

New York City Department of Transportation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Transportation (“DOT”) is proposing to amend title 34 of the Rules of the City of New York to add a new chapter 5 to establish rules relating to DOT’s Dining Out NYC program.

When and where is the hearing? DOT will hold a public hearing on the proposed rule online. The public hearing will take place on November 20, 2023 at 10:00 am.

Join through Internet:

- To join the hearing via your browser either click on the following URL link or copy and paste it into your browser’s address bar.

Join Zoom Meeting:

<https://zoom.us/j/94117065380?pwd=M0xUVGhpVzFFVIF3S3NrUnA0NHBTQT09>

Meeting ID: 941 1706 5380

Password: 384818

- Then follow the prompts.
- If you have low bandwidth or inconsistent Internet connection, we suggest you use the phone option below for the hearing.

Join via phone only:

- To join the meeting only by phone, use the following information to connect:
- Phone: +1 646 518 9805
- Meeting ID: 941 1706 5380
- Password: 384818

How do I comment on the proposed rules? Anyone can comment on the proposed rules by any of the following methods:

- **Website.** You can submit comments to DOT through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@dot.nyc.gov.
- **Mail.** You can mail comments to Michelle Craven, Assistant Commissioner, Office of Cityscape and Franchises, New York City Department of Transportation, 55 Water Street, 9th Floor, New York, NY 10041.
- **Fax.** You can fax comments to 212-839-9685.
- **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 emailing rules@dot.nyc.gov or calling 212-839-6500 by November 17, 2023, and providing your name and affiliation. While you will be given an opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, the deadline for written comments is at 5pm on November 20, 2023.

What if I need assistance to participate in the Hearing? You must tell the DOT Office of the General Counsel 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 e-mailing at rules@dot.nyc.gov or by calling 212-839-6500 by November 13, 2023.

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/>. Copies of all comments submitted online, copies of all written comments, and a recording of the hearing may be requested by emailing rules@dot.nyc.gov.

What authorizes DOT to make this rule? Sections 1043 and 2903(a) of the New York City Charter (“City Charter”) authorize DOT to make this proposed rule. This rule was included in DOT’s regulatory agenda for this Fiscal Year.

Where can I find the Department of Transportation rules? DOT’s rules are in title 34 of the Rules of the City of New York.

What laws govern the rulemaking process? DOT 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

The Commissioner of the New York City Department of Transportation (“DOT”) is authorized to promulgate rules regarding parking and traffic operations in the City pursuant to section 2903(a) of the New York City Charter.

In accordance with Local Law No. 121 for the year 2023 (“Local Law 121”), DOT is proposing rules relating to its permanent outdoor dining program. In 2020, the temporary Open Restaurants program was established pursuant to an emergency executive order in response to the COVID-19 pandemic. During the height of the pandemic, the temporary Open Restaurants program was a critical lifeline for communities and businesses as they navigated the effects of this devastating crisis. The program aided restaurants in recovering from this difficult economic time, enhanced social distancing and promoted open space. It quickly evolved from a response to the COVID-19 pandemic to a reimagination of the city’s streetscape to support small businesses, while creating vibrant public spaces that improve quality of life for all New Yorkers.

This proposed rule would set forth requirements for the granting of licenses and revocable consents for sidewalk and roadway cafes, establish siting and design criteria for sidewalk and roadway seating areas, and set forth the compensation required to be paid for the granting of a revocable consent for the operation of sidewalk and roadway cafes. Specifically, the amendments being proposed would:

- Repeal the entirety of subchapter F of chapter 2 of title 6 of the Rules of the City of New York, relating to the granting of revocable consents and licenses to operate a sidewalk cafe.
- Add a new chapter 5 to title 34 of the Rules of the City of New York in relation to the administration and operation of an outdoor dining program. Specifically, among other things, the proposed rule would:
 - Establish the application requirements and set forth the application process for the granting of licenses and revocable consents for sidewalk cafes and roadway cafes in

- accordance with Local Law 121;
- Set forth the annual compensation for revocable consents for sidewalk cafes and roadway cafes in accordance with Local Law 121;
- Set forth the annual compensation for revocable consents for enclosed sidewalk cafes in accordance with Local Law 121;
- Set forth operational and management requirements for sidewalk cafes and roadway cafes in accordance with Local Law 121, including but not limited to requirements relating to hours of operation, alcohol consumption, and seasonal operating restrictions for roadway cafes;
- Establish operational and management requirements for sidewalk cafes and roadway cafes, including but not limited to requirements related to maintenance, noise, lighting, abandonment, and accessibility;
- Establish siting and design requirements for sidewalk cafes and roadway cafes, including but not limited to clear path requirements for sidewalk cafes, required clearances, requirements for lighting and electrical connections, barrier and flooring requirements for roadway cafes, and requirements for awnings, coverings, umbrellas, and screenings; and
- Establish enforcement procedures, such as processes for corrective action requests, suspensions and revocation, and removals.
- Amend section 3-01 of chapter 3 of title 34 of the Rules of the City of New York to set forth penalties for violations of rules relating to the outdoor dining program in accordance with Local Law 121.
- Establish requirements for temporary outdoor dining setups authorized to continue operating pursuant to Local Law 121, which were previously adopted on an emergency basis pursuant to subdivision i of section 1043 of the Charter.

These proposed rules would replace the rules in subchapter F of chapter 2 of title 6 of the Rules of City of New York, relating to the granting of revocable consents and licenses to operate sidewalk cafes.

New material is underlined.

§ 1. Subchapter F of chapter 2 of title 6 of the Rules of the City of New York is REPEALED.

§ 2. Title 34 of the Rules of the City of New York is amended by adding a new chapter 5 to read as follows:

CHAPTER 5

LICENSES AND REVOCABLE CONSENTS FOR SIDEWALK AND ROADWAY CAFES

§ 5-01 Definitions.

For purposes of this chapter, the following terms have the following meanings:

Administrative Code. The term “Administrative Code” means the Administrative Code of the City of New York.

Barrier. The term “barrier” means an object placed on all sides of a roadway cafe, other than the side that fronts the restaurant, to protect patrons of a roadway cafe, that has a fully built interior wall and bottom to hold water or such other filler approved by the Department and that is removable.

Clear Path. The term “clear path” means a straight unobstructed path on the sidewalk or sidewalk widening for pedestrian circulation.

Commissioner. The term “Commissioner” means the Commissioner of Transportation, or their authorized designee.

Consent. The term “consent” means an authorization, revocable at will, to an owner of real property or, with permission of the owner, to a tenant of real property to use the adjacent sidewalk widening to construct and operate a sidewalk cafe subject to the terms applicable thereto.

Corrective action request or CAR. The term “corrective action request” or “CAR” means written notice by the Department that a condition created or maintained within a sidewalk cafe or roadway cafe is in violation of a provision of section 19-160 through 19-160.6 of the Administrative Code, these rules, or a term or condition of a license issued pursuant to this chapter, with a request that action be taken by the person to whom such notice is addressed to correct such condition.

Department. The term “Department” means the Department of Transportation.

Enclosed sidewalk cafe. The term “enclosed sidewalk cafe” means a sidewalk cafe that is constructed predominantly of light materials such as glass, slow-burning plastic or lightweight metal pursuant to a permit issued by the Department of Buildings.

Fee rate. The term “fee rate” means the compensation to be paid per square foot to the city during the continuance of a revocable consent or a consent in an amount equal to the applicable sector rate, reduced, as determined by the Department, to account for factors including, but not limited to, the impact historical weather patterns may have on the operation of a sidewalk cafe or roadway cafe and any area of such roadway cafe occupied by barriers demarcating such cafe from the curb lane or parking lane.

Floating parking lane. The term “floating parking lane” means a parking lane that is separated from the curb by a protected bicycle lane that is adjacent to the curb.

Furnishing zone. The term “furnishing zone” means an area of a sidewalk that is parallel to the curb line and in which streetscape elements, such as street furniture and trees, are located.

Ground floor. The term “ground floor” means visible from the street and directly accessible to the public from the street.

Ground floor restaurant. The term “ground floor restaurant” means any ground floor premises that is operated pursuant to a food service establishment permit issued by the Department of Health and Mental Hygiene.

