



HARVEY EPSTEIN  
Assemblymember 74<sup>th</sup> District

THE ASSEMBLY  
STATE OF NEW YORK  
ALBANY

To: Ydanis Rodriguez  
NYC DOT Commissioner  
[rules@dot.nyc.gov](mailto:rules@dot.nyc.gov)

My name is Harvey Epstein and I am the Assemblymember representing New York's 74th Assembly District, which includes the neighborhoods of the Lower East Side, East Village, Stuyvesant Town/Peter Cooper Village, Flatiron, Murray Hill, Tudor City, and the United Nations.

Thank you for the opportunity to comment on the Dining Out NYC program proposed rule. This issue greatly affects the communities I represent, who want to be able to enjoy outdoor dining and support local businesses while maintaining clean and quiet streets.

Outdoor dining sheds, sidewalk, and roadway cafes offer a creative solution to addressing overcrowding in restaurants and allow patrons a variety of seating options, including those who do not feel comfortable dining indoors due to health concerns. However, there must be measures in place to prevent these sheds from interfering with traffic or disrupting the surrounding neighborhood's residents. A careful balancing of these interests must occur.

1. Neither live music nor TVs should be allowed in these spaces, as they pose a significant disruption to the surrounding area.
2. Furthermore, to reduce noise in the surrounding area, the shed should no longer be in use by 10:00 PM.
3. Dining sheds should not be allowed across a bike lane because it endangers the server, patrons, and passing cyclists.
4. If dining sheds continue to be located across bike lanes, stricter enforcement is needed to ensure that alcohol is not permitted in sheds located across bike lanes, which violates Chapter 165 of 2022. New York law allows licensees to serve alcoholic beverages in auxiliary premises (dining sheds), that are either directly contiguous to the licensed premises or in "non-contiguous municipal public spaces," which are defined as "separated from the licensed premises only by a pedestrian thoroughfare." See Ch. 165 2022). Bicycle lanes are not "pedestrian thoroughfares."<sup>1</sup> Therefore, if the city allows sheds that require service across a bike lane, serving alcohol there will violate state law. The city must be explicit to applicants that it is illegal and licensees can have their licenses revoked for trying to sell alcohol in those locations.

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<sup>1</sup> See *Zhong v. Matranga*, 2022 N.Y. App. Div. LEXIS 4931, \*10 (Plaintiff was negligent for walking in a bicycle lane and unable to collect for her injuries sustained when hit by a bicycle properly traveling in the bicycle lane).



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5. Applicants should be required to go before the community board to ensure that neighbors have a voice in these decisions.

I hope DOT will consider these comments and arrive at a final rule that establishes a safe program that respects the communities in which it operates and supports the needs of small business owners and patrons.

Sincerely,

Assembly Member Harvey Epstein