

COMMUNITY BOARD 7/MANHATTAN
Manual for Sidewalk Cafe Applicants

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COMMUNITY BOARD 7/MANHATTAN

Manual for Sidewalk Cafe Applicants

INTRODUCTION

Community Board 7/Manhattan provides this manual to applicants for sidewalk cafes in order to:

- remind them of City-wide procedures for applying for a cafe license
- remind them of City-wide regulations on cafe construction and operation
- inform them of the Board's criteria for approving cafe applications.

However, because this manual is not an official statement of City regulations, applicants should consult the relevant laws and regulations (see References below, page 12) and City agencies for definitive, current regulatory interpretations.

Community Board 7/Manhattan reviews applications for sidewalk-cafe licenses in order to identify and fairly consider the interests of merchants and the desire of their patrons for sidewalk seating, and the community's interests in sidewalk life and freedom from obstruction, noise, litter, and other nuisances. Recognition is given to the fact that the use of the public sidewalk by a private entity is a privilege, rather than a right. We review architects' plans for proposed cafes, take note of minimum requirements imposed by the City, and then attempt to find the best way to accommodate competing interests. Thus the Community Board may, in specific cases, propose physical configurations or operating procedures that go beyond those required by applicable law, City departmental regulations (City Planning, Consumer Affairs, or Transportation), or even the Board's own criteria.

APPLICATION PROCESS

A restaurateur who wishes to operate a sidewalk cafe must apply to the NYC Department of Consumer Affairs for a "revocable consent," i.e. a license that may be revoked if the licensee disregards its restrictions.*

* This discussion does not address the case of cafes requiring special permits.

Unenclosed Cafes: Agency Review

Within 5 days of the filing of the application, Consumer Affairs provides copies of the application to: the departments of City Planning, Transportation (DOT), and Environmental Protection (DEP), and the Landmarks Preservation Commission (LPC) for the purpose of review; City Council Member in whose district the cafe would be located and City Council Speaker, for informational purposes; Community Board 7/Manhattan, for the purpose of review.

City agencies have 21 days to provide written comments to Consumer Affairs. For any proposed cafe located in an historic district, on a landmark site, or adjacent to a restaurant located in a landmark, the Landmarks Preservation Commission determines whether a Certificate of Appropriateness is required. In cases where LPC requires such a certificate,

the cafe applicant is responsible for following all LPC regulations and guidelines in applying for the Certificate of Appropriateness.

Silence by an agency is taken by Consumer Affairs to be assent to the application as submitted. (Consumer Affairs informs the applicant of any agency objections to the application. If objections remain unresolved for 30 days, the application is considered withdrawn. If the objections are resolved within the prescribed period, DOT holds a public hearing and takes further actions as described below.)

Unenclosed Cafes: Community Board Hearing and Review

Within 60 days of receipt of the application, Community Board 7/Manhattan holds a public hearing on it.

Community Board 7/Manhattan requires applicants to post a standard-format CB7 notice conspicuously at the location of the proposed sidewalk cafe for at least 15 days in advance of the Community Board hearing. In addition, the applicant must notify, at least 15 days in advance of this hearing, all residents of its building (and the president of any board of directors of the building's condominium association or cooperative corporation) as well as all owners of properties and all ground-floor occupants of buildings within a 200-foot radius.

Based on its hearing, the Board forwards a written recommendation on the application to the City Council and the Department of Transportation.

Unenclosed Cafes: Department of Transportation Hearing and Review

Within 60 days after expiration of the Community Board's 60-day review period, the Department of Transportation holds its public hearing on the application. In preparation for DOT's public hearing, both the applicant and DOT have outreach responsibilities.

For a second time, the applicant is required to post notice in a place "conspicuous to public view at the location of the proposed sidewalk cafe" for at least 15 days in

advance of the hearing. In addition, the applicant must notify, by certified or registered mail at least 15 days in advance of the hearing, all residents of its building as well as all owners of properties and all ground-floor occupants of buildings along its block front.

