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Thursday, January 30th

NYC Hospitality Alliance's Testimony to the NYC Council Committee on Small Business and Committee on Economic Development on Oversight: Legal and Regulatory Challenges Facing Small Businesses

The NYC Hospitality Alliance is a not-for-profit association representing and serving thousands of restaurants, bars, and nightclubs across the five boroughs. We submit the following 7 recommendations for important regulatory reforms, including an additional 6 recommendation to improve to the new Dining Out NYC, outdoor dining program.

1. **Community Board and 311 Reforms:** Community Boards play a key role in liquor and outdoor dining licenses, which are vital to the success of bars and restaurants. But appearing before Community Boards has become too bureaucratic, often involving confusing procedures, lengthy application forms, strict deadlines, and outsourced resident outreach requirements. People starting a new business must be treated fairly at Community Boards. The must be reforms that reign in the Community Board bureaucracy and increase representation from small business owners and pro-hospitality residents, so that each Community Board's procedures are sensible, and their actions reflect the interests of the entire community. Additionally, there should be penalties against individuals who make repeated, false 311 complaints to harass businesses.

2. **Getting Scaffolding (*Sidewalk Sheds*) Down:** These structures protect people from building construction and falling debris, however, scaffolding left up for long periods harms restaurants and bars. The effects range from losing business, a reduction of employee hours and layoffs, it creates unsightly conditions and invites problematic behavior and is a factor in some businesses closing. Reforms such as time limits on scaffolding, enhanced inspection oversight, aesthetic improvements, and financial support for affected businesses, among others are essential.

3. **Labor Law Compliance Support:** With New York's frequent changes to overly complicated labor laws, small businesses face growing operational burdens, legal and financial risks. The creation of a 24/7 hotline providing free legal counsel to businesses, so they save money on legal fees, along with a guarantee that businesses following this advice won't be held financially liable for violations should be established.

4. **Outdoor Dining Improvements:** The city's outdoor dining program should be improved by allowing enclosures on sidewalk cafes in colder months, allow for a year-round roadway café option, restoring pre-pandemic sidewalk café clearances for more seating, and making technical changes to streamline the process and reduce costs for restaurants. (SEE BELOW FULL LIST AND DETAILS OF REFORMS)

5. **Reducing Fines and Tax Reform:** Continue to reduce unnecessary fines on small businesses and create a regulatory environment focused on education and training first, with fines and penalties as a last resort. Permanently repeal the unfair New York City only imposed Liquor License tax that is not levied on businesses elsewhere in the state, but only on licensees in the five boroughs, and repeal of the unjust Commercial Rent Tax for storefronts like restaurants and bars that is levied on many high rent burdened businesses.

6. **Streamline Permitting and Licensing:** Continue to cut red tape and reduce government bureaucracy, helping restaurants, bars, and nightclubs open and expand faster—with fewer delays, less hassle, and lower costs.

7. **Fix OATH's broken remote hearings system.** The Office of Administrative Trials and Hearings was established by the City Council as an impartial administrative court to adjudicate agency summonses. During the pandemic, OATH understandably transitioned to remote hearings. However, these remote hearings have now become mandatory and permanent, creating significant barriers for small businesses. Currently, respondents must navigate a cumbersome process: emailing a specific address within a narrow window (3–7 days before the hearing), obtaining a PIN, and using it to access a phone line. This system is fraught with issues, often resulting in increased defaults, costing businesses real money. OATH must reform its practices to allow respondents to attend hearings on the date printed on their summons without unnecessary obstacles.

6 Dining Out NYC Reforms

NYC Hospitality Alliance's proposes 6 reforms to create the best and most inclusive outdoor dining program in the county. These reforms promote alfresco dining, support local restaurants, generate tax revenue for New York, and create jobs.

1. **Year-round Roadway Dining Option:** One of the key challenges faced by small restaurants across the five boroughs is the seasonal only roadway dining option. The construction and storage costs associated make it too expensive and cumbersome for many restaurants. To address this issue, the city should allow roadway cafes that meet specific standards to remain open year-round. For others, the city should provide winter storage for the streeteries since these restaurants are paying the city fees for participating in the outdoor dining program.

2. **Sidewalk Café Enclosures:** Restaurants pay annual fees for sidewalk cafes so they should be allowed to enclose them during the winter months using canvas, acrylic and glass vestibule style coverings to keep their customers and workers warm and protected from the elements of weather.

3. **Clearances:** The clearances requirements for sidewalk cafes should revert to the uncontroversial decade's old standard of half the sidewalk width or eight feet, whichever is greater. The new requirements reduced the number of seats many restaurants were allowed to have for years. Also, the way certain required clearances are measured should be changed to maximize allowable seating while preserving pedestrian clear path (e.g. measure to the tree trunk when tree beds are flush to grade).

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4. **Application Process:** The online application process should be upgraded to allow features like letting restaurants save partially submitted applications to return to complete so they don't have to be filed at once. The online only application option has also deterred some small restaurants from applying due to its complexity so the city should provide an in-person option to apply like they used to.

5. **Scaffolding:** Scaffolding by definition is temporary. Therefore, scaffolding put up above a sidewalk café must ensure its pedestrian clearance requirements and not prevent or limit a sidewalk café's footprint.

6. **Processing Time:** The City Council intended for a faster outdoor dining application process, but the city is now taking too long to determine if an application is complete before sending it to the community board, which begins the processing timeline, so speeding up this process is crucial.

Thank you for your consideration of our comments. If you have questions or comments, please contact the NYC Hospitality Alliance's executive director Andrew Rigie at arigie@thenycalliance.org.

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