

**Testimony of Lorelei Salas
New York City Department of Consumer and Worker Protection**

Committees on Consumer Affairs & Business Licensing and Transportation

**Hearing on
Int. 2096-2020 and Preconsidered Introduction 6677**

September 30, 2020

Good afternoon Chairs Cohen, Rodriguez and Members of the Committees. I am Lorelei Salas, Commissioner of the Department of Consumer and Worker Protection, also known as DCWP. I am joined by Steven Ettannani who is Executive Director for External Affairs. I would like to thank the Committees for the opportunity to testify today on Introduction 2096, relating to temporary operating letters for sidewalk café license applicants, and Preconsidered Introduction 6677, relating to sidewalk café plan drawings.

Before I discuss the bills before the Committees today, I would also like to take a moment to thank the Council for its close partnership with the Department over the past months to ensure that we have been able to continue serving our city's consumers and workers. In working with Chair Cohen and other members here today, we've tackled many important issues confronting the City during extremely difficult times.

Sidewalk Café Licensing

DCWP licenses 106 enclosed and 1,195 unenclosed sidewalk cafés. Applicants for a sidewalk café license are limited to only certain locations of the City, pursuant to the City's Zoning Resolution, and subsequently close to 70 percent of all sidewalk café licensees are in Manhattan.

Approving sidewalk café license applications is a detailed and lengthy process required by the Administrative Code, which includes reviews by DCWP and the Department of City Planning – in instances where the application is for an enclosed café – the local Community Board, the City Council, as well as approval from the Mayor's Office of Contract Services, and finally registration of the revocable consent agreements with the Comptroller. This process can take 4 to 5 months, even if an applicant has submitted their application correctly.

Pursuant to the Mayor's Executive Order (EO) 126, the sidewalk café licensing program was suspended on June 18th as the City began administering Open Restaurants. Pursuant to the EO, DCWP is not accepting or processing new or renewal sidewalk café applications. In early April, the Mayor suspended all sidewalk café consent fees under EO 105. Subsequently, Local Law 54 of this year, sponsored by Chair Cohen, refunded this year's consent fees to licensees.

Introduction 2096 and Preconsidered Introduction 6677

Before I turn to the specifics of the legislation at hand, I would be remiss not to mention that there is an incredible opportunity, right now, to holistically rethink the concept of outdoor dining in New

York City. DCWP believes that any future for the sidewalk café licensing program should be informed by the successes of the Open Restaurants program, operated by my colleagues at the Department of Transportation, which has served more than 10,000 businesses – eight times the size of the sidewalk café licensing program - across the City. While DCWP agrees with the intent of Introduction 2096 and Preconsidered 6677 to make the sidewalk café licensing processes less burdensome and prescriptive for businesses, these amendments will fall short of its goals if pursued in a vacuum. Instead, Council should consider a comprehensive reevaluation of the sidewalk café process in totality.

Moving on to today's legislation, Introduction 2096 would allow applicants of enclosed and unenclosed sidewalk cafés to be issued Temporary Operating Letters, also known as TOLs, pending approval of the applicant's revocable consent agreements. We are continuing to review the bill language and hope to work with the Council to ensure a final version accomplishes the goals of this bill, simplifying the requirements restaurants must meet to successfully operate in New York City, without causing any undue delays.

The Preconsidered Introduction would allow sidewalk café applicants to submit plan drawings, without the requirements that the drawings be prepared by an architect, engineer, or otherwise third-party professional. In our experience, the plan review process is burdensome and expensive for applicants, and difficult for agency staff, who do not have engineering or architectural backgrounds. We believe this legislation could be served by moving away from the current framework and instead enshrining a less prescriptive process for businesses that ensures compliance with applicable safety and accessibility laws.

Conclusion

Since the Council's last hearing on this topic in June, Open Restaurants has become a popular fixture of our City's streetscape with calls for it to be made permanent. We believe that the future of the sidewalk café process needs to take Open Restaurants into account, and its successful implementation by DOT, such as by contemplating a singular program, with the goal to continue supporting our city's restaurants as fairly as possible.

Once again, thank you Chairs Cohen, Rodriguez and Members of the Committees for the opportunity to testify today and I am happy to answer any questions you may have.

**NYC DEPARTMENT OF TRANSPORTATION TESTIMONY
ON THE CITY'S OUTDOOR DINING AND OPEN STREETS PROGRAMS AND A
PRECONSIDERED INTRODUCTION BEFORE THE CITY COUNCIL COMMITTEES ON
TRANSPORTATION AND CONSUMER AFFAIRS AND BUSINESS LICENSING**

September 30, 2020

Good afternoon Chair Rodriguez and Chair Cohen and members of the Committees on Transportation and Consumer Affairs and Business Licensing. I am Polly Trottenberg, Commissioner of the New York City Department of Transportation and I am joined by Eric Beaton, Deputy Commissioner for Transportation Planning and Management and Rebecca Zack, Assistant Commissioner for Intergovernmental and Community Affairs.

We are also joined by Commissioner Lorelei Salas of the Department of Consumer and Worker Protection, or DCWP, Steven Picker, Executive Director of Food and Beverages Industry Partnerships at SBS, Joseph Jardin, Chief of Fire Prevention, and Kelly Carr, Deputy Code Counsel, at FDNY. Thank you for the opportunity to testify, on behalf of Mayor Bill de Blasio, on the City's Open Restaurants programs, as well the Preconsidered Intro. by Council Member Reynoso. And our colleagues from DCWP will testify on Intro. 2096 and the other Preconsidered Introduction.

Re-cap of Open Streets and Open Restaurants

Under Mayor de Blasio's leadership, this Administration, and all of us at DOT, are very proud of the work we have done during the COVID-19 pandemic here in New York to transform our streets to promote safe recreation, sustainable transportation, and, of course our beloved restaurant industry.

As I testified earlier this month in-depth: this Administration has implemented over 75 miles of Open Streets citywide, nearly 50 percent of which are in zip codes with the highest rates of COVID-19 in the City, mostly communities of color, and nearly 60 percent are in census tracts that are low- to moderate-income. We are also on target to build more bike and bus lanes this year than ever before, and to continue expanding Citi Bike into Upper Manhattan and the South Bronx, even as we have had to grapple with severe workforce and budgetary challenges due to COVID-19.

But there is no question that our Open Restaurants program, done in partnership with you here on the Council and with the industry, has been one of our most far-reaching and successful initiatives and we think the largest such program in the world. To date, over 10,400 restaurants have applied to participate in the program, supporting an estimated 100,000 jobs for a diverse group of workers throughout the five boroughs.

The program now also boasts 85 Open Streets: Open Restaurants – sites where local restaurants are able to close the street off to vehicular traffic. The results have been inspiring – restaurants all over the City have created beautiful, welcoming outdoor spaces and I know we have all seen New Yorkers in so many neighborhoods dining out or just enjoying the festive closed streets to picnic, play music and watch their kids run around. And the restaurants have helped the City's economy and tax base while bringing a sense of hope and vibrancy back to our streets.

