



June 4, 2020

Committee on Consumer Affairs and Business Licensing Int. 1957-2020 Testimony

Thank you, Chair Cohen, for holding this hearing today. We also want to thank Speaker Johnson, Council Member Reynoso, and the other sponsors of this bill. The American Institute of Architects New York, also known as AIA New York, is strongly supportive of the Council's innovative effort to help restaurants and street vendors, as well as restore normal street life. As architects, we understand the importance of utilizing our open space for a variety of public purposes, including dining.

Nevertheless, some critical changes should be made to the bill in order to protect the safety of the public and ensure its effective enactment. We have attached recommended language revisions which are summarized below. We recognize that the events of the last few days may change the city's outlook on public space. Therefore, these comments are made solely regarding this bill as currently written, with the understanding that the city may need to adjust its laws and rules regarding access to public space.

The bill currently states that, "a proposed layout for such space may be submitted to the department [of Consumer Affairs] without the seal and signature of an architect or engineer licensed by the state of New York." As currently written, this bill allows restaurants to undertake unsafe and unsupervised work that bypasses Department of Buildings plan reviews. Rather, the bill should allow restaurants to make minor alterations that do not necessitate the seal and signature of a registered architect or professional engineer.

Furthermore, the bill places the burden largely on the Department of Transportation. Other agencies should be included as well, particularly the Parks Department and Department of City Planning. They supervise parks and privately owned public spaces (POPS), respectively, which should also be considered for temporary outdoor dining areas, where safe. There is no reason to limit this effort to streets and plazas, as parks and POPS also provide opportunities for dining. The city faces the worst financial crisis in nearly fifty years, which means that every agency's resources will be strapped. Under these circumstances, a single agency should not be held responsible for this bill's provisions.

While we strongly recommend the Council amend the bill to include these changes and others, we are also very supportive of the concept of the bill. We hope the Council incorporates these comments to write a safer and more effective bill.

Sincerely,

Benjamin Prosky, Assoc. AIA
Executive Director, AIA New York

Kim Yao, AIA
2020 President, AIA New York

The American Institute of Architects

AIA New York
536 LaGuardia Place
New York, NY 10012

T (212) 683 0023

F (212) 696 5022

www.aiany.org

2020 BOARD OF DIRECTORS

- Kim Yao, AIA
PRESIDENT
- Kenneth A. Lewis, AIA
FIRST VICE PRESIDENT / PRESIDENT-ELECT
- Daniel Wood, FAIA, LEED AP
VICE PRESIDENT FOR DESIGN EXCELLENCE
- Andrea Lamberti, AIA, NCARB
VICE PRESIDENT FOR PROFESSIONAL DEVELOPMENT
- Matthew Bremer, AIA
VICE PRESIDENT FOR PUBLIC OUTREACH
- Scott Briggs, AIA
SECRETARY
- Katherine Chia, FAIA
TREASURER
- Karen Fairbanks, AIA, LEED AP
DIRECTOR
- Rocco Giannetti, FAIA, LEED AP ID+C,
NCARB
DIRECTOR
- Hana Kassem, AIA, LEED AP
DIRECTOR
- David Leven, FAIA
DIRECTOR
- Pascale Sablan, AIA, NOMA, LEED AP
DIRECTOR
- Gregory Switzer, AIA, NOMA, NCARB
DIRECTOR
- Richard Yancey, FAIA, LEED AP, NCARB
DIRECTOR
- Ayodele Yusuf, Assoc. AIA
DIRECTOR
- Fiona Cousins, PE, CEng., LEED Fellow
PUBLIC DIRECTOR
- Marc Heiman
PUBLIC DIRECTOR
- Claudia Herasme
PUBLIC DIRECTOR
- Andrea Monfried
PUBLIC DIRECTOR, OCULUS ADVISOR
- Regina Myer
PUBLIC DIRECTOR
- Emily Abruzzo, LEED AP, NCARB
PUBLIC DIRECTOR
- Luis Munoz
STUDENT DIRECTOR
- Hayes Slade, AIA
IMMEDIATE PAST PRESIDENT
- Benjamin Prosky, Assoc. AIA
EXECUTIVE DIRECTOR



