

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? To help support public understanding of DCA's licensing and regulation of sidewalk cafés and compliance by businesses, the Department of Consumer Affairs (DCA) is proposing updates to the "Sidewalk Cafés" rules, which can be found in Subchapter F of Chapter 2 of Title 6 of the Rules of the City of New York.

When and where is the hearing? DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Monday, August 5, 2019. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

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

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Carlos Ortiz, Director of Community Affairs at the New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to DCA at (646) 500-5962.
- **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) 436-0345. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Monday, August 5, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 5:00 PM on Monday, August 5, 2019.

What if I need assistance to participate in the hearing? You must tell the External Affairs Division 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) 436-0345. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Thursday, August 1, 2019.

This location has the following accessibility option(s) available: wheelchair accessible.

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 website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCA to make this rule? Sections 1043 and 2203(f) of the City Charter, Section 14-01 of the Zoning Resolution of the City of New York, and Sections 20-104(e) and 20-224(b) of the New York City Administrative Code, authorize DCA to make this proposed rule. This proposed rule was not included in DCA's regulatory agenda for this Fiscal Year because it was not contemplated when DCA published the agenda.

Where can I find DCA's rules? DCA's rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCA 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Subchapter 6 of Title 20, Chapter 2, of the Administrative Code authorizes DCA to license and regulate sidewalk cafés. Section 14-01 of Article I, Chapter 4, of the Zoning Resolution states that the “[p]hysical criteria, including structural and operational requirements for . . . unenclosed sidewalk cafes in particular, shall be regulated by the Department of Consumer Affairs[.]” To help support public understanding of DCA’s licensing and regulation of sidewalk cafés and compliance by businesses, DCA is proposing updates to Subchapter F of Chapter 2 of Title 6 of the Rules of the City of New York (Rule or Rules). These proposed rules would:

- Incorporate the definition and physical criteria for small sidewalk cafés provided in Sections 12-10 and 14-30 of the Zoning Resolution of the City of New York.
- Clarify the meaning of “public sidewalk,” pursuant to Section 20-223(a) of the NYC Administrative Code (Code), by incorporating the definitions for “sidewalk” provided in Section 19-101 of the Code and Section 4-01(b) of Title 34, Chapter 4, of the Rules.
- Clarify that a petition for a revocable consent or an application for a license must include all materials required by DCA.
- Clarify how consent fees will be calculated when DCA receives a petition to convert an unenclosed sidewalk café to an enclosed sidewalk café or an enclosed sidewalk café to an unenclosed sidewalk café.
- Provide that DCA may allow a business to continue paying consent fees in installments even after a business has failed to make timely payment of at least two installments.
- Amend the process for seeking a waiver when an object is placed on the sidewalk after an initial revocable consent and license have been granted.
- Add an exemption that would allow a sidewalk café to be maintained or operated on an elevation (i.e., platform) that is deemed a historic feature by the Landmarks Preservation Commission.
- Amend insurance requirements, including: expand the list of companies from whom DCA may accept an insurance company rating, clarify that coverage for the City includes coverage for its officials and employees, add ISO Form CG 2012 as an acceptable standard for additional insured coverage, and clarify acceptable proof of insurance.
- Add a presumption that an unenclosed sidewalk café is being maintained or operated on the public sidewalk if the tables and chairs are located between the building line and the curb.
- Include plain language revisions throughout.

Additionally, working with the City's rulemaking agencies, the Law Department, the Mayor's Office of Operations, and the Mayor's Office of Management and Budget conducted a retrospective rules review of the City's existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small business, and simplify and update content to help support public understanding and compliance. The proposed amendment of Rule 2-43 is responsive to this review.

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 Rules

Section 1. Section 2-41 of Title 6 of the Rules of the City of New York, subdivision (a) of section 2-43, section 2-44, section 2-45, subdivision (b) of section 2-48, section 2-51, section 2-53, section 2-54, section 2-55, section 2-56, subdivision (c) of section 2-57, and subdivision (b) of section 2-58 are amended, to read as follows:

§2-41. Definitions.

Whenever used in this subchapter, the following terms [shall be deemed to] mean [and include]:

(a) "Commissioner" means the Commissioner of the Department of Consumer Affairs of the City of New York, and any official of the Department designated to act on his or her behalf.

(b) "Department" means the Department of Consumer Affairs of the City of New York.

