



**Department of
Consumer Affairs**

**Testimony of Fran Freedman, Deputy Commissioner for External Affairs
New York City Department of Consumer Affairs**

**Before the
New York City Council Committee on Consumer Affairs**

**Oversight Hearing on
Sidewalk Cafes**

and on

Intro Number 875, Intro Number 1039, and Intro 876-A

May 7, 2013

Good afternoon, Chair Garodnick and members of the Consumer Affairs Committee. I'm Fran Freedman, Deputy Commissioner for External Affairs for the Department of Consumer Affairs. I am joined today by the Department's Executive Deputy General Counsel, Sanford Cohen, and by Carolyn Grossman, Director of Government Affairs for the Department of City Planning. On behalf of Commissioner Mintz and all of us at DCA, we appreciate the opportunity to comment on three bills and to talk about sidewalk cafes, an iconic City industry which this Administration, together with City Council, has nurtured and grown over the past 11 years. In fact, the number of cafes throughout the City has risen steadily since 2002, from 700 to a high of 1,169 in 2012, and this despite a struggling economy. The number of cafes in Brooklyn, for example, has grown by 137 percent since 2004, 80 percent in Queens and 71 percent in the Bronx. Such growth would not have been possible without the well-oiled and efficient licensing process currently in place, designed to effectively enforce Council's right to determine who uses the public sidewalks and for what purposes and DCA's responsibilities to maintain public safety and accountability, ADA compliance and community needs. DCA has done everything in our power to help as many restaurants and neighborhoods as possible enjoy the economic and community benefits of outdoor cafes. Here's how:

- We collapsed a formerly six-agency, 465 day-licensing process into one agency and an average of 85 days.
- We made applying for and renewing licenses as easy as possible online and we've posted online all the information restaurants need to complete the process including the Sidewalk Café Design and Regulations Guide, the Street Guide, Consent Fees charts, and all the forms, certifications, affidavits and more.
- We move all applications within five days and when challenges arise that may delay the process, as sometimes occurs, we work with the restaurants to resolve architect and plan issues, advocate for them to quickly receive approvals they may need from other City agencies, research possible grandfathering issues, and conduct records searches, even if that involves digging up documents from as far back as the 1920's. We've even designed a new mapping tool to help us and our applicants avoid zoning and street errors.
- We issue operating letters as a business-friendly mechanism to ensure that applicants in good standing have minimal burdens during the renewal process. The ability to issue such letters means that DCA does not have to immediately deny an application just because the restaurant neglected to pay a bill or is late securing insurance renewal. Instead, issuing a time-defined operating letter, usually for 90 days, means we can temporarily withhold permanent permission to operate until the business resolves the problem. These letters also ensure that businesses possess all of the public safety and accountability requirements necessary to operate a café...the only rationale for requiring licensure, as we have said earlier. Public safety and accountability requirements include current revocable consent and paid consent fees, insurance, current Certificates of Occupancy, Public Assembly permits, health licenses, clearances from ECB and Department of Finance violations, and more.
- We've made it easier than ever for all businesses, including sidewalk cafes, to avoid violations and comply with the law by posting our inspection checklists online and

providing an online Live Chat opportunity exclusively for businesses to have their questions answered by DCA staff every day during business hours without picking up a phone or coming in to the Licensing Center.

- To mitigate operational challenges for sidewalk cafes in the Second Avenue Subway Construction Corridor, DCA conducted dozens of outreach events, advocated with the MTA so that businesses could operate as long as possible and ensured that every sidewalk café received every cent coming to it in unused consent and licensing fees.

The full licensing process for unenclosed sidewalk cafes, outlined in the attachment to our testimony and on the poster behind me, starts with the business submitting an application and fees and all relevant documents (including plans to scale, photographs, landowners consent, revocable consent petition, proof of insurance, and all the permits mentioned above, etc.) to DCA, which we carefully review for accuracy and completeness and then share with the relevant Borough President, community board, City Council member and the Speakers Office. Built into the process is the time needed for each party to review the completed application and hold public hearings regarding the proposed sidewalk café so that community voices are heard. The licensing process for enclosed cafés is a longer process involving additional City agencies, including the Department of Environmental Protection, the Landmarks Preservation Commission and the lead review agency, the Department of City Planning.

Sidewalk café licenses currently run for two years. This standard timeframe allows for accountability: businesses see the prospects of a not so distant license renewal as good reason to follow public safety and consumer protection regulations. Additionally, the ability of Council members to encourage compliance with community concerns is greatly enhanced when café owners know that they need to renew.

I turn now to comments on the three bills before this Committee. Intro 875 would extend operating hours on Sundays to 10:00 a.m. and Intro 1039 would shorten the Community Boards' review period and provide for DCA to waive its currently-scheduled hearing process. In addition, MOCS approval of petitions for revocable consent to operate sidewalk cafes could be waived as well. Omitting these components would significantly shorten the licensing process. We defer to Council's wisdom on the balance of needs between businesses and their customers and neighbors and on whether or not speeding up the process gives the public sufficient time for input.

DCA opposes Intro 876-A as drafted. This legislation separates the license expiration date from the expiration date for the consent term. If its goal was to make it easier for businesses, in fact it would have the opposite effect, making it more difficult. The bill imposes license renewals on a rolling basis rather than at fixed times, counter to current DCA practice for all other licensed industries. And although we support Council's idea to have revocable consent expire every four years, the bill as written would force businesses to apply twice at different times, once for the license and six months later for the consent. In addition to being confusing and time consuming, it doubles the cost of preparation fees for businesses who may feel the need to hire attorneys and expeditors twice. Remembering two different sets of deadlines exposes businesses to more liability if they forget.

