

# STATE OF NEW YORK

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7733

2021-2022 Regular Sessions

## IN ASSEMBLY

May 20, 2021

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Introduced by M. of A. FAHY -- read once and referred to the Committee on Economic Development

AN ACT in relation to permitting the use of municipal space for outdoor dining; and providing for the repeal of such provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The intent of this act is to provide  
2 relief to retail licensees for on-premises consumption or manufacturers  
3 with retail on-premises consumption privileges as provided for in the  
4 alcoholic beverage control law in relation to permitting the use of  
5 municipal space for outdoor dining.

6 § 2. Notwithstanding any provision of the alcoholic beverage control  
7 law to the contrary:

8 a. For the purposes of subdivision 1 of section 99-d, paragraph (g) of  
9 subdivision 1 of section 110, or any other applicable provisions of the  
10 alcoholic beverage control law, a temporary use permit issued to a  
11 licensee by a municipality authorizing the use of municipal property for  
12 the operation of a licensed premises shall demonstrate control of such  
13 municipal property for the purposes of this act. For the purpose of this  
14 act "licensee" shall have the same meaning as defined in subdivision 18  
15 of section 3 of the alcoholic beverage control law.

16 b. A licensee issued a retail license for on-premises consumption or  
17 manufacturers with retail on-premises consumption privileges as provided  
18 for in the alcoholic beverage control law and licensed by the state  
19 liquor authority (referred to hereinafter as the "authority"), may make  
20 an application to the authority and in accordance with their license and  
21 approval by the authority, to use both contiguous space as provided for  
22 in section 99-d of the alcoholic beverage control law and non-contiguous  
23 municipal space for outdoor dining. For the purposes of this act,  
24 "non-contiguous space" shall mean space that is: (i) in close proximity

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 and in-line-of-sight to the licensed premises; (ii) not wider than the  
2 edges of the licensed premises, unless the municipality has expressly  
3 approved otherwise, and extending no further than the centerline of the  
4 roadway; and (iii) provides a thoroughfare for pedestrian, customer, and  
5 employee access. As a condition of such approval, the applicant is  
6 required to demonstrate:

7 (i) use of any such space meets all applicable federal, state or local  
8 laws, rules, regulations, guidances, conditions or requirements; and

9 (ii) receipt of a current temporary use permit issued by the munici-  
10 pality if any such space would utilize municipal property.

11 c. All new applicants for use of non-contiguous municipal space shall  
12 provide community notification to a municipality, including munici-  
13 palities outside the city of New York, in a manner consistent with or  
14 required by subdivision 2 of section 110-b of the alcoholic beverage  
15 control law as required for the city of New York.

16 d. For the purposes of this section, the authority shall allow, pursu-  
17 ant to this act, those licensees currently using such space as provided  
18 under a pre-existing authorization to continue to use such municipal  
19 space, unless the municipality revokes the permit, the applicant seeks  
20 to change its municipal temporary use permit for such outdoor space, or  
21 a licensee seeks a renewal of such municipal space.

22 e. The authority may, on its own initiative or on complaint of any  
23 person or community board as established pursuant to section 2800 of the  
24 New York city charter, to institute proceedings to suspend or revoke a  
25 licensee's ability and privilege to use contiguous or non-contiguous  
26 space pursuant to this act after a hearing, in accordance with section  
27 119 of the alcoholic beverage control law, at which such licensee shall  
28 be given an opportunity to be heard. Such proceedings and such hearing  
29 shall be held in such manner and upon such notice as may be prescribed  
30 by the rules of the authority. The authority shall notify the munici-  
31 pality of any suspension or revocation of a licensee's ability to use  
32 such space.

33 f. The authority shall promulgate guidance, rules and/or regulations  
34 necessary to implement the provisions of this act in an expeditious  
35 manner. Notwithstanding existing provisions of the alcoholic beverage  
36 control law, the authority is authorized to provide simplified applica-  
37 tions and notification procedures for applicants whenever possible. At a  
38 minimum new applicants or applicants for renewal of municipal contiguous  
39 and non-contiguous outdoor space shall provide the authority with a  
40 diagram of the outdoor space as well as a brief description of the  
41 outdoor space intended to be used. Nothing in this act shall prohibit  
42 the authority from requesting additional information from any applicant  
43 seeking to use new municipal space or renewal of existing municipal  
44 space.

45 § 3. This act shall take effect immediately and shall expire and be  
46 deemed repealed one year after it shall have become a law.