiene,] located on a [public] sidewalk fronting the restaurant that is either an enclosed or unenclosed sidewalk cafe and is designed and operated pursuant to rules of the department.

g. “Small sidewalk cafe” shall mean an unenclosed sidewalk cafe containing no more than a single row of tables and chairs adjacent to the property line where such tables and chairs occupy a space on the public sidewalk no greater than 4 feet, 6 inches from the property line.

[c.] h. “Unenclosed sidewalk cafe” shall mean [a space on the sidewalk which] an open-air sidewalk cafe [contains] containing readily removable tables and chairs.

§ 5. Section 20-224 of the administrative code of the city of New York, as amended by local law 70 for the year 1990, is amended to read as follows:

§ 20-224 [License required] Open restaurants; license and revocable consent required for sidewalk cafe and roadway cafe. a. Any person owning, leasing, managing or operating a restaurant [under permit from the department of health and mental hygiene] upon property which abuts upon any street [within the city] may [maintain or] establish and operate a sidewalk cafe upon the sidewalk of such street in an area immediately adjacent to its premises, [a sidewalk cafe] 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. 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 this section and section 20-226 of this code.

b. A license issued pursuant to this subchapter shall be valid for no less than two years. Any license issued pursuant to this subchapter shall expire on a date the commissioner prescribes by rule.

[b.] c. The [commissioner] department, consistent with chapter 14 of the charter and the provisions of this subchapter and the applicable provisions of the zoning resolution, shall [establish such rules, regulations, terms and conditions as the commissioner deems proper in respect to the granting and issuance of such licenses and revocable consents, priorities or rights between applicants for a license covering the same space, and operation (including hours of operation, provided that no such rule, regulation, term or condition shall prevent licensed sidewalk cafes from operating during the hours of 10:00 a.m. through 12:00 a.m. daily or shall allow licensed sidewalk cafes to operate before 10:00 a.m. on Sundays) and maintenance of any sidewalk cafe, to ensure good order and to prevent undue obstruction of the sidewalk, which shall have the force and effect of law] 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. [A license to operate a sidewalk cafe shall be issued after the review and approval of a petition for a revocable consent to construct and operate such sidewalk cafe pursuant to the provisions of

section 20-225, 20-226 or 20-227 of this subchapter. The operator of a sidewalk cafe under license from the commissioner shall cause the boundary of the area licensed as a sidewalk cafe to be marked in a manner prescribed under rules promulgated by the commissioner.]

d. No rule promulgated by the department in accordance with subdivision c of this section shall prevent licensed sidewalk cafes or licensed roadway cafes from operating during the hours of 10:00 a.m. through 12:00 a.m. daily, or shall allow sidewalk cafes or roadway cafes to operate before 10:00 a.m. on Sundays. Roadway cafes shall not operate on any day from November 1 to March 31, inclusive.

e. 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 who is licensed by the commissioner shall cause the boundary of the area licensed as a sidewalk cafe to be marked in a manner prescribed pursuant to rules of the department. An operator of a roadway cafe who is licensed by the commissioner shall cause the boundary of the area licensed as a roadway cafe to be marked or protected in a manner prescribed pursuant to rules of the department or the department of transportation.

[c. No license shall be granted for an enclosed sidewalk cafe until an alteration permit or any other required permit is issued by the department of buildings. No license shall be granted for a sidewalk 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 required approval of the landmarks preservation commission.] f. No license or revocable consent shall be granted for [an unenclosed] a sidewalk cafe or roadway cafe which obstructs the means of egress from any portion of a building [nor for any unenclosed cafe with an awning unless a permit therefor is issued by the department of buildings].

[d. The fee for such license shall be at the rate of five hundred and ten dollars for a two-year

license. Such license fee shall be in addition to any fee imposed, pursuant to rules of the commissioner, upon approval of a petition for a revocable consent, or a renewal of such revocable consent, to construct and operate a sidewalk cafe or any other applicable fee.] g. There shall be separate fees for a sidewalk cafe license and a roadway cafe license. The fee for a license to establish and operate a sidewalk cafe, and for the renewal of such license, shall be \$510 for each license period, except that the fee for a small sidewalk café shall be \$225 for each license period. The fee for a license to establish and operate a roadway cafe, and for the renewal of such license, shall be \$255 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.

