

Proposed Permanent Open Restaurants Program:
NYC Council Intro 31b-2022

Overview of Draft Legislation



Community Board 8 Manhattan

Transportation Committee Meeting – June 7, 2023

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Permanent Open Restaurants (Intro 31b-2022)

§ 19-160: Open restaurants; license and revocable consent required for sidewalk cafes and roadway cafés

- Sidewalk cafes permitted “in an area immediately adjacent to its premises” with a license and revocable consent
- Roadway cafes permitted in “the roadway adjacent to the curb in front of such ground floor restaurant” with a license and revocable consent
- A restaurant may establish both a sidewalk and roadway café
- Any enclosed sidewalk café in existence prior to 3/16/2020 would be grandfathered into the new program if it had been lawfully operating at some point between between 3/16/16 and 3/16/20; if a restaurant wanted to modify their sidewalk café, they would need to apply under the new permanent program;
- Unenclosed sidewalk cafes shall be open-air and shall contain only readily removable tables, chairs and other removable decorative items
- 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
- Alcohol consumption permitted as permitted by NYS law
- No advertising permitted

DOT Rulemaking

- DOT to promulgate rules relating to:
 - Granting of licenses and revocable consents;
 - The design of the roadway or sidewalk café;
 - Priorities among applicants for a license covering the same area on a sidewalk or a roadway;
 - 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.
- Sidewalk cafes shall be open-air and shall contain only readily removable tables, chairs and other removable decorative items as set forth in such rules;
- Rules to be establish most conform to the following:
 - Hours in which sidewalk cafes are permitted must include the timeframe from 10AM to 12 Midnight
 - Unenclosed sidewalk cafes and roadway cafes not permitted before 10AM on Sundays
 - No roadway cafes permitted between November 1st and March 31st
- Boundaries for sidewalk and roadway café areas will need to be clearly delineated, with rules establishing specific requirements for roadway barriers to protect diners

Landmark Sites/Historic Districts

- Any sidewalk or roadway located in an historic district, on a landmark site or adjacent to a landmark (or an improvement containing an interior landmark) must obtain LPC Approval
- Like other sidewalk cafes and roadway cafes, will also require revocable consent, and must include work or improvements for which such approval is required
- LPC must make a determination on the application within 10 days of a complete application
- An LPC public hearing shall be required if LPC determines the proposed café may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district

Licenses & Fees

- For both Sidewalk and Roadway Cafes:
 - \$1,050 fee for license
 - \$1,050 for each subsequent license period
 - These fees are in addition to fees to be paid for upon revocable consent approval
 - 4-Year term of license
 - Licensee shall 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
 - Licenses are personal to applicants for the specific, and thus non-transferrable

Roadway Café Revocable Consents

- Terms shall be concurrent with license periods
- Revocable Consent Petitions shall include:
 - Accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and other permitted objects (but no requirement for the applicant to procure a professional architect or engineer to develop the drawing)
 - Roadway Cafes will include annual fees for revocable consents per square foot of roadway requested, based on the geographic “sector” in which the applicant is located.
 - Manhattan from 125th Street and South (including Community District 8) will be in either Sector 3 with a fee rate of \$14 per square foot, or Sector 4 at a fee rate of \$25 per square foot;
 - DOT will “provide notice of a petition for a revocable consent for a roadway cafe to the affected community board and council member”
 - “To the extent practicable, DOT will provide an opportunity for both the community board and council member to submit comments as prescribed in NYCDOT Rules”

Sidewalk Café Revocable Consents & Community Board Review Process

- Revocable Consent Petitions shall include:
 - Accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and other permitted objects (but no requirement for the applicant to procure a professional architect or engineer to develop the drawing)
 - Roadway Cafes will include annual fees for revocable consents per square foot of roadway requested, based on the geographic “sector” in which the applicant is located.
 - Manhattan from 125th Street and South (including Community District 8) will be in either Sector 3 with a fee rate of \$18 per square foot, or Sector 4 at a fee rate of \$31 per square foot;
 - Grandfathered enclosed sidewalk cafes will continue paying their prior annual fees until the law goes into effect.
 - On 1/1/28 and every 4 subsequent years, DOT may increase or decrease fees
- Revocable consent petitions to be forwarded to community boards for review within 5 days of filing;
- Community Boards will have 40 days to:
 - Notify the public of the petition;
 - Conduct a public hearing
 - Submit a recommendation
 - Waive the public hearing process if it wishes to do so
- If a Community Board submits a recommendation after the 40 day period lapses, it will be at the discretion of DOT whether to accept the Community Board recommendation.
- If the Community Board denies the applicant’s petition, or approves an application with “substantial modifications or conditions”, DOT shall hold a public hearing

Enforcement

- Fines for unlicensed operators of sidewalk and roadway cafes: \$500 for first violation, \$1,000 for subsequent violations
- Fines for licensed operators violating DOT rules: \$200 for first violation, \$500 for subsequent violations
- Upon a rules violation, DOT shall license holder and provide 30 days to take corrective action
- DOT may after providing notice and an opportunity to be heard, suspend or revoke a license to operate a roadway or sidewalk café and order its removal for:
 - 3 or more of the same violation within 2 years
 - 6 or more of any violation within 2 years
- Decision to suspend or revoke a license shall be waived if, upon the submission of satisfactory proof, DOT 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;
- DOT Commissioner may order the removal of any furniture, equipment, structure or other obstruction