Landmarks Preservation Commission or LPC. The term “Landmarks Preservation Commission” or “LPC” means the New York City Landmarks Preservation Commission.

Petitioner. The term “petitioner” means a person who submits a petition for a revocable consent for a sidewalk cafe or a roadway cafe.

Revocable consent. The term “revocable consent” means a grant of a right, revocable at will, to an owner of real property or, with the consent of such owner, to a tenant of real property to use adjacent inalienable property to construct and to operate a sidewalk cafe or roadway cafe subject to the terms and conditions applicable thereto.

Roadway. The term “roadway” means that portion of a street designed, improved, or ordinarily used for vehicular travel, exclusive of the shoulder and slope.

Roadway cafe. The term “roadway cafe” means an open-air portion of a ground floor restaurant containing readily removable tables, chairs, and other removable decorative items, which is located in the curb lane or parking lane of a roadway fronting the restaurant and is designed and operated pursuant to sections 5-02 through 5-12 of this chapter.

Sector. The term “sector” means an area of the city, as determined by the Department, where the median annual rent charged for a square foot of a ground floor commercial premises, in accordance with information published by the Department of Finance pursuant to subdivision h of section 11-3101 of the Administrative Code, is similar.

Sector rate. The term “sector rate” means a dollar amount determined by the Department for each sector, based on the median annual rent for a square foot of a ground floor commercial premises in such sector, as determined in accordance with the information published by the Department of Finance pursuant to subdivision h of section 11-3101 of the Administrative Code, or other similar data that the Department determines accurately reflects such median annual rent in such sector.

Sidewalk. The term “sidewalk” means a portion of a street between curb lines, or lateral lines of a roadway, and the adjacent property lines, but not including the curb, intended for the use of pedestrians.

Sidewalk cafe. The term “sidewalk cafe” means an open-air portion of a ground floor restaurant containing only readily removable tables, chairs, and other removable decorative items, that is located on a public sidewalk or sidewalk widening in front of the restaurant and that is designed and operated pursuant to sections 5-02 through 5-12 of this chapter.

Sidewalk widening. The term “sidewalk widening” shall have the same meaning as provided in subdivision (f) of section 37-53, or a successor provision, of the zoning resolution of the city of New York.

Street. The term “street” shall have the meaning ascribed thereto in subdivision 13 of section 1-112 of the Administrative Code.

§ 5-02 General Requirements.

(a) Requirement for a License and Revocable Consent. Any person owning, leasing, managing or operating a ground floor restaurant upon property which abuts upon any street may establish and operate a sidewalk cafe upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises, or a roadway cafe upon the roadway adjacent to the curb in front of such ground floor restaurant, or both, provided that such sidewalk cafe or roadway cafe be granted a license and a revocable consent by the Commissioner, and provided further that a sidewalk cafe located entirely on a sidewalk widening shall be granted a license and consent for the use of such sidewalk widening as a sidewalk cafe by the Commissioner.

(b) Enclosed Sidewalk Cafes.

(1) Notwithstanding subdivision (a), no license shall be granted or renewed for the operation of an enclosed sidewalk cafe at any location other than a location where:

(i) An enclosed sidewalk cafe had been constructed pursuant to a permit issued by the Department of Buildings and in accordance with section 3111 of the New York City Building Code prior to March 16, 2020; and

(ii) An enclosed sidewalk cafe was lawfully operated as such on March 16, 2020 or at any time within four years prior to such date.

(2) Granting or renewal of any such license to operate an enclosed sidewalk cafe at such location shall be in accordance with subdivision (c) of section 5-03 of this chapter.

(c) Landmarks Preservation Commission Review.

(1) Approval by the Landmarks Preservation Commission of a license application is required where the petition for a revocable consent to operate a sidewalk cafe or roadway cafe includes work or improvements on a sidewalk cafe or roadway cafe that is:

(i) Located within a historic district;

(ii) Located on a landmark site;

(iii) Attached to a landmark; or

(iv) Attached to an improvement containing an interior landmark.

(2) LPC shall make a determination on such application no later than 10 business days after the date of receipt of a complete application, unless LPC determines that such sidewalk cafe or roadway cafe may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district and a public hearing is required.

(3) Where approval is required pursuant to paragraph (1) of this subdivision, LPC shall review and approve any element of a sidewalk cafe or roadway cafe, including but not limited to heaters, lighting, electrical connections, and awnings, that is physically attached to a building located within a historic district or located on a landmark site. Such elements that are physically attached to a building located within a historic district or located on a landmark site shall comply with all applicable rules and regulations of LPC.

(d) Modification. An application to modify a license must be submitted in accordance with section 5-03, and a petition to modify a revocable consent, with appropriate drawings, must be submitted in accordance with paragraph (2) of subdivision (c) of section 5-04 of this chapter. Such application and petition shall be reviewed pursuant to the process set forth in subdivision (c) of section 5-07 of this chapter, except that the Department shall hold a public hearing only when a licensee seeks approval (i) to increase the area of the sidewalk cafe or roadway cafe by ten (10) percent or greater, or (ii) to modify the location of a sidewalk cafe or roadway cafe.

(e) Except where expressly prohibited by law, the Commissioner may, in accordance with sections 19-160 through 19-160.6 of the Administrative Code, waive these rules, in the interest of public safety and convenience.

(f) Compliance. A licensee shall comply with all other applicable laws, rules, and regulations, including but not limited to the New York City Fire Code, New York City Building Code, New York City Health Code and the Department of Health and Mental Hygiene's rules and regulations, as applicable.

§ 5-03 License Requirements.

(a) Term. The term of a license granted pursuant to this chapter shall be four years.

(b) Prohibition on Sale, Lease, or Transfer. A license to establish and operate a sidewalk cafe or a roadway cafe shall be personal to the applicant and may not be sold, leased or transferred. Such license shall not be deemed revoked by the sale or transfer of the lease or of title to the building or structure to which the sidewalk cafe or roadway cafe is related unless such sale or transfer materially alters the plans submitted for the license application or revocable consent. For purposes of this paragraph, “materially alter” shall mean to modify the location or increase the area of a sidewalk cafe or roadway cafe by ten (10) percent or greater.

(c) License Applications. An application for the granting of a license, or for renewal, modification, or assignment of a license, must be submitted electronically on the Department’s website and must include all materials required by the Department as set forth in these rules, including a completed application in a form prescribed by the Department and provided on the Department’s website.

(d) License Application Fees. There shall be separate fees for the granting, and renewal, of a sidewalk cafe license and a roadway cafe license. Such fees shall be non-refundable and are set forth in the chart below. Such license and license renewal fees shall be in addition to the amount required to be paid as compensation for a revocable consent, or renewal thereof, to establish and operate a sidewalk cafe or roadway cafe.

	<u>Sidewalk Cafe</u>	<u>Roadway Cafe</u>
<u>Granting of license</u>	<u>\$1,050</u>	<u>\$1,050</u>
<u>Renewal of license</u>	<u>\$1,050</u>	<u>\$1,050</u>

§ 5-04 Requirements for Revocable Consent of Sidewalk Cafes and Roadway Cafes.

(a) Term. The term of a revocable consent to operate a sidewalk cafe or roadway cafe shall be one license term (i.e., four years) and shall be concurrent with the term of the license granted pursuant to this chapter for the sidewalk cafe or roadway cafe.

(b) Assignment or Transfer of a Revocable Consent. Revocable consents may not be assigned, transferred, or otherwise conveyed without the written permission of the Commissioner.

(c) Petition Requirements. A petition for the granting of a revocable consent, or for a renewal, modification, or assignment of a revocable consent, must be submitted electronically on the Department’s website and must include:

(1) Petition Form. A completed and accurate petition form, which shall be made available on the Department’s website, signed by the person to whom a food service establishment permit is issued from the Department of Health and Mental Hygiene to operate the ground floor restaurant that occupies the premises immediately adjacent to the sidewalk and/or roadway area for which the revocable consent is sought, or an authorized representative of such person.

(2) Site Plan and Drawings. A site plan comprised of an accurate drawing depicting required clearances, the space to be occupied, and the locations of tables, chairs, barriers and vertical elements in the form provided on the Department’s website. Such site plan must delineate the

property line where outdoor dining will be operated on private property adjacent to a sidewalk cafe, if applicable. Such drawings may be, but are not required to be, developed by an architect, engineer, or other professional third party.

