



CITY PLANNING COMMISSION

November 15, 2021/Calendar No. 1

N 210434 ZRY

IN THE MATTER OF an application submitted by the New York City Department of Transportation and the New York City Department of City Planning, pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York, removing Article I, Chapter 4 (Sidewalk Cafe Regulations) and modifying related Sections.

This application (N 210434 ZRY) for an amendment to the Zoning Resolution (ZR) was filed by New York City Department of City Planning (DCP) and New York City Department of Transportation (DOT) on June 18, 2021. The application would remove from the ZR Sidewalk Cafe Regulations, which restrict the location of sidewalk cafes. Implementation of the proposed text amendment would support the creation of a Permanent Open Restaurants (POR) program regulated and enforced by DOT.

OVERVIEW

The proposed Open Restaurants zoning text amendment would facilitate implementation of a permanent, streamlined Open Restaurants program. As part of this program, the Department of City Planning and Department of Transportation propose a zoning text amendment to remove geographic restrictions on where sidewalk cafes can be located within the city. To be eligible for a sidewalk café, restaurants would need to meet physical criteria -- such as “clear path” requirements, including ensuring that table and chairs are appropriate distances from fire hydrants and neighboring businesses. The proposed zoning text would not change the process for how sidewalk cafes are reviewed by local community boards. However, the areas where they can be considered would expand to all neighborhoods. This proposed zoning text amendment would complement proposed legislative changes that would cut red tape for restaurant owners. Applications for the sidewalk café program and a new roadway café program would be consolidated under one agency, the Department of Transportation (DOT).

During the COVID-19 ban on indoor dining, the City suspended existing outdoor dining regulations, including zoning location rules. This emergency program provides a necessary

lifeline for nearly 11,000 restaurants— and allowed New Yorkers to appreciate how streets can be activated by a robust, citywide outdoor dining program. The zoning amendment would make thousands of restaurants eligible for a sidewalk café. It would facilitate expanding the benefits of outdoor dining to all New York City neighborhoods. The emergency program remains in effect into 2022, allowing transition time to a future Permanent Open Restaurants program.

Benefits of Permanent Open Restaurants Program

- Remove outdated prohibitions on sidewalk cafes
- Support outdoor dining in more areas of the city
- Create jobs
- Further activate city streets
- Simplify administration and streamline rules under a single agency with clear rules for siting, operation, and enforcement

Existing zoning rules restrict where sidewalk cafes are eligible and what types of cafes can exist in different areas. The proposed zoning text amendment would eliminate these geographic restrictions.

This process would move in parallel to legislative changes necessary to facilitate the permanent Open Restaurants program. In addition to the proposed zoning amendment, the City will move administration of the sidewalk café program from the Department of Consumer Affairs and Workforce Protection to DOT, streamline the application process and create rules for a permanent roadway dining program. In sum, restaurants will have a single agency to go to apply for outdoor dining, with a clear set of design guidelines on what is allowed.

BACKGROUND

Sidewalk cafes have long been a part of the New York City streetscape. The laws governing cafes have evolved over the years. When the Uniform Land Use Review Procedure (ULURP) was created in the 1970s, sidewalk cafes were subjected to ULURP regardless of location, as part of the revocable consent required to use the publicly owned space of the street. Almost immediately, it was recognized that this level of review was onerous and time

consuming and difficult to manage for each individual business. In 1980, the City Planning Commission (CPC) streamlined the process by designating specific areas of the city where sidewalk cafes were appropriate and allowed without going through ULURP. Since then, the program has been amended by several text amendments that made distinctions regarding location and type of sidewalk cafe. Until March 2020 and the beginning of the ongoing COVID-19 pandemic, the location of sidewalk cafes was regulated by provisions within the ZR.

The Sidewalk Cafe program is administered by Department of Consumer and Workforce Protection (DCWP) based on rules stipulated in the ZR, the New York City Administrative Code, and the Rules of the City of New York. Together, these regulations govern how sidewalk cafes can look and operate. Sidewalk cafes are subject to specific physical criteria, such as minimum clear path requirements, and offsets from permitted sidewalk obstructions, such as street furniture and fixtures. Other sidewalk cafe provisions govern physical components, including table count, signage, railings and fences, overhead shading and heaters, as well as hours of operation and adherence to noise regulations.

The Street Seats program, administered by DOT, allows for seating in the curb parking lane of the roadway, and can be utilized by any ground floor business, including a restaurant, though all such seating is open to the public. In March 2020, there were 25 active permits in the Street Seats program.

A sidewalk cafe license is subject to the revocable consent approval process outlined in the New York City Charter, which authorizes private use of inalienable city-owned property, such as streets and sidewalks. In March 2020, there were 1,224 active sidewalk café licenses, the majority of which were in Manhattan.

Following the onset of the COVID-19 pandemic, Governor Andrew Cuomo enacted the PAUSE (Policies to Assure Uniform Safety for Everyone) executive order, temporarily banning indoor dining. To help restaurants to operate while under this ban, the City established the Open Restaurants (OR) program, a temporary emergency citywide program to expand outdoor seating options for restaurants. The OR program was implemented via Local Law 77 of 2020 and

Mayoral Emergency Executive Order No. 126 dated June 18, 2020. These suspended the two existing outdoor dining programs and replaced them with a temporary program. The temporary program allowed individual food service establishments to apply to DOT and self-certify through an online portal to use the sidewalk or curb parking lane on the roadway adjacent to their business.

The OR program was quickly utilized by many restaurants. The process to apply was simple and accessible and, with no fees or public review was needed. Over 10,000 businesses applied within the first three months, and over 12,000 were participating by November 2020. There was a notable surge in outdoor dining in the boroughs outside Manhattan, which previously had a limited number of sidewalk café licenses. Out of the approximately 27,000 restaurants in the city, approximately 10,000 are using the sidewalk for all or a portion of their outdoor dining.

The OR program is estimated to have saved 100,000 jobs that would have been otherwise lost without the emergency program. The program allows for sidewalks and on-street parking spaces to be utilized by restaurants. It has increased spending at restaurants while making streets livelier. The program was credited with helping many restaurants survive the pandemic, particularly during the heightened restrictions enacted in late 2020, prior to the widespread availability of vaccines. With restaurants able to continue operations, this program helped anchor commercial and retail corridors throughout the city. It also helped maintain a sense of vibrancy in neighborhoods. Restaurants and cafes became active open air spaces in neighborhood commercial corridors.

Current Zoning Regulations

In the ZR eating or drinking establishments are categorized based largely on their size and whether they include entertainment uses, such as dancing. Smaller establishments, without dancing, are generally classified as Use Group 6, and are permitted in nearly all commercial and manufacturing zoning districts, while larger establishments, without restrictions on dancing, are generally listed as Use Group 12, and permitted in select districts that allow for more intensive commercial activity

Within areas where eating or drinking establishments are permitted, locational criteria for sidewalk cafes are found in Article I, Chapter 4: Sidewalk Cafe Regulations. There are three types of sidewalk cafes under the existing program: enclosed cafes, unenclosed cafes, and small unenclosed cafes.

Unenclosed sidewalk cafes are permitted in commercial, manufacturing, and select high density residence zoning districts only, though there are exceptions to these regulations, including specific areas with further prohibitions or restrictions. Enclosed cafes are allowed in most locations where unenclosed cafes are permitted, except for prohibitions in special purpose districts, such as Hudson Yards, Lower Manhattan, and specific corridors in East Harlem. Small unenclosed cafes are allowed only in additional areas of Manhattan, as part of a moderate expansion of eligibility added by a zoning text amendment in 2004 (N 040197 ZRY).

In addition, current regulations fully restrict sidewalk cafes in certain areas. These include certain named areas around Grand Central Terminal and on streets where an elevated rail line is present. In addition, sidewalk cafes are not permitted in some special purpose districts, such as the Special Mixed-Use District, or in specific areas of special districts. Finally, current regulations do not allow sidewalk cafes in residence districts, restricting the approximately 3,000 eating or drinking legal, non-conforming establishments found in these districts from applying for sidewalk cafes at DCWP.

Other standards in zoning may indirectly impact the placement and operation of sidewalk cafes. In some districts, eating and drinking establishments are required to be fully enclosed, potentially precluding outdoor dining and removeable walls or windows opening onto the sidewalk. In some zoning districts, sidewalk widening requirements potentially preclude outdoor dining from operating in the widening areas.

Proposed Text Amendment

The proposed text amendment would remove sidewalk cafe regulations from the ZR.

The proposed action would allow the program to operate on a citywide basis., and address zoning regulations that make it difficult for outdoor dining to occur.

By removing the existing zoning barriers that limit sidewalk cafe eligibility, more restaurants will be able to apply for sidewalk cafes, including those in certain special purpose districts and high pedestrian traffic areas, as well as those beneath elevated rail lines and pre-existing legal non-conforming ones in residential zoning districts. The city estimates that, of the restaurants that have participated in the emergency program, approximately 2,500 restaurants fall into a category that would prevent them from participating in a non-emergency setting.

The text amendment will also remove the sidewalk cafe types for small, regular unenclosed, and enclosed cafe locations.

Several other smaller text changes would include removal of definitions and references throughout the ZR. The proposal also includes limited changes to zoning rules that may make it difficult for outdoor dining to occur under the new program. These include changes to allow permeable walls and operable windows in between an outdoor dining area and interior dining space in zoning districts where they are currently restricted, such as C1 and C5 commercial zoning districts. The proposal would also clarify that sidewalk widenings required by zoning may be used for outdoor dining as part of the POR program.

Permanent Open Restaurants Program

As a result of the success of the OR program, the Mayor directed agencies to develop a permanent program that would continue robust participation in outdoor dining. The new program would create a new successor sidewalk and roadway cafe program that is applicable citywide. Like the previous DCWP-administered sidewalk licenses, the new program would include physical siting criteria and an agency administrative review and enforcement process. The revocable consent approval process in the City Charter would be part of this new program. This process requires referral of sidewalk cafe applications for community board and City Council review, consistent with section 20-225 of the Administrative Code. The future sidewalk cafe program would rely heavily on the current DCWP physical and administrative rules for unenclosed cafes. Using key lessons learned from the emergency program, the city would seek to simplify and streamline procedures where possible, while returning to a non-emergency system

of regulation. The restaurants would no longer self-certify their applications. The program would replace both the previous sidewalk café license and the Street Seats program.

On October 15, 2020, the City Council enacted Local Law 114 of 2020 to authorize DOT to establish a permanent outdoor dining program to succeed the emergency program. Subsequent additional legislation is anticipated to transfer sidewalk cafe authority, and the administrative procedures regarding sidewalk cafes, from DCWP to DOT, as well as to establish procedures for roadway cafes. New rules for design criteria would be promulgated by DOT in 2022 and DCP and DOT have announced a joint public engagement process for the development of the new design rules.

Under the proposed POR all sidewalk cafes would be subject to physical criteria and public review administered by DOT. All unenclosed cafes would be exclusively subject to locational criteria that limits size based on sidewalk width and obstructions that would be established by the POR program. Enclosed sidewalk cafes would only be allowed in previously licensed locations and permitted to continue under the new program.

ENVIRONMENTAL REVIEW

This application (N 210434 ZRY) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 *et seq.* and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is DOT. The designated CEQR number is 21DOT016Y.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on June 18, 2021.

PUBLIC REVIEW

The application (N 210434 ZRY)) was duly referred on June 21, 2021, to all 59 community boards, to all borough boards, and to all borough presidents for information and review in accordance with the procedures for referring non-ULURP matters.

Community Board Review

Fifty-two community boards adopted resolutions regarding the proposed zoning text amendment, many of which included comments on the proposal and recommendations for modifications. The complete recommendations received from all Community Boards are attached to this report. A summary of the vote and comments received is as follows.

Table 1: Summary Table of Community Board Votes:

In favor	13
In favor with conditions	5
Opposed with conditions	3
Opposed	27
Waived vote	2
No objection	2
Did not vote	7

Table 2 - Summary Table of Community Board Recommendations, is found on the next page.

Community Board	Recommendation	Conditions	Comments
Brooklyn CB 1	Disapproval	No	Yes
Brooklyn CB 2	Waiver	No	No
Brooklyn CB 3	Approval	No	No
Brooklyn CB 4	Disapproval	No	No
Brooklyn CB 8	Approval	No	No
Brooklyn CB 9	Approval	Yes	No
Brooklyn CB 10	Disapproval	No	Yes
Brooklyn CB 11	Disapproval	No	Yes
Brooklyn CB 12	Disapproval	No	No
Brooklyn CB 13	Disapproval	No	No
Brooklyn CB 14	Disapproval	Yes	No
Brooklyn CB 15	Disapproval	No	No
Brooklyn CB 18	Disapproval	No	No
Bronx CB 1	Disapproval	No	No
Bronx CB 2	Approval	No	No
Bronx CB 3	Approval	No	No
Bronx CB 4	Approval	No	No
Bronx CB 5	Approval	No	No
Bronx CB 6	Disapproval	No	No
Bronx CB 7	Approval	Yes	Yes
Bronx CB 8	Disapproval	No	Yes
Bronx CB 9	Approval	No	No
Bronx CB 10	Disapproval	No	Yes
Bronx CB 11	No Objection	No	No
Bronx CB 12	Approval	No	No
Manhattan CB 1	Disapproval	No	Yes
Manhattan CB 2	Disapproval	No	Yes
Manhattan CB 3	Disapproval	No	Yes

Manhattan CB 4	Disapproval	No	Yes
Manhattan CB 5	Approval	No	No
Manhattan CB 6	No Objection	No	No
Manhattan CB 7	Disapproval	No	Yes
Manhattan CB 8	Approval	No	No
Manhattan CB 9	Approval	Yes	No
Manhattan CB 10	Disapproval	No	No
Manhattan CB 11	Disapproval	No	No
Manhattan CB 12	Disapproval	No	No
Queens CB 1	Disapproval	No	Yes
Queens CB 2	Disapproval	No	No
Queens CB 3	Disapproval	No	Yes
Queens CB 4	Approval	Yes	Yes
Queens CB 5	Approval	Yes	Yes
Queens CB 6	Approval	No	No
Queens CB 7	Disapproval	No	Yes
Queens CB 8	Approval	No	No
Queens CB 9	Approval	Yes	No
Queens CB 10	Disapproval	No	No
Queens CB 11	Disapproval	No	No
Queens CB 12	Approval	No	No
Queens CB 14	Waiver	No	No
Staten Island CB 1	Disapproval	No	No
Staten Island CB 2	Disapproval	No	No
Staten Island CB 3	Disapproval	No	Yes

Fifty-two out of 59 community boards submitted recommendations. Of these, 13 boards recommended approval, five recommended approval with conditions, three recommended disapproval with conditions, 27 recommended disapproval, two did not object to approval, and two waived their recommendation.

Many community boards expressed support for restaurants and understood that the OR program was necessary to help restaurants continue operating during the COVID-19 pandemic. Many boards also expressed concerns regarding the effects that broad permanent changes to the public realm may have on quality of life and public space. These concerns, along with other more specific recommendations on various aspects of the proposal, are further detailed below.

Enforcement

Many community boards voiced concerns regarding the level of regulatory oversight and enforcement evidenced in the emergency program, noting that the future permanent program might prolong these concerns. Specific enforcement issues include abuse of noise rules and operating hours, abandoned or unsightly setups, and incursions into non-permitted areas of public space, such as the pedestrian clear path, or bus and bike lanes. Concerns pertained to both the sidewalk cafes and roadway cafes. Community boards reported difficulty in obtaining timely response or action from DOT during the emergency and expressed a desire to better understand the rules and staffing requirements to ensure compliance.

