



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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District Manager

November 25, 2020

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NYC Department of Sanitation
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Ariel Palitz
Senior Executive Director,
Office of Nightlife
1697 Broadway, 6th Fl.
New York, NY 10019

Re: Coordination of Outdoor Dining Program

Dear City and State Representatives and Agencies,

In October, MCB4 voted and endorsed all year-round outdoor street dining. The Board believes that this pandemic induced experiment was successful. It originally had been conceived of as a temporary summer program. It helped the restaurateurs and added a lively element to our neighborhoods providing another way for residents and visitors in Hell's Kitchen, Hudson Yards, and Chelsea to socialize and connect with one another.

By a vote¹ of 37 for, 0 against, 1 abstaining, 0 pnc MCB4 urges all the municipal agencies in charge of enforcing compliance with the outdoor dining and winterization requirements to coordinate and concentrate their efforts more rigorously. They need to focus. The health and lives of our community members are in danger.

¹ Due to the increase in COVID cases and the immediate health risks involved this letter was approved by the MCB4's Executive Committee and is subject to ratification by the Full Board at it's regularly scheduled monthly meeting on Wednesday, December 2nd, 2020.

As noted in the New York Times and the restaurant press², improperly enclosed and/or poorly ventilated outdoor dining spaces can present health risks equal to or even greater than indoor dining. Thus it is essential that the regulations governing the construction and enclosure of outdoor dining structures be clear and unambiguous and that those regulations be strictly enforced.

As restaurants have built out and winterized both on the sidewalks and streets of MCD4, Board members have noticed that many of the installations raise issues about the interpretation and enforcement of the city's requirements for outdoor dining. Recently announced roadway safety enhancements will add to the requirements already in place. Together they ensure the health of patrons and workers by limiting the constructions to enable proper ventilation and dining space; create safety barriers against wintry road conditions; and maintain sufficient sidewalk width to allow pedestrians a clearly defined path accommodating those walking, in wheelchairs, or with baby carriages or shopping carts.

Currently, at least 50% of the side wall surface area of an outdoor dining enclosure topped by an awning, tent, or some more permanent roofing, must remain open. Two sides of the enclosure must be open, one of which is parallel to the roadway. If more than half of its total wall area is covered, an outdoor space is considered an indoor dining space and is subject to the 25% capacity rule. The exact measurements of the enclosure walls and the interpretations of these definitions is left to the establishment's owners. City representatives can be called in as consultants during construction but seem to intervene after the fact infrequently leaving lots of grey areas perhaps compromising the salubriousness of the ventilation.

Street dining structures if extending to the sidewalk area must leave at a minimum an unobstructed pedestrian path of eight feet. This is exclusive of tree pits or other permanent sidewalk space users.

By the middle of December, restaurants with outdoor dining enclosures must build 18" roadway barriers filled with soil or sand and have continuous strips of reflector tape on their outside facing traffic as well as install on the barriers snow sticks. Some restaurants on high volume streets designated by DoT will need water barriers. All these are to be put in place to deter vehicle impacts in the dining areas hopefully preventing injury to patrons.

Initial compliance to the city's requirements are self-certified by the applicant. Enforcement is left to the DoT. With winterization efforts, the DSNY will become involved in monitoring the roadway side barriers. To be effective, enforcement actions by representatives of these agencies must be coordinated and expended on an active regular schedule. To ensure the health and safety of MCB4's residents and visitors, they cannot be the reactive result of complaints. Without the implementation of an ongoing enforcement program, the extension of outdoor dining year-round will be put in question.

Sincerely,



Lowell D. Kern
Chair



Burt Lazarin
Co-Chair
Business Licenses & Permits
Committee



Frank Holozubiec
Co-Chair
Business Licenses & Permits
Committee

² "The Setups for Outdoor Winter Dining Are Lavish. But Are They Safe?" NYTimes, November 10, 2020. "The Rise of Enclosed Outdoor Dining in a Time of Rising Coronavirus Cases Is Worrying Health Experts," Eater, November 9, 2020.