

Michelle Craven, Assistant Commissioner
New York City Department of Transportation, Office of Cityscape and Franchises
55 Water Street, 9th Floor
New York, NY 10041

November 20, 2023

RE: Comments on New York City Department of Transportation Proposed Rules on Dining Out NYC Program

Dear Assistant Commissioner Michelle Craven,

American Institute of Architects New York writes to express our support for New York City Department of Transportation's (DOT) proposed rules on the Dining Out NYC program and present recommendations to improve the implementation of the permanent outdoor dining program.

During the COVID-19 pandemic, the temporary outdoor dining program served as a lifeline for restaurants. After more than a year of negotiations, Intro 31-C was signed into law by Mayor Adams, creating a permanent outdoor dining program in NYC. Dining Out NYC demonstrates how the city is reimagining the use of public space to improve quality of life and create vibrant, safe, and accessible outdoor dining experiences. The permanent program allows for sidewalk cafes to operate year-round and roadway dining to operate from April to November. DOT's proposed rules provide valuable guidance on the design requirements for outdoor dining structures, with a focus on maintaining accessibility and sanitation.

AIANY makes the following recommendations to improve DOT's proposed rules for the Dining Out NYC program.

Recommendation 1: Provide clarity on design requirements for slopes, accessibility, alternative materials to fill barriers other than water, easily removable umbrellas and coverings, and screening on roadway side of structures. As written, the rules leave many design elements up for interpretation. Sloping needs to be defined in terms of slope steepness. ADA accessible is a term used loosely to define accessibility guidelines and needs to be made explicitly clear. While the rules include a metric to determine the alternative materials allowed to be used to fill barriers other than water, it would be useful to include what the approved materials are. For the requirements on umbrellas and coverings, a clarification on what "easily removable" means is necessary. Add in a metric such as "it should take one person one hour to remove" or "three people one day". The current language leaves room for broad interpretation. In terms of the screens on the roadway side of the dining structures, the degree of visibility must be defined. Are plantings and plexiglass acceptable materials?

Recommendation 2: Host design competition to give design professionals an opportunity to demonstrate the possibilities for the design of dining structures with the permanent program rules for restaurant owners to use as a reference and guide. While the Kit of Parts will be a valuable resource for restaurant owners, hosting a design competition where design professionals have an opportunity to demonstrate the various design possibilities for dining structures with the permanent program rules will be immensely helpful for restaurant owners. Given that an architect, engineering, or licensed design professional is not required for restaurant owners to submit an application, providing owners with a variety design proposals and ideas will improve the quality of designs put forward in restaurant's applications and provide additional variety for owners in a multitude of spaces and typologies.

Recommendation 3: Clarify and restructure the timeline for applications, compliance, and removal. Decouple the application timeline from the compliance date. Restaurants should have the flexibility to apply for outdoor dining setups prior to the November 1, 2024 removal deadline. This would allow approved and compliant setups to be built before the deadline, without risk of demolition and waste. This would create an incentive for restaurants to submit their applications to the permanent program early and would reduce waste while also giving DOT a head start in evaluating applications prior to the start of the 2025 seasonal program. This would allow approved and compliant setups to be built before the deadline, without risk of demolition and waste. This would create an incentive for restaurants to submit their applications to the permanent program early and would reduce waste while also giving DOT a head start in evaluating applications prior to the start of the 2025 seasonal program. The current timeline for applying for the permanent program permit and removing temporary structures is unclear and unrealistic. The timeline in the rules disincentivizes restaurant owners for submitting their application early because once approved they need to take down their temporary structure to comply with the permanent program rules. The reason this disincentivizes owners is because restaurants will be required to take down their roadway structures in November regardless as the permanent program makes roadway dining seasonal; therefore, many owners would view this as double the work and bad for business and wait to apply until the November deadline. As a result, DOT will be swarmed with applications slowing down the review process and potentially impacting businesses for the April start date in 2025. Our recommendation to incentivize owners to submit their application early is to decouple the application approval from the teardown date for the temporary structure. In this scenario, businesses can apply early and know the fate of their application and make revisions, if necessary, without the stress of the impact on their business of take down and putting up new structures in a short time period. All restaurants whether they have applied or not will be required to take down their roadway dining structures in November and begin complying with the permanent program rules. Additionally, this will make coordinating with the Department of Sanitation easier because it will be a defined period when restaurants will be disposing of their temporary structures.

Recommendation 4: Provide clear guidance for denied applications on the reason the application was not approved to allow restaurant owners to remedy their application to appropriately comply with the program rules. With architects, engineers, or licensed design professionals not being required to be involved in restaurant's applications, providing owners with as much clear guidance as possible on the reason an application was denied will be essential. Owners need to know what changes they need to make to comply and be approved without having to spend money to hire a licensed professional. This will be key in making the permanent program equitable.

Recommendation 5: Add section on the waste removal plan and rules for the temporary program structures with the Department of Sanitation. The amount of waste created by the removal of the temporary program dining structures will be significant and require strong interagency coordination to avoid waste mania that negatively impacts quality of life and the public realm. Specialty carting will likely be necessary for the removal of most of the materials, so the development of a waste removal plan with the Department of Sanitation is important to effectively and efficiently removing the temporary structures.

AIA New York looks forward to continuing our partnership with DOT, Chief Public Realm Officer Ya-Ting Liu, and Mayor Eric Adams to ensure successful implementation of Dining Out NYC and to serve as a resource and advocate for meeting the city's public realm improvement goals.

Sincerely,

Matthew Bremer, 2023 President, AIA New York; Founder, Architecture in Formation