

New York City Department of Small Business Services
NYC Small Business COVID Recovery Grant Program: Open Restaurant Outdoor
Heating Expenses Reimbursement
Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing?

Pursuant to Section 1301 of the New York City Charter (“the Charter”), the New York City Department of Small Business Services (“DSBS”) is proposing to promulgate an amendment to Chapter 17 of Title 66 of the Rules of the City of New York to add a reimbursement to fund certain outdoor heating expenses incurred by food service establishments.

When and where is the hearing? DSBS will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 AM on January 6, 2022. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, use the following link and/or meeting information:
<https://nycsbs.webex.com/nycsbs/j.php?MTID=mda7824eb4d597ae9ac4decc15abc6d6>

Meeting Number: 2341 344 4991
Password: K3w3fauj7EM

- **Video System.**
Dial 23413444991@webex.com
You can also dial 173.243.2.68 and enter your meeting number.
- **Phone.** For access, dial: +1-646-992-2010
When prompted, enter Meeting ID: 2341 344 4991

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

- **Website.** You can submit comments to the DSBS through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@sbs.nyc.gov.
- **Mail.** You can mail written comments to Zen Baraki, New York City Department of Small Business Services, 1 Liberty Plaza, 11th Floor, New York, NY 10006.
- **Fax.** You can fax written comments to DSBS at 212-618-8865.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by internet video and audio or by telephone using the instructions above. It is recommended,

but not required, that commenters sign up prior to the hearing by contacting DSBS by phone at (212) 513-6352 or by email at zbaraki@sbs.nyc.gov.

Is there a deadline to submit written comments? The deadline for submitting written comments is 5:00 PM on January 6, 2022.

What if I need assistance to participate in the hearing? You must contact DSBS's Office of Legal Affairs if you need a reasonable accommodation at the hearing because of a disability. You must tell us if you need a sign language interpreter. You can tell us by email at zbaraki@sbs.nyc.gov. You may also tell us by telephone at (212) 513-6352. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us of an accommodation request by December 27, 2021.

Can I review the comments made on the proposed rule? You can review comments submitted online by visiting <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public upon request by email at zbaraki@sbs.nyc.gov.

What authorizes DSBS to make this rule? Sections 1301 and 1043(a) of the New York City Charter authorize DSBS to make this proposed rule. This proposed rule was not included in DSBS's regulatory agenda for this Fiscal Year because it was not evident that such a rule would be necessary at the time.

Where can I find DSBS's rules? DSBS's rules are in Title 66 of the Rules of the City of New York.

What rules govern the rulemaking process? DSBS 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

On June 18, 2020, Emergency Executive Order ("EEO") No. 126 established the Open Restaurants program in response to the COVID-19 pandemic and its impact on food service establishments. This program allowed restaurants, bars and other establishments to use outdoor space on sidewalks and the roadway to set up additional dining space, successfully supporting small businesses and allowing New Yorkers to safely enjoy dining out during the COVID-19 pandemic.

EEO No. 153 was issued on October 14, 2020 to support the program during the colder months. This EEO authorized the use of "temporary outdoor heaters," including portable heaters fueled by propane liquefied petroleum gas. The EEO temporarily suspended section 3805.3(12) of the New York City Fire Code to the extent this section prohibited the use of liquified petroleum gas for space heating in outdoor dining areas operated pursuant to the Open Restaurants program. On

May 12, 2021, this EEO was amended by EEO No. 200 which revoked permission to use temporary outdoor heaters fueled by propane as of June 1, 2021.

Due to the economic hardship caused by the COVID-19 pandemic, food service establishments need to continue to maximize their dining space by offering outdoor seating options. In order to accommodate outdoor dining in the winter months, some of these establishments will need to purchase outdoor heaters compliant with EEO No. 200, specifically those that are not fueled by propane gas.

DSBS is proposing to promulgate an amendment to Chapter 17 of Title 66 of the Rules of the City of New York by adding a reimbursement-based grant to fund outdoor heating expenses for food service establishments, thereby offsetting the cost of complying with EEO No. 200. Purchases of propane gas fueled systems were not reimbursed when they were allowed to be used under EEO No. 153.

This new grant component will be available to businesses that are eligible for the NYC Small Business COVID Recovery Grant Program, that have revenue of up to \$1M, and that are participating in the Open Restaurants program with sidewalk seating. Eligible businesses will need to show that they purchased and properly installed electric or natural gas-fired outdoor heating units in order to receive the grant funds. The purpose of this grant is to encourage small businesses to continue providing outdoor dining options to customers during the COVID-19 pandemic, as well as to support these businesses by increasing revenue and reimbursing pandemic-related expenses.

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.

Section 1. The heading of Chapter 17 of Title 66 of the Rules of the City of New York is amended to read as follows:

CHAPTER 17

NYC SMALL BUSINESS COVID RECOVERY GRANT PROGRAM AND OPEN RESTAURANT OUTDOOR HEATING EXPENSES REIMBURSEMENT

§ 2. Section 17-01 of Title 66 of the Rules of the City of New York is amended to read as follows:

§ 17-01 Purpose.

The objective of the NYC Small Business COVID Recovery Grant Program ("Grant Program") is to provide immediate funding to small businesses in LMI areas, and small businesses in the Arts, Entertainment, and Recreation sector and small businesses in the Accommodation and

Food Services sector. The objective of the Open Restaurant Outdoor Heating Expenses Reimbursement, a part of the Grant Program, is to provide financial assistance for the purchase of electric and natural gas-fired outdoor heaters to Open Restaurants that wish to continue outdoor dining operations during the colder weather months.