(c) "Revocable consent" means a grant of a right, revocable at will, to an owner of real property or, with the consent of the owner, to a tenant of real property to use immediately adjacent inalienable property to construct and to operate an enclosed or unenclosed sidewalk café subject to the terms and conditions applicable thereto.

(d) “Small sidewalk café” means an unenclosed sidewalk café containing no more than a single row of tables and chairs adjacent to the property line where such tables and chairs occupy a space on the public sidewalk no greater than 4 feet, 6 inches from the property line. No form of serving station or any other type of furniture may be placed within that space occupied by a small sidewalk café.

(e) “Public Sidewalk” means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians. Where it is not clear which section is intended for the use of pedestrians, the sidewalk will be deemed to be that portion of the street between the building line and the curb.

§ 2-43 Petition Requirements.

(a) *Petition form.* A petition for a new revocable consent or for a renewal, modification, assignment or [recission] rescission thereof [shall] must be made on a petition form obtained from the Department and must include all materials required by the Department, including the materials described in this section. Such petition [shall] must be signed by the petitioner who [shall] must be the proprietor that holds the permit from the Department of Health and Mental Hygiene to operate the restaurant that occupies the premises immediately adjacent to the sidewalk space for which revocable consent is requested. Petitioner [shall] must also submit one (1) original and six (6) copies of the revocable consent petition[, and, in the case of a new consent, if such consent has been determined to be subject to ULURP, petitioner shall submit an additional seven (7) copies].

§ 2-44 Action by the Department on Petition.

(a) Notice of the receipt of the petition and copies of the petition and plans shall be sent within five days to community boards, borough presidents and Council members in whose districts or boroughs the consent is proposed to be located. Petitioners shall have the opportunity to amend their petition or plan to resolve objections [raised]. When a petitioner agrees to revise a petition or plan to resolve objections raised by the Community Board, any such agreed revisions, along with new blue prints showing the revised plan, must be submitted by the petitioner to the Department in writing, and signed by both the applicant and the chairperson of the Community Board, not later than forty-five (45) days after the Community Board receives the petition and plans. Such agreed revisions shall be incorporated into, and be deemed to modify, the original petition in accordance with its terms. The Department may then hold a public hearing based on the modified petition [as so modified]. If such written agreements to modify an original petition to address objections raised are not received within the time specified, the Department shall hold any such public hearing based on the original petition and the objections to it that have been raised.

(b) The Department, before granting the consent, shall hold a public hearing on the terms and conditions of the proposed agreement memorializing the proposed consent, unless the Department waives its public hearing within ten days after the expiration of the period allowed for the community board filing of a recommendation by (i) filing with the City Council a written statement of such waiver and any decision to approve or approve with modifications the proposed consent, and (ii) notifying the petitioner of such waiver, provided that the time to give such notice to the Council and petitioner may be extended up to 180 days upon the request of the petitioner for an additional period of time to correct any deficiencies in the petition. Such hearing shall be held at a location designated by the Department unless otherwise designated in the notices required hereunder. Prior to such hearing,

(1) a notice thereof shall be published in The City Record at least five (5) calendar days before the scheduled date of the hearing, and

(2) the petitioner at its own expense [shall] must publish a notice of such hearing stating the place where copies of the proposed agreement may be obtained in a weekly newspaper which is

published in the City and has a circulation in the community district or districts in which the affected property of the City is located, and

(c) The petitioner [shall] must post a notice of the date, time and place of the public hearing scheduled by the Department at the premises at least fifteen (15) calendar days before the date of such hearing. The notice [shall] must be conspicuously posted to be visible to any person standing on the sidewalk abutting the premises where the proposed sidewalk cafe is to be located.

(d) Whenever a petitioner submits a petition to operate an enclosed sidewalk cafe for which a consent issued to another person had lapsed or was terminated, the commissioner may authorize such petitioner to operate the existing sidewalk cafe at such premises pending the approval of consent for operating such cafe provided that the structure and the plans for the cafe are the same as the cafe for which a consent to operate a sidewalk cafe had previously been granted, and provided further that the petitioner has acquired his or her interest in the restaurant to be operated at such premises from the former holder of the consent in an arm's length transaction as specified in section 20-227.1(f) in the administrative code of the City of New York.

§2-45. Rates for Sidewalk Café Consents.

