

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2013**

No. 139

Introduced by Council Members Reyna, Koo, Gennaro, Vallone and Van Bramer.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the review and approval of petitions for revocable consents to operate sidewalk cafes.

Be it enacted by the Council as follows:

Section 1. Section 20-225 of the administrative code of the city of New York, as amended by local law number 70 for the year 1990, subdivisions a, e, f, g, i and j as amended by local law number 8 for the year 2003, subdivision b as amended by local law number 10 for the year 1991, and subdivision h as added by local law number 70 for the year 1990, is amended to read as follows:

§ 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 *president of the borough in which 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, 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. *If the community board submits a recommendation on a petition after the forty-five day time period has expired, such recommendation may be accepted by the department at the sole discretion of the commissioner.*

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 *pursuant to subdivision e of this section*, 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, *except that if the department waives its public hearing, the department shall file with the council a written statement of such waiver and any decision to approve or approve with modifications, together with the petition, within ten days after the expiration of the period allowed for the community board filing of a recommendation or waiver pursuant to subdivision e of this section.* If [within the time period provided,] the department fails to [take the actions on a petition] *file with the council any decision to approve or approve with modifications, together with the petition, as provided [for] in the preceding sentence,* the petition shall be deemed to have been denied, *unless the petitioner submits a request in writing to the department for an additional period of time, which shall not exceed one hundred eighty days, to correct any deficiencies in the petition.* [For] *Unless the department waives its public hearing, 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, *unless, in accordance with that subdivision, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required.*

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, *except that if, in accordance with subdivision i of this section, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required, the council shall file its resolution with the department. Such filing of the resolution shall take place 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, *unless the mayor has determined that such approval is not required for petitions reviewed and approved pursuant to subdivisions a through h of this section, or any category of such petitions.*

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.

§ 2. Section 20-226 of the administrative code of the city of New York, as amended by local law number 70 for the year 1990, subdivisions a through i as amended by local law number 8 for the year 2003 and subdivisions c, d, e, f, g, h and i as relettered by local law number 8 for the year 2003, is amended to read as follows:

§ 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 *president of the borough in which the cafe is proposed to be located*, the speaker of the 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. *If the community board submits a recommendation on a petition after the forty-five day time period has expired, such recommendation may be accepted by the department at the sole discretion of the commissioner.*

c. [The] *Within thirty days after the expiration of the period allowed for the filing of a recommendation or waiver by the community board pursuant to subdivision b of this section*, the department shall (i) hold a public hearing *on the petition* pursuant to subdivision d of this section [and], (ii) 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], and (iii) file with the council any such decision to approve or approve with modifications, together with the petition, except that if the department waives its public hearing, the department shall file with the council a written statement of such waiver and any decision to approve or approve with modifications, together with the petition, within ten days after the expiration of the period allowed for the community board filing of a recommendation or waiver pursuant to subdivision b of this section. If [within the time period provided,] the department fails to [take the actions on a petition] file with the council any decision to approve or approve with modifications, together with the petition, as provided [for] in the preceding sentence, the petition shall be deemed to have been denied, unless the petitioner submits a request in writing to the department for an additional period of time, which shall not exceed one hundred eighty days, to correct any deficiencies in the petition. [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] *Unless the department waives its public hearing, 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] *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, *unless, in accordance with that subdivision, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required.*

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, *except that if, in accordance with subdivision g of this section, the petition is one for which the mayor has determined that separate and additional mayoral approval is not required, the council shall file its resolution with the department. Such filing of the resolution shall take place 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, *unless the mayor has determined that such approval is not required for petitions reviewed and approved pursuant to subdivisions a through f of this section, or any category of such petitions.*

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.

§ 3. Section 20-227 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:

§ 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, *unless the mayor has determined that such approval is not required for petitions reviewed and approved pursuant to this section, or any category of such petitions.* 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).

§ 4. This local law shall take effect one hundred twenty days after it shall have become a law, provided, however, that the commissioner shall take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, the adoption of any necessary rules.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 19, 2013 and approved by the Mayor on December 30, 2013.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 139 of 2013, Council Int. No. 1039-A of 2013) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.