
RESTAURANT AND BAR BACKYARD USE

During the warmer months, restaurants may want to use their backyard space as a service area in order to attract more customers and to increase their capacity. If you would like to begin providing table service in the backyard area of your restaurant or bar, you must first make sure that you can answer the following questions regarding New York City laws and regulations:

Do you have the proper permits issued by the Department of Buildings (DOB)?

- **Certificate of Occupancy:** States zoning and usage specifications, including approval of backyard use, and affirms compliance with city regulations
 - Or a **Letter of No Objection:** For buildings built prior to 1938.
<http://www.nyc.gov/html/dob/html/certificates/certificates.shtml>
- **Place of Assembly Permit:** Must be obtained if the combined floor area of indoor and outdoor space can accommodate more than 75 people, including employees (as determined by a Fire Department inspector).
http://www.nyc.gov/html/dob/html/applications_and_permits/pa.shtml

The best way to ensure that your Certificate of Occupancy allows for your desired backyard use is to meet with a DOB representative. Call 311 and ask to be connected to the DOB office in your borough to speak with an inspector.

Does your backyard use allow for sufficient egress (exit) from the property as determined by DOB?

A number of factors determine “sufficient egress,” including number of exits, location and nature of exits, building construction and property usage. The best way to ensure that you have sufficient egress is to meet with a DOB representative. Call 311 and ask to be connected to the DOB office in your borough to speak with an inspector.

Can your patrons access your backyard without entering or walking through your kitchen?

Are you adhering to the New York City Noise Control Code as determined by the Department of Environmental Protection?

New legislation, effective July, 2007 will lower the ambient noise level within adjoining properties from 45 dB to 42 dB, and specifically regulate bass frequencies.

Noise Code notwithstanding, the Police Department may respond to complaints regarding unreasonable noise.

For more information on the current and amended Noise Code call 311 and ask for the Department of Environmental Protection.

If you plan on cooking food, allowing smoking, or any other activities that will create smoke outside, are you configured so it will not impact the air quality for your neighbors?

Note that outdoor smoking is limited to 25% of available seating.

If you serve alcohol and plan on changing your configuration to now use your backyard space, have you received permission from the New York State Liquor Authority (SLA)?

The application for permission to make alterations from the SLA is available online at:
<http://abc.state.ny.us/forms/L.B.-28.pdf>

Additional Considerations

- If your plans are “self-certified” by your architect or expeditor, this does not necessarily mean that you are in compliance with all of the requirements for a Certificate of Occupancy. The only way you can be certain is to speak with a DOB representative.
- You have the option to schedule an inspection with the FDNY to ensure that you are not in violation of any NYC fire codes.
- Baffling techniques may be used to reduce outdoor noise, including sound absorbing material, foliage and specific layout configurations.
- Advise after hours staff members to keep their noise levels to a minimum as the sound that they create while cleaning could potentially lead to complaints from neighbors.

All experts agree that the best way to avoid problems with the use of your backyard is to have an open and on-going dialogue with your neighbors. The vast majority of individuals want your business to thrive, and will appreciate being included in a conversation about how to use your space so that it serves the needs of both the business and the neighborhood.