At the same time, the Department of Transportation notifies Community Board 7/Manhattan, the Manhattan Borough President, and the City Council Member in whose district the cafe would be located.

Based on its public hearing, the Department of Transportation approves or disapproves the application or approves it with modifications. Failure by DOT to take action within the prescribed period is to be taken as denial of the application. DOT is required to file notice of any approval (whether with or without modifications) of an application with the City Council.

Enclosed Cafes: Agency Review

Within 5 days of the filing of the application, Consumer Affairs provides copies of the application to: the departments of City Planning, Transportation, and Environmental Protection, and the Landmarks Preservation Commission (for the purposes of review); City Council Member in whose district the cafe would be located and City Council Speaker (for informational purposes).

City agencies have 21 days to provide written comments to City Planning. For any proposed cafe located in an historic district, on a landmark site, or attached to a restaurant located in a landmark, the Landmarks Preservation Commission determines whether a Certificate of Appropriateness is required. In cases where LPC requires such a certificate,

the cafe applicant is responsible for following all LPC regulations and guidelines in applying for the Certificate of Appropriateness.

Silence by an agency is taken by City Planning as assent to the application as submitted. Applications having no agency objections are forwarded to Community Board 7/Manhattan within 5 days of the conclusion of the 21-day agency review period. (In the case of applications that do have agency objections, City Planning informs the applicant of the objections. If objections remain unresolved for 6 months, the application is considered withdrawn. If the objections are resolved within the 6 months, City Planning forwards the application to Community Board 7/Manhattan for review and to the City Council Member in whose district the cafe would be located.)

Enclosed Cafes: Community Board Hearing and Review

Within 60 days of receipt of the application, Community Board 7/Manhattan holds a public hearing on it.

Community Board 7/Manhattan requires applicants to post a standard-format CB7 notice conspicuously at the location of the proposed sidewalk cafe for at least 15 days in advance of the Community Board hearing. In addition, the applicant must notify, at least 15 days in advance of this hearing, all residents of its building (and the president of any board of directors of the building's condominium association or cooperative corporation) as well as all owners of properties and all ground-floor occupants of buildings within a 200-foot radius.

Based on its hearing, the Board forwards a written recommendation on the application to the City Council and the Department of Transportation.

Enclosed Cafes: Department of Transportation Hearing and Review

Within 60 days after expiration of the Community Board's 60-day review period, the Department of Transportation holds its public hearing on the application. In preparation for DOT's public hearing, both the applicant and DOT have outreach responsibilities.

For a second time, the applicant is required to post notice in a place "conspicuous to public view at the location of the proposed sidewalk cafe" for at least 15 days in advance of the hearing. In addition, the applicant must notify, by certified or registered mail at least 15 days in advance of the hearing, all residents of its building as well as all owners of properties and all ground-floor occupants of buildings along its block front.

At the same time, the Department of Transportation notifies Community Board 7/Manhattan, the Manhattan Borough President, and the City Council Member in whose district the cafe would be located. The Department of Transportation is also responsible for arranging for publication of a notice, at least 5 days in advance of the public hearing, in *The City Record* and one newspaper serving the community where the cafe would be located.

Based on its public hearing, the Department of Transportation approves or disapproves the application or approves it with modifications. Failure by DOT to take action within the prescribed period is to be taken as denial of the application. DOT is required to file notice of any approval (whether with or without modifications) of an application with the City Council.

Within 20 days of receiving notice of the Department of Transportation's approval of an application, the City Council may resolve, by majority vote of all Council Members, to review the application. Any such review must include a public hearing and must be completed within 50 days of receiving notice of DOT's approval of the application. If the City Council takes no action to review the application, DOT's approval stands.

