

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON CONSUMER AFFAIRS
SUBCOMMITTEE ON ZONING & FRANCHISES

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May 7, 2013
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HELD AT: Council Chambers
City Hall

B E F O R E:

DANIEL R. GARODNICK
Chairperson

COUNCIL MEMBERS:
Council Member Leroy G. Comrie, Jr.
Council Member Julissa Ferreras
Council Member G. Oliver Koppell
Council Member Karen Koslowitz
Council Member Michael C. Nelson
Council Member Mark Weprin
Council Member Stephen Levin
Council Member Diana Reyna
Council Member Jessica S. Lappin
Council Member Robert Jackson

A P P E A R A N C E S (CONTINUED)

Fran Freedman
Deputy Commissioner
Department of Consumer Affairs, New York City

Sanford Cohen
Executive Deputy General Counsel
Department of Consumer Affairs, New York City

Robert Bookman
Counsel
New York City Hospitality Alliance and represents
sidewalk café's

Andrew Rigie
Executive Director
New York City Hospitality Alliance

Nancy Plager
Manhattan Chamber of Commerce

James Versaki
New York State Restaurant Association

Bob Gormley
District Manager
Manhattan Community Board Two

Maury Schott
Chair
Community Board Two, Manhattan, Sidewalk and Street
Activities Committee

Alvin Burke
Chair
Brooklyn Community Board 14, Flatbush and Midwood

A P P E A R A N C E S (CONTINUED)

Mark Diller
Chairman
Community Board Seven, Upper West Side

Susan Stetzer
District Manager
Community Board Three

Sondra Shirad
Chair
Manhattan Community Board Six

Evan Lascher
Community Liaison
Manhattan Community Board One

Schlomo Steve Waygoda
SWA Architects

Louis Azolini
Owner
Paul and Jimmy's Restaurant

Bob Minor
Co Chair
HK 5051, a Park Association

Kathleen Treat
Chair
Hell's Kitchen Neighborhood Association

Stephen Belida
Co Chair
HK 5051 Block Association

Christine Burte
First Vice Chair

A P P E A R A N C E S (CONTINUED)

John Lynch
Co Chair Economic Development Committee
Manhattan Community Board 10, Central Harlem

Leslie Johnson
Representative
West 44th Street Better Block Association

CHAIRPERSON GARODNICK: Good

afternoon. Welcome to this Joint Hearing of the Consumer Affairs Committee with the Subcommittee on Zoning and Franchises. Today is Tuesday, May 7th. My name is Dan Garodnick and I have the privilege of chairing the Consumer Affairs Committee. I am joined today by Chair, Mark Weprin, who chairs the Subcommittee on Zoning and Franchises which does the approvals of revocable consents for the Council before they go onto the Land Use Committee and on to the full Council. We're also joined today by Council Members Karen Koslowitz and Mike Nelson and Oliver Koppell. The subject of today's hearing is sidewalk café's and it is a timely one as the weather outside is nicer, New Yorkers start looking to dine al fresco. But unfortunately, setting up a sidewalk café is not so simple as sticking some chairs and tables on the sidewalk. The sidewalks are public spaces and so a restaurant trying to set up a sidewalk café must go through a complicated application process. The process includes approvals from the Department of Consumer Affairs, community boards and the Council. We are here today to discuss how

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2 we can improve that process to the benefit of both
3 restaurants, diners and community members. We are
4 also here to conduct oversight of how the
5 Department of Consumer Affairs deals with sidewalk
6 café's. This includes both how they conduct
7 enforcement and how they approve applications. We
8 have heard complaints from restaurants the DCA
9 fines them in an unfair manner. We've also heard
10 complaints from community boards the DCA is not
11 suitably responsive to their concerns, especially
12 when it comes to alerting DCA to the sidewalk
13 café's the may be unlicensed or operating in an
14 area where they are not permitted due to the
15 underlying zoning. We'll be hearing three pieces
16 of legislation today as well, two of these bills I
17 have sponsored and one of them is sponsored by
18 Council Member Diana Reyna. The first piece of
19 legislation is intro 875 or what I like to call
20 the brunch bill. Currently, city rules do not
21 permit sidewalk café's to begin operation before
22 noon on Sunday's. This rule, in my view, is
23 outdated, it's frequently ignored and it
24 accomplishes very little except to restrict
25 restaurants business. Intro 875 simply mandate

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2 that sidewalk café's could not be prohibited
3 between 10:00 and noon on Sunday's. It would also
4 provide that they could not be allowed to operate
5 before 10:00 a.m. on Sunday's so as to allow
6 residents some quiet on Sunday mornings before the
7 prime brunching hours begin. The second piece of
8 legislation that I sponsored is Intro 876-A which
9 is designed to protect restaurants from
10 unnecessary violations while they have a pending
11 renewal application for their sidewalk café's. To
12 operate a sidewalk café a restaurant owner must
13 have a license and a revocable consent for the
14 right to use the sidewalk. The problem is that
15 while renewing a license alone would be a
16 relatively fast and painless process, renewing a
17 revocable consent is a lengthy and much more
18 complicated experience. We have heard numerous
19 complaints from restaurant owners who have
20 followed all of the rules, they're operating a
21 sidewalk café in accordance with the rules and
22 regs and have filed a timely application for
23 renewal. Unfortunately, because the renewal
24 process is so lengthy their licenses expire before
25 their revocable consent comes through. They get a

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2 temporary operating letter from DCA. When that
3 expires they either need to seek renewal again or
4 they may find themselves fined for operating an
5 unlicensed café. There are two mechanisms in this
6 bill to solve this issue, first it establishes
7 that an operator should not be considered to be
8 operating an unlicensed café, as long as the
9 operator and has done everything right. That is,
10 he or she has submitted a timely application to
11 renew a revocable consent and that application is
12 still pending, the café was licensed at the time
13 the application was submitted and the café abides
14 by all the relevant rules and regulations. The
15 second mechanism would stagger the renewal periods
16 of licenses and revocable consents so that both
17 would never come up for renewal at the same time.
18 As a result, restaurants would never find
19 themselves in the unfortunate situation of having
20 their licensed expire because their revocable
21 consent application was taking too long to
22 process. I look forward to discussing the
23 relative merits of these two mechanisms for
24 protecting the well intentioned and law abiding
25 restaurant owners that are out there. The final

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2 bill we're hearing today, Intro 1039, also
3 addresses the issue of revocable consents and is
4 sponsored by Council Member Reyna. As I mentioned
5 earlier, the process to renew revocable consent is
6 extremely convoluted and lengthy. Council Member
7 Reyna's bill seeks to streamline the process by
8 allowing DCA to waive its right to a public
9 hearing, eliminating the need, potentially, for
10 approval by the Mayor's Office of Contract
11 Services and reduces the amount of time allocated
12 for community board comment from 45 to 30 days. I
13 know that there are many community boards that are
14 interested in this bill in particular and I look
15 forward to their testimony. On all of the bills
16 we have engaged in good, constructive
17 communications with the Bloomberg Administration.
18 We certainly hope that that will continue with the
19 Department of Consumer Affairs specifically today.
20 So, at that point, at this point I'm going to turn
21 the microphone over to Chari Weprin and recognize
22 we've been joined by Council Members Ferreras and
23 Council Member Comrie. Chair Weprin.

24 CHAIRPERSON WEPRIN: Thank you,
25 Chair Garodnick. Thank you for joining me here

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2 today for this joint hearing. I am going to be
3 very brief. The bills we're being discussed
4 today, obviously, are with the Consumer Affairs
5 Committee and go through that Committee but the
6 sidewalk café review process falls under the
7 Zoning and Franchises Subcommittee and it's
8 purview. And I thought that this was a good
9 opportunity and an important time for us to open
10 up the dialogue that Council Member Garodnick
11 talked about about DCA and their role in the
12 process. And I'll have a number of questions as
13 the process goes on concerning some of the issues
14 that have arisen in our Committee when dealing
15 with these sidewalk café's. So, Chairman
16 Garodnick, that's all I have to say at the moment.
17 I know you have a lot of people to testify so why
18 don't we just get right to it.

19 CHAIRPERSON GARODNICK: You got it.
20 Next up and first up will be Fran Freedman, the
21 Deputy Commissioner of the Department of Consumer
22 Affairs and it looks like she will be joined by
23 Sanford Cohen, also of the Department of Consumer
24 Affairs. Please come on up. [off mic] Welcome and
25 whenever you are settled and ready we'll be happy

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to hear your testimony.

MS. FRAN FREEDMAN: Thank you. [off mic] Good afternoon, Chair Garodnick and Chair Weprin. I wasn't anticipating your joining but how nice that you're here and that we're here. We seem to be meeting a lot lately with the Consumer Affairs Committee and I welcome all members of the Committee. I'm joined today by the Department's Executive Deputy General Counsel, Sanford Cohen, and I know that Carolyn Grossman is here and will answer from Department of City Planning and will be able to answer questions should you have any. 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 café's, 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 café's 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 café's 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

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2 have been possible without the well oiled and
3 efficient licensing process currently in place
4 designed to effectively enforce Council's right to
5 determine who uses the public sidewalks and for
6 what purposes, and DCA's responsibility to
7 maintain the public safety and accountability, as
8 well as ADA compliance and community needs. DCA
9 has done everything in our power to help as many
10 restaurants and neighborhoods as possible enjoy
11 the economic and community benefits of outdoor
12 café's and here is how. We collapsed a formerly
13 six agency, 465 day licensing process into one
14 agency and an average of 85 days. We made
15 applying for and renewing licenses as easy as
16 possible online and we've posted online all the
17 information restaurants need to complete the
18 process, including the sidewalk café design and
19 regulations guide, the street guide, consent fees
20 charts and all the forms, certifications,
21 affidavits and more. We move all applications
22 within five days and when challenges arise that
23 may delay the process as sometimes and perhaps
24 often occur we work with the restaurants to
25 resolve architect and plan issues, advocate for

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2 them to quickly receive approvals they may need
3 from other city agencies. We research possible
4 grandfathering issues and conduct record searches,
5 even if that involves digging up documents from as
6 far back as the 1920's. We've even designed a new
7 mapping tool internally to help us and our
8 applicants avoid zoning in street areas. We issue
9 operating letters as a business friendly mechanism
10 to ensure that applicants in good standing have
11 minimal burdens during the renewal process. The
12 ability to issue such letters means that DCA does
13 not have to immediately deny an application just
14 because the restaurant neglected to pay a bill or
15 is late securing insurance renewal. Instead,
16 issuing a time defined operating letter, usually
17 for 90 days, means we can temporarily withhold
18 permanent permission to operate until the business
19 resolves the problem. These letters also ensure
20 that businesses possess all of the public safety
21 and accountability requirements necessary to
22 operate a café. The only rational, after all, for
23 requiring licensure, as we have said earlier.
24 Public safety and accountability requirements
25 include current revocable consent and paid consent

1 fees, insurance, current certificates of
2 occupancy, public assembly permits health
3 licenses, clearances from ECB and the Department
4 of Finance and more. We made it easier than ever
5 for all businesses, including sidewalk café's to
6 avoid violations and comply with the law by
7 posting our inspection checklists online and
8 providing an online live chat opportunity
9 exclusively for businesses to have their questions
10 answered by DCA staff every day during business
11 hours without picking up a phone or coming into
12 the licensing center. And finally, to mitigate
13 operational challenges for sidewalk café's in the
14 2nd Avenue construction corridor, DCA conducted
15 dozens of outreach efforts advocated with the MTA
16 so that businesses could operate as long as
17 possible and ensured that every sidewalk café
18 would receive every cent coming to it in unused
19 consent and licensing fees. The full licensing
20 process for unenclosed sidewalk cafes outlined in
21 the attachment in the copies of our testimony and
22 right here on the poster starts with the business
23 submitting an application and fees and all
24 relevant documents, including plans to scale,
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2 photographs, land owners consent, revocable
3 consent petitions, proof of insurance and all the
4 permits I mentioned earlier to DCA, which we
5 carefully review for accuracy and completeness and
6 then share with the relevant borough president,
7 community boards, Council Member and the Speaker's
8 office. Built into the process is the time needed
9 for each party to review the completed application
10 and hold public hearings regarding the proposed
11 sidewalk café so that community voices are heard.
12 The licensing process for enclosed café's is a
13 longer process involving additional city agencies
14 including the Department of Environmental
15 Protection, the Landmarks Preservation Commission
16 and the lead review agency, excuse me, the
17 Department of City Planning. Sidewalk café
18 licenses currently run for two years. This
19 standard timeframe allows for accountability
20 because businesses see the prospects of a not so
21 distant license renewal as a good reason to follow
22 public safety and consumer protection regulations.
23 Additionally, the ability of Council Members to
24 encourage compliance with community concerns is
25 greatly enhanced when café owners know that they

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2 need to renew. I turn now to comments on the
3 three bills before this Committee, excuse me.
4 Intro 875 would extend operating hours on Sunday's
5 to 10:00 a.m. and Intro 1039 would shorten the
6 community board's review period and provide for
7 DCA to waive its currently scheduled hearing
8 process. In addition, marks approval of petitions
9 for revocable consent to operate sidewalk café's
10 could be waived as well. Omitting these
11 components would significantly shorten the
12 licensing process. We defer to Council's wisdom
13 on the balance of needs between businesses and
14 their customers and neighbors and on whether or
15 not speeding up the process gives the public
16 sufficient time for input. DCA, however, opposes
17 Intro 876-A as currently drafted. This
18 legislation separates the license expiration date
19 from the expiration date from the consent term.
20 If it's goal was to make it easier for businesses
21 in fact it would have the opposite effect, making
22 it more difficult. The bill imposes license
23 renewals on a rolling basis rather than at fixed
24 times, current counter to DCA practice for
25 sidewalk café's and for all other licensed

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2 industries. And although we support Council's
3 idea to have revocable consent expire every four
4 years the bill as written would force businesses
5 to apply twice at different times, once for the
6 license and six months later for the consent. In
7 addition to being confusing and time consuming it
8 doubles the cost of preparation fees for
9 businesses who may feel the need to hire attorneys
10 and expeditors twice. Remembering two different
11 sets of deadlines exposes businesses to more
12 liability if they forget. Further, the bills
13 approach to forcing the City to license sidewalk
14 café's to operate without completion of the public
15 consent process which is the only true intent of
16 the decoupling advocated by a minority of industry
17 attorneys supporting this bill, unwisely benefits
18 only a small number of - - law businesses. Those
19 with unpaid public consent fees or lapsed
20 insurance who plan to illegally operate anyway.
21 It is this very accountability which this bill
22 seeks to cripple that is the whole point of
23 licensing these café's in the first place. For
24 the vast majority of restaurants doing right by
25 the public, by their neighbors and by the City,

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2 this bill would simply make doing business more
3 difficult, more expensive while being unfairly
4 solicitous of their competitors who are not
5 playing by the same rules. That said, however,
6 we'd be pleased as always to continue discussions
7 with the Council on this bill. We are proud of
8 our commitment to helping the sidewalk café
9 industry flourish through more than a decade of
10 sensible policies and efficient and effective
11 practices. We look forward to continuing to work
12 with Council to ensure the industries ongoing
13 growth and success. I'll be happy to answer your
14 questions.

15 CHAIRPERSON GARODNICK: Thank you
16 very much, Deputy Commissioner. Before I jump in
17 with some questions I want to acknowledge the
18 presence today of Council Member Diana Reyna who
19 is the sponsor of one of the three bills we are
20 haring today and we'll hear from her in a moment
21 and also Council Member Lappin. And Council
22 Member Reyna, would you like to make an opening?
23 Welcome.

24 COUNCIL MEMBER REYNA: Thank you,
25 Mr. Chair. I apologize for getting here late. I

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2 just wanted to take a moment to thank both you and
3 Chair Weprin for conducting this hearing. My name
4 is Diana Reyna, Council Member and Chair of this
5 Committee on Small Business and I have sponsored
6 one of these pieces of legislation being discussed
7 today, Intro 1039. The intent behind Intro 1039
8 is to ensure that our business are able to operate
9 efficiently without undo burden and ensuring
10 public safety in the City of New York. In my
11 discussions with restaurant owners it has come to
12 my attention that many go through a prolonged and
13 confusing process when applying for a sidewalk
14 café permit. Two scenarios in particular concern
15 me. Despite unanimous community support a
16 sidewalk café application can take a minimum of 70
17 to 100 days for approval. And despite approval by
18 the Department of Consumer Affairs, upon review of
19 a sidewalk café application at the community board
20 and City Council multiple issues are raised with
21 the inaccuracies of the proposed plan on file. In
22 either case, both the small business owner and the
23 community lose and, unfortunately, it is both
24 these situations that I hear are commonly taking
25 place. Just last week my staff at the City

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2 Council informed that that a sidewalk café
3 application from my district was fraught with
4 errors. I had to work with a business owner who
5 is a chef by trade, not a land use attorney or an
6 architect to fix an application that had already
7 been reviewed by DCA. He took time off form work
8 and will have to revisit with his architect to
9 ensure the sidewalk café plans are legal and
10 accurate. It is this situation that I wish to
11 amend, compliance should be expected of the agency
12 reviewing the application, the architect
13 submitting the application, the community boards
14 and Council Members approving the application.
15 Regulations are created for the safety of the
16 consumers and the quality of life of the
17 community. Regularity laws should not serve as a
18 gotcha moment to our small business owners. That
19 is what we are here today to fix. I'd like to
20 thank you for, I'd like to thank you all on the
21 Committee, my colleagues, and I look forward to
22 hearing from the administration discussing this
23 bill before you today and hearing from the public
24 and their input. Thank you.

25 CHAIRPERSON GARODNICK: Thank you

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2 very much, Council Member Reyna. And let me just
3 jump in with a few initial questions here. Ms.
4 Freedman, on the subject--

5 COUNCIL MEMBER KOPPELL:

6 [interposing] Point of order, Mr. Chairman. I
7 would, it would be helpful to me at least, and I
8 don't know if other members are the same position,
9 to understand a little bit more the distinctions
10 between the license and the revocable consent.
11 I'm confused as a hear this testimony and maybe
12 you could explain that to us or have someone
13 explain it to us.

14 CHAIRPERSON GARODNICK: [crosstalk]

15 I can, thank you Council Member Koppell, and
16 certainly that is an issue which is central to the
17 issues that we're discussing today. And I think
18 that it will come out in the course of my initial
19 question here, the differences and why, actually,
20 I have introduced one of the bills that I've
21 introduced. So, I think that you will find that
22 beneficial. But first, before I get to that, I
23 want to ask you about brunch because that's the
24 easiest part of the day, it seems. So, Intro 875
25 as we discussed would allow New Yorkers to enjoy

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2 brunch at a sidewalk café starting at 10 o'clock
3 on Sunday. I noted no view by the Department of
4 Consumer Affairs as to whether you consider that
5 to be a good or bad idea and I just wanted to make
6 sure that I did not miss that in your testimony.

