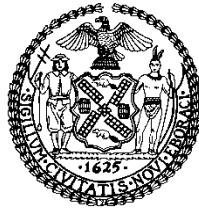


Committee on Consumer and Worker Protection  
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Leah Skrzypiec, *Senior Legislative Policy Analyst*  
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Subcommittee on Zoning and Franchises  
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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE**  
**GOVERNMENTAL AFFAIRS AND LAND USE DIVISIONS**

Andrea Vazquez, *Legislative Director*  
Rachel Cordero, *Deputy Director, Governmental Affairs Division*  
Raju Mann, *Director, Land Use Division*

**COMMITTEE ON CONSUMER AND WORKER PROTECTION**

Hon. Marjorie Velázquez, *Chair*

**SUBCOMMITTEE ON ZONING AND FRANCHISES**

Hon. Kevin C. Riley, *Chair*

**February 8, 2022**

**PRECONSIDERED INT. NO. 31:**

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

**TITLE:**

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 cafés and roadway cafés, to repeal subchapter 6 of chapter 2 of title 20 of such administrative code, relating to granting licenses and revocable consents for sidewalk cafés, 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

**Preconsidered L.U. 12:**

Application No. N 210434 ZRY (Open Restaurants Text Amendment) submitted by the New York City Department of Transportation and the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, removing Article I, Chapter 4 (Sidewalk Cafe Regulations) and modifying related Sections, Citywide.

## **I. INTRODUCTION**

On February 8, 2022, the Committee on Consumer and Worker Protection, chaired by Council Member Velázquez, and the Subcommittee on Zoning and Franchises, chaired by Council Member Riley, will hold a hearing on Preconsidered Introduction Number \_\_ (Int. \_\_), in relation to granting licenses and revocable consents for sidewalk cafés and roadway cafés, to repeal subchapter 6 of chapter 2 of title 20 of such administrative code, relating to granting licenses and revocable consents for sidewalk cafés, 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 and Preconsidered Land Use\_\_ (ULURP No. N 210434 ZRY) Open Restaurants Text Amendment, submitted by the New York City Department of Transportation and the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, removing Article I, Chapter 4 (Sidewalk Cafe Regulations) and modifying related sections, citywide. The Committee and Subcommittee have invited the Department of Consumer and Worker Protection (DCWP), food service business and trade associations, worker groups, transportation and community advocates, and other interested parties to testify at the hearing.

## **II. BACKGROUND**

### **Sidewalk Café Licenses**

While the formal sidewalk café licensing process is currently suspended by Mayoral Executive Order due to the COVID-19 emergency,<sup>1</sup> sidewalk cafés are typically regulated by DCWP, and are a ubiquitous part of New York City’s urban landscape. These licensed cafés typically involve a lengthy approval process that, if successful, results in the granting of a revocable consent to a restaurant owner. A revocable consent is the grant of a right to an individual or organization to construct and maintain certain structures on, over or under the inalienable property (streets and sidewalks) of the City.<sup>2</sup>

According to DCWP, prior to the COVID-19 pandemic, there were approximately 1,416 licensed sidewalk cafés in New York City.<sup>3</sup> The majority of these sidewalk cafés were located in Manhattan, which had 1,004 cafés, while 412 were located in the outer boroughs.<sup>4</sup> The Administrative Code defines a sidewalk café as a “portion of a restaurant operated under permit from the department of health and mental hygiene, located on a public sidewalk that is either an enclosed or unenclosed sidewalk café.”<sup>5</sup> There are three different types of sidewalk cafés: an enclosed sidewalk café, an unenclosed sidewalk café, and a small unenclosed sidewalk café.<sup>6</sup> An enclosed café is one that “is constructed predominantly of light materials such as glass, slow-

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<sup>1</sup> See New York City Department of Consumer and Worker Protection, “Sidewalk Café”, available at: <https://www1.nyc.gov/site/dca/businesses/license-checklist-sidewalk-cafe.page> (last accessed February 1, 2022); and The City of New York Office of the Mayor, Executive Order 126 of 2020, June 18, 2020, <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-126.pdf>.

<sup>2</sup> N.Y.C. Charter § 362

<sup>3</sup> Department of Consumer Affairs “Sidewalk Café Licenses and Applications,” *NYC Open Data*, available at: <https://data.cityofnewyork.us/Business/Sidewalk-Caf-Licenses-and-Applications/qcdj-rwhu/data> (last accessed March 1, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> N.Y.C. Admin. Code §20-223.

<sup>6</sup> Department of Consumer Affairs “Sidewalk Café Design and Regulations Guide,” available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Design-Regulations-Guide.pdf> (last accessed September 25, 2020).

burning plastic or lightweight metal,” encompassing the seating area.<sup>7</sup> An unenclosed sidewalk café has no such containing structure, though the seating area may be surrounded by a fence, railing or planters, and may be covered by an awning.<sup>8</sup> A small unenclosed sidewalk café consists of a single row of tables and chairs extending no farther than 4.5 feet from the side of the business.<sup>9</sup>

Because sidewalk cafés by their nature obstruct pedestrian traffic, they have been subject to a number of regulations, such as requiring pedestrian clearances, adequate spacing between tables, ADA compliance, and clearances from certain street fixtures.<sup>10</sup> Sidewalk cafés are also subject to regulations that would limit the nuisance they might present to neighboring homes and restaurants. For example, unenclosed and small unenclosed sidewalk cafés may only operate between 10:00 a.m. and midnight on Sunday, 8:00 a.m. and midnight on Monday through Thursday, and between 8:00 a.m. and 1:00 a.m. on Friday and Saturday.<sup>11</sup>

Obtaining a sidewalk café license is a lengthy multi-step process. Prior to submitting a license application, the restaurant must first ensure that the proposed café meets zoning requirements and that the sidewalk proposed for use is at least 12 feet wide.<sup>12</sup> The restaurant must also possess a current New York City Department of Health and Mental Hygiene (DOHMH) food

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<sup>7</sup> N.Y.C. Admin. Code §20-223(b).

<sup>8</sup> Department of Consumer Affairs “Sidewalk Café Design and Regulations Guide,” available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Design-Regulations-Guide.pdf> (last accessed September 25, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Department of Consumer Affairs “License Application Checklist,” available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Compliance-Checklist.pdf> and <https://www1.nyc.gov/site/dca/businesses/license-checklist-sidewalk-cafe.page> (last accessed September 25, 2020).

service establishment permit prior to beginning the application process.<sup>13</sup> Prospective licensees must also submit numerous documents and certifications, and must obtain approval for a revocable consent to construct and operate a sidewalk café.<sup>14</sup>