In addition, community boards, particularly those in neighborhoods with higher concentrations of restaurant and nightlife uses, focused on quality-of-life concerns. These quality of life issues include, vermin proliferation and trash accumulation, late night crowds or loitering, and general noise concerns. Communities expressed concern that the widespread proliferation of outdoor dining under emergency conditions has exacerbated challenges and impeded quality of life for residents on streets with concentrations of restaurants. As a result of continuing challenges with the temporary program, residents expressed concerns that a permanent program would prolong and further exacerbate residential and nightlife conflicts.

Community Board Oversight

Many boards expressed concern regarding the removal of community board review of applications during the emergency program and noted that they would prefer to see individual review reinstated, as required under section 20-225 of the Administrative Code.

Roadway cafes are not subject to the same provisions under the New York City Charter, and many community boards advocated strongly that Roadway cafes be subjected to similar referral requirements.

Additionally, some community boards were concerned that the previous application review was not as strong as an outright zoning prohibition and argued that zoning be maintained as a way of determining where cafe applications could be entertained on a block-by-block basis.

Design of Open Restaurants

Many community boards expressed substantive opinions regarding siting criteria for sidewalk cafes and roadway cafes, as well as opinions regarding the process and community engagement. Community boards expressed a desire to be part of the rulemaking process. They questioned the sequence of removing the zoning regulations pertaining to sidewalk cafes prior to the development of a comprehensive suite of design and siting criteria. Concerns were expressed regarding adequate enforcement, the desire to protect pedestrian, bike and bus priority on streets, and concerns about privatization effects from non-compliant, physically imposing structures.

Non-Conforming Restaurants in Residential Districts

Community boards with many non-conforming commercial spaces in residential districts, such as Manhattan Community Boards 2, 3 and 4 in and Brooklyn Community Board 1, expressed concerns regarding removing the prohibition on sidewalk cafes in residential districts. They expressed concerns regarding quality of life, such as noise, as well as concerns regarding the potential to incentivize proliferation of restaurants in non-conforming spaces that have previously been occupied by other non-conforming retail uses.

Retail Diversity

Several community boards expressed concern that the program would provide an advantage to a single industry type, accelerating a trend away from dry goods and local retailers towards restaurant use. Brooklyn Community Board 1, 2 and 10 mentioned this in resolutions, and it was also raised in meetings with Manhattan Community Boards 3, and 4, as well as Brooklyn Community Board 1 and Queens Community Board 1.

Operable Windows & Enclosures

Manhattan Community Boards 1, 2, 3 and 4 expressed concerns regarding the proposed allowance for operable windows to support outdoor dining and interaction with noise conflicts and energy efficiency. Conversely, the Brooklyn Borough President supported modifying the sections related to operable windows to allow for interaction between indoor and outdoor dining on a seasonal basis.

Additionally, Manhattan Community Board 2 and 4 expressed concern that in changing the enclosure provisions in ZR Section 52-34, the proposal removes the word “seated” in one reference to dining areas will result in standing only restaurants.

Sidewalk Widening

Manhattan Community Board 2 and 4 opposed the clarifications regarding sidewalk widenings and how they relate to the future OR program, stating that sidewalk widenings should be kept free from privately programmed use.

Timing

Many community boards expressed concerns regarding approving the text amendment at a juncture when other legislative or rule-based elements of the program are unavailable to review in their final form. A few boards requested that the text proposal be delayed until DOT was ready to enter Citywide Administrative Procedure Act (CAPA) rulemaking process with the proposed rules for the sidewalk and roadway cafe program.

Borough President Review

Three borough presidents submitted resolutions on the proposal. The complete borough president resolutions are appended to this report and are summarized below.

The Manhattan Borough President issued a letter dated October 13, 2021 recommending disapproval with the following conditions:

“

- Require that all community boards and borough presidents be allowed to comment on the DOT proposed permanent Open Restaurant program in advance on the approval of the zoning text amendment;
- Consult with all community boards and borough presidents regarding the applicability of proposed permanent Open Restaurant program in residential and mixed-use districts, particularly in Lower Manhattan, and further evaluate the existing sidewalk cafe regulations in special zoning districts;
- Ensure that all sidewalks remain fully accessible and that emergency vehicles have the ability to navigate the street effectively and provide a more detailed plan for enforcement;
- Complete a study on the impact that the proposed DOT program would have on dry goods retail spaces, and present mitigations as necessary;
- Present a plan to allow other public uses on sidewalks and roadways;
- Prioritize bike lane and bus lane expansion over roadway dining in accordance with the DOT 5-year transportation plan;
- Require restaurants to comply with noise restrictions, have windows and doors closed while playing amplified music indoors, prohibit amplified music outside, and require patrons to be seated;
- Present citywide sanitation plan and vermin control guidelines for restaurants;
- Include compliance with program guidelines as key criteria for approving renewal applications and use license revocation as an enforcement option, thereby eliminating the need for NYPD involvement regarding enforcement issues;

- Prohibit seating on the roadway or sidewalk in a location that would impede passage in a bike lane; and
- Reduce hours of operation for outdoor dining in residential areas.”

The Bronx Borough President issued a letter dated November 11, 2021, recommending approval of the application, raising several concerns:

“

- This provision adds dining capacity to a restaurant. Will there be any consideration given to kitchen facilities, most importantly its size and how it functions safely.
- Installation of any exterior area will require access to electricity. How will this need be addressed, i.e. the possible need for a generator, installation of electric cables that draw current from inside the established restaurant.
- It is essential that noise associated with outdoor music be strictly enforced. This is especially relevant in communities that are predominantly residential. Likewise, where more than one dining facility is located on the same block, noise pollution is an issue for which strict rules must also be enforced. Regrettably, in many Bronx communities such noise intrusions are entirely ignored by those charged with enforcing such provisions.
- What if any consideration will be given to those restaurants where sidewalk widths and other constraints do not allow for sidewalk cafes at a specific location whereas at an adjacent site these constraints are not present. One such constraint might be the location of a street tree that reduces sidewalk width.”

The Brooklyn Borough President issued a letter dated November 11, 2021, recommending disapproval of the application, to with the following conditions:

“

- City departments, such as the New York City Department Small of Business Services (SBS) and New York City Department of Transportation (DOT), should provide appropriate resources to businesses operating in underserved communities that have been hardest hit by COVID-19
- DOT should establish a public participation process that would enable the development of rules to be promulgated by DOT to include multiple opportunities to weigh in before draft rules are put forth for public comment.
- DCP should not refer a zoning text change for removing the linkage between sidewalk cafes and commercial zoning designation until such time that DOT is prepared to promulgate permanent sidewalk cafe and restaurant seating within the street bed, and that such text change take into consideration whether enclosed building operations should allow for seasonally-opened façades based on meeting acoustical standards of the City’s Noise Code.”

Borough Board Review

Four borough boards submitted resolutions on the proposal. The complete borough board resolutions are appended to this report and are summarized below.

Manhattan

The Manhattan Borough Board submitted a letter on October 13, 2021 to disapprove the text amendment with the following conditions:

- “• Consult with all community boards and borough presidents regarding the proposed DOT permanent program, including its applicability in residential and mixed-use districts, particularly in Lower Manhattan
- Provide a plan for enforcement of DOT Open Restaurant regulations as well as sanitation and allow for that plan to be previewed by community boards and borough presidents and ensure that the program is informed by data obtained in more typical, post-pandemic conditions;
- Complete a study on the impact that the proposed DOT program would have on dry goods retail spaces, and propose mitigations as necessary;

- Allow community boards to review and recommend approval or denial for applications of licenses for sidewalk dining and roadbed dining prior to final DOT approval; Maintain the enclosure requirements for eating and drinking establishments in residential districts;
- Include compliance with program guidelines as key criteria for approving renewal applications and use license revocation as an enforcement option;
- Require restaurants to submit sanitation and rat abatement plans as part of their license application;
- Prohibit new sidewalk widenings from being used for outdoor dining unless the loss of pedestrian space is included in an analysis for the widening, and mitigation measures are ensured;
- Ensure all sidewalks and roadways remain fully accessible, including maintaining the three-foot service aisle (in addition to the four-foot clearance requirement) and that emergency vehicles have the ability to navigate city streets efficiently;
- Prohibit restaurants from playing amplified music and require patrons to be seated;
- Include measures to prevent loss of space or safety for users of bike lanes; and
- Present a plan to allow other public uses on sidewalks and roadways.”

Queens

On October 4th, 2021 the Queens Borough Board voted six in favor, seven in opposition, and one abstaining to adopt a resolution to recommend disapproval of the application.

Bronx

On October 28th, 2021 the Bronx Borough Board voted eight in favor, two in opposition, and one in abstaining to adopt a resolution to recommend approval of the application. The letter in support also had the following concerns:

- “• This provision adds dining capacity to a restaurant. Will there be any consideration given to kitchen facilities, most importantly its size and how it functions safely?
- Installation of any exterior area will require access to electricity. How will this need be addressed,.i.e. the possible need for a generator, installation of electric cables that draw current from inside the established restaurant.

- It is essential that noise associated with outdoor music be strictly enforced. This is especially relevant in communities that are predominantly residential. Likewise, where more than one dining facility is located on the same block, noise pollution is an issue for which strict rules must also be enforced. Regrettably, in many Bronx communities such noise intrusions are entirely ignored by those charged with enforcing such provisions.
- What if any consideration will be given to those restaurants where sidewalk widths and other constraints do not allow for sidewalk cafes at a specific location whereas at an adjacent site these constraints are not present. One such constraint might be the location of a street tree that reduces sidewalk width.”

Brooklyn

On November 3, 2021 the Brooklyn Borough Board voted five in favor, 10 in opposition and three abstaining to adopt a resolution to recommend disapproval of the application with the following conditions:

“The Brooklyn Borough Board supports legalizing eating and drinking establishment operations that would best reflect functional operations to serve customers outside the building, and while not supporting the removal of Article I, Chapter 4, would support modifications to ZR Sections 32-411, 52-34, 73-243. Be it further resolved that:

- “1. City departments, such as the New York City Department Small of Business Services (SBS) and New York City Department of Transportation (DOT), should provide appropriate resources to businesses operating in underserved communities that have been hardest hit by COVID-19
2. DOT should establish a public participation process that would enable the development of rules to be promulgated by DOT to include multiple opportunities to weigh in before draft rules are put forth for public comment
3. DCP should not refer a zoning text change for removing the linkage between sidewalk cafés and commercial zoning designation until such time that DOT is prepared to promulgate permanent sidewalk café and restaurant seating within the street bed, and that such text change take into consideration whether enclosed building operations should

allow for seasonally-opened façades based on meeting acoustical standards of the City’s Noise Code.”

City Planning Commission Public Hearing

On September 22, 2021 (Calendar No. 1), the CPC scheduled October 6, 2021, for a public hearing on this application (N 210434 ZRY). The hearing was duly held on October 6, 2021 (Calendar No. 37). There were 44 speakers in favor of the application and 45 in opposition.

Speakers in favor included representatives from the New York State Restaurant Association, NYC Hospitality Alliance, Tri State Transportation Campaign, Design Trust for Public Space, Citizen Housing and Planning Council, Design Corps, Regional Plan Association, Design Advocates, Bronx Chamber of Commerce and the New York State Latino Bar and Restaurant Association. Owners and employees from 31 restaurants also spoke in favor of the text amendment.

Speakers in favor stated that this program has been popular, and successful in reactivating retail corridors and providing safe places for people to gather. Successful restaurants bring additional patrons to commercial corridors and can greatly benefit from having outdoor dining. Speakers in favor also expressed that dining preferences at restaurants has changed, and that many people prefer having the option to eat outdoors.

Restaurant owners expressed the desire to continue to use outdoor dining. Stating that this additional space has been crucial for the survival of small businesses during an economic recession. Restaurant owners discussed the many challenges that they faced during the height of COVID-19 restrictions from PAUSE and noted that outdoor dining allowed them to continue to operate. Through this program, restaurant owners stressed that they were able to re-hire staff and that this program has been critical to the restaurant industry. While they expressed understanding that the permanent program would differ from the emergency program, they noted that they would like to continue using outdoor dining space as long as the rules of the program are clear and defined.

A representative from the Hospitality Alliance, who is also the former counsel for the Department of Consumer Affairs, spoke in favor of the text amendment. He testified that zoning is not the ideal method of regulation for a license category because zoning is not designed to be reactive. He stated that the small cafe distinction took several years to be created, and when it was finally implemented, the fears that it would create undue congestion were not realized, and the small cafes were successful in the expanded areas in Manhattan. Creating a clear and consistent process for legal restaurants to apply would be a positive outcome of the proposed text amendment, and that the City Council and process for the POR would be better suited for determining how and where sidewalk cafes are sited.

A representative from the Regional Plan Association spoke in favor of the text amendment. They stated their support for the city advancing a POR program, noting that the text amendment will ensure equitable access to all restaurants. They also supported the idea that the OR program has allowed the city to prioritize people over cars, creating space for people interact. The Regional Plan Association will be working with the Urban Design League and the Tri State Transportation Campaign's Al Fresco coalition to help support the permanent program with design guidelines and goals.

A representative from the Design Trust for Public Space spoke in favor of the text amendment. They noted their support for the proposed text amendment, as they believe it would help to make public space more inclusive and include restaurants and businesses that previously had difficulty in creating outdoor dining set ups. The Design Trust has been spearheading their efforts to reimagine public spaces to better support communities, and this text amendment will allow restaurants to be co-activators in this process. The Design Trust has previously worked with restaurants in underserved communities. The representative of the Trust noted that restaurants have been grateful for the opportunity to participate in outdoor dining, and that work will need to continue to ensure access for these businesses. They underscored that accessibility is key to the program's success, especially for the mobility impaired, and that additional sidewalk seating can ensure access to businesses that cannot provide access to their indoor space.

Three elected officials testified in opposition to the proposed text amendment at the public hearing, including the assemblywoman from the 66th District, the assemblyman from the 74th district, and the Manhattan Borough President. The assemblyman representing the 74th district and the Manhattan Borough President both noted support for the restaurants but expressed that they felt this plan was not ready to advance in its current state. The assemblywoman expressed concerns that neighborhoods she represents have little distinction between residential and commercial, and that the current zoning helps separate them to a degree and that removing it would be harmful to residential areas. The assemblywoman also noted the high number of restaurants in the districts she represents, and that removing prohibitions to sidewalk cafes in this area would create an outsized burden for her constituents in the POR.

The state senator representing the 28th District submitted a written statement, in lieu of public testimony. She was opposed to the text amendment and specific provisions of it, including allowing sidewalk cafes in residential districts and special districts that did not allow them, preventing any sidewalk widenings from being allow for sidewalk cafes and keeping enclosure provisions in residential districts for restaurants. Furthermore, the senator wanted a study to analyze the impact of the POR and that the city should present a plan to allow other public uses on sidewalks and roadways.

Speakers in opposition included representatives from the West 10th Street Residents, South Village Neighbors, West Village Residents Association, Central Village Block Association, Human Scale NYC, Bedford Downing Block Association, NoHo-Bowery Stakeholders Inc., Berry Street Alliance, and 8 Saint Marks Tenants Association. The speakers cited many quality-of-life issues from outdoor dining that have resulted during the emergency program. Major issues included cleanliness, vermin, noise, and scarcity of parking.

Additionally, speakers in opposition articulated that they felt that the sidewalk cafe program has a history in the zoning, and that a broad removal of zoning would remove an additional layer of local oversight. Other issues related to the sidewalk cafes have been enforcement, clear path needs and ADA compliance, and overall issues with the privatization of public space and the program's limitation to restaurants and instead of allowing other commercial uses.