7 MS. FREEDMAN: You did not miss
8 that in our testimony, I assure you.

9 CHAIRPERSON GARODNICK: So, what is
10 DCA's view on whether or not brunch loving New
11 Yorker's should be able to enjoy outdoor brunch
12 starting at 10 o'clock on a Sunday morning.

13 MS. FREEDMAN: DCA remains
14 completely neutral. That's a decision for Council
15 to make, you know, in balancing what the
16 communities need, what the businesses need.
17 That's your purview.

18 CHAIRPERSON GARODNICK: And will
19 there be no issue for DCA for the Council were to
20 make this law go into effect immediately upon
21 passage and signature by the Mayor?

22 MS. FREEDMAN: No issue whatsoever.

23 CHAIRPERSON GARODNICK: Thank you.
24 Now, let's go to the harder stuff. I want to talk
25 to you about the question which Council Member

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2 Koppell started to prime us for, the issue of
3 licenses versus revocable consents, which I agree
4 as it relates to renewals. And I' going to just
5 give you my thumbnail understanding of it, Council
6 Member and Deputy Commissioner Freedman can
7 correct me when I go astray. The license process
8 for getting an actual license for DCA is a much
9 simpler process than going for a revocable
10 consent, is that correct?

11 MS. FREEDMAN: Correct.

12 CHAIRPERSON GARODNICK: The license
13 is the process where somebody presents a variety
14 of factors, qualifications to the agency and says,
15 I believe that I have what I need to do to be able
16 to operate this business on the street, is that
17 right?

18 MS. FREEDMAN: Correct.

19 CHAIRPERSON GARODNICK: Now, the
20 revocable consent is wehre the City is granting a
21 special permission to a business to be able to
22 actually use the physical space on the street, is
23 that right?

24 MS. FREEDMAN: Correct.

25 CHAIRPERSON GARODNICK: Okay.

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2 MS. FREEDMAN: And that's within
3 your purview.

4 CHAIRPERSON GARODNICK: In our
5 purview and that's what you're going to hear from
6 Council Member Weprin on in a few moments and
7 that's what comes to the Zoning Committee and
8 that's what we talk about most frequently here.
9 We don't really talk about the licensing of
10 sidewalk café's here at the Council. That is
11 something wehre they apply directly to the
12 Department of Consumer Affairs.

13 MS. FREEDMAN: Exactly.

14 CHAIRPERSON GARODNICK: You grant
15 or reject, for the most part, on the - - at the
16 outset.

17 MS. FREEDMAN: But we wouldn't
18 currently grant without revocable consent.

19 CHAIRPERSON GARODNICK: Okay,
20 right. So--

21 MS. FREEDMAN: [interposing] We
22 couldn't.

23 CHAIRPERSON GARODNICK: At the
24 outset you can't grant a license.

25 MS. FREEDMAN: Correct.

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CHAIRPERSON GARODNICK: If there's
no permission for somebody to be able to use--

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MS. FREEDMAN: [interposing]

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Precisely.

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CHAIRPERSON GARODNICK: --the

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sidewalk as per a revocable consent.

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MS. FREEDMAN: Exactly.

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CHAIRPERSON GARODNICK: Okay. So,

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I want to talk to you about is the renewal

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process. I think we're pretty clear that when you

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start up and you want to get a sidewalk café on

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the street, you need the license per DCA, you need

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the sidewalk, I'm sorry, you need the revocable

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consent, a longer process, and you can't get the

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license until the revocable consent is complete.

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MS. FREEDMAN: Correct.

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CHAIRPERSON GARODNICK: Now, every

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two years the license is up for renewal with the

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Department of Consumer Affairs, is that right?

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MS. FREEDMAN: Correct.

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CHAIRPERSON GARODNICK: Okay. And

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every two years the revocable consent is also up

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for renewal, is that right?

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MS. FREEDMAN: Correct.

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2 CHAIRPERSON GARODNICK: Okay. So,
3 my question for you is this, when somebody applies
4 to you for a renewal of their sidewalk café
5 license they are also contemporaneously applying
6 for a revocable consent renewal, is that right?

7 MS. FREEDMAN: Correct.

8 CHAIRPERSON GARODNICK: How long
9 does the revocable consent process generally take?

10 MS. FREEDMAN: If there are no
11 changes and, you know, nothing has happened in the
12 environment, nothing has happened in the
13 restaurants history, it doesn't owe any fines, it
14 has its insurance in place. It simply takes as
15 long as it would have originally in terms of the
16 public hearing process.

17 CHAIRPERSON GARODNICK: So, what's
18 the shortest period of time?

19 MS. FREEDMAN: So, shortest, we say
20 the shortest period of time is about 85 days.

21 CHAIRPERSON GARODNICK: Okay. So,
22 somebody applies to you for both the license and
23 the revocable consent. You can't grant them a
24 renewal to their license until that revocable
25 consent is complete, right?

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MS. FREEDMAN: That is currently correct.

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CHAIRPERSON GARODNICK: Okay, got it. So, it's actually impossible for you all to grant them anything but an operating letter at that point to be able to continue pending their revocable consent approval, is that right?

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MS. FREEDMAN: That's exactly why we issue.

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CHAIRPERSON GARODNICK: Wait, but just, but just to be clear on the process first.

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MS. FREEDMAN: Yes.

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CHAIRPERSON GARODNICK: So, the answer is yes?

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MS. FREEDMAN: Yes.

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CHAIRPERSON GARODNICK: Right? Okay, so at that point DCA has no ability to do anything else other than to say to the business, look, you are okay for a period of what, 60 to 90 days, what, how much time do you usually give them for a temporary?

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MS. FREEDMAN: Usually 90, sometimes they're longer.

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CHAIRPERSON GARODNICK: Okay.

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MS. FREEDMAN: Sometimes they're shorter depending on the issues.

CHAIRPERSON GARODNICK: Okay, so--

MS. FREEDMAN: [interposing] But in the main, 90 days.

CHAIRPERSON GARODNICK: --standard is generally 90?

MS. FREEDMAN: And they're renewable.

CHAIRPERSON GARODNICK: Okay.

MS. FREEDMAN: They're renewable.

CHAIRPERSON GARODNICK: So, you give them 90 days in which to, in which they can operate before such time as they have a revocable consent. So, that's a three month period of time.

MS. FREEDMAN: But it doesn't usually take that long.

CHAIRPERSON GARODNICK: It doesn't usually take that long?

MS. FREEDMAN: Right.

CHAIRPERSON GARODNICK: To get the revocable consent?

MS. FREEDMAN: Right.

CHAIRPERSON GARODNICK: But what

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2 happens if somebody gets a temporary operating
3 letter and that temporary operating letter expires
4 on them? Is it incumbent on the business to come
5 back to DCA for another temporary operating letter
6 or does DCA?

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MS. FREEDMAN: Yes, they have to
8 renew the letter.

9

CHAIRPERSON GARODNICK: Okay. So,
10 what you're saying is somebody who has applied for
11 a license and a revocable consent at the same time
12 has applied, adhered to all operable laws and
13 rules and regulations could get, find themselves
14 with a temporary letter that could expire on them
15 where if they don't come back to you they could be
16 operating without a license, is that correct?

17

MS. FREEDMAN: Well, it's not just
18 not coming back to us, they have to address
19 various issues, in other words, they have to make
20 sure that they've gotten their revocable consent.
21 Sometimes they have to ensure that their insurance
22 is in place.

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CHAIRPERSON GARODNICK: Yeah, but
24 if the revocable consent hasn't happened yet--

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MS. FREEDMAN: [interposing] Yeah,

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that is correct.

CHAIRPERSON GARODNICK: --temporary letter is going to expire on them at some point.

MS. FREEDMAN: Exactly, but it's completely renewable.

CHAIRPERSON GARODNICK: [crosstalk] But they're going to have to come back, completely? Completely renewable meaning what?

MS. FREEDMAN: In other words you can get another 90 day--

CHAIRPERSON GARODNICK: [interposing] Yeah, but if you don't know that it's expired or you hadn't paid such close attention to the fact that it, you know, your 90 days are up, you know, you--

MS. FREEDMAN: [interposing] I believe we send reminders, one moment please. [off mic]

CHAIRPERSON GARODNICK: Why don't you introduce yourself, okay, or let Fran take--

MS. FREEDMAN: [interposing] I'll do it. I'll do it. That's okay. So, we do send out operating letters automatically.

CHAIRPERSON GARODNICK: So, what

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you're saying is?

MS. FREEDMAN: Renewal, the
renewal.

CHAIRPERSON GARODNICK: When an
operating letter--

MS. FREEDMAN: [interposing]
Expires.

CHAIRPERSON GARODNICK: --expires
you send an automatic renewed operating letter
from DCA?

MR. SANFORD COHEN: The operating
letters, the initial operating letters are timed
to expire with the insurance expiration if
insurance is expiring and to expire with the time
that the next payment for consent fees is due. If
those conditions are not met the automatic
copywriting letter will not go out. If they are
met at the time, if the sidewalk cafe has paid all
its consent fees and they're showing proof that
their insurance is up to date it's an automatic
process of renewing the operating letters. That
gives us the opportunity, gives the Department the
opportunity to ensure that its compliance with
important laws protecting the public safety and to

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2 ensure that the City is getting paid for the use
3 of the sidewalks.

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CHAIRPERSON GARODNICK: It sounds
5 like you all would love this bill because what
6 this bill would do would be to ensure that all of
7 the revocable consent information and filings and
8 fees, et cetera, are done with by the time that
9 they get to the point of filing with you guys for
10 a license renewal. What is objectionable to that?
11 That sounds like that is right down the fairway as
12 to what DCA would want to achieve here.

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MS. FREEDMAN: Well, in fact, we do
14 love something about the bill, Mr. Chair. We do
15 like the four year revocable consent, that's fine.
16 But what the bill unfortunately has, the bill has
17 done two things that are counterproductive. It's
18 mandating licensing on a rolling basis instead of
19 at defined times--

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CHAIRPERSON GARODNICK:
21 [interposing] Sorry, wait, let's just be clear
22 with our language 'cause we want to make sure that
23 we're consistent and know, Council Member Koppell
24 and Weprin are going to probe you on this. It
25 doesn't have a licensing on a rolling basis. It

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has the licensing at one date and the revocable consent at another date?

MS. FREEDMAN: Yeah, right.

CHAIRPERSON GARODNICK: Right?

Okay.

MS. FREEDMAN: But currently, for example, we have three periods of renewing licenses, three distinct periods, September 15th, I mean, just to give you a date, September 15th, December 15^h, April 15th. And well before that time the renewal packets go out. I mean, it's a huge amount of operational work on the part of the Department. The renewal packets go out, the restaurants know that they have to renew and everything is put into motion. This would be staggered, in other words, the bill the way it's written it says it expires two years from the date that it was issued. That's not how we issue licenses now. That's one thing. The second thing that it does is it decouples, it separates the revocable consent in the time period from the licensing and we feel that those should always, for accountability and public safety should always be the same.

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2 CHAIRPERSON GARODNICK: So, it
3 sounds like there just may be a difference of
4 opinion between, certainly the bill's sponsor and
5 I can't speak for the other members of this
6 Committee as to the benefit of allowing businesses
7 to wrap up their revocable consent process when
8 they're applying to you for their license. In my
9 mind it seems rational to say to them, look, we
10 want to make sure that you are legit, that you are
11 doing everything you're supposed to do, that you
12 have filed all of your fees, that you have all of
13 your insurance paperwork but not to get them
14 enmeshed in a black hole of bureaucracy where they
15 can't actually get their license renewed at the
16 moment that their license is due?

17 MS. FREEDMAN: The interesting
18 thing, Mr. Chair, is that the actors who, or shall
19 I say, the restaurants, who complain about
20 operating letters are those who are such bad
21 actors they just haven't gotten their act
22 together. I mean, we don't get--

23 CHAIRPERSON GARODNICK:
24 [interposing] Then why are you granting them an
25 operating letter? I guess, my point is, if

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somebody doesn't deserve to have their license renewed, you know, it's not clear to--

MS. FREEDMAN: [interposing] We do.

CHAIRPERSON GARODNICK: --to us why you're renewing the licenses.

MS. FREEDMAN: Because we know that they're in the revocable consent process and we want to ensure that they can seamlessly continue to operate until that is--

CHAIRPERSON GARODNICK:
[interposing] Do you have the power to revoke a license?

MS. FREEDMAN: Yes.

CHAIRPERSON GARODNICK: Do you have the power to fine somebody for violating a license, violating the terms of their license?

MS. FREEDMAN: Of course.

CHAIRPERSON GARODNICK: Right.

MS. FREEDMAN: There are licensing laws.

CHAIRPERSON GARODNICK: So, it sounds like you've got more than enough power to be able to address bad actors in that context. Don't you?

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MS. FREEDMAN: We do.

CHAIRPERSON GARODNICK: Okay.

MS. FREEDMAN: But not more than enough, I would say.

CHAIRPERSON GARODNICK: You have enough, just enough.

MS. FREEDMAN: Sufficient hours.

CHAIRPERSON GARODNICK: All right, okay. Thank you. I'm going to turn to Chair Weprin.

CHAIRPERSON WEPRIN: Thank you, Chair Garodnick. Deputy Commissioner, thank you very much for your testimony. You know, we enjoyed it and we do appreciate the hard work the agency puts in on this process and I'm glad that you do state you carefully review for accuracy and completeness to share with the borough Presidents, community boards and Council. So, we thank you for that. I'm just curious, does DCA actually conduct site inspections of the café's before the issue of a licenses?

MS. FREEDMAN: You mean qualifying inspections?

CHAIRPERSON WEPRIN: Yes.

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MS. FREEDMAN: That's what you mean? Yes, sometimes we do. But remember, if I may remind you, Council Member, that in fact, Council changed the law and made this whole process self certifying. That was the only way all of us together, the Administration and Council were able to collapse that cumbersome six to nine agency process, 485 days, 465 days, into one agency, and really about 85 days now. So, it's all self certifying. So we--

CHAIRPERSON WEPRIN: [interposing]
So, do you always just take on faith the self certifications or do you ever do inspections to make sure what they're--

MS. FREEDMAN: [interposing] We do, we do.

CHAIRPERSON WEPRIN: - -what they're telling you is true.

MS. FREEDMAN: We do, and there are affidavits that every restaurant must sign and deliver to us, that's part of the documentation.

CHAIRPERSON WEPRIN: They said you had, you do some inspections to--

MS. FREEDMAN: [interposing] We

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certainly do inspections upon inquiry from Council, upon inquiry from an elected official, upon--

CHAIRPERSON WEPRIN: [interposing] Only at that point, not generally. You just take your self certifications?

MS. FREEDMAN: [crosstalk] Not as a routine. If a community board has an issue we certainly are happy, more than happy to go out and do a qualifying inspection.

CHAIRPERSON WEPRIN: How many inspectors are there at DCA?

MS. FREEDMAN: 80.

CHAIRPERSON WEPRIN: 80? 80 inspectors? And what are their responsibilities?

MS. FREEDMAN: 80, may I just add?

CHAIRPERSON WEPRIN: Yes, certainly.

MS. FREEDMAN: I'm so glad you asked.

CHAIRPERSON WEPRIN: You may, mm-hmm.

MS. FREEDMAN: I'm so glad you asked. We have 80 inspectors inspecting 79,000

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businesses in 55 different industries, not only for licensing laws but for the consumer protection law.

CHAIRPERSON WEPRIN: Right, so they do a little bit of everything is what you're saying?

MS. FREEDMAN: They do everything.

CHAIRPERSON WEPRIN: There are no--

MS. FREEDMAN: [interposing] All of our inspectors are cross trained.

CHAIRPERSON WEPRIN: Mm-hmm.

MS. FREEDMAN: We do have a tobacco squad that works with our teen tobacco squad for undercovers in that arena. And we do have a specially trained gas squad, gas and fuel squad but everyone else is totally cross trained.

CHAIRPERSON WEPRIN: And so the inspectors, as far as café's go, 'cause that's what we're talking about today. You're saying they only go out generally when you get a complaint from the community, you get a complaint from the Council?

MS. FREEDMAN: Or on patrol. If an inspector's on patrol they will inspect a café or,

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2 in fact our inspection list, our check list is
3 online and you can see all the things that they
4 inspect for. Now, for example, if you had
5 registered a complaint with us, suppose you said
6 that a certain café didn't have, had too many
7 tables and chairs, for example. We'd send an
8 inspector to look at that but we would also do
9 what we call a comprehensive inspection.

10 CHAIRPERSON WEPRIN: How does DCA
11 receive their reports from an authorized or non
12 compliant café's? where do you get most of your
13 complaints from?

14 MS. FREEDMAN: Elected officials,
15 community boards, that's basically it.

16 CHAIRPERSON WEPRIN: Do they come
17 in, like, how do you receive them? Through a 311
18 or just some call the agency?

19 MS. FREEDMAN: 311 - - 311, and
20 many phone calls and emails.

21 CHAIRPERSON WEPRIN: Do you, I know
22 that as a self certification process but is that,
23 do you make any effort to make sure that this café
24 is actually legally allowed under the zoning when
25 you approve it or?

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MS. FREEDMAN: We make every

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effort.

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CHAIRPERSON WEPRIN: You do make

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effort?

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MS. FREEDMAN: Every effort.

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CHAIRPERSON WEPRIN: Okay.

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MS. FREEDMAN: Every effort.

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CHAIRPERSON WEPRIN: Okay, but how

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successful is your efforts? I just wanted, I

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mean, do you feel like if the zoning doesn't allow

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for a café you think you catch all of them, most

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of them, some of them?

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MS. FREEDMAN: No, I would never

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say, Mr. Weprin, that we catch all of them. I

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don't think any of us could possibly say that we

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don't make any errors. Council makes errors, we

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make errors.

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CHAIRPERSON WEPRIN: Mm-hmm.

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MS. FREEDMAN: But, the wonderful

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thing about this very well oiled process is that

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there are so many points at which those errors can

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be caught by the community board, by the elected

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official.

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CHAIRPERSON WEPRIN: Right.

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MS. FREEDMAN: By our own staff.

And, of course, by Council.

CHAIRPERSON WEPRIN: Right. One of the frustrations we have on the Council and in our Committee is very often, you know, café's are called up, they come to us and sure enough, lo and behold and this is one of the issues Council Member Reyna talks about, this never should have been approved in the first place. The zoning didn't allow it. This small business person who has, is trying to run a restaurant, did all the applications, did everything they thought was right not realizing they were violating the zoning law. And then we, comes to us and it's already long, months later and then we tell them, you know, you really couldn't have done, you shouldn't have done this in the first place. You never should have been approved by DCA. I understand that's just an error that fell through the cracks but what could you, DCA do to try to make sure that doesn't happen more often because in the last few months alone in our subcommittee we've gotten about five of these cases where they never should have been approved in the first place.

