



Legislation Details (With Text)

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Type: Introduction **Status:** Enacted
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On agenda: 6/13/2012 **Final action:** 7/28/2013
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Title: A Local Law to amend the administrative code of the city of New York, in relation to permitting sidewalk cafes to operate on Sundays beginning at 10:00 a.m.
Sponsors: Daniel R. Garodnick, Stephen T. Levin, Diana Reyna, Gale A. Brewer, Leroy G. Comrie, Jr., Daniel Dromm, Vincent J. Gentile, Letitia James, Peter A. Koo, G. Oliver Koppell, Karen Koslowitz, Brad S. Lander, Domenic M. Recchia, Jr., Deborah L. Rose, Jumaane D. Williams, Ruben Wills, Jessica S. Lappin, James G. Van Bramer, Maria Del Carmen Arroyo, Mark S. Weprin, Daniel J. Halloran III

Indexes:

Attachments: 1. Int. No. 875 - 6/13/12, 2. Additional Subcommittee on Zoning Hearing for 5-7-13, 3. Committee Report 5/7/13, 4. Hearing Testimony 5/7/13, 5. Hearing Transcript 5/7/13, 6. Committee Report 6/26/13, 7. Hearing Transcript 6/26/13, 8. Hearing Transcript - Stated Meeting 6-26-13, 9. Fiscal Impact Statement

Date	Ver.	Action By	Action	Result
6/13/2012	*	City Council	Introduced by Council	
6/13/2012	*	City Council	Referred to Comm by Council	
5/7/2013	*	Committee on Consumer Affairs	Hearing Held by Committee	
5/7/2013	*	Committee on Consumer Affairs	Laid Over by Committee	
5/7/2013	*	Subcommittee on Zoning and Franchises	Hearing Held by Committee	
5/7/2013	*	Subcommittee on Zoning and Franchises	Laid Over by Subcommittee	
6/11/2013	*	Committee on Consumer Affairs	Hearing Held by Committee	
6/26/2013	*	Committee on Consumer Affairs	Hearing Held by Committee	
6/26/2013	*	Committee on Consumer Affairs	Amendment Proposed by Comm	
6/26/2013	*	Committee on Consumer Affairs	Amended by Committee	
6/26/2013	A	Committee on Consumer Affairs	Approved by Committee	Pass
6/26/2013	A	City Council	Approved by Council	Pass
6/26/2013	A	City Council	Sent to Mayor by Council	
7/28/2013	A	Administration	City Charter Rule Adopted	

Int. No. 875-A

By Council Members Garodnick, Levin, Reyna, Brewer, Comrie, Dromm, Gentile, James, Koo, Koppell, Koslowitz, Lander, Recchia, Rose, Williams, Wills, Lappin, Van Bramer, Arroyo, Weprin and Halloran

A Local Law to amend the administrative code of the city of New York, in relation to permitting sidewalk cafes to operate on Sundays beginning at 10:00 a.m.

Be it enacted by the Council as follows:

Section 1. Subdivision b of section 20-224 of the administrative code of the city of New York, as amended by local law number 8 for the year 2003, is amended to read as follows:

b. The commissioner, consistent with the provisions of this subchapter and the applicable provisions of the zoning resolution, shall establish such rules, regulations, terms and conditions as the commissioner deems proper in respect to the granting and issuance of such licenses and revocable consents, priorities or rights between applicants for a license covering the same space, and operation (including hours of operation, provided that no such rule, regulation, term or condition shall prevent licensed sidewalk cafes from operating during the hours of 10:00 a.m. through 12:00 a.m. daily or shall allow licensed sidewalk cafes to operate before 10:00 a.m. on Sundays) and maintenance of any sidewalk cafe, to ensure good order and to prevent undue obstruction of the sidewalk, which shall have the force and effect of law. A license to operate a sidewalk cafe shall be issued after the review and approval of a petition for a revocable consent to construct and operate such sidewalk cafe pursuant to the provisions of section 20-225, 20-226 or 20-227 of this subchapter. The operator of a sidewalk cafe under license from the commissioner shall cause the boundary of the area licensed as a sidewalk cafe to be marked in a manner prescribed under rules promulgated by the commissioner.

§ 2. This local law shall take effect immediately upon enactment.

R.C.
LS 2582
5/31/13

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The Law (and Rules) are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER 6: SIDEWALK CAFES

§ 20-223 Definitions. Whenever used in this subchapter:

- a. "Sidewalk cafe" shall mean a portion of a restaurant operated under permit from the department of health and mental hygiene, located on a public sidewalk, that is either an enclosed or unenclosed sidewalk cafe.
- b. "Enclosed sidewalk cafe" shall mean a sidewalk cafe which is constructed predominantly of light materials such as glass, slow-burning plastic or lightweight metal.
- c. "Unenclosed sidewalk cafe" shall mean a space on the sidewalk which contains readily removable tables and chairs.