APPLICATION CONTENTS

Every application to the Department of Consumer Affairs must include:

- written consent of the owner of the property in front of which the cafe would be operated
- 6 copies of a floor plan showing: frontage of 10 inches and proportional width; location of all tables (for Community Board 7/Manhattan, this includes portable busing stations), chairs, gratings (for Community Board 7/Manhattan, this includes cellar doors), doors to adjacent premises, fire-escape drop ladders; dimensions of sidewalk area and location of street obstructions (e.g. subway entrances, bus-stop shelters, newsstands, public telephones, and other street furniture)
- 6 copies of an elevation diagram showing: any awnings and canopies and indicating their capability for retraction; location of door and window openings (for Community Board 7/Manhattan, this includes cellar doors), fire escapes, drop ladders, and counterbalanced stairs; height of any platforms and railings; sideview tables (for Community Board 7/Manhattan, this includes portable busing stations).

CITY-WIDE REGULATIONS: CONFIGURATION AND CONSTRUCTION

Any sidewalk cafe is an obstruction to pedestrian traffic. Several City regulations aim to minimize this inconvenience:

- a mid-block cafe must leave a clear path of at least 8 feet or 50% of the width of the sidewalk, whichever is greater; the path must be free of all obstructions (trees with gratings flush to grade, parking meters, and traffic signs are not considered obstructions; examples of obstructions include, but are not limited to, mailboxes, public telephones, and tree pits with raised gratings)
- a corner cafe must leave a clear path of at least 9 feet; the path must be free of all obstructions, without exception
- a cafe must be at least 15 feet away from large (i.e. greater than 15 ft² in area) sidewalk obstructions; examples of such obstructions are bus-stop shelters, newsstands, subway entrances, and other sidewalk cafes
- an establishment with a cafe may not further obstruct the public right of way by storing its refuse in a structure or enclosure outside the cafe boundary
- an establishment with a cafe may not further obstruct the public right of way by allowing anything (e.g. a door or window) to project or swing beyond the cafe boundary.

Moreover, the cafe should not intrude unnecessarily on the fabric of the neighborhood:

- no support members (e.g. for railings) may be cemented or leaded into the sidewalk
- furnishings (consisting solely of tables, chairs, and decorative accessories) must be moveable
- nothing other than lights and HVAC equipment may be affixed to the wall
- any HVAC equipment must exhaust at least 10 feet above curb level
- no awning or canopy may extend more than 2 inches beyond the cafe boundary
- signage (consisting solely of name and type of establishment) is permitted only on umbrellas or on an awning valance; letter height on awnings is limited to 8 inches
- height of the awning valance is limited to 12 inches
- for a cafe proposed to be located in an historic district, on a landmark site, or attached or adjacent to a restaurant located in a landmark, a Certificate of Appropriateness may be required by the Landmarks Preservation Commission.

The cafe must also comply with more general City building regulations:

- no fixture, furniture, or appurtenance of the cafe may be placed so as to obstruct any siamese connection or any fire escape, cellar door, safety drop ladder, counterbalanced stair, or other means of egress
- the cafe must be accessible to people with physical disabilities.

Unenclosed Cafes

These additional regulations apply only to unenclosed cafes:

- the cafe may not obstruct the means of egress from any portion of a building
- no surface cover or treatment of any kind (e.g. paint, Astroturf) may be applied to the public sidewalk
- the maximum height permitted for any railing, fence, or planter (including vegetation) is 30 inches above the sidewalk
- a cafe awning requires a separate permit from the Department of Buildings and must be adequately secured, retractable, and made of non-combustible materials
- at its lowest point, an awning must be at least 7 feet above the sidewalk
- fixtures of the cafe are to be removed from the sidewalk during the cafe's off season.

Enclosed Cafes

These additional regulations apply only to enclosed cafes:

- separation between the near end-walls of neighboring enclosed cafes must be at least 15 feet when the intervening use is non-commercial; separation between the near-end walls of neighboring enclosed cafes must be at least 40 feet when the intervening use is commercial
- an enclosed cafe must be constructed to maximize transparency: glass/plastic must be untinted and non-reflective; vertical supports cannot be more than 10 inches wide; at least 50% of wall space must be comprised of operable windows
- a base wall of opaque material may be constructed to a maximum height of 12 inches above the floor level; all horizontal structural supports must be included within the base wall
- the floor may be no more than 7 inches above the sidewalk
- a cafe awning must be adequately secured, retractable, and made of non-combustible materials approved by the Department of Buildings
- at its lowest point, the ceiling (or awning) must be at least 7 feet above the floor.