There are numerous fees associated with obtaining and maintaining a sidewalk café license, including a two-year license fee of \$510; a revocable consent application fee of \$445; and an annual revocable consent fee for the street space being used, which varies based on the location, square footage and type of sidewalk café.<sup>15</sup> Consent fees typically amount to thousands of dollars annually. Unenclosed and small unenclosed sidewalk cafés are also responsible for a \$310 plan review fee and a \$1,500 security deposit.<sup>16</sup> Enclosed sidewalk café applicants must submit a \$4,000 security deposit and a City Planning Fee of \$55 per seat with a minimum of \$1,360.<sup>17</sup> Restaurants that modify their plans after they submit their license applications are subject to an additional \$175 fee for modification of the revocable consent.<sup>18</sup> Enclosed sidewalk café applicants that modify their plans after submission must again pay the City Planning Fee.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (a sales tax identification number or a certificate of authority application confirmation number; a sidewalk cafe compliance checklist, a form that, when completed, will “demonstrate that the proposed cafe meets City requirements;” a copy of the insurance certificate for the business’s premises naming DCA as the certificate holder; a petition for revocable consent, the permission a business must be granted by the City before using the sidewalk space; a substitute form W-9; a copy of a notification letter sent to all residents who live within 50 feet of either direction from the proposed sidewalk cafe; an original, notarized affidavit confirming the fact that the notification letter has been sent; scale drawings of the proposed sidewalk cafe; photographs of the property on which the proposed sidewalk cafe will be situated; a completed copy of the landowner’s consent to operate a sidewalk cafe; a copy of a completed zero tolerance police affirmation, which affirms the business will not attempt to engage in any form of bribery with a governmental entity; a completed child support certification form; and a completed copy of the granting authority to act affirmation, which enables someone appointed by the applicant to file the application in his or her place).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

A restaurant with a licensed sidewalk café must renew its license every two years and must not have any outstanding fines or consent fees prior to renewal.<sup>19</sup> The paperwork involved in renewing a sidewalk café license is similar to that of the initial application process. Licensees must also continue to pay the annual revocable consent fees.

Within five days of receiving an application, DCWP will forward copies of the petition for revocable consent for any enclosed sidewalk café to the Landmarks Preservation Commission, the Department of City Planning (DCP) and the Department of Environmental Protection (DEP) for review, each of which has 21 days to submit any objections in writing to DCWP.<sup>20</sup> If the agencies do not respond within the 21 days, they are deemed not to have any objections.<sup>21</sup> DCWP will also forward the petition for any type of sidewalk café, for informational purposes, to the Speaker of the City Council and the Council Member in whose district the café is situated, and the Community Board, which corresponds to the location of the business, for comments.<sup>22</sup> The Community Board may then hold a public hearing and issue its recommendation to DCWP.<sup>23</sup> The Community Board has 45 days within which to make this recommendation or waive its right to do so.<sup>24</sup> Within the next 30 days, DCWP will hold a public hearing, and then make a recommendation to the City Council for disapproval, approval or approval with modifications.<sup>25</sup> DCWP may also waive the public

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<sup>19</sup> *Id.*

<sup>20</sup> N.Y.C. Admin. Code §20-225(a) and (b).

<sup>21</sup> N.Y.C. Admin. Code §20-225(b).

<sup>22</sup> N.Y.C. Admin. Code §20-225(a).

<sup>23</sup> N.Y.C. Admin. Code §20-225(e).

<sup>24</sup> *Id.*

<sup>25</sup> N.Y.C. Admin. Code §20-225(f).

hearing. If DCWP does not make a determination within that time period then the petition will be considered denied.<sup>26</sup> If the City Council does not call up the petition for a vote within 20 days of the date that the Council received a recommendation from DCWP, then the petition is considered approved.<sup>27</sup> If the City Council calls up the application for a vote, it has 50 days to file its resolution with DCWP.<sup>28</sup> Once approved, DCWP forwards the application to the Comptroller, who has 30 days to register the consent. Finally, upon approval of the revocable consent, DCWP issues the license.

The penalty for operating a sidewalk café without the appropriate DCWP license is a fine of \$200 to \$1,000 for the first violation and subsequent violations issued on the same day, and a fine of \$500 to \$2,000 for subsequent violations issued on separate days within two years of the first violation.<sup>29</sup> Similar fines can be issued to licensed cafés operating in violation of any Administrative Code provisions, and DCWP may seal a café upon repeated violations of the Code or of terms and conditions of the café's license or revocable consent.<sup>30</sup>

For over a decade, restaurant owners have complained that the process for sidewalk café licenses has become too lengthy and too costly. According to DCWP, since 2017, enclosed sidewalk cafés applications took an average of 467 days from the filing of the application to approval of the license, and unenclosed sidewalk cafés applications took an average of 177 days.<sup>31</sup> While each application can vary, and up to 180 additional days can be requested by applicants to make

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<sup>26</sup> *Id.*

<sup>27</sup> N.Y.C. Admin. Code §20-225(g).

<sup>28</sup> N.Y.C. Admin. Code §20-225(h).

<sup>29</sup> N.Y.C. Admin. Code § 20-227.1(a).

<sup>30</sup> N.Y.C. Admin. Code § 20-227.1.

<sup>31</sup> Correspondence from the Department of Consumer Affairs, "Overview: Sidewalk Cafe Application Processing Time," Received by the City Council on June 12, 2019.



necessary amendments,<sup>32</sup> the average processing times appear to indicate that there are significant delays in the overall process. DCWP has some discretion to shorten the process by, for example, waiving its public hearing.

While the sidewalk café licensing process is costly overall, certain requirements in particular can be unnecessarily burdensome. For example, plans for sidewalk cafés are currently required to be drawn up by a licensed architect or engineer.<sup>33</sup> Such a requirement can result in thousands of dollars' worth of fees, while the renderings are usually fairly simple, often depicting an arrangement of tables and chairs that meet DCWP's placement and spacing requirements. Such renderings do not necessarily require the specialized knowledge of a licensed professional and can be generated by the petitioners themselves.

During the initial wave of the pandemic, restaurants with sidewalk café licenses were unable to utilize their sidewalk seating. In response, the Council enacted Local Law 54 of 2020, which required the City to waive and refund all revocable consent fees for unenclosed sidewalk cafes due between March 1, 2020 and February 28, 2021.<sup>34</sup> Enclosed sidewalk café consent fees were waived for the duration of the Mayor's Emergency Executive Order No. 105.<sup>35</sup> The Open Restaurants program, which is discussed in detail below, was implemented during the COVID-19 pandemic and temporarily replaced the sidewalk café licensing system. In anticipation of the conclusion of the

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<sup>32</sup> N.Y.C. Admin. Code §§ 20-225(f) and 20-226(c)

<sup>33</sup> Department of Consumer Affairs "License Application Checklist," available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Compliance-Checklist.pdf> and <https://www1.nyc.gov/site/dca/businesses/license-checklist-sidewalk-cafe.page> (last accessed September 25, 2020).