§ 20-224 License required. a. Any person owning, leasing, managing or operating a restaurant under permit from the department of health and mental hygiene upon property which abuts upon any street within the city may maintain or operate upon the sidewalk of such street in an area immediately adjacent to its premises, a sidewalk cafe, provided that such sidewalk cafe shall be granted a license and a revocable consent by the commissioner.

b. The commissioner, consistent with the provisions of this subchapter and the applicable provisions of the zoning resolution, shall establish such rules, regulations, terms and conditions as the commissioner deems proper in respect to the granting and issuance of such licenses and revocable consents, priorities or rights between applicants for a license covering the same space, and operation (including hours of operation) and maintenance of any sidewalk cafe, to ensure good order and to prevent undue obstruction of the sidewalk, which shall have the force and effect of law. A license to operate a sidewalk cafe shall be issued after the review and approval of a petition for a revocable consent to construct and operate such sidewalk cafe pursuant to the

provisions of section 20-225, 20-226 or 20-227 of this subchapter. The operator of a sidewalk cafe under license from the commissioner shall cause the boundary of the area licensed as a sidewalk cafe to be marked in a manner prescribed under rules promulgated by the commissioner.

c. No license shall be granted for an enclosed sidewalk cafe until an alteration permit or any other required permit is issued by the department of buildings. No license shall be granted for a sidewalk cafe located in a historic district, on a landmark site or attached or adjacent to a landmark or an improvement containing an interior landmark without the required approval of the landmarks preservation commission. No license shall be granted for an unenclosed cafe which obstructs the means of egress from any portion of a building nor for any unenclosed cafe with an awning unless a permit therefor is issued by the department of buildings.

d. The fee for such license shall be at the rate of five hundred and ten dollars for a two-year license. Such license fee shall be in addition to any fee imposed, pursuant to rules of the commissioner, upon approval of a petition for a revocable consent, or a renewal of such revocable consent, to construct and operate a sidewalk cafe or any other applicable fee.

e. A licensee must provide waiter or waitress service to patrons in the sidewalk cafe if alcohol is served. If no alcohol is served at the restaurant, a licensee must provide adequate service to maintain tables in the sidewalk cafe and the adjacent sidewalk in a manner that ensures good order and cleanliness.

f. The license shall be personal to the applicant and may not be sold, leased or transferred and shall be deemed revoked by the sale or transfer of the lease or of title to the building or structure to which the sidewalk cafe is related.

§ 20-225 Review and approval of petitions for revocable consents to construct and operate enclosed sidewalk cafes which do not require special permits. A petition for a revocable consent to construct and operate an enclosed sidewalk cafe which does not require a special permit modification pursuant to the zoning resolution shall be reviewed and approved in the following manner:

a. The petition shall be in such form as prescribed by the department. The petition shall be filed with the department which, within five days of the filing of such petition, shall forward copies thereof to the department of city planning, the department of environmental protection and the landmarks preservation commission for review pursuant to subdivision b of this section. The department shall forward copies of the petition, within five days of the filing of such petition, to the speaker of the council and to the council member in whose district the cafe is proposed to be located, for informational purposes.

b. The agencies to which the petition has been forwarded shall review the petition and shall indicate any objections to such petition, including any determination by the landmarks preservation commission that the petition requires a certificate of appropriateness, by filing written comments with the department of city planning within twenty-one days of the receipt thereof. The failure of an agency to indicate its objections within the prescribed time to the department of city planning shall be construed to mean that such agency has no objections.

c. If no objections to such petition are filed within the twenty-one day period prescribed in subdivision b of this section, the department of city planning shall forward the petition within five days after the close of such period to the community board for the community district in which the cafe is proposed to be located, and such board shall review such petition pursuant to subdivision e of this section.

d. If any objections exist, including any objections by the department of city planning, the department of city planning shall inform the petitioner of the objections and that review of the petition has been stayed until the objections indicated are resolved. If the objections are not resolved within six months from the date the petitioner is informed that review of the petition has been stayed, such petition shall be deemed to have been withdrawn. If the objections are resolved within the prescribed time, the department of city planning shall forward the petition within five days of such resolution to the council member in whose district the cafe is proposed to be located and to the community board for the community district in which the cafe is proposed to be located, and such board shall review the petition pursuant to subdivision e of this section.

e. The community board shall, not later than forty-five days after receipt of such petition, either (i) notify the public of the petition in a manner specified by the city planning commission, conduct a public hearing thereon and submit a written recommendation to the department and to the council or (ii) waive by a written statement its public hearing and recommendation on such petition, and submit such statement to the department and to the council.

f. Within thirty days after the expiration of the forty-five day period allowed for the filing of a recommendation or waiver by the community board, 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. If within the time period provided, the department fails to take the actions on a petition provided for in the preceding sentence, the petition shall be deemed to have been denied. For a period of not less than fifteen calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk

cafe. At least fifteen days prior to the date of such hearing, the department shall give notice to the community board for the district in which the cafe is proposed to be located, to the president of the borough in which the cafe is proposed to be located and to the council member in whose district the cafe is proposed to be located. Not less than five calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in one newspaper of local circulation in the community where the cafe is proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

g. Within twenty days of the date the petition is received by the council pursuant to subdivision f of this section, the council may resolve by the majority vote of all council members to review the petition. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision i of this section.