Mayor de Blasio's Announcement on Expanding Open Restaurants

So we are pleased to be here today to also amplify the Mayor's announcement last week that the Open Restaurants program will be extended year-round and expanded even further and the City will take the steps, working with the Council and our industry partners, to make the program permanent.

For the first time, the City will allow electric, gas, and propane heaters to facilitate outdoor dining at restaurants during the colder months, under FDNY and DOB oversight, and will provide guidance on the use of tent enclosures. And we are working with the restaurant industry on additional safety features for roadside barriers with the winter months in mind, to be announced very soon.

And, in another significant expansion, we will allow restaurants to create seating in adjacent roadway space and in the sidewalk frontage, as long as the owners of adjacent properties are willing to cooperate. This will open the program to thousands of additional restaurants. The City will also work with the State Liquor Authority on any necessary requirements and in early October, DOT will release a template agreement for restaurants that wish to use adjacent space.

Lessons Learned

As we now turn to the legislation before us today on codifying the Open Restaurants program permanently, let me share some of the City's lessons learned to date.

There is no question that, facing the devastating economic effects of COVID-19, the City stepped out of its comfort zone and faced a steep learning curve in standing up a program of this scope and magnitude in a matter of weeks. We saw 1,800 applications on the first day, over 5,000 the first week, and over 8,000 within the first month, and are now over 10,400 as I mentioned earlier.

We are proud of DOT's nimble self-certification process that made it possible for restaurants to begin serving customers outdoors right away. But we do want the Council to understand that the program did require a lot of resources from a number of City agencies, overseen by City Hall.

We collectively stood up a robust real-time data system to monitor progress and compliance, devised educational materials, including detailed diagrams and a "how-to" video for roadway setups, and established teams to handle thousands of telephone and email communications with applicants to help restaurants create safe curb lane setups and follow appropriate health regulations. DOT also created a popular public-facing portal with the most up-to-date information and a map of participating restaurants.

The City rapidly deployed hundreds of staff from DOT and other City agencies for education, mediation, inspections, and enforcement, as we helped restaurants create safe roadway setups. And I can honestly say that breaking down agency silos and tackling this interdisciplinary work collaboratively has been an inspiration for all of us in this Administration, exemplifying the best in City government.

Looking Ahead

Now as we turn to making the popular Open Restaurants program, which was created under an emergency Mayoral Executive Order, a permanent part of our City, we look forward to discussing with the Council the longer-term operational, fiscal, and legal issues to be resolved.

The first issue is the City's ultimate legal control of the public right of way. The City has an inalienable right in the streets, and therefore, we will need to consider the nature of any consent that we would grant restaurant operators, which could effectively motivate storefront owners to consider that the value of their commercial leasehold interest has been enhanced. This is a critical issue, which has the potential to affect our use of streets, agency operations, and budgets for generations to come. I urge careful consideration, balancing all the other, ever-changing needs for the curb.

DOT's core mission remains moving people and goods through the City safely, efficiently, and in an environmentally sustainable manner. As we make the Open Restaurants program permanent, we must also prioritize public transportation and safety infrastructure, including bike lanes and bus lanes, while also leaving room for future innovations. This is particularly true because the geographic distribution of Open Restaurants closely overlaps with some of the City's highest demand curbs and its busiest streets.

Our streets are used by many entities, public and private. DOT is regularly resurfacing and restriping as well as installing and maintaining traffic infrastructure, DSNY is sweeping and removing snow, DEP is maintaining water and sewer infrastructure, New York City Transit is maintaining subway infrastructure, and private utilities are running pipes, conduits and wiring. Long term, all these necessary functions must be integrated into a permanent roadway restaurant program.

In addition to working through these questions, we also need to determine how this new outdoor dining program will fit with the existing sidewalk café program, and we look forward to discussing with the Council and our sister agencies. There is also the issue of what zoning text amendments might be needed to make this program permanent. We will obviously look for the Council's partnership in that process.

Finally, the Mayor's Executive Order states that Open Restaurants shall adhere to all local, state, and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table heights, and clearance requirements, and it will be important to ensure that setups under a permanent program meet these standards as well.

Conclusion

In closing, the Administration and DOT remain immensely proud that Open Restaurants has been embraced by diverse neighborhoods citywide — from Mott Haven in the Bronx, Washington Heights in Manhattan, Jackson Heights in Queens, Sunset Park in Brooklyn, to Tompkinsville on Staten Island — and dozens more. I want to express my profound gratitude to the entire hard-working team at DOT, from every corner of our agency, many of whom worked non-stop, seven days a week, giving up holidays and precious family time, to make this program

such a success. I also wish to thank our sister agencies, especially SBS, MOME and the Office of Nightlife, as well as the Mayor and Deputy Mayor Laura Anglin for their support.

Finally, I want to thank Council Member Reynoso and the whole Council for championing Open Restaurants. The Administration looks forward to a fruitful discussion on the legislation before us today and I will be happy to answer any questions after you hear from Commissioner Salas.



September 30, 2020

Testimony of Annie Shi on behalf of Relief Opportunities for All Restaurants (ROAR)
Before the New York City Council Committees on Consumer Affairs and Business
Licensing, and Transportation

Good afternoon Chairs Cohen and Rodriguez, and members of the Committees on Consumer Affairs and Transportation. Thank you for holding a hearing on the important topic of Outdoor Dining and the City's Open Restaurants Program during COVID-19 and legislation related to the changes needed to make this program permanent. I would also like to thank Councilmembers Powers and Reynoso for introducing the pre-considered legislation before us. My name is Annie Shi and I am the General Manager of King Restaurant in Manhattan. I am here today to testify on behalf of Relief of Opportunities for All Restaurants (ROAR). ROAR was created in March by a group of restauranteurs to support our industry and our workers during this unprecedented crisis and to advocate for reforms that would help our industry come out of this crisis stronger than before. Outdoor dining and the Open Restaurants program have been an incredibly important lifeline to our industry and the half a million New Yorkers who work in our industry. We are excited by the recent announcement that this program will become permanent and look forward to the continued collaboration with the City Council and Administration to ensure this program continues to be such a success. As we return to limited indoor dining, continuing to have outdoor dining will allow restaurants to stay afloat. We know that New Yorkers have responded extremely positively to this change and we applaud the Council and the Mayor for their commitment to the program

Restaurants are the largest private employer in the City. We have been hit harder than any other industry in any state, not least of which because ours is the only one in which it is impossible to keep a face mask on while you dine. Our density, dependence on public transportation, high cost of living and soaring occupancy create the perfect storm here in New York unlike anywhere else in the country. King has had to pivot many times throughout this pandemic. In June, we decided to open for takeaway drinks and food. In that same month, we launched meal kits for our guests to pick up and bring home. In July, we opened for full-service dining – from when we received instructions on the regulations around outdoor dining early Monday morning, we scrambled and hustled to get our outdoor dining built in time to open for service later that Thursday, July 9. Since then, we have been open seven nights a week, doing our best to make the most of our summer months. We have been contemplating closing our restaurant throughout these past weeks.