Residents of landmark districts expressed concern regarding outdoor dining in landmark districts. Stated concerns included that many historic districts, particularly ones located on streets with narrow sidewalks, see outdoor dining as conflicting with the character of historic districts. These residents expressed concern that they invested time and money into building maintenance for years, and outdoor dining could conflict with the historic character they have built or maintained.

Speakers in opposition also highlighted the transit conflicts that arise from outdoor dining, including roadway cafes. These structures remove valuable parking for residents, diminish vehicle sight lines, interfere with emergency access, and sometimes directly block bicycle lanes. Sidewalk seating can be arranged in a way that forces people to walk in the street to pass, and this can be particularly hazardous for elderly residents.

Residents from downtown Manhattan also discussed the abundance of restaurants in their neighborhoods. Residents from the West Village, East Village and Greenwich Village discussed the increase of outdoor dining to since the start of the program. Many of these residents said they were in favor of this outdoor dining as a solution to help businesses in their neighborhood but don't understand why permanent changes are being made to the ZR when the problem is temporary.

As a result of concentrations of restaurants in certain communities, residents from these neighborhoods noted issues regarding noise control. They expressed fear that the text amendment will not diminish restaurant noise and that it makes the noise code more difficult to enforce. They noted that 311 or the NYPD have not been responsive in the emergency program.

In addition to those who testified in person at the public hearing, the Commission received a substantial amount of written testimony. Many who submitted written testimony were also present at the public hearing and covered the same range of issue areas, including restaurant owners and members of the public noting the beneficial effect of outdoor dining for their restaurants and the city overall, and their desire to see these effects continued and expanded, as well as those writing in opposition who reiterated concerns that outdoor dining contributed to

additional noise, trash, vermin, loss of parking and other unwanted quality of life effects, and their desire to see the emergency program sunset post-pandemic.

There were no other speakers, and the hearing was closed.

WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW

The application (N 210434 ZRY) was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 30, 2013, and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 21-061. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that the application for the text amendment (N 210434 ZRY), as modified herein, is appropriate.

The Commission notes that the initial intent of the sidewalk cafe regulations was to streamline the approval process for cafes by naming areas of the city where cafes were allowed, and in so doing, remove the need to subject a cafe to a full ULURP. This approach led to a program that permitted sidewalk cafes largely in Manhattan. Because of the lengthy and complex approval process needed to change these regulations, a significant number of commercial streets in the other boroughs were excluded from participation. The zoning cannot be easily adjusted to respond to new conditions.

The robust participation in the emergency OR program during the COVID-19 pandemic has strengthened the role that sidewalk cafes can play as a community's social and commercial anchor, as well as expand and enhance economic equity in all city neighborhoods. Restaurants are critical to the city's economic recovery and continuing vitality. The activation of outdoor dining has proven to be a vital tool in supporting this key industry, as well as anchoring the

success of neighborhood commercial streets. The Commission believes that the removal of locational prohibitions in zoning will ensure that this vibrancy is sustained, and that provisions will be flexible and responsive to dynamic street conditions. The new regulations in the POR program will ensure flexibility in an appropriate program that will support the city's recovery and ongoing economic vibrancy.

The Commission has carefully considered the recommendations of the community boards, borough boards, and borough presidents, as well as the comments made at the public hearing. The Commission understands that ensuring the permanent program is administered in a manner that is sufficiently responsive, efficient, transparent, and accountable, are all necessary goals that extend beyond the scope and timeline of this text amendment. The Commission believes assigning sole responsibility for the POR program to a single agency will enable the program to be responsive to both the needs of businesses and the priorities of surrounding communities. This streamlining and consolidation will increase efficiency and reduce bureaucratic hurdles to participation and enforcement. The Commission is encouraged by DOT's efforts preparing for administration of the permanent program and believes the concepts for legislation, rulemaking, design standards, application process, and enforcement are sound.

The Commission also understands the need to ensure that the zoning changes are implemented in concert with other planned changes to protect against adverse outcomes. The Commission heard concerns regarding enacting zoning changes while the final administrative, design, procedural, and operational rules are still being formulated. The Commission agrees that the zoning changes should not be implemented until and unless the full program is enacted as contemplated. To ensure consistency, the Commission hereby modifies the proposed text amendment to include a provision linking the effective date of the removal of the existing sidewalk cafe regulations to the subsequent enactment of the contemplated authorizing legislation and adoption of initial rules by DOT governing the POR program. This modification will ensure that the removal of the current regulations would only become effective after the POR program has been subjected to public review and enactment.

The Commission heard a great deal of testimony on items related to the administration of the permanent program and, while not related to the specifics of the zoning proposal itself, has considered these issues below.

Regarding enforcement, the Commission appreciated the reports from DOT that documented the increase in inspections and removals of non-compliant restaurants. Since the early stages of the emergency program, which focused on establishing a new and easily accessible program to encourage participation and provide critical flexibility to restaurants, DOT has adapted and continued working to send inspectors to issue citations and encourage adherence to rules and guidelines established for the emergency program. The future program will create a licensure process for sidewalk cafes, requiring cafes to comply with rules before they are built and subjecting them to inspection shortly after. The Commission also notes that DOT is in the process of adding to its staff a director of Open Restaurants, and a team of additional inspectors, planners and site reviewers who will be tasked with inspections on weekends and nights.

The Commission notes the measures DOT has taken will be incorporated into the final program administration to address noise concerns. DOT has committed to ensuring that amplified noise is prohibited in outdoor dining settings. DOT reviewers and inspectors will ensure that amplified noise is not included in outdoor dining plans and is not present when structures are inspected after they are built.

The Commission heard concerns from community boards regarding the elimination of their role during the emergency program. Referral of sidewalk cafe applications to community boards is required under section 364 of the Charter as part of the revocable consent process for sidewalk cafes. As such, a modification to the proposal is not necessary to ensure that sidewalk cafe applications will be again be referred to community boards in the permanent program.

The Commission heard questions and concerns regarding inadequate design standards, enforcement, and rule ambiguity during the emergency program. While design flexibility under the emergency program out of necessity afforded the opportunity for many restaurants to participate quickly, at low cost, and during inclement parts of the year, the Commission also recognizes that the protection of adequate pedestrian space and visibility on the sidewalk is a critical feature of a permanent program. The Commission notes DOT's stated intention to rely primarily on the DCWP sidewalk cafe design rules, which both restore and expand upon clear path requirements and other critical design features that ensure the openness and balance between private and public sidewalk use. The Commission also notes the continued work of DCP and DOT to publicly engage in the development of design standards and to update the Commission following the completion of that process and prior to the public review of final rules. The Commission believes the proposed modification linking the effectiveness of the proposed action to the final rules will ensure that the program is implemented with appropriate design requirements.

The Commission also heard several comments regarding the design of roadway setups, raising new considerations about balancing curb lane use with other infrastructure needs. While the Commission agrees that the roadway setups require strong design rules and encourages the ongoing efforts of DCP and DOT to engage in a citywide design consultation, the Commission notes that rules regarding the roadway seating setups are beyond the scope of this application.

The Commission heard concerns about allowing sidewalk cafes for legal non-conforming restaurants in residential zoning districts. Non-conforming restaurants in residential districts, of which there are nearly 3,000 citywide, are legal and in many cases anchor modest mixed-use areas with older commercial spaces in residential neighborhoods. Under the current regulations a restaurant owner would have to go through ULURP to map a commercial district for the sole purpose of allowing outdoor dining. This process may require the drawing of unusual district boundaries and permitting a wider range of commercial uses that are not intended for the site and represents a costly and time-consuming burden for small business owners. The emergency OR program has also demonstrated that the introduction of cafes in residence districts has been beneficial to the public realm. The Commission understands that the proximity of restaurants to

residences raises the potential for noise conflicts or other nuisances. However, this concern has been more strongly expressed in areas with large concentrations of restaurants, typically not located in residential zoning districts, where most non-conforming restaurants are highly dispersed. Additionally, the Commission reiterates that strong oversight and enforcement is critical to ensuring potential conflicts are well managed, and notes that the combination of new DOT rules, site review, and community board referrals will support this objective.

The Commission heard concerns that more permissive sidewalk cafe locational provisions would lead to a loss of retail diversity. Broader trends documented in retail corridors, including a decline in dry retail and other shifts related to e-commerce and consumer preferences are driven primarily by broader forces and not significantly shaped by the introduction of outdoor dining opportunities. Under the permanent program, in contrast to the emergency program, restaurants will be required to pay fees for use of the public right-of-way as part of the revocable consent, as has been the case previously. It is not anticipated that this program will create incentives so significant as to deter other uses.

The Commission also heard comments about elements of the proposal meant to address conflicts between the POR program and other zoning regulations. Removing restrictions around enclosures and operable windows is necessary for the POR program to be consistently applied across the city. Removing these provisions will allow eating or drinking establishments in C1 and C5 commercial zoning districts and non-conforming commercial uses in residential zoning districts to provide improved integration of indoor and outdoor dining operations consistent with the goals of the POR program.

Regarding the quality-of-life concerns raised, the Commission notes that noise and energy codes would continue to apply to buildings. Moreover, consistent rules pertaining to eating and drinking establishments across the city supports to support the outdoor dining.

Manhattan Community Boards 2 and 4 expressed concern that in changing the enclosure provisions in ZR Section 52-34, the proposal removes the word “seated” in one reference to dining areas will result in standing only restaurants. The Commission notes that the

reestablishment of a clear site plan review process for cafes, which will require the specification of locations of tables and chairs, will provide assurances that outdoor dining areas are designed for seated patrons.

The Commission also heard concerns from one community board regarding the use of sidewalk widenings required by zoning regulations for outdoor dining purposes. Sidewalk widenings are intended to function as part of the sidewalk and should not in this case be subjected to restrictions that would not apply to a public sidewalk. The siting criteria will continue to apply to the entire area that appears as sidewalk from building to curb line, regardless of ownership condition. Requiring otherwise could produce unintended consequences and discontinuities in a space intended to blend seamlessly with the public sidewalk. The Commission believes this provision is appropriate as proposed and will create a consistent and clear rule for the POR program to operate.

As the enclosure, takeout provisions, and sidewalk widening text amendments have independently utility from the enactment of the full POR program, the Commission does not believe it is necessary to subject these provisions to the modification effecting enactment date.

The Commission notes that sidewalk café regulations have long been a part of the Zoning Resolution and they have helped contribute to a livelier streetscape across the city. However, the Commission agrees that the current framework is imperfect, as it treats areas of the city inconsistently and is extremely difficult to change. The Commission believes the POR program will address the needs of sidewalk cafes than could be done through ongoing amendments to the current zoning rules. The Commission anticipates DOT's creation of the requirements for the program to address the very real concerns raised by communities during the public review process and therefore ensuring outdoor dining continues to contribute to the city's economy and public realm. Therefore, the Commission believes that the application for the text amendment to establish the Permanent Open Restaurants program, as modified herein, is appropriate.

RESOLUTION

RESOLVED, that having considered the Environmental Assessment Statement (EAS) for which a Negative Declaration was issued on June 18, 2021 with respect to this application (CEQR No. 21DOT016Y), the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter underlined is new, to be added;

Matter ~~struck out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

* * * indicates where unchanged text appears in the Zoning Resolution.

ARTICLE I GENERAL PROVISIONS

Chapter 4 Sidewalk Cafe Regulations

* * *

14-01 General Provisions

The provisions of this Chapter shall be in effect only until the adoption of initial rules governing the Permanent Open Restaurants program by the Department of Transportation following authorizing legislation by the City Council.

In conjunction with the termination of this Chapter, the following provisions shall also be terminated:

(a) defined terms in Section 12-10 (DEFINITIONS):

#Enclosed sidewalk cafe#;

#Sidewalk cafe#;

#Small sidewalk cafe#; and

#Unenclosed sidewalk cafe#;

(b) provisions in Section 22-00 (GENERAL PROVISIONS) regarding #sidewalk cafes# in R10H Districts;

(c) provisions regarding #sidewalk cafes# in the #Special 125th Street District#, as set forth in Sections 97-03 (District Plan and Maps), 97-13 (Permitted Sidewalk Cafe Locations), and Map 2 (Permitted Sidewalk Cafe Locations) in Appendix A of Article IX, Chapter 7; and

(d) provisions regarding #sidewalk cafes# in the #Special Long Island City Mixed Use District#, as set forth in Sections 117-03 (District Plan and Maps), 117-05 (Permitted Sidewalk Cafe Locations), and on the Permitted Sidewalk Cafe Locations map in Appendix A of Article XI, Chapter 7.

In harmony with the general purpose and intent of this Resolution, and the general purposes of the #sidewalk cafe# regulations, certain specified regulations concerning area eligibility, sidewalk locational criteria and physical criteria for #sidewalk cafes#, in general, and specifically for #enclosed sidewalk cafes#, are herein established.

* * *

ARTICLE III COMMERCIAL DISTRICT REGULATIONS

Chapter 2 Use Regulations

* * *

32-41 Enclosure Within Buildings

* * *

32-411

In C1, C5, C6-5 or C6-7 Districts

C1 C5 C6-5 C6-7

In the districts indicated, all such #uses# shall be located within #completely enclosed buildings# except for store fronts or store windows, associated with eating and drinking establishments, which may be opened to serve customers outside the #building#.

32-412

In other Commercial Districts

C2 C3 C4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9 C8

In the districts indicated, all such #uses# shall be located within #completely enclosed buildings# or within #buildings# which are #completely enclosed# except for store fronts or store windows which may be opened to serve customers outside the #building#.

* * *

Chapter 3

Bulk Regulations for Commercial or Community Facility Buildings in Commercial Districts

33-00

APPLICABILITY, DEFINITIONS AND GENERAL PROVISIONS

* * *

33-05

Outdoor Table Service Areas

Notwithstanding any other provisions of this Resolution, outdoor table service areas, associated with eating and drinking establishments, meeting all requirements set forth by the Department of Transportation shall be permitted within any required sidewalk widening areas.

* * *

ARTICLE IV

MANUFACTURING DISTRICT REGULATIONS

Chapter 3

Bulk Regulations

43-00

APPLICABILITY AND GENERAL PROVISIONS

* * *

43-03

Outdoor Table Service Areas

Notwithstanding any other provisions of this Resolution, outdoor table service areas, associated with eating and drinking establishments, meeting all requirements set forth by the Department of Transportation shall be permitted within any required sidewalk widening areas.

* * *

ARTICLE V

NON-CONFORMING USES AND NON-COMPLYING BUILDINGS

Chapter 2

Non-Conforming Uses

* * *

52-30

CHANGE OF NON-CONFORMING USE

* * *

52-34

Commercial Uses in Residence Districts

In all #Residence Districts#, a #non-conforming use# listed in Use Group 6, 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed, initially or in any subsequent change, only to a conforming #use# or to a #use# listed in Use Group 6. In the case of any such change, the limitation on #floor area# set forth in Section 32-15 (Use Group 6) shall not apply. Eating or drinking ~~places;~~ establishments with musical entertainment, but not dancing, thus permitted as a change of #use#, shall be ~~limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a #completely enclosed building#~~ subject to the enclosure provisions of Section 32-411.

* * *

ARTICLE VII

ADMINISTRATION

Chapter 3

Special Permits by the Board of Standards and Appeals

* * *

73-24

Eating or Drinking Places

* * *

73-243

In C1-1, C1-2 and C1-3 Districts

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, and those which provide outdoor table service) with #accessory# drive-through facilities for a term not to exceed five years, provided that the following findings are made:

* * *

- (d) that in C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C5, M1-5A and M1-5B Districts, such #use# shall ~~take place in a #completely enclosed building#~~ be subject to the enclosure provisions of Section 32-411; and

* * *

~~In connection therewith, the Board may modify the requirement of Section 32-411 (In C1, C5, C6-5 or C6-7 Districts) insofar as it relates to the #accessory# drive-through facility.~~ The Board may prescribe additional appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

* * *

Article VIII - Special Purpose Districts

Chapter 3

Special Limited Commercial District

* * *

83-00

GENERAL PURPOSES

* * *

(10/9/69)

83-05

Enclosure of Uses

All permitted ~~#uses#~~ shall be ~~located within #completely enclosed buildings#~~ be subject to the enclosure provisions of Section 32-411.