In accordance with sections seven and ten of Local Law Number 8 for the Year 2003, annual rates for sidewalk consents shall be:

(a) The annual rate for sidewalk café consents shall be: (1) \$3840 for enclosed and \$1,920 for unenclosed cafés for the first seventy (70) square feet plus \$30 per square foot for every additional square foot of sidewalk space occupied by a sidewalk café in zone one (1), and; (2) \$2880 for enclosed and \$1,440 unenclosed for the first seventy (70) square feet plus \$22.50 per square foot for every additional square foot of sidewalk space occupied by a sidewalk café in zone two (2)[, except that all enclosed sidewalk cafés located in the Borough of Manhattan to the south of the area bounded by Canal Street and by Rutgers Street shall pay the same rate as paid by cafés located in zone 2 until February 28, 2011,] unless provided otherwise by rule or local law.

(b) If the Department receives a petition for a new revocable consent that seeks to convert an unenclosed café to an enclosed cafe, and the unenclosed café is being maintained or operated pursuant to a current revocable consent, the annual rate for unenclosed cafés shall continue to apply until the new revocable consent is registered by the Comptroller pursuant to section 328 of the City Charter. If the Department receives a petition for a new revocable consent that seeks to convert an enclosed café to an unenclosed café, and the enclosed café is being operated pursuant to a current revocable consent, the annual rate for enclosed cafés shall continue to apply until the new revocable consent is registered by the Comptroller pursuant to section 328 of the City Charter, the enclosed café structure has been removed, the sidewalk has been restored to its proper condition to the satisfaction of the City, and the commissioner has authorized petitioner to operate the unenclosed café.

([b]c) There shall be two zones [for the purpose of determining] used to determine the annual rate for sidewalk café consents. Zone One shall encompass all of the area [of the borough] of Manhattan

south of, and including both sides of, 96th Street. Zone Two shall encompass all of the areas of the City of New York not included within Zone One.

([c]d) The rates for all consents to operate sidewalk cafés shall be as set forth in this section, which shall apply to all consents granted on or after the effective date of this rule and to existing consents for any period after such effective date. At the start of each subsequent year, the per square foot rate shall be adjusted to reflect the change in the seasonally adjusted consumer price index for December of each year for all urban consumers published by the U.S. Department of Labor.

([d]e) The City may temporarily reduce the rate payable by an individual café by up to 50 percent of the regular rate during a street reconstruction project taking place on a street on which the café or portion thereof fronts. Such temporary reduction may, at the discretion of the Commissioner, be made after the receipt of the written request of the grantee. Such request may not be made and will not be accepted prior to the actual commencement of construction. The amount and duration of any reduction in a rate will be at the sole discretion of the Department.

([e]f) The annual fee for a consent to operate a sidewalk café may be paid in up to four quarterly installments on such payment terms as specified in the consent agreement except that such fee shall not be payable in installments by any holder of a consent who has failed to make timely payment of at least two installments for any one year under such an agreement unless authorized by the Department.

§2-48. Waivers Related to Standards.

(b) Whenever a petition for renewal of a revocable consent to operate a sidewalk café would not comply with the standards set forth in 6 RCNY § 2-46 and 6 RCNY § 2-47 or part 2 of this subchapter [but only because] and the noncompliance is due to an object that was placed on the sidewalk after the granting of the initial revocable consent to operate such sidewalk café, [such objects shall not bar the granting of such renewal of a revocable consent provided that] the petitioner may seek a waiver from the Commissioner to continue operating pursuant to the plans under the initially approved consent. The waiver application shall be made in writing in such form and manner as the Commissioner prescribes, including that the petitioner must provide any information and materials requested by the Department.

(1) [the plans for the sidewalk café to be operated pursuant to the renewed consent are identical to the plans for the sidewalk café operated under the prior consent;] The Commissioner shall, in his or her discretion, approve, approve with modifications or disapprove the waiver based on:

(i) Whether the public health, safety and general welfare will be endangered if the waiver is approved.

(ii) Whether the object has been placed on the sidewalk to promote public health or safety.

(iii) Whether all the physical criteria for the sidewalk café shall continue to fully comply with the applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder if the waiver is approved or approved with modifications.

(iv) Whether the plans under the initially approved consent may be revised to provide a minimum of eight feet of the sidewalk width that is reserved for pedestrian use, or the clear path, that is measured from the sidewalk café frontage to the object.