[e. A licensee must provide waiter or waitress service to patrons in the sidewalk cafe 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.]

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.

[f.] i. 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] Such license shall not be deemed revoked by the sale or transfer of the lease or of title to the building or structure to which the sidewalk or roadway cafe is related unless such sale or transfer materially alters the plans submitted for the license application or the revocable consent.

§ 6. Sections 20-225, 20-226 and 20-227 of the administrative code of the city of New York are REPEALED and new sections 20-225, 20-226 and 20-227 are added to read as follows:

§ 20-225 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 shall include an accurate drawing depicting required clearances, space to be occupied, and the locations of tables and chairs; provided, however, that the department shall permit such drawings to be developed by the petitioner and shall not require that such drawings be developed, reviewed, or approved by an architect, engineer, or other professional third party. Such petitions 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. The department shall file with the council a written recommendation for such formula no less than 45 days prior to the rule establishing or modifying such formula being noticed pursuant to subdivision b of section 1043 of the charter.

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, except as provided by section 20-227.2.

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. The term of such revocable consent shall be one license period and shall be concurrent with such license periods.

§ 20-226 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 and shall include an accurate drawing depicting required clearances, space to be occupied, and the locations of tables and chairs; provided, however, that the department shall permit such drawings to be developed by the petitioner and shall not require that such drawings be developed, reviewed, or approved by an architect, engineer, or other professional third party. 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. 1. Within 10 days after the expiration of the period allowed for the filing of a recommendation or waiver by the community board pursuant to subdivision b of this section, the department shall (i) approve the petition for an unenclosed sidewalk cafe, disapprove it or approve it with modifications; and (ii) file with the council any such decision to approve or approve with modifications, together with the petition.

2. For sidewalk cafes other than small sidewalk cafes, the department may hold a public hearing on the petition for an unenclosed sidewalk café if (i) a community board has submitted a recommendation to deny the petition; or (ii) the community board has submitted a recommendation to approve such petition with

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

d. Where the department holds a public hearing pursuant to paragraph 2 of subdivision c of this section the department may hear one or more petitions at the same public hearing upon a determination that doing so is in the public interest. 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, except that upon renewal for a revocable consent for a substantially similar unenclosed café the term of such revocable consent shall be two 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, except that consent fees for small sidewalk cafes shall not be greater than \$1000. The department shall file with the council a written recommendation for such formula, no less than 45 days prior to noticing the rule establishing or modifying such formula in accordance with subdivision b of section 1043 of the charter.

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, except as provided by section 20-227.2.

j. A revocable consent granted pursuant to this section may be renewed pursuant to rules promulgated by the department, except that when the petition to renew a revocable consent is substantially similar to the petition for which the preceding revocable consent was granted, the department shall not require that such a petition be reviewed by the community board, pursuant to subdivision b of this section.

§ 20-227 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, its menu and other such information on the services provided by the establishment may be painted, imprinted or otherwise displayed in a manner prescribed by rules promulgated by the department.

§ 7. Section 20-227.1 of the administrative code of the city of New York, as amended by local law number 39 for the year 2022, is REPEALED and a new section 20-227.1 is added to read as follows:

§ 20-227.1 Violations; penalties for a sidewalk or roadway cafe. a. Any person found to be operating an unlicensed sidewalk cafe or roadway cafe shall be liable for a civil penalty of \$200 for the first violation and \$200 for each additional violation occurring on the same day; \$500 for the second violation and for each additional violation occurring on the same day; and \$1,000 for each subsequent violation at the same place of business within a two-year period, except that any person found to be operating an unlicensed small sidewalk café shall be liable for a civil penalty of \$50 for the first violation and \$50 for each additional violation occurring on the same day; \$100 for the second violation and for each additional violation occurring on the same day; and \$250 for each subsequent violation at the same place of business within a two-year period.

b. Any holder of a sidewalk cafe or roadway cafe license found to be operating a cafe in violation of: (i) this subchapter, (ii) the terms and conditions of such license, (iii) a revocable consent, or (iv)

rules promulgated by the commissioner pursuant to this subchapter, shall be liable for a civil penalty of \$200 for the first violation, and \$200 for each additional violation occurring on the same day; and \$500 for the second violation and each subsequent violation at the same place of business within a two year period, except that any holder of a license for a small sidewalk café found to be in violation of: (i) this subchapter, (ii) the terms and conditions of such license, (iii) a revocable consent, or (iv) rules promulgated by the commissioner pursuant to this subchapter, shall be liable for a civil penalty of \$50 for the first violation and \$50 for each additional violation occurring on the same day; \$100 for the second violation and for each additional violation occurring on the same day; and \$250 for each subsequent violation at the same place of business within a two-year period.