h. If the council resolves to review a petition pursuant to subdivision g of this section, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing. The council shall take final action on the petition and shall file with the mayor its resolution, if any, with respect to the petition within fifty days of the filing of the petition with the council pursuant to subdivision f of this section. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove the petition. Any modifications by the council shall not affect the terms of any proposed revocable consent agreement which relate to term, compensation, revocability, exclusivity, security, insurance, indemnification, erection, maintenance or removal of any structure, right of access by the city and rights of abutting property owners. If within the time period provided for in this subdivision, the council fails to act or fails to act by the required vote on a petition, the council shall be deemed to have approved the petition.

i. The consent shall be for such term and upon such conditions as may be provided in the approval of the petition by the department, as such approval may be modified by action of the council pursuant to subdivision h of this section, but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be necessary to its validity.

j. Consents for sidewalk cafes shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law, which shall apply uniformly to all consents for enclosed sidewalk cafes. The department shall file with the council a written recommendation for a formula to be used to calculate such fees.

§ 20-226 Review and approval of petitions for revocable consents to operate unenclosed sidewalk cafes which do not require special permits. A petition for a revocable consent to operate an unenclosed sidewalk cafe which does not require a special permit modification shall be reviewed and approved in the following manner:

a. The petition shall be in such form as prescribed by the department. The department shall forward copies of the petition, within five days of the filing of such petition, to the speaker of council and the council member in whose district the cafe is proposed to be located, for information purposes, and to the community board for the community district in which the cafe is proposed to be located, for review pursuant to subdivision b of this section.

b. The community board shall, not later than forty-five days after receipt of such petition, either (i) notify the public of the petition, conduct a public hearing thereon and submit a written recommendation to the department and to the council or (ii) waive by a written statement its public hearing and recommendation on such petition and submit such statement to the department and to the council. The petitioner shall amend the petition if both the community board and the petitioner agree to modifications in writing. Such modifications shall be reflected in the written recommendations of the community board to the department and the council.

c. The department shall hold a public hearing pursuant to subdivision d of this section and approve the petition, disapprove it or approve it with modifications within thirty days of the expiration of the forty-five-day period allowed for the filing of a recommendation by the community board. If within the time period provided, the department fails to take the actions on a petition provided for in the preceding sentence, the petition shall be deemed to have been denied. Within the thirty-day time period provided for in this subdivision, the department shall file with the council any such decision to approve or approve with modifications, together with the petition.

d. The department shall hold a public hearing on each petition prior to approving, approving with modifications or disapproving the petition. For a period of not less than fifteen calendar days prior to the date of such public hearing, the petitioner shall post notice of the public hearing in a place conspicuous to public view at the location of the proposed sidewalk cafe. At least fifteen days prior to the date of the hearing, the department will give notice to the community board for the district in which the cafe is proposed to be located, to the president of the borough in which the cafe is proposed to be located and to the council member in whose district the cafe is proposed to be located. Not less than five-calendar days prior to the date of any such hearing, notice of the hearing shall be published in the City Record and in one newspaper of local circulation in the community where the cafe is

proposed to be located. No other notice requirements shall apply to hearings for revocable consents for sidewalk cafes.

e. Within twenty days of the date the petition is received by the council pursuant to subdivision c of this section, the council may resolve by majority vote of all the council members to review the petition. If the council does not so resolve, the approval of the petition by the department shall be forwarded to the mayor for approval pursuant to subdivision g of this section.

f. If the council resolves to review a petition pursuant to subdivision e of this section, the council shall hold a public hearing, after giving public notice not less than five days in advance of such hearing. The council shall take final action on the petition and shall file with the mayor its resolution, if any, with respect to the petition within fifty days of the filing of the petition with the council pursuant to subdivision c of this section. The affirmative vote of a majority of all the council members shall be required to approve, approve with modifications or disapprove the petition. Any modification by the council shall not affect the terms of any proposed revocable consent agreement which relate to term, compensation, revocability, exclusivity, security, insurance, indemnification, erection, maintenance or removal of any structure, right of access by the city and rights of abutting property owners. If within the time period provided for in this subdivision, the council fails to act or fails to act by the required vote on a petition, the council shall be deemed to have approved the petition. If within the time period provided for in this subdivision, the council approves the petition with modifications, the petitioner shall accept such modifications within fifteen days of such approval, or the council shall be deemed to have denied the petition.

g. The consent shall be for such term and upon such conditions as may be provided in the approval of the petition by the department, as such approval may be modified by action of the council pursuant to subdivision f of this section, but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be necessary to its validity.

h. Consents for sidewalk cafes shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law, which shall apply uniformly to all consents for unenclosed sidewalk cafes. The department shall file with the council a written recommendation for a formula to be used to calculate such fees.

i. An unenclosed sidewalk cafe may not be opened or operated prior to the approval of the consent therefor by the department pursuant to this section.