(2) [the failure to comply is not due to an object that has been placed on the sidewalk to promote public health or safety; and] Upon the Commissioner's finding that all the physical criteria for the sidewalk café cannot fully comply with the applicable requirements of the Americans with Disabilities Act or rules promulgated thereunder if the waiver is approved, the Commissioner shall disapprove the waiver and the petition seeking for renewal of the revocable consent.

[(3) the burden shall be on the petitioner to demonstrate compliance with the requirements of this subdivision.]

§2-51. License Applications.

(a) Every application for a license must include all materials required by the Department, including [accompanied by the following]:

(1) The written, signed and notarized consent of the owner of the property in front of which a sidewalk café is to be operated.

(2) One (1) original and six (6) copies of a drawing measuring not less than eleven (11) by seventeen (17) inches, to be sealed and signed by an architect or engineer licensed by the state of New York and containing [the following]:

(i) a floor plan diagram in a scale of not less than one quarter inch equaling one foot and showing a frontage of ten (10) inches and width of proportion, indicating the location of all tables and chairs; menu holders; ratings; exit and entrance doors to adjacent premises; separation, if any, between pedestrian and café areas; width and length of café area; total width and length of sidewalk area; bus stops, if any, in front of café; fire escape drop ladder, counterbalanced stairs, and all permanent street obstructions between café area and curb line, if any; and the location of any fixed objects located on the sidewalk within twenty (20) feet of the existing or proposed sidewalk café;

(ii) an elevation diagram showing canopies and awnings, if any, and an indication whether such canopies and awnings shall be in a permanently fixed position or capable of being retracted, folded or otherwise moved; door and window openings; height of divider, if any; height of platforms and if platforms are used, the degree of grade of sidewalk; location of fire escapes, drop ladders and counterbalanced stairs, if any; sideview tables;

(iii) a plot plan, not to scale, locating the site to be occupied by the sidewalk café; and

(iv) a building section drawing in a scale of one quarter inch equaling a foot showing the orientation of the sidewalk café to the immediately adjacent buildings.

(v) photographs keyed to the plans and showing one (1) frontal, one (1) left and one (1) right sideview of the proposed sidewalk café. Such photographs [shall] must show the complete sidewalk area to be occupied by, and adjacent to, the proposed sidewalk café up to the curb line and to the entrance of the adjoining property.

(3) [The original copy of the liability insurance policy maintained] Proof of commercial general liability insurance pursuant to the provisions of § 2-57(c).

(4) A security fee, by certified check payable to the Comptroller, City of New York, of one thousand five hundred dollars (\$1,500) for unenclosed sidewalk cafés and four thousand (\$4,000) for enclosed sidewalk cafés.

(5) Proof that the Department of Health and Mental Hygiene has allowed operation of the existing restaurant for which the applicant seeks a license and revocable consent to operate the sidewalk cafe.

(b) In order to add more tables to an existing cafe for which a revocable consent has not expired, a licensee must secure a modified license and modified revocable consent by filing a modification application and modification petition for a revocable consent with appropriate diagrams in accordance with paragraph (a) of this section.

(c) Every renewal application for a license that is submitted during the unexpired term of a revocable consent must [be accompanied by the following] include all materials required by the Department, including:

(1) [The original copy of the liability insurance policy maintained] Proof of commercial general liability insurance pursuant to the provisions of § 2-57(c).

(2) Proof that the Department of Health and Mental Hygiene has allowed operation of the existing restaurant for which the applicant seeks a license to operate the sidewalk cafe.

(d) The consent of the owner shall not be necessary for the issuance of a renewal during the term of the licensee's lease. If the lease permits its assignment, the assignee shall not be required to secure and file an owner's consent, so long as the assignee holds occupancy under the original lease. Upon the commencement of any new lease, a new owner's consent [shall] must be secured and filed with the Department of Consumer Affairs.

(e) The fee for a license to maintain and operate a sidewalk cafe shall be \$510 for a two year license, which [shall apply] applies to all licenses issued on or after the effective date of this rule, and to existing licenses for any period after such effective date.

§ 2-53 Physical Criteria for Sidewalk Cafés.

The criteria included in this section apply to the construction or configuration of both enclosed and unenclosed sidewalk cafés.

(a) No portion of sidewalk cafés, such as doors, windows, walls, or any objects placed within a sidewalk café, shall swing or project beyond the designated exterior perimeter of the sidewalk café. However, fire exit doors, which are used exclusively as emergency fire exits, [shall be] are exempt from this provision.

