

JEFFREY LEFRANCOIS
Chair

JESSE R. BODINE
District Manager

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

424 West 33rd Street, Suite #580
New York, NY 10001

tel: 212-736-4536
www.nyc.gov/mcb4

March 9, 2022

Hon. Erik Bottcher
New York City Council
224 W. 30th Street, Suite 1206
New York, NY 10001

Hon. Mark Levine
Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007

Re: Open Restaurant Proposed Legislation

Dear Council Member Bottcher and Borough President Levine,

Manhattan Community Board 4 (MCB4), at its March 2nd Full Board voted by 39 in favor, 0 opposed, 1 abstain, and 0 present but not eligible to oppose the language of the proposed legislation for the Open Restaurant program unless the following elements and the attached framework are included in the law and/or in the rules.

Background

New York City allowed installation of restaurants in the roadway during the pandemic to support continued activity in this industry. This option was made permanent under the previous administration in 2021, subject to establishing detailed regulations. The Departments of City Planning and Transportation are now leading the effort to create legislation to administer the permanent roadway program and fold the sidewalk café program into it. The new program is due to debut in March 2023.

MCB4 has commented on this program multiple times over the last 18 months, during the pandemic and more recently when the Department of City Planning presented its proposal for

zoning changes.¹ This letter summarizes our existing positions as amended in light of the City Council hearings of the proposed legislation² on February 8, 2022. The framework we proposed relies upon MCB4's years of experience in approving and resolving issues with the many sidewalk cafes in our district.

Key Recommendations

The proposed legislation does not include a single mention of pedestrians or residents as if they did not exist. The city should create a framework for this use of public space that balances the needs of all populations by:

- Giving the highest priority to pedestrians and residents and the services they need
- Giving the second highest priority to transportation, delivery and sanitation needs
- Ensuring residents' quality of life is not degraded

New York is a city of neighborhoods, and one size does not fit all. We recommend that the framework be customized by borough and if appropriate by districts.

The following elements are particularly critical to achieve a balanced program for pedestrians:

- Space created to reduce pedestrian congestion must remain free of cafes
- The calculation of pedestrian right of way must take into account all obstructions without exceptions
- Cafes should be on the sidewalk or in the roadway but not both
- The consent must include an option for the city to terminate the license for transportation or safety reasons

The following elements are equally critical to achieve a reasonable quality of life for all:

- Cafes must not be permitted on residential blocks except at corners with arterials
- They should be vacated by 10pm, except on Fridays and Saturdays, which would be midnight
- There should be no amplified sound on the sidewalk or in the roadway or that can be heard through open windows or doors

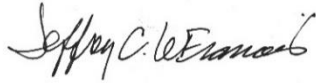
¹ [June 10, 2020](#) ; [June 2020](#) ; [August 4, 2020](#) ; [February 24, 2021](#); [August 12, 2021](#)

² [Preconsidered Int. No. _____](#), in relation to granting licenses and revocable consents for sidewalk cafes and roadway cafes, to repeal subchapter 6 of chapter 2 of title 20 of such administrative code, relating to granting licenses and revocable consents for sidewalk cafes, to amend section 2 of local law number 114 for the year 2020, relating to the establishment of a permanent outdoor dining program, in relation to the commencement of such program, and to amend section 1 of local law number 77 for the year 2020, relating to establishing a temporary outdoor dining program, in relation to the expiration of such program; and

[Preconsidered _____](#), Application No. N 210434 ZRY (Open Restaurants Text Amendment) submitted by the New York City Department of Transportation and the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, removing Article I, Chapter 4 (Sidewalk Cafe Regulations) and modifying related Sections, Citywide.

We also request that the Street Seats program be reinstated to be used in front of other businesses and provide free seating for neighbors. Food vendors should equally have the option to conduct business in the parking lane.

Sincerely,



Jeffrey LeFrancois
Chair
Manhattan Community Board 4



Christine Berthet
Co-Chair
Transportation Planning Committee



Dale Corvino
Co-Chair
Transportation Planning Committee

Enclosure

cc: Ydanis Rodriguez, Commissioner, NYC DOT
Dan Garodnick, Chair, NYC Department of City Planning

Attachment: Framework for open restaurants

The city should create a framework for this use of public space that:

- Give the highest priority to pedestrians and residents and the services they need
- Give the second highest priority to transportation, delivery and sanitation needs
- Accommodate restaurants as feasible, and provide similar privileges to other retail businesses

This framework could be customized by borough and in certain districts.