§ 20-227 Review and approval of petitions for revocable consents to construct and operate sidewalk cafes which require special permits.

Notwithstanding the provisions of any other section of the charter or code, a petition for a revocable consent to construct and operate a sidewalk cafe which requires a special permit modification pursuant to the zoning resolution shall be reviewed and approved in accordance with the provisions of sections one hundred ninety-seven-c and one hundred ninety-seven-d of the charter and shall require the approval of the department. The consent shall be for such term and upon such conditions as may be provided in the approval of the department but shall be revocable at any time by the department. The separate and additional approval of the mayor shall be necessary to its validity. The consent shall provide for fees to be paid annually to the city during the continuance of the consent. Such fees shall be calculated pursuant to a formula established by rule or by local law pursuant to section 20-225(j) or section 20-226 (h).

§ 20-227.1. a. Any person found to be operating an unlicensed sidewalk cafe shall be liable for a civil penalty of at least two hundred and not more than one thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation and each subsequent violation at the same place of business within a two-year period. For purposes of this section, any violation for operating an unlicensed sidewalk cafe shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises.

b. Any holder of a license found to be operating a sidewalk cafe in violation of this subchapter, the terms and conditions of such license and/or a revocable consent or rules promulgated by the commissioner pursuant to this subchapter, shall be liable for a civil penalty of at least two hundred and not more than one thousand dollars for the first violation, at least two hundred and not more than one thousand dollars for each additional violation occurring on the same day; and at least five hundred and not more than two thousand dollars for the second violation, and at least one thousand and not more than four thousand dollars for each subsequent violation at the same place of business within a two-year period. In addition, for a third violation occurring on a different day and all subsequent violations occurring on different days at the same place of business within a two-year period, any person

licensed to operate a sidewalk cafe at such place of business shall be subject to suspension or revocation of his or her sidewalk cafe license for such place of business. For purposes of this section, any such violation by any license holder at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original license holder to avoid the effect of violations on the premises. A sidewalk cafe license shall be suspended or revoked at the same hearing at which a person is found liable for a third violation or subsequent violations at the same place of business within a two-year period.

c. A proceeding to recover any civil penalty authorized pursuant to the provisions of subdivisions a or b of this section shall be commenced by service of a notice of violation which shall be returnable to the adjudication division of the department. Such notice shall contain a statement that any hearing for a third violation or subsequent violations of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner under this subchapter at the same place of business within a two-year period shall also constitute a hearing for the suspension or revocation of a license.

d. The penalties provided by subdivisions a and b of this section shall be in addition to any other penalty imposed by any other provision of law or rule promulgated thereunder.

e. In addition to any other enforcement procedures authorized by this subchapter or any other provision of law or rule, the commissioner after notice and a hearing shall be authorized to order that any sidewalk cafe and the restaurant of which it is a portion be sealed for a period not to exceed thirty consecutive days. Such notice may be included with notice of any hearing for a second violation for operating an unlicensed sidewalk cafe as provided in subdivision a of this section, or a third violation of this subchapter, the terms and conditions of a license and/or a revocable consent or rules promulgated by the commissioner, as provided in subdivision b of this section. For purposes of this subdivision, any such violations at a place of business shall be included in determining the number of violations by any subsequent license holder at the same place of business unless the subsequent license holder provides the department with adequate documentation demonstrating that the subsequent license holder acquired the premises or business through an arm's length transaction as defined in subdivision f of this section and that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the

original license holder to avoid the effect of violations on the premises. The procedures provided for in subdivisions c and e through j of section 20-105 of this title shall apply to an order by the commissioner for sealing of a sidewalk cafe and the restaurant of which it is a portion.

f. For purposes of this section, "arm's length transaction" means a sale of a fee or all undivided interests in real property, or lease of any part thereof, or a sale of a business, in good faith and for valuable consideration, that reflects the fair market value of such real property or lease, or business, in the open market, between two informed and willing parties, where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale or lease was made for the purpose of permitting the original licensee to avoid the effect of violations on the premises. The following sales or leases shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale or lease was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of violations on the premises:

- (1) a sale between relatives;
- (2) a sale between related companies or partners in a business; or
- (3) a sale or lease affected by other facts or circumstances that would indicate that the sale or lease is entered into for the primary purpose of permitting the original licensee to avoid the effect of violations on the premises,

g. Notwithstanding the provisions of subdivisions a or b of this section, the suspension or revocation of a license for a subsequent offense shall be waived if, upon the submission of satisfactory proof, the commissioner determines that the person or persons who committed the violations which are the basis for the suspension or revocation acted against the licensee's will in committing such violations.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The Law (and Rules) are current as of January 2009.

