

## SIDEWALK CAFÉ INSURANCE RULE

### New York City Department of Consumer Affairs

#### **Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

**What are we proposing?** Section 2-57(c) of Title 6 of the Rules of the City of New York, Chapter 2, subchapter F, sets forth the insurance requirements that must be satisfied by a sidewalk café licensee throughout the term of its license. The Department of Consumer Affairs proposes amendments to clarify the requirements and bring them, including by raising the minimum amounts of coverage, into conformity with city-wide standards.

**When and where is the Hearing?** The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 am on August 10<sup>th</sup>, 2015. The hearing will be in the Department of Consumer Affairs hearing room at 66 John Street, 11<sup>th</sup> Floor, New York, NY 10038.

**How do I comment on the proposed rules?** Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov).
- **Mail.** You can mail comments to Mary Cooley, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax comments to the Department of Consumer Affairs, 212-487-4482.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0392. You can also sign up in the hearing room before the hearing begins on August 10<sup>th</sup>, 2015. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes. You must submit any written comments to the proposed rule on or before August 10<sup>th</sup>, 2015.

**Do you need assistance to participate in the Hearing?** You must tell the Office of Legislative Affairs if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0392. You must tell us by August 6<sup>th</sup>, 2015.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules by going to the Web site at <http://rules.cityofnewyork.us/>. A few days

after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

**What authorizes the Department of Consumer Affairs to make this rule?** Sections 1043 and 2203(f) of the City Charter and Section 20-104 of Chapter 1 of Title 20 of the New York City Administrative Code authorize the Commissioner of the Department of Consumer Affairs to make this proposed rule. Section 20-224(b) of the Administrative Code further authorizes the Commissioner to establish rules regarding sidewalk cafes. This proposed rule was not included in regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because it was not anticipated when the Department published the agenda.

**Where can I find the rules of the Department of Consumer Affairs?** The Department of Consumer Affairs' rules are in Title 6 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Department of Consumer Affairs must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

## **Statement of Basis and Purpose of Proposed Rule**

Section 2-57(c) of Title 6 of the Rules of the City of New York, Chapter 2, subchapter F, sets forth the insurance requirements that must be satisfied by a sidewalk café licensee throughout the term of its license. The Department of Consumer Affairs proposes amendments to clarify the requirements and bring them into line with city-wide standards, including by raising the minimum amounts of coverage. Specifically, the proposed amendments:

- Clarify the A.M. Best or Standard & Poor’s rating the issuing insurance company must satisfy;
- Raise the minimum amounts of coverage to one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;
- Clarify that the coverage must at least be as broad as provided in the most recently issued edition of Insurance Services (“ISO”) Form CG 001 and that it be “occurrence” rather than “claims-made”;
- Clarify that the coverage for the City of New York as an Additional Insured must be as broad as provided in the most recent edition of the ISO Form CG 2026;
- Require that the coverage meet the requirements of the rule and the terms of the licensee’s revocable consent agreement;
- Require that the licensee provide to the Department an endorsement(s) naming the City of New York as an Additional Insured and proof of the insurance by submission of a certificate of insurance in a form satisfactory to the Department; and
- Require that the endorsement and certificate of insurance satisfy the requirements of the rule and the terms of the licensee’s revocable consent agreement, clarify the information that must be included, and require a sworn statement in a form prescribed by the Department from a licensed insurer or broker certifying that the certificate of insurance is accurate in all material aspects.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

## **Proposed Rule**

Subdivision (c) of section 2-57 of Title 6 of the Rules of the City of New York is amended to read as follows:

(c) [Every licensee must secure and maintain throughout the term of the license liability insurance issued by a company duly authorized to do business in the State of New York, insuring the licensee and the city of New York and to hold them harmless from and against any claim, injury, or damage caused or alleged to be caused by or as a result of the construction, operation or use of the sidewalk café and any structure hereby authorized in the following amounts:] Insurance Requirements.

(1) [For bodily injury including death, in (i) the minimum amount of \$100,000 for any one (1) person and (ii) the minimum amount of \$300,000 for any one (1) accident; and] Every licensee must secure and maintain throughout the term of the license commercial general liability (“CGL”) insurance, which shall:

(i) be issued by a company that may lawfully issue the CGL policy. The company must have an A.M. Best rating of at least A-/VII or a Standard and Poor’s rating of at least A;

(ii) insure both the licensee and the City of New York and protect them from any claims for injury (including death) or property damage that may arise from or allegedly arises from construction, operation or use of the sidewalk café and any structure hereby authorized;

(iii) provide coverage of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate;

(iv) provide coverage at least as broad as that provided in the most recently issued edition of Insurance Services Office (“ISO”) Form CG 001 and be “occurrence” based rather than “claims-made”; and

(v) name the City of New York as an Additional Insured with coverage at least as broad as the most recent edition ISO Form CG 2026.

(2) [for property damage in the minimum amount of \$25,000.] Failure to maintain insurance coverage in [the foregoing amounts] complete conformity with this rule and the terms of licensee’s revocable consent agreement shall cause the immediate revocation of the license.

(3) Every licensee shall provide the endorsement(s) naming the City as an Additional Insured and proof of CGL insurance by submission of a certificate of insurance in a form satisfactory to the Department that:

(i) satisfies the requirements of this rule and the terms of licensee’s revocable consent agreement;

(ii) identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date; and

(iii) is accompanied by a sworn statement in a form prescribed by the Department from a licensed insurance broker or agent certifying that the certificate of insurance is accurate in all material respects.

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-356-4028**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Insurance Requirements for Sidewalk Café Licensees**

**REFERENCE NUMBER: 2015 RG 071**

**RULEMAKING AGENCY: Department of Consumer Affairs**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: June 25, 2015

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Amendments to the Rules regarding Insurance Requirements for Sidewalk Café Licensees

**REFERENCE NUMBER:** 2015 RG 071

**RULEMAKING AGENCY:** Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Gregory Schwartz  
Mayor's Office of Operations

June 30, 2015  
Date