



ADVISORY #2024-1

Subject: Addition of Outdoor Space to Licensed Premises and Newly Enacted ABCL 111-a (Effective 4/20/24)

The purpose of this advisory is to provide updated guidance to applicants and licensees regarding the use of outdoor space for the sale/service of alcoholic beverages as part of their licensed premises including outdoor municipal public space, as authorized by ABCL 111-a enacted and effective 4/20/24, which imposes added conditions on licensees using such space. Further, this Advisory hereby replaces Advisory 2022-19, which addressed COVID emergency circumstances.

New York City: Dining Out NYC Program

New York City launched the new Dining Out NYC program authorizing permit holders to use municipal public space for sale/service of food, including Roadway Cafes, Sidewalk Cafes or both. The NYC program requires all those seeking authorization to use such space for the sale/service of food to apply to the new Dining Out NYC program in order to obtain a new permit whether or not they had prior municipal authorization to use such space pursuant to the prior municipal program.

Obtaining a Dining Out NYC permit **does not** authorize the permitholder to sell/serve alcoholic beverages in this outdoor municipal public space, they must obtain authorization to do so from the Authority whether or not they had previous authorization, including pursuant to Advisory 2022-19, because Licensees must now obtain a Dining Out NYC permit and comply with the additional conditions required pursuant to ABCL 111-a.

After obtaining a Dining Out NYC permit, in order to add the permitted outdoor municipal public space to an existing premises licensed to serve/sell alcoholic beverages the licensee must:

File an Alteration for Adding or Removing Contiguous and/or Non-Contiguous Municipal Public Space Application with the Authority, preferably within 90 days of obtaining a Dining Out NYC Permit, and obtain approval for the application altering the existing licensed premises to add the Dining Out NYC permitted space.

The following must be all included to be considered a complete application submission:

- an active Dining Out NYC permit for the identical space where added alcohol sale/service is sought
- a copy of the NYC Dining Out permit application including all supporting materials submitted therewith
- a diagram of the municipal public space permitted for use by the Dining Out NYC program that the application seeks to add to the existing Authority-licensed premises **to include a clear depiction of the placement of all seating and tables for dining which are required for use of this outdoor dining space to serve/sell alcoholic beverages. (Please note: The inclusion of a depiction of all seating and tables is required for outdoor dining spaces notwithstanding Advisory 2022-14 which remains in effect otherwise.)**
- proof of community board notification made not more than 270 days before the application filing in a manner consistent with that required pursuant to ABCL 110-b(2) for New York City **(Please note: The SLA is unable to issue an approval prior to the passage of 30 days from said notification including where notification is made at the same time/date of application filing.)**
- proof that the applicant has obtained workers' compensation insurance for all employees, as required by the workers' compensation law
- proof that the applicant has obtained general liability insurance to provide coverage against liability for injury sustained by persons on the contiguous municipal public space or non-contiguous municipal public space to be used by the licensee and, if applicable, persons and cyclists using or crossing a bike thoroughfare that connects the licensed premises to the non-contiguous municipal public space.

Given the application process requires submission of a valid, current Dining Out NYC permit, the Alteration for Adding or Removing Contiguous and/or Non-Contiguous Municipal Public Space Application should not be filed with the Authority until after the Dining Out NYC permit is received.

Any applications missing a required document will be returned in their entirety.

If a Dining Out NYC permit is not issued, the outdoor municipal public space cannot be used by the applicant/licensee for the sale/service of alcoholic beverages and the application, if submitted to the Authority, will be disapproved.

Outdoor Municipal Public Space Programs Outside NYC

Licensees authorized through municipal programs outside New York City - whether by permit or other written authorization from the municipality in which the premises is located - to use contiguous or non-contiguous outdoor municipal public space to sell/serve food, and who also seek to continue or add the sale/service of alcoholic beverages in said space, **must also comply with newly enacted ABCL 111-a, effective 4/20/24, and obtain Authority approval.**

This requires **licensees to file an Alteration for Adding or Removing Contiguous and/or Non-Contiguous Municipal Public Space Application** with the Authority illustrating compliance with ABCL section 111-a and obtain Authority approval.

The following must be included in the application submission:

- the active municipal permit or written authorization for the identical space where alcohol sale/service is sought to be added or continued in space previously authorized prior to the April 20, 2024, enactment of ABCL 111-a
- a copy of the municipal permit or written authorization application including all supporting materials submitted therewith
- a diagram of the municipal public space permitted for use by the municipal program that the application seeks to add to the existing Authority-licensed premises or continue to use **to include a clear depiction of the placement of all seating and tables for dining which are required for use of this outdoor dining space to serve/sell alcoholic beverages (Please note: The inclusion of a depiction of all seating and tables is required for outdoor dining spaces notwithstanding Advisory 2022-14 which remains in effect otherwise.)**
- proof of municipal notification made not more than 270 days before the application filing in a manner consistent with that required pursuant to ABCL 110-b(2) for New York City **(Please note: The SLA is unable to issue an approval prior to the passage of 30 days from said notification including where notification is made at the same time/date of application filing.)**
- proof that the applicant has obtained workers' compensation insurance for all employees, as required by the workers' compensation law
- proof that the applicant has obtained general liability insurance to provide coverage against liability for injury sustained by persons on the contiguous municipal public space or non-contiguous municipal public space to be used by the licensee and, if applicable, persons and cyclists using or crossing a bike thoroughfare that connects the licensed premises to the non-contiguous municipal public space.