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER F: SIDEWALK CAFES
PART 1: REVOCABLE CONSENTS FOR SIDEWALK CAFE

§2-41 Definitions.

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

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

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

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

§2-42 Processing Fee for Revocable Consent Petitions.

(a) *Filing Fees.* The filing fees for petitions pertaining to revocable consents for an enclosed or unenclosed sidewalk café shall be submitted with the initial submission of the petition form. The filing fees for such petitions shall be as follows:

(1) initial grant	\$445.00
(2) renewal	\$445.00
(3) modification	\$175.00
(4) assignment or transfer	\$445.00
(5) rescission	\$445.00
(6) plan review (unenclosed only)	\$310.00

(b) *No refunds.* The fees required pursuant to this section shall not be refundable.

§2-43 Petition Requirements.

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

(b) *Business certificates.* Petitioners for a new consent must submit a copy of any applicable business certificate that establishes the identity of the petitioner, e.g. certificates of incorporation, partnership certificate. With respect to petitions for assignments or transfers of consents, a copy of such certificate sufficient to identify the assignee or transferee must be submitted.

(c) *Plan requirements.* (1) Paper prints of a plan, to be sealed and signed by an architect or engineer licensed by the state of New York, shall be submitted together with the petition, in the equivalent number of prints as are required for the petition form, including the original form. The plan prints shall each measure no larger than twenty-four (24) inches by thirty-six (36) inches and no smaller than eleven (11) by seventeen (17) inches (or as otherwise required by the Department), shall be drawn to scale, and shall include the following:

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

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

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

(iv) a building section drawing showing the orientation of the sidewalk café to the adjacent buildings,

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

Additional prints and/or revised plans shall be submitted by the petitioner as requested by the Department. The Department may require additional prints for

renewals. The petitioner may request that copies or prints on file at the Department be provided by the Department if conditions have not changed and the petitioner is unable to provide such additional prints. The fee charged for such services shall not exceed the actual cost of reproducing such prints.

(d) *Hearing notice requirements.* A notice of the date, time and place of public hearing schedule by the affected community board shall be posted at the premises at least five (5) days before the date of such hearing. The notice shall be conspicuously posted to be visible to any person standing on the sidewalk abutting the premises where the proposed sidewalk café is to be located.

§2-44 Action by the Department on Petition.

(a) Notice of the receipt of the petition and copies of the petition and plans shall be sent within five days to community boards, borough presidents and Council members in whose districts or boroughs the consent is proposed to be located. Petitioners shall have the opportunity to amend their petition or plan to resolve objections raised. When a petitioner agrees to revise a petition or plan to resolve objections raised by the Community Board, any such agreed revisions, along with new blue prints showing the revised plan, must be submitted by the petitioner to the Department in writing, and signed by both the applicant and the chairperson of the Community Board, not later than five (5) days before the Department is required to hold its public hearing on the petition. Such agreed revisions shall be incorporated into, and be deemed to modify, the original petition in accordance with its terms. The Department shall then hold its public hearing based on the petition as so modified. If such written agreements to modify an original petition to address objections raised are not received within the time specified, the Department shall hold its public hearing based on the original petition and the objections to it that have been raised.

(b) The Department, before granting the consent, shall hold a public hearing on the terms and conditions of the proposed agreement memorializing the proposed consent. Such hearing shall be held in City Hall unless otherwise designated in the notices required hereunder. Prior to such hearing,

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

(2) a notice of such hearing, which notice shall indicate the place where copies of the proposed agreement may be obtained, shall be published at least twice at the expense of the petitioner in a weekly newspaper or newspapers designated by the Mayor which are published in the City and have a circulation in the community district or districts in which the affected property of the City is located, and

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

(d) Whenever a petitioner submits a petition to operate an enclosed sidewalk cafe for which a consent issued to another person had lapsed or was terminated, the commissioner may authorize such petitioner to operate the existing sidewalk cafe at such premises pending the approval of consent for operating such cafe provided that

the structure and the plans for the café are the same as the café for which a consent to operate a sidewalk café had previously been granted, and provided further that the petitioner has acquired his or her interest in the restaurant to be operated at such premises from the former holder of the consent in an arm's length transaction as specified in section 20–227.1(f) in the administrative code of the City of New York.

§2-45 Rates for Sidewalk Café Consents.

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

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

(b) There shall be two zones for the purpose of determining the annual rate for sidewalk café consents. Zone One shall encompass all of the area of the borough of Manhattan south of, and including both sides of 96th Street. Zone Two shall encompass all of the areas of the City of New York not included within Zone One.

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

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

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

§2-46 Sidewalk Clearance Standards.

(a) Sidewalks fronting the entire property must be in good condition, without violations or illegal encroachments, and at least twelve (12) feet wide except for: (1) renewal applications of revocable consents to operate an unenclosed sidewalk café which had been approved prior to the effective date of these rules at locations where

the sidewalk was less than twelve feet; or (2) an application for a revocable consent to operate an enclosed sidewalk café or renewal thereof at a location where the sidewalk is less than twelve (12) feet wide and the enclosed sidewalk café continues to occupy the space where its construction was approved pursuant to a previously granted revocable consent.