* * *

ANITA LAREMONT, *Chair*

KENNETH J. KNUCKLES, *Esq., Vice-Chairman*

DAVID BURNEY, ALLEN P. CAPPELLI, *Esq.*,

JOSEPH I. DOUEK, RICHARD W. EADDY, ANNA HAYES LEVIN,

ORLANDO MARÍN, LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners*

ALFRED C. CERULLO III, *Commissioner Recused*



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 31	# Against: 0	# Abstaining: 1	Total members appointed to the board: 32
Date of Vote: 9/14/2021 12:00 AM		Vote Location: WEBEX	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/12/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	WEBEX

CONSIDERATION: Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:52 AM
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OPEN RESTAURANTS/SIDEWALK CAFES ZONING TEXT AMENDMENT. New York City is working to create a permanent, streamlined Open Restaurants program. As part of this program, the Department of City Planning and Department of Transportation propose a zoning text amendment **to remove geographic restrictions on where sidewalk cafes can be located within NYC.** To be eligible for a sidewalk café, restaurants would need to meet physical criteria -- such as “clear path” requirements, including ensuring that table and chairs are appropriate distances from fire hydrants and neighboring businesses. The proposal would not change the process for how sidewalk cafes are reviewed by local community boards; but the areas where they can be considered would expand to all neighborhoods. This proposed amendment to NYC’s Zoning Resolution complements proposed legislative changes that would **cut red tape for restaurant owners.** Applications for the sidewalk café program and a new roadway café program would be consolidated under one agency, the Department of Transportation (DOT)

Ms. Alexandra Paty-Diaz and Mr. Ben Huff Presented.

At the full board’s public hearing many board members and residents agreed that the restaurants had suffered through no fault of their own from the shutdowns and needed help getting back on their feet. However, there was much opposition to the overall Open Restaurants plan due to a lack of safety standards regulating the construction of the outdoor sheds, the increase in garbage and noise associated with the use of the sheds and sidewalk cafes, the reduction in parking spaces and size of sidewalk space for pedestrians, and the permanent nature of the amendment. Most speakers felt it was premature to ask for the board’s approval even of this initial request for the text amendment (which is allegedly targeting only the decrease of regulations on restaurants’ ability to apply for permission to have a sidewalk café) until these concerns were met.

The committee acknowledged the recent meeting of community board leaders and the strong opposition to granting this application until the city presented the details of the overall all plan for sidewalk cafes and Open Restaurant regulations. It was noted that restaurants still have time to take advantage of the current emergency regulations. In the meantime, the city should present a plan for oversight, including inspections and enforcement of sanitation and noise regulations. In addition, the city should meet with the land use and SLA committees to discuss whether the plan is a good fit for our neighborhood.

Recommendation:

Deny the application as premature.

18 in favor of the motion to deny.

0 against the motion to deny.



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f aiver oFRecommendation			
# In Favor: 15	# Against: 9	# Abstaining: 6	Total members appointed to the board: 30
Date oFVote: 9/29/2021 12:00 AM		Vote Vbcation: Virtual Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing:	
f as a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Vbocation:	

CONSIDERATION: After a lengthy discussion at both the committee and general meetings, Community Board 2 was unable to pass a motion and as such the board has opted to not comment.

Recommendation submitted by	BK CB2	Date: 10/5/2021 5:45 PM
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Community Board 4
Housing and Land Use (HLU) Committee Feedback/Recommendations
Various Zoning Text Amendments
6.29.21 Meeting

Fresh II

Mr. Camacho raised the point: is this serving us (the community) with food or them (developers), who want more money?

- 1) **Concern: Developers will forgo parking for a density bonus because they aren't making money/no one is using the parking.**

Example/reference: 54 Knoll Street Fresh Application

- 2) Felix Ceballos commented about the **parking problems in the neighborhood.**

Jesse Hirakawa from City Planning noted that the parking reduction will only occur in areas zoned R3 to R5. It won't affect Bushwick.

Health & Fitness

Mr. Camacho mentioned the following :

- 1) **Concern: Noise in Residential Areas from the treadmills and weights.**
- 2) **Concern: Old Buildings don't have the capacity to support equipment**

Jesse, City Planning, noted that DOB added regulations for construction. Professional architects and engineers examine the spaces and should determine viability.

Timeline for to submit recommendations for the above: May 17th to July 17th

Anne commented on the timing of the certification for the amendments.

Concern: Little time to discuss and weigh-in moving forward.

Mr. Camacho added that the city shouldn't operate like this unless it's an emergency. The Community Board regulations are in the City Charter. Agencies know the boards don't meet in July and August. The Executive Order (State of Emergency) is finished; now meetings are in-person. He's going to do/recommended the following:

- Bring it up at the Borough Board
- Draft a letter to the City Council - for more time to do outreach

Alexandra, City Planning, acknowledged the timing challenges and encouraged the committee to include the feedback in their recommendations. She added:

- The review timeframe is a policy however, feedback is welcome as it becomes available.
- **The clock for Open Restaurants is extended to 90 days for boards to discuss further.**

Concern: Agencies know boards don't meet during July and August. The review timeframe is challenging.

Open Restaurants

Anne expressed **concern about public space being used privately without public input.** She requested/suggested the following:

- **Request for City Planning and the Department of Transportation to return/present in September (The next full board meeting is Wednesday, September 15th at 6pm. The location is TBD).**
- Suggested a presentation at the board's Transportation--Committee meeting.

Desmonde didn't see different levels of community engagement. He expressed **concerns about the following:**

- Deliveries
- Pickups
- When people are moving into/out of buildings

None of the above were addressed in the presentation.

Desmonde wasn't satisfied with the agencies' answer. He added **the following concerns:**

- **What about the impact on other businesses?**
 - Price gouging
- **Sidewalks under the trains**
 - **Sediment from the trains (dust, potentially lead)**
 - Has the DOT discussed this with the Department of Health--?

Carolyn Grossman, City Planning, indicated that the DOHMH has been part of the conversation to make sure the infrastructure is mindful of COVID however, the issue of sediment hasn't come up. **They can bring it back to the Department of Health.**

Jose asked about the maintenance of the infrastructure and who verifies it's safe. He also referenced the building materials.

Mr. Camacho added the following concerns:

- Sometimes they think it's Manhattan.
- More than several restaurants in Bushwick have the outdoor dining closed off.

Request: Need to do a walk for the agency to 'see what we see.'

- Garbage
- Not cleaning 18" into the curb
- Illegal/horrendous

Request: Do a survey. (Who is doing the survey? What is the goal?)

- Who owns a business
- Gives back

Action: Going to speak to the elected officials. (Who and what is the ask?)

Ask: When are they going to find those that are illegal? (Enforcement)

- Taking away from deliveries and buses. Customers are eating gas fumes in some areas. They cater to certain areas and not others.

Concern: Equity.

Negative precedent - the city is giving free land to bikes and everything.

Concern: No parking.

Hours of Open Restaurants remain the same as the previous Sidewalk Cafe regulations.

Sunday to Thursday - midnight

Friday and Saturday - 1am

Request: Statistics that show this benefits the community.

Desmonde commented **that the city is going to profit and move forward regardless. (How can Bushwick benefit from this? How do we hold the agencies involved accountable?)**

Felix emphasized the following concerns:

- The street is dangerous for the customer
- Cleaning issues (opportunity to create a new EDC + PLC stipulation?)

Request (Anne): Is there any citywide accident data?

Question from Mr. Larancuent about **snow prep**.

Kristen noted that biking in bike paths is dangerous. She also suggested exploring polytunnels. (Kristen, are you able to elaborate on this below?)

- I feel the dining in the streets directly adjacent to bike lanes is dangerous for restaurant staff, patrons and cyclists.
- Polytunnels can be constructed similar to these Street cafes for very low cost and be used to grow fresh food-produce, herbs, medicinal plants etc which could benefit the local residents particularly in food insecure neighborhoods. Think of it as an extension of the community garden concept. This would also add greenery, oxygen and many more benefits to the community. There is a cafe in Bed Stuy called Playground coffee shop on Quincy and Bedford, which is very active in the local community and opted to build a polytunnel instead of expand their seating/dining area, so that it can create a food program for locals in need, if you're interested in seeing an example. In my opinion, this could be a real opportunity to bring a benefit to the community by repurposing public space such as parking or sidewalks where able.





Desmonde asserted that their community engagement failed. (Any requests/recommendations for them to improve?) **The info from their presentation is high level; not from the community.**

Daniella suggested:

- **A preliminary study to bring back to the board** (Who would do the study? How much would it cost?)
- Topic: Where the proposed cafes could be located (Should this include anything else?)

Celeste: **Will the Community Boards have an opportunity to review draft rules before the review process concludes?**

Carolyn, City Planning, the text amendment review process is separate from the review of the design guidelines/rules. She confirmed there will be a separate process for the latter.

Celeste: **Has the DOT conducted outreach to other agencies, such as the NYPD and DOE? (Referenced the Street Activity Permit Office 'SAPO')**

Leroy, DOT, they have and both along with other agencies will be a part of the rule-making process.

Celeste: **Will the boards have a formal part in the review process?**

Leroy thinks they will have some input. It's not hashed out. Carolyn, City Planning, the boards' will be involved in the same way as they were prior to COVID. **The new processes are being reformed. (This is an opportunity for the board to influence policy in a way that benefits Bushwick and prioritizes equity.)**



Eric Adams
Borough President

COMMUNITY BOARD NO. 8

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(718) 467-5620/5574 • BROOKLYNCB8.ORG • BROOKLYNCB8@GMAIL.COM

Irsa Weatherspoon
Chairperson

Michelle T. George
District Manager

September 13, 2021

Ms. Marisa Lago, Chairperson
City Planning Commission
120 Broadway
New York, NY 10271

Dear Chairperson Lago,

Community Board 8 held a public hearing on Open Restaurants Citywide Zoning Text Amendment on August 31, 2021 via Webex. The public hearing was to discuss the NYC Dept. of Transportation and Dept. of City Planning's citywide zoning text amendment that would allow the DOT to administer the Permanent Open Restaurant program (POR). The proposal would remove sidewalk café regulations from the Zoning Resolution to increase geography eligibility as sidewalk cafes will become part of a unified sidewalk and roadway outdoor dining program administered at DOT.

At the September 9, 2021 Community Board 8 general meeting, the Chairpersons of the Economic Development, Environment/Sanitation/Transportation, Land Use, and SLA and Sidewalk Café Review committee chairs presented the following resolution based upon the presentation at the hearing and comments received:

RESOLUTION

Whereas the Emergency Open Restaurant program, which enabled restaurants to erect Sidewalk and/or Roadway seating, was instrumental in ensuring the continued survival of over 11,000 restaurants, over 100,000 jobs, and New York City's food scene – a vital part of the city's culture; and

Whereas in October 2020, the New York City Council voted to establish a permanent version of Open Restaurants, managed by the Department of Transportation; and

Whereas the Zoning Resolution of New York City, as currently written, has detailed rules that limit the location of Sidewalk Cafes; and

Whereas to administer a permanent Open Restaurants program, the Department of Transportation needs greater flexibility than currently permitted under these zoning rules;

NOW THEREFORE, be it resolved, that:

Community Board 8 supports the proposed amendments to the Zoning Resolution, deleting Article 1, Chapter 4, in its entirety and making other edits, to allow any restaurant, anywhere in New York City, to apply for a sidewalk café; PROVIDED:

- Community Boards have an advisory role to play in the application process for any restaurant that seeks a Sidewalk or Roadway seating area, regardless of whether it also seeks a State Liquor Authority license;
- The Open Restaurants Program includes a method to address and enforce Quality of Life concerns, such as
 - o trash management and sanitation,
 - o vermin and rodent abatement,
 - o excess and/or late noise,
 - o abandoned or underused Sidewalk or Roadway seating areas, and
 - o behaviors such as loitering;
- The fee structure for permitting is structured equitably, to encourage applications from lower income neighborhoods;
- The renewal window is less than 4 years;
- Neither Sidewalk nor Roadway seats will be placed such that they impede pedestrian right of way, emergency vehicle access, efficient delivery of goods and services to local businesses, or bus transit.

Community Board members voted 23 in favor, 2 opposed, with 5 abstentions to support the Zoning Text Amendment provided the above are implemented in the plan. We thank you for the opportunity to comment on such an important issue facing our community. If you have any questions, comments, or concerns, please do not hesitate to contact us.

Sincerely,

Irsa Weatherspoon
Chairperson



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 35	# Against: 2	# Abstaining: 0	Total members appointed to the board: 37
Date of Vote: 9/20/2021 12:00 AM		Vote Location: Zoom Teleconferencing	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/20/2021 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Knights of Columbus, 1305 86th Street, Brooklyn NY 11228

CONSIDERATION: 35 Members voted to support the Zoning and Land Use Committee motion to OPPOSE the Open Restaurants Text Amendment; 2 Board Members voted against the committee's motion.
(Note: This meeting was originally scheduled to take place at Knights of Columbus, but was changed to Zoom when the Open Meetings Law suspension was put back into effect. The Zoom meeting information was published correctly in The City Record.)

Recommendation submitted by	BK CB10	Date: 9/22/2021 12:43 PM
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Community Board Ten

8119 5th Avenue • Brooklyn, NY 11209
(718) 745-6827 • Fax (718) 836-2447
Email: bk10@cb.nyc.gov
www1.nyc.gov/site/brooklyn10/index.page

JAYNEMARIE CAPETANAKIS
Vice Chairperson
SANDY VALLAS
Secretary
SHIRLEY CHIN
Treasurer

LORI WILLIS
Chair
JOSEPHINE BECKMANN
District Manager

September 21, 2021

Marisa Lago, Chair
New York City Planning Commission
120 Broadway
New York, NY 10271

Re: Open Restaurant Text Amendment
CEQR#21DOT016Y

Dear Chair Lago:

At a duly publicized meeting of Community Board Ten held on Monday, September 20, 2021, members voted overwhelmingly in **OPPOSITION** to the proposed Department of City Planning (DCP) Open Restaurant Text Amendment. I have attached the Zoning and Land Use Committee Report for your review.

While Board Members supported the emergency Open Restaurant program and extension through 2022, they also strongly felt that to completely dispose of current zoning regulations in order to usher in a wide-sweeping “open restaurants plan”, without a publicly reviewed replacement plan, is a reckless move.

The Board motion outlined concerns about the Citywide Open Restaurant Text Amendment, as follows:

1. Removal of Zoning Regulations

- The current proposal removes a codified set of regulations, enacted with good underlying reasons, and does not replace them with any clear zoning regulations regarding where outdoor dining may be permitted.
- Removal of clear path requirements will impact the retail landscape – especially when multiple cafes are located on one block. A post-Covid world will experience more congestion: pedestrian and vehicular. Sidewalks and roadways are, in some areas, impassable.
- ADA requirements are outlined for sidewalk and roadway cafes, but no language addresses the restaurants’ obligation to the disabled who are passing by and who may not be able to navigate through narrow, obstructed spaces.
- Sidewalk clearance and permitted obstructions not clearly defined. Currently, electrical wires for lighting and heat run both - affixed to sidewalk and overhead.
- The pedestrian traffic in Community Board 10 brings vitality to our commercial corridors. Pedestrian traffic will be negatively impacted by this proposal.