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2 MS. FREEDMAN: I couldn't agree
3 with you more. Every single one of them is
4 regrettable. And we certainly don't want that to
5 happen. Fortunately, we have developed, as I
6 suggested in my testimony, a new mapping tool.
7 We're going to be working, in fact, we just
8 discussed that with City Planning and we are going
9 to be working on that zoning, admittedly. I don't
10 have to tell you is incredibly complicated and
11 yes, there are errors.

12 CHAIRPERSON WEPRIN: Right, what
13 else can DCA do to try to eliminate these errors
14 because it is the source, as I said, are
15 frustrating not only for us but for those
16 businesses.

17 MS. FREEDMAN: You mean beyond our
18 two - - I would be very grateful, Mr. Weprin, if
19 you have a suggestion for us. We would, you know,
20 beyond working with City Planning on this, if you
21 have something in mind we would certainly love to
22 hear it.

23 CHAIRPERSON WEPRIN: I mean, it
24 would seem that there is ways of trying to ensure
25 that you don't have the things fall through the

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2 cracks as often by doing more than just accepting
3 the self certification and saying, or the tech
4 sheet, the check off saying that this is, complies
5 with zoning. The person who did that might not
6 have realized either and there must be a way to
7 have someone on, at DCA inspect the site, know
8 where it is, actually do the second level of that
9 evaluation, say, you know, make sure that this is
10 actually a legal café to begin with. So, it
11 doesn't go through the whole process and waste a
12 lot of money for the businesses and a lot of time
13 for both DCA Council and the community.

14 MS. FREEDMAN: Honestly, I wish we
15 had the resources, both in terms of manpower and
16 other resources to be able to send out an
17 inspector to 1,100 café's, but unfortunately, we
18 don't. Absent that, we are open to suggestions.
19 I do want you to know that we check all new
20 applications, all new applications specifically,
21 zoning.

22 CHAIRPERSON WEPRIN: Right.

23 MS. FREEDMAN: So, we are, it's not
24 that we're neglecting that aspect, we are
25 checking.

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2 CHAIRPERSON WEPRIN: Right. Well,
3 as we both agree, not well enough in that we do
4 have a number of errors, and like I said, in just
5 a short period of time we've had a few of them
6 here and it really does cause, it's embarrassing
7 for all of us involved, a little bit where a
8 person came all the way down the process and then
9 finds out they weren't allowed to have the
10 application in the first place.

11 MS. FREEDMAN: Zoning is incredibly
12 complicated.

13 CHAIRPERSON WEPRIN: Yeah, it's
14 complicated but still is embarrassing when we
15 don't do our job as well as we like.

16 MS. FREEDMAN: [crosstalk] Used to.

17 CHAIRPERSON WEPRIN: And that is a
18 problem. I know Councilman Garodnick talked about
19 the penalties the DCA had. In the affirmations
20 that are given out there's some strict language on
21 the penal code and on the DCA's enforcement. How
22 much, how many fines on these type of applications
23 does DCA give out? Do you often find these
24 affirmations when they are incorrect or when the
25 businesses make a misstatement of whether they

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have enough sidewalk space or whether they're zoned correctly?

MR. COHEN: We will look at applications to see if there are false statements when we have discovered something is awry in the actual operation of the sidewalk café. But most of our violations are issued for non compliance with the plans or the largest category is for unlicensed café's. So we do, we take a look at the affirmations.

CHAIRPERSON WEPRIN: And those are discovered by the inspectors who happened to be passing by that you talked about before, not, that's not a separate assignment for the inspectors? They find out about the café's, too many tables by just a complaint following up on a complaint or happening to discover it walking by?

MR. COHEN: Well, it's not just walking by. They have fixed patrols.

CHAIRPERSON WEPRIN: Right.

MR. COHEN: That often patrol the, each block of the city and--

CHAIRPERSON WEPRIN: [interposing]
Walking by and on their patrol?

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2 MR. COHEN: Yes, on patrol where
3 they specifically inspect the sidewalk café's as
4 part of their patrol. It's not just a matter of
5 walking by and noticing something.

6 CHAIRPERSON WERPIN: Right, so
7 they, go ahead.

8 MS. FREEDMAN: If you would like,
9 for example.

10 CHAIRPERSON WEPRIN: Mm-hmm.

11 MS. FREEDMAN: I'll take you on a
12 walk through.

13 CHAIRPERSON WEPRIN: Mm-hmm.

14 MS. FREEDMAN: An inspection so our
15 inspector would first check to make sure that the
16 sidewalk café had a license. The license is
17 required by law to list how many tables and
18 chairs. They would note that.

19 CHAIRPERSON WEPRIN: Right.

20 MS. FREEDMAN: It would be a
21 violation of that didn't mesh or, in fact, it
22 would be a violation if there was no license.

23 CHAIRPERSON WEPRIN: So, you didn't
24 answer before. I was just curious--

25 MS. FREEDMAN: [interposing] I'm

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sorry.

CHAIRPERSON WEPRIN: --not you, I'm just, I meant I was just going to ask, I asked about how the violations when someone files an affirmation that is incorrect does DCA fine them on, a lot or rarely, ever?

MR. COHEN: I would say that's not at the top of our categories of fines for sidewalk café's. It tends to be in their operations whether they've been in non compliance, what the plans are, what the plans that are improved or if they're operating on an unlicensed basis.

CHAIRPERSON WEPRIN: Yeah, and I want to, DCA, when the law was changed to allow for, what you called self certification DCA was not opposed to that, correct?

MS. FREEDMAN: I don't believe so.

CHAIRPERSON WEPRIN: No, I don't--

MS. FREEDMAN: [interposing] I don't believe so. I mean, I don't go back that far. So, I have no idea.

CHAIRPERSON WEPRIN: Well, neither do I so we're even.

MS. FREEDMAN: Good.

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2 CHAIRPERSON WEPRIN: And, all
3 right, 'cause, well, I would like, my
4 recommendations for the, to the agency would be to
5 try to figure out a way 'cause, I mean, this has
6 happened in my short time here a lot and that's
7 jus ton the ones we happened to call up. I can
8 only imagine how many are out there that we didn't
9 call up that might not actually be, have been
10 properly looked at, whether the zoning didn't
11 allow it or their sidewalk didn't allow it. And
12 it just seems like a lot of them are falling
13 through the cracks and that is an effort that the
14 DCA needs to do in order to, not waste time and
15 not waste money for these small businesses, not to
16 mention look bad for all of us for having missed
17 it in the first place.

18 MS. FREEDMAN: Thank you.

19 CHAIRPERSON WEPRIN: Okay, well
20 thank--

21 MS. FREEDMAN: [interposing] On the
22 other hand I do wish you would imagine how many
23 hundreds and hundreds of café's are out there
24 operating legally.

25 CHAIRPERSON WEPRIN: Oh, I know, I

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know them well.

MS. FREEDMAN: With all of our blessings.

CHAIRPERSON WEPRIN: And I hope to be able to go to them at 10 o'clock in the morning too. So... [laughter] Okay.

CHAIRPERSON GARODNICK: Thank you, Mr. Chairman. We're now going to go to Council Member Reyna.

COUNCIL MEMBER REYNA: Thank you so much, Mr. Chair. I just wanted to understand. The last statement was you wouldn't believe how many illegal sidewalk café's or you--

MS. FREEDMAN: [interposing] No, how many hundreds and hundreds of legally operating--

COUNCIL MEMBER REYNA: [interposing] Legal.

MS. FREEDMAN: --café's there are out there. I wish I had stopped by for a little refreshment before this hearing.

COUNCIL MEMBER REYNA: I completely agree. I wanted to just take a moment just to understand a little of where Council Member, Chari

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2 Garod--, Chair Weprin had been living off as far
3 as the fines were concerned. In the year 2012
4 it's part of the Mayor's Management Report, I'm,
5 I'd imagine that there is a specific amount of
6 illegal sidewalk café's that are noted as part of
7 your report for DCA. Do you have that number?

8 MS. FREEDMAN: The number of ille--

9 COUNCIL MEMBER REYNA:

10 [interposing] Illegal sidewalk café's for the year
11 2012.

12 MS. FREEDMAN: I'm sorry, Council
13 Member, I don't have the number of illegal.

14 COUNCIL MEMBE REYNA: Can someone
15 with you--

16 MS. FREEDMAN: [interposing] But we
17 will certainly get you that number if--

18 COUNCIL MEMBER REYNA:

19 [interposing] That, I would like it for this
20 particular hearing. I'm just trying to understand
21 how many in the year 2012, illegal sidewalk café's
22 have been shut down? And while someone is,
23 perhaps, texting away trying to get that answer
24 I'd like to understand how would the public know
25 what is illegal versus legal? How would a small

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business owner who spends thousands of dollars on a sidewalk café know that they are competing with an illegal sidewalk café?

MR. COHEN: Could we clarify, Council Member, what you mean by illegal?

COUNCIL MEMBER REYNA: Mm-hmm.

MR. COHEN: Do you mean unlicensed?

COUNCIL MEMBER REYNA: Unlicensed, I apologize.

MR. COHEN: I could tell you that in the year 2012 the Department issued violations for unlicensed and sidewalk café activity 217 times.

COUNCIL MEMBER REYNA: In the year 2012?

MR. COHEN: That's correct.

COUNCIL MEMBER REYNA: And this is out of the, how many total sidewalk café's are there in the city?

MS. FREEDMAN: There are about 1,103 at the moment, licensed, at the moment, Council Member.

COUNCIL MEMBER REYNA: So, the 1,169 in 2012 are in the process of being renewed?

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2 MS. FREEDMAN: Café runs, yeah,
3 café's close for different reasons, sometimes they
4 go out of business. It, you're absolutely right--

5 COUNCIL MEMBER REYNA:
6 [interposing] Hurricane Sandy?

7 MS. FREEDMAN: --I'm saying.

8 COUNCIL MEMBER REYNA: Mm-hmm.

9 MS. FREEDMAN: - - suggesting that
10 there is a flux and, you know, we just, we're
11 still in the middle of the renewal, the April
12 renewal. So, you're absolutely right. Part of the
13 difference may well be that.

14 COUNCIL MEMBER REYNA: And what is
15 the fine for an illegal, I apologize, unlicensed
16 sidewalk café?

17 MR. COHEN: The code provides for a
18 fine of \$100 - - for, I'm sorry, it's \$1,000.

19 MS. FREEDMAN: \$1,000.

20 MR. COHEN: \$1,000 for an
21 unlicensed sidewalk café.

22 COUNCIL MEMBER REYNA: Per day?

23 MR. COHEN: No, total fine of
24 \$1,000 for the first instance of an unlicensed
25 sidewalk café.

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COUNCIL MEMBER REYNA: Mm-hmm.

MR. COHEN: If there's a repeated unlicensed sidewalk café, activity, the fine will increase.

COUNCIL MEMBER REYNA: To what amount?

MR. COHEN: I think it's \$4,000 but there is also a provision that says if there are two findings of guilt of conducting unlicensed sidewalk café activity in a two year period the restaurant is subject to seal king for up to 30 days, and that's part of the law that the Council enacted several years ago.

COUNCIL MEMBER REYNA: And how many cases of subject to sealing have occurred in the year 2012, let's say?

MS. FREEDMAN: We have that. [off mic] Okay, in 2012 a total of 28 café's throughout the City were sealed for a period of time.

COUNCIL MEMBER REYNA: Okay. It's information that we don't have an opportunity to ask so I'm taking advantage and making sure that I have these figures.

MS. FREEDMAN: We're glad you're

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asking.

COUNCIL MEMBER REYNA: I want to understand, as far as sidewalk café's are concerned the revocable consent, how many are revoked in the year 2012?

MS. FREEDMAN: Revocations are very rare. What we use is the sealing and what goes along with the sealing, coupled with the sealing is usually suspension of the license for that period of time. I can't even tell you, I think, do you remember how many revocations, one? None? We don't know.

COUNCIL MEMBER REYNA: Could we get that?

MR. COHEN: It's typically not a process that we pursue is the revocation of the consent.

COUNCIL MEMBER REYNA:
[interposing] What is the reason--

MR. COHEN: [interposing] We pursue license violations and--

COUNCIL MEMBER REYNA:
[interposing] License violation based on what?

MR. COHEN: Based on the rules and

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2 laws that govern the operation of sidewalk café's.
3 There are specific clear passage requirements,
4 tables requirements, passage, clear passage from
5 fixed sidewalk furniture. And all of those may be
6 addressed as license law violations. And the
7 other side is we pursue those sidewalk café's that
8 don't have legal authorization to operate through
9 the issuance of a revocable consent and a license.
10 That's our typical way of pursuing the enforcement
11 practice.

12 MS. FREEDMAN: And may I just add,
13 Council Member Reyna, that if's our intention and
14 responsibility, as I know you feel the same way,
15 to ensure that as many café's as possible can
16 operate. So, that's what we're trying to do to
17 help café's operate. And, if they can--

18 COUNCIL MEMBER REYNA:
19 [interposing] I appreciate that comment. My
20 problem is, which was already mentioned, I'm
21 calling up my own sidewalk café applications in
22 the Council and there are issues that are
23 reflecting the specifications of a plan that are
24 submitted that are not complete. And so, I'm
25 trying to understand why are we not seeing a

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2 complete application from DCA before it comes to
3 the final process where then the owner is upset at
4 the Council because he was already approved at
5 DCA?

6 MR. COHEN: We reviewed the plans,
7 as Deputy Commissioner Freedman says, we don't do
8 qualifying inspections for all 1,100 restaurants
9 that have sidewalk café's up for renewal and
10 renewal periods. When there are discrepancies
11 that are brought to our attention we will send out
12 inspectors and look at those and stop the renewal
13 process to find that the streetscape is different
14 from what is reflected on the plans. But
15 otherwise if the plans reflect what is a legal
16 sidewalk café according to the law and the rules,
17 we will pass that on to the Council for its
18 action.

19 COUNCIL MEMBER REYNA: So, I just
20 want to make a suggestion as had been asked by the
21 Chair if he had any, why are these plans not
22 accessible online via DCA?

23 MS. FREEDMAN: You mean the
24 actual--

25 COUNCIL MEMBER REYNA:

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[interposing] Architectural plans.

MS. FREEDMAN: Right. Currently, we don't have the ability to do that with our database but every plan is easily accessible directly through our - - officer, anyone in the public can get a copy of the plan.

COUNCIL MEMBER REYNA: Moving forward to 21st Century, just making sure that we are understanding technology is a great tool and we should be using it so that, you know, it seems to me that it would be even a better way to conduct business if these plans were filed electronically so that there is a real time response to those plans so that the business owner understands what is complaint or not. So that the architect is not, and there was a comment shared according to one small business owner a few years back to me that, you know, the architect happened to express to the small business owner that it is customary that only one percent of all applications get called up. So, there is this culture that's built where this is being said and understood as the normal practice because everyone is just rubber stamping. And it presents us a

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2 problem to the small business owner who is
3 actually trying to do the right thing and comply
4 with the law and spending the money to do so and
5 yet there are others who are not. And so I just
6 want to make sure that we level the playing field
7 and we make sure that we're using technology and
8 applications in the agency that could allow for
9 that culture to change, to do better business with
10 the public, to do better business with the small
11 business owner.

12 MS. FREEDMAN: Rest assured,
13 Council Member, that DCA is not spreading that
14 urban legend. But your point is well taken about
15 the technology aspect and we are working on that.
16 We're going to have a whole new enterprise system
17 on--

18 COUNCIL MEMBER REYNA:
19 [interposing] Correct, I heard the mapping
20 comment.

21 MS. FREEDMAN: You heard?

22 COUNCIL MEMBER REYNA: Yeah.

23 MS. FREEDMAN: Yes, we're working
24 on that. Those are--

25 COUNCIL MEMBER REYNA:

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2 [interposing] In addition to that there should be
3 an application where you can have everything
4 digitized so that there is a view online of your
5 architectural plans. Is that going to be part of
6 it?

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MS. FREEDMAN: That's our goal.

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COUNCIL MEMBER REYNA: And what is
the timeline for that?

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MS. FREEDMAN: Well, the first roll
out of our new system will be in September,
actually. But I can't promise as to what
components will be included but I will certainly
take your suggestion back. Thank you.

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COUNCIL MEMBER REYNA: I would
appreciate that and I would, I wanted to just ask,
as far as the community board is concerned there
is a process that they go through vetting the
application as well. What does DCA do with their
recommendations? How is that implemented?

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MS. FREEDMAN: When? I'm glad you
asked that question. When a business voluntarily
consents to a change that is recommended on the,
by the community board or the Council and it's
usually something that limits the business from

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2 what is legally required, for example, shortening
3 of hours. When that process has voluntarily taken
4 place that's an agreement between the business and
5 the Council Member or the business and the
6 community board and the purview for holding that
7 restaurants feet to the fire is in the public
8 accounting, the public review process, that's
9 exactly where those issues have to come up and
10 it's, that's what, why Council and the community
11 boards are there to hold the restaurants feet to
12 the fire. We're there to hold the restaurants
13 feet to the fire in terms of the law.

14 COUNCIL MEMBER REYNA: So, it goes
15 back to enforcement being the responsibility of
16 the community board and the Council?

17 MS. FREEDMAN: For any agreement.
18 For any mutually agreed upon amendment to what is
19 legally, what a business can legally do. [off mic]
20 Oh, yes. Except, right, we do enforce the number
21 of tables and chairs. So, if you've made an
22 agreement about that we do enforce that.

23 COUNCIL MEMBER REYNA: But that's
24 the only piece that you--

25 MS. FREEDMAN: [interposing] Right,

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2 but not the hours, not whether you've, you know,
3 they've agreed to a security guard or any number
4 of other accommodations.

5 COUNCIL MEMBER REYNA: And with the
6 exception of tables and chairs no other details
7 are enforced by the agency, DCA?

8 MS. FREEDMAN: From that mutually
9 agreed upon agreement, yes, correct.

10 COUNCIL MEMBER REYNA: And the
11 number of tables and chairs reflected in the
12 plans, I've had a situation where the plans were
13 inaccurate according to the numbers of tables and
14 chairs. How does one know what are the number of
15 tables and chairs that are supposed to be in the
16 sidewalk café? Is there a sign that is supposed
17 to be--

18 MS. FREEDMAN: [interposing] Yes,
19 yes, absolutely. That appears on the license that
20 you must post publically facing, usually on the
21 door or the window and that tells you exactly how
22 many tables and chairs you've been licensed for.

23 COUNCIL MEMBER REYNA: And how is
24 that enforced? How many, do you separate your
25 finds concerning what is the number of tables and

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chairs and not--

MS. FREEDMAN: [interposing] Yes,
we do.

COUNCIL MEMBER REYNA: --being
displayed?

MS. FREEDMAN: Yes, yes, that's a--

COUNCIL MEMBER REYNA:
[interposing] And how many--

MS. FREEDMAN: --separate - - and
I'll tell you exactly, one 2012, for example.

COUNCIL MEMBER REYNA: Mm-hmm, mm-
hmm.