(3) Photographs. One or more photographs that show the entire area of or to be occupied by the sidewalk cafe or roadway cafe, and one or more photographs that show the area adjacent to the sidewalk cafe or roadway cafe, in the form provided on the Department’s website.

(4) Property Owner Consent. Where the petitioner is not the owner of the property in front of which the sidewalk cafe or roadway cafe is located, such owner’s written, signed and notarized consent of such petition. Upon commencement of a new lease following a transfer in ownership of the building, the new owner’s consent must be secured and filed with the Department.

(5) Pest Control Plan. A certification from the petitioner that they have entered into a contract with a licensed pest professional that includes pest control services for the sidewalk cafe or roadway cafe.

(6) Additional Information. Any additional supporting materials or information requested by the Department, including any documents, information or materials necessary to register the revocable consent agreement with the Comptroller.

(d) Additional Revocable Consent Requirements. Prior to executing the revocable consent agreement, the petitioner must submit proof of insurance and a security fee in the amounts and form set forth in the revocable consent agreement.

(e) Renewal. Petitions for renewal of a revocable consent granted pursuant to this chapter must include all forms and materials required by subdivision (c) of this section, together with all the supporting documents and correspondence, except that the consent of the owner shall not be necessary for the issuance of a renewal during the term of the lease for the premises, including any renewals of such lease.

(f) Order of Priority. When two or more ground floor restaurants share the same sidewalk and roadway frontage, the ground floor restaurant that first submits a complete and accurate petition for a revocable consent pursuant to this chapter shall have priority for the operation of a sidewalk cafe or a roadway cafe in such frontage.

§ 5-05 Sidewalk Cafe Revocable Consent Review Process.

(a) Department Notice. The petition filed with the Department must be complete and accurate, as determined by the Department. The Department shall, within 5 days of the filing of a complete and accurate petition, forward such petition by electronic mail to the Borough President of the borough in which the sidewalk cafe is proposed to be located, the Speaker of the Council and the Council Member of the district in which the sidewalk cafe is proposed to be located, for information purposes, and to the Community Board for the community district in which the sidewalk cafe is proposed to be located, for review pursuant to subdivision (b).

(b) Community Board Review. No later than 40 days after receipt of such petition, the Board must either:

(1) Notify the public of such petition, conduct a public hearing thereon, and submit a written recommendation to the Department, provided that where such recommendation is submitted later

than 40 days after receipt of such petition, such recommendation may be accepted by the Department at the sole discretion of the Department; or

(2) Waive, by a written statement, its public hearing and recommendation on such petition in accordance with the requirements set forth in subdivision (b) of section 19-160.2 of the Administrative Code.

(c) Department Review.

(1) If a public hearing is not required to be held by the Department pursuant to paragraph (3) of this subdivision, within 20 days after the expiration of the period described in subdivision (b), the Department shall:

(i) Approve the petition for a revocable consent for a sidewalk cafe, disapprove it or approve it with modifications; and

(ii) File with the Council any such decision to approve or approve with modifications, together with the petition. Such approval or approval with modifications shall be final approval of the revocable consent unless the Council and Mayor act pursuant to subdivision (d) of this section.

(2) If a public hearing is required to be held by the Department pursuant to paragraph (3) of this subdivision, within 30 days after the period described in subdivision (b), or within 45 days after such period if the Department plans to combine the public hearing on the petition with the public hearing required for one or more additional petitions, the Department shall:

(i) Hold a public hearing on the petition;

(ii) Approve the petition, disapprove it, or approve it with modifications; and

(iii) File with the Council any such decision to approve or approve with modifications, together with the petition. Such approval or approval with modifications shall be final approval of the revocable consent unless the Council and Mayor act pursuant to subdivision (d) of this section.

(3) The Department shall hold the public hearing when:

(i) A Community Board has submitted a recommendation to deny the petition;

(ii) A Community Board has submitted a recommendation to approve such petition with substantial modifications or conditions and the petitioner does not agree to adopt such modifications; or

(iii) The Department has determined that such a hearing would be beneficial to address a concern about the effect of a sidewalk cafe at the proposed location.

(4) During the Department's review period, the Department shall send the petition to city agencies whose operations may be affected by such petition for review and comment, including but not limited to the New York City Fire Department, the Mayor's Office for People with Disabilities, and LPC.

(5) Upon the Department's determination to disapprove a petition, the Department shall notify the petitioner, and the petitioner may submit a written statement to the Department within ten (10) days of such determination. The Department will consider any comments set forth in a timely delivered written statement. If the Department affirms its decision to disapprove the petition, such disapproval shall be a final determination of the Department.

(6) The Department may hear one or more petitions at the same public hearing upon a determination that doing so is in the public interest.

(7) Department Notice of Public Hearing.

(i) At least 15 days prior to the date of a hearing required to be held pursuant to paragraph (3) of this subdivision, the Department will give notice to the Community Board for the district in which the sidewalk cafe is proposed to be located, to the President of the Borough in which such cafe is proposed to be located and to the Council Member in whose district such cafe is proposed to be located.

(ii) Not less than five (5) calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record, and in the print or online edition of one newspaper of local circulation in the community where such cafe is proposed to be located. The petitioner shall bear the cost of publication in the print or online edition of such newspaper.

(d) City Council and Mayoral Review. Upon receipt of such petition, the Council may resolve by majority vote of all the council members to review the petition in accordance with subdivisions (e) and (f) of section 19-160.2 of the Administrative Code. If the Council does not so resolve, the approval of the petition by the Department shall be forwarded to the Mayor unless the petition, or the category of such petition, is one for which the Mayor has determined that separate and additional mayoral approval is not required.

(e) Comptroller Registration. The Department shall notify the petitioner that its petition has been approved. Upon approval, the Department shall file the revocable consent agreement with the comptroller for registration pursuant to section 328 of the City Charter. Upon notification that the revocable consent agreement has been registered, DOT will issue the license along with a copy of the executed revocable consent agreement to the petitioner.

§ 5-06 Sidewalk Cafe Located Entirely in Sidewalk Widening Revocable Consent Review Process.

(a) Term. The term of the consent for a sidewalk cafe located entirely in a sidewalk widening shall be one license term (i.e., four years) and shall be concurrent with such license term.

(b) Assignment or Transfer of a Consent. A consent may not be assigned, transferred, or otherwise conveyed without the permission of the Commissioner.

(c) Petition Requirements. A petition for the granting of a consent, or for a renewal, modification, or assignment thereof, must be submitted electronically on the Department's website and must include all materials required by subdivision (c) of section 5-04, except that the site plan shall also delineate the property line that separates the sidewalk from the sidewalk widening.

(d) Sidewalk Widening Approval Process. Notwithstanding section 5-05 of these rules, a petition for a consent to establish a sidewalk cafe located entirely on a sidewalk widening, as demonstrated to the satisfaction of the Department, shall be reviewed and approved pursuant to section 5-07 of these rules, except that a public hearing is not required.

§ 5-07 Roadway Cafe Revocable Consent Review Process.

(a) Department Notice. The petition filed with the Department shall be complete and accurate, as determined by the Department. The Department shall, within 10 business days of the filing of a complete and accurate petition to operate a roadway cafe, forward such petition by electronic mail to the Council Member in whose district the roadway cafe is proposed to be located, and to the Community Board for the community district in which the roadway cafe is proposed to be located.

(b) Comment Period. The Community Board and the affected Council Member may submit comments to the Department not later than 30 days after receipt of such petition.

(c) Department Review.

(1) Prior to granting a petition for a revocable consent to operate a roadway cafe, or for renewal of such a revocable consent, or for modification to the location of a roadway cafe or to increase the area of a roadway cafe by ten (10) percent or greater, the Department shall hold a public hearing. Notice of such hearing shall be published by the Department at the expense of the petitioner in accordance with section 371 of the Charter.

(2) During the Department's review period, the Department shall send the petition to other agencies whose operations may be impacted by such petition for review and comment. The Department shall approve the petition, disapprove it, or approve it with modifications.