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

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

e. Notwithstanding any inconsistent provision of this section, any person found to be operating an unlicensed sidewalk cafe or roadway cafe or any holder of a license found to be operating a sidewalk cafe or roadway cafe in violation of this subchapter, the terms and conditions of such license or a revocable consent, or rules promulgated by the department pursuant to this subchapter shall be subject to a civil penalty of zero dollars for a first violation, if such person or holder of a license proves to the satisfaction of the department, within 30 days of the issuance of the notice of violation and prior to the commencement of an adjudication of the violation, that the violation has been cured. The submission of proof of a cure, if accepted by the department as proof that the violation has been cured, shall be deemed an admission of liability for all purposes. The option of presenting proof that the violation has been cured shall be offered as part of any settlement offer made by the department to such person or holder of a license who has received, for the first time, a notice of violation of this subchapter or any rule or regulation promulgated thereunder. The department shall permit such proof to be submitted electronically or in person. Such person or holder of a license may seek review, in the department's administrative tribunal, of the determination that such person or holder of a license has not submitted proof of a cure within 15 days of receiving written notification of such determination.

f. Notwithstanding any inconsistent provisions of this section, the decision to suspend or revoke a license shall be waived if, upon the submission of satisfactory proof, the department determines that the

person or persons who committed the violations which are the basis for the suspension or revocation acted against the licensee's instructions in committing such violations.

g. The commissioner may order the removal of any furniture, equipment, structure or other obstruction used in connection with the operation of an outdoor dining area on the sidewalk or in the roadway by a person who 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.

§ 8. Section 20-227.2 of the administrative code of the city of New York, as added by local law number 39 for the year 2022, is amended to read as follows:

§ 20-227.2. Temporary [sidewalk cafe] authorization to operate. a. Where an applicant for a

sidewalk cafe license submits a petition to operate [an enclosed or unenclosed] a sidewalk cafe or roadway cafe for which a consent issued to another person has lapsed or was terminated, the commissioner may authorize such applicant to operate the sidewalk cafe or roadway cafe at such premises pending the approval of consent for operating such cafe, provided that the plans for the cafe are the same as the cafe for which a consent to operate [a sidewalk cafe] had previously been granted and, if it is an enclosed sidewalk cafe, that the structure is the same for which consent was previously granted. For the purposes of this section, the commissioner may not authorize an applicant to operate an unenclosed sidewalk cafe or a roadway cafe if the original consent has been expired for more than three years from the date of the submission of an applicant's petition.

b. Where the department has approved a petition to operate [an enclosed or unenclosed] a sidewalk cafe or roadway cafe pursuant to sections 20-225 or 20-226, as applicable, the commissioner may authorize such applicant to operate [a sidewalk] such cafe pending the registration of the revocable consent by the comptroller, except that if the Council has resolved to review the petition pursuant to subdivision e of section 20-226 such authorization shall not be issued until the Council files a resolution on the petition with the mayor or the department pursuant to subdivision f of section 20-226.

§ 9. 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] consumer and worker protection [and any other agency designated by the mayor] shall establish a permanent open restaurants program to succeed the temporary program established by local law number 77 for the year 2020[, provided that any additional legislation necessary to authorize such program has been enacted]. Such program shall include but not be limited to the following elements:

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

local law.

§ 10. 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 20-224 of the administrative code of the city of New York, as amended 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 31-A.

§ 11. 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 consumer and worker protection required by section 20-224 of the administrative code, as amended by section five of this local law, and sections 20-225 and 20-226 of the administrative code, as added by section six of this local law, provided that such restaurant submits a petition for such revocable consent within one year after such effective date, 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 submitted a petition for such a revocable consent within one year from the effective date of this local law 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.

§ 12. 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 consumer and worker protection relating to the design of roadway cafes and sidewalk cafes shall remove such structure by the next October 31 after the date such rules take effect.

§ 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 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.

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

§ 19. 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 consumer and worker protection 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.