

Landmarks Preservation Commission  
Transcript Excerpt  
February 13, 2024

Presentation by LPC General Counsel Mark Silberman on proposed amendments to Chapter Two of Title 63 of the Rules of the City of New York, consisting of existing rules, including amendments relating to roadway and sidewalk cafes

LPC Staff Member 0:26

Moving on to the Preservation Department public meeting agenda. This is item number one to initiate rulemaking pursuant to the City Administrative Procedures Act. This is proposed amendments to Chapter Two of Title 63 of the Rules of the City of New York, consisting of existing rules, including amendments relating to roadway and sidewalk cafes.

LPC Chair Sarah Carroll 0:46

Right, so with that, we'll introduce our General Counsel Mark Silberman who's going to do a brief overview for you and then we will have any questions and then make a decision on whether or not to calendar these rules. So,

LPC General Counsel Mark Silberman 0:59

Abby, you're going to be you're going to be advancing the slides. So could you move to next slide, please. Commissioners, Mark Silberman, General Counsel. Today, the staff is presenting Proposed Rules for Roadway and Sidewalk Cafes, for your consideration for calendaring. The proposed rules.

Let me start again. Commissioners, today the staff is presenting proposed rules

Speaker 1 1:38

try this, okay. Okay. All right. We'll try a third time. Commissioners, today the staff is presenting proposed rules for roadway and sidewalk cafes for your consideration for calendaring. The proposed rules are related to the city's new outdoor dining law and the Department of Transportation's promulgation of rules implementing that law. Next slide please.

Rules play an important role in the agency's mission to protect our historic buildings by ensuring our regulation is as efficient as possible and in our equity framework as well by promoting transparency and predictability by making it clear what criteria are being applied and what materials are needed to get a permit. As you know, approximately 95% of all applications are handled by staff pursuant to our current rules. By streamlining regulatory review, we will support the broader goals of the Landmarks Law to promote economic recovery

and growth in areas under our jurisdiction. Finally, rules can support a broader efficiency by aligning our practices with those of other city agencies to create more coordinated and therefore efficient reviews. Next slide, please.

Mayor Adams signed into law in August 2023 to create a permanent outdoor dining program encompassing both sidewalk cafes and roadway cafes. DOT is taking the lead on developing regulations and will be responsible for overseeing the program. DOT has engaged with private and agency stakeholders including LPC staff to develop siting, safety, and design guidelines. DOT has been through the rulemaking process including a public hearing late last year and recently published final rules in the City Record which will be effective on March 3, 2024. Next slide, please.

LPC General Counsel Mark Silberman 3:30

First, let's talk about sidewalk cafes. Sidewalk cafes associated with ground floor restaurants have been part of the city streetscape since the mid 19th century, and legally so since 1929. These installations support ground floor restaurants and then live in the commercial streetscapes and are common in historic districts. due to their low scale and lightweight components such as dining furniture, umbrellas, perimeter elements, like ropes, stanchions, and planters. sidewalk cafes have traditionally had a simple presence on the streetscape, and do not detract from the buildings they are associated with. And the streetscape in general. LPC has historically not regulated their presence except where components are not movable. So in most cases there's little to no substantive review

which is I'm not going to look at you so the mic picks me up sorry. Pre-pandemic, there was a limited sidewalk cafe program in place and operated by the Department of Consumer Affairs, now the Department of Consumer and Worker Protection. They would refer applications for sidewalk cafes to the LPC. We would review these applications solely to determine if there were permanent or non-moveable elements. Typically, there aren't. LPC's review these ephemeral sidewalk cafes is not covered anywhere in our rules. If the restaurant wanted an awning or something attached to the building, they would need to obtain a separate permit from the LPC and we would review that work scope in accordance with our current rules. Most of the time, this permit work would be reviewed at staff level but there are a few instances when the commission was required to review such as the awnings at at street at 80 Spring Street, which were reviewed because they had text on the side panels and the application and at 55 Gansevoort Street where they were installing a floor and continuous planter barriers. Next slide please. Oops, sorry. One more, sorry.

The outdoor dining law passed last year codifies the current practice for sidewalk cafes. Their look and function remains as before, low, temporary, and movable, and they would not be permitted to be

enclosed.

As an aside, the law prohibits any new enclosed sidewalk cafes altogether. The design criteria for sidewalk cafes as passed by the DOT allows for awnings and canopies as well as heating elements, lighting, etc.

The LPC would continue to review aspects of the proposals that are attached to the building or the the paving, such as awnings or electrical connections, for compliance with our current rules and to make sure any penetrations and installations avoid damage or concealing architectural features or paving. Next slide please. And one more.