(3) Notwithstanding the foregoing, the Department may deny a petition for a revocable consent without a hearing if, in the sole judgement of the Commissioner, the granting of such revocable consent would interfere with the use of inalienable property of the City (including but not limited to roadways and sidewalks) for public purposes or would otherwise not be in the best interest of the City.

§ 5-08 Temporary Authorization to Operate.

(a) Lapsed or Terminated Revocable Consent. Where an applicant for a license to operate a sidewalk cafe or roadway cafe submits a complete and accurate petition for a revocable consent to operate a sidewalk cafe or roadway cafe for which a revocable consent granted to another person has lapsed or was terminated, such applicant may operate the sidewalk cafe or roadway cafe at such premises pending the approval such petition, provided all of the following requirements are satisfied:

(1) The plans for the cafe, submitted with the petition as required by paragraph (2) of subdivision (c) of section 5-04 of this chapter, are the same as the plans for the cafe for which a revocable consent to operate had been granted previously.

(2) Where the petition is for an enclosed sidewalk cafe, the structure of such enclosed sidewalk cafe is the same as the structure of the enclosed sidewalk cafe for which a consent had been granted previously.

(3) The petitioner makes a good faith effort to be granted a revocable consent to operate such sidewalk cafe or roadway cafe. The Department may, in its sole discretion, determine that the applicant has not made a good faith effort where the petition for a revocable consent has not been approved within one year from the date of submission due to the petitioner's failure to provide submissions of information and materials requested by the Department. If such determination is made by the Department, the application will be deemed to have been withdrawn and the temporary authorization terminated.

(4) The previously granted revocable consent has lapsed or was terminated no more than two years prior to the date of submission of the petition.

(5) Where the previously granted revocable consent was terminated by the Department, such termination was not a result of non-compliance with the design requirements set forth in section 5-11 of this chapter.

(b) Comptroller Consent Pending Registration. Where the Department has approved a petition for a revocable consent to operate a sidewalk cafe or roadway cafe, the petitioner may operate such cafe pending registration of such revocable consent by the comptroller, provided the following requirements are satisfied:

(1) The comptroller has consented to such operation of the sidewalk cafe or roadway cafe pending registration; and

(2) Where the petition is for a revocable consent to operate a sidewalk cafe, the time for Council to resolve to review such petition has expired, or the Council has resolved to review such petition and has either approved such petition or has approved such petition with modifications and the petitioner has accepted such modifications.

§ 5-09 Annual Fee Rate Schedule

(a) A revocable consent for a sidewalk cafe or a roadway cafe, or a consent to operate a sidewalk cafe located on a sidewalk widening, granted pursuant to this chapter shall provide for compensation to be paid annually to the city during the continuance of the consent. Such annual compensation shall be equivalent to the product of the fee rate and the square footage of such sidewalk cafe or roadway cafe.

(b) There shall be 4 sectors, as described on the website of the Department. The fee rate for each sector shall be as follows:

<u>Sector</u>	<u>Sidewalk Fee Rate (per square foot)</u>	<u>Roadway Fee Rate (per square foot)</u>
<u>1</u>	<u>\$6</u>	<u>\$5</u>
<u>2</u>	<u>\$10</u>	<u>\$8</u>
<u>3</u>	<u>\$18</u>	<u>\$14</u>
<u>4</u>	<u>\$31</u>	<u>\$25</u>

(c) Enclosed Sidewalk Cafes.

(1) A revocable consent for an enclosed sidewalk cafe shall provide for compensation to be paid annually to the city during the continuance of the consent at the rate required to be paid for such cafe as of March 16, 2020 pursuant to the rules of the Department of Consumer and Worker Protection in effect prior to the date these rules take effect, as provided in subparagraphs (i) and (ii) of this paragraph. Such rules established two zones, and compensation to be paid annually depended on the zone in which an enclosed sidewalk cafe was located. Zone One encompassed all of the area of Manhattan south of, and including both sides of, 96th Street. Zone Two encompassed all of the areas of the City of New York not included within Zone One. The rates in effect as of March 16, 2020 were:

(i) \$5,378.13 for the first seventy (70) square feet plus \$42.02 for every additional square foot of sidewalk space occupied by an enclosed sidewalk cafe in Zone One; and

(ii) \$4,033.60 for the first seventy (70) square feet plus \$31.51 for every additional square foot of sidewalk space occupied by an enclosed sidewalk cafe in Zone Two.

(2) On January 1, 2028, and every 4 years thereafter, the Department may increase or decrease such compensation for an enclosed sidewalk cafe in accordance with increases or decreases in the sector rate.

§ 5-10 Operation and Management Requirements.

Upon approval by the Department of a license granted pursuant to this chapter, a licensee must operate and manage all aspects of a sidewalk cafe or roadway cafe in accordance with this section.

(a) Maintenance.

(1) Sidewalk cafes and roadway cafes shall be kept clean, well-maintained, and clear of trash, debris, graffiti, vermin, food scraps, and unsanitary conditions. A licensee shall also keep clean the area of the roadway extending one and one-half feet distance beyond any roadway cafe on all sides of such roadway cafe.

(2) A licensee shall not store trash or other items within a sidewalk cafe or roadway cafe, except that in roadway cafes rigid receptacles with tight-fitting lids as referenced in subdivision (b) of section 1-02.4 of Title 16 of the Rules of the City of New York are permitted.

(b) Hours of Operation. Sidewalk cafes and roadway cafes may operate only during the following hours and days, except that enclosed sidewalk cafes are permitted to operate before 10 a.m. on Sunday:

- Sunday, 10 a.m. to midnight
- Monday, 8 a.m. to midnight
- Tuesday, 8 a.m. to midnight
- Wednesday, 8 a.m. to midnight
- Thursday, 8 a.m. to midnight
- Friday, 8 a.m. to 1 a.m. Saturday
- Saturday, 8 a.m. to 1 a.m. Sunday

(c) Alcohol Consumption. No beer, alcoholic or spirituous liquors shall be served at a sidewalk cafe or a roadway cafe, unless permitted by the New York State Liquor Authority.

(d) No Smoking. Smoking or using electronic cigarettes is prohibited within sidewalk cafes and roadway cafes pursuant to subdivision (c) of section 17-503 of the Administrative Code.

(e) Advertising. No advertising sign, picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign, shall be placed or painted on or affixed to any awning, screen or other appurtenance used in connection with a sidewalk cafe or roadway cafe, except that the name of the restaurant, the logo of the restaurant, the menu and information on the services provided by the restaurant, and the name and logo of any sponsors of the restaurant's amenities may be painted, imprinted or otherwise displayed, in accordance with the following requirements:

(1) Names and logos shall be limited to ten (10) percent of the surface area of the surface on which they are displayed.

(2) Names and logos may be painted onto barriers, or otherwise physically attached and secured to the barriers, provided that any signs attached to the barriers shall be no more than one (1) inch in depth. Menus and hours of operation may not be painted on or physically affixed to the barriers.

(3) On coverings, umbrellas, and awnings, names and logos must be physically adhered to the fabric.

(4) Any sign, picture, flag, banner, side curtain or other device used to display a name or logo may not be illuminated, flashing, or moving.

(f) Heaters. Heating units utilized in a sidewalk cafe or roadway cafe must comply with all applicable laws, rules, and regulations and must be approved for use in such sidewalk cafe or roadway cafe by the New York City Department of Buildings and New York City Fire Department. Such heating units shall only be located within the area of the sidewalk cafe or roadway cafe for which the revocable consent and license to operate such cafe has been granted.

(g) Good Order. Every licensee shall be held strictly accountable for the maintenance of good order in the sidewalk cafe or roadway cafe and the proper conduct of their patrons, including the prevention of excessive congregation within or immediately adjacent to a sidewalk cafe or roadway cafe. A licensee must 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.

(h) Accessibility. A sidewalk cafe and roadway cafe must be directly accessible to persons with physical disabilities, including that the design of such cafe shall fully comply with applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder, and applicable requirements of the New York City Building Code.

(i) Noise.

(1) No loud or unnecessary noises may emanate from a sidewalk cafe or roadway cafe.

(2) No musical instruments or sound reproduction or amplification devices shall be operated or used within a sidewalk cafe or roadway cafe, except where authorized pursuant to a street activity permit issued pursuant to chapter 1 of title 50 of the rules of the city of New York.