CITY-WIDE REGULATIONS: OPERATION

The operator of a sidewalk cafe should always be aware that the cafe is potentially a nuisance to neighbors and passers-by. Thus s/he is responsible for maintaining "good order" in the cafe and assuring the "proper conduct" of patrons.

To help ensure the maintenance of good order, City regulations:

- require that the licensee provide waiter/waitress service to patrons in the sidewalk cafe; waiters/waitresses must work within the cafe boundary, i.e. may not serve from the public sidewalk's required clear path
- prohibit the use of musical instruments and sound reproduction devices in the sidewalk cafe
- prohibit the serving of alcoholic beverages in the cafe, except as permitted under a license issued by the New York State Liquor Authority
- limit seats at a table to 6
- limit hours of operation for sidewalk cafes to

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| Sunday | noon - midnight |
| Monday-Thursday | 8 a.m. - midnight |
| Friday | 8 a.m. - 1 a.m. Saturday |
| Saturday | 8 a.m. - 1 a.m. Sunday |
| 31 December | 8 a.m. - 1 a.m. New Year's Day |
| 11 February | 8 a.m. - 1 a.m. Lincoln's Birthday |
| 21 February | 8 a.m. - 1 a.m. Washington's Birthday |
| 29 May | 8 a.m. - 1 a.m. Memorial Day |
| 3 July | 8 a.m. - 1 a.m. Independence Day |
| Sunday before Labor Day | noon - 1 a.m. Labor Day |
| 11 October | 8 a.m. - 1 a.m. Columbus Day |
| 10 November | 8 a.m. - 1 a.m. Veteran's Day |
| Wednesday before Thanksgiving | 8 a.m. - 1 a.m. Thanksgiving Day |
| 24 December | 8 a.m. - 1 a.m. Christmas Day |

(when holiday hours conflict with normal weekday hours, the holiday hours take precedence, except that the cafe may not open earlier than noon on a Sunday).*

Other City regulations are designed to prevent licensees from making disproportionate profits from their use of public space:

- the licensee may not impose an additional charge for cafe seating
- the licensee may not charge higher prices for food and drink sold in the cafe than for the same items sold inside the restaurant.

* Dates for holidays and holiday eves are reproduced verbatim from City regulations. Community Board 7/Manhattan recognizes that some dates are erroneous and has brought errors to the attention of City officials.

In addition, there are regulations to protect the City as licensor:

- the licensee must secure and maintain liability insurance (for at least these amounts: \$100,000 for any one person; \$300,000 for any one accident; \$25,000 for property damage) holding the City of New York harmless against any claim, injury, or damage caused in any way by the construction or operation of the sidewalk cafe
- the license is personal to the licensee and cannot be sold, leased, or transferred; it is deemed revoked by the sale or transfer of the lease or title to the building to which the cafe is attached or adjacent.

COMMUNITY BOARD 7/MANHATTAN CRITERIA

In response to community needs and concerns, Community Board 7/ Manhattan has established the following criteria for successful cafe applications. The Board requires that every sidewalk cafe:

- be attached to a restaurant in operation for at least one year prior to application for a sidewalk cafe (or possibly a restaurant whose owner's other restaurants in New York City have shown themselves to be satisfactory neighbors)
- provide waiter/waitress service during all hours of cafe operation
- provide both food and beverage service
- use only non-disposable dishware, glassware, and cutlery.

Applicants should note that cafe operation prior to submission of an application to the Department of Consumer Affairs is illegal and sufficient grounds for denial.