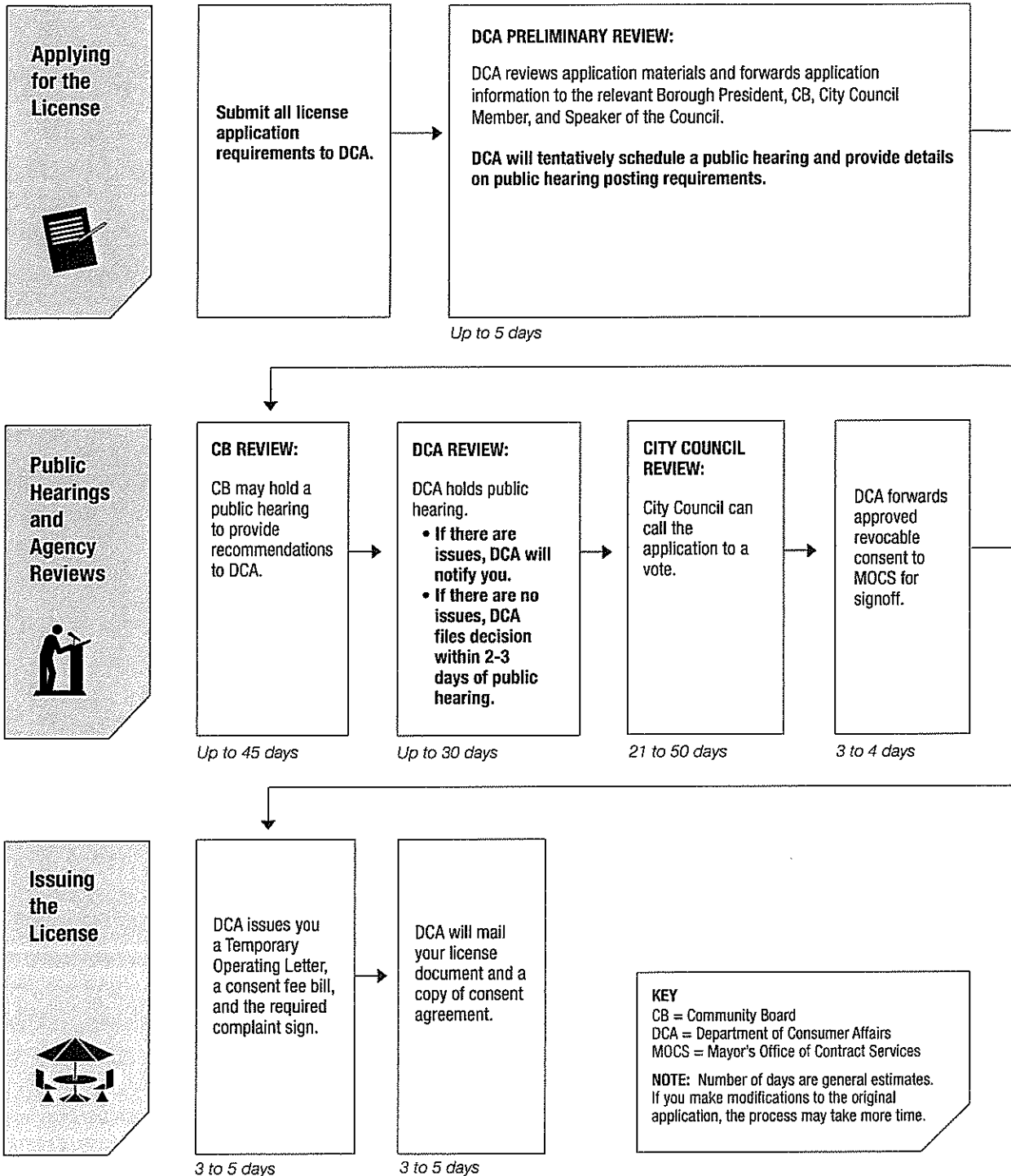
Further, the bill's approach to forcing the City to license sidewalk cafes to operate without completion of the public consent process, which is the only true intent of the decoupling advocated by a minority of industry lawyers supporting this bill, unwisely benefits only a small number of scofflaw businesses: those with unpaid public consent fees or lapsed insurance who plan to illegally operate anyway. It is this very accountability, which this bill seeks to cripple, that is the whole point of licensing these cafes in the first place. For the vast majority of restaurants doing right by the public, by their neighbors and by the City, this bill would simply make doing business more difficult and more expensive while being unfairly solicitous of their competitors, who are not playing by the same rules. That said, we'd be pleased, as always, to continue discussions with the Council.

We are proud of our commitment to helping the sidewalk café industry flourish through more than a decade of sensible policies and efficient and effective practices. We look forward to continuing to work with Council to ensure the industry's ongoing growth and success.

We'll be happy to answer your questions.



License Application Process Unenclosed Sidewalk Café (including Small Unenclosed)





The City of New York

Manhattan Community Board 1

Catherine McVay Hughes CHAIRPERSON | Noah Pfefferblit DISTRICT MANAGER

**Council of the City of New York
Committee on Consumer Affairs
Hearing on Sidewalk Café Local Law**

**Testimony by
Evan Lacher
Community Liaison, Manhattan Community Board 1**

**Tuesday, May 7, 2013, 1:00 PM
250 Broadway - Committee Room, 16th Floor, New York, NY**

Good afternoon Chairman Garodnick and members of the Consumer Affairs Committee and Zoning and Franchises Subcommittee. I am Evan Lacher, Community Liaison of Manhattan Community Board One (CB1). Thank you for the opportunity to comment on the proposed amendments to the administrative code of the City of New York in relation to sidewalk cafés.

Community Boards play a pivotal role in the review and monitoring of sidewalk cafés. In 2012, Manhattan Community Board One reviewed a total of 26 sidewalk cafés, which brought the total number of sidewalk cafes within our district to 52. Sidewalk cafes provide economic benefits to local establishments and enhance the street life of our neighborhoods; at the same time, sidewalk cafés can have adverse effects on residents if not properly operated and monitored.

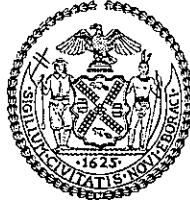
Unfortunately, the proposed amendment to reduce the Community Board review period to thirty days would severely limit the role of Community Boards in the review process for sidewalk café licenses. Community Boards operate on a monthly cycle and a 30-day review period is often incompatible with our operations. An application received at our office after the relevant monthly committee meeting must wait until the following month for a public hearing and resolution. Since the proposed amendment states that a Community Board would waive its right to comment if no resolution is provided within 30 days, the adoption of this amendment would make it impossible for a Community Board to comment on roughly half the applications it receives. Manhattan Community Board 1 requests that the committee retain the 45-day review period to provide sufficient time for Community Boards to review all sidewalk café licenses.

