

BRONX BOROUGH PRESIDENT'S RECOMMENDTION
APPLICATION NO: N 210434 ZRY
OPEN RESTAURANTS / SIDEWALK CAFES

PROJECT BRIEF

The New York City Department of Transportation (DOT) and Department of City Planning (DCP) are proposing a citywide zoning text amendment that will allow the DOT to administer the Permanent Open Restaurant program (POR). The proposal will remove sidewalk café regulations from the Zoning Resolution to increase geography eligibility as sidewalk cafes will become part of a unified sidewalk and roadway outdoor dining program administered at DOT.

BACKGROUND

Recognizing the severe impact on dining establishments across the City of New York prompted by the Covid 19 pandemic, numerous emergency measures were taken by the Mayor's office. These actions included establishing the current Open Air Restaurants Program (Emergency Executive Orders 126 and 128, and Local Law 77 of 2020). Pursuant to this temporary order, zoning restrictions were set aside in favor of allowing individual food service establishments to provide for exterior dining. Under this emergency declaration, the New York City's Department of Transportation was charged with administering this process. Approval of this application would seek to establish the adoption of new provisions which would ultimately provide for the permanent inclusion of outdoor dining throughout New York City.

This zoning proposal would:

- Delete Zoning Resolution, Article 1, Chapter 4 in its entirety, effectively removing all zoning locations restrictions on sidewalk cafes;
- Remove language that prevents sidewalk cafes in Special Districts
- Remove rules that would preclude or limit outdoor dining under the Open Restaurants program.
- Grandfather existing enclosed cafes

The overall objective of this zoning text amendment would be to allow any restaurant anywhere in the city to apply to the Department of Transportation for the installation of a sidewalk café. This objective would be realized by:

- Establishing a DOT Office overseeing sidewalk and roadway café programs
- Providing a design guidance package with detailed visuals
- Streamlining the application via online filing
- Issuing a 4-year license subject to periodic compliance checks

Guidelines to be considered include, but not limited to the following:

- Public safety, access to fire hydrants, visibility of traffic are maintained
- ADA compliance
- Assure sturdy barriers are installed
- Prohibit fully enclosed structures
- Maintain a minimum sidewalk width of eight feet or 50% of the sidewalk
- Require that furniture or shading must be removable
- Structures installed in the bed of a street are removed during winter months
- Seating at sidewalk cafes must be against the building wall
- Outdoor cafes must be in the restaurant's frontage

Bronx Emergency Open Restaurants:

Responding to the Covid emergency the following profile is in place:

Sidewalk Cafes:	249
Bed of Street:	36
Both:	313

Currently,

109 are in areas prohibited by zoning

58 are in residential/no café zoning area

ENVIRONMENTAL REVIEW

This application was reviewed pursuant to CEQR and SEQR and received a Negative Declaration.

BRONX COMMUNITY BOARD'S RECOMMENDATION

The following represents votes taken on this matter by Bronx Community Boards. Whereas numerous community boards voted in favor of a motion to oppose this application, shown below is the intent of each board to either approve the proposed zoning text change or deny it.

Community Board #1: 2 in favor, 25 against, 1 abstaining
Community Board #2: 27 in favor, 0 against, 0 abstaining
Community Board #3: Land Use & Economic Development Committee Recommends approval
Community Board #4: 22 in favor, 6 against, 4 abstaining
Community Board #5: 16 in favor, 0 against, 4 abstaining
Community Board #6: 5 in favor, 6 against, 14 abstaining
Community Board #7: 17 in favor, 5 against, 3 abstaining
Community Board #8: 2 in favor 36 against, 0 abstaining
Community Board #9: 4 in favor, 0 against, 0 abstaining
Community Board #10: 0 in favor, 10 against, 0 abstaining
Community Board #11: No submission
Community Board #12: 31 in favor, 0 against, 0 abstaining

BRONX BOROUGH BOARD

The Bronx Borough Board convened on October 28, 2021. A vote recommending approval of this application was 8 in favor, 2 opposed and 1 abstaining.

BRONX BOROUGH PRESIDENT'S PUBLIC HEARING

A virtual public hearing was convened by the Bronx Borough President on October 14, 2021. Representatives of applicants were present and spoke in favor of this application. There were no members of the public who spoke out on this matter and the hearing was closed.

BOROUGH PRESIDENT'S RECOMMENDATION

Covid 19 presented the City of New York with countless challenges as well as opportunities. The matter of “rescuing” the city’s restaurant industry is a prime example of both a challenge and opportunity. In brief, by declaring an emergency prompted by the pandemic, the cumbersome process mandated by the Zoning Resolution allowing outdoor dining were set aside. In its place, a set of temporary provisions were adopted that suspended zoning requirements, thereby allowing for the immediate installation of exterior dining locations across the city. Recognizing that these exterior locations would impact both sidewalk and roadbed functions, the city’s Department of Transportation was charged with oversight.

By endorsing this application, I acknowledge the demonstrated benefits of what to date is an emergency measure and favor the long term goal of eliminating zoning restrictions associated with allowing for exterior dining. Furthermore, I acknowledge that it would ultimately be the city’s Department of Transportation that would oversee how and where exterior dining sites could be installed.

Having said this, there are many specifics which I believe need to be addressed, none the least of which is, how will local elected officials and community boards oversee what is otherwise decided by the Department of Transportation. In other words, what local oversight will be in place. I believe resolving this question is absolutely critical.

I also realize that adoption of this zoning text amendment is an essential “first step,” I do believe however, it is entirely appropriate to raise logistical concerns as how open air restaurants/sidewalk cafes will actually function if they are to be considered “permanent.”

- This provision adds dining capacity to a restaurant. Will there be any consideration given to kitchen facilities, most importantly its size and how it functions safely.
- Installation of any exterior area will require access to electricity. How will this need be addressed...i.e. the possible need for a generator, installation of electric cables that draw current from inside the established restaurant.

- It is essential that noise associated with outdoor music be strictly enforced. This is especially relevant in communities that are predominantly residential. Likewise, where more than one dining facility is located on the same block, noise pollution is an issue for which strict rules must also be enforced. Regrettably, in many Bronx communities such noise intrusions are entirely ignored by those charged with enforcing such provisions.
- What if any consideration will be given to those restaurants where sidewalk widths and other constraints do not allow for sidewalk cafes at a specific location whereas at an adjacent site these constraints are not present. One such constraint might be the location of a street tree that reduces sidewalk width.

Given the documented success of what made it possible for restaurants across the city to provide for exterior dining, I believe this application warrants my support.

I recommend approval of this application.