



Legislation Text

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Int. No. 1468

By Council Member Menin

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to removing the requirement to obtain a revocable consent to operate a sidewalk cafe and a roadway cafe, and to repeal subdivision e of section 364 of such charter in relation thereto

Be it enacted by the Council as follows:

Section 1. Sections 19-160, 19-160.1, 19-160.2, 19-160.3, 19-160.4, 19-160.5, 19-160.6 and 19-160.7 of the administrative code of the city of New York, as added by local law number 121 for the year 2023, are amended to read as follows:

§ 19-160 Open restaurants; license [and revocable consent] required for sidewalk cafe and roadway cafe.

a. Any person owning, leasing, managing or operating a ground floor restaurant upon property which abuts upon any street may establish and operate a sidewalk cafe upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises, or a roadway cafe upon the roadway adjacent to the curb in front of such ground floor restaurant, or both, provided that such sidewalk cafe or roadway cafe shall be granted a license[and a revocable consent] by the commissioner, and provided further that a sidewalk cafe located entirely on a sidewalk widening shall be granted a license [and consent] for the use of such sidewalk widening as a sidewalk cafe by the commissioner. Notwithstanding the preceding sentence, no such license shall be granted or renewed for the operation of an enclosed sidewalk cafe at any location other than a location where: (i) an enclosed sidewalk cafe had been constructed pursuant to a permit issued by the department of buildings and in accordance with section 3111 of the New York city building code prior to March 16, 2020; and

(ii) an enclosed sidewalk cafe was lawfully operated as such on March 16, 2020 or at any time within 4 years prior to such date. Granting or renewal of 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.

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; (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) authorize a roadway cafe to operate on any day from November 30 to March 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] an application 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] an application 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] an application 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].

§ 19-160.1 Review and approval of [petitions] applications 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,] approval of a roadway cafe application pursuant to this section and any rules adopted by the commissioner pursuant thereto.

b. The [petition] application shall be in such form as prescribed by rules of the department and shall include an accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and other permitted objects; provided, however, that the department shall not require that such drawing be developed, reviewed or approved by an architect, engineer, or other professional third party. The [petition] application shall be reviewed by the department and other relevant agencies as determined by the department.

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

Sector	Fee Rate
1	\$5
2	\$8
3	\$14
4	\$25

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

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

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

§ 19-160.2 Review and approval of [petitions] applications to establish and operate sidewalk cafes.

[A petition for a revocable consent] An application to establish and operate a sidewalk cafe shall be reviewed and approved in the following manner:

a. The [petition] application shall be in such form as prescribed by the department. The [petition] application shall include an accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and other permitted objects. Such drawing may be developed by an architect, engineer, or other professional third party, or by the [petitioner] applicant. The [petition] application filed with the department shall be complete and accurate, as determined by the department, and the department [shall, within 5 days of the filing of such complete and accurate petition,] may forward such [petition] application by electronic mail 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 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. 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.

c. 1. Except as provided in paragraphs 2 and 3 of this subdivision, within 20 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 a 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. Such approval or approval with modifications shall be final approval of the revocable consent unless the council and mayor act pursuant to subdivision e and f of this section.

2.] 1. The department [shall] may hold a public hearing on a petition for a sidewalk cafe if [(i) a community board has submitted a recommendation to deny the petition; (ii) a community board has submitted a recommendation to approve such petition with substantial modifications or conditions and the petitioner does not agree to adopt such modifications; or (iii)] the department has determined that such a hearing would be beneficial to address a concern about the effect of a sidewalk cafe at the proposed location. [If the department holds such 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 the section, or within 45 days after the expiration of such period when the department plans to combine the public hearing on the petition with

the public hearing required on 1 or more additional petitions pursuant to paragraph 3 of this subdivision, 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. Such approval or approval with modifications shall constitute final approval of the revocable consent subject to review by the council or mayor pursuant to subdivisions e and f of this section.]

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

[d.] c. At least 15 days prior to the date of a hearing held pursuant to [paragraph 2 of] subdivision [c] b of this section, 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 5 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 1 newspaper of local circulation in the community where the cafe is proposed to be located.]

[e. At the next stated meeting after 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, except that if such meeting is scheduled to occur less than 3 days after such date, the council may so resolve at the following stated meeting. If the council does not so resolve, the approval or approval with modifications of the petition by the department shall be forwarded to the mayor pursuant to subdivision f of this section, unless, in accordance with subdivision g of this section, the petition, or the category of such 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 5 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, or the category of such 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 45 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, and the term of a renewal of such consent, shall be 1 license period and shall be concurrent with such license period.