(b) A sidewalk café or its restaurant [shall] must be directly accessible to persons with physical disabilities. All the physical criteria for a sidewalk café [shall] must fully comply with applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder. [In the event] If the main restaurant has provided access, the sidewalk café [shall] must be accessible to persons with disabilities from the interior of such restaurant. In order to ensure access for persons with physical disabilities:

(1) at least one door leading into the sidewalk café or restaurant from the adjoining sidewalk [shall not be less than] must be at least three feet wide, clear; and

(2) a ramp with non-skid surface, if there is change of grade, having a minimum width of three feet and a slope not greater than 1 in 12, [shall] must be provided. Such ramp may be of portable type for cafés which are six feet wide or less, except if such café is at least 180 square feet in area.

(c) Except as provided otherwise for unenclosed sidewalk cafés in subdivision (e) of § 2-55 of this subchapter, the furnishing of the interior of a sidewalk café [shall] must consist solely of movable tables, chairs and decorative accessories, nor may any objects, other than lighting fixtures and HVAC installations, be permanently affixed onto any portion of the sidewalk café wall. In no event shall such objects penetrate the exterior perimeter of the wall or roof of the enclosed sidewalk café or impede the transparency as required by this subchapter. Exhaust ducts on adjacent walls must be at least ten feet above the sidewalk.

(d) No signs are permitted on a sidewalk café except that only the name and type of establishment may appear on the umbrella or the valance of the awning or on the partition. [In the event] If the roof is of glass or material other than fabric, the signage may be placed upon the glass wall, but [shall] must not obscure the required transparency.

(e) No structure or enclosure to accommodate the storage of garbage or refuse may be erected or placed adjacent to or separate from the sidewalk café on the public right of way.

(f) No musical instruments or sound reproduction devices shall be operated or used within a sidewalk café for any purpose.

§ 2-54 Physical Criteria for Enclosed Sidewalk Cafés.

(a) An enclosed sidewalk café may be constructed with a base wall of opaque material up to a maximum height of 12 inches from the finished floor level. The base wall [shall] must include any horizontal structural members that support transparent materials above.

(b) All enclosing walls, doors and windows, except for the structural members, above finished floor level or base wall as provided in subdivision (a), up to a height of seven feet zero inches

above the finished floor level, must be of colorless, untinted, non-reflective transparent material, as approved by the New York City Department of Buildings. In order to maximize transparency, the horizontal, as well as vertical structural members [shall] must not be more than ten inches wide. At least 50 percent of the walls, up to a height of seven feet zero inches above finished floor level, [shall] must consist of operable transparent windows.

(c) The awning [shall] must be of incombustible materials, including colored or colorless safety glass or fabric which has been treated to be fire resistant as approved by the New York City Department of Buildings. At no point shall the height of the ceiling or awning of an enclosed sidewalk café be lower than seven feet zero inches above the floor of the sidewalk café. The valance of the awning [shall] must not be more than twelve inches high.

(d) The enclosed sidewalk café [shall] must not be more than seven inches above the level of the adjoining sidewalk.

(e) [Reserved.]

(f) There shall be a minimum distance of 40 feet between the near end walls of two enclosed sidewalk cafés if the entrance to a ground floor commercial use, other than an entrance to the eating or drinking place associated with either enclosed sidewalk café, is located between them. There shall be a minimum distance of 15 feet between the near end walls of two enclosed sidewalk cafés if an entrance to a ground floor non-commercial use, or use located above or below the ground floor, other than an entrance to an eating or drinking place associated with either enclosed sidewalk café, is located between them.

§2-55. Physical Criteria for Unenclosed Sidewalk Cafes.

(a) Provided that a service aisle not less than 36 inches is maintained along the entire length of the separated areas occupied by the sidewalk cafe, such space may be separated from the space used by pedestrians by a removable base wall, railing, planter (including any vegetation therein) or fence, which may not be higher than 30 inches above the floor or platform of the sidewalk café, except that there shall be no railing, structure or other form of barrier between a small sidewalk café and the remaining area of the sidewalk. In all cases, service must be provided to patrons from within the area designated for the sidewalk cafe. All planters, railings and fences placed within a sidewalk cafe [shall] must be self-supporting. Where a fence or railing is used, one-half (1/2) of the total area must be transparent. All approved sidewalk cafe equipment or accessories [shall] must be removed from the sidewalk when the unenclosed sidewalk cafe ceases operation, except for the planter which shall be removed or, alternatively, placed with its longest side against the wall of the restaurant, provided that such planter does not obstruct any egress from the building.