(3) Where practicable, the Department may refer community noise disputes to alternative dispute resolution through the Mediating Establishment and Neighbor Disputes NYC program (MEND NYC), or a successor program.

(4) A licensee must fully comply with the New York City Noise Code, as applicable.

(j) Lighting. Lighting shall not be glaring, or overly bright, to the immediately surrounding area and shall illuminate only within the sidewalk cafe or roadway cafe.

(k) Secure Cafe. During hours when a sidewalk cafe or roadway cafe is not operating, the licensee must secure all furnishing and decorative elements of such sidewalk cafe or roadway cafe, such as tables and chairs, using a cable or other locking system.

(l) Furnishing Zone. No portion of a sidewalk cafe or roadway cafe shall be located in the furnishing zone and no items associated with such sidewalk or roadway cafe shall be placed or stored in the furnishing zone.

(m) Roadway Cafe Operating Season.

(1) A roadway cafe shall not operate on any day from November 30 to March 31, inclusive.

(2) Notwithstanding paragraph (1) of this subdivision, a ground floor restaurant for which a revocable consent and license for a roadway cafe have been granted pursuant to this chapter may:

(i) Occupy the area of the roadway cafe beginning on a date prescribed by the Department on its website that is earlier than March 31, for the purpose of setting up the roadway cafe prior to commencement of operation of the roadway cafe, provided that such date shall be no earlier than March 24 of each year; and

(ii) Occupy the area of the roadway cafe until a date prescribed by the Department on its website that is later than November 30, for the purpose of disbanding the roadway cafe, provided that such date is no later than December 7 of each year.

(n) Abandonment. A sidewalk cafe or roadway cafe must be used and occupied for outdoor dining. Where not used and occupied for outdoor dining for thirty (30) consecutive days or more, except in accordance with subdivision (l) of this section, they must be removed from the sidewalk and roadway by the licensee.

(o) License Availability. A licensee shall retain on the premises of a sidewalk cafe or roadway cafe a copy of the license issued for such cafe, and upon request by an employee of the Department or other city agency, shall make available such copy of such license for inspection.

§ 5-11 Design Requirements.

(a) Sidewalk Cafes.

(1) Siting Requirements.

(i) Clear Path. A clear path shall remain on the sidewalk or sidewalk widening after installation of a sidewalk cafe.

(A) The minimum width of the required clear path shall be the greater of:

1. The width provided in the table below for the corridor category of the street on which the sidewalk cafe is located; or

2. Fifty percent (50%) of the width of the sidewalk, including any sidewalk widening. The corridor categories are set forth in the Department’s NYC Pedestrian Mobility Plan, which is available on the Department’s website.

<u>CORRIDOR CATEGORIES</u>	<u>REQUIRED CLEAR PATH</u>
<u>Global Corridors</u>	<u>12 Feet</u>
<u>Regional Corridors</u>	<u>10 Feet</u>
<u>Neighborhood Corridors</u>	<u>8 Feet</u>
<u>Community Connectors</u>	<u>8 Feet</u>
<u>Baseline Streets</u>	<u>8 Feet</u>

(B) Notwithstanding clause (A), on regional corridors, the minimum width of the required clear path shall be 8 feet where the following conditions are satisfied:

1. Maintenance of a 10-foot clear path after installation of such sidewalk cafe is not feasible; and
2. Such sidewalk cafe is located within an area where only small sidewalk cafes were permitted prior to the date these rules take effect, as shown on the Department’s website.

(C) The clear path shall be measured from the outer edge of the perimeter of the sidewalk cafe to the nearest element or object affixed to the sidewalk between such perimeter and the nearest curb line, or if there is no such element or object, to the nearest curb line.

(ii) Clearances. The following distances shall be required between the sidewalk cafe and the specified element or object:

<u>Element or Object</u>	<u>Required Distance</u>
<u>Subway Stair: Open End (Entry Side)</u>	<u>15 Feet</u>
<u>Subway Elevator Entrance</u>	<u>10 Feet</u>
<u>Exhaust Ducts</u>	<u>10 Feet</u>
<u>MTA or FDNY Curb Cuts</u>	<u>10 Feet</u>
<u>Citibike/Bikeshare stations, Bike Corrals, Micromobility Stations</u>	<u>8 Feet</u>
<u>Edges of Street Tree Beds</u>	<u>8 Feet</u>
<u>Mailboxes</u>	<u>8 Feet</u>
<u>LinkNYC Kiosks, Wayfinding Kiosks, E-Charging Stations, Parking Meters; Select Bus Service Fare Machines</u>	<u>8 Feet</u>
<u>Newsstands</u>	<u>8 Feet</u>
<u>Streetlights</u>	<u>8 Feet</u>
<u>Bus Stop Poles</u>	<u>8 Feet</u>
<u>Fire Hydrants</u>	<u>8 Feet</u>
<u>Bus Stop Shelters</u>	<u>8 Feet</u>
<u>Traffic Signals</u>	<u>8 Feet</u>
<u>Primary Building Entrances</u>	<u>5 Feet</u>
<u>Curb Cuts</u>	<u>5 Feet</u>
<u>Emergency Exit Hatches</u>	<u>5 Feet</u>
<u>Subway Stair: Closed-End (non-entry)</u>	<u>5 Feet</u>
<u>Subway Elevator: Non-Entry</u>	<u>5 Feet</u>
<u>Siamese Connections and Standpipes</u>	<u>5 Feet</u>
<u>Elevated Train Infrastructure (e.g., support beams, etc.)</u>	<u>3 Feet</u>

(iii) Covering Restrictions. A sidewalk cafe shall not be located over or block any of the following: cellar and basement doors, freight elevators or service entrances, retail and non-primary building entrances, building projections (including, but not limited to, stoops, steps, and stairs), manhole covers, transformer vaults, and subway grates, provided that a sidewalk cafe may block or cover a cellar or basement door that is not a means of egress if such door is closed and is reinforced, the safety of which is certified by a registered design professional as defined

in the New York City Construction Codes in the form prescribed by the Department on its website.

(2) Material Requirements

(i) Perimeter demarcation. The perimeter of a sidewalk cafe shall be clearly and visibly demarcated by a removable and self-supporting base wall, railing, planter, fence, or stanchion and rope, which shall be no higher than two (2) feet and six (6) inches, exclusive of any shrubbery and/or planting. Such perimeter demarcations shall not be affixed to the sidewalk.

(ii) Flooring. A sidewalk cafe shall be level with the sidewalk. No platforms or flooring are permitted.

(iii) Furnishings. The furnishing of the interior of a sidewalk cafe shall consist solely of lightweight and easily moveable tables, chairs, and decorative accessories. No furnishing element shall be permanently affixed to the sidewalk.

(iv) Awnings, Coverings, and Umbrellas

(A) An awning, covering, or umbrella utilized in a sidewalk cafe must be easily removable and comprised of fire-resistant grade materials.

(B) An awning shall be no lower than eight (8) feet from the ground and must not exceed a maximum height of ten (10) feet. A covering or umbrella shall be no lower than seven (7) feet from the ground and must not exceed a maximum height of ten (10) feet.

(C) Any such awning or covering physically attached to a building shall be approved by the New York City Department of Buildings and Landmarks Preservation Commission, as applicable.

(D) No awning or covering shall extend over the perimeter of the sidewalk cafe, unless approved by the New York City Department of Buildings, and where applicable, the Landmarks Preservation Commission. Documentation demonstrating such approval shall be made available to Department personnel upon request.

(E) All umbrellas shall have a weighted base.

(v) Lighting and Electrical Connections. Lighting shall be outdoor rated, properly secured, protected and lightweight. Any lighting shall be directly connected to the ground floor restaurant's power source, shall be located within the perimeter of such sidewalk cafe, and shall not exceed 10 feet in height. No such connections shall be made to any type of City electrical equipment or attached to any City property, including street trees. All electrical work shall comply with the applicable requirements set forth in the Department's rules and the New York City Electrical Code.

(vi) Fire Escape Stairs. No element of a sidewalk cafe shall be affixed to any fire escape stairs or other components of a fire escape.

(b) Roadway Cafes

(1) Siting Requirements.

(i) Permitted Locations.

