



CITY OF NEW YORK

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February 24, 2021

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

Re: Permanent Outdoor Street Dining

Dear City and State Representatives and Agencies;

The sidewalks and streets of New York City are public spaces. Their use and enjoyment should be maintained through a regulatory framework that meets the needs of the City's population and generates money for a dedicated street improvement fund. Manhattan Community Board 4 (MCB4) believes making all-year-round outdoor street dining permanent will require a legal and operational framework different than the one currently used on a temporary basis. We request that the City evaluate and discuss with MCB4 the viability of the enclosed proposals as the rules for any future permanent program are being drafted.

In October of last year, MCB4 voted¹ and endorsed all-year-round outdoor street dining. Originally conceived of as a temporary summer program during the health crisis, the immediate extension of outdoor street dining to twelve months a year has helped restaurants economically and has proven extremely popular. Outdoor street dining has 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.

However seemingly successful outdoor street dining has proven to be during the current health emergency, it first should be evaluated before any permanent program is structured. As is, the current program is non-sustainable going forward with its high non-compliance rates. It puts an enormous burden on pedestrians and transportation routes. In the seven months since July, there were 40,000 inspections and 19% of outdoor dining sites were found to be non-compliant with the temporary regulations. The City received 4,400 311 calls during this period and 41% were about blocked sidewalks. A post-Covid program should incorporate relevant findings of any analysis. Existing outdoor dining site permits should not be automatically grandfathered under a new program. Each establishment must have to apply as if starting afresh.

Any permanent New York City outdoor dining program will have to define a clear jurisdictional overseer, create a process to better recognize the wishes of local communities, more thoughtfully integrate sites within their environment, and capture for the municipality some of the enhanced retail value it creates. In making the program permanent, MCB4 urges that the following measures be part of any future regulatory structure. They are changes from the current emergency program.

Process Changes:

- The program should be put under the purview of a single agency. Only one agency can provide a serious and sustained enforcement effort to ensure safety for customers and pedestrians and to assist the restaurant owner in their operations. Currently, many winter enclosures are not compliant with program requirements. A number have lost their liquor licenses for this reason.

¹ MCB4's current recommendation is based on a vote taken at its February 3, 2021 Full Board Meeting with _38_ members voting in favor of recommendation, _3_ members opposed, _0_ members abstaining and _0_ present but not eligible.

Recent winter snow storms have exposed inadequately protected outdoor dining structures to weather damage and skidding vehicles.

- Sidewalk café and open street dining guidelines need to be merged and streamlined in one approval process.
- Community boards have to be included in the approval process for any outdoor street dining structures as they are now for liquor license applications and sidewalk cafés. Any requests for outdoor street dining must start at the community board level. Community boards provide much needed education to applicants. This interactive process between community boards and applicants minimizes future quality of life problems and reduces the costs of enforcement.
- It is critical that the permits for outdoor street dining be time-limited with periodic renewals to provide for evaluations. They also must be revocable for due cause upon notice including the need to yield priority to the City's transportation mandate.

Operational Changes:

- Any permanent all-year-round outdoor street dining program must recognize that the overriding purpose of our streets and sidewalks is to provide transportation routes through the city for vehicles and pedestrians and that safety for all users of public rights-of-way is of paramount importance. Accessibility for firefighting equipment is critical as well. DoT's ability to meet its mandate must not be compromised by street or sidewalk outdoor dining.
- Protecting pedestrian space, bicyclist routes, and wait staff safety must be considered essential in creating any new program. Permanent outdoor dining, to put people first and facilitate safe walking, must be on the sidewalk or in the roadway, but not both. Where ever possible, installations in the roadway are preferable. Storm enclosures, tents and awnings, heaters, and sandwich boards must not be permitted on the sidewalks. There shall be no exceptions to the definition of obstruction.
- The configuration and siting of permanent outdoor dining must not diminish the safety or hinder the effectiveness of bicycle lanes.
- Consideration must be given to wherever possible widening the minimum unobstructed pedestrian area of the sidewalk from 8 to 12 feet. This measurement is exclusive of tree pits or other permanent sidewalk space users. Ideally, a separate clearly defined lane should be created in each corridor or street where outdoor dining is authorized accommodating those walking, in wheelchairs, or with baby carriages or shopping carts.
- The agency designated in charge shall publish a clear list of materials, blueprints, and permitted heating and lighting appliances for outdoor street dining structures. This will minimize confusion, safety issues, and unnecessary expenses.
- The permanent outdoor street dining program must adopt the current SLA regulations to prevent sidewalk over-crowding and excessive noise for residents.

- No standing and drinking.
- All service to seated patrons only.
- No music or video (neither in the outside structure nor from the open windows of the establishment). Existing sidewalk café music guidelines must be followed.

MCB4 believes that as outlined above, these process and operational measures are essential to a future New York City permanent outdoor street dining program. They are critical to the success of any long-term program bringing benefits to restaurant owners and patrons and our community district's residents and visitors.

Finally, in anticipation of this success, MCB4 urges the City to devise a fiscal mechanism to capture appropriate revenue from the use of its public spaces. New York City should be able to share in the added value accruing to these properties by their use of public spaces. Each midtown delivery space, for example, is estimated to generate up to \$34,000 annually. Surely, the outdoor dining value per parcel is greater than that sum. Landlords are already thinking of raising their rents and looking to have increased profits based on the success of the temporary outdoor street dining program. Through the fiscal mechanism chosen by the city, restaurant operators should directly pay into a dedicated fund whose purpose would be to physically enhance the street environment. These payments should be phased in over time to allow operators to recover from the impact of Covid on their businesses. Additionally, during their recovery, a fiscal method could be designed to shield these operators from rent increases.

MCB4 holds that all-year-round street dining will add to the livability and excitement of being in Chelsea, Hudson Yards, and Hell's Kitchen. It will strengthen our neighborhoods by adding additional connections. And any future program must include the measures we have outlined and generate money for a dedicated street improvement fund.

Sincerely,



Lowell D. Kern
Chair



Burt Lazarin
Co-Chair
Business Licenses & Permits
Committee



Frank Holozubiec
Co-Chair
Business Licenses & Permits
Committee