We opened in 2016 to much acclaim, which we did not expect. We were first time restauranteurs opening in the hardest, most scrutinizing city in the world. For me in

particular, I am a first-generation immigrant – my parents moved to New York in the late 80s and no one in my family has ever attempted to open their own business. We have worked tirelessly to make King successful and to employ our staff, which totaled thirty four strong on March 17th. The thought of closing a restaurant which we have poured all our hopes and dreams and for which we have worked tirelessly, was devastating. But with PPP drying up and with a landlord completely unwilling to negotiate rent with us, we felt like we had no choice as we faced the incoming winter months. When we heard the news that outdoor dining was to continue and remain a permanent part of this city, we were relieved because this is the lifeline we need to at least continue to remain open through this winter. As business owners, we are clear-eyed about what the next few years look like, and we are aware that it is far from rosy. Realistically, we will require federal aid to be able to make it through to the other side, but in the meantime, outdoor dining at least gives us hope to keep going. What we need now is clear rules about what changes we have to make in order to continue to be able to serve our guests in the long-term future.

This past year has been incredibly challenging for the restaurant industry. We were ordered by the state to close, and then we were allowed to re-open, we did so at great cost to the business. Now, in order to stay open, once again, we are required to invest further capital into a business that at its best was making single digit profit margins. Objectively, this is a bad business. But it's one that has massive cultural importance to our wonderful city and something that we all need to fight for. What I have learned from talking with my peers is that every restaurant has had different needs and challenges. We need all the options we can get if we want to make it out of this intact. One of those most necessary measures is to be able to continue to serve outdoors, where most of our diners now feel very comfortable, while we figure out indoor dining in a way that is both safe to our staff and our guests. As we have watched other cities re-open, we have seen examples where the guest wears the mask indoors when they are not eating or dining, or anytime that they are interacting with staff members. Such measures would allow our employees feel valued by the city and that their health is important, and go a long way in making them feel safe to come back to work. As we get back on our feet restaurants of all sizes will need to be reimaged to accommodate the new reality

The continuation of outdoor dining is important step for restaurants as we struggle to recover from an unprecedented crisis. Expanding outdoor dining and allowing us to use propane heaters will provide a lifeline as restaurants reopen and adjust to the new reality in which we find ourselves. There are no silver bullets as restaurants recover but this step will benefit an industry that is such a critical part of life in the City. The last few months have shown us that this is something that New Yorkers and that is of great benefit to restaurants. ROAR supports the legislation before you today and looks forward to continuing to help craft the program. Thank you again for your leadership on this issue and we look forward to continued partnership on these initiatives.



Testimony by Liza Martinez
New York City Council
Joint Committee Hearing with Consumer Affairs,
Business Licensing & Transportation
September 30, 2020

My name is Liza Martinez and I am a member of Families for Safe Streets.

In January, I stood before some of you in person and shared the story of my beloved mother Ada Martinez. Three days ago, our family marked the one year since my dear, sweet, beautiful, healthy mother, Ada Martinez was killed. She was the 177th New Yorker to be killed in a traffic crash in 2019. She was the 27th cyclist killed last year.

I talked about her at the last hearing but I want everyone to know about my mom and the price for not acting.

Ada was an amazing, devoted mother to three of us, a proud grandmother to our seven kids, a loving wife, and a dear dear friend to too many people to count. She was our family matriarch and our family was so secure with her at the helm. She was a connector -- and brought everyone together. She loved to spend time on the boardwalk near my parents' home in the Rockaways -- and she danced. She loved to dance. She was the love of my father's life and the two of them had a marriage that was the envy and admiration of all who knew them.

My mother was 66-years-old but had the vibrancy of someone 26. She brought life and positivity to everyone around her. She was a community leader and a force. She moved to New York City from Puerto Rico and together with my dad, started a family business - a hardware store in Bed Stuy -- and put me and my siblings through college.

My beautiful mother, Ada Martinez, inspires me and gives me the courage to be here today. But I am here today for you and your family -- that you'll never have to stand here

to speak about your own mother, spouse, child, friend. This is a nightmare my family lives with.

Ten months ago, I begged for action. But for ten months, redesigning streets to save lives was an uphill battle if it meant a few parking spots were taken away.

I am a New Yorker and, like my mom, I like to tell it like it is. It is crazy that the city can act fast when business is at stake.

Trust me I know the importance of business because my mom and dad ran a family business for decades until she died and I have a business degree from Baruch College. I understand the dollars and the need for people to pay their bills. I know because our family business is now shutdown.

But it is so hypocritical that these life-saving changes are easy to make for commercial reasons and not to protect New Yorkers like my mom. She deserved better. Her legacy must be a call to action.

New York is a rare gem but it is not perfect. We should not be celebrating and focusing on dining when we have not even resolved the problem of safe streets or we will have a lot more tears. Before we put cafes in the streets, we need to fix our broken streets to keep New Yorkers alive. My mom was following the rules but the street was broken.

I urge you as you contemplate your legacy, that you remember my mother and act with urgency to fix our streets.



Families for Safe Streets (FSS) confronts the epidemic of traffic violence by advocating for life-saving changes and providing support to those who have been impacted by crashes. Comprised of individuals who have been injured or lost loved ones, FSS was founded in 2014 in New York City and is growing as a national movement with chapters across the country.

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**Testimony of Jessica De La Rosa, Systems Advocate, before the
Committee on Consumer Affairs and Business Licensing and the Committee of Transport
Oversight Hearing on the City's Outdoor Dining and Open Streets Program
September 30, 2020**

My name is Jessica De La Rosa, systems advocate for the Brooklyn Center for Independence of the Disabled. Our mission is to promote the independence of people with disabilities.

I am here to testify on behalf of BCID and the disability community concerning the amendment to Local Law 77 and Intro. 2096, which would make street outdoor dining permanent. Local Law 77 did not refer to accessibility and these proposals do not either. That's inexcusable.

I preface my comments by making it clear that we support outdoor dining. I can attest from my own experience that, when outdoor dining started a few months ago, this made a huge difference to me in the wake of the Covid-19 lockdown. I have enjoyed some nice meals because of outdoor dining. One was at a restaurant that is not otherwise accessible to a person who cannot walk like myself. I had always wanted to eat there but couldn't because of an inaccessible staircase. However, a few weeks ago, I was able to experience eating there because of outdoor dining.

Nevertheless, we have serious concerns about the implementation of the program and urge the Council to amend these proposals to ensure that people with disabilities are able to travel freely on sidewalks and use the street dining areas unimpeded.

I describe some of these problems in greater detail below. But I first want to offer several suggestions about how the Council should alter this legislation. An amended Local Law 77 and Intro. 2096 should:

- **Include specific language that guarantees that the path of travel on sidewalks be maintained, with at least 64 inches free from obstruction.** Currently, city guidelines require only 32 inches (the width of a doorway) for passage, which disappears to nothing when people are standing waiting for tables or waiters get in the way.
- **Include enforcement provisions** so that the burden isn't on the public to file complaints through a cumbersome 311 process. Instead, require Department of Transportation, the Mayor's Office of People with Disabilities or another city agency to hire and train personnel about accessibility provisions, do spot inspections, issue warnings and, if necessary, fines for restaurants that violate accessibility rules. Inspectors should look at access questions for diners, not just whether sidewalks are kept clear.
- **Require restaurants to put up clearly visible, city-issued signs about how to make a complaint about an accessibility violation.** They should be posted at each end of the space they're using.
- **End self-certification** for any new restaurants who want to join the outdoor dining program from now on, so that new problems don't unnecessarily arise.