MS. FREEDMAN: So, in 2012 we wrote
100 and, wait a moment, wait, wait, wait... Hmm,
that's very interesting. We didn't, we actually
didn't write any in 2012.

COUNCIL MEMBER REYNA: Okay.

MS. FREEDMAN: But I can tell you
that from 2008 until 2012 we wrote 447 of those.

COUNCIL MEMBER REYNA: 447?

MS. FREEDMAN: Of those specific
violations.

COUNCIL MEMBER REYNA: And the
signage, do you agree or disagree that the signage

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allows for the public to understand and the small business owners as they neighbor to, neighboring each other to distinguish what the, who was licensed and/or unlicensed?

MS. FREEDMAN: Correct, that's why there's signage.

COUNCIL MEMBER REYNA: And--

MS. FREEDMAN: [interposing] That's why the license has to be displayed.

COUNCIL MEMBER REYNA: Since they're--

MS. FREEDMAN: [interposing] And they get violations if they're not.

COUNCIL MEMBER REYNA: Since there was no issued fines in 2012 do you believe that there was an increase of unlicensed sidewalk café's?

MS. FREEDMAN: I don't think it signifies that. I really can't tell you what that signifies.

COUNCIL MEMBER REYNA: I just, you know, I want to just finalize with asking, does DCA play a role in educating and outreach to small business owners and on sidewalk café's?

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2 MS. FREEDMAN: Absolutely. In
3 fact, we held an open house after hours for
4 sidewalk café owners. Last year we're going to
5 hold another one. This year we do this routinely
6 for our various 55 different industries regarding
7 the whole, we're going to be holding our second
8 one for sidewalk café's and we've done enormous
9 outreach in the 2nd Avenue corridor specifically
10 for 2nd Avenue for the café's in that corridor and,
11 of course, every year we hold our business
12 education day and we visit thousands of
13 businesses.

14 COUNCIL MEMBER REYNA: To couple
15 all the small business owners? I just want to
16 focus on the sidewalk café's as far as outreach
17 and education and, you know, trying to distinguish
18 so that the owners themselves understand what is
19 their responsibility that there isn't a gotcha
20 moment for them.

21 MS. FREEDMAN: Right, which is
22 certainly not our intent, quite the opposite. So,
23 that's why we held the open houses so that we
24 could walk through--

25 COUNCIL MEMBER REYNA:

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[interposing] But you mentioned 2nd Avenue so you only had one last year and it was on 2nd Avenue?

MS. FREEDMAN: No, no, no. We had an open house at the Department, that's where we hold our open houses in our licensing center.

COUNCIL MEMBER REYNA: Mm-hmm.

MS. FREEDMAN: We walk the particular industry, like the sidewalk café, through all the rules and regulations again.

COUNCIL MEMBER REYNA: Mm-hmm.

MS. FREEDMAN: And we give them ample time to ask questions.

COUNCIL MEMBER REYNA: Mm-hmm. Mr. Chair, thank you so much for giving me the opportunity to ask these questions. And I just want to reserve my right to ask questions later.

MS. FREEDMAN: Thank you.

CHAIRPERSON GARODNICK: You're right is reserved, Council Member, thank you. And before I go to Council Member Koppell I just want to follow up on just two brief points that Council Member Reyna just raised. So, the community board spends a fair amount of time thinking about what is proper and appropriate in the neighborhood.

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After they review it and they send it to DCA, you guys have up to 30 days to hold a public hearing and act before you send it on to the City Council, is that right?

MS. FREEDMAN: Correct.

CHAIRPERSON GARODNICK: So, do you ever take the recommendations that the community board is making and incorporate them into, I guess it's the revocable consent at that point or the license, I don't know - - but I know it's a revocable consent. And put that into the application as a requirement before you send it to the Council?

MS. FREEDMAN: No, we don't. [off mic]

MR. COHEN: If there's a recommendation to modify the--

CHAIRPERSON GARODNICK: [interposing] Yeah, a recommendation from the community board, a recommendation to modify the plans?

MR. COHEN: Yeah. It looks different from the original plans, that's taken into account and new plans have to be filed

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[crosstalk] in accord with the agreement between the community board and the operator.

CHAIRPERSON GARODNICK: No, I'm just taking a bland scenario where the community board gets the application and says, you know what, we actually think that there should be ten tables instead of 20 tables, they send it on to DCA. Does DCA consider that, say, you know what? Actually Community Board, you were right. We're going to actually incorporate that into the plan?

MR. COHEN: Only if the plans would not accord with the clearance requirements and the rules otherwise.

CHAIRPERSON GARODNICK: Okay, so only if technically non complaint would you incorporate those changes?

MR. COHEN: Right. We welcome advice from the community boards about proposed plans that are not compliant with the rules and laws for sidewalk café's.

CHAIRPERSON GARODNICK: Okay. But otherwise you don't take that into, you don't put that into any requirements for the café's?

MR. COHEN: There's no basis in the

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law for us to do that.

CHAIRPERSON GARODNICK: Right, okay. 'Cause to me that, if we're looking to save time maybe it's DCA that we should consider bypassing because it seems like the Council is doing a lot of that work itself. Okay, so, my additional question is, on the hours of operation, I think you said in response to Council Member Reyna that other than the number of tables you will not enforce any of the other agreed upon provisions that are included into the revocable consent at the Council level, is that correct?

MS. FREEDMAN: Those agreements are between Council and the business or between the community board and the business. They don't necessarily get to us and we--

CHAIRPERSON GARODNICK:
[interposing] Then how do you deal with the sidewalk? How do you deal with the number of tables issue?

MR. COHEN: That would be reflected in the plans and in the license.

CHAIRPERSON GARODNICK: So, in the revocable, it's a change to the revocable resent -

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MR. COHEN: It's a change to the petition and when the petition is granted or approved by the Council that number of tables and chairs that have been the agreement between the community board or the elected official and the sidewalk care will be reflected in the license process.

CHAIRPERSON GARODNICK: And the petition does not change the hours of operation in some circumstances?

MR. COHEN: I have never seen a resolution coming from the Council that reflects that agreement.

CHAIRPERSON GARODNICK: Okay. We're going to, I'm a little confused on that but we're going to come back to it in a moment. I'm going to go to Council Member Koppell.

COUNCIL MEMBER KOPPELL: Ms. Freedman, I think your testimony, and I know you're a constituent and we have a good relationship so I'm going to be a little bit critical, I hope you don't mind. But I think your testimony--

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MS. FREEDMAN: [interposing] Why would I mind?

COUNCIL MEMBER KOPPELL: I hope your testimony, I think your testimony is inconsistent with the discussion because in your testimony you talk about these operating letters as allowing someone to continue to operate while they're dealing with a problem that may exist with their license, right? That's what you talk about on page one.

MS. FREEDMAN: Correct.

COUNCIL MEMBER KOPPELL: But what the bill is trying to address is not that. What, I'd like the Chairman to hear what I'm saying.

CHAIRPERSON GARODNICK: I was just trying to get clarity on that last question. Go ahead, Council Member.

COUNCIL MEMBER KOPPELL: Okay, so, what the bill is dealing with is not an operating letter to allow someone to continue to operate while they deal with some problem with the license, I don't know what kind of problems. I think you talk about the problems, neglected to pay a bill or late securing insurance renewal.

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2 That, I understand you if you're an operating
3 letter there. But that's not what the bill is
4 intended to deal with. The bill is intended to
5 deal with a problem that the revocable consent
6 renewal takes longer than the license renewal.
7 That's what the bills contend, not the problem you
8 address. You're not, and that, the bill deals
9 with that by saying that while the revocable
10 consent application is pending, the license is
11 automatically extended, that's what bill does, is
12 that right, Mr. Chairman?

13 CHAIRPERSON GARODNICK: It will not
14 deem you to be unlicensed on the basis--

15 COUNCIL MEMBER KOPPELL:
16 [interposing] Right, so--

17 CHAIRPERSON GARODNICK: --that the
18 pending application.

19 COUNCIL MEMBER KOPPELL: Right,
20 right. So, I think that the bill in that makes a
21 great deal of sense in that way. And what really
22 is a problem here is that the license is for two
23 years and the bill now contemplates that the
24 revocable consent will be for four years and
25 there's a lack of sync. I think that as far as

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2 the bill goes it makes it better because you don't
3 need to issue these letters all the time while the
4 revocable consent thing is pending. But what I
5 would recommend, Mr. Chairman, quite honestly is
6 that you do an inquiry with the department to see
7 whether these two applications can be merged. It
8 doesn't seem to me that there's a need for two
9 different applications. Now, you--

10 MS. FREEDMAN: [interposing] That
11 was my point.

12 COUNCIL MEMBER KOPPELL: You think
13 there is a need for two different applications?

14 MS. FREEDMAN: No, no, we're
15 agreeing with that.

16 COUNCIL MEMBER KOPPELL: Oh, okay.
17 Well, I think that would make life easier for
18 everybody if we made them, you want them to expire
19 at the same time.

20 MS. FREEDMAN: Exactly.

21 COUNCIL MEMBER KOPPELL: Then make
22 it one form, not two forms.

23 MR. COHEN: It currently is one
24 form and they do expire at the same time.

25 MS. FREEDMAN: Now.

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COUNCIL MEMBER KOPPELL: It's one form but it's two different time periods.

MR. COHEN: License will, no, currently it's, they're every two years.

COUNCIL MEMBER KOPPELL: Yes.

MR. COHEN: As I understand the proposal the revocable consent will be four years but you will uncouple the licensing application from the revocable consent. So, you'll be applying twice for licenses and once for revocable consent on three different occasion and two, in a four year period.

COUNCIL MEMBER KOPPELL: Well, but, well maybe I'm mixed up here but my impression is that right now if you don't have a revocable consent in effect because the renewal process takes time you have to get this special letter that extends your, sort of licensing authority.

MR. COHEN: The application for the renewal of the license and for the revocable consent are done contemporaneously. We will issue an operating letter, a waiting action by the Council and other city bodies so that there is no lapse in the operation of the revocable consent--

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COUNCIL MEMBER KOPPELL:

[interposing] Okay. [crosstalk] Well, I think what, but the bill says you don't need to issue that letter anymore. And that makes sense to me, Mr. Chairman, but I also think that you should consider, because they say right now they go together, they should at least continue to go together, and in my opinion should be turned into one form or one application.

CHAIRPERSON GARODNICK: Fair

enough.

COUNCIL MEMBER KOPPELL: That's

what I would come out.

CHAIRPERSON GARODNICK: Thank you,

Council Member. And I think we'll hear, suspect from the next panel in a moment on whether they view this to be additional, this proposal to be additionally or less burdensome on them. I suspect they're going to find the Council's action to be less burdensome on them than what the Department of Consumer Affairs is doing presently. But we'll, I'm sure we will hear from them in a moment. And I think the important point, Council Member, is while the renewal comes up at the same

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2 time, as you correctly point out, one piece of the
3 renewal takes 85 to however many days and the
4 other one takes just a couple of days. So, you
5 can't possibly get your license renewal from the
6 department of consumer affairs at the moment that
7 you're applying, ever. And what the bill is
8 trying to do is to move forward the revocable
9 consent applications so that at the moment that
10 you are applying for your renewal license, that
11 part is done at that DCA can act as opposed to
12 having these, this constant process of temporary
13 orders. So--

14 COUNCIL MEMBER KOPPELL:

15 [interposing] Mr. Chairman, I might respond.
16 First of all, I apologize, I have another
17 obligation so I can't stay but I trust you'll
18 cover this. But as I say, the solution to the
19 whole thing is working together.

20 CHAIRPERSON GARODNICK: Thank you,
21 thank you. And thank you to the Department of
22 Consumer Affairs for your testimony today. It's
23 always good to see you.

24 MR. COHEN: Thank you.

25 CHAIRPERSON GARODNICK: We're going

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2 to call up our next panel which is Robert Bookman
3 on behalf of a variety or sidewalk café clients,
4 Andrew Rigie of the New York City Hospitality
5 Alliance, Nancy Plager [phonetic] of the Manhattan
6 Chamber of Commerce and James Versaki [phonetic]
7 of the New York State Restaurant Association. And
8 we'd like to get them started as quickly as
9 possible. And we thank everybody for their
10 patience today. [pause] [off mic] Are we missing
11 James? All right. Okay, all right. Well, the
12 panel is yours. I guess, Mr. Bookman, you're
13 going to start?

14 MR. ROBERT BOOKMAN: Yes, thank you
15 very much. My name is Robert Bookman. I'm an
16 attorney. I've been representing sidewalk café
17 applicants at the Department of Consumer Affairs
18 for 28 years this summer and I was with the agency
19 for five years before that. So, pretty familiar
20 with the process. I'm also Counsel to the New
21 York City Hospitality Alliance, a trade group in
22 New York City that, you know, represents
23 restaurants. So, let me just get to some of my
24 comments concerning these bills. We feel that, I
25 feel they're an important piece of legislation

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2 that reforms a number of issues for small business
3 owners and frankly, as a continuation of the
4 regulatory form process. In April 2010, three
5 years ago this month, the regulatory reform report
6 was released. Many of us were part of that. I
7 remember being at the press conference at Brooklyn
8 Navy Yard. In that report was a section entitled,
9 simplify the application process for sidewalk
10 café's. And it discussed earlier hours on Sunday,
11 renewals every four years instead of two and
12 simplifying the complex process for renewals, it
13 says what the stated goals of restaurant owners.
14 Nothing has changed except that we've been working
15 with the administration concerning these issues
16 for the last three years and so we think that
17 these bills are right on target. They address
18 these concerns that are not new concerns and they
19 move the ball forward. And I think the Council
20 and the Administration over the decades in
21 periodically looking at sidewalk café's, seeing
22 what works, seeing what doesn't work, you know,
23 and addressing it. And so I think this needs to
24 be put in that context. I frankly, you know,
25 think Consumer Affairs and this Administration has

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2 been very café friendly. Part of the reason why
3 there has been a large expansion in the number of
4 café's was in 2005, City Planning opened up a lot
5 of areas that previously been restricted for what
6 they now call small café's, you know, one row of
7 tables, and that accounted for a lot of it. So, I
8 think their heart has been in the right place, you
9 know, concerning sidewalk café's but I think there
10 were changes in the laws ten years ago which have
11 made their job much more difficult, and to answer
12 your question, I think these bills, and I'll
13 address it more specifically, can help alleviate a
14 lot of the concerns that you expressed, that
15 Council Woman Reyna expressed and give them more
16 of the time and personnel to really do what they
17 need to be doing rather than just pushing paper.
18 But also to put it into historical context, the
19 world did not start in 2002 when the Mayor became
20 mayor, and the number of did not start expanding
21 then. Back in 1990 when I was much younger there
22 was 253 sidewalk café's. So, in 12 years between
23 the number you got there was 180 percent increase
24 in the number of sidewalk café's. so, I want to
25 give the restaurant industry a little bit of

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2 credit for the fact of this increase in the number
3 of café's because it ahs been, there never,
4 restaurants are opening up everywhere, not just in
5 Manhattan anymore and the sidewalk café, for good
6 or for bad, has become a critical aspect of the
7 operation of most small restaurants. It's, the
8 public really wants it. It's a real New York City
9 and tourist type of issue. We find that in the
10 warm weather there'll be seats inside, air
11 conditioned, and people don't want it. They want
12 to sit outside on the sidewalk. It's that
13 critical to the operations is, so we thank you for
14 these bills, both of you, all three of you, and
15 those who support it 'cause we think it moves in
16 the right direction. The reducing Sunday hours
17 from 10:00 a.m. to noon, I think, you know, that's
18 just a no brainer. It's the last vestige of blue
19 laws and I don't think there's any value,
20 seriously, you know, opposes that. As a matter of
21 fact, there's a bill pending in the State
22 Legislature right now to decrease on Sunday the
23 hours of liquor service at 10:00 a.m. as well and
24 that seems to be moving nicely through the State
25 Legislature. So, this would be a good time

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2 because we, it'll allow us to do both. Now, ten
3 years ago the new café law was amended and
4 renewals went from every five years to every two
5 years, so let's remember that. We had renewals
6 every five years up until ten years ago and the
7 licenses were not always concurrent with the
8 sidewalk café franchise and it didn't matter. It
9 wasn't a problem. Despite DCA's best efforts to
10 keep up with the resulting increased case load it
11 has not worked going to every two years. You
12 instantly gave them 60 percent more work for doing
13 renewals every five years to every two years. And
14 by the way, it was their idea. You agreed with it
15 over ten years when it came from them. So, that
16 was a 60 percent increase plus they've had a 60
17 percent increase in the number of - - since the
18 law went into effect so I think despite their best
19 efforts they just don't have enough personnel to
20 keep up with the renewal process the same way they
21 do with new applications. And they do put more
22 attention to new applications. So, to me that was
23 a failed change that this bill corrects by making
24 the consent every four years instead of every two
25 years. so, it'll be every other time you renewed

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2 your license now you'll also be renewing the
3 consent. So, I think that's logical and it makes
4 sense. The five was a little odd number and I
5 think, you know, I think that would work really
6 well. And as Council Member Garodnick pointed out
7 the consent renewal time is more of an
8 administrative process, that should not be the
9 tiem to be catching up with bad operators. So,
10 I'm not concerned about oh, we're only going to
11 take a look at them every four years. well,
12 you're only doing that for the public use of the
13 sidewalk. If they're bad operators there's plenty
14 of stuff in the law to go after the bad operators
15 who are violating rules and regulations. That, you
16 know, suspension, revocation, that enforcement,
17 regardless of how frequent the consent renewal is
18 and it's still doing the license renewal every two
19 years. I don't think, you know, I don't think
20 that should be a problem that any of us should
21 really be concerned with. This bill also brings
22 New York City in line with State law concerning
23 the status of businesses who have timely filed
24 renewals which have been accepted for processing.
25 The State Administrative Procedure Act, SAPA,

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2 states that businesses that have a State license,
3 which has liqueur licenses, for example, are
4 deemed to be licensed while their renewal is in
5 the hands of the government agency and it's all
6 such time as that renewal is approved or denied.
7 Yeah, that makes sense. The ball is in your
8 court. We've done, as a business man or woman,
9 everything that we're required to do. We've given
10 you the renewal. Whether it takes you two days or
11 two years to do the renewal we should be deemed
12 licensed during that period of time. These op
13 letters as Council Member Koppell correctly
14 pointed out, are not being issued because you have
15 a problem. They're being issued because it takes
16 six months or more to do your consent renewal and
17 you're filing it at the time your license is
18 expired. Everybody who files a renewal has to
19 have an op letter, even if they are 100 percent in
20 compliance. And what happens is these op letters
21 that are issued 60 and 90 days at a time when
22 renewals are not taking 90 days. I never seen a
23 renewal take 90 days in the last decade, when
24 they're taking six months or eight months, you
25 know, and in closed café's could take a full two