(b) Sidewalk clearances must always be sufficient to ensure a pedestrian path free of obstructions as specified in subdivision (a) of §2-52 of this subchapter. A minimum sidewalk width must remain after installation of said improvement. Sidewalk passage clearance must be measured from the improvement to the nearest obstruction directly opposite an intersecting line of pedestrian passage.

(c) Standard adjacent (i.e.: non-pedestrian path) clearances for improvements from the following existing objects are:

Subway Entrance (except flat end)	15'
Sidewalk Cafes (enclosed only)	15'
Bus Stop (with shelter at open end)	15'
Other authorized object (over 15 square feet)	15'
Fire hydrants	10'
Traffic Lights	9'
Telephone booths/kiosks	8'
Mail Boxes	8'
Lamp Posts	8'
Street Trees (with fencing and guards)	8'
Bicycle rack (including all bicycles)	8'
Benches (only for enclosed cafes)	5'
Subway entrance/bus stop (at closed end)	5'
All other legal street furniture (15 sq. feet or less)	5'
Cellar door (unless closed, locked, and reinforced)	3'
Transformer vaults/subway grates	3'
Siamese connections	3'

(d) A petitioner for or a holder of a consent to operate a sidewalk cafe may, at its sole cost, liability and expense, remove a tree guard that obstructs the required minimum free path for pedestrian passage if such tree guard was installed after a completed petition for a consent to operate has been filed with the Department or it has been approved pursuant to this part, provided the petitioner: (1) files with the Department a request for authorization to remove such obstructing tree guard; (2) receives such authorization; (3) submits a copy of the request for such authorization to the local community board; and (4) installs, in a manner that does not obstruct the required free path for pedestrian passage, and maintains pavers and two steel pipe bollards in accordance with the specifications approved by the New York City Department of Parks.

§2-47 Level of Service.

(a) The City may require that a pedestrian flow analysis be submitted with revocable consent petitions for enclosed sidewalk cafes. The City may require such a study as evidence that the granting of a consent for a structure would not cause a degradation of level-of-service of the pedestrian path by more than one level and not below level D as defined in subdivision (b) of this section. Level D permits a minimum of 15 square feet of pedestrian space per pedestrian at a flow rate of 15 or fewer pedestrians per minute per foot width.

(b) The standards for such pedestrian flow analysis shall be the sidewalk performance standards described in the Highway Capacity Manual TRB, National Research Council, Washington D.C. 2000 chapter on pedestrian flow. "Level-of-Service" is defined by six levels, delineated as levels A through F, of relative convenience for pedestrian flow. Convenience factors of primary concern are:

- (1) the ability to select walking speeds,
- (2) bypass slower pedestrians, and
- (3) conflict avoidance with other pedestrians.

§2-48 Waivers Related to Standards.

(a) No waivers from the standards set forth in §2-46 and §2-47 of this subchapter shall be granted for an initial application for a revocable consent to operate a sidewalk café filed after the effective date of these rules.

(b) Whenever a petition for a revocable consent to operate a sidewalk café would not comply with the standards set forth in §2-46 and §2-47 of this subchapter but only because the noncompliance is due to an object that was placed on sidewalk after the granting of the initial revocable consent to operate such sidewalk café, such objects shall not bar the granting of such renewal of a revocable consent provided that: (1) the plans for the sidewalk café to be operated pursuant to the renewed consent are identical to the plans for the sidewalk café operated under the prior consent; (2) the failure to comply is not due to an object that has been placed on the sidewalk to promote public health or safety; and (3) the burden shall be on the petitioner to demonstrate compliance with the requirements of this subdivision.

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of the New York City Licensing Law (and Rules, if enacted) are included as a handout in this packet. The Law (and Rules) are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 2: LICENSES
SUBCHAPTER F: SIDEWALK CAFES
PART 2: SIDEWALK CAFÉ LICENSES

§2-51 License Applications.

(a) Every application for a license must be accompanied by the following:

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

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

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

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

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

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

(v) photographs keyed to the plans and showing one (1) frontal, one (1) left and one (1) right sideview of the proposed sidewalk café. Such photographs shall show the

complete sidewalk area to be occupied by, and adjacent to, the proposed sidewalk café up to the curb line and to the entrance of the adjoining property.

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

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

(5) A copy of the current permit issued for the existing restaurant by the Department of Health and Mental Hygiene to the applicant for the license and revocable consent to operate the sidewalk café adjoining such restaurant.

(b) In order to add more tables to an existing café a licensee must file an amended application with appropriate diagrams, and secure an amended license.

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

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

§2-52 Sidewalk Café Location Criteria.