ERIC L. ADAMS, BOROUGH PRESIDENT

Community Board Ten

Page – 2 –

2. Removal of Community Review

- The deletion of sidewalk café clear path and location requirements from the Zoning Resolution takes away public input/review as to seating placement for sidewalk cafes in residential districts.
- Roadway/curbside café applications will not be subject to public review.

3. Giving-Up of Public Space for Private Use

- Favors restaurants over retail businesses, residential uses, and all other uses
- Disregards practical concerns of roadway and sidewalk use.
- Provides restaurants use of public roadways paid for by the public. There is no transparency regarding fees for permits/applications.
- There is no guarantee that a fee schedule will be established.
- Removal of current zoning and replacement with virtually no zoning restrictions on sidewalk/roadway cafes may lead to unintended unpermitted vendors setting up outdoor stalls and pick-up/drive-through locations at roadway cafes.

3. Major Concerns and Lack of Input from Other City Agencies

- Removal of DOB from Structural Review will result in lack of participation by any engineering or architectural design professionals in the review of the construction of street structures which the City wants to be removable yet strong enough to withstand natural occurrences (wind, snow load, fire, weather deterioration, etc.) and highly likely vehicular impact hazards - all point to significant risk and likely disaster.

4. Clear Path Requirements are Not Clear

- Again, the committee had strong concerns that sidewalks would not be passable. Electrical wires for lighting, heating and entertainment would be obstructions for wheelchair and walker users and for families with strollers and toddlers.

5. Quality of Life and Environmental Concerns for Non-Restaurant Public

- The impact of this and future proposals to the residential quality of life cannot be understated or underestimated. Opposition to this zoning text amendment was based on so many objections and for so many reasons including longstanding street and roadway safety guidelines concepts.
- Noise Complaints - Noise complaints from eating and drinking establishments have increased more than 500% since May 2020. Community Board 10 is a residential district with commercial overlays. When CB10 reviews licensed establishments for SLA permits, they consider the impact of the establishment on the surrounding residential area. Currently there are restaurants advertising outdoor DJs on Friday and Saturday nights. There must be protections for residents.

ERIC L. ADAMS, BOROUGH PRESIDENT

Community Board Ten

Page - 3 -

- Lasting impact on traffic flow (public transit, personal vehicles, bicycles, E-bikes & scooters), traffic safety, and pedestrian safety especially in light of the Vision Zero Program

Therefore, on behalf of Board Members, we strongly request that you and the members of the City Planning Commission review our objections and reconsider the proposed Citywide Open Restaurant Text amendment to the Zoning Resolution as we fear communities throughout the city will forever be negatively impacted by these changes.

Sincerely,


Lori Willis
Chair


Josephine Beckmann
District Manager

LW:JB:jb

Att:

cc: Henry Gutman, Commissioner DOT
Mayor Bill deBlasio
Borough President Eric Adams
Council Member Justin Brannan
Council Member Carlos Menchaca
Council Member Rafael Salamanca
NYC Community Boards
Sanmati Naik
Richard Bearak

Zoning and Land Use Committee Report

September 20, 2021

Members of the Zoning and Land Use Committee met to review the Open Restaurant Zoning Text Amendment during 3 meetings this month. September 2nd was a formal presentation by Department of City Planning and DOT which was followed by two additional meetings held on September 14th and 16th.

DCP presenters stated they needed to get this zoning amendment “out of the way” to clear the path for a new DOT permanent “open restaurants” program. A representative from DOT was in attendance to be on hand to answer questions to explain the current concepts for the basic parameters of that program.

Currently, there are many sections within the Zoning Resolution that address and define where sidewalk cafes both enclosed and unenclosed can operate, and the process is overseen by the Department of Consumer Affairs. This proposal by the Department of City Planning seeks to remove those sections and reassign jurisdiction to the Department of Transportation. Most sidewalk cafes currently fall within what is known as “commercial overlays” found within residential districts.

Commercial overlays are mapped within residence districts to serve and protect the community. Typical retail uses include neighborhood grocery stores, restaurants and beauty parlors. Most buildings in our district within the commercial overlay typically have a commercial use limited to one or two floors and must always be located below the residential use. Creating a balance between the quality of life of residents and the prospering of the commercial establishments which provide their much-needed services is and should remain the goal. This is why the current zoning text includes requirements for sidewalk clearance, distances between cafes, prohibited music and amplified sound, and other protections.

The proposed action:

- Removes the definitions of enclosed, unenclosed and small sidewalk cafés thus eliminating limitations on size and design
- Eliminates the regulations on where certain sidewalk cafes are not permitted, including locational criteria (including under elevated subway lines and in such areas as within Community Board 10 along 86th Street from 3rd Avenue to Gowanus Expressway); the clear path requirement around the corners (currently at 8 feet); and the 40 feet minimum distance between sidewalk cafes; physical criteria for enclosed sidewalk cafes
- Removes structural requirements for enclosed cafes; and prohibition of music and noise amplification.
- Adds Outdoor Table Service Areas in roadways and against restaurant facades within most zoning use districts meeting all requirements set forth by the Department of Transportation (which requirement will be set forth in the new as-of-yet undetermined “open restaurants” plan).

- Prohibits enclosed cafes which will no longer be permitted, existing will be grandfathered.
- Does NOT include Community Board review for dining areas under the anticipated “open restaurants” plan
- Department of City Planning stated that “no geography is off limits”.

During our discussion, ZALUC members shared that they fully supported the emergency order to allow outdoor dining during the pandemic because the industry was hit hard. Additionally, members expressed support for the extension of the temporary program to continue through 2022 despite many issues that have arisen and continue with limited and uneven enforcement.

However, it was the overwhelming opinion of the committee that the rush to adopt sweeping changes to the Zoning Resolution to certify this application over the summer without proper public review and prior to having a new permanent program in place is unacceptable.

The changes to the Zoning Resolution are significant and the effects are of great concern to members of the committee. These changes will have a broad impact on our community.

DOT’s premise in seeking these changes is: “let’s take what works and make it permanent”. The committee took exception to that premise as what many in our community are experiencing on our streets and in the public right of way is NOT working for all. While it may be working for restaurants and providing some lessons on how we may enliven our streetscape, but to completely dispose of current zoning regulations in order to usher in a wide-sweeping “open restaurants” plan – absent a publicly reviewed replacement plan – the committee viewed as a reckless move and an abuse of power.

Therefore, ZALUC, having met in quorum, voted to oppose the Open Restaurant Text Amendment, and to share our following concerns with the Department of City Planning:

1. Removal of Zoning Regulations:

The current proposal removes a codified set of regulations, enacted with good underlying reasons, and does not replace them with any clear zoning regulations regarding where outdoor dining may be permitted.

- Removal of clear path requirements will impact the retail landscape – especially when multiple cafes are located on one block. A post-Covid world will experience more congestion: pedestrian and vehicular. Sidewalks and roadways are, in some areas, impassable.
- ADA requirements are outlined for sidewalk and roadway cafes, but no language addresses the restaurants’ obligation to the disabled who are passing by and who may not be able to navigate through narrow, obstructed spaces.

Sidewalk clearance and permitted obstructions not clearly defined. Currently, electrical wires for lighting and heat run both - affixed to sidewalk and overhead.

The pedestrian traffic in Community Board 10 brings vitality to our commercial corridors. Pedestrian traffic will be negatively impacted by this proposal.

2. Removal of Community Review

The deletion of sidewalk café clear path and location requirements from the Zoning Resolution takes away public input/review as to seating placement for sidewalk cafes in residential districts.

Roadway/curbside café applications will not be subject to public review.

3. Giving-Up of Public Space for Private Use Favors restaurants over retail businesses, residential uses, and all other uses and concerns.

Disregards practical concerns of roadway and sidewalk use.

Provides restaurants use of public roadways paid for by the public. There is no transparency regarding fees for permits/applications.

There is no guarantee that fees will be established.

Removal of current zoning and replacement with virtually no zoning restrictions on sidewalk/roadway cafes may lead to unintended unpermitted vendors setting up outdoor stalls and pick-up/drive-through locations at roadway cafes.

3. Major Concerns and Lack of Input from Other City Agencies

· Removal of DOB from Structural Review will result in lack of participation by any engineering or architectural design professionals in the review of the construction of street structures which the City wants to be removable yet strong enough to withstand natural occurrences (wind, snow load, fire, weather deterioration, etc.) and highly likely vehicular impact hazards - all point to significant risk and likely disaster.

4. Clear Path Requirements are Not Clear

· Again, the committee had strong concerns that sidewalks would not be passable. Electrical wires for lighting, heating and entertainment would be obstructions for wheelchair and walker users and for families with strollers and toddlers.

5. Quality of Life and Environmental Concerns for Non-Restaurant Public

The impact of this and future proposals to the residential quality of life cannot be understated or underestimated. Opposition to this zoning text amendment was based on so many objections and for so many reasons including longstanding street and roadway safety guidelines concepts.

· Noise Complaints - Noise complaints from eating and drinking establishments have increased more than 500% since May 2020. Community Board 10 is a residential district with commercial overlays. When CB10 reviews licensed establishments for SLA permits, they consider the impact

of the establishment on the surrounding residential area. Currently there are restaurants advertising outdoor DJs on Friday and Saturday nights. There must be protections for residents.

- Lasting impact on traffic flow (public transit, personal vehicles, bicycles, E-bikes & scooters), traffic safety, and pedestrian safety especially in light of the Vision Zero Program
- Communities throughout the city will forever be negatively impacted by these changes

Respectfully submitted,


Doris Cruz

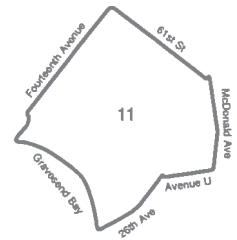
ZALUC Chair

Tel. (718) 266-8800
Fax (718) 266-8821



WILLIAM R. GUARINELLO
Chairman

THE CITY OF NEW YORK
COMMUNITY BOARD No. 11
2214 BATH AVENUE
BROOKLYN, NEW YORK 11214



MARNEE ELIAS-PAVIA
District Manager

October 5, 2021

Anita Laremont
Chair
New York City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Open Restaurant Text Amendment
CEQR# 21DOT016Y

Dear Chair Laremont:

I am writing to you regarding the Open Restaurants Text amendment, which our full board did not have the opportunity to engage in public review since the application was referred during summer recess.

However, Community Board 11's Planning and Zoning committee convened to discuss the proposal and unanimously rejected the application due to the lack of process and the many concerns relating to the removal of locational prohibitions.

The committee is very concerned that this proposal removes clear path requirements on our restricted streets under the elevated train structure, which is restricted due to sidewalk congestion, the simultaneous rulemaking process, and the removal of public review in the proposed application process.

Additionally, the Permanent Restaurants Program EAS, Sidewalk Analysis made standard assumptions and not the current use of our sidewalks, that includes sidewalk racks, oversized stoop line stands, major local transportation hubs, unlicensed general vending, and truck deliveries. In some locations we barely have 3 feet of sidewalk space for pedestrians.

e-mail: bk11@cb.nyc.gov
www.brooklyn11.org

Page 2

While we recognize the need for the emergency Open Restaurant program, we hope that the City Planning Commission considers our concerns before moving forward with this text amendment.

Respectfully,

A handwritten signature in black ink, reading "Marnee Elias-Pavia". The signature is fluid and cursive, with the first name "Marnee" being more prominent and the last name "Elias-Pavia" following in a similar style.

Marnee Elias-Pavia
District Manager



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 8	# Abstaining: 0	Total members appointed to the board: 11
Date of Vote: 6/21/2021 12:00 AM		Vote Location: CB 13 - Land Use Committee meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/21/2021 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	CB13 via Zoom

CONSIDERATION: It was voted down in committee so it never went to the full board.

Recommendation submitted by	BK CB13	Date: 7/29/2021 1:24 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable			
# In Favor: 31	# Against: 0	# Abstaining: 5	Total members appointed to the board: 36
Date of Vote: 9/13/2021 12:00 AM		Vote Location: Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/9/2021 6:30 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex www.cb14brooklyn.com

CONSIDERATION: Unfavorable conditioned upon fully realized DOT program proposal.

Recommendation submitted by	BK CB14	Date: 9/22/2021 12:10 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 40	# Abstaining: 0	Total members appointed to the board: 40
Date of Vote: 9/13/2021 12:00 AM		Vote Location: webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/13/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex

CONSIDERATION: The board has voted against this text amendment, the sidewalks are being blocked, some businesses have abandoned outdoor seating areas that take up valuable parking spaces. The areas is not ADA compliant and has no sanitation enforcement.

Recommendation submitted by	BK CB15	Date: 9/14/2021 12:55 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 27	# Against: 1	# Abstaining: 5	Total members appointed to the board: 33
Date of Vote: 10/20/2021 12:00 AM		Vote Location: 1097 Bergen Avenue, Brooklyn, NY 11234 and via WebEx	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/22/2021 7:00 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	1097 Bergen Avenue

CONSIDERATION:

Recommendation submitted by	BK CB18	Date: 10/21/2021 2:18 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 26	# Abstaining: 2	Total members appointed to the board: 28
Date of Vote: 10/28/2021 12:00 AM		Vote Location: Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 10/28/2021 6:03 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex

CONSIDERATION: There is no clear process for community review and input as it relates to the permanency and selection of the sites. Secondly, is the concern of DOT doing structure reviews and not having some linkage with the Department of Buildings. Third, there are quality of life and environmental concerns.

Recommendation submitted by	BX CB1	Date: 11/8/2021 10:15 AM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional favorable			
# In favor: 27	# Against: 0	# Abstaining: 0	Total members appointed to the board: 44
Date of Vote: 9/29/2021 12:00 AM		Vote Location: virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/29/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Full Board Virtual Meeting

CONSIDERATION: Community Board input necessary.

Recommendation submitted by	BX CB2	Date: 10/5/2021 1:36 PM
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The City of New York Bronx Community Board Three

1426 Boston Road, Bronx, NY 10456
Telephone No.: (718) 378-8054 – Fax No.: (718) 378-8188
E-mail Address: brivera@cb.nyc.gov / eritter@cb.nyc.gov

DIAL	Government Services
311	& Information for NYC

Comm. Bd. Info go to: nyc.gov/bronxcb3

**RUBEN DIAZ, JR.
BRONX BOROUGH PRESIDENT**

**REV. DR. BRUCE RIVERA
CHAIR**

**VACANT
DISTRICT MANAGER**

September 27, 2021

City Planning Commission
Calendar Information Office – 31st Floor
120 Broadway, New York, N.Y. 10271

RE: APPLICATION N210434ZRY – OPEN RESTAURANTS ZONING TEXT AMENDMENT

To Whom It May Concern,

This is to inform you that at a meeting of the Housing, Land-Use & Economic Development Committee held on Monday, September 20, 2021, representatives of the NYC Department of City Planning and the Metropolitan Transportation Authority, proposed the first of a series of changes to the Open Restaurants zoning text amendment requesting the removal of the geographic restrictions on where sidewalk cafes can be located within NYC.

After hearing said presentation, it was the consensus of the committee to approve and recommend the proposed zoning text amendment and provide a conditional letter of support. The proposed zoning text amendment is recommending eliminating geographic restrictions and to expand the benefits of outdoor dining on roadways and sidewalks in all New York City neighborhoods.

As noted at the meeting, the general board will consider this recommendation for full board approval at its next regularly scheduled meeting to be held on Tuesday, October 12, 2021. Please advise should any other assistance be required of the board in this matter.