<sup>34</sup> Local Law 54 of 2020, NYC Council, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4424936&GUID=D9778009-7325-432C-94D4-5B06C8BCC869&Options=Advanced&Search=>

<sup>35</sup> Local Law 54 of 2020, NYC Council, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4424936&GUID=D9778009-7325-432C-94D4-5B06C8BCC869&Options=Advanced&Search=>

temporary program, however, the Council passed two bills last session that streamlined the café licensing system to make the process easier for restaurants applying for a license. The Council enacted Local Law 39 of 2022, which enabled DCWP to issue temporary operating licenses to applicants for a sidewalk café license if the plans for the new sidewalk café are identical to the plans for a previously operating sidewalk café at the same location.<sup>36</sup> Accordingly, someone opening a restaurant in a location where a previous restaurant had a sidewalk café license could reapply for the license while still temporarily operating a sidewalk café. The Council also enacted Local Law 41 of 2022, which enabled applicants to self-prepare drawing plans of the proposed layouts of the sidewalk café, instead of needing to pay a licensed architect or engineer.<sup>37</sup>

### **Open Restaurants Program**

The City’s temporary Open Restaurants program implemented a citywide, expanded outdoor seating option for food service establishments during COVID-19. Under the temporary outdoor dining program established by LL 77 of 2020, the Department of Transportation (DOT) established a temporary program whereby restaurants could apply, free of charge, to serve customers on the sidewalk (and in some instances the roadway). This program bypassed the various bureaucratic layers of the sidewalk café process. Unlike the sidewalk café program, restaurants participating in Open Restaurants could self-certify their spaces and, because Open Restaurants applied to all applicable sidewalks, unaffected by zoning restrictions, far more restaurants could participate.

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<sup>36</sup> Local Law 39 of 2022, NYC Council available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4648097&GUID=9FEC6412-7C1B-436A-B011-6F7AA5077475&Options=&Search=>

<sup>37</sup> Local Law 41 of 2022, NYC Council, available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4649786&GUID=48518878-D265-4108-A1AB-7DA7130EF13A&Options=&Search=>

There are two separate programs that enabled temporary outdoor dining, as New Yorkers have experienced it during the pandemic: “Open Restaurants” and “Open Streets Full Closure.”<sup>38</sup> Open Restaurants allows individual food establishments to utilize the sidewalk or curb lane adjacent to their business for outdoor seating. As part of this program, food service establishments can apply and self-certify that they meet program requirements to utilize these spaces.<sup>39</sup> In addition to this option, the Open Streets Full Closure program allows community-based organizations or groups of three or more restaurants on a single block to apply for a street to be closed to traffic, so that they can accommodate outdoor dining on the closed street.<sup>40</sup>

As of February 1, 2022, there are 12,124 Open Restaurants.<sup>41</sup> Of these restaurants, 1,247 have only roadway seating, 4,357 have only sidewalk seating, and 6,160 have both roadway and sidewalk seating.<sup>42</sup> In addition, 360 exist on Open Streets.<sup>43</sup> Establishments participating in the Open Restaurants program exist throughout the five boroughs. As of February 1, 2022, there are:

- 659 Open Restaurants in the Bronx, of which 28 have roadway-only seating, 309 have sidewalk-only seating, 310 have both roadway and sidewalk seating, and 12 exist on Open Streets;

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<sup>38</sup> Department of Transportation “Open Restaurants”, available at: <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml> (last accessed February 1, 2022).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> New York City Department of Transportation “NYC Open Restaurants Portal,” available at: <https://experience.arcgis.com/experience/ba953db7d541423a8e67ae1cf52bc698> (last accessed February 1, 2022).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

- 2,955 in Brooklyn, of which 303 have roadway-only seating, 1,096 have sidewalk-only seating, 1,460 have both roadway and sidewalk seating, and 96 exist on Open Streets;
- 5,909 in Manhattan, of which 717 have roadway-only seating, 1,957 have sidewalk-only seating, 3,036 have both roadway and sidewalk seating, and 199 exist on Open Streets;
- 2,414 in Queens, of which 188 have roadway-only seating, 904 have sidewalk-only seating, 1,273 have both roadway and sidewalk seating, and 49 exist on Open Streets; and
- 187 in Staten Island, of which 11 have roadway-only seating, 91 have sidewalk-only seating, 81 have both roadway and sidewalk seating, and four exist on Open Streets.<sup>44</sup>

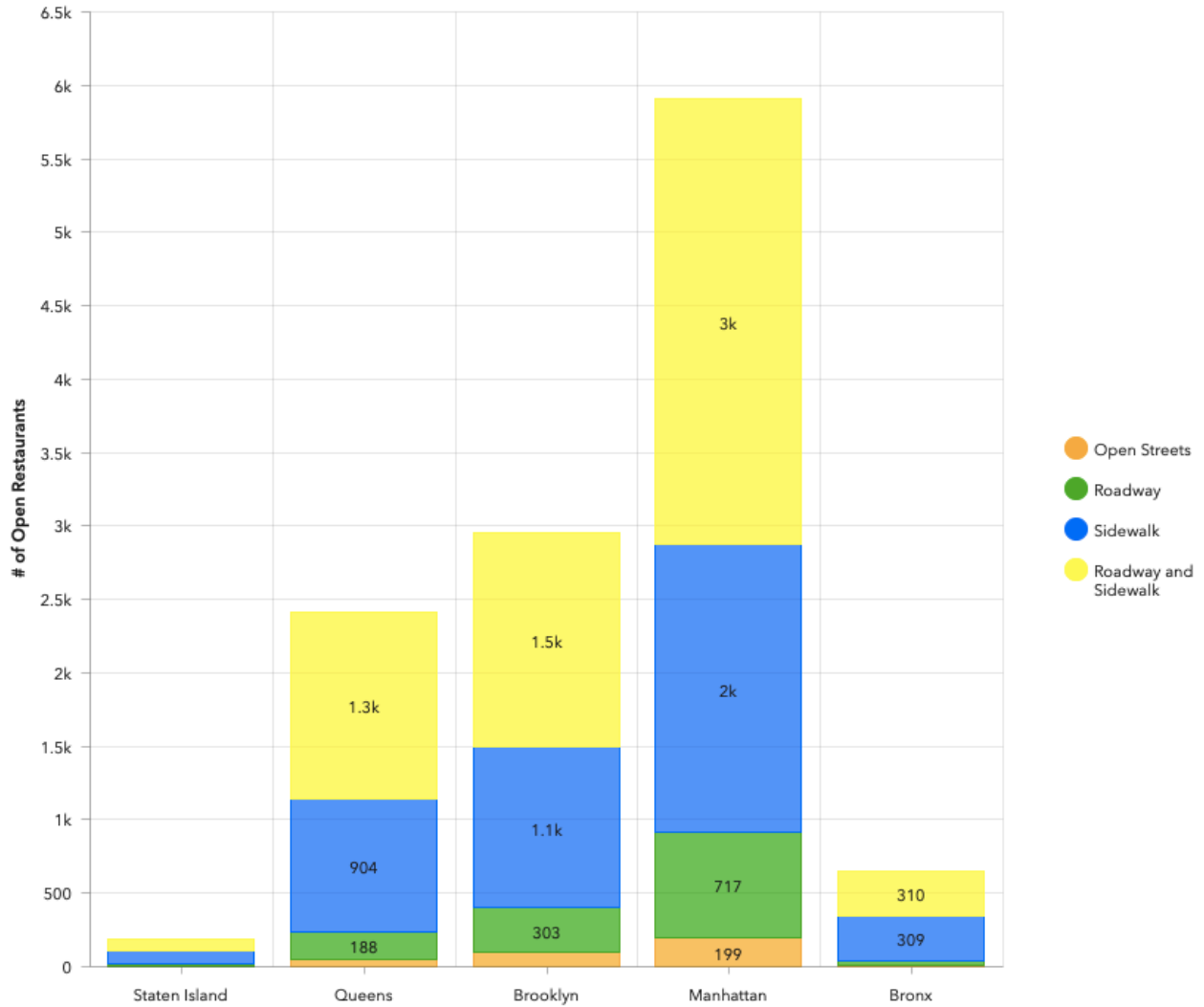
These figures are further illustrated below:

**Open Restaurants by Seating Type  
February 1, 2022<sup>45</sup>**

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<sup>44</sup> *Id.*

<sup>45</sup> *Id.*



To ensure safety and accessibility, restaurants participating in Open Restaurants are required by the DOT to meet a number of criteria for sidewalk or roadway seating. The siting requirements are detailed and aim to safely facilitate the program while ensuring that the dining setups do not overly encroach on sidewalks or other important amenities (such as bus stops, fire hydrants or trees).

