

Practice Update

Permanent Outdoor Dining Is Coming to New York—Is Your Business Ready?

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On August 16, 2023, Mayor Eric Adams signed Introduction No. 31-C to amend the New York City charter and administrative code to streamline the approval process to allow year-round sidewalk café dining and roadway café dining during warmer months.

The Department of Transportation (DOT) will administer licensing of both sidewalk and roadway cafés and enforce rules regarding their operation. Any owner, lessee, manager, or operator of a sidewalk café on a public sidewalk, or roadway café in the curb lane or parking lane of a roadway, must obtain both a license and revocable consent from DOT. The new code regulations will operate in conjunction with zoning changes approved in 2022 under the Open Restaurants Zoning Text Amendment, which removed geographic restrictions on sidewalk cafés.

With exceptions for certain existing cafés, sidewalk and roadway cafés must be open-air and contain only readily-removable tables, chairs, and decorative items. Roadway cafés are prohibited from operating between November 30 and March 31; all roadway cafés must be broken down by November 29 and may be reinstalled April 1 on an annual basis. Alcoholic beverages are allowed as permitted by state law. Advertising displays, other than the

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restaurant name, logo, menu, and service information, are prohibited. The regulations grant authority to DOT to impose civil penalties for operating an unlicensed café, suspend and revoke licenses, and remove café furniture, equipment, structures, or other obstructions.

While petitions for revocable consent for sidewalk and roadway cafés are each subject to review and recommendation by the applicable community board and council member, the regulations establish a special public hearing process for petitions to establish and operate sidewalk cafés. DOT anticipates that it will take between two to six months to obtain approval of an application for a sidewalk café and three to four months to obtain approval of an application for a roadway café.

The regulations are intended to lower costs for restaurants to participate in the outdoor dining program compared to the pre-pandemic process. A café license fee must be paid to operate a sidewalk or roadway café for term of four years. A revocable consent for a four-year term will run concurrently with the license period, subject to payment of an annual fee based on the café's square footage and its location within one of four sectors determined by median annual ground floor commercial rent.

Restaurants are allowed to continue outdoor dining operations under the temporary emergency outdoor dining program created in response to the COVID-19 pandemic as they apply for a license and submit a petition for a revocable consent. Restaurants actively participating in the temporary open restaurants program can continue operating throughout the remainder of 2023.

DOT is required to promulgate rules for granting of licenses and revocable consents, design of sidewalk and roadway cafés, priorities among applicants covering the same area on a sidewalk or roadway, and operation and maintenance of sidewalk and roadway cafés to prevent obstructions. DOT

anticipates that the proposed rules will be made public in September 2023 and will be finalized by early 2024. Once the rules are finalized, DOT will launch an online application portal and restaurants can begin applying for the permanent program.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.