

STATE OF NEW YORK

6353--A

2021-2022 Regular Sessions

IN SENATE

April 23, 2021

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 municipal space for outdoor dining. For the purposes of this act,
2 "non-contiguous space" shall mean space that is: (i) in close proximity
3 and in-line-of-sight to the licensed premises; (ii) not wider than the
4 edges of the licensed premises, unless the municipality has expressly
5 approved otherwise, and extending no further than the centerline of the
6 roadway; and (iii) provides a thoroughfare for pedestrian, customer, and
7 employee access. As a condition of such approval, the applicant is
8 required to demonstrate:

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

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

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

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

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

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

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