(b) The sidewalk café [shall] must be at the same elevation as the adjoining sidewalk, except that this requirement shall not apply to an unenclosed sidewalk café that is:

(1) operated pursuant to a revocable consent that authorizes otherwise and that was granted prior to March 27, 2003, the effective date of this rule, provided the elevation of the sidewalk café

operated under such consent conforms to the plans for which the consent was granted[.] This exception applies to a petition for a renewal, modification, or assignment of a revocable consent that was granted prior to March 27, 2003 provided the elevation continues to conform to the plans for which the initial consent was granted; or

(2) operated pursuant to a revocable consent that authorizes otherwise, provided the elevation conforms to the plans for which the consent was granted and at the time the consent was granted the sidewalk café was located in a historic district, on a landmark site, or attached or adjacent to a landmark or an improvement containing an interior landmark and the New York City Landmarks Preservation Commission determined that the elevation was a historic feature that should not be removed. This exception applies to a new petition for a revocable consent or for a renewal, modification, or assignment thereof.

(c) Paint, grass or artificial turf, carpet, platforms, or any other surface cover or treatment of any kind, shall not be permitted to be placed upon the area designated for an unenclosed sidewalk café, at any time, except an unenclosed sidewalk café may be operated upon an elevation pursuant to subdivision (b) of this section.

([c]d) The awning [shall] must be adequately secured, retractable and made of non-combustible frame covered with flame-proofed canvas or cloth, slow-burning plastic or other equivalent material, as approved by the New York City Department of Buildings, but not including glass. At no point shall the height of the awning of an unenclosed sidewalk cafe, including the valence of the awning, be lower than seven feet zero inches from the floor of the sidewalk cafe. The valence of the awning [shall] must not be more than twelve inches high.

([d]e) The exterior corners of the border of the space authorized to be occupied by an unenclosed sidewalk café [shall] must be marked on the sidewalk by a line painted with white latex traffic and zone marking paint. The line at the outside corner [shall] must be one (1) inch wide and either: (i) be three (3) inches long on each side of the café border from the point where the borders intersect at an angled corner, or (ii) mark the entire arc of a curved corner from the point where the arc intersects with the straight portion of the sidewalk café border. In addition, a line one (1) inch wide and three inches long identifying the furthest extension of the café border on the sidewalk [shall] must be marked on the sidewalk at intervals of no more than three feet, and no less than two feet apart, starting from the end point of the line marking the café corners.

([e]f) Heating units that are approved for use in unenclosed sidewalk cafés by the Department of Buildings[' Material and Equipment Acceptance Division] may be placed solely within the area of the sidewalk for which the revocable consent and license to operate an unenclosed sidewalk café has been granted as required by subchapter 6 of chapter two of title 20 of the New York City Administrative Code and applicable rules. No such heater shall be placed or be used within the area occupied by a sidewalk café until the installation of all connections to required fuel sources complies with the requirements of the rules and regulations of the New York City Department of Buildings and the New York City Fire Department governing the installation and use of sidewalk café heaters by licensed unenclosed sidewalk cafés, that was in effect as of such installation; and such installation has been inspected and approved for use in writing by the Department of Buildings. Such approval shall be made available on demand for inspection by Department

personnel at the premises at any time while the sidewalk café is open for business. No such heaters shall be operated unless the sidewalk café licensee has a currently valid open flame permit required for such heaters by the New York City Fire Department, and that during all times that the system is in operation it is under the direct supervision of a person holding a certificate of fitness issued by the New York City Fire Department. Such permits and certificates [shall] must be retained at all times on the premises and [shall] must be displayed on demand to any inspector authorized to inspect the premises.

([f]g) Any licensee that is ordered to cease using a sidewalk café heater or shut down the gas fuel line for such heater for failing to comply with applicable rules and requirements of the New York City Department of Buildings or the New York City Fire [Department] Department shall notify the Department in writing of such order within 24 hours after such order is issued.

§ 2-56 Requirements for Applicants.

(a) An application for a new or renewal sidewalk cafe license that is submitted with a petition for a new, renewal or modified petition for a revocable consent [shall] must include one (1) original and six (6) copies of assembled sets of the standard application form and all material required therein, together with all supporting documents and supporting correspondence. Only the original renewal application for a license must be submitted during the unexpired term of a revocable consent.