Additionally, extending the duration of the permit from two to four years would severely limit a Community Board's ability to monitor a newly licensed sidewalk café. The first renewal application for a newly issued sidewalk café license provides a forum to discuss the operations of the sidewalk café and address any impacts on the quality of life of neighbors. Delaying this initial review by an additional two years would be detrimental to residents as well as establishments, which sometimes use renewals as an opportunity to increase the number of tables and chairs. Manhattan Community Board 1 requests that the committee retain the two year duration for new licenses and only extend it to four years after the first renewal.

Thank you for the opportunity to comment today.

SANDRO SHERROD
CHAIR

VICE-CHAIRS
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CLAUDE WINFIELD, 2ND
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ELLEN IMBIMBO
LETTY SIMON



TONI CARLINA
DISTRICT MANAGER

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SECRETARY

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
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NEW YORK, NY 10007

**TESTIMONY BY SANDRO SHERROD, CHAIR
OF MANHATTAN COMMUNITY BOARD SIX BEFORE THE
CITY COUNCIL COMMITTEE ON CONSUMER AFFAIRS
MAY 7, 2013**

Good afternoon Mr. Chairman and members of the committee. My name is Sandro Sherrod and I have the privilege of being Chair of Manhattan Community Board Six.

I am here today to speak against Introduction T2013-6143 and the unsettling effect it would have on the ability for public comments to be recorded, whether in favor or against, for petitions of revocable consent to operate a sidewalk café in this city.

As you may know, section 2801 of the New York City Charter requires determinations of a community board be done by a majority of its membership. Today I stand before you without a resolution from my board, as this legislation was only brought to our attention 12 days ago. While this legislation has been discussed in the board's committee where a resolution unanimously opposing it was passed-now- it awaits debate and a vote before the full body at tomorrow's meeting. It is because of the haste that this introduction seeks to permanently add to the administrative code, that I cannot provide you with that resolution to you today.

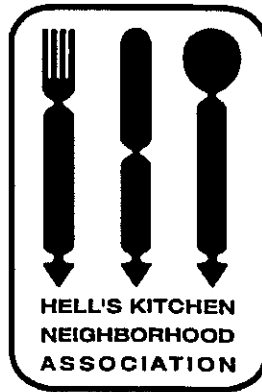
I point this out, as it clearly demonstrates how if my community board were to receive a petition for a sidewalk café this coming Thursday- that is May 9, 2013; and the changes to limit the community board response period as this introduction seeks to do were in force, it would then be impossible for us to submit a written recommendation prior to the expiration of the 30 day limitation since the day after our next monthly meeting- June 12th would be 35 days after the petition is received. That would exceed the new reduced response time, like it would in 7 of the 12 months that have more than 30 days in them.

In fact through no fault of the board, we would "be deemed to have waived our public hearing and recommendation on such petition" effectively upon receipt of the petition.

While I agree, it may be desirable for those seeking to open a sidewalk cafe to have their petitions reviewed and processed in a timely manner, such need for expediency should not trump the option for public comment or prevent community boards from functioning in their charter mandated roles.

I implore the committee to reject Introduction 6143 as written as it would silence the public and stifle the community board's public hearing process. This surely should not ever be a goal of any democratic assembly.

I thank the committee for the opportunity to speak before you today.



T2013-6143 – to amend #20-225(f) and #20-226(b) Administrative Code

I was elected Chair of the Hell's Kitchen Neighborhood Association ten years ago – and we have been fighting encroaching bars and sidewalk cafes ever since, here and in Albany.

Please do not even consider approving this bill.

This spurious bill wants to reduce Community Board powers. As a member of Community Board 4's Quality of Life committee, I urge you to kill this bill!

Many thoroughfares in Manhattan have narrow sidewalks, like Ninth and Tenth Avenues – Lexington Avenue is really skinny.

My husband cannot walk. He drives a scooter. Blind New Yorkers and New Yorkers in wheelchairs have to maneuver around out-size phone booths, news boxes, restaurant sandwich boards, poorly placed bus stops – and throughout most of the year – sidewalk cafes.

Please kill this bill.

A handwritten signature in cursive script that reads "Kathleen Treat".

Thank you.

"Wherever the people are well informed they can be trusted with their own government..."

Thomas Jefferson

Hell's Kitchen Neighborhood Association
454 West 35th Street, New York, New York 10001
212-501-2704 - www.hknanyc.org

Testimony, Manhattan CB4,
DCA, Sidewalk Cafes, May 7, 2013

My name is Christine Berthet, I am the First vice chair of Manhattan CB4. There are over 100 sidewalk cafes in Chelsea and Hell's Kitchen, on very narrow sidewalks. The density of sidewalk cafes is such that, in some instances the whole length of a block is used for a succession of cafes. Confronted with DCA's lack of enforcement either at approval time or during operations, it falls to the community boards to be extremely diligent in maintaining the right of way for pedestrians and quality of life for neighbors.

We have no objections to Int. No. 875 i.e. opening cafes at 10 am on Sunday. However the committee should be aware that DCA refuses to enforce the clause indicating that "the operator ...shall cause the boundary of the area licensed as a sidewalk cafe to be marked". Without such guidelines, the operator's staff routinely expands the boundaries when setting up the cafe. I have yet to see any enforcement against a cafe that exceeds its boundaries.

The DCA does not enforce the law related to storing the furniture when the cafe is not in use. In our neighborhood, the cafes keep their furniture out 24 hours a day 365 days a year, using valuable sidewalk space even when it snows. Thus, our only recourse is to wait two years and address these issues at renewal time when the community has a sliver of leverage when Int. No. 876-A would make us wait four years. Without a much stronger enforcement, or an opportunity for the community board to object to the license renewal at the two-year mark, we oppose expanding the consent to four years.

We have observed that DCA when approving cafes, is interpreting the rules in the very loose manner, to the point of creating havoc on our sidewalks: the 3 feet of service space outside a small cafe is often not required, or service is assumed to be done from the French doors even though they will be closed most of the time, and the requirements that the boundary of a sidewalk cafe be in straight line is not adhered to.

In addition even the rules fail us, since trees and muni-meters do not count as obstacles on the sidewalk, an absurd situation we have to negotiate one by one. As a result, most of times the applicant has to revise his plans. For these reasons, we strongly oppose Int. No. 1039, which would reduce the community board's review period to 30 days from 45 days. Should it pass, we will be constrained to object to each application, obviously a huge time burden for all involved.