Sincerely,

Rev. Dr. Bruce C. Rivera

Rev. Dr. Bruce Rivera
Chair

Cc: Kolaco Acqui, chair, Housing, Land-Use & Economic Development Committee
Aazam Otero, co-chair,

EXECUTIVE OFFICERS

Rev. Frederick Crawford
1st Vice-Chairperson

Joetta Brown
2nd Vice-Chairperson

Keziah Sullivan
Secretary

Kathy Johnson-Morris
Treasurer

Rita Jones
Sgt.-at-Arms/Parliamentarian



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

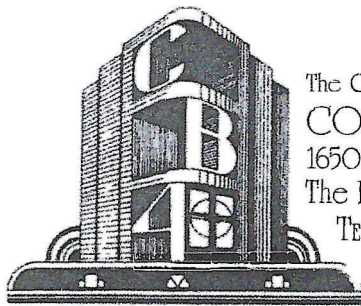
RECOMMENDATION: f favorable			
# In f avor: 22	# Against: 6	# Abstaining: 4	Total members appointed to the board: 43
Date oFVote: 9/28/2021 12:00 AM		Vote Location: Via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing:		
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>	
Public Hearing Location:		

CONSIDERATION:

Recommendation submitted by	BX CB4	Date: 10/19/2021 3:29 PM
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The City of New York
COMMUNITY BOARD 4
1650 Selwyn Avenue, Suite 11A
The Bronx, New York 10457
TEL: 718-299-0800 FAX: 718-294-7870
Email: bx04@cb.nyc.gov

HONORABLE RUBEN DIAZ, JR.
Bronx Borough President

MR. ROBERT GARMENDIZ
Board Chair

MR. PAUL A. PHILIPS
District Manager

October 5, 2021

Anita Laremont, Chairperson
NYC Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Dear Chairperson Laremont:

Please be advised that on September 28, 2021, at its regularly scheduled General Board Meeting, Bronx Community Board Four voted in the affirmative to issue a letter of support for the Open Restaurants text amendment. The Board fully supports additional tools and resources to support small businesses and recognizes the critical role that sidewalk dining can play in the recovery of the NYC restaurant industry.

However, we want to raise our concerns as it relates to the timing and process for the proposed text amendment. As evidence by the lack of effort by the City to consider and factor in the summer months it was clear that the Open Restaurants Text Amendment was a fete accompli by the time it reached us for review. This was only made worse by the lack of preparation by both NYC DOT and City Planning. I would note that the proposal was only presented to the Economic Development subcommittee on September 21, 2021. At that time the Committee Chair decided that based on the complexity of the issue and short turn around that it would be best for a presentation to be made to the full Board on Tuesday, September 28, 2021 for review and vote.

No representative from DCP was present at the full Board meeting on September 28, 2021, and the DOT representative had no materials to share with the Board or the public. The lack of consideration and respect is a scenario that has become far too familiar for many of us as it relates to City agencies.

Community Boards are comprised of volunteers who give freely of their time and talents to play an active role in shaping the neighborhoods in which they live. Moving forward, we hope that the City will treat Community Boards and Community Board members as true partners and make a more concerted effort to collaborate with us. If the City is serious about Community Boards playing an active role, we must be constructively engaged in anything that affects where we live rather than patronized. We deserve and demand the utmost respect from the City at all levels

We appreciate your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul A. Philps". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul A. Philps
District Manager
Community Board Four

Cc: Mr. Robert Garmendiz, Board Chairperson
Hon. Ruben Diaz Jr., Bronx Borough President
Hon. Vanessa L. Gibson, 16th CD
Hon. Diana Ayala, 8th CD



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f favorable			
# In f avor: 16	# Against: 0	# Abstaining: 4	Total members appointed to the board: 20
Date oFVote: 10/27/2021 12:00 AM		Vote Location: Virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: Bronx Community Board 5 voted to supoort this resolution. The vote was 16 yes; 0 No ; and 4 abstentions.		
Recommendation submitted by	BX CB5	Date: 10/28/2021 12:12 PM



THE CITY OF NEW YORK

BOROUGH OF THE BRONX

COMMUNITY BOARD #5

Honorable Ruben Diaz, Jr., Bronx Borough President

**Chairperson
Dr. Bola Omotosho**

**District Manager
Kenneth Brown**

Carol Samol
Bronx Borough Director
New York City Department of City Planning
1775 Grand Concourse; suite 503
Bronx, NY
10453

October 28, 2021

Dear Borough Director Samol,

Please accept this letter as affirmation of Bronx Community Board 5's assent to the Open Restaurant Text Amendment.

Bronx Community Board 5 assents to the proposal to change said regulation. The Board affirms that the proposal to transfer authority for this program from the Department of City Planning to the Department of Transportation has been deemed as beneficial by Bronx Community Board 5.

On October 27, 2021 at the Bronx Community Board 5 December General Board meeting, the Board did vote to approve the aforementioned text amendment. The vote of the Board was as follows:

Yes: 16

No: 0

Abstentions: 4

Please accept this letter as confirmation of Bronx Community Board Five's assent for this proposed change.

Sincerely,

Dr. Bola Omotosho

Chair, Bronx Community Board 5

BCC Campus * Gould Hall, Room 200 * 2155 University Avenue * Bronx, New York 10453
Telephone (718) 364-2030 * Facsimile (718) 220-8426 * bx05@cb.nyc.gov

Serving these Neighborhoods:
Fordham, Morris Heights, Mount Hope, University Heights



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 5	# Against: 6	# Abstaining: 14	Total members appointed to the board: 25
Date of Vote: 10/13/2021 12:00 AM		Vote Location: Zoom Audio and Video Conference: https://zoom.us/j/94704009785	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	BX CB6	Date: 10/16/2021 12:07 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional favorable			
# In favor: 17	# Against: 5	# Abstaining: 3	Total members appointed to the board: 25
Date of Vote: 9/28/2021 12:00 AM		Vote Location: https://zoom.us/j/83066035540 Join Meeting by Phone: (646) 558-8656 Meeting ID: 830 6603 5540	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/28/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom

CONSIDERATION: We support the proposed zoning text amendment which removes geographical restrictions on sidewalk cafes. The current program has limitations on size, location and clearances from existing street infrastructure for all sidewalk cafes. However, since June 2020 due to the Covid-19 Pandemic the City via a special filing process under the Department of Transportation (DOT) allowed restaurants to establish and operate sidewalk cafes in all areas (neighborhoods) of the city. Under the proposed zoning regulation text amendment, sidewalk cafes can continue to operate and be established without any geographical restriction through the health emergency program. This is the first steps to revamping the sidewalk café program and permitting process that will be regulated by DOT. The Board supports the establishment of sidewalk café as they are a vital neighborhood amenity. They not only activate the sidewalks, but also can provide additional income to a restaurant and safe outdoor eating areas. Removing the geographical restriction on sidewalk cafes regulations provides the option to all restaurants throughout the city to operate an outdoor café. It also allows about 11,000 sidewalk cafes that were establish through the emergency program to continue to operate until new regulations are drafted by DOT for the Open Restaurant Program. However, the Board has its concerns about the noise levels and late-night openings of the sidewalk cafes in residential neighborhoods. The obstructions and insufficient clearances on sidewalks for the mobility impaired and pedestrians alike. Also, the additional garbage generated by these establishments in our streets. More importantly the lack of supervision on the proper use of existing and newly created sidewalk and roadway cafes that have become a permanent obstruction, garbage collectors and/or storage units for some restaurants. The Board looks forward to reviewing the new regulations for the Open Restaurant Program.		
Recommendation submitted by	BX CB7	Date: 10/29/2021 11:49 AM



THE CITY OF NEW YORK

BOROUGH OF THE BRONX

COMMUNITY BOARD 7



RUBEN DIAZ, JR., BOROUGH PRESIDENT

EMMANUEL MARTINEZ, CHAIRPERSON

ISCHIA BRAVO, DISTRICT MANAGER

September 29th, 2021

Carol Masol
Bronx Borough Director
NYC Dept. of City Planning
1775 Grand Concourse
Bronx, NY 10453

Re: Sidewalk Cafe zoning text amendment

Bronx Community Board 7 voted to support the proposed zoning text amendment which removes geographical restrictions on sidewalk cafes.

Presently, sidewalk cafes for restaurants are only allowed in certain parts of the city. Restaurants must obtain a permit to operate sidewalk cafes from the Department of Consumers and Worker Protection (DCWP) formerly known as Department of Consumer Affairs (DCA). The current program has limitations on size, location and clearances from existing street infrastructure for all sidewalk cafes. However, since June 2020 due to the Covid-19 Pandemic the City via a special filling process under the Department of Transportation (DOT) allowed restaurants to establish and operate sidewalk cafes in all areas (neighborhoods) of the city. Under the proposed zoning regulation text amendment, sidewalk cafes can continue to operate and be established without any geographical restriction through the health emergency program. This is the first steps to revamping the sidewalk café program and permitting process that will be regulated by DOT.

The Board supports the establishment of sidewalk café as they are a vital neighborhood amenity. They not only activate the sidewalks, but also can provide additional income to a restaurant and safe outdoor eating areas. Removing the geographical restriction on sidewalk cafes regulations provides the option to all restaurants throughout the city to operate an outdoor café. It also allows about 11,000 sidewalk cafes that were establish through the emergency program to continue to operate until new regulations are drafted by DOT for the Open Restaurant Program.

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THE CITY OF NEW YORK

BOROUGH OF THE BRONX

COMMUNITY BOARD 7



RUBEN DIAZ, JR., BOROUGH PRESIDENT

EMMANUEL MARTINEZ, CHAIRPERSON

ISCHIA BRAVO, DISTRICT MANAGER

However, the Board has its concerns about the noise levels and late-night openings of the sidewalk cafes in residential neighborhoods. The obstructions and insufficient clearances on sidewalks for the mobility impaired and pedestrians alike. Also, the additional garbage generated by these establishments in our streets. More importantly the lack of supervision on the proper use of existing and newly created sidewalk and roadway cafes that have become a permanent obstruction, garbage collectors and/or storage units for some restaurants. The Board looks forward to reviewing the new regulations for the Open Restaurant Program.

If you have any questions or concerns, please contact me at (347) 256-8719.

Ischia Bravo, District Manager
Bronx Community Board 7

CC: Bronx Borough President, Ruben Diaz Jr.

Council Members:

- Eric Dinowitz, District 11
- Fernando Cabrera, District 14
- Oswald Feliz, District 15

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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable			
# In Favor: 36	# Against: 2	# Abstaining: 0	Total members appointed to the board: 44
Date of Vote: 9/14/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/1/2021 7:00 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	zoom

CONSIDERATION: WHEREAS, the Department of City Planning has proposed a citywide zoning text amendment removing sidewalk café regulations from the Zoning Regulations, increasing geographic eligibility as sidewalk café would become a unified sidewalk and roadway outdoor dining program, allowing DOT (rather than the Department of Consumer Affairs) to administer the outdoor dining program; and

WHEREAS, pursuant to existing Executive Order the current regimen respecting authorization and regulation of outdoor dining facilities continues, pursuant to its terms, through 2022, thus providing in excess of one calendar year of continued operation;

WHEREAS, at a duly convened and noticed public meeting of the Land Use Committee of Community Board 8 noticed to consider and vote upon the foregoing, the City representatives, including senior officials of the Department of City Planning and DOT, acknowledged that an essential and integral part of the proposed outdoor dining program is a series of regulations, ordinances and other statutory authorization measures that will shape the outdoor dining program, the facilities and services to be authorized and provided thereunder, concerns respecting location, noise, traffic and structural concerns, issues relating to the public safety, public convenience and financial concerns that are inherent in the foregoing illustrated questions and that none of such materials have yet been presented for public review or prepared in such form as to be capable of public review and comment;

THEREFORE BE IT RESOLVED, the viability of public dining and restaurants is a matter of vital concern to the City of New York and its residents and taxpayers, as are the roadway and sidewalk facilities extant or contemplated as part of the outdoor dining program and such matters are an integral part of the concerns and issues set forth above and are inexorably intertwined therewith as well as with the proposed Department of City Plann

Recommendation submitted by	BX CB8	Date: 9/16/2021 11:31 AM
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Bronx CB9 Exec & Operations Voting Sheet

Motion: Approve Outdoor dining with the condition that appropriate agency(s) will come back to the Board to review outdoor dining guidelines

Board Member	2nd	YAY	NAY	Abstain	Absent	Recused
Angel Martinez		X				
Brandon Ganaishlal		X				
Henry Pelayo Jr.		X				
Lisa Diaz						
Mohammed Mujumder	X					
TOTAL VOTES:						
Recorder: Virtual Meeting			Sign:			
Witness: Virtual Meeting			Sign:			
Date: 9.27.21						



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 10	# Against: 0	# Abstaining: 0	Total members appointed to the board: 13
Date of Vote: 9/8/2021 12:00 AM		Vote Location: Cisco Webez	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/8/2021 7:30 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Virtual

CONSIDERATION: While this was not technically a public hearing, the Housing and Zoning Committee of Bronx Community Board 10 feels that this program served its purpose and that is time to return the roadway to pedestrians and motorists alike.

Recommendation submitted by	BX CB10	Date: 10/20/2021 11:32 AM
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Ruben Diaz, Jr.
Borough President

BRONX COMMUNITY BOARD No. 10

3165 East Tremont Avenue • Bronx, New York 10461

Tel: (718) 892-1161 • Fax: (718) 863-6860

E-mail: bx10@cb.nyc.gov

Facebook.com/BronxCommunityBoard10

Website: www.nyc.gov/bronxcb10



Joseph Russo
Chairperson

Matthew Cruz
District Manager

September 17, 2021

Marissa Lago, Director
City of New York Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Henry Gutman, Commissioner
City of New York Department of Transportation
55 Water Street, 9th Floor
New York, NY 10041

RE: Concerns Regarding Longevity of Open Restaurants Program

Dear Director Lago and Commissioner Gutman:

Firstly, we applaud the creation of the temporary Department of Transportation (NYCDOT) Open Restaurants program, as we know it has saved countless food & beverage establishments throughout our City amidst a global pandemic. The Open Restaurants program was a lifeline for many New Yorkers to safely enjoy themselves while dining outdoors. We know this program to be effective in serving its purpose.

We write to you today because of the City of New York Department of City Planning's (DCP) recent intention to revise the Zoning Resolution (ZR) through a new text amendment that seeks to eliminate geographical barriers when applying for a sidewalk café permit and use of the roadway made permanent. Bronx Community Board #10 has many concerns after hearing of this proposal during our Housing and Zoning Committee meeting on September 14, 2021. We are not pleased that community boards stand to lose its advisory opinion and review of these applications. It helped establish direct communication between our community and the local establishment's ownership. Losing a review of this magnitude gives the appearance to the establishment that the Community Board no longer has a reputable voice and can proceed without proper oversight.

Furthermore, we have seen along our commercial corridors of East Tremont Avenue, Crosby Avenue and Westchester Avenue different examples of outdoor cafes. Some establishments elected to fully enclose their outdoor seating in parking lots, some attempted curbside, while others built street shanties. Some elected to use different construction materials and erect mini platforms, many of which took weeks for City officials to notice, and ultimately, inspect for safety. Due to the Open Restaurant Program, many adjacent small businesses lost street side metered parking. Additionally, there were several instances of vehicular incidents, specifically with emergency vehicles like snowplows and streetsweepers by the Department of Sanitation (DSNY). During our Housing and Zoning Committee Meeting, we were informed of a businesses' ability to apply for waivers if a sidewalk did not meet spacing guidelines or if it were to operate its outdoor seating during the winter seasons. Collectively, we believe no waiver should be considered or granted without consideration and approval from the local Community Board.

Restaurants should be considered on a case-by-case basis. This places an undue burden on local small business and pedestrians.

The Open Restaurants Program has met its desired goals. However, we remind your Agencies that the Program was only meant to exist for the duration of the pandemic. While we understand the pandemic rages on, restaurants and bars no longer have capacity limits which renders the Open Restaurants Program no longer necessary – particularly during the winter season.

