

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to repeal rules related to sidewalk cafes in order to implement Local Law 121 of 2023, which repealed subchapter 6 of chapter 2 of title 20 of the NYC Administrative Code relating to sidewalk cafes.

When and where is the hearing? Pursuant to section 1043(e) of the New York City Charter, DCWP will not hold a public hearing on this rule because the Department has determined a hearing would serve no public purpose.

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

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before March 15, 2024.

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 comment deadline, all comments received by DCWP 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 DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Local Law 121 for the year 2023 authorize the Department to make these proposed rules. This proposed rule was not included in the Department’s regulatory agenda for this Fiscal Year because Local Law 121 had not been enacted when the agenda was prepared.

Where can I find DCWP’s rules? The Department’s rules are in title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP 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

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to repeal portions of chapter 1 of title 6 of the Rules of the city of New York (“RCNY”) related to the licensing of sidewalk cafes and repeal the sidewalk cafe penalty schedule and certain citations involving sidewalk cafes in other penalty schedules, to facilitate Local Law 121 of 2023, which enacted the City’s new Dine Out NYC outdoor dining program. Subchapter F of Chapter 2 of the RCNY, relating to the granting of revocable consents and licenses by DCWP for the operation of sidewalk cafes, was repealed by rules promulgated by the Department of Transportation, pursuant to Local Law 121, implementing the new licenses and revocable consents required for Dine Out NYC.

Local Law 121 of 2023 created a new outdoor dining program in the City that includes sidewalk cafes. Pursuant to that Law, sidewalk cafes are now regulated by the City Department of Transportation. The repeals being proposed remove citations and penalties from title 6 of the RCNY that are no longer relevant.

Sections 1043 and 2203(f) of the New York City Charter authorize the Department of Consumer and Worker Protection to make this proposed rule.

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. Subdivisions (d) and (e) of section 1-02 of chapter 1 of Title 6 of the Rules of the City of New York, relating to the expiration of revocable consents and licenses for unenclosed sidewalk cafes and for enclosed sidewalk cafes, respectively, are REPEALED.

§ 2. Section 1-03 of chapter 1 of Title 6 of the Rules of the City of New York is amended as follows:

§ 1-03 Display of License Sign.

(a) Every licensee[, except for those licensed to operate a sidewalk cafe as described in subdivision b of this section,] must post conspicuously at [his or her] the licensee’s place of business the license sign provided by the Department that includes the license information, instructions on contacting the Department to file a complaint, and other important information for consumers as the Department deems appropriate. A licensee may post a copy of such sign at the licensee’s place of business only if the original is available at such place of business for inspection by any person. A licensee having no fixed place of business must exhibit [his or her] their license upon the request of any person.

(b) [Every licensee licensed to operate a sidewalk cafe pursuant to § 20-224 of Subchapter 6 of Chapter 2 of Title 20 of the Administrative Code of the City of New York is required to post a sign provided by the Department that includes the license information, instructions on contacting the Department to file a complaint, the maximum number of tables and chairs permitted for the sidewalk cafe, and any other pertinent information for consumers as the Department deems appropriate, at a location from which it must be visible to persons on that portion of the sidewalk adjacent to such licensee’s sidewalk cafe. A licensee may post a copy of such sign at a location as described in this subdivision only if the original is available at the licensee’s place of business for inspection by any person] Reserved.

§ 3. The second and fourth rows, labelled “6 RCNY § 1-03(b)” and “6 RCNY §§ 2-41 through 2-59”, respectively, of the table contained in paragraph 5 of subdivision b of section 6-03 of chapter 6 of Title 6 of the Rules of the City of New York, related to the violations of sidewalk cafe regulations for which an opportunity to cure a first-time violation is available, are REPEALED.

§ 4. The eleventh row, labeled “6 RCNY § 1-03(b)”, of the penalty schedule in section 6-11 of chapter 6 of Title 6 of the Rules of the City of New York, relating to penalties for violations of 6 RCNY § 1-03(b), is REPEALED.

§ 5. Section 6-15 of chapter 6 of Title 6 of the Rules of the City of New York, relating to penalties regarding sidewalk cafes, is REPEALED.

**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: Repeal of Rules Relating to Sidewalk Cafes

REFERENCE NUMBER: 2023 RG 098

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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
Senior Counsel

Date: February 6, 2024

**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: Repeal of Rules Relating to Sidewalk Cafes

REFERENCE NUMBER: DCWP-44

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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

February 6, 2024
Date