Broadly, the requirements cover:

- **Outdoor dining structure and furniture placement** – structures cannot be bolted to the roadway or building, and cannot be taller than the storefront. Additionally, the seating must leave at least eight feet clear for pedestrians, and be at least three feet from adjacent businesses. Furniture must also not inhibit trees in the area.<sup>46</sup>
- **Heaters** – while electric heaters are permitted on both the sidewalk and roadway, natural gas heaters are only permitted on the sidewalk.<sup>47</sup> Propane heaters were permitted during winter 2020, but are no longer allowed after the expiration of Local Law 114 of 2020.<sup>48</sup> To mitigate the new limitations on heating appliances, the Department of Small Business Services (SBS) established a \$5,000 grant for small restaurants (with an annual revenue of \$1 million or less), to be used to swap out propane heaters for either heaters powered by electricity or natural gas.<sup>49 50</sup>
- **Sound** – amplified sound is prohibited on both sidewalk and roadway setups.<sup>51</sup>
- **Roadway Barriers** – for outdoor dining setups established on roadways, protective barriers must be erected to separate seating from traffic lanes. These barriers have strict

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<sup>46</sup> Department of Transportation “Open Restaurants”, available at: <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml> (last accessed February 1, 2022).

<sup>47</sup> *Id.*

<sup>48</sup> Local Law 114 of 2020, available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=9058975&GUID=0F24A453-41CE-41C6-BD6C-BE798204544B>.

<sup>49</sup> Department of Transportation “Open Restaurants”, available at: <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml> (last accessed February 1, 2022).

<sup>50</sup> SBS has not begun administering grants as part of this program yet, see: Cara Eisenpress, “With six weeks till spring, still no fire under propane heat for restaurants” *Crain’s New York*, February 2, 2022, available at: <https://www.crainnewyork.com/small-business/six-weeks-till-spring-still-no-fire-under-propane-heat-restaurants>

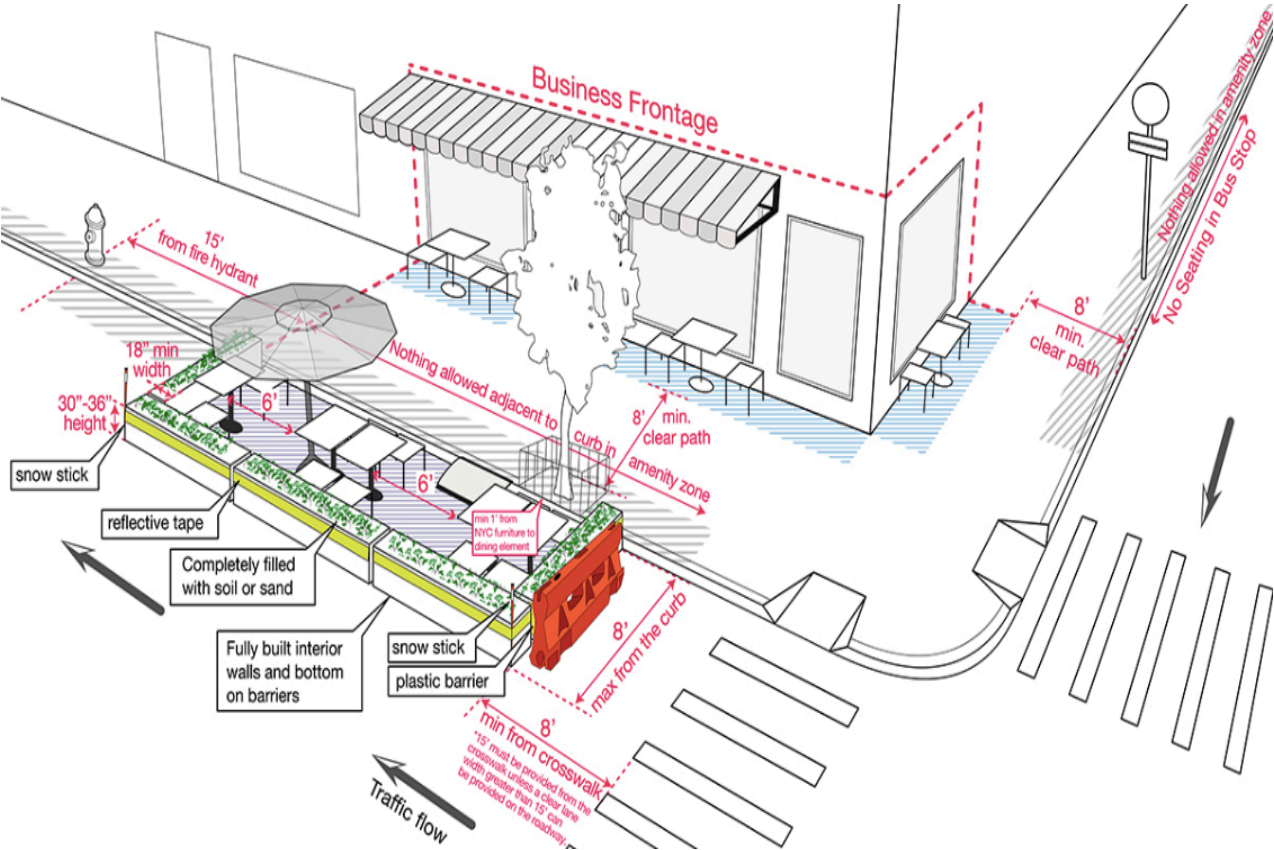
<sup>51</sup> Department of Transportation “Open Restaurants”, available at: <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml> (last accessed February 1, 2022).

size minimums and must be filled with sand or soil. The top outside edges must be covered in reflector tape and snow sticks must be added to the corners of the two barriers facing traffic.<sup>52</sup>

- **Snow** – during active snow alerts, roadway dining is suspended. Diners may not sit in roadway setups and restaurants are required to remove or secure any tables and chairs, and remove all electrical heaters.<sup>53</sup>

The image below illustrates some of the siting criteria that must be followed:

**Outdoor Dining Siting Requirements<sup>54</sup>**



<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

### III. SUCCESS OF THE OPEN RESTAURANT PROGRAM

The City has benefited in a number of ways from the emergency outdoor dining program. The program was a major boost to the restaurant industry during a period when restaurants were closed to in-person dining. The de Blasio Administration estimated that over 100,000 jobs were saved due to outdoor dining, and over 12,000 restaurants have participated in the program.<sup>55</sup> In saving jobs, the open restaurants program has boosted the City's economy and tax base during a period of high unemployment across the City.<sup>56</sup> The program also created more equitable access to the experience of outdoor dining. While before the pandemic sidewalk cafes were almost exclusively in Manhattan, the outdoor dining program expanded the areas in the City that could participate in the program. The Bronx now has more than 650 sidewalk cafes,<sup>57</sup> while before the pandemic there were only 30 in the borough.<sup>58</sup>