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2 years. I'm just starting a renewal on an enclosed
3 café where our license renewal from two years ago
4 was just issued last week. It's absurd. So what
5 you have is these 60 and 90 day letters constantly
6 needing to be renewed. Sometimes it's, you know,
7 they get to it and some times they don't. like I
8 said, they're overwhelmed. Sometimes the business
9 owner screws up and doesn't get to it. Sometimes
10 an annual document like an insurance certificate
11 expires during one of those 60 and 90 days and
12 they're not aware of it. So, you get this gotcha
13 find of unlicensed activity. I would like to know
14 of the 200 in 2012, the 217 violations issued for
15 unlicensed sidewalk café. And the 28 of those 217
16 that they sealed the restaurants, how many of
17 those were truly bad guys, truly unlicensed
18 sidewalk café's, as opposed to how many of them
19 were people who had renewals pending that got
20 caught up with this op letter expiring. Because I
21 don't think when you gave them the authority ten
22 years ago to go after the bad guys who twice
23 ignore the law by putting table and chairs out
24 there with no license that you could padlock the
25 restaurant. I don't think you intended to have

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2 them padlock licensed restaurateurs who do have a
3 sidewalk café license and have a current renewal
4 pending. But, and maybe you're late on paying a
5 fee, I mean, the penalty for being late on paying a
6 a fee should be a late payment, a late fee. It
7 shouldn't be shut down your restaurant for three
8 or four days and put a lot of people out of work,
9 which has just happened. So, I think this bill
10 really corrects that situation in a very, very
11 positive way. These changes also free up, like I
12 said, personnel at DCA to process applications
13 faster and more carefully and have time to go
14 after the bad operators 'cause they're not going
15 to be handling renewals, you know, as frequently
16 and they don't have to worry about these op
17 letters. Finally, these bills will allow
18 applications where there is no opposition or
19 little opposition to the café applications and
20 will move faster by allowing DCA and by allowing
21 the Mayor's office to waive their commentary.
22 Right now you could have a non controversial
23 application, you know, business, has the
24 misfortune of going into business in New York City
25 or a restaurant in March or April. There is no

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2 way to get a café to approve you for a season. It
3 takes at least four months to get a new license
4 approved. Even if the community board is
5 welcoming them and the Council Member is welcoming
6 them, you guys can't waive your own mandatory
7 comment periods, that's silly. You know, you
8 should, each of you, every step of the way, the
9 Council as well, should have the opportunity of
10 the Council Member to say, I checked with my
11 community board, they had no opposition here,
12 they're beautiful application. We'll waive, I'm
13 waiving my 20 day comment period too. We waive
14 all these comment periods on non controversial
15 applications we might be able to get people
16 licensed, you know, as quickly as a couple months,
17 which is more taxes and, you know, more
18 employment. Now, there is one thing in the bill
19 that at the, I don't agree with and I've promised
20 my good friends at the community boards who we do
21 work closely with who are here today that I would
22 mention, we don't think the 45 day comment period
23 with the community board is a problem. They move
24 very quickly. The only meet once a month, we're
25 not looking to slip in an application issued in

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2 between one of their monthly meetings, that's not
3 the goal of good operators. So, I don't think we
4 need, we could save time these other ways, I think
5 we don't need to move that to 30 days. I think we
6 could keep it at 45 days. And as a matter of
7 fact, I think these bills will encourage operators
8 to work with their community board 'cause now they
9 have something to offer them. They say, we come
10 to an agreement and we're going to recommend a lot
11 of waivers, you know, and you can get a license
12 faster. So, I think it's actually a win win, you
13 know, for everyone. And other than that I would
14 be happy to answer questions. [laughter]
15 [background noise]

16 MR. ANDREW RIGIE: Good afternoon,
17 Mr. Chair, Mr. Chair, Council Members. My name is
18 Andrew Rigie. I am the Executive Director of the
19 New York City Hospitality Alliance in which Mr.
20 Bookman is our legislative counsel. We are a
21 broad based membership association here in New
22 York City representing restaurants, nightlife
23 venues, destination hotels and industry suppliers.
24 We've been very happy, the Alliance, you know, in
25 the past to work with the Council Members here,

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2 the Regulatory Reform Panel and the administration
3 on many pro business regulatory reform bills. And
4 these three bills absolutely fit that definition.
5 The first one, Intro 875, as Council Member
6 Garodnick calls it the brunch bill, just makes
7 sense. New Yorkers love to brunch. Many years
8 ago I used to, you know, go to sleep a little bit
9 later, wake up a little bit later, so I never
10 thought that I'd go to brunch before noon on a
11 Sunday. However, recently that's changed and now
12 I can't wait to go to brunch at 10:00 or 11:00
13 a.m. on a Sunday and enjoy New York City sidewalk
14 café's, people watch and do everything that, you
15 know, diners and New York City love to do. And
16 this bill will allow that and not only will it
17 allow diners to enjoy themselves it'll really help
18 the small business owner. The restaurant industry
19 is a very low profit margin industry and any
20 additional hours of operation, especially on a
21 sidewalk café will really enhance the ability of
22 the restaurant to generate much needed revenue
23 which creates more jobs, tax revenue and helps our
24 small businesses succeed. So, we are in support
25 of that bill. The second is Intro 876-A which is

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2 in relation to the operations of the sidewalk
3 café. This bill will really just close a loophole
4 that's allowed consumer affairs to treat the
5 sidewalk café licensee who has a timely and
6 completed renewal file as if they are operating an
7 unlicensed café. This obviously subjects them to
8 fines and penalties and this bill seems to address
9 that by extending the revocable consent to four
10 years, again, it'll give business owner who's
11 already busy enough more time to be in compliance
12 and has been discussed here, allows the whole
13 process to move forward in a more streamlined
14 manner to get the proper renewal and not penalize,
15 you know, honest hardworking business owners. The
16 last bill which I believe was, that was a number
17 which was Intro 1039 which is in relation to the
18 review and probable process of the petitions which
19 we just addressed which there's another bill,
20 again, we support it. We want to get restaurants
21 open quicker with their sidewalk café's. It's
22 great for the city, it's great for the business
23 and it's really just great for the city as a
24 whole. So, in all, the New York City Hospitality
25 Alliance is glad to continue to work with the

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2 Council, the Administration on these bills and we
3 urge you all to support and pass them. Thank you.

4 CHAIRPERSON GARODNICK: Thank you.

5 MS. NANCY PLAGER: Hi, good
6 afternoon. Thank you very much for holding this
7 hearing. We are very pleased that these are three
8 pro business bills, we feel from the Manhattan
9 Chamber. I have been working very closely, by the
10 way, with all the 2nd Avenue merchants and I
11 probably know more about running a restaurant and
12 café's than I ever thought I would because it is a
13 very special case with the subway construction.
14 It's ten years of construction and upheaval in
15 that area for the businesses there. So, I do want
16 to say to the DCA's defense that their
17 representative who is working in the 2nd Avenue
18 corridor, as every representative for most of the
19 businesses, I mean, most of the City agencies have
20 gone out of their way to really try to be very
21 helpful to the businesses. And it's a very
22 special circumstance with narrowed sidewalks, you
23 know, lots and lots of challenges. So, again, we
24 are very happy to be here today and as you know
25 the restaurants have been faced with increasing

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2 fines from various city agencies, most of which do
3 not endanger workers or diners. The fines are
4 nuisance fines in most cases with posters being on
5 the wrong wall, a light bulb being out in a closet
6 and they just hadn't had a chance to go screw it
7 out, put in a new one and varying fines imposed by
8 different inspectors, for example, one says the
9 sign should be on this wall and he fines the
10 restaurant and the next one comes in and then
11 says, no, the sign should be on that wall. So,
12 it's very, very challenging to these restaurant
13 owners. And again, we're very happy to support
14 these bills today and very thankful to Council
15 Members Garodnick, Reyna and Weprin and their
16 colleagues for listening to the restaurant owners
17 comments and challenges in running their
18 businesses and for trying to do something to ease
19 the pain. We feel the passage of these bills are
20 a step in the right direction, are welcome
21 reforms. Intro 875, extending the hours of
22 operation for sidewalk café's on Sunday's for two
23 hours has obvious benefits for the community, for
24 the workers and for the business owners. Hungry
25 people who would like to eat outside on a nice day

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2 don't have to wait until noon. Workers have a
3 chance to make more money and business owners have
4 a chance to attract more customers, that's what we
5 want. Intro 876-A is a fair move for both city
6 and the restaurants to move the constant renewals
7 from two years to four years. The DCA cannot keep
8 up with the workload as Robin noted and 95 percent
9 of the café's get renewed with no changes or
10 problems anyway. The paperwork and the time it
11 takes is burdensome and making this change is not
12 jeopardizing the health or safety of anyone. Even
13 requiring license renewals every two years is fine
14 as that is just a one page renewal application and
15 Diana, can be done online at this time. But the
16 consent renewal takes six months or more, the
17 average of 95 days we're all, like, where did that
18 come from? Moving the process to four years
19 wasn't good for everyone. In addition, once the
20 business is filed its renewal in a timely fashion
21 it should continue to be treated as a licensed
22 establishment until which time the determination
23 of the application is made by the DCA. The
24 business should not be treated as in limbo and
25 thereby subject to different licensing fines. The

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2 State even handles liqueur license permitting as
3 Robin noted in this fashion. An applicant that
4 files in a timely fashion is considered a licensed
5 business while the State is working on the renewal
6 paperwork. There's no 60, 90 day letters and you
7 got to go, oh, I got to file another. That's
8 ridiculous. A business should not get penalized
9 if they file appropriately and are just waiting
10 for the final determination. And the final bill
11 in this cluster, which is now 1039, makes the
12 application process faster when there is no
13 opposition and allows the DCA and the Mayor and
14 the Council to waive their comment periods, again,
15 speeding up the application process leaning to
16 more jobs which is really of concern to all of us
17 in this city. Quote, burdensome regulations and
18 high regulatory compliance costs are commonly
19 cited as among the business difficulties facing
20 small businesses. According to the National
21 Federation of Independent Businesses and their
22 most recent survey says 21 percent of small
23 businesses list government requirements and red
24 tape as their single most important problem, a
25 larger portion than any other difficulty including

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2 sales. We need in this city to correct that. We
3 ask you to pass these bills easing burdensome
4 paperwork and issues and encouraging restaurant
5 owners to continue to offer great food and service
6 and jobs to our community. Thank you very much.

7 CHAIRPERSON GARODNICK: Thank you.

8 MR. JAMES VERSAKI: Thank you,
9 Council Member Garodnick. To all the Council men
10 and women today, thank you very much, Chair
11 Weprin. My name is James Versaki. I've been
12 asked to speak on behalf of New York State
13 Restaurant Association. And - - question, dare I
14 be brief, I will be, and I'll defer you my written
15 comments on behalf of the Association. Sidewalk
16 café's are a huge source of revenue to the
17 industry, which you all know. We appreciate and
18 the New York State Restaurant Association on
19 behalf of it's almost 5,000 members in New York
20 City encourages you to pass all three of these
21 bills. Obviously, you are aware of, well versed
22 in and understand the need for streamlined renewal
23 processes. Removing obstacles such as these
24 temporary renewal letters is obviously a huge step
25 in the right direction. And the focus should be

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2 being a former regulator myself with the State
3 Attorney General's Office is on smart regulation.
4 Obviously, the ability for the DCA to go after
5 those operators who are very few and far between
6 who don't comply intentionally with these laws,
7 they have full and ample remedies, as you noted,
8 Mr. Garodnick, they have ample remedies available
9 to go after those operators. That being said, the
10 only thing we request today is that you pass these
11 as fast as possible, particularly Intro 875, the
12 brunch bill. The weather is out there and people
13 need this for their business. So, anything you
14 can do to do that, even if you have to decouple
15 these bills would be appreciated. Thank you very
16 much.

17 CHAIRPERSON GARODNICK: Thank you
18 very much to all of you. And it looks like we are
19 good on questions. So, we appreciate your clear
20 testimony and we're going to go to our next panel
21 as we have a number of them. First is Maury
22 Schott [phonetic] of community board two, Bob
23 Gormley [phonetic] community board two, Alvin
24 Burke [phonetic] and I'm sorry, those are both in
25 Manhattan. Alvin Burke of the Brooklyn community

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2 board 14, and Mark Diller [phonetic] of Manhattan
3 community board seven. Welcome, you can go ahead
4 and get started. It's all right [off mic]

5 MR. BOB GORMLEY: All right, thank
6 you. Good afternoon, Chairs Garodnick and Weprin,
7 Council Members. My name is Bob Gormley. I'm the
8 District Manager of Manhattan Community Board Two.
9 I want to thank you for the opportunity to testify
10 today for this important hearing. Manhattan
11 community board tow includes the neighborhoods of
12 Greenwich Village, Hudson Square, Soho, Noho,
13 Little Italy and a portion of Chinatown. Our
14 district has about 230 licensed sidewalk café's.
15 This is approximately 20 percent of all the
16 sidewalk café's in New York City. It's also more
17 than all the sidewalk café's combined in Brooklyn,
18 Queens, the Bronx and Staten Island. I say this
19 to you so you will understand that we have a keen
20 and vested interest in the legislation being
21 considered today. We have been told that the
22 purpose of and intention of this legislation is to
23 make things easier for the food establishments
24 that are applying for and operating sidewalk
25 café's. This is a laudable goal and one that we

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2 all can share. Everyone wants to see our small
3 businesses succeed. Community board two has
4 worked hard to become an evenhanded, honest broker
5 between the businesses that come before our
6 committees that help all the constituents
7 including residents and businesses which are
8 impacted by newcomers to our neighborhoods.

9 However, streamlining the process at the expense
10 of input by the public through the community
11 boards is not the way to accomplish this goal.

12 While the rest of them are good proposals in this
13 package there are a few items that simply must be
14 reconsidered. First, Intro 1029 which amends the
15 approval process for sidewalk café's is, frankly,
16 ill conceived and harmful to public participation
17 in the sidewalk café approval process. Most
18 controversially, the legislation would reduce the
19 amount of time a community board has to deal with
20 sidewalk café application from 45 days to 30 days.
21 Currently, the 45 days is barely enough time for a
22 community board to review a sidewalk café
23 application. In fact, in April we received two
24 sidewalk café applications from DCA for which it
25 was too late to place them on our April calendar

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2 for which the 45 days would experience before our
3 May full board meeting. Community boards as you
4 well know operate on a monthly cycle with the full
5 board meeting being the focal point of the month.
6 If the amount of time given to community boards is
7 reduced by one third that would mean that
8 approximately one third of the sidewalk café
9 applications we receive could not be heard in a
10 timely way. The result would be to deny the
11 public both the opportunity to have a dialogue
12 with the applicants and an opportunity to comment
13 on the applications. It is imperative that the
14 Council removes this provision from the bill. We
15 were also opposed to the provision that states the
16 community board be deemed to have waive its public
17 hearing and recommendation on the application if
18 it does not take action within a legal time
19 period. It is especially unfair for the law to
20 make this assumption when the amount of time
21 allotted to the community board is insufficient.
22 Furthermore, section 20-225E and section 20-226B
23 already provide an opprountnity for community board
24 to waive it's public hearing and recommendation
25 should it so intend. Finally, regarding the

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2 provision that would allow DCA to waive its public
3 hearing we would like to remind the Council that
4 under the existing law the DCA public hearing is
5 the only time in the entire sidewalk café
6 application process where a public hearing is
7 required. Eliminating this requirement would be
8 eliminating the only point in the process where
9 the public would be guaranteed an opportunity to
10 comment on an application. Having said that, we
11 recognize that the DCA public hearings under this
12 administration have become virtually useless. The
13 applicants are not required to attend and the
14 public, which is not - - the city record with the
15 fervor of some folks in this room are rarely in
16 attendance. Nonetheless, we fear the granting of
17 the agency the power to waive the public hearing
18 without even giving the reason for a waiver will
19 likely lead to the elimination of all DCA public
20 hearings and sidewalk café's. the second bill,
21 Intro 876, contains provisions which we applaud
22 and others for which we have great concerns.
23 Let's start with the positive. During my seven
24 years of community board two and my previous stint
25 at the Department of Consumer Affairs where I was

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2 the sidewalk café attorney, there have been many,
3 many times when I received a call from a
4 restaurant owner complaining that he or she had
5 been issued a violation because while in the midst
6 of their renewal process its DCA issued operating
7 letter had expired and an inspector appeared to
8 cite them for operating a sidewalk café without a
9 license. This has always been unfair. It is my
10 understanding that, you know, DCA as we know now
11 issues a 90 day operating letter to a restaurant
12 when it applies to renew its sidewalk café,
13 revocable consent. This often has proved
14 inadequate when the renewal process can take
15 months longer than 90 days. The amendment to
16 section 20.227.1 is an absolute and overdue remedy
17 to this problem. Restaurant owners who are acting
18 in accordance with the law will now be protected
19 from these nuisance violations. This intro also
20 contains a provision which would extend the
21 revocable consent quote for a term of no less than
22 four years. currently as you know the term of the
23 consent is two years and runs concurrently with
24 the license and we'll discuss today. Manhattan CB2
25 reviews every sidewalk café application sent to us

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2 by DCA. We feel that two years for a revocable
3 consent is, strikes a fair balance between a
4 restaurant owner interested in a streamlined
5 process and the public's right to comment on an
6 application that seeks to use the public sidewalk.
7 However, there was another compelling reason for
8 leaving the term of a revocable consent of two
9 years assignments. Right now if a restaurant with
10 a sidewalk café consent with the misfortune of
11 going out of business, it can assign the existing
12 consent to the owner of the next restaurant to
13 occupy the space. While the consent remains at
14 two years we know it will not be long before the
15 new restaurant owner must appear before the
16 community board and the public to discuss his or
17 her operation. However, if the consent is four
18 years the amount of time passing before a new
19 restaurant owner must speak to his or her
20 neighbors through the community board forum is too
21 long. Finally, we have some reservations about
22 the language of the provision. By giving DCA the
23 authority to quote, to grant a consent quote for a
24 term of no less than four years, is it the
25 Council's intent to allow a consent to last eight

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2 years or ten years or longer? Regarding the third
3 piece of legislation we recognize that Intro 875,
4 which would allow unenclosed sidewalk café's to
5 open at 10:00 a.m. on Sunday's is popular with
6 restaurants that cater to a Sunday morning brunch
7 crowd. However, so as to balance the interest if
8 restaurants with the interest of residents who
9 might live above the sidewalk café we think the
10 Council should consider linking the earlier
11 opening time with a 10:00 p.m. closing time on
12 Sunday nights for sidewalk café's. As I stated at
13 the outset of my testimony, we thank the committee
14 for holding this important hearing and for giving
15 us an opproutnity to testify. Since sidewalk
16 café's have been a large presence in our district
17 we have an ongoing interest to make the process
18 more accessible for both the businesses applying
19 and for sidewalk café's and the residential and
20 business constituencies that may be impacted by
21 the operation of a sidewalk café. We hope that
22 this is the beginning of a dialogue and we hope
23 that you will give serious consideration to the
24 comments we have made today regarding this
25 legislative package, thank you.