Let me describe why we make these proposals:

My colleagues and I have gone down – or attempted to go down—sidewalks where the outdoor seating creates obstructions for wheelchair users, blind people and other pedestrians, whether they have a disability or not. You may not realize this, but we *already* have to deal with multiple obstructions every day – light posts, parking and traffic signs, newspaper boxes, bike tie-downs, trees and tree pits, broken and uneven pavement – and the additional barriers created by outdoor seating leave very limited space for a walker or wheelchair to navigate through.

Friends of mine who are blind have also expressed their troubles navigating the streets and sidewalks now. Some blind individuals rely on memory of the number of steps to get to places they frequently visit. Now with outdoor dining, it makes it harder to do so, so they must ask for assistance to navigate a new layout. This takes away from their independence.

Some outdoor dining spaces do not even have ramps that allow potential customers to get from the sidewalk to the street dining areas. Instead, they ask a wheelchair user to go to the end of the block to use the curb cut to come around in the street and be seated. And that's if the restaurant doesn't have their seating closed in: When that happens, we can't eat there and it now turns it into an inaccessible restaurant. In 2020.

Concerning the Open Streets program, the Council and the City must also make sure streets, especially those with bus routes, are not unnecessarily closed. As most of us know our subway system is not fully accessible to people with disabilities, but Access-A-Ride and city buses are. When bus routes are diverted or Access-A-Ride vehicles can't get through, we lose our ability to get around safely and easily.

Our overall takeaway: Access for people with disabilities should not be taken away when expanding and extending outdoor dining. We as a community are very frequently removed from conversations that affect us. We want to live in an era where equal access is the standard and not an afterthought. We urge the members of the committee and the Council, who are responsible for making decisions about outdoor dining, to take the lead and do the right thing to protect our independence and our rights.



Testimony by Rosamond Gianutsos
New York City Council
Joint Committee Hearing with Consumer Affairs,
Business Licensing & Transportation
September 30, 2020

Good Afternoon. My name is Dr. Rosamond Gianutsos. I am a specialist in neuropsychological rehabilitation and have treated numerous individuals whose lives have been devastated by traffic violence. I strongly support the mission of Families for Safe Streets. Traffic violence is eclipsed only by COVID-19 in killing and maiming New Yorkers. And no one is promising a vaccine for traffic violence. Instead we must do the hard work of making our streets safe one block at a time.

Today, I come before you as a long-time resident of Sunnyside and an active supporter of the 39th Avenue Open Streets Coalition. My neighbors and I have been working with the Department of Transportation as local partners to promote and maintain our 39th Avenue Open Street which runs for 10 blocks. It is a narrow two way corridor with bicycle sharrows and parked cars on both sides of the travel lanes. It has evolved into a “cut through” for cars heading into and out of the City. I have to hold my grandchildren’s hands tight as I negotiate the crossing on 52nd Street where I live.

Prior to the Open Street I was knocked from my bicycle to the pavement of 39th Avenue twice by cars. In the first instance, I had set out on my bike to see a patient and 2 blocks from my home I was t-boned by an NYPD patrol vehicle making an illegal U turn in front of a double parked car. I still see the wheel of the police car inches above my knee, held precariously by the axle of my bike’s pedals.

The second instance occurred when I was doored by a for hire vehicle driver exiting suddenly as he pulled his vehicle up by a fire hydrant, less than one block from my home. I was on my bike and in an instant my head whacked hard onto the pavement.

With the kind of traffic calming treatments described in the city's Vision Zero Toolbox, neither of these collisions should have been possible. I was incredibly lucky to have escaped serious injury. But no New Yorker should have to rely on luck.

I support the Open Streets program because it calms traffic (although it could do this better) and promotes community resiliency as we get to know our neighbors. If only the safety objectives of Open Streets were embraced as quickly and effectively as was done for businesses in the Open Restaurants program.

Families for Safe Streets (FSS) confronts the epidemic of traffic violence by advocating for life-saving changes and providing support to those who have been impacted by crashes. Comprised of individuals who have been injured or lost loved ones, FSS was founded in 2014 in New York City and is growing as a national movement with chapters across the country.

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Statement to City Council

Hello, I'm Andy Sydor (SEE-dor) and I've been a New York Licensed City Tour Guide for over 22 years.

As the Council considers strategies to reopen, attention must be paid to the tourism industry, particularly in the area of Double Decker tourism. There is a bill drafted, by Transit Chair Rodriguez, Intro 289-A, which could have led to a safe reopening of this particular branch, and to a better and safer normal than before, but the council has not yet enacted it. Meanwhile, some companies have "reopened," but not to give the kinds of tours they gave in the past, but to run their buses with a few unguided riders wandering aimlessly on the top, simply to justify running the bus around our streets for the sake of the advertising. This is a dangerous situation, not just for the COVID-19 risks currently weighing so heavily on all our minds, but for the risk of accident to the passengers themselves, the very kind of risk that prompted the writing of Intro 289-A in the first place.

The City has long maintained and upheld the right to regulate the commercial tourism industry. This pandemic shows the need to maintain and expand that regulation, not relax it. The CDC guidelines on safety and social distancing can NOT be maintained by a recording, just as an unwatched video monitor cannot keep passengers in their seats as the bus moves through potential hazard. When these inevitable infections and accidents occur, it will hobble any hope of this business recovering.

We, the City and the industry both, need this safety to be maintained by the same kind of licensed professionals that this City has enabled and overseen since 1937. We need Intro 289-A to be enacted. That way, the tourism industry can not only return to reopening, but to a safer and better standard than before.

Thank you.

CHEKPEDS, NYC pedestrian rights organization, supports the extension of the outdoor dining program year-round. This program has helped restaurants, proved extremely popular, and has contributed to a new sense of street and community in our district.

While we all want to help during COVID recovery period the long-term program require a different legal framework

- Any all year-round outdoor dining program should recognize that the overriding purpose of our streets and sidewalks is to provide transportation and pedestrian routes through the city. DOT `s ability to do so should not be compromised by street or sidewalk outdoor dining.

It is critical that the permits for outdoor dining be time limited with periodic renewals. They also must be revocable upon notice.

- To put people first, and facilitate safe walking, permanent outdoor dining should be on the sidewalk or in the roadway, but not both. Storm enclosures tents and awnings should not be permitted on the sidewalks.

Consideration should be given to widening the unobstructed area of the sidewalk from 8 to 12 feet. Ideally a separate walking lane would be created in each corridor or street where outdoor dining is authorized.

- CHEKPEDS urges the city to generate appropriate revenue from the use of its public spaces. Each midtown delivery space generates up to \$ 34,000 annually. Landlords are already thinking of raising the rents.
- To avoid sidewalk over-crowding and excessive noise for residents, CHEKPEDS urges the city's DOT to adopt the current SLA regulations.
 - all service to seated patrons only. no standing and drinking and no music.

We applaud the idea of restructuring sidewalk cafes and Open dining in concert to streamline the process.