(A) A roadway cafe shall be located within space dedicated for parking, including metered and non-metered spaces and alternate side parking spaces. A roadway cafe shall not be located within part-time or full-time travel lanes, including bicycle lanes and bus lanes, bus stops, dedicated use parking spaces, authorized vehicle parking spaces, or commercial vehicle parking spaces.

(B) Notwithstanding clause (A), a roadway cafe may be located within one or more angled parking spaces subject to approval by the Department. Where a petition is for a roadway cafe that is located wholly or partially within an angled parking space, the Department may, except where expressly prohibited by law, modify the requirements set forth in this subdivision where necessary to promote vehicular and pedestrian traffic safety, including but not limited to providing appropriate clearances from the travel lane and adjacent parking spaces, and preserving sight distance.

(ii) Clearances. The following minimum distances shall be required between the roadway cafe and the specified element or object, except as otherwise specified herein:

<u>Element or Object</u>	<u>Required Distance</u>
<u>Subway Entrance: Open End (Entry Side)</u>	<u>15 Feet</u>
<u>Fire Hydrant</u>	<u>15 Feet</u>
<u>Subway Elevator Entrance</u>	<u>10 Feet</u>
<u>MTA or FDNY Curb Cuts</u>	<u>10 Feet</u>
<u>Curb Cuts</u>	<u>5 Feet</u>
<u>Emergency Exit Hatches</u>	<u>5 Feet</u>
<u>Subway Stair: Closed-End (non-entry)</u>	<u>5 Feet</u>
<u>Subway Elevator: Non-Entry</u>	<u>5 Feet</u>
<u>Bus Stop Pole: Non-Approaching Side</u>	<u>5 Feet</u>
<u>Citibike/Bikeshare stations, Bike Corrals, Micromobility Stations located in the roadway</u>	<u>5 Feet</u>
<u>Drainage Infrastructure (Catch Basins/Rain Gardens)</u>	<u>5 Feet</u>
<u>Elevated Train Infrastructure (e.g., support beams, etc.)</u>	<u>3 Feet</u>
<u>Manholes, Transformer Vaults, Grates, At-Grade Ventilator Grates</u>	<u>1 Foot 6 Inches</u>
<u>Thermoplastic Markings</u>	<u>6 inches</u>

(iii) Dimensions.

(A) The maximum length of a roadway cafe shall be 40 feet.

(B) The maximum width of a roadway cafe shall be eight (8) feet, provided that the Department may require a maximum width of a roadway cafe to be less than eight (8) feet where necessary to address a safety concern based on roadway width, roadway geometry (e.g., number of traffic lanes, the presence and composition of bicycle lanes and parking lanes, etc.), or proximity to an intersection, or to facilitate the traversing of emergency vehicles on such roadway.

(C) Notwithstanding any contrary provision of this chapter, a 15-foot emergency travel lane shall be maintained on every roadway, provided that the Department may permit an emergency travel lane width of less than 15 feet upon consultation with the New York City Fire Department.

(D) There shall be a minimum distance of three (3) feet between the perimeters of adjacent roadway cafes. A roadway cafe adjacent to another roadway cafe shall maintain a minimum of a one foot, 6-inch (1'6") distance from the boundary of the extension of the perimeter of the ground floor restaurant. Such minimum distance shall remain unobstructed for emergency access and shall not be used for storage, including containers to store trash.

(iv) Street Trees. No element of a roadway cafe shall encroach upon or attach to a street tree bed or canopy of a street tree. A street tree shall not be cut, pruned, or removed except as authorized pursuant to a Tree Work Permit from the New York City Department of Parks and Recreation.

(v) Distance from Marked Crosswalks. The minimum distance between the perimeter of a roadway cafe and a crosswalk shall be a minimum of:

(A) Twenty (20) feet, where the nearest vehicular travel lane parallel to a roadway cafe provides for the direction of traffic to be approaching the intersection; and

(B) Eight (8) feet, where the nearest vehicular travel lane parallel to a roadway cafe provides for the direction of traffic to be exiting the intersection.

(vi) Distance from Unmarked Crosswalks. The minimum distance between the perimeter of a roadway cafe and the curb line of a street intersecting with the street on which the roadway cafe is located shall be twenty (20) feet.

(vii) Floating Parking Lanes. Roadway cafes located in a floating parking lane shall be limited to the width of the legal parking area and shall not be located, in whole or in part, within a bicycle lane. Notwithstanding subparagraph (ii) of paragraph (1) of subdivision (b) of this section, roadway cafes may abut but not cover a thermoplastic markings utilized as a bicycle lane buffer.

(viii) Signage Visibility. Any element of a roadway cafe, including decorative plantings, located within fifty (50) feet of any regulatory or warning signs, including but not limited to signage indicating Stop, Yield, One-Way, Wrong Way, Do Not Enter, Pedestrian Crossing, School Crossing and Speed Limit, shall be no greater than 46 inches in height.

(ix) Utility Hardware. A roadway cafe installed over utility coverings or hardware must be easily moveable so as to not restrict access to such coverings or hardware, provided that no such covering or hardware may be installed over manholes, transformer vaults, grates, or at-grade ventilator grates.

(2) Material Requirements.

(i) Barriers.

(A) Barriers shall be maintained on all sides of a roadway cafe except the side abutting the sidewalk.

(B) Barriers shall be between thirty (30) inches and forty-two (42) inches in height, not including the height of any plantings above such barrier. Barriers shall be at least eighteen (18) inches in width.

(C) Only water-filled barriers shall be permitted, except alternate fill materials may be used where approved by the Department. Each barrier shall be filled with a minimum of 150 pounds of fill per linear foot of barrier length.

(D) A reflective strip of a minimum of four (4) inches in width shall be located on each barrier, along the entire length of the outward-facing side of such barrier.

(E) Barriers shall not be affixed to the roadway.

(ii) Flooring.

(A) If flooring is utilized as part of a roadway cafe, such flooring shall:

1. Be durable, lightweight and easily removable;
2. Be flush with the curb line, except a roadway cafe located on a slope shall be flush with the curb line to the greatest extent feasible;
3. Be compliant with applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder, and accessibility requirements of the New York City Building Code, as applicable; and
4. Maintain a six (6) inch covered channel between the curb and base of such flooring to allow for drainage and water flow along the roadway.

(B) Where flooring is not utilized as part of a roadway cafe, such roadway cafe shall provide a ramp that complies with the Americans with Disabilities Act and any rules promulgated thereunder and the New York City Building Code, as applicable.

(iii) Furnishings. The furnishing of the interior of a roadway cafe shall consist solely of lightweight easily moveable tables, chairs, and decorative accessories.

(iv) Vertical Screenings, Coverings, and Umbrellas. If utilized, vertical screenings, coverings, and umbrellas shall be easily removable, shall not extend over the perimeter of the roadway cafe, and shall comply with the following:

(A) A covering or umbrella must be no lower than seven (7) feet and extend no higher than ten (10) feet from the base or floor of the roadway cafe.

(B) Vertical screening is permitted between the barrier and six (6) feet above the base or floor of the roadway cafe. Such vertical screening shall only be located on the roadway-facing side of such cafe, shall maintain clear visibility and shall not be opaque (e.g., plantings, lattice panels, clear plexiglass, etc.).

(C) If utilized, vertical screenings, coverings, and umbrellas shall be comprised of fire-resistant grade materials.

(D) Any vertical elements utilized for the purposes of providing support for a covering or umbrella shall not be affixed to the outside of a barrier.

(v) Lighting and Electrical Connections. Lighting shall be outdoor rated, properly secured, protected and lightweight. Wires for electrification shall be connected above-head, and may not be connected on or near the ground or within street tree beds. No such connections shall be made or attached to any electrical equipment or other property owned or controlled by the City, including street trees. Such electrical connections shall be at least fourteen (14) feet above the sidewalk and eighteen (18) feet above the roadway. All such electrical connections shall comply with the applicable requirements set forth in the Department's rules and the New York City Electrical Code.

§ 5-12 Enforcement.

(a) Corrective Action Request (CAR).

(1) If the Commissioner finds that any licensee has, for the first time, violated (i) any provision of section 19-160 through 19-160.6 of the Administrative Code; (ii) any of these rules; or (iii) any of the terms and conditions of the license, the Commissioner shall notify such licensee of such violation and request that action be taken to correct such violation within 30 days and shall afford such licensee an opportunity to protest the Commissioner's finding in a manner set forth in these rules.

