



American Council of Engineering Companies of New York

Testimony - June 4, 2020
Committee on Consumer Affairs
Intro. 1957 (temporary outdoor dining)

The American Council of Engineering Companies of New York (ACEC New York) is an association representing nearly 300 engineering and affiliate firms with 30,000 employees in New York State. Our member firms plan and design the structural, electrical, mechanical, plumbing, civil, environmental, fire protection and technology systems of buildings and infrastructure throughout New York City.

A substantial number of our members live and work in the City. We patronize the restaurants and bars and use the sidewalks, pedestrian plazas, streets and other spaces as everyone else. Like all New Yorkers, our members have been deeply affected by the pandemic, personally and professionally.

We thank the Committee for this opportunity to submit comments on Intro 1957, in relation to temporary outdoor dining permits for food service establishments. ACEC New York supports the Council's commendable goal and intention behind Intro 1957. We appreciate the Council's recognition that businesses are facing unprecedented times and this requires the City to calibrate its approach to fostering the private sector toward economic recovery.

Our members are anxious to see a quick recovery, including for the food establishment industry as well as our own design and construction industry. ACEC New York submits a few items for clarification and observations regarding Intro 1957 for your Committee's consideration.

We interpret the bill's language to mean it will create a permit process for temporary unenclosed outdoor cafés on sidewalks, pedestrian plazas, streets or parking lots that have been designated by NYC DOT. As temporary spaces, these outdoor dining areas will be comprised of removable tables and chairs as defined by the NYC DCA [Sidewalk Café and Design Regulations Guide](#). This means there will be no structural enclosure. We emphasize that the open and temporary nature of the way these outdoor dining spaces are to be used should be made clear in the bill's language. Only in such cases would expedited review be appropriate, as the erection of enclosed structures would require deeper safety analysis.

We note, the bill requires very substantial and critical work of NYC DOT, as the agency would be made responsible for ensuring that temporary dining spaces comply with applicable regulations to protect public safety. The [Sidewalk Café and Design Regulations Guide](#) contains design and operations requirements for sidewalk cafes developed with public safety and convenience in mind. As indicated, these newly permitted outdoor dining spaces should reflect safety, accessibility and historic preservation considerations, including zoning restrictions, sidewalk safety, clear path regulations, accessibility requirements, coordination with the Landmarks Preservation Commission and planning to account for permanent structures in proximity such as fire hydrants, subway grates, traffic lights and other equipment.

Given that the bill places responsibility on NYC DOT to identify spaces where outdoor dining would be appropriate and to take "all measures necessary to ensure protection for all street users," we recommend the agency not only identify general sidewalks, streets, plazas and other appropriate spaces, but specifically designate areas acceptable for use in outdoor dining service. It is worth noting, streets with high numbers of restaurants are often heavily traveled by vehicular, and increasingly, bicycle traffic, including ride share bringing patrons to the location, deliveries, emergency responders and carting.

Careful consideration needs to be given to which streets are appropriate for this purpose, the environmental effects if traffic is eliminated or curtailed, and how to maintain safety if some lanes remain in use. Similarly, while some blocks may have only a single restaurant on them, many have multiple, and NYC DOT will need to determine how to fairly allocate available space and should specifically designate areas within which each restaurant can operate, in order to avoid conflict and to be able to hold the appropriate operator accountable for the conduct of their business.

We also understand the intent of the bill to be that these permits will not be issued for outdoor spaces that are permanent (which would likely require review of the Public Design Commission), that will remain in place for more than a few months (potentially requiring some type of franchise or concession authorization), nor will they permit the construction of any structure and/or electrical/lighting systems without permits from DOB as required under the construction codes. The latter is particularly important, given the bill's provision allowing application plans to be prepared without the seal of a licensed design professional. While that might be warranted given the exigencies of the current emergency and the need for swift recovery, the risk of compromising safety is too great when an installation is contemplated as permanent or that includes utility or similar services, absent review by a licensed or registered design professional, as currently required for all sidewalk cafes. The bill should be amended in order to make this point clear.

We believe that permitting any longer-term or permanent space use, or for the preparation of plans that involve enclosed structures, electrical or HVAC systems, a design professional must be involved to ensure public safety and health. If temporary outdoor dining extends into cold weather months, or as the City reopens and sidewalks and streets become more active, then even more comprehensive planning and study will be necessary, such as impacts on pedestrian circulation, bus routes, proximity to road traffic, deliveries, loading docks, garbage pickups and numerous others, taking into account the actual experience gleaned from the temporary use.

We support the City Council's efforts to identify ways to restart the City's economy. Please let us know if there anything we can do as an association to assist in this process.

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