When the administration is fighting obesity and wants people to walk, we suggest that the committee consider changes to the law to require that ALL objects be considered obstruction, including parking signs and trees, that a minimum of 9ft be left for pedestrian's right of way, as is the case with newsstands. Finally the rates should be increased significantly to reflect the real estate value of adjoining properties.



BROOKLYN COMMUNITY BOARD 14
FLATBUSH–MIDWOOD COMMUNITY DISTRICT
810 East 16th Street
Brooklyn, New York 11230

MARTY MARKOWITZ
Borough President

ALVIN M. BERK
Chairman

SHAWN CAMPBELL
District Manager

TESTIMONY OF BROOKLYN COMMUNITY BOARD 14
BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON CONSUMER AFFAIRS
Public Hearing on Proposed Changes to T2013-6143 §20-225 (e) and §20-226 (b) of the Administrative Code

May 7, 2013

Submitted by Alvin M. Berk, Chair, Brooklyn Community Board 14

Good afternoon, Chairman Garodnick and members of the Council's Committee on Consumer Affairs. My name is Alvin Berk. I am chair of Community Board 14, which comprises the Brooklyn neighborhoods of Flatbush, Midwood, and eastern Kensington. The board's Executive Committee asked me to present this testimony after preliminary review of Intros 0875-2012, 0876A-2012, and 1039-2013 at the committee's previously-scheduled May 1st meeting.

I wish to preface my remarks by thanking the members of the Committee for seeking to simplify the process a restaurant has to step through to petition for a revocable consent for a Sidewalk Café. The experience of Brooklyn Community Board 14 is that appropriately-situated Sidewalk Cafés are valuable public amenities that add appreciably to the quality of life for residents and stimulate crucial economic activity.

Unfortunately, the timing of today's Committee hearing prevents action by the full membership of Brooklyn Community Board 14, which next meets on Monday, May 13. Accordingly, I will focus my testimony on Intro 1039-2013, which would amend Sections 20-225 and 20-226 of the administrative code by reducing the period for community board review of a revocable consent petition for a Sidewalk Café from 45 days to 30 days.

Inasmuch as community boards must comply with the public notice requirements of the City Charter and the State Open Meetings Law, a 30-day timetable for community board comment typically would prevent a board from holding a properly-noticed public hearing on a Sidewalk Café petition prior to taking action as a full board. This would hamper the ability of community residents and merchants to comment on the petition.

I am sure it would not be the Council's intent to reduce local public participation and transparency or limit the City's ability to gather local insight into potentially controversial revocable consent agreements.

As for other proposed changes to the Administrative Code, such as those which would allow the operation of Sidewalk Cafés on Sundays beginning at 10:00 a.m. and would specify that the revocable consent for a sidewalk café permit endure for at least four years, Community Board 14 has not had time to reach consensus on those provisions prior to today's Committee hearing.

Thank you again for your efforts to streamline the sidewalk café application process.

David Gruber, Chair
Bo Riccobono, First Vice Chair
Jo Hamilton, Second Vice Chair
Bob Gormley, District Manager



Antony Wong, Treasurer
Susan Kent, Secretary
Keen Berger, Assistant Secretary

COMMUNITY BOARD NO. 2, MANHATTAN

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Chairperson Garodnick and distinguished members of the committee:

My name is Maury Schott and I'm the Chair of Community Board 2 Manhattan's Sidewalks and Street Activities Committee. I want to thank you for the opportunity to speak with you today.

Bob Gormley has already spoken to you about our concerns regarding some aspects of the three pieces of legislation currently under consideration. But as this is also an oversight hearing on the management and enforcement of sidewalk cafes by the Dept. of Consumer Affairs, I would like to discuss our experiences with that.

Just a few of the issues we continually see include:

- The department leans heavily on a self-certification process for new and revised cafe plans, yet we see no evidence there is any meaningful auditing of the self-certifications
- Consistent violations go unchecked despite our continuing efforts to flag them to DCA. They appear to not want to enforce them and we as a community are frustrated in our efforts to create a level playing field for all operators
- When we detail non-complying conditions in our resolutions for renewals, we see no evidence that DCA attempts to require the conditions be corrected before renewing a license
- DCA recently provided Community Board 2 with copies of 11 letters sent to restaurants operating cafes in violation of their zoning. First, there is no doubt in my mind that the letters were sent only in response to the scheduling of this oversight hearing. Each letter began "Manhattan Community Board 2 recently challenged the right under zoning laws of several restaurants to operate sidewalk cafes." While I find it curious that DCA felt it necessary to pass the buck of enforcement to the Board, I also find it curious that of those 9 letters:
 - 2 were to restaurants not in Community Board 2,
 - 2 were to businesses who, to our knowledge, have not operated cafes in at least 3 years,
 - 3 concerned cafes on which we have been stonewalled by DCA for at least 6 years,
 - 1 more, virtually stonewalled for 2 years,
 - and another's license was renewed even after DCA had been notified about the zoning issue and had withdrawn it from the Council's oversight. It was renewed a month later without the Council's approval

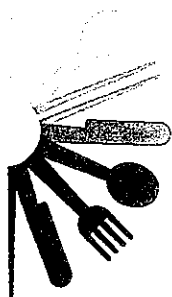
- Community Board 2 recently did our own audit of the sidewalk cafes in the district and identified an additional 6 cafes which are in clear violation of zoning, based directly on the BBL zoning data from the Dept. of City Planning. As locations where sidewalk cafes are allowed are established in the zoning code, it would be relatively easy to include sidewalk café eligibility in the base BBL data at City Planning. This would allow prospective applicants to see before signing leases, etc whether the property they are interested in can have a sidewalk café.
- Defunct enclosed café enclosures. Some of these enclosures in CB2 have been sitting on public sidewalk, used for nothing more than graffiti and other vandalism for 2 years or more. DCA claims that as they are no longer licensed, the department no longer has any responsibility for them. Property owners now simply market them as part of their own property.

Community Board 2 takes all of these issues very seriously. Given the huge number of cafes we have in our district we have the responsibility to balance the needs of our small businesses with the quality of life of our residential community.

Community Board 2 remains grateful for the cooperation we have often been given by DCA's Community Relations Division. But we are concerned about general oversight of café applications, particularly new ones and the small number of non-complying renewals, and we hope our areas of concern can be more fully addressed in the future.

Again, we call for consistency, even-handedness and a level playing field throughout CB2 – and the entire City.

Thank you.



