



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.nyc.gov/mcb4

CHRISTINE BERTHET
Chair

JESSE BODINE
District Manager

December 3, 2014

Julie Menin
Commissioner
Department of Consumer Affairs
42 Broadway
New York, N.Y. 10004

Re: Clarification and modification of sidewalk café rules

Dear Commissioner Menin,

Manhattan Community Board 4 (MCB4) is seeking your help in clarifying and possibly modifying a number of rules relating to sidewalk cafés. The lack of clarity in these rules causes many disagreements between the community and the operators of cafés and is the source of numerous complaints from residents.

As the DCA's Sidewalk Café Design and Regulations Guide states: "There is a need to prevent situations that would be uncomfortable and downright dangerous to pedestrians. This need is especially great when sidewalk cafés, which consume large portions of the sidewalks, are imposed upon public thoroughfares already occupied by other obstructions." MCB4 has a vibrant restaurant scene, and many restaurants have opted to install sidewalk cafes even though the sidewalks are unusually narrow (on 9th avenue), occupied with trap doors or subway grids (on 8th Avenue), or even narrower on historical side streets. In many cases, the cafés make it uncomfortable and sometimes dangerous to pedestrians.

Some of the typical problems we encounter include:

- **Location:** A few sidewalk cafes have been approved in our district even though the zoning does not permit it. It is critical that a comprehensive and up-to-date list of streets where sidewalk cafés are permitted be maintained and made accessible to the public, that DCA personnel be familiar with the zoning, and that such issues be caught early in the process.

- **Street trees:** The regulation indicates that a street tree is not considered an obstacle provided there is a grate or paver covering the tree well. The parks department recommends not to use grates and pavers, however, which have adverse effect on the health of the trees. Anyone who has pushed a stroller on a sidewalk knows that a tree is an obstacle. We suggest that the regulation be changed to provide that trees are obstacles and that an 8-foot clearance is required between a sidewalk café and the edge of the tree well/pit nearest to the sidewalk café.

- **Parking meters** are currently not considered an obstacle. Since that regulation was established, however, the ubiquitous one-meter-per-car parking meters have been replaced by the much larger Muni Meters (Pay and Display Meters), which are typically distributed one per block. Muni Meters should be considered an obstacle and an 8-foot clearance required.

- **Measurements:**
 - The regulation specifies that cafés “must maintain a clear path of eight (8) feet between the outer limit of the café and any object near the curb, including the curbstone.” Does this mean the curbstone is included or excluded from the 8-foot clear path measurement?
 - The regulation specifies that the café perimeter should be measured from the most preeminent obstacle across the café, as a straight line. “In no event may recesses in the sidewalk cafe frontage be used to satisfy this unobstructed width requirement . . .” To ensure accurate and effective application and enforcement of this clause, the language should be clarified, perhaps with examples given. Further, the 8-foot clear path should be a straight line from corner-to-corner of the block. At the moment, the 8-foot requirement seems to be interpreted as a path that can wind around tree pits and other obstacles, so long as it remains 8 feet.

- **Distance from bus stop:** The regulation specifies a minimum 8-foot clearance from a “bus stop (with shelter at open end),” but requires no clearance from bus stops without shelters. Groups of commuters wait at such bus stops in front of sidewalk cafés, leaving not enough space for pedestrians to walk. It is worse at popular destinations, where hop-on/hop-off buses use the MTA stops to pick up and discharge large groups of tourists. It should be noted that, when a shelter is not installed at a bus stop, that is typically because the Department of Transportation deems that there is not enough space on the sidewalk for a shelter. Accordingly, the regulation should require a minimum 8-foot clearance from all bus stops, with or without shelters.