On behalf of Bronx Community Board #10's Hosing and Zoning Committee, we thank you both for your time and attention to this matter.

As always, available for discussion.

Sincerely,

Joseph Russo, Chairperson



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f favorable			
# In f avor: 31	# Against: 0	# Abstaining: 0	Total members appointed to the board: 43
Date oFVote: 9/23/2021 12:00 AM		Vote Location: Virtually Via Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing:		
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>	
Public Hearing Location:		

CONSIDERATION:

Recommendation submitted by	BX CB12	Date: 10/12/2021 4:15 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable			
# In Favor: 40	# Against: 0	# Abstaining: 2	Total members appointed to the board: 0
Date of Vote: 9/30/2021 12:00 AM		Vote Location: Remote via WebEx	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/12/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	1 Centre Street, New York, NY 10007 / live.mcb1.nyc

CONSIDERATION: Please see the attached resolution for full comment.

Recommendation submitted by	MN CB1	Date: 10/15/2021 11:10 AM
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COMMUNITY BOARD 1 – MANHATTAN
RESOLUTION

DATE: SEPTEMBER 30, 2021

COMMITTEE OF ORIGIN: LAND USE, ZONING & ECONOMIC DEVELOPMENT

COMMITTEE VOTE:	14 In Favor	0 Opposed	0 Abstained	0 Recused
PUBLIC VOTE:	1 In Favor	0 Opposed	0 Abstained	0 Recused
BOARD VOTE:	40 In Favor	0 Opposed	2 Abstained	0 Recused

RE: Open Restaurants Citywide Zoning Text Amendment

WHEREAS: During the COVID-19 pandemic, the permanent outdoor dining program outlined in the Zoning Resolution was suspended and replaced by the emergency Open Restaurants Program by Local Law 77 of 2020 and Mayoral Emergency Executive Orders 126 and 128; and

WHEREAS: Under this temporary program, over 10,000 restaurants applied to the New York City Department of Transportation (DOT) to use sidewalk or street space adjacent to their business location; and

WHEREAS: Locational criteria for sidewalk cafés are regulated by the Zoning Resolution, Article I, Chapter 4: Sidewalk Regulations. There are three types of sidewalk cafés under the existing program: enclosed cafés, unenclosed cafés, and small unenclosed cafés. The proposed zoning text amendment would remove all text related to sidewalk café regulations from the Zoning Resolution, including Article 1, Chapter 4; and

WHEREAS: DOT would administer a new proposed Open Restaurants program; and

WHEREAS: The City Council would have to review, hold hearings, and vote on the proposed DOT program which would move oversight from the Department of Consumer and Worker Protection (DCWP) to DOT, authorize road seating and codify design guidelines; and

WHEREAS: This application proposes to remove the current zoning sidewalk cafe regulations regarding placement, structure, and physical appearance of cafes; and

WHEREAS: Due to the unique nature of the district, Lower Manhattan has specific zoning to detail where different types of sidewalk cafes are, or are not, permitted. Removing the zoning text on outdoor dining could also remove protections for areas previously deemed unfit for outdoor dining; and

WHEREAS: CB1 is concerned over the removal of years of carefully crafted zoning regulations meant to guide the presence of outdoor dining, particularly in the unique areas of Lower Manhattan that are increasingly mixed use/residential with streets and sidewalks that are more narrow than the typical grid-style streets in most of Manhattan; and

WHEREAS: The current zoning text prohibits outdoor eating or dining facilities in residential districts; and

WHEREAS: The proposed action may allow eating and drinking establishments to keep their doors open, leading to more noise on the street; and

WHEREAS: The proposed action would no longer require outdoor dining patrons to be seated; and

WHEREAS: There have been complaints regarding inadequate enforcement of sidewalk passage regulations, hours of operation, and noise; and

WHEREAS: With the highly dense and unique, mixed-use nature of Community District 1 (CD1), there are major concerns over whether and how the rules regulating these outdoor establishments will be enforced; and

WHEREAS: Given that the extension of Executive Order 126, the emergency Open Restaurants program, will last at least until 2022, members have questioned why this application is being rushed forward with urgency; and

WHEREAS: CB1 has raised questions on this program including but not limited to the new application process and CB's role in that process, potential conflicts between the proposed programs and street vendors, details of the liquor licensing procedures under this program, fee structures and siting criteria. These questions are left largely unanswered, with an overarching explanation by the agencies that program details will be determined later; now

THEREFORE
BE IT
RESOLVED

THAT: CB1 opposes the Open Restaurants Citywide Zoning Text Amendment due to the following reasons, and urges that the plan does not move forward until these items are satisfied:

- There are far too many unanswered questions and a desire for greater detail not only on the zoning text amendment; but also, on future design regulations and review procedures including rationale for the timing of this proposed program

- Additionally, there are unanswered questions and concern as to the timing of this application and why Community Boards are being put in this position now, to review and comment on this major proposal before details of the plan have been decided
- CBI has technical concerns and questions regarding issues such as: clearance and clear path requirements, obstructions, requirements for spaces to be level, driveway, and curb cuts, etc.



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 40	# Against: 1	# Abstaining: 1	Total members appointed to the board: 49
Date of Vote: 9/23/2021 6:30 PM		Vote Location: Meeting via Videoconference	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/20/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Videoconference

CONSIDERATION: See attached resolution.

Recommendation submitted by	MN CB2	Date: 9/27/2021 3:23 PM
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Jeannine Kiely, *Chair*
Susan Kent, *First Vice Chair*
Valerie De La Rosa, *Second Vice Chair*
Bob Gormley, *District Manager*



Antony Wong, *Treasurer*
Eugene Yoo, *Secretary*
Ritu Chattree, *Assistant Secretary*

COMMUNITY BOARD No. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE
NEW YORK, NY 10012-1899

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P: 212-979-2272 F: 212-254-5102 E: info@cb2manhattan.org

Greenwich Village ♦ Little Italy ♦ SoHo ♦ NoHo ♦ Hudson Square ♦ Chinatown ♦ Gansevoort Market

September 27, 2021

Anita Laremont, *Chair*
City Planning Commission
22 Reade Street
New York, NY 10007

Hon. Bill de Blasio
Mayor
City Hall
New York, NY 10007

Dear Ms. Laremont:

At its Full Board meeting on September 23, 2021, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

Open Restaurants/Sidewalk Cafés: The New York City Department of Transportation (DOT) and Department of City Planning (DCP) are proposing a citywide zoning text amendment that will allow the DOT to administer the Permanent Open Restaurant (POR) program. The proposal will remove sidewalk café regulations from the Zoning Resolution, including all geographic restrictions, as part of a larger action that would create a new permanent program consisting of both a successor to the New York City Department of Consumer and Worker Protection (DWCP) sidewalk café program and a new roadway café seating program administered by DOT.

Whereas:

1. Manhattan Community Board 2 (CB2) joins the growing number of community boards around the city that are recommending denial of Mayor de Blasio's rushed attempt to remove all locational prohibitions for sidewalk cafés and create a new Permanent Open Restaurants (POR) program citywide that will make permanent changes to our city's streetscape, based entirely on an emergency plan whose goal was to temporarily help one industry during an unprecedented global pandemic.
2. CB2 is opposed to sweeping permanent changes to the streetscape without consideration of the best use of the public realm for greenspace, pedestrian access and other public realm or industry uses. The Mayor's plan utterly disregards critical public safety impacts of roadway cafés and equity issues for residents and businesses – all for the benefit of one industry. The Mayor claims that city streets

are his number one priority under *Vision Zero*,¹ but his proposal of a citywide program, in the final days of his administration, comes in a year when the number of traffic deaths increased 30% in 2021 from traffic-related fatalities – the most deaths on city streets since 2014.²

3. CB2 is opposed to having to review this text amendment prior to new DOT rules for siting and design guidelines of sidewalk and roadway cafés.
4. The Proposed Actions represent a fundamental change in that it expands the geography of eating and drinking establishments to the public realm without sufficient study of the impacts, including:
 - a. Allowing sidewalk cafés in residentially zoned areas where non-conforming uses would be allowed to expand their footprint onto public property, including expansion of premises to the outdoors for bars and restaurants with liquor licenses resulting in known quality-of-life impacts;
 - b. Allowing windows and facades of bars and restaurants open for non-conforming uses in residential areas;
 - c. Allowing sidewalk cafés on streets and areas previously specifically excluded in the zoning text; and
 - d. Allowing the expansion of full-size sidewalk cafés on streets previously limited to small sidewalk cafés.
5. Removal of Zoning Resolution text that has been crafted over decades will allow establishments, with and without liquor licenses, in residential neighborhoods to expand onto public property, without limitations in numbers, and where such intrusions were previously carefully controlled or prohibited.
6. POR would eliminate the existing DCWP’s Sidewalk Café Program’s zoning framework, which over many decades has produced a successful balance between CB2’s commercial and heavily residential uses and removes critical protections for residents.
7. At the CB2 public hearing on July 19, 2021,³ residents testified in unanimous opposition to a program whose one-size-fits-all approach demonstrates an utter disregard for local input. Since then, written testimony from scores of residents has echoed this sentiment.
8. In their recent answers to CB2’s questions, DCP and DOT stated that, “sidewalk conditions, not neighborhood conditions, best determine whether a sidewalk café will work or not.”⁴ That is so at odds with the DCWP’s nuanced management of the current Sidewalk Café Program (which also considers neighborhood context) and

¹ NYC DOT [Vision Zero](#).

² City of New York Office of the Mayor [Mayor’s Management Report, September 2021](#): pg 15.

³ [CB2 Permanent Open Restaurants Public Hearing: July 19, 2021](#).

⁴ [CB2 POR Questions to DCP, September 16, 2021](#): DCP Response R32.1.

CB2 questions whether DOT is the appropriate agency to monitor this program. DOT's low level of enforcement during the temporary program and the lack of accompanying details regarding the size of its proposed "inspection force" adds to our doubts. To do an adequate job, DOT would need stronger enforcement tools than "education."

9. CB2 objects to the proposed simplified application process that would lower the level of community board review. CB2 supports continuing the current process of community board reviews of sidewalk cafés on an individual basis, as currently exists in the DWCP Sidewalk Café program, and individual reviews of roadway dining setups.
10. To the extent that an increase in FAR was a bonus given to a developer in return for widened sidewalks, CB2 objects to further givebacks in the form of sidewalk and/or roadway cafés.

WHY APPLYING A ONE-SIZE-FITS-ALL APPROACH DOESN'T WORK

11. Each community district is different. CB2 is largely composed of mixed-use and residential neighborhoods. Our 100- to 200-year-old buildings were not built to mitigate the negative impacts of bars and restaurants and are complicated and financially burdensome to alter.
12. The generic EAS that accompanies this text amendment does not take into account variations in the length of a block face from district to district. None of the six prototypes⁵ outlined in the EAS properly addresses the unique neighborhood character of CB2. We would seem to fall into Prototype 1 (P1) with its narrow street and sidewalks, but P1 is marked by only medium restaurant concentration and CB2 has one of the highest restaurant densities in New York. In terms of density, even Prototype 6, the restaurant street scenario that envisions as many as two sidewalk cafés and four roadway cafés per block face (for a total of six), does not properly reflect the number of sidewalk and roadway cafés already on the streets of our district during the Temporary Open Restaurants program. Carmine, Sullivan, Thompson, Mulberry, West 4th, Cornelia, MacDougal, West 10th, Mott, Kenmare, Laguardia and Christopher are but a sampling.
13. The text amendment proposes no limits on sidewalk and roadway density per block face. Furthermore, the text amendment proposes no limits on the number of outdoor seats as a percentage of indoor seating in either sidewalk or roadway cafés. For example, currently, many restaurants and bars have outdoor seating capacity in excess of their indoor seating.

⁵ NYC Department of Transportation (DOT), 2021, *Permanent Open Restaurants Program (CEQR No. 21DOT016Y) Environmental Assessment Statement (EAS) Full Form. Attachment A: Project Description, Figures A-5, A-6, A-7, A-8, A-9, A-10.*

WHY PERMANENT OPEN RESTAURANTS WILL HAVE AN OUTSIZE IMPACT ON CB2

14. CB2 is home to the **highest density of liquor licenses, sidewalk cafés and destination eating and drinking establishments in New York City.**⁶ The density of liquor licenses has created and will continue to create quality of life impacts on our residents.
15. Our district has an unusually high percentage of residential buildings with restaurants and bars on the ground floor. We cannot approve removing zoning resolution language that requires operable windows to be closed during the service of food and beverage. Keeping operable windows closed is the first line of defense for protecting quality of life for residents. Likewise, we support continuing the rules that outdoor diners be seated.
16. CB2 contains buildings with residences on the ground floor that have windows facing the sidewalk which could and do face significant intrusions on the livability of those residences where restaurants place outdoor seating directly outside their windows.
17. CB2 contains nine historic districts. Given the care that Landmarks Preservation Commission (LPC) takes to regulate items such as the size, height and supports for blade signs, it is hard to imagine how LPC would be able to regulate the design of roadway structures with their current staffing. The idea that approval of any new construction, without historic precedent, by LPC staff through Fast Track or a similar program is highly objectionable. In addition to bypassing public hearings and community review, this expansion of the scope of LPC staff decision-making would have profound consequences within CB2 and other neighborhoods containing historic districts or individual landmarks.⁷
18. The Open Restaurants program has had significant negative impacts on ADA accessibility in CB2. Lack of enforcement has contributed to a significant decline in quality of life for people with disabilities. In the City Council Speaker's survey, only 18% of Open Restaurants participants in the survey area were compliant with clear path regulations
19. The self-certification of restaurants and bars during the Temporary Open Restaurants program has overwhelmed CB2's residents with negative impacts due to the high density of Open Restaurants and lack of enforcement of the most egregious offenders.

⁶ Appendix B: *Bar Chart of Licensed Premises that are Open Restaurants Participants by Community District.*

⁷ Appendix F: *CB2 Landmarks Committee Memo on Permanent Open Restaurants.*

20. An analysis of 311 calls shows that weekly noise complaints within CB2 doubled between June 15, 2020 and June 14, 2021,⁸ coinciding with the launch of the Open Restaurants program.
21. The CB2 community is currently overwhelmed with vermin, which now live under the many roadbed dining structures, and trash, which further exacerbates the problem.
22. The text amendment does not distinguish between bars and restaurants,⁹ including many establishments that operate as bars and do not have kitchens; operate with entertainment levels of music; where the service of alcohol is the primary method of operation; and operating hours extend well beyond the 10 p.m. to 12 a.m. closing times that are more typical of restaurants.
23. CB2 regularly receives 25+ liquor license applications per month, and is the most heavily licensed community board in the city. In 2021, about 80% of those applications included an outdoor dining component in the Temporary Open Restaurants and/or planned outdoor dining component as part of the proposed Permanent Open Restaurants program.

THE ANTI-EQUITY, ANTI-COMPETITIVE REPERCUSSIONS OF THE POR

24. CB2 agrees with former DOT Commissioner Polly Trottenberg, who concluded that “If [the Temporary Open Restaurants program] becomes...a permanent feature attached to a particular private property, then the balance sort of tips and it becomes somewhat a value more captured potentially by the building owner.”¹⁰
25. DCP’s August 2019 “Assessing Storefront Vacancy in NYC” Report found a 50%+ increase in eating and drinking establishments between 2007 and 2017, replacing other diverse dry retail uses that support our residential community, and CB2’s two SLA committees have continued to see an increase in liquor license applications through 2021.
26. The zoning text proposal provides an advantage to a single retail industry over all other forms of retail businesses and services, discouraging competition and unfairly increasing commercial rents.
27. There will be further dislocation and replacement of neighborhood dry retail storefront businesses through tools such as lease incentives and buyouts of businesses that have served the local community’s needs for decades, such as

⁸ Appendix C: *Graph of CB2 311 complaints related to Open Restaurants overlaid with the number of CB2 Open Restaurant Participants.*

⁹ NYC DOT, 2021, *Attachment B: Land Use, Zoning, and Public Policy*, p B-10.