(2) A CAR may be served by mail or by e-mail on the licensee responsible for the condition which requires correction at the address or e-mail address for such person contained in the records of the Department.

(3) Any corrective action required by the CAR shall be performed within thirty (30) days of the issuance of the CAR unless such issuance is protested as provided herein. If the corrective action required by the CAR is not performed within thirty (30) days of the issuance of the CAR and such issuance is not protested, the Department may issue a summons for an uncorrected condition upon reinspection.

(4) Protest.

(i) Within fourteen (14) days after the date of mailing of the CAR, the respondent may protest the issuance of the CAR in the manner directed on the CAR. If the respondent fails to timely protest the CAR and the Department issues a summons for an uncorrected condition, the respondent may be issued a summons for failing to respond to the CAR in a timely manner.

(ii) Protests shall be reviewed by the Department and a final determination regarding the protest shall be made within a reasonable period of time.

(iii) If a protest is denied, any corrective action required by the CAR shall be performed within thirty (30) days after the date of such denial. If the corrective action required by the CAR is not performed within thirty (30) days of such denial, the Department may issue a summons for an uncorrected condition upon reinspection.

(b) Suspension and Revocation.

(1) In addition to any other authorized enforcement procedures, the Commissioner may, after providing notice of intent to suspend or revoke a license and an opportunity to be heard in

accordance with paragraph (2), suspend or revoke a license to operate a sidewalk cafe or roadway cafe and order the removal of such sidewalk cafe or roadway cafe for 3 or more violations of the same provision of subchapter 1 of chapter 1 of title 19 of the Administrative Code or these rules within a 2-year period, or for any 6 or more violations of any provision of such subchapter or these rules within a 2-year period.

(2) Opportunity to Be Heard

(i) The licensee must submit a request for an opportunity to be heard to the Department in writing. Such request must be received no later than thirty (30) days following the date of the Department's notice to the licensee that the license may be suspended or revoked. Where the Department does not receive a written request for an opportunity to be heard within such time, the Department may revoke or suspend the license.

(ii) Process.

(A) Where the licensee submits a timely request for an opportunity to be heard, the Department will schedule a date and time, no later than 30 days from the date on which the Department received such request, for such opportunity to be heard, in person at the Department's offices, regarding the suspension or revocation.

(B) The licensee may request, in writing, copies of any evidence relied upon by the Department in determining that the license should be suspended or revoked. Such request must be received by the Department no later than 14 days prior to the date of the opportunity to be heard. The Department will provide a copy of such evidence by mail or electronic mail, as specified by the licensee in its request, no later than 7 days prior to the date of the opportunity to be heard.

(C) Requests for rescheduling by the licensee of the opportunity to be heard must be received by the Department no later than 48 hours prior to the originally scheduled date. If the Department approves the request for rescheduling, a new date will be scheduled within 14 days of the original date.

(D) The opportunity to be heard will be conducted by an employee of DOT designated by the Commissioner. The designee will (1) review the Department's decision to issue the notice of intent to revoke or suspend the license, and (2) provide an opportunity for the licensee to present reasons and evidence in support of the challenge to the suspension or revocation. The designee will issue findings of fact and a recommendation following the opportunity to be heard.

(E) Within 30 days of the opportunity to be heard, the Commissioner or their designee, who shall be an employee of DOT other than the employee who conducted the opportunity to be heard and issued the recommendation pursuant to clause (D), will issue a final decision regarding the suspension or revocation. Such final decision will set forth the findings of fact and recommendation of the employee who conducted the opportunity to be heard and will accept, reject or modify such findings of fact and recommendation. The Department will send such final decision to the licensee via mail or electronic mail within 5 days of issuance of such final decision. Such final decision will constitute a final agency determination.

(3) Notwithstanding any inconsistent provision of this section, the suspension or revocation of a license shall be waived if, upon the submission of satisfactory proof, the Department 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.

(c) Removal.

(1) Operating without a License. The Commissioner may order the removal of any furniture, equipment, structure or other obstruction used in connection with the operation of an outdoor dining area on the sidewalk or in the roadway by a person that is not licensed to operate a sidewalk cafe or roadway cafe pursuant to section 19-160 of the Administrative Code and has no other lawful right to operate an outdoor dining area on such sidewalk or in such roadway.

(2) Noncompliance. The Commissioner may order the removal of any furniture, equipment, structure or other obstruction placed on the sidewalk or roadway by a licensee where such furniture, equipment, structure or other obstruction is inconsistent with any of the requirements set forth in these rules.

(3) Commissioner's Order.

(i) An order pursuant to this subdivision shall be served personally or by mail to the person and address contained in the records of the Department. The person to whom such order is directed shall have an opportunity to be heard within five (5) business days after a timely request for such opportunity is received by the Department. A request shall be made within the time and in the manner directed on the order. If, after considering the written objections of the respondent, the Commissioner affirms the order, the action required by the order shall be completed within a reasonable period of time, as set forth in such order, after notice of such determination is mailed to the respondent.

(ii) Where such order has not been complied with within a reasonable period of time as set forth in such order, officers or employees of the Department or the Police Department may remove such furniture, equipment, structure or other obstruction from the sidewalk or the roadway and convey them to a place of safety.

(iii) Where the Department has an address for the person to whom such order was directed, within five (5) days of removal, the Department shall mail to such person notice of such removal and the manner in which such furniture, equipment, structure or other obstruction may be claimed. In any notification served personally or mailed pursuant to this section, the Department shall include a statement of the right to sell, dismantle, destroy or otherwise dispose of such furniture, equipment, structure, or other obstruction within thirty (30) days after removal if such property is not claimed.

(iv) Any furniture, equipment, structure, or other obstructions removed pursuant to this section shall not be released until the removal charge and storage fee of two thousand five hundred (2,500) dollars has been paid or a bond or other security for such amount has been posted.

(v) Any furniture, equipment, structure, or other obstructions that is not claimed shall be sold at public auction after having been advertised in the City Record for a period of ten (10) days. In the alternative, any such property may be used or converted to use for the purpose of any city, state, or federal agency, or for charitable purposes, upon consultation with the appropriate city agencies.

(vi) The procedures outlined in the preceding subdivisions of this section shall not apply to furniture, equipment, structures, or other obstructions determined by the Department to be without worth or value. The Department is authorized to immediately dispose of such property at disposal points or places designated by the New York City Department of Sanitation.

(4) Nothing in this section is intended to alter or affect the power of the Commissioner to immediately order the removal of or remove any obstruction from the sidewalk or roadway that the Commissioner determines is a danger to public welfare, safety, or energy system reliability, including planned or emergency work, parades, marathons, or other special events.

(d) Liability of Subsequent Licensees

(1) Any violation for operating an unlicensed sidewalk cafe or unlicensed roadway cafe shall be included in the number of violations by any subsequent licensee at the same place of business unless such subsequent licensee provides the Department with adequate documentation in accordance with subdivisions (a) and (d) of section 19-160.5 of the Administrative Code, demonstrating that such licensee acquired the premises or business through an arm’s length transaction and that the sale or lease of such sidewalk cafe or roadway cafe was not conducted, in whole or in part, to avoid the effect of violations on such premises or business.

(2) A subsequent licensee shall be liable for violations by a prior licensee unless such subsequent licensee provides the Department with adequate documentation in accordance with subdivision (d) of section 19-160.5 of the Administrative Code.