In reviewing sidewalk cafe applications, the Community Board is particularly concerned about issues of pedestrian circulation. The Community Board considers the proposed cafe's proximity to nearby generators of pedestrian traffic (e.g. subway stations, supermarkets, movie theatres, newsstands) and to sidewalk obstructions (e.g. subway entrances, bus-stop shelters, newsstands, public telephones, and other street furniture). In order to limit sidewalk congestion while simultaneously encouraging a vibrant sidewalk environment, Community Board 7/Manhattan has developed these requirements, over and above City-wide regulations, for cafe configuration:

- all encroachments on or obstructions of the sidewalk (e.g. waiting lines, storage of delivery bicycles and mopeds) must be confined within the boundaries of the cafe
- to plan cafe space properly, each rectangular table must be at least 24" x 24" and each circular table must be at least 24" in diameter
- barriers for a cafe located at an intersection must have rounded or chamfered corners.

Applicants should note that Community Board 7/Manhattan does not approve cafes on platforms.

In considering nearby sidewalk obstructions, the Community Board pays special attention to neighboring sidewalk cafes. Allowing multiple cafes on one block raises issues not only of pedestrian dynamics, but also of neighborhood character. The Community Board also believes sidewalk cafes are inconsistent with the quiet residential character of side streets and thus discourages applicants from proposing cafes that wrap around from avenues to, or otherwise exist on, side streets.

Unenclosed Cafes

Community Board 7/Manhattan has established the following requirements for configuration of unenclosed cafes:

- the cafe may not be more than 9 feet in depth (i.e. even in the case of a sidewalk greater than 18 feet in width)
- to guard against furniture drifting beyond the cafe boundary, the cafe must have removable barriers, no higher than 30 inches; moreover, the seating plan must allow for adequate serving aisle(s) within the cafe boundary marked by the barriers.

Community Board 7/Manhattan supplements City-wide operational regulations for cafes with this requirement:

- fixtures of the cafe are to be removed from the sidewalk at closing time or as soon as it becomes evident that poor weather is discouraging patrons from using the cafe, whichever is earlier.

Enclosed Cafes

Being very concerned about the construction of virtually permanent private structures on the public sidewalk, Community Board 7/Manhattan has developed this requirement for enclosed cafes:

- the cafe may not be more than 7 feet in depth (i.e. even in the case of a sidewalk greater than 18 feet in width).

Applicants for enclosed cafes should take special note of Landmarks Preservation Commission regulations, guidelines, and concerns.

There are more than 40 individual landmarks in the Community Board 7/Manhattan district. In addition, Columbus Avenue between 68th Street and 88th Street, and Amsterdam Avenue between 79th Street and 84th Street, lie within the Upper West Side / Central Park West Historic District. Maps showing the boundaries of this and other neighborhood historic districts (e.g. Riverside - West End Historic District, West End - Collegiate Historic District) are available from the Community Board office and the Landmarks Preservation Commission.

COMMUNITY BOARD 7/MANHATTAN PROCESS NOTE

Public hearings on sidewalk cafe applications are conducted by the Land Use Committee of Community Board 7/Manhattan. The Land Use Committee generally meets the fourth Thursday of each month (except August) at the Community Board's office, located at 250 West 87th Street. Upon reviewing the application and hearing public testimony, the Committee develops a recommendation to present to the full Community Board.

This may be a resolution of approval or of disapproval or of approval contingent on some action(s) of the applicant.

If the Land Use Committee requires the applicant to amend the plans, the amended plans (stamped by the Department of Consumer Affairs) must be provided to the Community Board office before the next meeting of the full Board.

The full Community Board generally meets the first Tuesday of each month (except August). The full Board may or may not adopt the Land Use Committee's recommendation on the application. Reversal is a possibility, as is emendation, or even referral back to the Committee for further consideration of the application.

Applicants may contact Board office (212/362-4008) business days from 10 a.m. to 5 p.m. in order to confirm dates and locations of full Board and Committee meetings.

REFERENCES

City of New York Administrative Code, Title 20, Chapter 2, Subchapter 6, "Sidewalk Cafes"

New York City Zoning Resolution, Article I, Chapter 4, "Sidewalk Cafe Regulations"