§ 3. Section 17-02 of Title 66 of the Rules of the City of New York is amended by adding the following definition, in alphabetical order, to read as follows:

Electric or natural gas-fired outdoor heating unit. “Electric or natural gas-fired outdoor heating unit” means a freestanding or ceiling- or wall-mounted electric radiant heater or natural gas-fired heater.

§ 4. Chapter 17 of Title 66 of the Rules of the City of New York is amended by adding a new Section 17-07 to read as follows:

§ 17-07: Outdoor Heating Expenses for Open Restaurants.

Applicants in the Accommodation and Food Services sector with up to \$1M in revenue in calendar year 2019 that meet the eligibility criteria outlined in § 17-07(a), will be eligible for a reimbursement of up to \$5,000 towards the purchase and/or installation of electric and/or natural gas-fired outdoor heating units.

(a) Eligibility Requirements. To be eligible for the reimbursement, an applicant must satisfy all of the following criteria:

1. Applicant meets the eligibility requirements set forth in § 17-03 of this chapter, as determined pursuant to the selection criteria set forth in § 17-04(a).
2. Applicant is participating in the Open Restaurants program, as established by emergency executive order number 126, dated June 18, 2020, as amended by subsequent orders, or any successor program, with sidewalk seating (list of participating businesses can be found here: <https://experience.arcgis.com/experience/ba953db7d541423a8e67ae1cf52bc698>).
3. Applicant was awarded a grant pursuant to § 17-05 of this chapter and did not, and will not, use the funds provided by such grant for the same heating expenses for which it seeks a reimbursement pursuant to this section.
4. Applicant purchased electric or natural gas-fired outdoor heating units on or after June 1, 2021 and installed such units in substantial compliance with applicable local laws, rules and other legal requirements, including any applicable guidance issued by the Fire Department, Department of Buildings, Department of Transportation, or the Department of Sanitation.

5. Applicant is operating and will continue to operate such heating units in substantial compliance with applicable local laws, rules and other legal requirements.

(b) Selection Criteria. DSBS will use the following processes & documents to determine whether a business meets the eligibility criteria in § 17-07(a) of this chapter. The documentation types listed below are illustrative and not exhaustive.

| <u>CATEGORY</u> | <u>DOCUMENTATION TYPE</u> |
|---|--|
| <u>Applicant meets the eligibility requirements set forth in §17-03 of this chapter</u> | <u>Eligibility determination from DSBS or documents outlined in § 17-04(a) of this chapter.</u> |
| <u>Applicant operates a business that is participating in the Open Restaurants program, or any successor program, with sidewalk seating</u> | <u>Appear on list of participating businesses with sidewalk seating only, or both roadway and sidewalk seating:</u> https://experience.arcgis.com/experience/ba953db7d541423a8e67ae1cf52bc698 |
| <u>Applicant purchased electric and/or natural gas-fired outdoor heating units on or after June 1, 2021</u> | <u>Proof of payment, including but not limited to invoices, receipts, cancelled checks, credit card statements, bank statements</u> |
| <u>Applicant installed electric and/or natural gas-fired outdoor heating unit in substantial compliance with all City requirements</u> | <u>Electric heater: proof of permit from the NYC Department of Buildings, if applicable</u> <u>Natural gas-fired heater: proof of permit and required certificates from the NYC Department of Buildings and the Fire Department of New York</u> |
| <u>Applicant is operating and will continue to operate such heating units in substantial compliance with</u> | <u>Signed attestation</u> |

| | |
|--|---------------------------|
| <u>applicable local laws, rules and other legal requirements</u> | |
| <u>Applicant did not and will not use the grant award outlined in §17-05 for the same heating expenses for which it seeks a reimbursement pursuant to this section</u> | <u>Signed attestation</u> |

- (c) Funding Priority. Funding will be released in two rounds. The first round will fund eligible applicants that are LMI small businesses, as defined in § 17-02. The second round will fund all eligible applicants, regardless of geographical location. If there is insufficient funding available for all applicants in a given round, funding will be provided on a first-come, first served basis within each round, based on the order in which applicants have submitted a complete application.
- (d) Award. Once eligibility has been determined based on an applicant’s ability to meet the requirements set forth in §17-07(a), DSBS will reimburse eligible applicants up to \$5,000 towards the cost of purchasing and/or installing electric and/or natural gas-fired outdoor heating units, distributed on the basis of the priorities listed in §17-07(c) and subject to funding appropriations thereof.
- (e) Compliance. Applicants for the reimbursement awarded pursuant to this section must submit an application and comply with the terms and conditions set forth in the application. Should an applicant fail to comply with the terms and conditions set forth in the application, DSBS reserves the right to recover the full reimbursement amount distributed to the applicant.
- (f) Expiration. DSBS will not accept applications for the reimbursement awarded pursuant to this section that are submitted after May 1, 2022.

**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: Reimbursement of Outdoor Heating Expenses for Certain Restaurants

REFERENCE NUMBER: SBS-16

RULEMAKING AGENCY: Department of Small Business Services

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/ Francisco X. Navarro
Mayor's Office of Operations

November 29, 2021
Date

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

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

RULE TITLE: Reimbursement of Outdoor Heating Expenses for Certain Restaurants

REFERENCE NUMBER: 2021 RG 089

RULEMAKING AGENCY: Small Business Services

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: November 23, 2021