Cafes associated with restaurants and bars and situated in the road better were not permitted before the COVID-19 pandemic. During the pandemic, the City allowed them in order to address safety concerns and support eating and drinking establishments during the economic turndown. Due to the nature of the emergency condition under which they were born, roadbed cafes were created in a mostly ad hoc manner in terms of form and design. During the pandemic and since they have generated both supporters and detractors. The city passed the outdoor dining law to set uniform siting and design guidelines. The law requires owners to obtain both a revocable consent and a license from the City. Next slide, please.

DOT has adopted extensive siting criteria and detailed design guidelines. And we'll be making a presentation at the public hearing if the commissioners vote to calendar the proposed rules to summarize some of the important limitations there are seasonal road bed cafes can only operate for eight months between April 1 and November 29. And installations must be removed. Siting: they must be located directly in front of the establishment cafe that they are associated with and can be no longer than 40 feet, specified distances away from intersections, crosswalks, bus stops, hydrants, electrical vaults, etc. And also require a gap of at least three feet between cafe enclosures erected by adjacent restaurants. As far as design, they must have low water-filled barriers. That can be that can that can have outside cladding material or similar or a similar barrier that needs outlined safety requirements. It can be no higher than 42 inches can be taller only on the roadway side. And that side is taller must have a level of transparency. In other words cannot be solid or opaque and have no solid rule. Finally, advertising is significantly limited to 10% of the area on which printed and no lighted or flashing signage is permitted. The content of advertising is limited the name, logo or menu of the establishment. These criteria will generate roadway cafes. That look and feel much different from the ad hoc cafes erected during the pandemic, which could be fully enclosed with taller salons extend along the road and sidewalk for longer longer stretches indirectly but adjacent cafes without gaps. Current cafes have a grace period to

continue to operate before they are required to get a DOT permit and comply with the new requirements. After the grace period, any non-compliant cafe will be required to be removed. There are also provisions for removal of abandoned seating areas that go unused for a specific set of time period. Next slide, please.

As I mentioned at the beginning, DOT consulted with LPC staff and the development of the design and siting criteria. Given the adopted siting and design criteria and since installations are designed to appear temporary and for roadway cafes must be seasonal, LPC staff feels these dining setups will have no impact on significant exterior architectural features of buildings or the streetscape in general. Therefore, we're proposing to not require LPC Review Approval unless specified work requires attachment to the building such as electrical conduit extended from the buildings that are row at Cafe are an awning in that instance, and for that conduit penetration only will an LPC permit be required. Attachment to pavement would also require LPC review this type of limited LP regular, this type of limited regulatory review mirrors our historic approach for sidewalk cafes and has been previously and successfully adopted by the Commission with respect to public telephones and the link kiosks. Next, next slide please.

Just a final word about process. rules must be considered pursuant to procedures required by the city Administrative Procedures Act or CAPA. In compliance with that act today you are being asked to vote to calendar the proposed rules for future public hearing for your consideration. If you vote to calendar, the CAPA process begin then we will publish the proposed rules in the city record on Thursday will hold a public hearing on March 19. Representatives from the Department of Transportation will present their newly adopted outdoor dining rules and design criteria at the public hearing. Your notice and a full copy of the rules will be posted on our website and on the City's NYC rules website. After the public hearing, staff will review your comments and the testimony and the proposed modifications to address specific issues or concerns. Final rules as amended would be presented at separate? public hearing for your consideration and vote. Thank you and I'm happy to answer any questions. Any questions?

Or did I say a public hearing I guess? But yes, it was the final and final meeting to consider the final rules would be a public meeting, yes.

LPC Commissioner Unknown 11:42

Slightly unclear but it seems to me as if most of these things would not come to the Commission at all. But my I mean to the contrary, the staff not not the commission working for the most part. I mean attachment of electrical conduit or something like that would go to the staff?

LPC General Counsel Mark Silberman 12:03

Well, yes, as long as we just passed the rules. That's right.

So any attachment would be approved by the staff. It could be approved, pursuant to our rules and we expect in most cases that would be the case just like it is now.

LPC Chair Sarah Carroll 12:17

Other questions? Then, I would like to suggest that we go ahead and move to vote to calendar this and begin the CAPA process and set up for the hearing on March 19. So, Commissioner Master would you make a motion to calendar?

LPC Commissioner Master 12:37

I'm sure you want me to read the nope just just the all I have to say is so move. So moved

LPC Chair Sarah Carroll 12:48

And Commissioner Chu, would you second that motion?

LPC Commissioner Chu 12:50

second.

LPC Chair Sarah Carroll 12:51

All in favor say aye. Okay, so these are now officially calendered and we will have our public hearing on March 19. This will be the draft rules will be posted on our website and we will look forward to the discussion after the hearing. Thank you.

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