Whether this is new space or an existing space operating pursuant to a prior municipal program and/or Advisory 2022-19, it is necessary to obtain and submit to the Authority a current permit or other written authorization from the municipality pursuant to their current outdoor municipal public space use program.

Given the application process requires submission of a valid, current municipal permit or written authorization, the **Alteration for Adding or Removing Contiguous and/or Non-Contiguous Municipal Public Space Application** should not be filed with the Authority until **after** the municipal permit is received.

If the municipality does not provide such authorization, the outdoor municipal public space cannot be used by the applicant/licensee for the sale/service of alcoholic beverages and an application, if submitted to the Authority, will be disapproved.

Outdoor Space Under Applicant/Licensee Control (Owned, Leased, etc. – not municipal public outdoor space)

Please note: This space is not impacted by newly enacted ABCL 111-a so the process for adding or removing such outdoor dining space remains the same as prior to the enactment of ABCL 111-a. ABCL section 111-a addresses outdoor municipal public space, therefore, it is not applicable to space that is under the control of the applicant (owned, leased, etc.- not municipal public outdoor space). Licensees who already have outdoor space that is under their control (owned, leased, etc. – not municipal public outdoor space) as part of their existing SLA licensed premises do not need to do anything as a result of this new legislation and can continue to operate as licensed.

Applicants/Licensees who seek authorization to serve/sell alcoholic beverages in outdoor space that is **under their control** (owned, leased, etc. - not municipal public outdoor space) and **contiguous** to their indoor licensed premises must continue to do the following when seeking use of their outdoor space:

- *New premises* - Applicants must **include** the outdoor contiguous space controlled by the applicant (owned, leased, etc.) that they seek authorization to use as part of the licensed premises **in the original license application** and gain approval from the Authority.
- *Existing premise seeking to add outdoor space under their control (owned, leased, etc.)* - An **Alteration Application** must be filed with and approved by the Authority where a licensee is seeking **to add** contiguous outdoor space that is controlled (owned, leased, etc.) by the licensee to their existing licensed premises.
- Please note an **Alteration Application** is used when seeking the addition of licensee controlled outdoor space (owned, leased, etc.) to an existing premises **not** an **Alteration for Adding or Removing Contiguous and/or Non-Contiguous Municipal Public Space Application**.

Outdoor space that is not controlled by the applicant/licensee (owned, leased, etc.) and/or that is not contiguous cannot be included in the licensed premises except as specifically authorized herein pursuant to an applicable municipal public outdoor space program described above.

Applicable to both Dining Out NYC and Municipal Public Space Programs Outside NYC:

Outdoor Municipal Public Space Permit revocation, cancellation or suspension: If at any time a Dining Out NYC permit or other municipal authorization is not in effect, such as if the municipality revokes, cancels, suspends or otherwise terminates the licensee's authorization for use of said municipal public space the licensee must:

- immediately cease the sale and/or service of alcohol in the municipal public space
- file a new **Alteration for Adding or Removing Contiguous and/or Non-Contiguous Municipal Public Space Application** removing the municipal public space from the licensed premises within 10 business days of the municipality's termination of authorization for use of the space.
- ***Failure to file such application removing the space within 10 days shall be cause for revocation, cancellation, suspension and/or imposition of a civil penalty against the license in accordance with ABCL 118.***
- Upon approval of this application the licensee has 90 days to satisfy and submit any conditions of approval and complete the approved alteration.

Applicable to All Added Outdoor Space:

Any licensee that has a **license condition prohibiting the use of outdoor space** may not add outdoor space, municipal or otherwise, except after **application and approval for a change in method of operation**. The application for a change in method of operation can be filed simultaneously with the application to add outdoor space.

For purposes of this advisory, a license condition prohibiting the use of outdoor space means: a) a condition imposed by the Members of the Authority at a Full Board meeting; or b) a condition in a stipulation with the licensee's municipality that was submitted as part of their application.

Bathroom Requirement Waiver requests: The outdoor seating space will be considered when assessing waiver requests.

Outdoor dining spaces at the licensed premises are not for use for the consumption of To-Go alcohol purchases from that or any other establishment.

Compliance for All Added Outdoor Spaces:

Licensees adding outdoor space to their premises must comply with all state, federal and local laws, rules, regulations and guidance, including ABCL section 111-a, as related to the use of municipal public outdoor space. **This includes provisions of ABCL section 111-a related to signage for non-contiguous outdoor municipal public space involving bicycle lanes.**

Any outdoor space authorized by the Authority for use – whether part of a municipal program or pursuant to licensee's control of the space (ownership, lease, etc.) – **is deemed part of the licensed premises** and is subject to any and all conditions, stipulations, laws, rules and regulations governing the licensed premises. This includes, but is not limited to, any conditions imposed by the municipality and/or those imposed by the Authority when the original or alteration application was approved.

Further, since the outdoor space added pursuant to an application approval is deemed part of the licensed premises, **violations occurring related solely to the outdoor space subjects**

the Authority issued license – for ***both*** the indoor and outdoor spaces – **to disciplinary action** with potential penalties to include license suspension, cancelation or revocation.

This matter was heard and determined by the Members of the Authority at a Full Board meeting held on August 7, 2024 before Chair Lily Fan, Commissioner Edgar De Leon, and Commissioner John Maya. The above written advisory was approved by Chair Fan on behalf of the Members of the Authority on August 16, 2024.

Dated: 08/16/24



Donald Roper
Secretary to the Authority