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2 MR. MAURY SCHOTT: Chairperson
3 Garodnick and Chairperson's Garodnick and Weprin
4 and distinguished members of the committee. My
5 name is Maury Schott and I'm the Chair of
6 Community Board Two, Manhattan's sidewalks and
7 street activities committee. Thank you for the
8 opportunity to speak with you today. Mr. Gormley
9 has already spoken to you about our concerns
10 regarding some aspects of the three pieces of
11 legislation currently under consideration but as
12 this is also an oversight hearing on the
13 management and enforcement of sidewalk café's by
14 the Department of Consumer Affairs, and in light
15 of the large number of café's in our district I
16 would like to discuss our experiences with that.
17 Just a few of the issues we continually see
18 include the Department leans heavily on its self
19 certification process for new and revised café
20 plans yet we see no evidence there is any
21 meaningful auditing of the self certifications.
22 Secondly, consistent violations go unchecked
23 despite our continuing efforts to flag them to
24 DCA. They appear to not want to enforce them and
25 we as a community are frustrated in our efforts to

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2 create a level playing field for all operators.
3 Third, when we detail non compliant conditions in
4 our resolutions for renewals we see no evidence
5 that DCA attempts to require that conditions be
6 corrected before renewing a license. Fourth, DCA
7 recently provided community board two with copies
8 of 11 letters sent to restaurants operating café's
9 in violation of their zoning. First, there is no
10 doubt in my mind that the letters were sent only
11 in response to the scheduling of this oversight
12 hearing. And next, each letter began, Manhattan
13 community board two recently challenged the right
14 under zoning laws of several restaurants to
15 operate sidewalk café's. Now, while I find it
16 curious that DCA felt it necessary to pass the
17 buck of enforcement to the board I also find it
18 curious that of those nine letters two were in,
19 two were to restaurants that were not even in
20 community board two, two were to businesses who to
21 our knowledge have not operated café's in at least
22 three years. Three concerned café's in which we
23 have been stonewalled by DCA if for at least six
24 years, one more stonewalled for virtually two
25 years and another's license was renewed even after

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2 DCA had been notified about the zoning issue and
3 had withdrawn it from the Council's oversight.
4 And yet, it was renewed a month later without the
5 Council's approval. Next, community board two
6 recently did our own audit of the sidewalk café's
7 in the district and identified an additional six
8 café's which are in clear violation of zoning
9 based directly on the borough block lot zoning
10 data from the Department of City Planning. As
11 locations for sidewalk café's are allowed, are
12 established in the zoning code it would be
13 relatively easy to include sidewalk café
14 eligibility in the base BBL data at City Planning.
15 This would allow prospective applicants to see
16 before signing leases or at any point whether the
17 property they are interested in can have a
18 sidewalk café. And then also we have an issue
19 with the defunct and closed café's. Some of these
20 enclosures in CB2 have been sitting on public
21 sidewalk use for nothing more than graffiti and
22 other vandalism for two years or more. DCA claims
23 that as they are no longer licensed the Department
24 no longer has any responsibility for them.
25 Property owners now simply market them as part of

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2 their own property. Community board two takes all
3 of these issues very seriously, given the huge
4 number of café's we have in our district we have
5 the responsibility to balance the needs of our
6 small businesses with the quality of life of our
7 residential community. CB2 remains grateful for
8 the cooperation we have often been given by DCA's
9 community relations division but we are concerned
10 about general oversight of café applications,
11 particularly new one, and the small number of non
12 complying renewals and we hope our areas of
13 concern can be more fully addressed in the future.
14 Again, we call for consistency, even handedness,
15 and a level playing field throughout CB2 and the
16 entire city. Thank you.

17 MR. ALVIN BURKE: Thank you Chairs
18 Garodnick and Weprin and Members of the Council.
19 I am Alvin Burke, Chair of Brooklyn Community
20 Board 14, Flatbush and Midwood. Our community is
21 undergoing some of the economic revitalization
22 that's characterizing New York City generally and
23 we're seeing greater restaurant activity and we
24 certainly have the sense that our residents would
25 welcome an increase in the number of sidewalk

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2 café's. So, I'm going to turn to my able
3 colleagues from Manhattan community board two and
4 ask them to tell their restaurateurs that we have
5 a market for sidewalk café's in Flatbush and
6 Midwood in Brooklyn. [off mic] [laughter] Having
7 said that, we do ask that the Council maintain the
8 existing 45 day period for community board review
9 of revocable consent for sidewalk café's. in some
10 cases a truncation of that period to 30 days could
11 absolutely eliminate the ability of the community
12 board to notify community residents and other
13 merchants of the intended sidewalk café and
14 illicit comment to or solicit comment from the
15 community. That's the extent of my testimony. We
16 are, we just are asking that you maintain the 45
17 day period in order to, we feel that there is
18 benefit to the restaurateurs, benefit to the
19 Council Members, and to all parties here to get an
20 early vetting of any problems here and be able to
21 head them off before they become before they come
22 gotchas. That's the whole point. Thank you very
23 much.

24 CHAIRPERSON GARODNICK: Thank you
25 very much. And let me note, we've been joined by

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Council Member Robert Jackson. The floor is yours.

MR. MARK DILLER: Thank you, Chairs and thank you Council Members for this opportunity. My name is Mark Diller. I'm the Chairman of Community Board Seven on the Upper West Side of Manhattan. And since my colleagues on the panel have already made a lot of the arguments that I was going to make I'll jump to just a couple of focal points if I could. One is the reduction from infrequency of renewals from four years, from two years to four. Has the consequence of limiting the ability of community boards as folks who, A, have the greatest on the ground knowledge of the block by block conditions of our district rivaled only by our Council Members in terms of people who actually know what's going on in our districts, and our ability to be heard and understood. If you, so a reduction in frequency would mean a reduction in our opportunity to rope in those few operators who are consistently non compliant. Most of them are compliant and our end of the renewal process doesn't materially affect that and I agree with

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2 the panel that two years is a good balance. But
3 one of the things that we're able to do without
4 involving violations, without involving undue
5 process is to remonstrate with operators who from
6 time to time have issues with conforming to their
7 license and their permit and we are able to do
8 that and get their attention when their renewal is
9 coming up. So, lengthening that period means that
10 you are eliminating our ability as retail
11 purveyors of the sidewalk realm to have it, to
12 make a difference there. With respect to the 45
13 days, I think the argument has been adequately
14 made except that I will note that because of the
15 way in which the applications come in reducing by
16 one third our time to review the applications
17 isn't just the one third app but elimination of it
18 in many cases it would be 100 percent because our,
19 because the timing is such that we would not have
20 a full board. This happens to us all the time, by
21 the way, at the Landmarks Preservation Commission.
22 I know that's not this hearing but lots of times
23 when you go to them with simply a committee action
24 it does not have the proper weight and it doesn't
25 give our full board colleagues the opportunity to

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2 perhaps weigh in contrary to the very pro business
3 folks that find themselves on my Business and
4 Consumer Repairs committee who are rightfully
5 prone to want to grant applications and encourage
6 small business. So, that our balance is at the
7 risk of the matter. We visit every single site
8 that is up for consideration by our board. And we
9 do the zoning review on every single site. So, we
10 are the error trap and if you shorten the time
11 from 45 to 30 days you will unwittingly eliminate
12 that error trap and it appears that we may be the
13 only one. Finally, I'll make, I'll kind of
14 briefly about the enclosed café's, we have one in
15 our district that just came down after five years
16 of inactivity, four of the five years of
17 inactivity, it actually was a WAMU Bank. And then
18 when WAMU went defunct it just sat there. So,
19 some ability to reform the process with respect to
20 defunct outdoor café's is essential to a reform
21 movement. I know that's the next bill but
22 something that I commend to your attention. So,
23 please don't take away our ability to hold the
24 feet to the fire of those who need our little
25 extra nudge, especially informal process that

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2 enables us to eliminate violations, eliminate fees
3 and still get compliance. Thanks very much.

4 CHAIRPERSON GARODNICK: Thank you.

5 Let me just, one comment and then maybe a couple
6 quick questions. First, I wanted to thank Mr.
7 Gormley for a couple points that I think are worth
8 our considering on the bill, one about the
9 business that goes out of business and has the
10 opportunity to assign the right to the sidewalk
11 café. That's an important point and one which I
12 think that we need to take a look at. And also,
13 the term of the specific language in the bill of
14 for no less than four years was not intended to be
15 an unlimited opportunity it was just intended to
16 be something slightly more than a four years so
17 that they were not precisely on the same track.
18 But I think those are very good suggestions. Now,
19 let me just go to the most recent comment about
20 four versus two. I hear that point and I'm
21 sensitive to it and concerned about it too.
22 Obviously what we're trying to do is eliminate the
23 situation where everything is operating in a
24 temporary basis which I think is bad for
25 everybody. We're certainly not looking to do

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2 anything which would inhibit a community boards
3 ability to weigh in substantively, especially
4 since it is so clear that the community board and
5 I would say the Council when there is a call up is
6 doing the lion's share of the work here. My only
7 question for you is this. If DCA were in fact,
8 and we can accept that maybe this is contrary to
9 that, were doing aggressive enforcement against
10 those areas in which community boards were raising
11 the concerns and asking them to take a look and
12 to, you know, to actually act when requested.
13 Would this be as important an issue of four versus
14 two?

15 MR. GORMLEY: May I? I believe it
16 would, and I believe it would for a couple of
17 reasons. One of which is that they just told you
18 that they don't enforce anything that we do and
19 they don't enforce anything that you do. So, as a
20 practical matter you

21 CHAIRPERSON GARODNICK:
22 [interposing] I got it. I was asking you to just
23 suspend your disbelief for a moment. But I - - .

24 MR. GORMLEY: I have a second
25 answer.

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CHAIRPERSON GARODNICK: Yeah.

MR. GORMLEY: The other answer is, and it goes back to what I was trying to articulate to say about our ability to negotiate and remonstrate with folks who probably aren't intending to violate but end up violating, and I'll spare you the for instances. But lots of times we only get their attention when their renewal is coming up and if it's four years out the new operator may not even know what a community board is and by the time that we convince them that we are indeed relevant to their lives problems have persisted from a time that will address the issue that small businesses are rightly concerned about, about small businesses being the backstop to the budget for all these fees and fines that they're being charged. I think that's relevant to the consideration.

CHAIRPERSON GARODNICK: Okay, thank you. That's very helpful. And the last question from me is the notion that it could be a problem to include in any language of a bill, and I'm specifically referring to Council Member Reyna's

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2 bill, to have a waiver of a public hearing if the
3 community board does not act. Assuming that the
4 date were 45 days, the timeframe were 45 days, is
5 it unreasonable to assume that a community board
6 has waived its interest in hearing the application
7 in 45 days. 45 days, now I'm not talking about 30
8 days, has come and gone? Or was that issue really
9 specifically to the 30 day language that's
10 currently in the book?

11 MALE VOICE 2: No, we would still,
12 I'm sorry, we would still have some applications
13 that we would not get to, it would be a matter of
14 a few days in most cases. And as Bob pointed out,
15 we still have the option now under current law to
16 waive our comments if we want to. The, what we
17 see the difference in the bill is that the bill
18 essentially assumes that if we miss the time
19 period, whether it's 30 days or 45 days, even by a
20 day, that we have automatically waived our
21 comments on the application.

22 MALE VOICE 3: If I could add to
23 that. Here is a real life scenario that is a
24 problem. If an applicant misses their appointment
25 with the community board what we typically do is

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2 enter a resolution to disapprove without prejudice
3 to their coming back at the next one. But the
4 timing of DCA may make that impossible. So, if we
5 have been deemed to have waived our ability to
6 hear the application we don't even have the
7 opportunity for somebody who just screws up his
8 calendar to be heard and corporately evaluated.
9 So, we put those two things together and the only
10 way that we can address that now is if they
11 withdraw their application and refile which means
12 that they have to pay another fee. We don't think
13 that's fair either. So, on balance better we
14 should not be deemed to have waived and give the
15 applicant the opproutnity to come back then to
16 make them file a second fee.

17 MR. GORMLEY: I have one word,
18 amen.

19 CHAIRPERSON GARODNICK: Very good,
20 well done. Council Member Reyna?

21 COUNCIL MEMBER REYNA: So that if,
22 in order to prevent for the applicant to pay a
23 second time you give the option to come back and
24 that allows them not to start over again.

25 MR. BURKE: That's correct.

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2 COUNCIL MEMBER REYNA: But that can
3 be done, that has happened currently under the 45
4 days?

5 MR. BURKE: When we are, yes it has
6 and we are, when we are deemed not to have waived
7 our rights we can grant that opportunity to the
8 applicant whereas if we would be waiving our
9 rights by not hearing it it would not.

10 COUNCIL MEMBER REYNA: And I just
11 wanted to make sure that I have a full
12 understanding. This is a rule within your bylaws
13 as a community board across the board or is this
14 just your community board?

15 MR. BURKE: I'm not sure I
16 understand the question.

17 COUNCIL MEMBER REYNA: Is this
18 particular act as far as allowing for an applicant
19 to be deemed, the opportunity to come back failure
20 of not being able to respond within the timeframe
21 given? That the community board all operate this
22 way or is it just your own?

23 MR. BURKE: I think, I don't think
24 it's a matter of community board bylaws. I think
25 the reality is that DCA has a timetable and we are

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2 on it. And if we do not act within the timeframe
3 our only other option as a community board, I'm
4 pretty sure this is for all of us, is to actually
5 disapprove it.

6

COUNCIL MEMBER REYNA: Right.

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8 MR. BURKE: And say no under all
9 circumstances and we don't want to do that
10 because, no, because A, DCA will grant it anyway.
[laughter]

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COUNCIL MEMBER REYNA: I was just
12 about to...

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14 MR. BURKE: And B, because it
15 eliminates our ability to make it better. And
16 that's what we're out, that's what, we're not here
17 to say no undermost circumstances, under 99.99 out
18 of 100 times. We're here to make it better if
there's something that can be saved in it.

19

COUNCIL MEMBER REYNA: Right, but
20 under the 30 day you still have the same function
21 or you're saying you don't have the same function?

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23 MR. BURKE: Under the 30 day rule
24 we wouldn't, almost all of the applications would
25 not make it to our full board and therefore we
would have no opportunity as a board to comment at

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all.

COUNCIL MEMBER REYNA: Whether that's disapproving or approving?

MR. BURKE: Correct. We would simply have no voice. And since community board's exist to be the voice of our community that would be something of a shame, especially when most of the time amicably we make it better for everybody, including the operator.

COUNCIL MEMBER REYNA: And Mr. Burke, you know, be careful what you wish for as far as sidewalk café's. There was a time when no one was opening sidewalk café's in my neighborhood, Williamsburg, and today it's, you know, becoming a nightmare. And I learned from our community board number two in Manhattan as to what I have to look out for. So, they're great teachers. Hopefully you are able to learn the ropes through them. As far as the issue concerning sidewalk café's in the sense of how long does DCA send the application to the community board in respect to a timeline according to their chart, they claim it takes up to five days.

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2 MR. BURKE: That's right. The law
3 requires something gets to the community boards
4 within five days and they do a very good job of
5 doing that. That's not been a problem.

6 COUNCIL MEMBER REYNA: Do you agree
7 that they have no room to give up there?

8 MR. BURKE: I don't think so. I
9 think that five days is a pretty short turn around
10 time for when an application comes in.

11 COUNCIL MEMBER REYNA: And it
12 actually does take five days or does it take
13 longer?

14 MR. BURKE: In my--

15 COUNCIL MEMBER REYNA:
16 [interposing] Or have you ever reviewed when the
17 applicant--

18 MR. BURKE: --and to my knowledge
19 and experience it rarely, rarely takes longer than
20 that. They're very good about getting to us very
21 quickly.

22 COUNCIL MEMBER REYNA: Okay.

23 MR. BURKE: The community boards
24 review consists of notifying concerned community
25 residents and merchants of the intended

1 application. And allowing them an opportunity to
2 be heard on it. It's for that reason that the 45
3 days is used to

4 COUNCIL MEMBER REYNA:

5 [interposing] No, I'm not referring to the 45
6 days. I mean, I am referring

7 MR. BURKE: [interposing] The five
8 day period.

9 COUNCIL MEMBER REYNA: --I am
10 referring to the five days

11 MR. BURKE: [interposing] We've had
12 so few applications at board 14 that I can't
13 comment on it.

14 COUNCIL MEMBER REYNA: Fantastic.
15 The issue of up to five days, application at DCA,
16 does it take essentially five days for it to get
17 to, on the fifth day it's already at the community
18 board for the most part?

19 MR. BURKE: Yes, mm-hmm.

20 COUNCIL MEMBER REYNA: And then you
21 as a community board have up to 45 days, sometimes
22 even more than that is necessary, but you have
23 your own opportunities to disapprove and or give
24 the opproutnity for it to be heard later? And
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2 then you return that application with comments to
3 DCA?

4 MR. GORMLEY: Well, keep in mind
5 that with the, even with the 45 days if the
6 applicant tends, happens to miss the committee
7 hearing we would do the rejection, you know, as
8 they do. But the process then goes on at DCA and
9 we may hear it the next month, typically we don't
10 because DCA has already moving the application on.
11 We will attempt to address any issues when it
12 comes to the City Council. So, - - .

13 COUNCIL MEMBER REYNA: So, you
14 still have a second opportunity is what I'm trying
15 to

16 MR. GORMLEY: [interposing] It's
17 not really a second opportunity. It's a work
18 around but it's not really within the process.

19 COUNCIL MEMBER REYNA: Within the
20 process as in the City Council is not within the
21 process?

22 MR. GORMLEY: Well, I mean, our
23 comments to DCA are not within the process. At 45
24 days we would get within the 45 days even with as
25 many as we have, I would say 98 percent of the

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2 time. With 30 days we would get within that time
3 maybe 20 or 30 percent of the time.

4 MR. GORMLEY: If I may also, the
5 Council is a wonderful backstop to make sure that
6 we're paying attention to, but if we relied on the
7 Council to have to take up all the applications
8 that either gamesmanship or neglect get caught in
9 the trap.

10 COUNCIL MEMBER REYNA: Sure.

11 MR. GORMLEY: You would be doing an
12 awful lot of, even some that are not
13 controversial. I think the appropriate role for
14 the Council here is when the parties are unable to
15 map out an appropriate solution then it's great to
16 have the Council have the back of a community on
17 that. But to make you the front line on that
18 would be not a great use of your time.

19 COUNCIL MEMBER REYNA: And I can
20 understand that sentiment. I do it now with every
21 sidewalk café application to set a tone and
22 culture that is not what I consider to be healthy
23 for anyone. But I just wanted to understand
24 exactly what were the realistic days that it takes
25 for DCA to begin the process when they stamp, you

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2 know, what would be the beginning timestamp of
3 that timeline before it gets to you? Is it really
4 five days or is it 15 days?