NEW YORK
STATE
RESTAURANT
ASSOCIATION

Comments

of

The New York State Restaurant Association

to the

**Committees on Consumer Affairs and Zoning & Franchises
Int. 875-2012, 876-2012, and 1039-2013**

May 7, 2013

1:00 p.m.

250 Broadway – Committee Room, 16th Floor

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NEW YORK
STATE
RESTAURANT
ASSOCIATION

Good morning members of the Committee. My name is Rick Sampson and I am the CEO and President of the New York State Restaurant Association ("NYSRA"), a trade group that represents approximately 5,000 food service establishments in New York City and over 10,000 statewide. NYSRA is the largest hospitality trade association in the State of New York and it has advocated on behalf of its members for over 75 years. Our members, known as Food Service Establishments ("FSEs"), represent one of the largest constituencies regulated by the City. New York City is one of the pillars of the culinary arts world. Our restaurants employ hundreds of thousands of New Yorkers and are a backbone of the tourism trade.

NYSRA would like to thank the Committee for taking proactive, logical, and necessary steps to correct inconsistent provisions of the administrative code that had caused the "brunch controversy" and sidewalk café licensing issues. As some members of the committee are aware, NYSRA has worked closely with members of the council, including Chairperson Garodnick and Councilman Levin, once NYSRA became aware of these issues.

NYSRA fully supports Intros 875-2012, 876-2012, and 1039-2013. It corrects discrepancies in the administrative code that negatively impacted the operation of restaurants. Intro. 875 also balances the needs of business to capitalize on consumer demand for brunch service while also balancing the needs of local community members by not having street-side brunch service commence before 10 a.m. on any day of the week (and particularly Sundays).

In conclusion, the New York State Restaurant Association appreciates the efforts of the committee and only suggests that this legislation move as quickly as possible to enact Intro. 875 so that restaurants can capitalize on the upcoming seasonal weather. The New York State Restaurant Association looks forward to continuing its ongoing work with the Council to protect the restaurant and hospitality industry in the City of New York.

Respectfully Submitted,

Rick J. Sampson
CEO and President
New York State Restaurant Association
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Manhattan Chamber of Commerce

Testimony for Hearing on Int 875, Intro 876-A May 7, 2013

Nancy Ploeger, President

Good afternoon. We are here today on behalf of our business community to comment on the proposed legislation affecting restaurants being discussed at this hearing.

As you know, restaurants have been faced with increasing fines-most of which do not endanger workers or diners. The fines are "nuisance fines" with posters being on the wrong wall, a light bulb being out in a closet, and varying fines imposed by different inspectors-ie one says a sign should be on this wall and the next one comes in and says no, it should be on that wall.

We are very happy to support these three bills and very thankful to Council Members Garodnick and Reyna as well as their colleagues for listening to the restaurant owner's comments and challenges in running their businesses and for trying to do something to ease the pain.

We feel the passage of all these bills in a step in the right direction and are welcome reforms.

Intro 875, extending the hours of operations for sidewalk cafes on Sundays for two hours has obvious benefits for the community, workers and business owners. Hungry people who would like to eat outside on a nice day don't have to wait, workers have a chance to make more money and business owners can attract more customers.

Intro 876-A is a fair move for both the city and the restaurateurs to move the consent renewals from two years to four years. The DCA cannot keep up with the workload and 95% of the cafes get renewed with no changes or problems anyway. The paperwork and time it takes is burdensome and making this change is not jeopardizing the health or safety of anyone. Even requiring license renewals every two years is fine as that is just a one page renewal application and can be done online at this time. But the consent renewals take 6 or more months. Moving the process to four years is good for everyone.

In addition, once a business has filed its renewal in a timely fashion, it should continue to be treated as a licensed establishment until which time the determination of the application is made by DCA. The business should not be treated as "in limbo" and thereby subject to licensing fines. The state even handles liquor license permitting in this fashion. An applicant that files in a timely fashion is considered a licensed business while the state is working on the renewal paperwork. A business should not get penalized if they filed appropriately and are just waiting for the final determination.

The final bill in this cluster makes the application process faster when there is no opposition and allows the DCA and Mayor to waive their comment period, again, speeding up the application process.

“Burdensome regulations and high regulatory compliance costs are commonly cited as among the biggest difficulties facing small businesses.” According to the National Federation of Independent Businesses most recent survey, “21% of small businesses list ‘government requirements and red tape’ as their single most important problem – a larger proportion than list any other difficulty, including sales.” (citing National Federation of Independent Businesses, “NFIB Small Business Trends,” February 2013, available at <http://www.nfib.com/Portals/0/PDF/sbet/sbet201302.pdf> .)

We ask that you pass these bills, easing burdensome paperwork and issues and encouraging restaurant owners to continue to offer great food and service to our communities.

Comments

of

Andrew Rigie

Executive Director

New York City Hospitality Alliance

on

Int. No. 875 - In relation to permitting sidewalk cafes to operate on Sundays beginning at 10:00 a.m

Int. No. 876-A - In relation to operation of a sidewalk cafe.

Int. No. - In relation to the review and approval of petitions for revocable consents to operate sidewalk cafes.

May 7th, 2013

1:00pm

250 Broadway -16th Floor Committee Room, New York, NY 10007 – NYC Council

My name is Andrew Rigie and I am the Executive Director of the New York City Hospitality Alliance. The Alliance is a broad-based membership association founded in 2012 to foster the growth and vitality of the industry that has made New York City the Hospitality Capital of the World. It is the first association ever formed in New York City representing all facets of this diverse industry: restaurants, bars, lounges, destination hotels and major industry suppliers.

The Alliance has heard too many stories from members about the complicated sidewalk café process and its pitfalls and have been discussing reforming this process for years with the Administration and the Regulatory Reform panel. That is why I am here today to testify in support of these proposed pro-business, regulatory reform bills.

If passed, this legislation will streamline the operating and permitting process of sidewalk cafés and spur economic development in the New York City restaurant industry.

First, Int. No. 875 - In relation to permitting sidewalk cafes to operate on Sundays beginning at 10:00 a.m, just makes sense. Simply put, New Yorkers and the more than 50 millions tourists that visited our city last year would love to eat brunch on a sidewalk café before noon on Sundays. Unfortunately, because of an antiquated regulation, which makes people in 2013 scratch their heads, NYC restaurants are prohibited from operating their sidewalk cafes until noon on Sundays. The current noon start time infringes on the pleasure of those people who love nothing more than to enjoy an early brunch and people watch on a sidewalk café. Furthermore, the restaurant industry is a low profit business where every dollar counts, especially when you pay high fees to operate a sidewalk café. Passing this law will provide restaurants with sidewalk cafes an additional window of time to generate meaningful revenue.

