

Lowell D. Kern
Chair
Jesse Bodine
District Manager

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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August 12, 2021

Ed Pincar
Manhattan Borough Commissioner
NYC Department of Transportation
59 Maiden Lane, 37th Floor
New York, NY 10038

Re: Open Restaurants Legislation and Rule-Making

Dear Borough Commissioner Pincar,

Manhattan Community Board 4 (MCB4), at its July 28th Full Board meeting by a vote of 33 in favor, 0 opposed, 1 abstaining, and 0 present not eligible, requests that the Department of Transportation (DOT) start public outreach and consultations for its proposed rule-making as guided by proposed legislation for Open Restaurants as soon as possible. Such consultation is crucial to advance the rezoning proposed by the Department of City Planning (DCP) concerning sidewalk cafes; both processes should proceed in lockstep. We are taking this opportunity to reaffirm the points outlined in one of our previous letters, the minimum requirements that the new Open Restaurants rule-making should include in order to make this program successful and respect pedestrians, people with disabilities, and neighbors.

Our Board is on record for supporting the program. However, in the last 12 months, we have learned many lessons from the current installations. We have attached our previous letters which contain detailed recommendations. Our governing principle is that sidewalks are for pedestrians, not dining, plants, sandwich boards, restaurant staff, or patrons waiting for a table. In our pedestrian-heavy district, it is crucial that the appropriate right-of-way (12'), clear of all obstructions, be maintained; this is especially critical for sidewalk users with mobility devices.

Sidewalk widening and extensions that are designed to relieve pedestrian congestion must continue to be reserved exclusively for walking. In districts such as ours, where pedestrian loads necessitate sidewalk widening, we must continue the restriction on sidewalk cafes on widened areas.

- Transportation purposes must be prioritized in the roadways. The streets Master Plan must

be completed and published to regularize which streets and arterials will eventually be available for Open Restaurants.

- For a given operator, permits should be granted for either Sidewalk cafe, where feasible, or a roadway installation, not both. Operators who “double-dip” and take over both the sidewalk and the roadway have created sidewalk obstructions of objects and personnel. Preference should be given to the roadway unless it is not feasible.
- Licenses should include an at-will revocation and/or a suspension clause with a short notice period in order to not delay utilities, street work, or the implementation of street design improvements.
- A curbside plan for each block will be critical in identifying how and where key functions, such as fire and EMS access, oil tank refilling, business and residential deliveries, and garbage storage and pick-up, shall be accommodated. In case these operations cannot be performed within legal parking, the parking regulations will need to be adjusted.
- We recommend that all licensees of Open Restaurants commit to move their deliveries to nighttime or complete deliveries two hours before opening time.
- Design and timing: During the winter, a number of installations were abandoned, leading to unsightly and unsanitary conditions. A season with specified beginning and end would address this issue and allow snow removal; many bike lanes were obstructed last winter. Operators should be granted Seasonal Permits, and their enclosures removed during the off season. Specifications and guidance should be provided for the design of compliant and dismountable structures. Open Restaurant participants with feasible locations for year-round operation, such as plazas, who wish to operate year-round and take responsibility for dutiful year-round maintenance of their structures, may be eligible for a special year-round permit.
- There should be no enclosed cafes on the sidewalk. Enclosed structures are detracting instead of contributing to the street life. Structures in the parking lane should be as open and transparent as possible to maintain lines of sight.
- Currently, compliance and enforcement are sorely lacking. Many operators struggle with design and administrative tasks, as is plainly visible during their SLA applications. To think that operators can self-certify is naive and ignores the lessons of the pandemic. Review by local Community Boards would be a low-cost approach to community certification, and an improvement over self-certification. Community Boards are the city agencies which have the best understanding of hyper-local curbside use and conditions. Such a review would preempt potential enforcement issues.
- A single agency must be responsible for an integrated enforcement function, including for noise, design, placement, storage, and sidewalk encroachments. Rules and enforcement must also be in place for electrical and gas installations, in concert with an assessment of the climate impacts of such usage.

- License revocation should be part of the enforcement options.

We look forward to working closely with the DOT in shaping this program so that it is an enhancement to city life without detracting from our sidewalk and roadway capacity.

Sincerely,



Lowell D. Kern
Chair
Manhattan Community Board 4



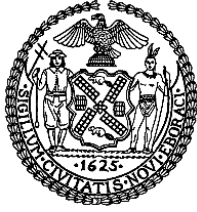
Christine Berthet
Co-chair
Transportation Planning Committee



Dale Corvino
Co-chair
Transportation Planning Committee

Enclosure

Cc: Marisa Lago, Chair, City Planning Commission



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JESSE R. BODINE
District Manager

June 10, 2020

Hon. Bill de Blasio
Mayor, City of New York
City Hall
New York, NY 10007

Hon. Corey Johnson
Speaker, New York City Council
224 W. 30th Street, Suite 1206
New York, NY 10001

Re: Open Streets for Dining

Dear Mayor de Blasio and Speaker Johnson,

Manhattan Community Board 4 (MCB4) urges the City temporarily allow restaurants and retailers impacted by store capacity limits to utilize roadway space for their operation. This would follow the recently launched Open Streets program, except this allowance would grant use of the roadway (“dining lane”) for restaurants and retailers who need additional space to resume their operation, while complying with COVID-19 distancing requirements. To ensure the allowance does not create new distancing challenges, this program must be structured in a way that reserves an appropriate (12-ft) amount of sidewalk space without any obstructions for proper distancing for pedestrians.

We also recommend that specific provisions be adopted for food vendors to provide for an equitable and orderly allocation of public space, while providing 12-ft of non-obstructed sidewalk space for pedestrians.