The location criteria contained in this section apply to both enclosed and unenclosed cafes. (a) The Commissioner may permit any portion of the sidewalk to be used for a café, provided that a minimum of eight feet zero inches or 50 percent of the sidewalk width, whichever is greater, from the curb to the building line is free of all obstruction and reserved for pedestrian use, except that this requirement shall not apply to an enclosed sidewalk café that has been granted a revocable consent, provided the space occupied by such café conforms to the plan submitted with the application for such consent. Such minimum distances shall be measured as follows:

(1) The minimum distance for a clear path shall be measured from the portion of the curb line which is nearest the curb line or the nearest obstruction. In no event may recesses in the sidewalk café frontage be used to satisfy this unobstructed width requirement, except that the corners of the sidewalk café may be rounded or mitered. A clearance of eight feet zero inches shall be maintained around the corners of sidewalk cafes, measured in radius.

(2) For the purpose of the minimum clear path, but not the clearance from the corners of the sidewalk cafes, parking meters, traffic signs, and trees which have gratings flush to the grade, without fences or guards, shall not count as obstructions.

(b) In the case of a street for which a mall plan or other special plan has been adopted, the clear path requirements pursuant to this subsection shall be deemed satisfied if there is not less than eight feet zero inches of clear path.

(c) There shall be a minimum of nine feet zero inches clearance at intersections of street line, free of all obstructions with no exception, measured from the outer edge of the sidewalk café to the curb side obstacle. The corner of the sidewalk café wall may be

rounded or mitered. Such distance shall be measured from the outer edge of the sidewalk café to either the curb line or the nearest obstruction.

(d) All sidewalk cafes shall maintain a minimum clearance of fifteen feet from large obstructions. For the purpose of this subsection, large obstructions shall be bus stop shelters, newsstands, subway entrances or any other object larger than fifteen square feet in area. The closed end of a subway entrance located along the front line may abut a sidewalk café.

§2-53 Physical Criteria for Sidewalk Cafes.

The criteria included in this section apply to the construction or configuration of both enclosed and unenclosed sidewalk cafes. (a) No portion of sidewalk cafes, such as doors, windows, walls, or any objects placed within a sidewalk café, shall swing or project beyond the designated exterior perimeter of the sidewalk café. However, fire exit doors, which are used exclusively as emergency fire exits, shall be exempt from this provision.

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

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

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

(c) The furnishing of the interior of a sidewalk café shall consist solely of movable tables, chairs and decorative accessories. No objects, except lighting fixtures and HVAC installations, may be permanently affixed onto any portion of the sidewalk café wall. In no event shall such objects penetrate the exterior perimeter of the wall or roof of the enclosed sidewalk café or impede the transparency as required by this subchapter. Exhaust ducts on adjacent walls must be at least ten feet above the sidewalk.

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

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

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

§2-54 Physical Criteria for Enclosed Sidewalk Cafes.

(a) An enclosed sidewalk café may be constructed with a base wall of opaque material up to a maximum height of 12 inches from the finished floor level. The base

wall shall include any horizontal structural members that support transparent materials above.

(b) All enclosing walls, doors and windows, except for the structural members, above finished floor level or base wall as provided in subdivision (a), up to a height of seven feet zero inches above the finished floor level, must be of colorless, untinted, non-reflective transparent material, as approved by the New York City Department of Buildings. In order to maximize transparency, the horizontal, as well as vertical structural members shall not be more than ten inches wide. At least 50 percent of the walls, up to a height of seven feet zero inches above finished floor level, shall consist of operable transparent windows.

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

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

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

§2-55 Physical Criteria for Unenclosed Sidewalk Cafes.

(a) Provided that a service aisle not less than 36 inches is maintained along the entire length of the separated areas occupied by the sidewalk cafe, such space may be separated from the space used by pedestrians by a removable base wall, railing, planter (including any vegetation therein) or fence, which may not be higher than 30 inches above the floor or platform of the sidewalk cafe. In all cases, service must be provided to patrons from within the area designated for the sidewalk cafe. All planters, railings and fences placed within a sidewalk cafe shall be self-supporting. Where a fence or railing is used, one-half (1/2) of the total area must be transparent. All approved sidewalk cafe equipment or accessories shall be removed from the sidewalk when the unenclosed sidewalk cafe ceases operation, except for the planter which shall be removed or, alternatively, placed with its longest side against the wall of the restaurant, provided that such planter does not obstruct any egress from the building.

(b) The sidewalk cafe shall be at the same elevation as the adjoining sidewalk, except that this requirement shall not apply to an unenclosed sidewalk cafe that is operated pursuant to a revocable consent that authorizes otherwise and that was granted prior to the effective date of this rule, provided the elevation of the sidewalk cafe operated under such consent conforms to the plans for which the consent was granted. Paint, grass or artificial turf, carpet, platforms, or any other surface cover or treatment of

any kind, shall not be permitted to be placed upon the area designated for an unenclosed sidewalk cafe, at any time.