As we are still constrained by COVID measures, and not yet through our first winter, we do not yet have all the facts necessary to legislate. At this time, CHEKPEDS supports a bill making the program permanent and leaving a wide berth to DOT to regulate as needed.

Please do not forget the pedestrians.



Testimony by Thomas Proctor
New York City Council
Joint Committee Hearing with Consumer Affairs,
Business Licensing & Transportation
September 30, 2020

My name is Thomas Proctor. I'm a Bronx resident and a member of Families for Safe Streets. Thank you for allowing me to testify today.

When the lockdown started, I was worried about the rampant speeding I saw throughout our city, but I never expected tragedy to strike me. However, in May, my brother Charlie was killed by a reckless driver near his home in Boston while he was out riding his bike with his girlfriend. It was just two weeks before his 28th birthday. They had just signed a lease to move in together. Instead, he died in her arms.

In his 28 years, Charlie did more than most do in a lifetime. He spent his final birthday on mount Denali, climbing the Kasin ridge. He was always pushing us to push our own limits and exit our comfort zones. I speak to you now on the way to a memorial in the mountains he loved, to grieve with those he inspired and contemplate how we can live a life deserving of his memory without him.

The intersection where he was killed had been identified by the Boston Region Metropolitan Planning Organization as a particularly dangerous intersection in need of repair. Local leaders had the opportunity to prevent my brother's death, but they ignored the problem and did nothing.

The problem of deadly traffic crashes is particularly severe in the United States, and New York is no exception. As we reopen, New Yorkers are avoiding the subway, and will be walking and biking on our streets more than ever. If we do nothing, these deaths will only increase further.

You have shown that NYC can act quickly to transform our streets when there is a commercial need. I urge you to build a true network of Open Streets while we recover

from the pandemic to protect our brothers, sisters, parents, children and friends — before it is too late.

You have the opportunity to fix New York streets and prevent deaths like my brother's. Please do not ignore the problem. Please do not do nothing.



Families for Safe Streets (FSS) confronts the epidemic of traffic violence by advocating for life-saving changes and providing support to those who have been impacted by crashes. Comprised of individuals who have been injured or lost loved ones, FSS was founded in 2014 in New York City and is growing as a national movement with chapters across the country.

info@familiesforsafestreets.org | familiesforsafestreets.org | 844-377-733

Testimony of
the New York City Hospitality Alliance
Before the Committee on Consumer Affairs and Business Licensing
Jointly with the Committee on Transportation
September 30, 2010

My name is Andrew Rigie, and I am Executive Director of the New York City Hospitality Alliance (“The Alliance”), a not-for-profit trade association representing restaurant and nightlife establishments throughout the five boroughs. I want to thank Chair of the Committee on Consumer Affairs and Business Licensing, Andy Cohen, Chair of the Committee on Transportation, Councilmember Ydanis Rodriguez, and members of both committees for the opportunity to testify in support for Int. 2096, T2020-6655 and T2020-6677.

The Alliance supports T2020-6655, which makes permanent the widely popular Open Restaurants program established in response to the COVID-19 pandemic and will allow the use of outdoor heaters to keep customers warm as the temperature drops. Outdoor dining has helped us reimagine how we use our public space to support local restaurants, jobs, and create a more vibrant and livable city. Making outdoor dining permanent is of monumental importance for small businesses, jobs and our city as a whole.

Over the coming weeks we look forward to working with the City Council and Mayor de Blasio’s administration on many details of the program but for the purpose of this testimony we support these provisions of this legislation and share additional comments:

1. Self-certification and ability of the food service establishment to design the layout without the need for architectural renderings and certification. However, we suggest a quick approval of such design by the city so small business owners can be confident that the setup they build meets all the requirements before investment and installation.
2. No fee to participate in the program.
3. Allowance for full block closures to be used for outdoor dining space.
4. Use of natural gas heaters but this should be amended to also allow for various models of electric heaters and permit the use of forced air heating systems be allowed to warm up outside areas, especially areas covered by a tent.
5. We also recommend that restaurants be permitted to use the roadway that is adjacent to their storefront for seating.
6. Due to the COVID-19 recovery we also advise this program to be implemented in two phases, if ultimately, additional safety barriers are a requirement of participation. Because the cold weather is upon us and because the vast majority of small business owners will not have the time and/or financial means to rebuild their existing outdoor dining setups they just created within the past few months at this time: (a) We recommend during the 2020/2021 winter that sturdy structures such as Jersey or Yodock barriers be set up facing the upcoming vehicular traffic. These barriers should include reflective tape and snow stakes. (b) We recommend that any more extensive new outdoor dining buildout requirements be implemented at some point in 2021. It is not practical or affordable for restaurateurs to deconstruct their current structures they recently built and rebuild them now when their business is low in cash and in debt.

7. We'd like to note that we have concerns about the due process section of the proposal and are speaking with the City Council's counsel about this provision.

The Alliance supports Int. 2096. This bill allows allow the Department of Consumer Affairs to issue temporary operating licenses to applicants for a sidewalk cafe license if the plans for the new sidewalk cafe are identical to the plans for a previously operating sidewalk cafe at the same location. We are in a crisis with what may be thousands of vacant restaurants, many of which had approved sidewalk cafes. New operators who are bold enough to open new restaurants in these vacant storefronts should be permitted to operate sidewalk cafe permits under the prior conditions until they can apply for and receive their own cafe license. It is essential to restart our economy soon with as little red tape as possible. This legislation would decrease the business' startup costs and provide much needed revenue to a new business.

The Alliance supports T2020-6677. Currently, an application for a sidewalk cafe must be accompanied by a drawing plan of the proposed layout. That drawing must be prepared by licensed architect or engineer. This bill, however, would allow sidewalk cafe applicants to design their own layout and self-certify. This new policy will reduce the cost for small business owners to apply for a sidewalk café by submitting their own plan. This practice already exists for other commercial uses of the public sidewalk like newsstands and only ask for the submission of accurate plans by the applicants.

Both Int. 2096 and T2020-6677 are very important modifications to the existing sidewalk café system but we urge the City Council and de Blasio administration to work further with The Alliance on reducing the costs, bureaucracy and expanding and enhancing the sidewalk café program for restaurants around the city.

New York City will not economically and socially recover unless the hospitality industry is at the core of our city's recovery. These bills do not solve our crisis, but they are major advances in supporting struggling small businesses and saving jobs while building a more supportive and resilient restaurant industry and city in the long term.

We appreciate the City Council and the Committees on Consumer Affairs and Business Licensing and Committee on Transportation for their time and consideration on these pieces of legislation. We look forward to continuing to work with the prime sponsors and the City Council on these proposals.

We urge the City Council to vote in support of Int. 2096, T2020-6655 and T2020-6677 and urge the Mayor to sign them into law.

If you have any questions, I am reachable at arigie@thenycalliance.org

Respectfully submitted,



Andrew Rigie
Executive Director
NYC Hospitality Alliance



Testimony by Allison Raygor
New York City Council
Joint Committee Hearing with Consumer Affairs,
Business Licensing & Transportation
September 30, 2020

My name is Allison Raygor and I am a member of Families for Safe Streets.