In addition to its positive economic impact, the outdoor dining program has arguably beautified some City streets, as welcoming outdoor spaces have taken over curbs and parts of sidewalks. Open Restaurants' enhancement of residents' lives and the City streetscape can most clearly be seen in its overwhelming support by City residents. A DOT survey of 905 City residents

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<sup>55</sup> Testimony of Commissioner Polly Trottenberg, Department of Transportation, delivered before the Committee on Consumer Affairs and Business Licensing and Committee on Transportation, September 30, 2020, available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=8831172&GUID=094B7FC9-548D-41F6-8A47-8D4AFB493357>; and "Open Restaurants Map", Department of Transportation, last updated February 1, 2021, available at: [nycopensteraurants.info](http://nycopensteraurants.info).

<sup>56</sup> Testimony of Commissioner Polly Trottenberg, Department of Transportation, delivered before the Committee on Consumer Affairs and Business Licensing and Committee on Transportation, September 30, 2020, available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=8831172&GUID=094B7FC9-548D-41F6-8A47-8D4AFB493357>;

<sup>57</sup> "Open Restaurants Map", Department of Transportation, last updated February 1, 2021, available at: [nycopensteraurants.info](http://nycopensteraurants.info).

<sup>58</sup> Nicole Hong, "What's the Future of Outdoor Dining in New York?", *The New York Times*, November 17, 2021, available at: <https://www.nytimes.com/2021/11/16/nyregion/outdoor-dining-near-me-nyc.html>



from all five boroughs found that 65 percent of respondents supported using street space for outdoor dining, with only 17 percent of participants opposed.<sup>59</sup> The survey found that nearly 85 percent of Manhattan residents surveyed support using street space for outdoor dining, the highest share of any borough.<sup>60</sup> Another survey commissioned by Transportation Alternatives and conducted by the Siena College Research Institute of registered NYC voters found similar results. The survey found that 64 percent of voters surveyed reported that outdoor seating for restaurants is an important use of curb space in their neighborhood, including 78 percent of voters in Manhattan.<sup>61</sup> Andrew Rigie, executive director of the Hospitality Alliance, commented in response to these survey results, “COVID-19 has decimated New York City’s restaurant industry, and the Open Restaurants program helped save countless small businesses and jobs throughout the five boroughs, while bringing back a critically important energy to our streetscape... outdoor dining helped us reimagine all the possibilities and creative uses for our streetscape to build a more welcoming, vibrant and livable city.”<sup>62</sup>

#### **IV. CRITICISMS AND CONCERNS REGARDING THE OPEN RESTAURANTS PROGRAM**

##### **Customer and Pedestrian Safety in Outdoor Dining Areas**

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<sup>59</sup> Department of Transportation “Citywide Mobility Survey: Transportation Impacts of COVID-19”, October 2020, available at: [https://www1.nyc.gov/html/dot/downloads/pdf/2020\\_cms\\_covid\\_october\\_summary\\_report.pdf](https://www1.nyc.gov/html/dot/downloads/pdf/2020_cms_covid_october_summary_report.pdf).

<sup>60</sup> *Id.*

<sup>61</sup> “POLL: Majority of Voters Support Adding Protected Bike Lanes, Bus Lanes In Their Neighborhood; Near-Universal Support For Expanding Crosswalks, Green Spaces -- Even If It Results in Less Parking” Transportation Alternatives, available at: <https://www.transalt.org/press-releases/poll-majority-of-voters-support-adding-protected-bike-lanes-bus-lanes-in-their-neighborhood-near-universal-support-for-expanding-crosswalks-green-spaces-even-if-it-results-in-less-parking>.

<sup>62</sup> *Id.*

While the Open Restaurants program has largely been a success, there have been several instances of motor vehicles crashing into the outdoor dining areas and, in some cases, causing injuries to patrons and employees. In late August, 2020, within the span of one week, there were two instances of cars crashing into outdoor dining areas. One accident occurred in Manhattan<sup>63</sup> and the other one in Brooklyn.<sup>64</sup> Fortunately, no one was seriously injured in either accident. In December of 2020, a driver slammed into outdoor seating at a restaurant on Bailey Avenue in the Bronx, though the restaurant was closed at the time and no one was injured.<sup>65</sup> In April of 2021, a vehicle crashed into a restaurant's outdoor dining area in Astoria Queens, killing one individual and injuring several others.<sup>66</sup> These examples are a few of many situations where drivers have crashed into dining areas, injuring City residents.

### **ADA Compliance and Accessibility for Individuals with Disabilities**

The ADA prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.<sup>67</sup> As the law requires that most businesses and facilities

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<sup>63</sup> “3 injured when car crashes into Manhattan outdoor dining area,” *Eyewitness News*, August 25, 2020, available at: <https://abc7ny.com/3-injured-when-car-crashes-into-outdoor-dining-area/6387121/>.

<sup>64</sup> Adam Harding, “Car Smashes Into Brooklyn Outdoor Eating Area, Latest Crash to Endanger NYC Diners,” *NBC New York*, August 28, 2020, available at: <https://www.nbcnewyork.com/news/local/car-smashes-into-brooklyn-outdoor-eating-area-latest-crash-to-endanger-nyc-diners/2590158/>.

<sup>65</sup> Azi Paybarah and Sean Piccoli, “One Dead as Car Hits Motorbike and Outdoor Dining Structure in Queens,” *The New York Times*, April 29, 2021, available at: <https://www.nytimes.com/2021/04/29/nyregion/restaurant-astoria-crash-scooter.html>

<sup>66</sup> Ali Bauman, “1 Killed, Several Injured After Vehicle Crashes Into Restaurant’s Outdoor Dining Area In Queens” *CBS Local*, April 30, 2021, available at: <https://newyork.cbslocal.com/2021/04/30/queens-car-into-outdoor-dining-area/>

<sup>67</sup> United States Equal Employment Opportunity Commission “Fact Sheet: Disability Discrimination,” September 27, 2020, available at: <https://www.eeoc.gov/laws/guidance/fact-sheet-disability-discrimination>.

provide reasonable access and accommodation for all disabled customers, clients and members of the public, this has been an issue regarding the City’s outdoor dining program. At a recent Committee on Transportation hearing regarding the City’s Open Streets program, concerns were shared regarding ADA compliance and capacity issues for outdoor dining establishments.<sup>68</sup> Existing wheelchair accessible ramp requirements can take up a full table’s worth of space in what amount to already limited outdoor areas.<sup>69</sup> It was suggested that these requirements be altered to allow for alternative designs that can ensure safety and accessibility, while not reducing capacity.<sup>70</sup>

The expansion of the sidewalk café system under the Open Restaurants program has also made it more difficult for individuals with certain disabilities to use City streets. Regulations under the program require restaurants to leave an eight foot clear path for pedestrians to pass.<sup>71</sup> The dining structures create obstructions, however, for wheelchair users and blind City residents.<sup>72</sup> While the eight foot clear path rule provides space for pedestrians to be able to pass through, City residents will often stand within the eight foot path while waiting for tables, and waiters are constantly walking back and forth to serve customers seated in roadways. While these issues may inconvenience City residents without disabilities, they pose an additional risk to individuals with disabilities, leaving certain streets functionally inaccessible.