§ 3. Section 3-01 of chapter 3 of title 34 of the Rules of the City of New York is amended to read as follows:

<u>Section</u>	<u>Description</u>	<u>Penalty (\$)</u>	<u>Default (\$)</u>
<u>5-02(a)</u>	<u>Operation of a sidewalk cafe or roadway cafe without a license and revocable consent (FIRST OFFENSE)</u>	<u>500</u>	<u>500</u>
<u>5-02(a)</u>	<u>Operation of a sidewalk cafe or roadway cafe without a license and revocable consent (SECOND AND SUBSEQUENT OFFENSE)</u>	<u>1,000</u>	<u>1,000</u>
<u>5-09</u>	<u>Failure to comply with operation and management requirements (FIRST OFFENSE)</u>	<u>200</u>	<u>200</u>
<u>5-09</u>	<u>Failure to comply with operation and management requirements (SECOND AND SUBSEQUENT OFFENSE)</u>	<u>500</u>	<u>500</u>
<u>5-11</u>	<u>Failure to comply with design requirements (FIRST OFFENSE)</u>	<u>200</u>	<u>200</u>
<u>5-11</u>	<u>Failure to comply with design requirements (SECOND AND SUBSEQUENT OFFENSE)</u>	<u>500</u>	<u>500</u>

§ 4. Subdivision (j) of section 2-14 of title 34 of the Rules of the City of New York is REPEALED.

§ 5. Chapter 5 of title 34 of the Rules of the City of New York, as added by section 1 of this rule amendment, is amended by adding a new section 5-13 to read as follows:

§ 5-13 Temporary Outdoor Dining Structures.

(a) Definition. The term “temporary outdoor dining setup” means outdoor dining facilities authorized to continue operating on the sidewalk and in the roadway pursuant to section 10 of local law number 121 for the year 2023, and operated pursuant to this section.

(b) Applicability. Pursuant to section 11 of local law number 121 for the year of 2023, temporary outdoor dining setups that do not comply with section 5-11 of this chapter relating to design requirements for sidewalk cafes and roadway cafes shall be removed by the earlier of November 1, 2024 or 30 days after a determination of the Department to grant or deny a revocable consent for such sidewalk cafe or roadway cafe.

(c) Operation and Management

(1) Maintenance. Temporary outdoor dining setups shall be kept clean, well-maintained, and clear of trash, debris, graffiti, vermin, food scraps, and unsanitary conditions.

(2) Hours of Operation. Temporary outdoor dining setups may operate only during the following hours and days:

Sunday, 10 a.m. to midnight
Monday, 8 a.m. to midnight
Tuesday, 8 a.m. to midnight
Wednesday, 8 a.m. to midnight
Thursday, 8 a.m. to midnight
Friday, 8 a.m. to 1 a.m. Saturday
Saturday, 8 a.m. to 1 a.m. Sunday

(3) Alcohol Consumption. No beer, alcoholic or spirituous liquors shall be served at a temporary outdoor dining setups, unless permitted by the New York State Liquor Authority.

(4) No Smoking. Smoking or using electronic cigarettes is prohibited within temporary outdoor dining setups pursuant to subdivision (c) of section 17-503 of the Administrative Code.

(5) Heaters. Heating units utilized in a temporary outdoor dining setup must comply with all applicable laws, rules, and regulations and must be approved for use in such temporary outdoor dining setup by the New York City Department of Buildings and New York City Fire Department. Such heating units shall only be located within the area of the temporary outdoor dining setup.

(6) Good Order. Operators of temporary outdoor dining setups shall be held strictly accountable for the maintenance of good order in the temporary outdoor dining setup and the proper conduct of their patrons, including the prevention of excessive congregation within or immediately adjacent to a temporary outdoor dining setup. Operators of temporary outdoor dining setups must provide adequate service to maintain the tables in the temporary outdoor dining setup and the adjacent street in a manner that ensures good order and cleanliness.

(7) Accessibility. A temporary outdoor dining setup must be directly accessible to persons with physical disabilities, including that the design of such setup shall fully comply with applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder, and applicable requirements of the New York City Building Code.

(8) Noise.

(i) No loud or unnecessary noises may emanate from a temporary outdoor dining setup.

(ii) No musical instruments or sound reproduction or amplification devices shall be operated or used within a temporary outdoor dining setup, except where authorized pursuant to a street activity permit issued pursuant to chapter 1 of title 50 of the rules of the city of New York.

(iii) Where practicable, the Department may refer community noise disputes to alternative dispute resolution through the Mediating Establishment and Neighbor Disputes NYC program (MEND NYC), or a successor program.

(iv) An operator of a temporary outdoor dining setup must fully comply with the New York City Noise Code, as applicable.

(9) **Lighting.** Lighting shall not be glaring, or overly bright, to the immediately surrounding area and shall illuminate only within the temporary outdoor dining setup.

(10) **Secure Cafe.** During hours when a temporary outdoor dining setup is not operating, the operator must secure all furnishing and decorative elements of such temporary outdoor dining setup, such as tables and chairs, using a cable or other locking system.

(11) **Furnishing Zone.** No portion of a temporary outdoor dining setup shall be located in the furnishing zone and no items associated with such temporary outdoor dining setup shall be placed or stored in the furnishing zone.

(d) Placement.

(1) Temporary outdoor dining setups shall not block or obstruct any of the following sidewalk and roadway features:

(i) a bus lane or bus stop;

(ii) a bicycle lane;

(iii) a carshare or bikeshare station;

(iv) a taxi stand; or

(v) a catch basin, utility cover, sewer, rainwater drainage or flow.

(2) Temporary outdoor dining setups shall not be located in any of the following designated zones on a roadway:

(i) No Stopping Anytime;

(ii) No Standing Anytime;

(iii) No Stopping during specific hours; or

(iv) No Standing during specific hours.

(3) Temporary outdoor dining setups shall be located at least fifteen (15) feet from a fire hydrant and at least eight (8) feet from a crosswalk.

(4) Temporary outdoor dining setups shall provide a clear path for pedestrians on the sidewalk that is no less than eight (8) feet wide.

(5) Roadway Barriers.

(i) Barriers shall be maintained on all sides of a temporary outdoor dining setup located on the roadway, except the side abutting the sidewalk.

(ii) All barriers must be completely filled with material (e.g., water, sand, etc.). Water-filled barriers are strongly recommended.

(iii) Barriers shall be between thirty (30) inches and thirty-six (36) inches in height, not including the height of any plantings above such barrier. Barriers shall be at least eighteen (18) inches in width.

(iv) A reflective strip shall be located on each barrier, along the entire length of the outward-facing side of such barrier.

(e) Temporary outdoor dining setups must be used and occupied by the restaurant that erected them for outdoor dining. If not used and occupied for outdoor dining for thirty (30) consecutive days or more, they must be removed from the sidewalk and roadway by the restaurant. This includes the removal of outdoor dining setups that are not being used during the winter months. The Department may send a written notice to the owner to remove an unused setup from the street or sidewalk. If the owner does not remove the setup or utilize the setup for outdoor dining purposes within fourteen (14) days after such notice the Department may remove the setup to a place of safety and send notice of such removal to the owner of such restaurant if an address for such person is available. If the property is unclaimed it may be disposed of in accordance with the provisions of the personal property law relating to lost property. If the property has slight or no value the Department may provide for its immediate disposal after removal.

(f) The Department may order the removal of or remove any outdoor dining setup or other obstruction that the Commissioner determines is a danger to public welfare, safety, or energy system reliability, including for planned or emergency work.

§ 6. Section 3-01 of chapter 3 of title 34 of the Rules of the City of New York is amended to read as follows:

<u>Section</u>	<u>Description</u>	<u>Penalty (\$)</u>	<u>Default (\$)</u>
<u>5-13</u>	<u>Failure to adequately maintain a temporary outdoor dining setup</u>	<u>500</u>	<u>500</u>

§ 7. Sections 5 and 6 of these rules expire and are deemed repealed on November 1, 2025.

§ 8. Pursuant to section 10 of local law number 121 for the year 2023, any restaurant operating outdoor dining pursuant to emergency executive order number 126, dated June 18, 2020, as amended, continued or superseded by subsequent executive orders, may continue in operation without the license and revocable consent of the Commissioner of Transportation required by sections 19-160, 19-160.1 and 19-160.2 of the Administrative Code of the City of New York pending the granting of any such license and revocable consent, provided that such restaurant submits a petition for such revocable consent within five (5) months of the effective date of these rules.

**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: Rules relating to Permanent Open Restaurants Program

REFERENCE NUMBER: DOT-75

RULEMAKING AGENCY: Department of Transportation

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) Provides 30 days to correct a violation after denial of a protest.

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

October 17, 2023
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: Rules relating to Permanent Open Restaurants Program

REFERENCE NUMBER: 2023 RG 059

RULEMAKING AGENCY: Department of Transportation

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: October 17, 2023