The COVID-19 public health emergency has created a unique set of hardships for residents and merchants. In order for businesses to resume their operations and save many jobs, while complying with COVID guidelines, it is necessary that additional space be made available to these operators. Manhattan Community District 4, especially on Eighth and Ninth Avenues, has limited amounts of sidewalk and a large concentration of eating and drinking establishments.

Manhattan Community Board 4 ratified this letter at its June 3rd Full Board meeting and voted with 47 in favor, 1 against, 1 abstaining and 0 present, not eligible, to support the program conditionally with the following guidelines we feel are necessary for the program to succeed, while complying with COVID-19 directives and maintaining quality of life for surrounding residents:

1. Program duration: The program would begin this season and last until October 2020 - to be evaluated and re-approved for next season depending on the state of COVID-19 and economic conditions.
2. Location: the dining lane can be located on a parking or moving lane on the avenues. In MCB4, dining lanes would not be authorized on plazas, parks, sidewalks, side streets, construction zones or bus boarding areas. Exceptions for side streets must be approved by the Community Board. The area allocated to each merchant should be limited to the width of their storefront and marked on the ground.
 - In MCB4, the following locations have been identified:
 - Seventh Avenue – one dining lane from West 14th to West 26th Streets
 - Eighth Avenue – one dining lane from West 14th to West 24th Streets. There should be no installation north of West 23rd Street. A large residential community fronts the avenue from West 24th to West 30th Streets; the corridor with heavy pedestrian commuter volumes extends from West 30th to West 48th Streets; a fire house and residential sector lies north of West 47th Street
 - Ninth Avenue – one dining lane from West 14th to West 42nd Street and two dining lanes from West 42nd Street to West 48th Street, one on each side, as both sides of the avenue have a large concentration of restaurants. Some sections of the avenue above West 48th Street are under construction and should not be included
 - Tenth Avenue – one dining lane from West 14th to West 59th Streets
 - West 14th Street from Sixth to Eleventh Avenues, which includes the Meatpacking District and the areas freed up by the Busway installation
 - West 46th Street (from Eighth to Ninth Avenues, known as Restaurant Row.)
3. Restaurants must keep the sidewalk free of all obstructions so there is enough space for pedestrian distancing (12-ft minimum between any real obstructions measured perpendicularly to the property line). If there is not enough space for pedestrian distancing the operators should:
 - relocate sidewalk cafes and take-out lines to the dining lane if there is one
 - remove menus, A-frames, serving tables, and storm enclosures
 - deposit garbage in the dining lane after closure, which will also provide easier access for sanitation
 - all deliveries should be scheduled to be completed two hours before opening time
4. Hours and method of operations: 10a.m. to 10p.m. during the week, 11p.m. on weekends; There will be no music, no smoking and other stipulations of the method of operation for the establishment apply.

5. Establishments are responsible for the safe operation of the outdoor premises:
 - physical distancing: patrons must be spaced according to then applicable distancing guidelines and wear masks if standing or moving. There should be no service, including alcohol service, to standing patrons. All service will be to seated patrons only. Staff should wear masks and gloves at all times.
 - provide tables, chairs, a movable ADA ramp and Department of Transportation (DOT)-approved barriers to separate patrons from the traffic.
 - provide security, using paid detail.
6. Post installation, a review process with the local community board should be required if the operation or the location of a specific establishment is problematic as expressed by neighbor or customer complaints.
7. Consideration should be given to how public space will be allocated between restaurants to ensure equitable opportunity.
 - food vendors, in particular (not food trucks), should be directed to set up their operations on side streets only, in the parking lane – not on the sidewalk – in a space located 20-ft to 50-ft from the limit of the pedestrian crossing. This would ensure that restaurants and food vendors do not compete for roadway space and would free up space on the crowded and narrow sidewalks in midtown for pedestrian distancing where 12-ft is required.
8. Mechanisms should be put in place to prevent landlords from capitalizing on this amenity (charging a rent premium)

We look forward to working with your offices in these next steps towards reopening the city that will benefit the businesses in our district.

Sincerely,



Lowell D. Kern
Chair
Manhattan Community Board 4



Frank Holozubiec
Co-Chair
Business License & Permits Committee



Burt Lazarin
Co-Chair
Business License & Permits Committee

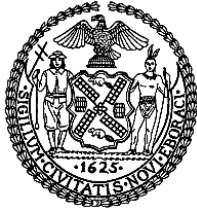


Christine Berthet
Co-Chair
Transportation Planning Committee



Dale Corvino
Co-Chair
Transportation Planning Committee

Cc: Hon. Jerry Nadler, U.S. Congressman
Hon. Brad Hoylman, NYS Senator
Hon. Richard Gottfried, NYS Assembly Member
Hon. Linda B. Rosenthal, NYS Assembly Member
Hon. Helen Rosenthal, NYC Council Member
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Laura Anglin, Deputy Mayor for Operations
Hon. Vicki Been, Deputy Mayor for Housing and Economic Development
Ed Pincar, Manhattan Borough Commissioner, DOT
Lily M. Fan, Commissioner, State Liquor Authority
Lorelei Salas, Commissioner, Department of Consumer Affairs
Jonnel Doris, Commissioner, Small Business Services



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LOWELL D. KERN
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JESSE R. BODINE
District Manager

February 24, 2021

Hon. Bill de Blasio
Mayor
City Hall
New York, NY 10007

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Manhattan Borough
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Jannel Doris
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Ariel Palitz
Senior Executive Director,
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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
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Business Licenses & Permits
Committee