Second, The Alliance supports Int. No. 876-A - In relation to operation of a sidewalk cafe. This bill will close a loophole that has allowed the Department of Consumer Affairs (DCA) to treat sidewalk cafe licensees who have timely and complete pending renewals on file, as if they are operating as unlicensed cafes, which subjects them to fines and penalties. As this legislation proposes, it should not be too burdensome for small business owners to renew their café licenses every (2) two years if the process is short and the forms can be completed and submitted online. However, we have heard that the revocable consent renewals can take up to six months for the Department of Consumer Affairs to process; therefore, by extending the consent renewal from the current (2) two years to the proposed (4) four year renewal, business owners with timely renewals pending will have time to better ensure that their sidewalk café is properly licensed throughout the renewal process.

Third, Int. No. ___ In relation to the review and approval of petitions for revocable consents to operate sidewalk cafes should be passed. Small business owners are busy and when their application for a sidewalk café permit is delayed, when there is little or no opposition, it hurts the small business owner and hampers the City's regulatory reform agenda.

It is for all of the stated reasons that the New York City Hospitality Alliance urges the passage of these bills in the City Council. The Alliance has been happy to work with Administration and the Council on these and many other pieces of regulatory reform legislation. The NYC restaurant industry is vital to our City and if you want to reduce regulatory burdens and support our local entrepreneurs, The Alliance urges you to pass these bills.

Respectfully submitted,



Andrew Rigie
Executive Director
NYC Hospitality Alliance



FOR THE RECORD

**THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN**

SCOTT M. STRINGER
BOROUGH PRESIDENT

**Testimony of Manhattan Borough President
Scott M. Stringer**

**Before the Committee on Consumer Affairs and the
Subcommittee on Zoning and Franchises**

Regarding Intro 1039, A Local Law to amend the administrative code of the city of New York, in relation to the review and approval of petitions for revocable consents to operate sidewalk cafes

May 7, 2013

Thank you, Chairpersons Garodnick and Weprin, for holding this important hearing today about regulation of sidewalk cafes in the City of New York.

While I strongly support and respect efforts to streamline the application process for sidewalk cafes, including placing the application online through NYC Business Express¹, I do not support reducing the amount of time for Community Board review of these applications and thus urge the Council to reject Intro 1039.

Since 1929, New York City has regulated unenclosed sidewalk cafes.² In the ensuing 75 years, the City found that these cafes add to the vitality of our street life, but only if careful steps are taken to avoid obstructing pedestrians or residents. As of 2011, the City had 861 licensed unenclosed sidewalk cafes, taking up nearly 210,000 square feet. Eighty percent of these cafes are in Manhattan, with even more applications in the pipeline.³

Community Boards represent community interests on crucial issues of development and planning, land use, zoning and City service delivery, such as sanitation and street maintenance. The boards help to shape their communities while enhancing and preserving the character of the city's many unique neighborhoods.

Under current law, Community Boards have 45 days to schedule and hold a public hearing on an application for a sidewalk cafe and recommend denial, approval, or denial/approval with modification. In so doing, the boards ensure that sidewalk cafes both respond to neighborhood concerns and play a positive role in the city's street life.

¹<http://www.nyc.gov/portal/site/businessexpress/menuitem.8b3d2506e659b9f24f366f8b01c789a0/>.

² http://www.nyc.gov/html/dea/downloads/pdf/swc_design_regulations_guide.pdf.

³ <http://nycedc.tumblr.com/post/10734104051/sidewalk-cafes-in-nyc-statsbee-is-a-new-column>.

Intro 1039 would reduce the amount of time provided for Community Board review from 45 days to 30 days. This is simply not enough time for boards to do the neighborhood outreach that is necessary to have a robust public hearing in which all voices can be heard.

Thirty days is insufficient to allow for both a committee hearing and a full board hearing. If the boards cannot schedule the hearings legally necessary for them to vote at committee and full board, they cannot act. For this reason, my office has consistently requested that agencies extend their review periods to a minimum of 45 days.

A rushed public hearing process can lead to lower turnout, preventing the board from considering the wide range of views on a particular application. This is contrary to good government and antithetical to the promise of democratic governance embodied by the Community Boards themselves.

Thank you for the opportunity to testify.



THE CITY OF NEW YORK MANHATTAN COMMUNITY BOARD 3

59 East 4th Street - New York, NY 10003

Phone (212) 533-5300 - Fax (212) 533-3659

www.cb3manhattan.org - info@cb3manhattan.org

Gigi Li, Board Chair

Susan Stetzer, District Manager

T2013-6143 A Local Law to amend the administrative code of the city of New York, in relation to the review and approval of petitions for revocable consents to operate sidewalk cafes.

Susan Stetzer, District Manager, for Community Board 3, M

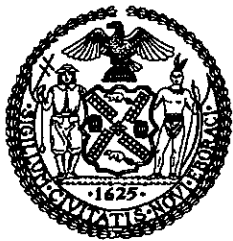
Community Board 3 opposes the amendment to the timeline for community boards to review sidewalk café applications from 45 days to 30 days. As all are aware, community boards have monthly cycles of meetings and must comply with the Open Meetings Law. My board is typical: we have a full board meeting the 4th week of the month, and committee meetings for the first 3 weeks. Open Meeting Law requires one week notice before the first meeting—so the schedule is distributed at the end of the previous month. Community Boards were created to provide a structure for community participation in local planning decisions—so it is important to have clear description of agenda items. Community participation is the only way to ensure that a method of operation is appropriate for a specific location. A 30-day schedule would eliminate community board hearings.

We support streamlining procedures and lowering expenses for small businesses—but it is not necessary to do so at the expense of larger community. This amendment would remove the community and community board from the process—and it is surprising that the Council would consider this.

Community Board 3 has never attended a DCA hearing, so eliminating this hearing would not impact us. We attend Council hearings only on the rare occasion that there is a problem that cannot be resolved. Waiving this hearing when there is support from the community board would not have a negative impact. It might even be an incentive for applicants to come to agreement with the community boards.