### **Quality of Life Concerns**

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<sup>68</sup> NYC Council Committee on Transportation 9/9/20 Hearing, available at: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=802207&GUID=19306395-07DB-4DEA-96D5-0C7282B8A364&Options=info/&Search=>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Department of Transportation “Open Restaurants”, available at: <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml>

<sup>72</sup> Testimony from Jessica De La Rosa, Brooklyn Center for Independence of the Disabled, before the Committee on Consumer Affairs and Business Licensing and the Committee of Transport, September 30, 2020, available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=8831172&GUID=094B7FC9-548D-41F6-8A47-8D4AFB493357>

While a majority of City residents in surveys have voiced support for outdoor dining, certain City residents have complained that the expansion of sidewalk cafés has worsened their quality of life. For restaurants that permanently closed but had outdoor dining structures remain, the abandoned sheds can be unkept eye sores.<sup>73</sup> According to a *New York Post* article, a total of 136 complaints about abandoned dining setups were placed to 311 between May 6, 2021 and September 23, 2021 although some were for the same restaurant.<sup>74</sup> From July 2020 through October 2021, DOT has removed 24 abandoned, non-compliant or destroyed outdoor dining setups.<sup>75</sup> City residents have also complained about excessive noise coming from residents dining outside at restaurants, and increased trash and vermin in the streets.<sup>76</sup> According to Linda Jones, a member of Manhattan Community Board 3, “My neighborhood was quiet until this program began. Now it’s a nightmare...there are people drunk, reveling in the streets, fighting each other, harassing women and even harassing any passerby until 4 in the morning. We cannot sleep.”<sup>77</sup>

### **Winter Heating**

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<sup>73</sup> Ben Brachfeld, “Use ’em or lose ’em: Mayor says NYC will yank away unused outdoor dining areas, restore parking”, *AMNY*, October 18, 2021, available at: <https://www.amny.com/news/sidewalk-sheds-not-used-for-outdoor-dining-will-be-yanked-returned-to-parking-mayor-says/>

<sup>74</sup> Kerry J. Byrne and Melissa Klein, “Abandoned NYC dining sheds are now havens for the homeless”, *New York Post*, October 2, 2021, available at: <https://nypost.com/2021/10/02/abandoned-nyc-dining-sheds-are-now-havens-for-the-homeless/>

<sup>75</sup> Ben Brachfeld, “Use ’em or lose ’em: Mayor says NYC will yank away unused outdoor dining areas, restore parking”, *AMNY*, October 18, 2021, available at: <https://www.amny.com/news/sidewalk-sheds-not-used-for-outdoor-dining-will-be-yanked-returned-to-parking-mayor-says/>

<sup>76</sup> Aundrea Cline-Thomas, “West Village Residents Sound Off On NYC’s Stance To Keep Outdoor Dining, Say Structures Bring Excessive Noise, Trash And Rats” *CBS NY*, July 19, 2021, available at: <https://newyork.cbslocal.com/2021/07/19/new-york-city-outdoor-dining-west-village-department-of-transportation-noise-trash-rats/>

<sup>77</sup> Melissa Klein, “NYC outdoor dining a noisy, dirty ‘nightmare’ for residents fighting expansion,” *New York Post*, July 24, 2021, available at: <https://nypost.com/2021/07/24/nyc-outdoor-dining-a-noisy-dirty-nightmare-for-residents-fighting-expansion/>

Since COVID-19 continues to push customers towards outdoor dining during the winter months, outdoor heating is a necessity. However, in New York City, outdoor space heaters are only authorized if fueled by electricity or piped natural gas.<sup>78</sup> The specific Fire Code (FC) provisions related to portable space heaters are contained within FC 313.3(2) which prohibits the “[s]tor[ing], handl[ing] or us[ing] for space heating . . . any portable fueled equipment that utilizes a flammable liquid as a fuel, or . . . that utilizes a combustible liquid as a fuel.”<sup>79</sup> An exception to this general prohibition is included to allow for the outdoor use of portable heaters fueled with piped natural gas,<sup>80</sup> permanent installations that are further regulated by safety precautions and installation requirements contained within the Fire and Building Codes.<sup>81</sup>

Propane, a form of Liquefied Petroleum Gas (LP Gas or LPG), can also be used to fuel portable heaters, and they were previously permitted under Open Restaurants, during the winter of 2020, until Local Law 114 of 2020, which governed their use, expired on May 1, 2021.<sup>82</sup> During the time when restaurants in New York City were using propane heaters as part of their outdoor dining setups, there were no safety incidents.<sup>83</sup>

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<sup>78</sup> Department of Consumer Affairs “Frequently asked questions: Sidewalk café heaters”, May, 2013, available at: <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Heaters-FAQs.pdf>.

<sup>79</sup> FC 313.3 (2)

<sup>80</sup> FC 313.5.2.1

<sup>81</sup> See FC 313.6 et seq.

<sup>82</sup> Local Law 114 of 2020, available at: <https://legistar.council.nyc.gov/View.ashx?M=F&ID=9058975&GUID=0F24A453-41CE-41C6-BD6C-BE798204544B>.

<sup>83</sup> Ben Yakas “New legislation, supported by Eric Adams, would allow propane heaters for outdoor dining”, *Gothamist*, November 20, 2021, available at: <https://gothamist.com/food/new-legislation-supported-eric-adams-would-allow-propane-heaters-outdoor-dining>.

Propane-fueled space heaters are preferred over electric or piped natural gas heaters by restaurant operators due to both practical and economic considerations.<sup>84</sup> Practically, propane-fueled heaters provide restaurants with greater flexibility than heating devices with other fuel sources that are currently authorized in New York City. First, heaters fueled by piped natural gas and electricity tend to need professional installation with permanent hardwiring or piping. This in turn, limits the flexibility in placement of such heaters. In contrast, propane heaters can be easily and temporarily placed and moved.

Economically, the use of propane fuel, in addition to potential installation costs, tends to be less expensive and it produces a more efficient heat when compared to using electric space heaters. Depending on electrical cost per kilowatt, cost per gallon of propane, size of the heating area, and upkeep/storage, propane-fueled space heaters can be up to four times cheaper than using electrical space heaters.