(b) An applicant who submits a new or renewal application for a sidewalk cafe license with a petition for a new, renewal or modified revocable consent [shall] must also [be required to] notify by certified or registered mail, all persons who occupy ground floor frontage, whether residential, commercial or other use, within 50 feet of either side of the proposed sidewalk cafe, the owners of such properties along the same block front as the proposed sidewalk cafe, and the association or board of any residential cooperative or condominium for any building along the same block front as the proposed sidewalk cafe. Such notification [shall] must state that an application for a sidewalk cafe has been filed for the location, and [shall] must invite all interested parties to [forward] send their comments to the affected Community Board.

§2-57. Operations.

(c) *Insurance Requirements.*

(1) Every licensee must secure and maintain throughout the term of the license commercial general liability (“CGL”) insurance, which [shall] must:

(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-/VII₂ [or] a Standard and Poor’s rating of at least A, a Moody’s Investors Service rating of at least A3, a Fitch Ratings rating of at least A-, a Demotech rating of at least A, or a similar rating by any other nationally recognized statistical organization acceptable to the City;

(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 0001 and be “occurrence” based rather than “claims-made”; and

(v) name the City of New York, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition ISO Form CG 2012 or CG 2026.

(2) Failure to maintain insurance coverage in 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 submit proof of CGL insurance by submission of [provide] the endorsement(s) naming the City as an Additional Insured and either [proof of CGL insurance by submission of a certificate of insurance in a form satisfactory to the Department that]:

(i) a certificate of insurance in a form satisfactory to the Department that satisfies the requirements of this rule and the terms of licensee's revocable consent agreement[;], identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date and 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; or

(ii) [identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date; and] an original or true copy of the CGL policy as certified by an authorized representative of the issuing insurance carrier.

[(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.]

§2-58. Variations and Amendments.

(b) Whenever a renewal application for a license to operate a sidewalk café would not comply with the standards set forth in 6 RCNY § 2-46 and 6 RCNY § 2-47 or part 2 of this subchapter [but only because] and the noncompliance is due to an object that was placed on the sidewalk after the granting of the initial license to operate such sidewalk café, [such objects shall not bar the granting of such renewal of a license provided that] the petitioner may seek a waiver from the Commissioner to continue operating pursuant to the plans under the initially approved consent. The waiver application must be made in writing in such form and manner as the Commissioner prescribes,

including that the petitioner must provide any information and materials requested by the Department.

(1) [the plans for the sidewalk café to be operated pursuant to the renewed license are identical to the plans for the sidewalk café operated under the initially approved license;] The Commissioner shall, in his or her discretion, approve, approve with modifications or disapprove the waiver based on:

(i) Whether the public health, safety and general welfare will be endangered if the waiver is approved.

(ii) Whether the object has been placed on the sidewalk to promote public health or safety.

(iii) Whether all the physical criteria for the sidewalk café shall continue to fully comply with the applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder if the waiver is approved or approved with modifications.

(iv) Whether the plans under the initially approved consent may be revised to provide a minimum of eight feet of the sidewalk width that is reserved for pedestrian use, or the clear path, that is measured from the sidewalk café frontage to the object.

(2) [the failure to comply is not due to an object that has been placed on the sidewalk to promote public health or safety; and] Upon the Commissioner's finding that all the physical criteria for the sidewalk café cannot fully comply with the applicable requirements of the Americans with Disabilities Act or rules promulgated thereunder if the waiver is approved, the Commissioner shall disapprove the waiver and the petition seeking for renewal of the revocable consent.

[(3) the burden shall be on the applicant to demonstrate compliance with the requirements of this section.]

§ 2. Subchapter F of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new Section 2-59, to read as follows:

§2-59. Rebuttable Presumption of Unenclosed Sidewalk Café Operation.

There shall be a rebuttable presumption that an unenclosed sidewalk café is being maintained or operated on the public sidewalk if there are tables and chairs located between the building line and the curb immediately adjacent to a restaurant.

**NEW YORK CITY LAW DEPARTMENT
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**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Sidewalk Cafe Rules

REFERENCE NUMBER: 2018 RG 082

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 20, 2019

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

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

RULE TITLE: Amendment of Sidewalk Cafe Rules

REFERENCE NUMBER: DCA-82

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 20, 2019
Date