



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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**Manhattan Community Board 4
Testimony
Department of Transportation Hearing
on Proposed Rules on Outdoor Dining**

Manhattan Community Board 4 (MCB4) reviewed the proposed rules related to the Department of Transportation's (DOT) permanent Dining Out NYC program. Although many of the proposed rules are positive and consistent with past sidewalk cafe rules and current interim Open Restaurant rules, we find important deficiencies in the areas of pedestrian safety and accessibility, transit riders' conflicts, and procedures and clarity in language and enforcement. We are asking DOT to revise those rules before implementation. Due to the scheduling of the DOT hearing, the approval of this testimony has been ratified at its December 6, 2023 full board meeting by a vote of 37 in favor, 0 opposed, 1 abstaining, and 1 present non-eligible.

Pedestrian safety and accessibility

- A 3 ft service aisle must be required for sidewalk cafes in addition to the 8 ft pedestrian clear path. Otherwise, sidewalk cafe service will be done from the pedestrian clear path, leaving only 5ft of clear path.
- A clear path of 65% (instead of the proposed 50%) of total sidewalk width -- including the sidewalk widening -- is required to guarantee an 8 ft clear path in certain configurations and to maintain most of the space benefit the zoning has envisioned for pedestrians through the widening mechanism. Based on our consultation with the industry and real estate interests, we believe this change will not be met with opposition.
- Sidewalk corners are especially crowded and people with disabilities require significant level space (6 ft) from the top of an ADA ramp to maneuver their wheelchairs. There should be no sidewalk cafes installed at corners within 8 ft of the pedestrian crossings (measured parallel to the curb).
- The proposed 3 ft distance between roadway cafes is insufficient in case of fire. It should be increased to 5 ft.
- Sidewalk cafes should provide a 3 ft buffer from any residential entrance to allow for deliveries and EMS access.

- It should be made clear that super-sidewalks are not available for either sidewalk or roadway cafes, nor do they count in the clear path calculations.
- Cafe owners should be required to mark on the sidewalk the corners of the boundaries of the cafe, to ensure compliant set up by employees.

Bus riders

- The clearance distance of 8 ft from the pole of a bus stop is grossly inadequate for a sidewalk cafe: buses are 50 to 75 ft long with multiple boarding and alighting doors. Long distance operators offload luggage on the sidewalk. These activities are in addition to the normal pedestrian traffic on the given sidewalk. The clearance distance between the pole of a bus stop and a sidewalk cafe should be established at 75 ft.
- The same clearance distance of 75 ft should be applicable to roadway cafes which -- if too close to a bus stop -- would prevent a bus from approaching the sidewalk and prevent access for persons with disabilities.

Procedures and Enforcement

- The 30 and 40 days (why two different numbers?) provided for community board review are not viable. Those time periods are tantamount to excluding the community board from the review process and should be increased to 60 days.
- All cafes that use any portion of sidewalk widening should be subject to public review and to commissioner approval. These are complex and challenging locations that should be properly vetted for sufficient pedestrian space.
- The hours of operations for both sidewalk and roadway cafes are problematic in the vicinity of residences. The closing times should be changed to 10 pm during the week and 11 pm on Fridays and Saturdays if residential units are located within 500 ft of the cafe.
- MCB4 is on record for requesting that any restaurant with a cafe make their toilets open to the public.
- Unless DOT enforcement works until 1 am and the term “excessive” is defined, the proposed prohibition of excessive congregation within or immediately adjacent to a sidewalk or roadway cafe is unenforceable. All sidewalk and roadway dining should be limited to seated patrons. No standing or congregating of patrons should be permitted inside or outside.
- The proposed enforcement procedure is unclear and leaves too much to interpretation. It will lead to costly enforcement and uncertain outcomes for the public. The procedure should clearly indicate that verified complaints will generate summonses and that, after two summonses, the DOT can issue a notice of removal. It should be clear that the operator or the landlord is responsible for removal costs. And it should be understood that the operator is fully responsible for his employees’ actions.

Outstanding Clarifications

- It should be explicit that trash containers and A-frame sandwich boards should not be placed at any time in the pedestrian clear path.
- The rules should stress that any amplified music from inside an establishment should not be heard outside.
- It is unclear whether a roadway cafe can be located on a floating parking lane. In any event, a roadway cafe must not encroach on buffer lane marking.
- It is unclear if a roadway café can be located in front of adjacent properties.
- The term “covering” with respect to both sidewalk and roadway cafes appears to be used with different meanings in different contexts and should be clearly defined.
- Material requirements for roadway cafes should be clarified. For example, will there be vertical plexiglass sidings? What materials are permitted for the roof? Without clearer material and design requirements, the unsightly and at times dangerous roadway sheds of the temporary program could easily return.
- The term “easily movable” is ambiguous: it would be helpful to define the maximum time it should take to remove furnishings, coverings, etc.
- Generally, it would be helpful to specify how the designated measurements are to be performed (perpendicular or parallel to the curb)

It is important that these issues be addressed so that the program is successful.