## **V. ZONING TEXT AMENDMENT**

The proposed citywide zoning text amendment (ULURP No. N 210434 ZRY) would remove the requirement for sidewalk cafés to only be located in certain zoning districts.<sup>85</sup> The proposed zoning text amendment, as approved by the City Planning Commission on November 15, 2021, is not intended to go into effect until after DOT adopts rules governing the permanent open restaurants program following authorizing legislation by the Council.<sup>86</sup> Without zoning geographic restrictions

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<sup>84</sup> *Id.*

<sup>85</sup> City Planning Commission Report ULURP No. N 210434 ZRY available at: <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/210434.pdf> ,

<sup>86</sup> *Id.* at 29. *Proposed language for section 14-01 of the Zoning Resolution: The provisions of this Chapter shall be in effect only until the adoption of initial rules governing the Permanent Open Restaurants program by the Department of Transportation following authorizing legislation by the City Council.*

on sidewalk café eligibility, any restaurant with ground floor frontage and an active DOHMH food service establishment license may apply for an Open Restaurant license and revocable consent as long as they meet the siting criteria pursuant to rules to be promulgated by DOT. Existing non-conforming<sup>87</sup> restaurants, would also be eligible to apply under the permanent program. Underlying zoning regulations on where restaurant uses are allowed, however, would still be applicable and not affected by this proposed text amendment.

## VI. LEGISLATIVE ANALYSIS

Preconsidered Int. No. \_\_, by Council Member Velázquez (by request of the Mayor) would 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.

Section one of the bill would amend subdivision e of section 364 of the New York City Charter (the Charter) by removing references to title 20 of the Administrative Code of the City of New York (Ad Code) and replacing them with references to title 19 of the Ad Code, substantively transferring purview of sidewalk café enforcement from DCWP to DOT.

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<sup>87</sup> See Zoning Resolution section 12-10 which defines “non-conforming, or non-conformity” in relevant part as: “A “non-conforming” use is any lawful use, whether of a *building or other structure* or of a *zoning lot*, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961, or as a result of any subsequent amendment thereto.”

Section two of the bill would amend section 371 of the Charter by permitting notices of public hearings conducted by the franchise and concession review committee to be in either a print or online edition of a weekly local newspaper, designated by the Mayor.

Section three of the bill would amend paragraph one of subdivision c of section 17-503 of the Ad Code (part of the Smoke-Free Air Act) by removing a provision that permits restaurants to designate an outdoor area for smoking, and instead stating that smoking is prohibited in outdoor dining areas including but not limited to sidewalk and roadway cafes.

Section four of the bill adds new subdivisions i through n to section 19-101 of the Ad Code. Each subdivision defines a new term and references to “the department” mean DOT. Subdivision i would define “Enclosed sidewalk cafe” as 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. Subdivision j would define “Ground floor” as a visible from the street and directly accessible to the public from the street. Subdivision k would define “Ground floor restaurant” as any ground floor premises that is operated pursuant to a food service establishment permit issued by the department of health and mental hygiene. Subdivision l would define “Roadway” as that portion of a street designed, improved or ordinarily used for vehicular travel, exclusive of the shoulder and slope. Subdivision m would define “Roadway cafe” as 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. Subdivision n would define “Sidewalk cafe” as 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.



Section five of the bill would add new sections to title 19 of the Ad Code, each in relation to “Open restaurants” and requirements for the operation of sidewalk and roadway cafes. References to “the department” in these new sections refer to DOT.

Subdivision a of new section 19-160 would require that: “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.”

Subdivision b of new section 19-160 would state that: “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.”

Subdivision c of new section 19-160 would require that “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.”

Subdivision d of new section 19-160 would require the approval of the Landmarks Preservation Commission to issue a license or revocable consent for any sidewalk or roadway cafe located in a historic district or landmark site or adjacent to a landmark site. Subdivision e would prohibit any sidewalk or roadway cafe from receiving a license or revocable consent if the cafe obstructs means of egress to a building.

Subdivision f of new section 19-160 would set licensing fees for sidewalk and roadway cafes as follows: “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.” Subdivision g would provide that terms of the license and renewal thereof would be established by DOT.

Subdivision h of new section 19-160 would require sidewalk and roadway café operators to provide adequate service to maintain “good order and cleanliness” at outdoor dining locations. Subdivision i would require an operator serving alcohol to provide table service to patrons seated in a sidewalk or roadway café.

Subdivision j of new section 19-160 would ensure that a license to operate a sidewalk or roadway café is personal to the licensee and may not be sold or transferred.

New section 19-160.1 would outline the review and approval process for revocable consents to operate roadway cafes. Subdivision a would deem it unlawful to operate a roadway café without a revocable consent granted pursuant to relevant Charter and Ad Code provisions. Subdivision b would require petitions for these revocable consents to be in a form established by rule by DOT and other agencies DOT deems relevant. Subdivision c would state that fees for roadway cafes would be calculated by formula established by rule and paid annually. Subdivision d would state that roadway cafes may not operate until approval of a petition for consent is received. Subdivision e would require DOT to provide notice of petitions to the relevant community board and subdivision f would allow these consents to be renewed pursuant to DOT rules.

New section 19-160.2 would outline the process for review and approval of revocable consents to operate sidewalk cafes.

Subdivision a would task DOT with prescribing the form of petitions for revocable consents, and require DOT to forward the petition within five days of filing to the relevant community board, borough president and council member, and Speaker of the City Council.

Subdivision b of new section 19-160.2 would give the community board 30 days to 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” and the petitioner would then amend the petition if both the community board and the petitioner agree to modifications in writing. These modifications would be reflected in the written recommendations of the community board to DOT and the City Council. Recommendations submitted after the 30-day time period would be accepted at the discretion of DOT. Subdivision c would mandate that within 30-days after the community board comment period, DOT 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.” Subdivision d would mandate that the public hearing 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.” DOT could also hold a public hearing if they determine it would be beneficial to address a particular concern. For a period of 15 days prior to the hearing, the petitioner would post notice of the hearing and DOT would give notice to the relevant community board, borough president and council

member. Five days before the hearing, notice would be posted in the City Record and in one local newspaper.

Subdivision e of new section 19-160.2 would allow the City Council to review the petition, by majority vote, within 20 days of receiving it. If the Council did not come to a decision in 20 days, the petition would move on to the Mayor. Subdivision f would mandate that if the Council chooses to review the petition, the Council shall hold a public hearing and file a resolution within 35 days. If the Council suggests modifications, the petitioner would have 15 days to accept these modifications.

Subdivision g of new section 19-160.2 would set the term of the revocable consent as one license period and the term of renewal as two consecutive license periods. Subdivision h would set revocable consent fees by DOT rule.

New section 19-160.3 allows alcohol to be served at sidewalk and roadway cafes pursuant to state law. Section 19-160.4 would prohibit the display of advertisements within a sidewalk or roadway café—however the name of the restaurant could be displayed in a manner established by DOT rules.

New section 19-160.5 would address penalties for violations of sidewalk and roadway café provisions. Violators would be subject to penalties pursuant to sections 19-150 and 19-151 of the Ad Code. In addition to monetary fines, DOT could, after notice and opportunity to be heard, suspend or revoke a sidewalk or roadway café license, and order the removal or sealing of such for three or more violations in a two-year period. For any café location, subsequent license holders would be liable for prior license holder's violations unless the subsequent license holder can show

DOT that the café was acquired in an arm's length transaction and was not purchased for the purpose of relieving the prior license holder of their obligations.

Section six of the bill repeals subchapter six of title 20 of the Ad Code—substantively removing sidewalk café licensing from DCWP's purview.

Section seven of the bill amends Ad Code language referencing the temporary outdoor dining program established pursuant to Local Law 14 of 2020 and mandates DOT and any agency designated by the Mayor to establish a permanent outdoor dining program that shall include the following elements: (i) use of roadway seating for outdoor dining; and (ii) accessibility for people with disabilities.