- 1. In which parts of the city should cafes be allowed:** The Open Restaurant program should preserve the quality of life for residents and the investments the city and developers made in pedestrian space
 - a. Not in the middle of residential blocks except at corners with arterials
 - b. Not on sidewalk expansions or enlargements
- 2. When should cafes be open:** The Program should minimize nocturnal noise and leave space for holiday crowds and snow removal.
 - a. March 15 to November 15 (must be stored off site during off season)
 - b. Vacate by 10pm weekdays, 12 midnight on Friday and Saturday
- 3. Where in the street should cafes be sited:** The cafes should never hinder the free passage of pedestrians, families, residents, emergency personnel and the delivery of basic services.
 - a. Sidewalk**
 - i. Only along the building side and not permitted if there is a roadway café
 - ii. Leaves 8-ft or 12-ft of sidewalk for pedestrian right of way– or more if warranted by study of high pedestrian traffic. Obstructions include currently excluded items like trees, traffic signs, meters and any movable object like sandwich boards, menus, and trash cans.
 - iii. Leaves 4-ft to building entrances (could be more for very large buildings and stores) and 10-ft from building corners
 - iv. Not under emergency escapes
 - b. Roadway**
 - i. Length of café is limited to frontage of the store only
 - ii. Not if there is a sidewalk café
 - iii. 10-ft from pedestrian crossing (roadway)
 - iv. Not on bike lanes buffers or markings
 - v. No encroachment on sidewalk or pedestrian refuges
 - vi. At least 3-ft from any tree branches
 - vii. Leaves 6-ft to store trash in container on roadway

viii. Leaves free access to fuel deliveries and truck delivery space on the block

4. **What is the recommended design for cafes:** The cafes should be easily movable, not enclosed and add value to the public life. Their operation should not spill over the sidewalk or create health hazards for residents and passers-by.

a. Sidewalk

- i. Table and chairs on sidewalk: no platform or wooden frames, no enclosures of any kind
- ii. Includes a serving aisle of 3-ft with light partition (cloth) no recess
- iii. Awning or umbrellas cannot hang over sidewalk beyond café
- iv. No windows for alcohol take out from sidewalk (all from inside)
- v. No outdoor bar seats at windows without café permit
- vi. No utility lines cross on or over the sidewalk, no obstructions
- vii. No smoking in café
- viii. No Propane heaters
- ix. No amplified sound on sidewalk or that can be heard through open windows or doors
- x. No lighting that disturbs residents or pedestrians
- xi. No obstruction (menu or sandwich board, or plants etc.) outside the café

b. Roadway

- i. Table and chairs on the roadway, no enclosed structures, no platforms, walls, or doors – 8-ft deep maximum – ADA access from the sidewalk
- ii. Umbrellas cannot hang over sidewalk beyond café
- iii. No element or utility crosses or covers the sidewalk, no obstructions
- iv. No smoking in the café or sidewalk
- v. No propane
- vi. No amplified sound
- vii. No lighting that disturbs residents or drivers
- viii. No obstruction (menu or sandwich board, or plants etc.) outside the café
- ix. No advertisement on the perimeter
- x. No queuing on sidewalk

5. **Procedures, License and Fees**

a. Approval:

- i. Both sidewalks and roadway follow same procedure – Community Board with Council review as needed.
- ii. Approval should take less than 4 months
- iii. Approval at City Council’s discretion (could be denied even if measurements work)

b. Revocation:

- i. City has the option to request temporary removal on 24-hour notice for utilities/construction
- ii. City can request permanent removal on 1 month notice for transportation, seating, and sanitation requirements

c. Fees:

- i. Annual application and renewal fees should be proportional to the size of the installation
- ii. Annual consent fees should be proportional to the real estate value of square foot in each area
- iii. Bonding for removal by city of revoked or terminated installations
- iv. Fees should be dedicated to funding street safety and improvement projects

d. Enforcement:

- i. Allow enforcement by Citizens modeled after the very successful DEP program for idling
- ii. Single point of contact for reporting, including sanitation and noise complaints
- iii. The license is revoked at the third valid complaint within one year