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

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

(e) Heating units that are approved for use in unenclosed sidewalk cafes by the Department of Buildings' Material and Equipment Acceptance Division may be placed solely within the area of the sidewalk for which the revocable consent and license to operate an unenclosed sidewalk cafe has been granted as required by subchapter 6 of chapter two of title 20 of the New York City Administrative Code and applicable rules. No such heater shall be placed or be used within the area occupied by a sidewalk cafe until the installation of all connections to required fuel sources complies with the requirements of the rules and regulations of the New York City Department of Buildings and the New York City Fire Department governing the installation and use of sidewalk cafe heaters by licensed unenclosed sidewalk cafes, that was in effect as of such installation; and such installation has been inspected and approved for use in writing by the Department of Buildings. Such approval shall be made available on demand for inspection by Department personnel at the premises at any time while the sidewalk cafe is open for business. No such heaters shall be operated unless the sidewalk cafe licensee has a currently valid open flame permit required for such heaters by the New York City Fire Department, and that during all times that the system is in operation it is under the direct supervision of a person holding a certificate of fitness issued by the New York City Fire Department. Such permits and certificates shall be retained at all times on the premises and shall be displayed on demand to any inspector authorized to inspect the premises.

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

§2-56 Requirements for Applicants.

(a) All applications for a sidewalk café license or renewal thereof shall include one (1) original and six (6) copies of assembled sets of the standard application form and all material required therein, together with all supporting documents and supporting correspondence.

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

§2-57 Operations.

(a) Sidewalk cafes may remain open for business for not longer than the hours and days below indicated:

Sunday, 12 noon 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

(1) In no event may a sidewalk café be opened for business prior to 11 o'clock ante meridiem on any Sunday.

(2) Notwithstanding the provisions of paragraph (1) of this subdivision, all enclosed sidewalk cafes may remain open for business until 4 a.m.

(b) Every licensee shall be held strictly accountable for the maintenance of good order in the sidewalk café and proper conduct of his patrons. No loud or unnecessary noises may emanate from the sidewalk café.

(c) Every licensee must secure and maintain throughout the term of the license liability insurance issued by a company duly authorized to do business in the State of New York, insuring the licensee and the City of New York and to hold them harmless from and against any claim, injury, or damage caused or alleged to be caused by or as a result of the construction, operation or use of the sidewalk café and any structure hereby authorized in the following minimum amounts:

(1) For bodily injury including death, in (i) the minimum amount of \$100,000 for any one (1) person and (ii) the minimum amount of \$300,000 for any one (1) accident; and

(2) for property damage in the minimum amount of \$25,000. Failure to maintain insurance coverage in the foregoing amounts shall cause the immediate revocation of the license.

(d) The license and the revocable consent to operate a sidewalk café shall be immediately revoked if the holder of such license and consent fails to maintain the insurance coverages required pursuant to subdivision (c) of this section, except that

such license and consent may be reinstated if such holder presents proof satisfactory to the Commissioner that the required insurance coverages are in full force and effect.

(e) No beer, alcoholic or spirituous liquors shall be served on the sidewalk café premises or at any table thereon, unless permitted under a license issued by the New York State Liquor Authority.

(f) No sign, either illuminated or non-illuminated, announcement or advertising devices of any nature, shall be placed or painted on or affixed to in any manner, any awning, screen or other appurtenances used in connection with sidewalk cafes; except the name of the establishment shall be permitted to be evidenced with a two dimensional sign which shall be affixed to the valance of the awning. The size of the letters used on the sign provided for herein shall not exceed a height of eight inches on a twelve inch valance and must be limited to a single horizontal line.

(g) A simple menu no larger than three square feet may be posted in the sidewalk café, so that it may be read from the street. The minimum charge, if any, must be prominently stated on said menu and prominently displayed on each table menu. At no time may the prices charged for food or drinks in the sidewalk café be higher than in any other portion of the restaurant, nor may a special or additional charge be levied for seating in the sidewalk café.

(h) The illumination of a sidewalk café must be confined within the interior perimeter of the sidewalk café area and there shall be no attempt to illuminate the area beyond the perimeter of the sidewalk café area through the medium of flood lights. All lighting fixtures must be maintained within the confines of the café.

(i) The restaurant shall post the DCA sidewalk café sign, as described in §1-03 of this title.

§2-58 Variances and Amendments.

(a) No waivers from the standards set forth in §2-46 and §2-47 and in part 2 of this subchapter shall be granted for an initial application for a license to operate a sidewalk café.

(b) Whenever a renewal application for a license to operate a sidewalk would not comply with the standards set forth in §2-46 and §2-47 or part 2 of this subchapter but only because the noncompliance is due to an object that was placed on sidewalk after the granting of the initial license to operate such sidewalk café, such objects shall not bar the granting of such renewal of a license provided that: (1) the plans for the sidewalk café to be operated pursuant to the renewed license are identical to the plans for the sidewalk café operated under the initially approved license; (2) the failure to comply is not due to an object that has been placed on the sidewalk to promote public health or safety; and (3) the burden shall be on the applicant to demonstrate compliance with the requirements of this section.