- **Distance from doorway:** In older tenement buildings with narrow facades and doorways, we have found that a 3-foot clearance from a sidewalk café on each side of the residential doors is necessary for safety reasons so that deliveries to the café do not block access to the residential entrances. This rule exists for enclosed sidewalk cafés. It should be added for unenclosed sidewalk cafés as well.
- **Distance from corners:** The current regulation requires a “nine (9) foot clear path to an intersection,” as measured from the curb. With traffic signals, a large menu stand, pedestrians standing at the curb and two pedestrian ramps in a location with a café, wheelchairs do not have enough space to get from the street to the sidewalk. We recommend that the language of newsstand measurements be adopted here, which would require a 10-foot clearance between a corner quadrant (the projection of the two property lines to the curb) and a sidewalk café.
- **Relocation of furniture:** The regulation specifies that an applicant can ask the city to relocate street furniture. As a result, applicants sought to relocate trees or bike parking, thus removing two important amenities for the community. Relocation of trees, furniture, or other obstacles should not be permitted.
- **Service aisle:** The regulation requires that the 3-foot service aisle must run “the entire length of the tables,” alternately described as “the entire length of the separated areas occupied by the sidewalk café.” However, many times the DCA staff approves configurations that do not conform: allowing serving from inside, which encourages French doors to remain open and amplified music to be heard from the street; allowing service from the sidewalk pedestrian clear path; or permitting an L-shape configuration of tables. This rule needs to be clarified so that it can be effectively applied and enforced.
- **Other obstructions outside the café:**
 - It is now common practice to install A-frame signs in front of cafés, encroaching further on the pedestrian path. It would be helpful if DCA included such encroachment in their enforcement since the law explicitly prohibits such signs.
 - The application of the “no smoking” law within café boundaries causes patrons often to congregate outside the café rail to smoke and converse. In recognition of this fact, it would make sense to adopt a 9’6” clear path around sidewalk cafés, as is the case for newsstands, to take into account the presence of customers outside the enclosure.
 - The situation is similar with newsstands where the obstruction represented by a person making a purchase is taken in account by the 9’6” clear path

requirement. It would make sense to adopt the same 9'6" clear path around sidewalk cafés, as is the case for newsstands, to take into account the presence of customers outside the phone booths.

- **Markings.** The regulation requires markings of the boundaries of a sidewalk café. We also understand, however, that the Department of Transportation disfavors sidewalk markings, an apparent tension which has perhaps contributed to the decline in the markings of sidewalk café boundaries. We believe such markings are essential because, without them, there is no way for the restaurant personnel setting up the café to know where the boundaries are. Accordingly, we urge the DCA to work with the DOT to develop a unified position on boundary markings. Once that issue is resolved, the DCA should direct architects to draw the boundaries in the presence of the community board and then enforce those boundaries. In addition, the markings need to outline the full area that can be occupied by the sidewalk café, including the 3-foot service aisle. It would be helpful if a café had to separately mark-off where the 3-foot service aisle is (as well as where the tables go). Marking only the overall boundaries of the café makes it easy for the tables to encroach into the service aisle -- with the serving staff forced into the pedestrian clear path.
- **Storage of furniture:** The current language, "All approved sidewalk cafe equipment or accessories shall be removed from the sidewalk when the unenclosed sidewalk cafe ceases operation," is not very precise. As a result, operators leave their café furniture in place the whole year, even when it rains, snows, or in the middle of the night. We suggest that the language be changed to: "stow inside (or against the wall) all furniture and planters during the hours when the café is not in operation, including but not limited to at night after closing and before opening, when it rains, when it snows, when the temperature is below 50 degrees and between October 31st and March 15th."
- **Obstructions arising from construction.** Given the extensive street construction on Ninth Avenue and the water main construction on side streets in Hell's Kitchen, we have faced multiple situations where construction fencing and other protections impinge on a sidewalk on which a sidewalk café is already located. When the café remains at its original size (approved at a time of no construction), the pedestrian clear path is often reduced to five feet or less -- a serious impediment to pedestrian safety and convenience. A regulation should provide that, when construction fencing and/or other protections (from either street construction or building construction/renovation) are installed on or abutting a sidewalk that also contains a sidewalk café, the café operator must ensure that an 8-foot pedestrian clear path remains in place between the café and the construction protections -- even if the operator is required temporarily to reduce the size of

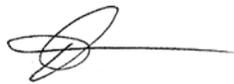
the sidewalk café while the construction protections are in place. To the extent a café is temporarily reduced in size, the operator could receive a *pro rata* rebate of the sidewalk café fees, reflecting the space and time lost; the rebate could be applied toward the next year's café fees.

- **New phone booths.** We understand that the city is in the process of determining the placement of new telephone booths on city sidewalks. We urge the DCA to coordinate with the relevant city agencies to ensure that, when determining the best placement of those booths, the city takes into account which sidewalks are occupied by sidewalk cafés in warm weather months.
- **DCA response to requests for enforcement through the 311 system.** Although community members may submit requests for enforcement regarding sidewalk cafés to the DCA through the city's 311 system, information about the resolution of such requests is not presently available through the 311 system (as it is available, for example, for issues directed to the Parks Department about trees). At present, a community member seeking to learn the resolution by the DCA of his/her request for enforcement must file a FOIL request. We propose that the DCA provide its responses to requests for enforcement through the 311 system, which would benefit both community members (who would gain any easier route to learn the resolution of their requests) and the DCA (which would face fewer time-consuming FOIL requests).

Sincerely,



Christine Berthet
Chair



Paul Seres
Co-Chair
Business License &
Permits Committee



Frank Holozubiec
Co-Chair
Business License & Permits
Committee