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Int. No. 1421

By Council Members Restler, Menin, Ossé, Hanif, Krishnan, Powers, Hudson, Brewer, De La Rosa, Banks and Louis (in conjunction with the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to expanding access to roadway and sidewalk cafes

Be it enacted by the Council as follows:

Section 1. Section 19-101 of the administrative code of the city of New York, as amended by local law number 121 for the year 2023, is amended by adding a new definition of "retail food establishment" and amending the definitions of "roadway cafe" and "sidewalk cafe" in alphabetical order to read as follows:

Retail food establishment. The term "retail food establishment" shall mean any business establishment located in the city that is licensed as a retail food store or food warehouse pursuant to article 28 of the agriculture and markets law.

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

Sidewalk cafe. The term "sidewalk cafe" shall mean a portion of a ground floor restaurant or retail food establishment located on a public sidewalk or sidewalk widening fronting the restaurant that is designed and operated pursuant to rules of the department, which shall include the use of tables.

§ 2. Section 19-160 of the administrative code of the city of New York, as added by local law number 121 for the year 2023, is amended to read as follows:

a. Any person owning, leasing, managing or operating a ground floor restaurant upon property which abuts upon any street may establish and operate a sidewalk cafe upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises, or a roadway cafe upon the roadway adjacent to the curb in front of such ground floor restaurant, or both, provided that such sidewalk cafe or roadway cafe shall be granted a license and a revocable consent by the commissioner, and provided further that a sidewalk cafe located entirely on a sidewalk widening shall be granted a license and consent for the use of such sidewalk widening as a sidewalk cafe by the commissioner. Any person owning, leasing, managing or operating a ground floor restaurant with less than 20 feet of frontage may expand their roadway cafe to the roadway adjacent to the curb in front of the abutting property subject to the permission of the commissioner and the abutting property owners. Notwithstanding the [preceding sentence] aforementioned, no such license shall be granted or renewed for the operation of an enclosed sidewalk cafe at any location other than a location where: (i) an enclosed sidewalk cafe had been constructed pursuant to a permit issued by the department of buildings and in accordance with section 3111 of the New York city building code prior to March 16, 2020; and (ii) an enclosed sidewalk cafe was lawfully operated as such on March 16, 2020 or at any time within 4 years prior to such date. Granting or renewal of any such license at such a location for the operation of an enclosed sidewalk cafe shall be in accordance with this section and section 19-160.2 of this code.

b. 1. The department, consistent with chapter 14 of the charter and the provisions of this subchapter, shall promulgate rules relating to (i) the granting 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; and (v) the design and operation of a roadway cafe that has been approved to operate during the period from November 30 through March 31, which shall include snow removal and sanitation.

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

c. No rule promulgated by the department in relation to the license granted to a sidewalk cafe or a roadway cafe in accordance with subdivision b of this section shall: (i) prevent a sidewalk cafe or a roadway cafe from operating during the hours of 10:00 a.m. through 12:00 a.m. daily; or (ii) allow a sidewalk cafe, other than an enclosed sidewalk cafe, or a roadway cafe to operate before 10:00 a.m. on Sundays; or (iii) prevent [authorize] a roadway cafe [to operate] from operating on any day from [November 30] January 1 to [March] December 31, inclusive.

d. 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, except that a license to operate a sidewalk cafe located entirely on a sidewalk widening shall be granted after review and approval of a petition for a consent to operate such sidewalk cafe in accordance with the rules of the department, which shall provide for notice of such petition to the affected community board and council member. 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 shall cause the boundary of the area licensed as a sidewalk cafe to be marked and separated in a manner prescribed pursuant to rules of the department. An operator of a roadway cafe shall cause the boundary of the area licensed as a roadway cafe to be delineated and protected by barriers in a manner prescribed in rules of the department.

e. No license 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 having obtained the approval of the landmarks preservation commission, provided that the petition for a revocable consent to establish or operate a sidewalk cafe or a roadway cafe or the petition to operate a sidewalk cafe located entirely on a sidewalk widening includes work or improvements

for which such approval is required pursuant to chapter 3 of title 25 of this code. The landmarks preservation commission shall make a determination on such application no later than 10 business days after the date of receipt of a complete application, unless the landmarks preservation commission determines that such sidewalk cafe or roadway cafe may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district and a public hearing is required.

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

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 a license, shall be $1,050 for each license period. The fee for a license to establish and operate a roadway cafe, and for the renewal of such a license, shall be $1,050 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.

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

i. 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.

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. 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 cafe or roadway cafe is related unless such sale or transfer materially alters the plans submitted for the license application or the revocable consent.

k. No rule promulgated by the department in relation to the license granted to a roadway cafe in accordance with subdivision b of this section shall restrict a roadway cafe from operating at a distance that is

greater than 8 feet between the perimeter of a roadway cafe and a crosswalk or between the perimeter of a roadway cafe and the curb line of a street intersecting with the street on which the roadway cafe is located.

§ 3. Subdivision b of section 19-160.2 of the administrative code of the city of New York, as added by local law number 121 for the year 2023, is amended to read as follows:

b. The community board shall, not later than 40 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. The community board shall not require the petitioner to supply the board with additional written materials other than the petition and the agreed upon modifications. If the community board submits a recommendation on a petition after the 40 day time period has expired, such recommendation may be accepted by the department at the sole discretion of the department.

§ 4. This local law takes effect 120 days after it becomes law.

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