



## MANHATTAN COMMUNITY BOARD FIVE

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David M. Siesko, *Chair*

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June 13, 2008

Hon. Daniel Boyle  
Chairman  
NYS Liquor Authority  
84 S. Swan Street, Suite 900  
Albany, NY 12210

**RE: Rooftop/Rear Yard On-Premises Liquor License Policy and Procedure for Review and Analysis of Application**

Dear Chairman Boyle:

At the regularly scheduled monthly meeting of Community Board Five on Thursday, June 12, 2008, the Board passed the following Policy and Procedure by a vote of 33 in favor; 0 opposed; 1 abstention:

### COMMUNITY BOARD FIVE

#### **Rooftop/Rear Yard On-Premises Liquor License Policy and Procedure for Review and Analysis of Applications**

**Overview:**

Rooftop/Rear Yard use is an amenity to many restaurant and liquor license owners and their patrons, but can be a nuisance to the quality of life of surrounding residents. Such outdoor use can be disruptive for residents with apartments within earshot because of the late hours of operation and the high noise levels that have the capacity to travel into the homes. This policy recognizes the need for a balance between these sometimes competing interests by laying ground rules for the consideration of these types of uses. It is important to note that while sidewalk cafes go through a separate approval process involving the Department of Consumer Affairs, there is no such similar oversight for other outdoor use.

Based on experience, where outdoor uses are allowed, the best mix of businesses with outdoor use and adjacent and nearby residents, includes control of hours and use of operation; responsible business owners and managers are key to maintaining a beneficial and respectful environment.

However, Community Board Five (CB5) has found that rear yard and rooftop use comprised of predominantly bar or club establishments may be disruptive to the surrounding residents because of higher noise levels and ambient smoke. Therefore, the board sets the following additional standards of review for rear yard and rooftop liquor license applications. Permitted rooftop bars/restaurants must be a minimum of ten stories above abutting and cross-street residences.

In considering such applications, the board will give the concerns of surrounding residents strong consideration in its determination to recommend or not recommend such use, as well as the configuration of the outdoor space.

## **Site Review and Considerations**

1. If there are no legal permanent residents within a two-block radius of the applicant site, then the site review and other considerations of an application for a rooftop or rear yard liquor license will proceed under the same review process as all other new liquor license applications.
2. If there are legal permanent residents within a two-block radius of the applicant site, then the following review process will be in effect:

At the time of the application, the applicant/representative will have available, a drawing (done to scale) showing the roof top or rear yard, its size, neighboring buildings and placement of bars, tables and chairs. Applicants are urged to consult with professional advisors to confirm that the proposed use of the space conforms to all applicable laws, regulations and CB5 policies.

In addition as requested by the Public Safety/Quality of Life Committee (PS/QL), the applicant will be required to arrange for committee members and/or board and staff members to inspect and observe the space prior to the PS/QL Committee meeting. The applicant/ representative should be present when the 'observers' survey the space so that they can answer questions. The committee observers will assess the space for consideration of community impact. The applicant and/or their representative will work with the committee, board and staff to determine the feasibility of the proposed rooftop or rear yard application. The observers will present their findings to the PS/QL Committee at the monthly meeting.

Any past community complaints involving either the applicant or the location will be noted by the committee, including but not limited to sidewalk café complaints. The applicant/representative is then expected to identify specific past or future corrective actions.

If, upon reviewing the plans, the site and community input, the committee and community cannot be reasonably certain that nearby residents will not be unduly disturbed by rooftop/rear yard use, -the application for use of outdoor space will not be recommended for approval.

## **Posting (Community Notice) Requirements**

Notice requirements of applications for rooftop/rear yard liquor licenses are of utmost importance. Applicants will:

- strictly conform to the notice posting requirements presently in effect for all liquor license applicants;
- furnish written notice to all buildings within the block and buildings abutting the block for which the rooftop or rear yard liquor license is sought;
- furnish written notice to all developers who are developing, constructing or creating by conversion, residential units within 500 feet of the applicant site.

## **Criteria:**

When making a determination to recommend new rooftop or rear yard use, the board will consider the following conditions and will require that the conditions that are mutually agreed upon by the applicants and the Board be incorporated in the method of operation of the liquor license as appropriate:

- The service and consumption of alcohol on rooftop outdoor space will be primarily by seated service whether food service or for drinks alone.

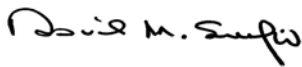
- The service and consumption of alcohol in rear yard outdoor space will be via seated food service only.
- The board, after reviewing the plans, will determine a fixed number of tables and chairs, and a maximum total of patrons in the outdoor space, based on size and local conditions.
- The rooftop/rear yard space will be closed and vacated by 10 p.m. Sunday through Thursday and 11 p.m. on Friday and Saturday. Additional hours of operation may be negotiable depending on proximity to residences.
- The applicant will have a lighting plan that will allow safe usage of the outdoor space without disrupting neighbors.
- The applicant will provide an effective sound baffling or sound controlled environment through landscape or other type of enclosure, where possible, provided they do not violate any fire or building code regulations. This stipulation includes possibly working with landlords to soundproof tenants' apartments, such as installing soundproof windows, acoustical tiles, etc.
- The applicant and staff will enforce a quiet environment in the outdoor space, so as not to disturb nearby residents, e.g., quiet conversation, no amplified music, as per the law, and windows and doors to areas that play amplified music shall be closed.
- The applicant will resolve neighbor complaints in a timely manner and in coordination with CB5 and local community groups.

**Transfers and Renewals:**

Transfers and renewals of all liquor licenses with existing rooftop or rear yard usage in a residential area will be subject to the same posting notice requirements as above. A history of significant and recent complaints on any establishment applying for transfer or renewal will require consideration of all guidelines and conditions above. Approval of transfers and renewals are not automatic and will be considered on a case-by-case basis.

Thank you for the opportunity to comment on this matter.

Sincerely,



David M. Siesko  
Chair



Vikki Barbero  
Chair, Public Safety & Quality of Life Committee