Section eight of the bill would have the outdoor dining program established by Local Law 14 of 2020 remain in effect until “revocation or expiration of authorization for an outdoor dining program pursuant to mayor's emergency executive order number 126...or an earlier date determined in accordance with [DOT rules]”.

Section nine of the bill would allow any restaurant operating outdoor dining pursuant to the prior temporary program to continue operating after this bill takes effect without a license or revocable consent pursuant to the sections described above, provided that such restaurant submits a petition for a revocable consent within a period of time after the effective date of this bill, to be determined by DOT.

Section ten of the bill would prohibit the operation of cafes that opened pursuant to the prior temporary program if those cafes do not meet structural mandates determined by new DOT rules. These cafes would be shuttered 90 days after such rules go into effect.

Sections 11 and 12 of the bill grant agencies the ability to exercise and continue to exercise their authority as granted by this or other local laws, including rule making authority.

Sections 13 and 14 would mandate that any existing right or remedy, action or proceeding, pending at the time this bill takes effect would not be affected by this local law, but any relevant matter may be transferred to an appropriate agency for handling.

Section 15 of the bill would allow licenses and revocable consents granted pursuant to Ad Code provisions repealed by this law to hold valid until expiration, suspension or revocation. Renewals of such licenses and revocable consents would be done pursuant to the parameters of this local law.

The law would take effect 180 days after it becomes law or on 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, whichever is later.

Matter underlined is new, to be added; Matter ~~struck-out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution.

## **ARTICLE I GENERAL PROVISIONS**

### **Chapter 4 Sidewalk Cafe Regulations**

\* \* \*

#### **14-01 General Provisions**

The provisions of this Chapter shall be in effect only until the adoption of initial rules governing the Permanent Open Restaurants program by the Department of Transportation following authorizing legislation by the City Council.

In conjunction with the termination of this Chapter, the following provisions shall also be terminated:

(a) defined terms in Section 12-10 (DEFINITIONS):

#Enclosed sidewalk cafe#;

#Sidewalk cafe#;

#Small sidewalk cafe#; and

#Unenclosed sidewalk cafe#;

(b) provisions in Section 22-00 (GENERAL PROVISIONS) regarding #sidewalk cafes# in R10H Districts;

(c) provisions regarding #sidewalk cafes# in the #Special 125th Street District#, as set forth in Sections 97-03 (District Plan and Maps), 97-13 (Permitted Sidewalk Cafe Locations), and Map 2 (Permitted Sidewalk Cafe Locations) in Appendix A of Article IX, Chapter 7; and



- (d) provisions regarding #sidewalk cafes# in the #Special Long Island City Mixed Use District#, as set forth in Sections 117-03 (District Plan and Maps), 117-05 (Permitted Sidewalk Cafe Locations), and on the Permitted Sidewalk Cafe Locations map in Appendix A of Article XI, Chapter 7.

In harmony with the general purpose and intent of this Resolution, and the general purposes of the #sidewalk cafe# regulations, certain specified regulations concerning area eligibility, sidewalk locational criteria and physical criteria for #sidewalk cafes#, in general, and specifically for #enclosed sidewalk cafes#, are herein established.

\* \* \*

**ARTICLE III  
COMMERCIAL DISTRICT REGULATIONS**

**Chapter 2  
Use Regulations**

\* \* \*

**32-41  
Enclosure Within Buildings**

\* \* \*

**32-411**

**In C1, C5, C6-5 or C6-7 Districts**

C1 C5 C6-5 C6-7

In the districts indicated, all such #uses# shall be located within #completely enclosed buildings#except for store fronts or store windows, associated with eating and drinking establishments, which may be opened to serve customers outside the #building#.

**32-412**

**In other Commercial Districts**

C2 C3 C4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9 C8

In the districts indicated, all such #uses# shall be located within #completely enclosed buildings#or within #buildings# which are #completely enclosed# except for store fronts or store windows which may be opened to serve customers outside the #building#.

\* \* \*

**Chapter 3**

**Bulk Regulations for Commercial or Community Facility Buildings in Commercial Districts**

**33-00**

**APPLICABILITY, DEFINITIONS AND GENERAL PROVISIONS**

\* \* \*

**33-05**

**Outdoor Table Service Areas**

Notwithstanding any other provisions of this Resolution, outdoor table service areas, associated with eating and drinking establishments, meeting all requirements set forth by the Department of Transportation shall be permitted within any required sidewalk widening areas.

\* \* \*

**ARTICLE IV**

**MANUFACTURING DISTRICT REGULATIONS**

**Chapter 3**

**Bulk Regulations**

**43-00**

## **APPLICABILITY AND GENERAL PROVISIONS**

\* \* \*

**43-03**

**Outdoor Table Service Areas**

Notwithstanding any other provisions of this Resolution, outdoor table service areas, associated with eating and drinking establishments, meeting all requirements set forth by the Department of Transportation shall be permitted within any required sidewalk widening areas.

\* \* \*

**ARTICLE V**

**NON-CONFORMING USES AND NON-COMPLYING BUILDINGS**

**Chapter 2**

**Non-Conforming Uses**

\* \* \*

**52-30**

**CHANGE OF NON-CONFORMING USE**

\* \* \*

**52-34**

**Commercial Uses in Residence Districts**

In all #Residence Districts#, a #non-conforming use# listed in Use Group 6, 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed, initially or in any subsequent change, only to a conforming #use# or to a #use# listed in Use Group 6. In the case of any such change, the limitation on #floor area# set forth in Section 32-15 (Use Group 6) shall not apply. Eating or drinking ~~places, establishments~~ with musical entertainment, but not dancing, thus permitted as a change of #use#, shall be ~~limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a #completely enclosed building#~~ subject to the enclosure provisions of Section 32-411.

\* \* \*

**ARTICLE VII**

**ADMINISTRATION**

**Chapter 3**

**Special Permits by the Board of Standards and Appeals**



\* \* \*

**73-24**

**Eating or Drinking Places**

\* \* \*

**73-243**

**In C1-1, C1-2 and C1-3 Districts**

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, and those which provide outdoor table service) with ~~accessory~~ drive-through facilities for a term not to exceed five years, provided that the following findings are made:

\* \* \*

- (d) that in C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C5, M1-5A and M1-5B Districts, such ~~use~~ shall ~~take place in a completely enclosed building~~ be subject to the enclosure provisions of Section 32-411; and

\* \* \*

~~In connection therewith, the Board may modify the requirement of Section 32-411 (In C1, C5, C6-5 or C6-7 Districts) insofar as it relates to the ~~accessory~~ drive-through facility. The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.~~

\* \* \*

**Article VIII - Special Purpose Districts**

**Chapter 3**

**Special Limited Commercial District**

\* \* \*

**83-00**

**GENERAL PURPOSES**

\* \* \*

(10/9/69)

83-05

**Enclosure of Uses**

All permitted #uses# shall be located within ~~#completely enclosed buildings#~~ be subject to the enclosure provisions of Section 32-411.

\* \* \*



Preconsidered Int. No.

By Council Members Velázquez and Powers (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.