*Changes underlined

Section 1. Temporary space for outdoor dining. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Open space. The term “open space” means a location that may be used by a food service establishment for temporary outdoor dining that: (i) has been approved for such use by the department of transportation, including but not limited to a sidewalk, pedestrian plaza, street, parking lot, or other public or privately-owned space designated as such by the department of transportation; provided, however that a privately-owned space shall be utilized only with the consent of the owner of such space; ~~or~~ (ii) a section of a sidewalk where a sidewalk café would be permitted under the New York city zoning resolution; (iii) has been approved for such use by the department of parks and recreation on property owned or maintained by the department; (iv) has been approved for such use by the department of city planning, including but not limited to publicly owned private spaces.

- Other open spaces, aside from plazas and sidewalks, can be utilized as temporary outdoor dining areas. These include parks and POPS. These spaces are owned, maintained, or supervised by the Parks Department and DCP, necessitating their involvement.

No later than ten days following the effective date of this local law, the department of consumer affairs shall begin accepting applications for such permits. Such application shall be limited to: (i) a proposed open space to be used as a temporary outdoor dining area; and (ii) a proposed layout for such space and may be submitted to the department ~~without the seal and signature of an architect or engineer licensed by the state of New York, which does not require alternations sufficient to necessitate the seal and signature of a registered architect or professional engineer.~~

- Original language creates an unintentional loophole, potentially allowing for DCA to approve plans which are normally reviewed by DOB and require the seal and signature of an RA/PE. This creates some serious safety concerns for the public. The intent of the provision seems to be that temporary spaces do not require any significant work be done, which is reflected in the amended language.

3. Within five days of receipt of an application for a temporary outdoor dining permit, the department of consumer affairs shall approve any such application from a licensed food service establishment that: (i) identifies a location identified by the department of transportation pursuant to subdivision d of this section or identifies a section of a sidewalk where a sidewalk café would be permitted under the New York city zoning resolution; ~~and~~

(ii) includes a proposed layout that would allow workers and patrons to observe department of health and mental hygiene guidelines issued pursuant to subdivision e of this section; ~~and~~

(iii) includes a place for storage of tables and chairs in the proposed temporary outdoor dining area, if applicant seeks to store such items on premises after normal business hours.

- Many restaurants lack sufficient storage for these additional outdoor tables and chairs. Some may seek to store them in open spaces regardless of whether it allowed, so it is safest to regulate where this storage can be from the beginning of the process. This should prevent improper storage creating issues for egress.

Identification of open spaces. 1. No later than seven days following the effective date of this local law, the department of transportation, department of parks and recreation, and department of city planning shall identify open spaces in each community district that are suitable for a temporary outdoor dining area.



2. The department of transportation, department of parks and recreation, and department of city planning shall consult with any business improvement district, community board, or association representing food service establishment that contacts the department regarding a location that could be utilized for a temporary outdoor dining area. Such locations shall be published online and updated at least once each week.

3. The department of transportation, department of parks and recreation, and department of city planning shall take all measures necessary to ensure that any open space utilized as a temporary outdoor dining area provides protection for all street users of the open space.

- This is a significant undertaking for a single city agency to take on, particularly at a time when all agencies are potentially facing major layoffs. Furthermore, this effort should include other city agencies who oversee the city's open space. For both of those reasons, it is important to include the Parks Department and DCP as well in identifying appropriate spaces.

f. Vendors. 1. Notwithstanding section 17-315 of the administrative code of the city of the New York, when a temporary spacing order is in effect, a food vendor may vend in an open space approved by the department of transportation pursuant to this subdivision provided that such vendor adhere to any guidelines issued by the department of health and mental hygiene pursuant to this subdivision. Such open space occupied by a food vendor must be at minimum 50 feet away from the nearest approved temporary outdoor dining area.

- In order to prevent overcrowding of open space with both vendors and restaurants, vendors should maintain an appropriate distance from temporary outdoor dining areas.