The first thing that comes to mind when I think about that day is the weather. It was a quintessentially perfect fall day – bright skies, crisp air, warm breeze. It was gorgeous! My boyfriend and I had spent time that morning on a bench in Williamsburg overlooking the East River, grateful for the time together in such an idyllic setting.

He went to work, and I went upstairs to his apartment to make my birthday guest list, emailing it to him before packing up my bike basket with produce from the Greenmarket and throwing on a tote bag, one strap on each shoulder. And off I rode to my own apartment in Bed-Stuy, a route I'd taken hundreds of times before over the previous few years.

It was a few blocks after I'd left the protected bike lane on Kent Ave, heading south, that I stopped at a light near a large vehicle, about the size of a garbage truck. The truck turned right, the force of it pushing me to the ground, and before I knew it, I was underneath it. I only really registered that I was in trouble when I tried to roll out from under the truck, and realized the tote bag was pinned under the truck's wheel – and, with its straps over my shoulders, I, too, was pinned. In what felt like much longer but was of course only a split second, I realized that if the tote bag was under the tire, then my own head would be next.

But thankfully, because it was such a beautiful day, the driver's windows were down and he could hear me screaming. And he stopped.

Since that day, I've often asked myself a series of "what if" questions. What if I had left the apartment a few minutes later? What if the driver had taken a

different route? What if it had been cold that day, or raining, and the driver hadn't heard my screams?

And what if that bike lane, protecting me from traffic by a concrete barrier, had extended just a few blocks more, getting me even closer to home?

I'm not here to ask the City Council to predict the weather, but I am here to illustrate what can happen when cyclist safety is not prioritized on New York City streets.

Thank you for making Open Streets a priority during the pandemic. It has been amazing to watch how quickly the city can prioritize people over cars. With the open dining program, the DOT has repurposed car parking lanes for open dining.

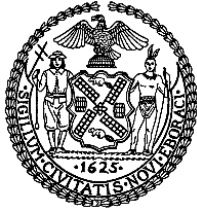
But why were they not able to take away parking spots to make it possible for me to have a protected bike lane my entire trip. It is truly infuriating how quickly the DOT can act to help restaurants survive when every change FSS fights for takes so long. The hypocrisy of doing it for commercial reasons and not for the purpose of safe street infrastructure to save lives is incomprehensible.

I look forward to the day when our city puts my safety and the safety of all New Yorkers first.

Thank you.

Families for Safe Streets (FSS) confronts the epidemic of traffic violence by advocating for life-saving changes and providing support to those who have been impacted by crashes. Comprised of individuals who have been injured or lost loved ones, FSS was founded in 2014 in New York City and is growing as a national movement with chapters across the country.

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LOWELL D. KERN
Chair

JESSE R. BODINE
District Manager

September 30, 2020

Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Bill de Blasio
Mayor
City Hall
New York, NY 10007
1

Andrea Stewart-Cousins
NY State Senator
28 Wells Avenue, Building #3
Yonkers, NY 10701

Carl E. Heastie
NY Assembly Member
1446 East Gun Hill Road
Bronx, NY 10469

Corey Johnson Speaker,
New York City Council
250 Broadway, 18th Floor
New York, NY 10007

Dear Governor Cuomo, Mayor de Blasio, Senator Stewart-Cousins, Assembly Member Heastie, City Council Speaker Johnson:

Manhattan Community Board 4 (MCB4) recognizes the critical role restaurants play in the economic life of our district and city. Their presence helps define Chelsea and Hell's Kitchen. They provide not only jobs for our residents and other New Yorkers, but often are local gathering spots where we meet and socialize with our friends and neighbors creating those bonds bringing us together as a community. In this letter, we outline some

¹¹¹ The current comment period ends before the next MCB4 Full Board meeting and this letter is subject to ratification by the Full Board members on Wednesday, October 6, 2020

of the issues confronting restaurants and discuss ways to help promote them as they continue with street dining and resume dining indoors.

The hospitality industry, particularly restaurants with 144,200 less jobs in August than last year, has been decimated by the pandemic. A recent survey by the NYC Hospitality Alliance found that of 450 restaurants queried, 87% could not pay their full rent. Over one-third (34%) did not pay any rent at all. This is a critical time for restaurants. The Executive Committee of MCB4 by a vote of 13 for, 0 against, 0 abstain, and 0 none supports the resumption of indoor dining which begins September 30 and the continuation of outdoor dining year-round. Both measures will financially reinvigorate this important part of our local economy and help heal our communities.

Indoor Dining

For indoor dining to be successful for the businesses involved and not create new pandemic hot spots, the conditions set by the Governor and Mayor must be enforced vigorously.

- initial operation at 25% capacity moving to 50% in November if health conditions support it.
- tables six feet apart.
- masked service staff.
- masked diners except when seated.
- no bar service except for drink preparation.

In addition, MCB4 believes communications from the state and city should be coordinated and clear. To maintain control of capacity, we strongly suggest seating for indoor dining be by reservation only.

Consideration must be paid to the special circumstances of restaurant employment. Some employees may not currently be able to work in an indoor dining environment. If called back by their employer and they refuse to return because of health concerns, they would not be eligible to collect unemployment insurance. The state and city must consider this and provide alternative means of support for these employees.

Air filtering and venting is critical to indoor dining in the pandemic and MCB4 would like the state and city to offer financial assistance to those businesses needing to upgrade their HVAC systems.

Outdoor Dining

At the same time as indoor dining is resuming, MCB4 urges the City Council, as requested by the Mayor, to extend the outdoor dining program year-round. This program has bolstered restaurant industry revenues, proved extremely popular among patrons, and has contributed to a new street sense and enhanced community in our district.

MCB4 supports this outdoor dining extension to year-round and wants inclusion of certain procedures and practices.

- A safe separation of diners and pedestrians should be established on the sidewalk or, if not possible, a separate walking lane should be created immediately in each corridor or street where outdoor dining is authorized.
- Any all year-round outdoor dining program should recognize that the principal and overriding purpose of our sidewalks is to provide pedestrian routes through the city. Their ability to do so should not be compromised by street or sidewalk outdoor dining.
- Existing measures needed to ensure safe pedestrian passage, and the flow of vehicle traffic, must be enforced and as the program evolves their efficacy should be periodically evaluated. In any evaluation, consideration should be given to widening where possible the unobstructed area of the sidewalk from 8 to 12 feet.

To facilitate the outdoor dining program in the colder months of the year as the program becomes year-round, the city should make available grants to restaurants to purchase outdoor heaters if they already do not have them, either electrical heaters for the street or propane heat lamps for the sidewalk. The environmental impact of these propane heaters needs to be studied before their use becomes extensive in any mature program.

To avoid over-crowding and excessive noise in the outdoor dining program, MCB4 urges the city's DoT to adopt the current SLA requirements.

- all service on sidewalks and roadways be to seated patrons only.
- no standing and drinking should be tolerated.
- only full-service restaurants should be included in the program.
- no alcohol only bar service.
- there should be no music outdoors.

Looking past the current emergency conditions, permanent outdoor dining should be either entirely on the sidewalk or entirely in the roadway, but not both. MCB4 stated in a July letter to DoT that its preference is for dining on the sidewalk (adjacent to a restaurant) with a continuous walking lane in the roadway.