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. A revocable consent for a sidewalk cafe, or a consent to operate a sidewalk cafe located on a sidewalk widening, shall provide for compensation to be paid annually to the city during the continuance of the consent. Compensation shall be equivalent to the product of the fee rate and the square footage of a sidewalk cafe. There

shall be 4 sectors, as described on the website of the department, provided that sectors 3 and 4 shall only include the area south of and including 125th Street in the borough of Manhattan, and the fee rate for sector 1 shall apply to a minimum of 80 percent of the city. The fee rate for each sector shall be as follows:

Sector	Fee Rate
1	\$6
2	\$10
3	\$18
4	\$31

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

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

j. Notwithstanding subdivision a through g of this section, a petition for a consent to establish a sidewalk cafe located entirely on a sidewalk widening, as demonstrated to the satisfaction of the department, shall be reviewed and approved in accordance with the rules of the department.

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

§ 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 restaurant, the logo of the restaurant, the menu and information on the services provided by the restaurant 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 found to be operating an unlicensed sidewalk cafe or unlicensed roadway cafe shall be subject to civil penalties as described in section 19-150 and enforcement pursuant to section 19-151. For purposes of this section, any violation for operating an unlicensed sidewalk cafe or unlicensed roadway cafe 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 d 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 to operate a sidewalk cafe or a roadway cafe license shall be subject to the civil penalties described in section 19-150 and enforcement pursuant to section 19-151 where such holder is found to be operating such cafe in violation of: (i) any provision of section 19-160 through 19-160.6 or any rule promulgated thereunder, or (ii) the terms or conditions of such license[, or (iii) the terms or conditions of a revocable consent to operate such cafe].

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 3 or more violations of the same provision of this subchapter or rules of the department promulgated under this subchapter within a 2 year period; or any 6 or more violations of any provision of this subchapter or rules of the department promulgated under this chapter within a 2 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 2 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. Corrective action request. Notwithstanding subdivision b of this section, if the department finds that any holder of a license to operate a sidewalk cafe or roadway cafe has violated for the first time (i) any provision of section 19-160 through 19-160.6 or any rule promulgated thereunder, or (ii) the terms or conditions of such license, the department shall notify such license holder of such violation and request that action be taken to correct such violation within 30 days and shall afford such licensee an opportunity to contest the department's finding in a manner set forth in rules of the department. Nothing in this subdivision prohibits

the department from issuing a notice of violation for any such violation that has not been corrected within such 30 days.

f. Notwithstanding any inconsistent provision 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 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 welfare, safety, or energy system reliability, including planned or emergency utility work.

§ 19-160.6 Temporary authorization to operate.

a. Where an applicant for a license to operate a sidewalk cafe or a roadway cafe submits an application [a petition for a revocable consent to operate a sidewalk cafe or roadway cafe] for which a [revocable consent] license granted 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 a [revocable consent for operating] new license to operate such cafe, provided that the plans for the cafe are the same as the cafe for which [a revocable consent] the license to operate had previously been granted and, if it is an enclosed sidewalk cafe, that the structure is the same for which [consent] approval was previously granted, and, provided further that such applicant makes a good faith effort to be granted a [revocable consent] license to operate such sidewalk cafe or roadway cafe. For the purposes of this section, the commissioner may not authorize an applicant to operate a sidewalk cafe or a roadway cafe if the original consent has been expired for more than 2 years from the date of the submission of [the petition of] such [applicant] application.

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

[§ 19-160.7 Report on compensation for revocable consent to operate sidewalk and roadway cafes.

No later than May 1, 2027, and every 4 years thereafter, the commissioner shall submit a report to the speaker of the council and the mayor on the changes to the median annual rent charged for a ground floor commercial premises for each sector, the corresponding percent land area for each sector, the number of restaurants operating sidewalk and/or roadway cafes in each sector, and the square footage of each sidewalk and roadway cafe in operation. The commissioner may include with any such report a recommendation to increase or decrease the fee rate or adjust the sectors.]

§ 2. Subdivision e of section 364 of the New York city charter is REPEALED.

§ 3. This local law takes effect immediately following its ratification by the voters of New York city in a referendum to be held in the general election next following its enactment.

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