5 MR. GORMLEY: It's always five.
6 It's always been five days.

7 COUNCIL MEMBER REYNA: Okay. Thank
8 you.

9 CHAIRPERSON GARODNICK: Thank you
10 Council Member Reyna and before I call the next
11 panel I just want one quick assessment from you
12 gentlemen about the number of or the percentage of
13 sidewalk café's for which you think there would be
14 a necessity to have a review every two years as
15 opposed to four years based on that fact that the
16 community board feels like there's a need for an
17 extra review. So, let's say we were to, you know,
18 make this change and do a four year revocable
19 consent? In your minds, what percentage of
20 sidewalk café's in your various areas do you think
21 it would be beneficial or important for you to
22 have additional community board or a Council
23 review in a shorter period? It could be 100
24 percent of them but I expect it's probably
25 something less than that, maybe it's a much

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2 smaller percentage. But give us a sense 'cause
3 it's important to the fact for us.

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MR. BURKE: I don't know if I can
5 answer the question but I'll say this. Most of
6 our restaurants operate their sidewalk café's
7 essentially within the law and we don't have
8 problems with them. However, I think
9 philosophically extending it to four years, you
10 kind of deprive, either making it less of an
11 opportunity for the public to kind of weigh in,
12 'cause we don't--

13

CHAIRPERSON GARODNICK:

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[interposing] I got it. The reason I'm asking is
15 because, look, this is a proposal, right? And the
16 point of the hearing here is for us to understand
17 from you guys with your experience as to, you
18 know, if we would work to inject additional
19 process and procedure here which would allow for
20 Council or community board to get their hooks into
21 an application process sooner than four years.
22 You know, that could all be part of this. What
23 percentage of them do you think would be, is this
24 a small number? 'Cause you said that maybe the
25 vast majority are operating consistently with the

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2 law and no issues. So, is this a, if you can't do
3 a percentage give us a sense through your
4 descriptions, is it a relatively small number? Is
5 it a marginal number? Is it, like, how would you
6 describe it?

7 MR. GORMLEY: I'd say to one degree
8 or another, and we may be talking a small degree,
9 but to one degree or another I would say, I would
10 like to see at least 70 percent of our operators
11 every two years, at least 70 percent. And many
12 that is for small things. But I say that in great
13 part because the first thing that I learned when I
14 took over this committee is that dealing with DCA
15 through this process is a perfect example of if
16 you want something done right do it yourself.
17 Okay?

18 CHAIRPERSON GARODNICK: Thanks.

19 MR. SCHOTT: I'm going to defer to
20 the - - .

21 MR. DILLER: Fair enough. I'll say
22 about 50 percent of the unenclosed and 100 percent
23 of the enclosed and I think that number would go
24 up if the, if they were, I'm sorry, that number
25 would go down if the ability to passing to a new

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2 operator when you change hands of the business
3 were eliminated but you won't make any friends in
4 the restaurant industry if you put that in your
5 bill.

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CHAIRPERSON GARODNICK: Okay.

7 Thank you very much and thanks to the panel. I'm
8 going to call the next group which includes Susan
9 Stetzer [phonetic], Sondra Shirad [phonetic] so,
10 Susan is from community board three in Manhattan,
11 Sondra Shirad in community board six in Manhattan,
12 my home community board. Evan Lascher [phonetic]
13 from Manhattan community board one and Schlomo
14 Wygoda [phonetic] of SWA Architects. Susan, go
15 right ahead since you're ready.

16

MS. SUSAN STETZER: Yeah. My name
17 is Susan Stetzer. I'm District Manager for
18 community board three and testifying for the board
19 and I thank you for this opportunity. I think the
20 30 to 45 day issue is so important I am going to
21 briefly comment on it. Community board three
22 opposes the amendment to the timeline for
23 community boards to review sidewalk café
24 applications from 45 days to 30 days. And my
25 testimony actually has a resolution on the back.

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2 As we are all aware community boards have monthly
3 cycles of meetings and must comply with the open
4 meeting law. I won't go through the details of
5 our schedule but the open meeting law requires one
6 week notice before the first meeting. So, the
7 schedule that, our posted schedule with the
8 sidewalk cafes is actually a week before. So,
9 that is five weeks right there. Community boards
10 were created to provide a structure for community
11 participation and local planning decisions. So,
12 it is clear to have, is important to have a clear
13 description of the agenda items. Community
14 participation is the only way to ensure that a
15 method of operation is appropriate for specific
16 location. 30 day schedules essentially eliminate
17 community board hearings. We support streamlining
18 procedures and lowering expenses for small
19 businesses but it's not necessary to do so at the
20 expense of the larger community. The amendment
21 would remove the community board from the process.
22 As far as the DCA hearings we've never attended a
23 DCA hearing. We think they're useless so
24 eliminating this would not impact us. City
25 Council hearings are only on rare occasions, we

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2 only go to City Council hearings on the rare
3 occasion there's a problem that cannot be
4 resolved. So, therefore, waiving this hearing
5 when there is support from the Community Board
6 would not have a negative impact on us. And it
7 might even be an incentive for applicants to come
8 to agreement with community boards. I would like
9 to make two further suggestions, one is to, one
10 would streamline the procedure and one would
11 memorialize the agreements. DCA, this has been
12 discussed before. DCA does not check plans,
13 rezoning or any other compliance before
14 transmitting to a community board. Identifying
15 problems at an early stage would be beneficial to
16 all. The applicant would save time and money. I
17 don't even think, I don't think DCA understands
18 the zoning issues, I really don't because there's
19 so many very easy and clear mistakes. One
20 suggestion I had for DCA is just to put on their
21 application what is the zoning and then if they
22 see an R there they know there's something wrong.
23 It's that easy and they won't do it. When I
24 became, okay, this is really important, when I
25 became District Manager in 2004, DCA did write

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2 agreements with the community boards into the
3 contract. Now they will show revised plans with
4 modifications of design but not hours. The way
5 the, hours, were memorialized before and this is
6 when Bob Gormley was actually a staff person
7 there, he would change the contract and to show
8 the revised hours. He would send us the Law
9 Department. The Law Department always approved
10 it. Why can't we do it? It was done before, why
11 can't we do it now? Because there is no way. we
12 talk about, it is up to the community board to
13 enforce, how do we enforce? Okay, so it's a
14 really easy situations. I think it would be less
15 work for everybody in the world if licenses were
16 online. I don't understand why this is the only
17 agency where you can't look up and see if there's
18 a license. We all, I think everybody acknowledges
19 that the Community Board is vital. We shouldn't
20 be so vital but because we are, you know, it's
21 essential that we have time to really review the
22 licenses. And I want to say the DCA Community
23 Relations Division is excellent and responsive but
24 I think it pretty much stops there.

25 MR. SONDRAD SHIRAD: Good afternoon

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2 Mr. Chairman, Garodnick and Weprin. My name is
3 Sondra Shirad. I am, I have the privilege of
4 being the Chair of Manhattan Community Board Six.
5 And I'm here today to speak against 1039 because I
6 find it unsettling and its effect that it would
7 have on the ability for public comments to be
8 recorded whether in favor or against for petitions
9 of revocable consent to operate a sidewalk café in
10 this city. As you know, section 2,801 as you may
11 know, section 8,201 of the New York City Charter
12 requires determinations of a community board be
13 done by the majority of its membership. Today I
14 stand before, sit before you without a resolution
15 from our board as this legislation was actually
16 brought to our attention about 12 days ago. While
17 it has been discussed in the boards committee
18 where the resolution was unanimously opposing it
19 passed. Now it awaits a debate and actual vote
20 before the full body to, at tomorrow's meeting.
21 And it is because of this haste that this
22 introduction seeks to permanently add to the
23 administrative code that I cannot provide you with
24 a resolution today. I point this out as it
25 clearly demonstrates how if my community board

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2 were to receive a petition for a sidewalk café,
3 say this coming Thursday, May 9th, and the changes
4 to the boards response period as this introduction
5 seeks to do were enforced it would then be
6 impossible for us to submit a recommendation in
7 writing prior to the expiration of the 30 day
8 limitation. Since the next monthly meeting would
9 actually occur on the 12th and that would be 35
10 days after the petition was received. The, that
11 would exceed the reduced response time like it
12 would in seven of the 12 months that have more
13 than 30 days in them. In fact, through no fault
14 of the board we would have been deemed to have
15 waived our public hearing on recommendation on
16 such petition effectively upon receipt of the
17 petition. While I agree it might be desirable for
18 those seeking to open a sidewalk café to have
19 their petitions reviewed and processed in a timely
20 manner such need for expediency should not trump
21 the option for public comment or prevent community
22 boards from functioning in their chartered
23 mandated roles. So, I wanted to implore the
24 Committee to reject or reject 1039 or amend it to
25 actually, perhaps some of the comments that were

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2 suggested by the Deputy Commissioner earlier from,
3 it seems, that the possible amendments that the
4 community, the Committee's should consider, should
5 include streamlining the way for the modifications
6 agreed to by the Community Boards and actually
7 properly incorporating them into the final
8 petition, the final document that's issued. So, I
9 just want to close with thanking the Committee for
10 the opportunity to speak before you.

11 MR. EVAN LASCHER: Hi there. Good
12 afternoon, Chairman Garodnick and Members of the
13 Consumer Affairs Committee and Zoning and
14 Franchising Subcommittee. I am Evan Lascher,
15 Community Liaison, Manhattan Community Board One,
16 consisting of the Financial District, Bowery Park
17 City, Tribeca, South Street Seaport and the Civic
18 Center area and where we are presently. Thank you
19 for the opportunity to comment on the proposed
20 amendment to the Administrative Code of the City
21 of New York in relation to sidewalk café's.
22 Community board one addressed 26 sidewalk café's
23 in 2012 which brings us roughly to 52 sidewalk
24 café's within our district. I will skip over the
25 comment on the 30 day review period proposal as

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2 our community board is in line with what has been
3 mentioned already from the previous community
4 board testimonies. I would like though to refer
5 to my testimony regarding the revocable consent
6 period and the proposal for the four year term
7 because we actually slightly difference of opinion
8 there. Extending the duration of the revocable
9 consent permit from two to four years would
10 severely limit the community boards ability to
11 monitor a newly licensed sidewalk café. The first
12 renewal application for a newly issued sidewalk
13 café license provides a forum to discuss the
14 operations of the sidewalk café and address any
15 impacts on the quality of life of neighbors.
16 Delaying this initial review by an additional two
17 years would be detrimental to residents as well as
18 establishments who sometimes use renewals as an
19 opportunity to increase the numbers of tables and
20 chairs. And having community board one request
21 that the Committee retain the two year duration of
22 revocable consent permits for new license can only
23 extend it to four years after the first renewal.
24 Additionally, I would also like to comment as this
25 was actually not prepared in my testimony that it

1
2 was a little disconcerting to hear that DCA
3 actually does not monitor hours established
4 between the City Council or community board or the
5 applicant through the whole consent. This is
6 actually new news to me and news to my community
7 board and we have been spending countless hours
8 negotiating a sidewalk café hours with the
9 applicant and we were just informed today that
10 that in fact was not monitored. So, I just wanted
11 to comment on that too which is not in my
12 testimony. Anyways, I'm open to questions and I
13 appreciate the opportunity to comment. Thank you.
14 [off mic]

15 MR. SCHLOMO STEVE WAYGODA: Thank
16 you. My name is Schlomo Steve Waygoda. I think
17 this year it'll be 40 years that I've been doing
18 these sidewalk café's. I think I'm about close to
19 600 of them in New York City but I'm going to be
20 careful, humble, and respectful because I'm in
21 front of all of you all the time. So, I'm going
22 to choose my words carefully. Having said that,
23 I've had a lot of time to think about sidewalk
24 café's, obviously. The brunch issue, I think it's
25 a no brainer. It seems to make a whole lot of

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2 sense, open up at 10:00. I get up earlier on
3 Sundays, open it up earlier. I'd go eat, you
4 know? I'm okay with that. 876-A, extending to
5 four years. and I want to preface this by saying
6 that my office does renewals and we change money
7 to do renewals so obviously it behooves me to have
8 it every two years. But that's not the reason why
9 I'm going to take that position. I feel strongly
10 that the community boards have that opportunity
11 and I've been to hundreds of these meetings, have
12 that opportunity to really work a deal out with
13 the restaurateur at that time. And the
14 restaurateur knowing that in two years they're
15 coming back. They're not going to play around,
16 they're not going to do anything different, that's
17 number one. Number two is within that two year
18 period we've seen a lot of turn over's in the
19 restaurant so somebody else will come in and sign
20 it and there's a three year lapse. If it goes to
21 four years, a three year lapse. I think you, the
22 communication, the intent of having a good
23 neighbor with the restaurant, the community the
24 residents above and all should constantly be
25 happening and the more the merrier, the more

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2 frequently the merrier. So, I'm very much in
3 favor of that. However, the issue of keeping it
4 two years and I remember in 2004 I had written a
5 letter to Mayor Bloomberg to complain about the
6 length of the process when it was going to six to
7 eight months and so on. And then the Mayor
8 contacted our office and asked us to form a
9 committee and the Commissioner at that time, I
10 forget her name, she moved on. And we created a
11 committee, the Fire Department, Building
12 Department, us, and all, and so on. And some good
13 things came out, five years became two years.
14 small sidewalk café, very, very important aspect
15 for New York City. It's a wonderful idea. It was
16 created by the Department of City Planning, give
17 them, and actually who's now the Chair of the BSA
18 was leading that front and, of course, the Chair
19 of City Planning was on that. I have a few items
20 to talk about separate from the bill about those
21 kind of issues at the very end of what I'm about
22 to say. The problem before you is in two years
23 not, is about these operating letters. And we are
24 very frustrated in our office because we get
25 frantic calls from operators saying, you know,

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2 there's an inspector here, where's my letter?
3 Well, get on the subway, go down there, pick up
4 the letter. It's crazy. It's really crazy. It's
5 not, it's really not the way to conduct life, you
6 know? So, four years to two years is not the way
7 to solve the operating letter issue. There's got
8 to be a different solution to solve the operating
9 letter issue, the continuance of, you know,
10 letting somebody operate legally whose intentions
11 are right. You got to be careful with the
12 insurance. That's got to be active because you
13 can't have an operator in there without insurance.
14 So, that has to be, you know, addressed and
15 thought about. So, I'm very much in favor of
16 keeping the two year only because it gives
17 everybody, the entire, everybody that's involved
18 with the outdoor café's the opportunity to speak
19 and to be heard. 1039, the review and approval
20 process. I have sent Mayor Bloomberg a letter
21 recently and got a response. My idea was we
22 charted out the whole process 'cause we've been
23 doing this for a long time. I got a response that
24 it was forwarded to the Commissioner Mintz and
25 that they thanked me for the idea. The idea is

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2 simple, it's like, let the community board have
3 their hearing, 45 days, absolutely 45 days, okay?
4 However, the 45 days is just a deadline to submit
5 their findings to the DCA who doesn't look at them
6 anyway. So, what's the point, you know? It
7 doesn't, it's useless to even have that kind of
8 thing, you know? Not only do they not look at it
9 but they can't legally adopt it, okay? The
10 strength of the sidewalk café's in New York City
11 is between the community board and the City
12 Council and there's a very good, there's always
13 been a very good relationship with the Council
14 Member and the community board there. They're
15 very, very close communication and I've seen that,
16 we've all seen that here that the community board
17 says, I got a couple of issues, you know, from
18 Mr., Council Member Jackson's issues with the - -
19 Street to everybody's and we get called into the
20 City Council office. And we sit with whichever
21 City Council Member there is. So, this 45 day
22 period is important only in a sense that it gives
23 a community board the proper time to listen to the
24 situation but submitting it to DCA is meaningless
25 'cause it doesn't really do anything, you know?

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2 So, but still, 45 days is good. I would give the
3 community board as much time as they need within
4 reason to work it out, within reason. To allow
5 them to say, well, the applicant is not here, you
6 know, we'd like to hold it over. That's unfair to
7 the applicants because they do have to pay it all
8 over again. So, there should be maybe a tweak to
9 that where, you know, you could have it just
10 legally held over and be heard the next time
11 around but let the process continue. Okay? So,
12 the idea of having the community board approve,
13 whether unanimous, split or deny but then allow
14 the sidewalk café operator to operate. This is
15 kind of similar to when you're 17 years old and
16 you get an interim driver's license, a permit, so
17 to speak, okay? Now, it gets a little complicated
18 but it's something to think about. If you allow
19 them to operate but allow the process to continue
20 to the end, now the operator is saying well, okay,
21 I got the, and by the way, 1981, when I did an
22 application I go to 80 Lafayette at DCA, pay \$85
23 for the applicant, not for me, they give me a
24 little sticker, I go out and put the tables out.
25 That's how it started in the early '80's. So,

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2 something to the effect, it's to everybody's
3 benefit to have the restaurants begin operating,
4 it's employment, it's wages, it's nice, it's
5 outside, it's outdoors, it's green, it's a lot of
6 good things about sidewalk café's. Make it happen
7 quicker. So, allowing this operator to have an
8 interim license legally so, you know, that's been
9 the problem, it has been legal but now there's an
10 opportunity to do that, is a very strong
11 possibility. But if the guy knows or the operator
12 knows that maybe it'll get denied later on because
13 he's not really buying it, you got a little more
14 ability to cooperate with the rules with the
15 community board, with the City Council knowing
16 that potentially he could get denied later on but
17 he has the right to operate, you know? He's kind
18 of on a little trial period but he's in business,
19 45 days, by the way, they're always good on that.
20 They show up in five days, 50 days later you got a
21 license. It's nice, you know? 50 days, it's not
22 even two months. Or, alternatively, wrap it up?
23 Okay, sorry. Alternatively, is to reverse the way
24 for the way you have it in the thing, reverse it
25 so that these, you allow it to happen, okay,

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2 unless there's a problem, okay? Three quick
3 things? Yes? There's a 12 foot rule that has
4 knocked out a lot of sidewalk café's from
5 operating by an inch or two even though they can
6 provide the eight foot clearance you can serve
7 from inside and serve to the sides. Posted plans,
8 the New York City Department of Buildings has the
9 online plans, they have the, you should look into
10 that. You can go online and it's very early,
11 actually, to be scanned process. And the last
12 thing, which was a major thing which I talked
13 about years ago is the residential zones, somebody
14 mentioned that it's our zone. The problem is, you
15 have a lot of these in the outer boroughs, you
16 have a lot of restaurants that are grandfathered.
17 They've been restaurants for 50 years but they're
18 in a residential zone. That's usually a mom and
19 pop operation. It would be really cool if you
20 gave them the opportunity because they're
21 grandfathered, legally of all, the whole thing,
22 give them the opportunity to come and file. Right
23 now they are just denied flat out because the
24 zoning says residential, is not, that's it.

25 MR. EVAN LASCHER: You want to

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submit your manila folder to the panel? It's up to you? [laughter]

CHAIRPERSON GARODNICK: Thank you, thanks very much to all of you. Go ahead, Susan.