It is critical that the permits for outdoor dining given to restaurants be time limited with periodic renewals. They also must be revocable upon notice. The latitude given to DoT to deny any installation or revoke a permit should support the department's flexibility to manage the program for the public benefit.

Permits should be free until the Covid restrictions are lifted and the restaurant industry is moving towards recovery. In a future with outdoor dining a permanent fixture of the street scene, MCB4 believes the city should generate appropriate revenue from the use of its public spaces.

Restaurants are hurting, closing down all around us, many people are losing their jobs and livelihoods. MCB4 believes that the resumption of indoor dining and making permanent year-round outdoor dining will help restore financial health to this critical neighborhood defining industry.

Sincerely,



Lowell D. Kern
Chair

Cc: Hon. Jerry Nadler, U.S. Congressman
Hon. Brad Hoylman, NYS Senator
Hon. Richard Gottfried, NYS Assembly Member
Hon. Linda B. Rosenthal, NYS Assembly Member
Hon. Helen Rosenthal, NYC Council Member
Hon. Antonio Reynoso, NYC Council Member
Hon. Gale A. Brewer, Manhattan Borough President

Testimony

**Re: Joint Meeting of Consumer Affairs & Business Licensing
& Transportation Committees**

Bills: TT2020-6656; TT2020-6655; TT2096-2020; TT2020-6677

From: Lionelle Hamanaka In Support of

To: City Council members

Date: Sept. 30 Time: Noon

Thank you, Chairs Cohen and Rodriguez, and Councilmembers Kallos, Reynoso and Salamanca. I am Lionelle Hamanaka, District 6, a tour guide supporting bills 2096; 6655; 6677 and Oversight 6656 that stimulate economic growth and protect against Covid-19. Since June 2020 several accidents have occurred where cars crashed into eight outdoor diners. Cars weigh 1.3 tons. Double decker buses weigh 13 tons, and their past accidents have injured or killed dozens. Presently, double decker bus operators are forced to multitask and engage in distracted driving, cannot enforce social distances or masks due to blind spots, imperiling diners on restaurant dense blocks. Int. 289-A is sequential to today's bills, requiring a licensed person on the second level. Devan Sypher, struck by a Gray Line bus with no licensed person, won an \$85 million lawsuit. Please move Int. 289-A as well.

LIST OF ACCIDENTS

<https://www.wsj.com/articles/new-york-city-sees-auto-accidents-at-temporary-dining-areas-11596387600>

<https://ny.eater.com/2020/8/24/21396510/nyc-restaurant-car-crash-outdoor-dining>

<https://www.nbcnewyork.com/news/local/car-smashes-into-brooklyn-outdoor-eating-area-latest-crash-to-endanger-nyc-diners/2590158/>

<https://nypost.com/2020/08/22/nyc-restaurant-owners-fear-cars-crashing-into-outdoor-diners/>

<https://nypost.com/2020/08/25/car-crashes-into-outdoor-dining-area-on-upper-east-side/>

<https://www.nydailynews.com/new-york/nyc-crime/ny-crash-upper-east-side-outside-diners-20200825-zqvicycpurhzpmdp4nz54l6bcm-story.html>

<https://abc7ny.com/upper-east-side-outdoor-dining-crash-new-york-city/6387121/>

<https://abc7ny.com/nyc-outdoor-dining-crash-upper-east-side-car-into-restaurant/6335499/>

<https://www.ny1.com/nyc/all-boroughs/news/2020/07/14/car-plows-into-expanded-outdoor-dining-restaurant--raising-safety-concerns>

<https://www.nydailynews.com/new-york/manhattan/bus-driver-sparks-3-vehicle-crash-front-hamilton-theater-article-1.3665205>

<https://nypost.com/2017/11/29/tour-bus-crashes-in-times-square/>

https://newyork.cbslocal.com/wp-content/uploads/sites/14578484/2017/12/report_on_nyc_double-decker_sightseeing_buses.pdf

“sightseeing bus operators are under no obligation to notify New York State of the identities of their drivers, or to report data about crashes to the New York State Department of Motor Vehicles.” Brad Hoylman, NYS Senator, District 27

<https://www.nbcnewyork.com/news/local/double-decker-bus-crash-midtown-times-square/958863/>

“Fourteen people were injured when two double-decker buses collided in Times Square Tuesday afternoon, causing a traffic light pole to topple over and smash onto the ground, authorities say.”

<https://www.nytimes.com/2014/08/06/nyregion/double-decker-buses-collide-in-times-square.html>

<https://djhernandez.com/new-york-city-tour-bus-injuries/>

“In 2017, a tour bus slammed into an MTA bus in Queens, killing the driver and two other people. According to Fox News, the driver of the Dahlia tour bus plowed into the city bus as it was attempting to make a left-hand turn in Flushing, Queens. The tour bus then crashed into a Kennedy Fried Chicken restaurant.”

<https://abc7ny.com/bus-accident-hits-tree-upper-east-side-manhattan/1436815/>

“UPPER EAST SIDE, Manhattan (WABC) -- 13 people were injured when a tour bus slammed into a tree on Manhattan's Upper East Side.

“The accident happened at about 1:15 Thursday afternoon at 5th Avenue and East 63rd Street.

“The double-decker bus is operated by Go New York Tours.”

<https://www.dnainfo.com/new-york/20140619/greenwich-village/elderly-woman-struck-by-tour-bus-on-seventh-avenue-police-say/>

“As tourists on the bus watched in horror, the woman was dragged under the bus and suffered serious injuries to her head and legs, according to police and [reports](#).

“The driver was not ticketed, police said.”

<https://www.nydailynews.com/new-york/manhattan/double-decker-tour-bus-fatally-slams-elderly-woman-article-1.2229759>

“Woman, 68, killed when struck by double-decker tour bus in Morningside Heights in front of sister's horrified eyes”

<https://www.nbcnewyork.com/news/local/person-hit-sightseeing-double-decker-bus-tour-greenwich-village-manhattan-police-accident-investigation-west-fourth-street/588241/>

“A double-decker sightseeing bus struck a man walking in Greenwich Village Friday afternoon, dragging him several feet and pinning him beneath the vehicle, fire officials and witnesses said.”

The man was Devan Sipher, a NYT reporter who sued Twin America and won his case for \$85 million. In light of this, how does not having a licensed person to deter accidents benefit the double decker bus companies?

<https://www.newyorkpersonalinjuryattorneysblog.com/record-setting-85-million-verdict-for-pedestrian-run-over-by-double-decker-sightseeing-tour-bus-obtained-by-new-york-personal-injury-attorneys-howard-hershenhorn-diana-m-a-carnemolla/#:~:text=Congratulations%20to%20our%20partners%20Howard,Line%20New%20York%20Tours%2C%20Inc.>

<https://www.gairgair.com/notable-verdicts.html>

<https://www.prnewswire.com/news-releases/record-setting-85-million-verdict-for-new-york-pedestrian-run-over-by-double-decker-sightseeing-tour-bus-obtained-by-howard-hershenhorn-and-diana-m-a-carnemolla-300761862.html>

“After a 5 week trial a jury of 2 men and 4 women took less than one day to reach their verdict, \$45 million for past pain and suffering and \$40 million for future pain and suffering.”