I would like to make two further suggestions: one to streamline the procedure and one to memorialize agreements. DCA does not check plans for zoning or other compliance before transmitting to the community board. Identifying problems at an earlier stage would be beneficial to all: the applicant would save time and money.

When I became District Manager in 2004, DCA wrote agreements with community boards into the contract. Now, modifications of plans are shown in revised plans. But modifications of hours are no longer acknowledged by DCA. This has led to unnecessary confusion and problems. Since this was done previously, it would be easy for DCA to revert back to previous practice.



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Gigi Li, Board Chair
Manager

Susan Stetzer, District

At its April 2013 monthly meeting, Community Board 3 passed the following resolution:

WHEREAS, Community Boards are the most local government structure for communities to have input into decision making for their districts, and

WHEREAS, Community Board 3 posts specific agenda items on the distributed calendar of meetings each month to give full, transparent notice to the community for public input, and

WHEREAS, Community Boards must post meeting calendars one full week before the first meeting to comply with the Open Meeting Law, and

WHEREAS, a minimum of 45 days is necessary to ensure that an item will not miss one monthly meeting and not be too late for the next monthly meeting, and

WHEREAS, Community Board 3, especially through its Economic Development Committee strives to support and retain our local small businesses, and strongly supports City efforts to help small businesses, and

WHEREAS, Community Board 3 believes that support of small businesses should not come at the expense of the community and is not necessary to come at the expense of the community, so

THEREFORE, BE IT RESOLVED that Community Board 3 supports retaining the 45-day notification period for sidewalk cafes to Community Boards and strongly urges the rejection of any attempt to reduce this period.

Sincerely,

A handwritten signature in cursive script that reads 'Gigi Li'.

Gigi Li, Chair

David Gruber, *Chair*
Bo Riccobono, *First Vice Chair*
Jo Hamilton, *Second Vice Chair*
Bob Gormley, *District Manager*



Antony Wong, *Treasurer*
Susan Kent, *Secretary*
Keen Berger, *Assistant Secretary*

COMMUNITY BOARD NO. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE
NEW YORK, NY 10012-1899

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Greenwich Village ♦ Little Italy ♦ SoHo ♦ NoHo ♦ Hudson Square ♦ Chinatown ♦ Gansevoort Market

Manhattan Community Board 2 Testimony

to the NY City Council Committee of Consumer Affairs

May 7, 2013

Chairman Garodnick and Members of the Committee on Consumer Affairs,

My name is Bob Gormley. I am the District Manager of Manhattan Community Board 2. I want to thank you for the opportunity to testify today at this important hearing.

Manhattan Community Board 2 includes the neighborhoods of Greenwich Village, Hudson Square, SoHo, NoHo, Little Italy and a portion of Chinatown. Our district has about 230 licensed sidewalk cafes. That is approximately twenty percent (20%) of all the sidewalk cafes in New York City and more than Brooklyn, Queens, the Bronx, and Staten Island combined. I say this so you will understand that we have a keen and vested interest in the legislation being considered today.

We have been told that the purpose and intention of the legislation is to make things easier for the food establishments that are applying for and operating sidewalk cafes. This is a laudable goal and one that we all can share. Everyone wants to see our small businesses succeed. Community Board 2 has worked hard to become an even-handed, honest broker between the businesses that come before our committees and our other constituents, including residents and businesses, which are impacted by newcomers to our neighborhoods. However, streamlining the process at the expense of input by the public through their community boards is not the way to accomplish this goal. While there are some good proposals in this legislative package, there are a few items that simply must be reconsidered.

First, Intro 1039-2013, which amends the approval process for sidewalk cafes, is, frankly, ill-conceived and harmful to public participation in the sidewalk café approval process. Most controversially, the legislation would reduce the amount of time a community board has to

review a sidewalk café application from forty-five days to thirty days. Currently, the forty-five days is barely enough time for a community board to review a sidewalk café application. In fact, in April, we received two sidewalk café applications from the Department of Consumer Affairs for which it was too late to place them on our April calendar and for which the forty-five days would expire before our May full board meeting. Community boards, as you all well know, operate on a monthly cycle with the full board meeting being the focal point of the month. If the amount of time given to community boards is reduced by one-third, that would mean that approximately one-third of the sidewalk café applications we receive could not be heard in a timely way. The result would be to deny the public both an opportunity to have a dialogue with the applicants and an opportunity to comment on the applications. It is imperative that the Council removes this provision from this bill.

We are also opposed to the provision that states the community board would be deemed to have waived its public hearing and recommendation on the application, if it does not take action within the legal time period. It is especially unfair for the law to make this assumption when the amount of time allotted to community boards is insufficient. Furthermore, §20-225(e) and §20-226(b) already provide an opportunity for a community board to waive its public hearing and recommendation, should it so intend.

Finally, regarding the provision that would allow DCA to waive its public hearing, we would like to remind the Council that, under the existing law, the DCA public hearing is the only time in the entire sidewalk café application process, where a public hearing is required. Eliminating this requirement would be eliminating the only point in the process where the public would be guaranteed an opportunity to comment on an application. Having said that, we recognize that the DCA public hearings under this Administration have become virtually useless. The applicants are not required to attend and the public, which does not read the City Record with the fervor of some folks in this room, are rarely in attendance. Nonetheless, we fear that granting the agency the power to waive the public hearing, without even giving a reason for the waiver, will likely lead to the elimination of all DCA public hearings on sidewalk cafes.

The second bill, Intro 0876-2012, contains provisions that we applaud and others for which we have great concerns. Let's start with the positive. During my seven years at Community Board 2 and my previous stint at the Department of Consumer Affairs, where I was the sidewalk café attorney, there have been many, many times when I received a call from a restaurant owner complaining that he or she had been issued a violation because, while in the midst of the renewal process, its DCA-issued operating letter had expired and an inspector appeared to cite them for operating a sidewalk café without a license. This has always been unfair. It is my understanding that DCA issues a ninety-day operating letter to a restaurant when it applies to renew its sidewalk café revocable consent. This often has proved inadequate when the renewal process can take months longer than ninety days. The amendment to §20.227.1 is an absolute and overdue

remedy to this problem. Restaurant owners who are acting in accordance with the law will now be protected from these nuisance violations.