MS. STETZER: As far as the grand -
- I'm sorry, as far as the grandfathered space it's actually against the zoning regulation. If you're grandfathered you are not allowed to expand the space.

MR. WAYGODA: Yeah, I know - - .

MS. STETZER: 'Cause you would have to have a zoning text amendment.

MR. WAYGODA: Yeah, that's what I'm talking about. [off mic]

CHAIRPERSON GARODNICK: Thanks everybody.

MR. LASCHER: Quick, can I just say that the 12 foot rule, actually, we've had this issue in the South Street Seaport where some of our businesses were devastated by Hurricane Sandy and they cannot actually open sidewalk café's because they're an inch too short of the 12 feet and the, obviously a sidewalk café would be very beneficial right now for the businesses and the

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2 South Street Seaport. So, I'd just like to add on
3 to that. [off mic] Yeah, Front Street.

4 CHAIRPERSON GARODNICK: Thanks,
5 everyone. Let me call the next panel. I'm
6 actually going to see if everybody is here.
7 Cheryl Smith [phonetic]? Not here. Louis Azolini
8 [phonetic]? Come on up. Robert Minor [phonetic]?
9 Mr. Minor? Stephen, yeah, come on and have a
10 seat, Stephen Belida [phonetic]? Okay, Mr.
11 Belida. David Rosen I saw and I think he left.
12 Kathleen Treat [phonetic]? Kathleen Treat, are
13 you here? [off mic] Oh, she is. [off mic] Good,
14 Miss Treat, come on and join the panel here. And
15 great, and actually, just for my knowledge here,
16 are any of the following people here? Christine,
17 there you go, sorry, I couldn't read your last
18 name, hey, oh - - we got you. Larry Roberts?
19 He's gone. Leslie Johnson [phonetic]? Okay, Ms.
20 Johnson, and John Lynch [phonetic]? Okay, great.
21 You three will be the last panel. Welcome. My
22 one request is that if it has been said
23 repeatedly, repeatedly if you could just make note
24 of it and just move on that at this late hour that
25 would be my one ask. But we do want to hear from

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you, thank you.

MR. LOUIS AZOLINI: Thank you. My name is Louis Azolini and I'm the owner of Paul and Jimmy's Restaurant on East 18th Street in New York. I sent a letter to Mr. Mintz on January 25th. I'd like to read it to you real quick. We reapplied for our sidewalk café license in March of 2012. In 2009 the landlord rescinded his approval due to a lease dispute which increased our rent by 50 percent. We had been waiting for approval since then. The café is an integral part of our business. Without the café is has been extremely difficult for us to stay in business. The café was continuously upgraded from 1989 to 2009. The dispute was settled in October 2011 with the landlord and he immediately gave his approval for the café. Plans were submitted on March 12th. We were approved by the community board on October 2012. We then found out that it needs to be approved by Consumer Affairs due to a zoning change. We are one of a minority of New York City Restaurants that are family owned and operated and are dependent on this approval for our survival. I don't think we can get through

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another summer without it. Is there anything you can do to help us?

Good afternoon, Council Members.
My name's Bob Minor. I'm one of the Co Chairs of HK 5051, a Park Association. We're in Hell's Kitchen, 50, 51st Street between 8th and the River. Agree with most of the stuff that the members of the community boards have said. I'm going to do something I shouldn't do which is kind of lecture my Council Person's. Remember, these community boards are all volunteers. They are all your constituents. They are here saying they don't have influence, they can't get stuff done, cutting them from 45 days to 30 days would be unconscionable. A lot of them are out there working trying to make money to feed their families and pay their taxes. In fact, if it were up to me and I were a Council Person I would extend their time from 45 days to 60 days, to give them the time to do what they want to do, which is protect their communities, protect their quality of life. Councilwoman Reyna, you had mentioned, if I understood you correctly, this is starting to happen in your area. It's happening in our area.

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2 It has apparently already happened in CB2's area.
3 The quality of life becomes the all important
4 thing. These neighborhood café's expand out onto
5 our sidewalks. If you want to allow them to start
6 doing this at 10 o'clock in the morning, guess
7 what? Your constituents are going to be listening
8 to whooping and hollering and party time on their
9 streets at 10 o'clock in the morning on a Saturday
10 morning. One of the, a Saturday or a Sunday
11 morning, I'm sorry. One of the components of a
12 brunch as I understand it is generally involves
13 alcoholic beverage, whether you're drinking bloody
14 Mary's or Mimosa's et cetera. If they're serving
15 them inside at least it's confined. If they're
16 serving that kind of alcoholic beverage and
17 understand all these lawyers that preceded us who
18 are on the payroll, they're not volunteers,
19 they're here because they're being paid to be, are
20 looking to amend the laws up in Albany to allow
21 them to serve alcoholic beverage at your sidewalk
22 café's at 10:00 a.m. in the morning, why? Because
23 it's money, it's all about the dollar and that's
24 the bottom line with that. You've got to think
25 ahead of this. You've got to get ahead of the

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2 curve. We, our block association is dealing with
3 it every single day and if it hasn't happened in
4 your neighborhood now is the time, come visit our
5 neighborhood, talk to the block associations, talk
6 to the community boards where it has already
7 happened and find out how to better protect your
8 constituents. I'm sorry for lecturing. Mr.
9 Carper wanted to change the time period for their
10 renewal of their licenses from two years to four.
11 What we've found and I'm going to use an analogy
12 and it's not, maybe not appropriate here. The
13 only time we as a block association and even the
14 community board gets the attention of the bad
15 operators, we're not talking about the good
16 operators, the good operators are good neighbors.
17 They don't want to disturb their neighborhood,
18 they want to have an operation, they want to make
19 money and everybody is happy. But you have the
20 bad operators, the only time that we get their
21 attention that we can go to them and say, hey,
22 you're being a bad operator, is when their license
23 is coming up for renewal. If your not going to
24 renew their license except every four years, guess
25 what? They're going to be bad, bad operators for

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2 three and a half years and then in the last six
3 months they're going to all of a sudden become
4 nice people, good operators, because they know
5 their license is coming up. At least in every two
6 year cycle we get, we the community, your
7 constituents, get a chance to confront these
8 people and say you are being a bad operator by
9 doing this, this and this. If you extend it to
10 four years we lose out on that opportunity. And
11 in finally, in streamlining the process,
12 absolutely no problem streamlining the process,
13 just don't throw the baby out with the bath water.
14 Don't cut the community boards out of the ability
15 to confront these operators and you're being a bad
16 operator, you're ruining our quality of life.
17 Thank you.

18 CHAIRPERSON GARODNICK: Thank you.
19 Go right ahead.

20 Is this on? Hi, I'm Kathleen
21 Treat. I'm Chair of the Hell's Kitchen
22 Neighborhood Association. I'm also a member of
23 our community board four's quality of life, safety
24 committee. The first thing I'd like to say is we
25 need those 45 days. There's no question about

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2 that. Intro 875, I think we're going to need a
3 compromise on that. 11 o'clock seems like a
4 perfectly reasonable time to start brunch, to sit
5 down and have your first drink, and I'm not
6 talking about coffee. In Hell's Kitchen we have
7 what Albany refers to as oversaturation of liqueur
8 serving establishments. That means every other
9 retail is a bar, is a sidewalk café, is a
10 restaurant. We've lost a toy store. We've lost
11 our bakery. We've lost our family shoe store. I
12 mean this, the reasons for all this have to do
13 with taxes and landlords. We know why it is,
14 we're just not happy with it. And we do indeed
15 need those 45 days. The DCA has bent over
16 backwards patting themselves on the back helping
17 café owners push through their license, great,
18 great, great. I'd sure like to know where they
19 are when owners ignore stipulations? Who is there
20 to enforce basic cleanliness? Where is the
21 oversight, for instance, this may seem like a
22 small thing, a lot of the restaurants on 9th Avenue
23 and 10th Avenue put up these little sandwich boards
24 which is street furniture, basically, on the
25 sidewalk. Well, 9th Avenue, like Lexington Avenue

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2 is very narrow sidewalks. So, you've got my
3 husband who's in a scooter, he can't walk. We've
4 got a lot of wheelchair people in our area, all
5 over the city, certainly blind people. You've got
6 badly placed bus stops. You've got those
7 pernicious little news boxes that are everywhere,
8 oversized telephone booths, and now we've got, I
9 mean, how does a blind guy, even if he's got a
10 dog, how does he get around all this crap? And
11 nobody's enforcing this, you know? Nobody,
12 nobody, nobody, nobody. That includes Dunkin
13 Donuts. There's a Dunkin Donuts on 10th Avenue
14 that has a sidewalk café. It's hideous and it's
15 not clean. I mean, it's just not nice. So, café
16 owners have the hospitality industry, the DCA, the
17 Chamber of Commerce, everybody is in their corner.
18 Who speaks for the people who live in the city?
19 You do, obviously, and our community boards.
20 Thank you.

21 MR. STEPHEN BELIDA: Hi, thank you
22 Committee Members. My name's Stephen Belida, also
23 a Co Chair of HK 5051 Block Association. I'll be
24 brief. Don't take any, don't take the 45 days
25 away from our community board. They're the ones,

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2 they speak for us and they speak much better than
3 the DCA. The DCA, in our opinion, to our
4 community, to our members are a block association,
5 rubber stamp everything. They gave a sidewalk
6 café after our community board, after our other
7 block associations besides ours asked them not to
8 do it because we have the water tunnel project
9 going on 49th and 9th Avenue. The garbage is asked
10 to be brought out from all the buildings between
11 49th and 48th and put on the sidewalk on this corner
12 where this bar is. Even with all that information
13 DCA approved a sidewalk café. We're now going out
14 into the street to get down the street. Sidewalk
15 is non passable. So, we firmly stand in support
16 of leaving the 45 days. I agree with Bob, bring
17 it to 60 days. We need time to sort this out.
18 The DCA doesn't enforce anything. I don't see how
19 they could. Thank you.

20 CHAIRPERSON GARODNICK: Thanks.
21 And thanks to all of you for your points and we
22 certainly hear and feel your frustrations. I can
23 [off mic] tell you, we'll have some coffee for you
24 next time [crosstalk] and I can tell you the area
25 which I happen to represent, we deal with a lot of

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2 the same issues on clearance and congestion and
3 the quality of life issues that you mentioned.
4 And it is a constant source of frustration. But
5 thank you for mentioning. Okay, let's go to our
6 last panel and I'm sorry that you had to wait as
7 long as you have, but John Lynch from Manhattan
8 community board ten, Christine, go ahead and come
9 on up, and Leslie Johnson, come join us. And as
10 soon as you're settled you can go ahead and get
11 started. Same request, if it's been said
12 repeatedly and you can help us streamline, we
13 appreciate.

14 MS. CHRISTINE BURTE: So, after
15 hearing anything, my first question is, why do we
16 need DCA? [laughter] Okay. Now I'm official. My
17 name is Christine Burte and I am the First Vice
18 Chair of my - - . Before there are over 100
19 sidewalk café in Chelsea and Hell's Kitchen and
20 these are my community. So, very narrow sidewalk.
21 The density of sidewalk café is such that in some
22 instance the whole length of a block is occupied
23 by sidewalk café with no interruptions. And when
24 we are confronted with this years lack of
25 enforcement, either at the approval time of during

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2 the operation it falls to the community board to
3 do all the diligence and to really maintain the
4 right of way for pedestrians, the quality of life
5 for neighbors. No objection of Intro 875. I
6 would just want to point out that the Committee
7 should be aware, DCA refuses to enforce the clause
8 in the 875 that indicates that the operator shall
9 cause the boundary of the area to be marked. And
10 I want to bring it up because this is one major
11 reason why we cannot, things don't get, the
12 sidewalk get bled over. The operator staff in the
13 morning do not have the guidelines of where to set
14 the café. And very often in, you know, the owner
15 is not there to tell them where to set the café.
16 The guide making the marks on the sidewalk is very
17 important. It is part of the rule and DCA refuse
18 to enforce that. We request that this become much
19 more enforced and it would cut down on the
20 bleeding tremendously. The DCA does not enforce
21 the law related to storing the furniture at night.
22 We have all the furniture out there, 24 hours a
23 day, 365 days a week, a month, a year, and it's
24 ridiculous. I mean, you know, it snows and
25 everybody has their sidewalk café outside. Our

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2 only recourse is therefore to wait two years and
3 you have heard about the two years. I think if
4 you were changing that and changing that after two
5 years there is a recourse by the community board.
6 If this is a bad operator maybe we would get 95
7 percent of them through except the community board
8 could raise their hands and say, those one you
9 have to stop. And therefore, those would be okay.
10 But I think that the problem you are trying to
11 resolve is really the lengths of getting the
12 consents done. And that should be interesting to
13 say, why is the consent so long? That's the
14 really the heart of the problem. The consent
15 shouldn't be taking six months. The license takes
16 one month. What is wrong with the consent
17 process? So, maybe there is something between
18 those two things? Maybe the consent process is
19 what need to be fixed rather than trying to change
20 the rule. We have observed that DCA when
21 approving café's into - - the rule in the, you
22 know, most laxest way. The three feet of service
23 space outside of the small café is not reflected.
24 They often say, oh, the service would be from
25 inside the French doors but the French doors are

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2 most often closed so it doesn't work. And the
3 boundary, they don't enforce this boundary which
4 is very important. So, if the rule fails us, even
5 the rule are not accurate, I mean, you know, I
6 would take this opportunity to bring up the absurd
7 case that a tree is considered a non obstruction.
8 So, have you ever seen a pedestrian walking
9 through a tree? So, we do that all the time. So,
10 we have to negotiate these things one by one and I
11 think those rules should be changed. I mean, you
12 know, a muni meter is an obstruction. It's pretty
13 big. And then a tree is an obstruction, it's
14 pretty big. And we are planting more trees. So,
15 we need to be really, so, the 35 to 45 days you
16 have heard it, this is critical. And so I would
17 recommend that, you know, a minimum of nine feet
18 be given to pedestrian right of way and that some
19 of the constraints be change and adjusted and this
20 is my testimony. Thank you.

21 Good afternoon. I'm John Lynch.
22 I'm am the Co Chair of the Economic Development
23 Committee of Manhattan Community Board Ten in
24 Central Harlem. I'll be very brief 'cause most of
25 what we feel has been said already. We are very

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2 much opposed to the reduction of the community
3 board comment period from 45 to 30 days. We
4 oppose the increase of the renewal period from two
5 years to four years. This is somewhat new
6 territory for Central Harlem. Unlike a lot of the
7 other community boards we've heard from today
8 we've had a tremendous boom in the opening of new
9 restaurants and along with that sidewalk café's.
10 it has literally changed the fabric of the
11 community. In one year, I'm just doing a count to
12 my head, in one year we've had 30 restaurants
13 opening. We have competing restaurant rows on
14 Frederick Douglass Boulevard, Lenox Avenue, 116th,
15 125th. By and large these new establishments have
16 been welcomed. They add to the economy, they
17 create jobs. They improve in most people's views
18 the quality of life. They increase safety. We've
19 had, you know, desolate corners and blocks that
20 have been rendered much more safe by the addition
21 of lighting, outdoor seating and the like. So,
22 we've had a lot of good experience with it. With
23 great change comes great stress, however, and as
24 our community changes the residents of the
25 community have fears and concerns with a very

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2 vocal community and when we do have hearings on
3 liquor licenses and sidewalk café's we get great
4 participation from the community. By reducing the
5 community board comment period from 45 to 30 days,
6 as it's been said many times, we will eviscerate
7 the ability for the community board to have public
8 fora for community residents to express their
9 views; views on noise, on egress and ingress, no
10 safety, on garbage, all the issues that are raised
11 by potential sidewalk café's. What, on that other
12 point of increasing the renewal period from two to
13 four years, a couple things that as I, everyone
14 has said, this is our opportunity to converse with
15 and dialogue with the sidewalk café owners. We,
16 again, I just was surprised to hear the DCA
17 basically say that they have no concern about
18 enforcing any agreements or consents between the
19 owners and community boards. And they very, you
20 know, blithely said well, you know, the community
21 board will hold their feet to the fire. Exactly.
22 We do hold their feet to the fire but we need to
23 do that every two years. Another point, four
24 years is a very long time. Memories don't last
25 for four years. There's tremendous turnover often

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2 on community boards and on community board
3 committees that address these issues. And you
4 lose institutional knowledge over that period,
5 people just don't remember what the owner said
6 four years ago and it's, we need to get them in
7 every two years to touch base, to do a little, you
8 know, just to check up. Again, Harlem welcomes
9 what's been happening in the restaurant industry
10 but these particular piece of legislation, what I
11 would remove the voice of the community, of our
12 residents, which really only as the opportunity to
13 be expressed through the community boards. Thank
14 you. [off mic]

15 MS. LESLIE JOHNSON: Hi, I'm Leslie
16 Johnson and, which, this? Hi, I'm Leslie Johnson
17 and I live in Hell's Kitchen and I represent the
18 West 44th Street Better Block Association. Please
19 keep the comment period for the community board to
20 45 days or think about extending it to 60 days.
21 We do not want to lose our voice. And making it
22 30 days we would lose our voice. Also, keep the
23 two year renewal. And that's it.

24 CHAIRPERSON GARODNICK: Well, that
25 is a good way to end. Thank you. [applause] Yes,

1
2 see? I think she deserves a little applause. And
3 also for the conclusion of a long hearing. Let me
4 say thank you very much to the panel and to
5 everybody who was here today to participate in
6 this hearing. I think that there were a couple
7 points which resonated very clearly, the first
8 comes from the members of the community and
9 community boards who have expressed some clear
10 concerns about the 40, the 30 day from the 45 day
11 period as well as some concerns about the
12 revocable consent time period of four to two. We
13 hear those and certainly it's not our intent,
14 certainly, I'll speak for myself, it's not my
15 intent to do anything which inhibits the community
16 boards ability to act here. In fact, it's become
17 very clear in the course of this hearing that the
18 community board is, perhaps, one of if not the
19 most central actor in the scrutiny and
20 consideration of the sidewalk café's. The other
21 issue which is clear is that there is a process
22 which is overly cumbersome and burdensome for the
23 restaurants themselves which has them operating on
24 two different applications which expire at the
25 same time but take considerably different periods

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2 of time to actually get into effect. And DCA has
3 them operating under temporary licenses as opposed
4 to real licenses and that doesn't work either.

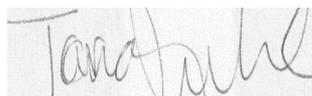
5 So, we are going to take everything we heard today
6 and we're going to see if we can find a way to
7 strike the right balance here. But we really do
8 appreciate your testimony and your participation
9 today. And with that, this hearing is adjourned.

10 [off mic]

C E R T I F I C A T E

I, Tara Juhl certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature

A rectangular area containing a handwritten signature in cursive script, which appears to read "Tara Juhl".

Date 5/22/13