These double decker tour buses of Twin America (Gray Lines), Go New York and Top View did not have a licensed person on the second level. The bus operators have blind spots and cannot see the second level or certain points laterally while turning. That is why a licensed person on the second level is necessary. Due to blind spots, drivers can't maintain social distancing or the wearing of masks during the Covid-19 pandemic. In addition, if bus drivers spent their time answering questions, punching recording buttons, and selling tickets, they would be engaged in distracted driving.

In neighborhoods as diverse as Jackson Heights, Sunset Park, Greenpoint, Castle Hill, the upper east side of Manhattan, cars and a truck have rammed into outdoor diners. A double decker bus with dozens of passengers, where the driver can't see due to blind spots, with no licensed person on the second level, is an accident waiting to happen. Fatal accidents have already taken place in New York City.

<https://ny.eater.com/2020/9/25/21456093/nyc-outdoor-dining-everything-to-know>

“Driving conditions are typically worse in the winter, and some restaurateurs in the city have already had to contend with cars **crashing** into their outdoor dining setups. The mayor's office says that “additional safety features to further strengthen roadway barriers” will be required for winter outdoor dining, although those features haven't been codified yet. The extra measures will have to be implemented by November 15.”

Eight people have been injured since June, 2020. At least 6,000 of the approximately 30,000 restaurants in NYC have been granted roadside permits. Now that year round outdoor dining is approved, complementary safety legislation is necessary to protect New Yorkers. Please move Int. 289-A immediately to prevent these tragedies.



In support of a permanent program for outdoor dining

Good afternoon. My name is Kathleen Reilly and I am the NYC Government Affairs Coordinator for the New York State Restaurant Association. We are a trade group that represents food and beverage establishments in New York City and State. We are the largest hospitality trade association in the State, and we have advocated on behalf of our members for over 80 years. Our members represent a large and widely regulated constituency in New York City, and even more critically, one of the industries hardest-hit by this pandemic.

We know how much the restaurant industry means to this city, its culture and its economy, and we believe that the recovery of NYC itself depends on supporting the recovery of the struggling restaurant industry. With that goal in mind, we are testifying today in favor of creating a flexible and permanent outdoor dining program for restaurants in NYC.

I recognize that since this hearing has been scheduled, Mayor de Blasio announced that outdoor dining will become a permanent, year-round fixture, and also provided preliminary guidance on tents and heaters, including allowing propane heaters in some spaces. I want to sincerely thank this Council, especially Council Member Reynoso and the other sponsors of Preconsidered Intro 6655, for taking initiative on the urgent issue of the future of outdoor dining, and elevating it so that we already have the beginning of a promising framework before us. With this development in mind, our testimony will refer to some of the parameters from the Mayor's announcement, assuming that this plan is largely if not entirely in agreement with what City Council would put forward.

The New York State Restaurant Association is entirely in favor of creating a permanent outdoor dining program for New York City. We are supportive of the new provision that would allow restaurants to set up seating areas in front of neighboring properties, with permission, and had actually raised this issue to DOT earlier in the Open Restaurants program. We are glad to see that the administration has come up with a framework to make this accommodation possible, and we expect it to be especially helpful to those restaurants with obstructed or narrow storefronts, who struggled to participate in outdoor dining previously.

We are also supportive of allowing propane outdoor heaters in some spaces, and understand that roadway usage of any heaters besides electric would likely pose a safety risk. We are hoping to get additional clarification about how these changes in heater regulations will impact private outdoor spaces such as backyards and rooftops – for instance, would propane heaters be allowed on a private patio? We look forward to the complete guidance on outdoor heater compliance from FDNY, and recognize that this question may be answered there.

NYSRA is supportive of differentiating between enclosed tents and non-enclosed tents, and allowing the non-enclosed tents to still be considered outdoor dining, while implementing the

indoor dining regulations for enclosed tents. We do have some questions about the reasoning for requiring a full 50% of tent side area to be open to be considered not-enclosed. As we understand, state guidance simply requires two open sides for structures to be considered “outdoor dining” and does not make any requirement about the relative size of the open sides versus covered sides. We also wonder how restaurants will be expected to calculate 25% of an enclosed tent’s capacity. We have been informed by operators who use tents that there is not typically a stated capacity for tents, or an equivalent of COI, which would be the indicator for true indoor dining. Additional guidance on this issue would be greatly appreciated.

Towards the goal of a permanent, yet flexible, outdoor dining program, NYSRA also supports the goals of the preconsidered Intros from Council Members Kallos and Salamanca, which would simplify the operational challenges of submitting planning paperwork and waiting for permits for sidewalk cafes. However, it seems possible that the soon-to-be permanent version of the Open Restaurants program may make these moot points, if the self-certification with DOT continues similarly. Nevertheless, we are always appreciative when Council Members identify ways to simplify city certification processes, and we are so glad to see that kind of effort present in each of the preconsidered Intros today.

In light of this being an oversight hearing as well, I’d like to briefly discuss the current Open Restaurants program. Overall, we have been very impressed with the resilience, enthusiasm, and creativity of New York City restaurateurs who have taken advantage of the Open Restaurants program, and we have gotten very positive feedback from operators grateful for an additional opportunity to serve customers safely. Against a backdrop of positive reviews, we also heard the following concerns, some of which are being resolved in the upcoming plan for permanent outdoor dining.

At the start of the program, there was a change in requirements that caused some businesses to be caught off guard, and made to immediately change the thickness of their barrier, at significant cost to them. Since then, I think communications about the requirements have been fairly clear and transparent. The cost of participating in the program is, thankfully, not compounded by the city charging a fee, yet, we do acknowledge that restaurateurs have invested significant amounts of money into creating their compliant outdoor setups. Many operators inquired about the ability to set up seating next to adjacent storefronts with permission, and we are grateful that the new program announced by Mayor de Blasio will allow that accommodation. We have also gotten many inquiries about the reasoning behind the blanket 11pm curfew, especially when some people say their previous sidewalk cafes were allowed to remain open later. We have suggested to DOT that the curfew be extended depending on how neighborhoods are zoned, so that restaurants in commercial areas may be able to stay open later, while respecting the consideration of neighbors in quieter areas. DOT expressed at the time that they had no intention of changing the curfew, but perhaps some kind of distinction could be drawn in the permanent outdoor dining program.

In conclusion, the New York State Restaurant Association is grateful to City Council and the administration, especially DOT, FDNY, and DOB, for focusing their efforts on creating a permanent, flexible outdoor dining program for restaurants. In light of the incredibly difficult circumstances the industry faces, and the long road ahead to a full recovery, it is critically important to ensure the near and long-term viability of outdoor dining in NYC. This is an industry fighting for its life, and we thank City Council for keeping that in its consideration of this and other relief measures. We look forward to our continued collaboration, and thank you for hearing us today.

Respectfully Submitted,

Kathleen Reilly

NYC Government Affairs Coordinator

New York State Restaurant Association

315 W 36th St., 7th Floor

New York, New York 10018