This intro also contains a provision that would extend the revocable consent "...for a term of no less than four years." Currently, as you know, the term of the consent is two years and runs concurrently with the license. Manhattan Community Board 2 reviews every sidewalk café application sent to us by DCA. We feel that two years for a revocable consent strikes a fair balance between a restaurant owner interested in a streamlined process and the public's right to comment on an application that seeks to use the public sidewalk. However, there is another compelling reason for leaving the term of a revocable consent at two years. Assignments. Right now, if a restaurant with a sidewalk café consent has the misfortune of going out of business, it can assign the existing consent to the owner of the next restaurant to occupy the space. While the consent remains at two years, we know it will not be long before the new restaurant owner appears before the community board and the public to discuss his or her operation. However, if the consent is four years, the amount of time passing before a new restaurant owner must speak to his or her neighbors through the community board forum is too long. Finally, we have reservations about the language in the provision. By giving DCA the authority to grant a consent "... for a term of no less than four years" is it the Council's intent to allow a consent to last eight years or ten years or longer?

Regarding the third piece of legislation, we recognize that Intro 0875-2012, which would allow unenclosed sidewalk cafes to open at 10 a.m. on Sundays is popular with restaurants that cater to a Sunday morning brunch crowd. However, so as to balance the interests of restaurants with the interests of residents who might live above the sidewalk café, we think the Council should consider linking the earlier opening time with a 10:00 p.m. closing time on Sunday nights for sidewalk cafes.

As I stated at the outset of my testimony, we thank this committee for holding this important hearing and for giving us the opportunity to testify. Since sidewalk cafes have such a large presence throughout our district, we have an ongoing interest in making the process more accessible for both the businesses applying for sidewalk cafes and our residential and business constituencies that may be impacted by the operation of a sidewalk café. We hope that this is the beginning of a dialogue and we hope you will give serious consideration to the comments we have made today regarding this legislative package.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 5/7/13

(PLEASE PRINT)

Name: John Lynch

Address: 40 W. 116th St. NY NY

I represent: Manhattan CB 10 Central Harlem

Address: 215 W. 125th St. NY NY

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Date: 5-7-13

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Name: Kathleen TREAT

Address: ktreat@earthlink.net

I represent: Hettie's Kitchen Neighborhood Ass'n

Address: _____

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(PLEASE PRINT)

Name: Leslie JOHNSON

Address: 323 W 43rd St

I represent: W 44th BBA

Address: 424 W 44th St.

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Name: Shlomo Wysocki

Address: 190 E. Main St

I represent: SWA Architects

Address: _____

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Name: Susan Stetzer

Address: _____

I represent: CB 3 Community Board 3

Address: _____

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I intend to appear and speak on Int. No. 215050 Res. No. _____

in favor in opposition

Date: 5/7/13

(PLEASE PRINT)

Name: Robert Bookman

Address: 325 Broadway, NYC

I represent: DOZENS OF sidewalk cafe clients

Address: _____

Please complete this card and return to the Sergeant-at-Arms

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I intend to appear and speak on Int. No. 1039/875/878 Res. No. _____

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Date: 5-7-13

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Name: BOB GORMLEY → DISTRICT MGR

Address: 3 WASH SQ VILLAGE

I represent: COMMUNITY BOARD 2

Address: MANHATTAN

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 5/7/13

(PLEASE PRINT)

Name: Maury Schott

Address: 690 Greenwich St. #1A

I represent: Comm. Bd 2 Manhattan

Address: 3 Washington Sq. Village

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I intend to appear and speak on Int. No. 1203-6143 Res. No. _____

in favor in opposition

Date: _____

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Name: Sandro Sheppard

Address: 666 UN Plaza, Suite 308, 10017

I represent: CB6 - Manhattan

Address: same

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Date: _____

(PLEASE PRINT)

Name: STEPHEN Belida

Address: 453 W 50th St. 1B NYC

I represent: HK 50/51 Block Assoc

Address: _____

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Fran Freedman

Address: Deputy Commissioner

I represent: DCA

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ROBERT M. INOR

Address: 419 W 50th St

I represent: HK 50/51 BA

Address: _____

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in favor in opposition

Date: 5-7-13

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Name: Evan Lacher, Community Liaison

Address: _____

I represent: Manhattan Community Board 7

Address: 49-51 Chambers St

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in favor in opposition

Date: 5-7-13

(PLEASE PRINT)

Name: LOUIS AZZOLLINI

Address: 31 BEDFORD RD. MAITWANA

I represent: MERLAGE INC

Address: 123 EAST 18TH ST NYC

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: SANFORD COHEN

Address: DEPT OF CONSUMER AFFAIRS

I represent: _____

Address: _____

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I intend to appear and speak on Int. No. 1039 Res. No. _____

in favor in opposition

Date: 5/7/13

(PLEASE PRINT)

Name: Alvin Beck

Address: ~~687~~ 735 Argyle Rd Bklyn

I represent: Brooklyn Community Board 14

Address: 210 E 16 St Bklyn

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THE CITY OF NEW YORK**

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I intend to appear and speak on Int. No. 875 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DAVID ROSEN

Address: 302 BEDFORD AVE #246 Brooklyn NY 11249

I represent: BABAR

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 5/7/13

(PLEASE PRINT)

Name: Lancy Roberts

Address: 406 W 47th St NY, NY

I represent: CB4

Address: _____

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THE CITY OF NEW YORK**

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CHRISTINE BERTRAM

Address: 348 W 38TH

I represent: CR4 - Manhattan

Address: W 42nd St

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition PART

Date: 5/7/13

(PLEASE PRINT)

Name: MARK DILLER

Address: 171 W 19th

I represent: COMMUNITY BOARD 7

Address: 250 W 37th

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THE CITY OF NEW YORK**

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in favor in opposition

Date: 5/7/2013

(PLEASE PRINT)

Name: Cheryl Smith

Address: 68 West 120 St

I represent: CB 10

Address: ~~68 West~~ 215 West 125 St

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in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Andrew Rife

Address: 65 W 55 St, 207A

I represent: NYC Hospitality Alliance

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 875 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MANUCH PLOEGER

Address: 1375 BROADWAY

I represent: MANHATTAN CHAMBER OF COMMERCE

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 875 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JAMES W VERSOCK NYS Restaurant Association

Address: 1001 Gth Ave Suite 301

I represent: NYS Restaurant Association

Address: _____

Please complete this card and return to the Sergeant-at-Arms