¹⁰ New York City Council [Committee on Consumer Affairs and Business Licensing Meeting Transcript, September 30, 2020](#), quoted from DOT Commissioner Polly Trottenberg, pg. 98, line 2.

delicatessens, dry cleaners, laundromats, hair salons, butchers, specialty markets, hardware, jewelry, book and other family-owned “mom and pop” small businesses.

28. The installation of as-of-right outdoor sidewalk and roadway structures, particularly in the densest parts of CB2, overwhelms and physically blocks storefronts of adjacent retail businesses, negatively impacting the value of the surrounding retail spaces.
29. Expansion of the siting criteria to include outdoor seating for only eating and drinking establishments would provide additional seating areas at a heavy discount, significantly distorting commercial rents in ways that hurt dry retail businesses.
30. This privatization of public space will result in a less equitable business mix and confer a permanent benefit to landlords in the form of increased rents outlasting the currently ongoing pandemic.

A LACK OF ADEQUATE STUDY MEANS A FLAWED ENVIRONMENTAL ASSESSMENT STATEMENT

31. Due to the lack of any studies measuring the real impacts of the proposed action on actual neighborhoods, CB2, block associations, concerned citizens, and the Office of New York City Council Speaker Corey Johnson have filled this void by compiling statistics and doing their own studies. In a survey completed by Speaker Johnson’s office, 93% of temporary program participants in Council District 3 (CD3), which overlaps with the boundaries of CB2, are not compliant with current DOT guidance.¹¹
32. There are no studies that support the removal of the Sidewalk Café Program as detailed in Article I, Chapter 4 from the Zoning Resolution.
33. CB2 questions why no studies were done to support the following proposed changes:
 - a. Why areas specifically excluded in the zoning text should be allowed to expand for outdoor eating and drinking without exception.¹²
 - b. Why non-conforming uses in residential areas should be allowed to expand into the public realm, contrary to the underlying residential zoning districts.¹³

¹¹ Appendix F: *Temporary Open Restaurants Program Survey Analysis of Restaurants Overlapping CB2 and Council District 3* by the Office of NYC City Council Speaker Corey Johnson, August 2021.

¹² Appendix A-3: *Map of Existing Sidewalk Café Regulations in Manhattan Community Board 2* [DCP & DOT Presentation on July 19, 2021](#), pg 21, areas in red on map.

¹³ Appendix A-3: *Map of Existing Sidewalk Café Regulations in Manhattan Community Board 2* [DCP & DOT Presentation on July 19, 2021](#), pg 21, areas in blue on map.

- c. Why areas in CB2 designated specifically for small sidewalk cafés should be expanded to now permit full size sidewalk cafés.¹⁴
 - d. Why additional modifications are being made to ZR 52-34 which would allow changes within non-conforming Use Group 6 (UG6) spaces in residentially zoned areas to now permit eating or drinking establishments for non-seated patrons.
34. No studies on the impacts of removing enclosure requirements for eating and drinking establishments with musical entertainment and dancing, given the current pending legislation 1728-2021 in City Council to remove all references to dancing in the zoning text as a follow up to the elimination of the Cabaret Laws.
 35. No studies on the quality-of-life impacts of outdoor drinking on densely-populated, residential neighborhoods such as those found in CB2.
 36. No studies on the negative impact on individual neighborhoods, when in fact CB2 contains hundreds of commercial storefronts with non-conforming uses that were never zoned to permit commercial retail, but were granted such permission in the past.¹⁵
 37. No studies on the potential impact of conversion of UG6 to eating and drinking uses from other non-conforming dry retail uses, particularly in dense residential zones like CB2.
 38. For a future study, to guide community board recommendations for future actions, explore the potential effects of charging market rent, average neighborhood rent, and extending commercial rent to mitigate equity and retail diversity issues.
 39. No studies on the impact of the geographic expansion of bars and outdoor consumption of alcohol on streets on neighborhood character in residential zones.
 40. No studies on the increased allowable noise levels and those impacts on nearby residents, whether outdoor dining produces unreasonable noise levels where that noise did not previously exist, and whether those increased noise levels either from outdoor dining or music and other noise from the interior of the unenclosed premises would violate NYC's noise codes.¹⁶
 41. No studies on pedestrian flows, counts and other usage of sidewalks for those areas not currently able to have sidewalk cafés and roadbed dining to determine

¹⁴ Appendix A-4: *Map of Sidewalk Open Restaurants by Existing Regulations in Manhattan Community Board 2* [DCP & DOT Presentation on July 19, 2021](#), pg 23, areas in red-orange on map.

¹⁵ Appendix D: *CB2 Storefront Analysis: Use Group 6 in Residential Zones*.

¹⁶ Local residents and CB2 have had little success with existing enforcement of noise related issues, and an elimination of geographical limitations on sidewalk cafés and expansion of roadbed dining coupled with reliance on voluntary programs such as MEND seem unlikely to change the success rate; the burden of enforcement for ongoing noise related issues falls on the shoulders of residents who are required to spend hours filing and following up on detailed complaints; reliance on voluntary confidential proceedings through the MEND program is unproven and untested.

whether those areas are appropriate for roadway setups; CB2 contains a number of high-trafficked pedestrian streets, such as Canal St. and Broadway.

42. No studies on the loss of service lanes at turnover times for essential deliveries or services which must be conducted in the immediate proximity of buildings such as deliveries by large trucks, residential or commercial moving, fuel oil deliveries, grease pump outs for restaurants, and other reasonable similar activities on one lane streets, thereby blocking traffic.
43. No studies on the impacts of loss of parking on small businesses.
44. No studies on the impact on traffic flow and vehicle speeds.
45. No studies regarding air quality issues affecting patrons (e.g., due to slow-moving vehicles).
46. No studies on negative impacts on public health and safety/roadbed.
47. No studies on adequate visibility near intersections with respect to outdoor dining setups, approaching vehicles, and pedestrians crossing the road; this is of particular concern for seniors and those with mobility and visual impairments.
48. No studies on roadway structures and their effects on accidents between vehicles and outdoor dining setups and access for emergency vehicles; in September 2020, it was stated that “there have been several instances of motor vehicles crashing into the outdoor dining areas and, in some cases, causing injuries to patrons and employees.”¹⁷
49. No studies of whether structures on streets provide protection for diners from accidents involving cars and trucks.
50. No studies on the direct impact to the safety of bicyclists, especially on narrow residential streets with insufficient width for both cars and bicycles side by side.
51. No public health study on the impact of vermin currently overwhelming communities, particularly those vermin that now live under and in new structures erected on the roadbed.
52. No study on the impact of roadway dining setups on flooding events, including the risk of debris obstructing the sewer system and emergency vehicle access, despite the many restaurants both within CB2 and citywide that are located in areas subject to coastal and/or stormwater flood risk.
53. No studies on whether outdoor dining setups impede emergency responses to fires, accidents or other emergencies. FDNY has expressed ongoing concerns regarding both temporary issues and issues should there be local fires – in particular, multi-alarm fires or multi exposure fires hindering immediate access.
54. No prototypes¹⁸ illustrate roadway seating in a parking lane that is separated from the curb by a bike lane, and the dangerous conditions posed by service lanes that

¹⁷ New York City Council [Briefing Paper and Committee Report - Oversight - Outdoor Dining and the City's Open Restaurants Program during COVID-19](#), pg 27.

¹⁸ NYC DOT, 2021, *Attachment F: Transportation*.

cross bike lanes and other dangers resulting from crossings through such bike lanes.¹⁹ Allowing roadway cafés to exist across bike lanes severely impedes not only bicyclist safety, but also pedestrian and worker safety – a direct conflict with the Mayor’s *Vision Zero*²⁰ plan. Bicyclist deaths and pedestrian deaths are up 15% and 13.6% year over year, respectively.²¹

55. No studies on bus stops that are mid-block or on a corner where the rear of the bus is flush with the corner.

Therefore, be it resolved that Manhattan Community Board 2 strongly recommends:

1. Denial of this one-size-fits-all text amendment that fails to address the unique needs of districts that already have a high saturation of bars, restaurants and liquor-licensed premises in residential areas.
2. That community boards be given an opportunity to review, comment and make recommendations on the POR text amendment in tandem with the DOT rules.
3. That the sidewalk café regulations remain in the Zoning Resolution Article I Chapter 4, which, when enforced, have worked well for decades.
4. That DOT and/or DCP revise the EAS and then do a neighborhood-specific EIS that reflects the impact of the Temporary Open Restaurants program on this and other severely affected community districts, and that greater attention be given to ADA accessibility, enforcement, noise, sanitation, and socioeconomic issues.

And Be It Further Resolved That:

5. Regarding ZR SECTION 32-411: To the extent that the section requires all uses in C1, C5, C6-7, and C6-5 districts to be “located within completely enclosed buildings” (i.e., no operable windows), CB2 recommends that ZR 32-411 remain in the zoning text or be added to the new legislation.
6. Regarding ZR Sections 33-05 and 43-03: To the extent that would allow sidewalk cafés on widened sidewalks, and to the extent that bonus FAR was part of a deal given to the developer in return for widened sidewalks, CB2 recommends that further givebacks in the form of sidewalk and/or roadway cafés should not be permitted.
7. Regarding ZR Section 52-34: To the extent that eating or drinking places with musical entertainment shall be limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a completely enclosed building, CB2 recommends that ZR 52-34 remain in the zoning text or be added to the new legislation.
8. Regarding ZR Section 109-02: To the extent that in the Special Little Italy District, “The use of the public streets and sidewalks for the maintenance of sidewalk cafés, outdoor

¹⁹ NYC DOT, 2021, *Attachment F: Transportation*.

²⁰ NYC DOT [Vision Zero](#).

²¹ City of New York Office of the Mayor: [Mayor’s Management Report, September 2021](#): pg 91.

cafés or any other structures shall require the separate approval of the City Council, which may be granted upon such terms and conditions as the Board of Estimate may deem appropriate,” CB2 recommends that ZR 109-02 remain in the zoning text or be added to the new legislation.

Vote: Passed with 40 Board members in favor one opposed (R. Sanz), and one abstention (J. Liff)

Please advise us of any decision or action taken in response to this resolution.

Respectfully submitted,



Jeannine Kiely, Chair
Community Board #2, Manhattan



Frederica Sigel, Chair
Land Use and Housing Committee
Community Board #2, Manhattan



Valerie De La Rosa, Chair
Reopening Working Group
Community Board #2, Manhattan

JK/jt

c: Hon. Jerrold Nadler, U.S. Representative
Hon. Carolyn Maloney, U.S. Representative
Hon. Nydia Velázquez U.S. Representative
Hon. Brad Hoylman, NY State Senator
Hon. Brian Kavanagh, NY State Senator
Hon. Deborah Glick, Assembly Member
Hon. Yuh-Line Niou, Assembly Member
Hon. Vicki Been, Deputy Mayor
Hon. Jumaane Williams, Public Advocate

Hon. Scott Stringer, City Comptroller
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council Speaker
Hon. Margaret Chin, City Council Member
Hon. Carlina Rivera, City Council Member
Edith Hsu-Chen, Manhattan Director, Dept. of City Planning
Sylvia Li, Dept. of City Planning
Andy Cantu, Dept. of City Planning
Edward Pincar Jr., Manhattan Borough Commissioner, Dept. of Transportation
Jennifer Leung, Dept. of Transportation

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Appendix A-1

Excerpts - Sidewalk Café Location Prohibitions within Manhattan Community Board 2
specifically noted within NYC Zoning Resolution Article I, Chapter 4

Highlighted items are within the boundaries of Manhattan Community Board 2

14-011 - Sidewalk cafe locations

LAST AMENDED 5/5/2004

#Sidewalk cafes# may be located in all R10H Districts, in all #Commercial Districts# other than C3 Districts and in all #Manufacturing Districts# only where eating or drinking establishments are permitted, as modified by special eligibility regulations set forth in Sections 14-40 through 14-45, inclusive. These sections identify #streets#, areas, special districts and malls or portions of #streets# for which special area eligibility regulations apply:

Section 14-40 — (AREA ELIGIBILITY FOR SIDEWALK CAFES)

Section 14-41 — (Locations Where Certain Sidewalk Cafes Are Not Permitted)

Section 14-42 — (Locations Where Enclosed Sidewalk Cafes Are Not Permitted)

Section 14-43 — (Locations Where Only Small Sidewalk Cafes Are Permitted)

Section 14-44 — (Special Zoning Districts Where Certain Sidewalk Cafes Are Permitted)

Section 14-45 — (Street Malls Where Certain Sidewalk Cafes Are Permitted).

#Sidewalk cafes# shall be permitted in Historic Districts or in designated landmark #buildings# only if such #sidewalk cafe# is approved by the Landmarks Preservation Commission.

14-41 - Locations Where Certain Sidewalk Cafes Are Not Permitted

LAST AMENDED 8/9/2011

No #enclosed# or #unenclosed sidewalk cafes# shall be permitted on any of the following #streets#, portions of #streets# and areas, except that #small sidewalk cafes# may be permitted pursuant to the provisions of Section 14-43 (Locations Where Only Small Sidewalk Cafes Are Permitted).

Manhattan:

All #streets# within the M1-5A and M1-5B Districts south of Houston Street

Canal Street — the entire length

Eighth Street — from Avenue A to Sixth Avenue

14th Street — from Second Avenue to Eighth Avenue

Fifth Avenue — from Washington Square North to 61st Street

14-42 - Locations Where Enclosed Sidewalk Cafes Are Not Permitted

LAST AMENDED 5/5/2004

No #enclosed sidewalk cafe# shall be permitted on any of the following #streets#.

Manhattan:

Bleecker Street — from Bank Street to Mercer Street

14-43 - Locations Where Only Small Sidewalk Cafes Are Permitted

LAST AMENDED 5/22/2013

#Small sidewalk cafes# may be located wherever #sidewalk cafes# are permitted. In addition, only #small sidewalk cafes# shall be allowed on the following #streets#, notwithstanding any regulations set forth in Sections 14-41 or 14-42 prohibiting certain #sidewalk cafes# on such #streets#.

Manhattan:

Centre Street — from Canal Street to Spring Street

Lafayette Street — from Canal Street to Houston Street

Sixth Avenue — from Canal Street to a line 100 feet south of Spring Street

Special Union Square District¹ (1 #Small sidewalk cafes# are not allowed on 14th Street)

14th Street — from a line 100 feet west of University Place to Eighth Avenue

14-44 - Special Zoning Districts Where Certain Sidewalk Cafes Are Permitted

LAST AMENDED 3/22/2018

#Enclosed# or #unenclosed sidewalk cafes# shall be permitted, as indicated, in the following special zoning districts, where allowed by the underlying zoning. #Small sidewalk cafes#, however, may be located on #streets# or portions of #streets# within special zoning districts pursuant to the provisions of Section 14-43 (Locations Where Only Small Sidewalk Cafes Are Permitted).

Manhattan	#Enclosed Sidewalk Cafe#	#Unenclosed Sidewalk Cafe#
Hudson Square District	Yes	Yes
Limited Commercial District	No	No ¹
Little Italy District	No	Yes

¹ #Unenclosed sidewalk cafes# are allowed on Greenwich Avenue

14-45 - Street Malls Where Certain Sidewalk Cafes Are Permitted

LAST AMENDED 5/5/2004

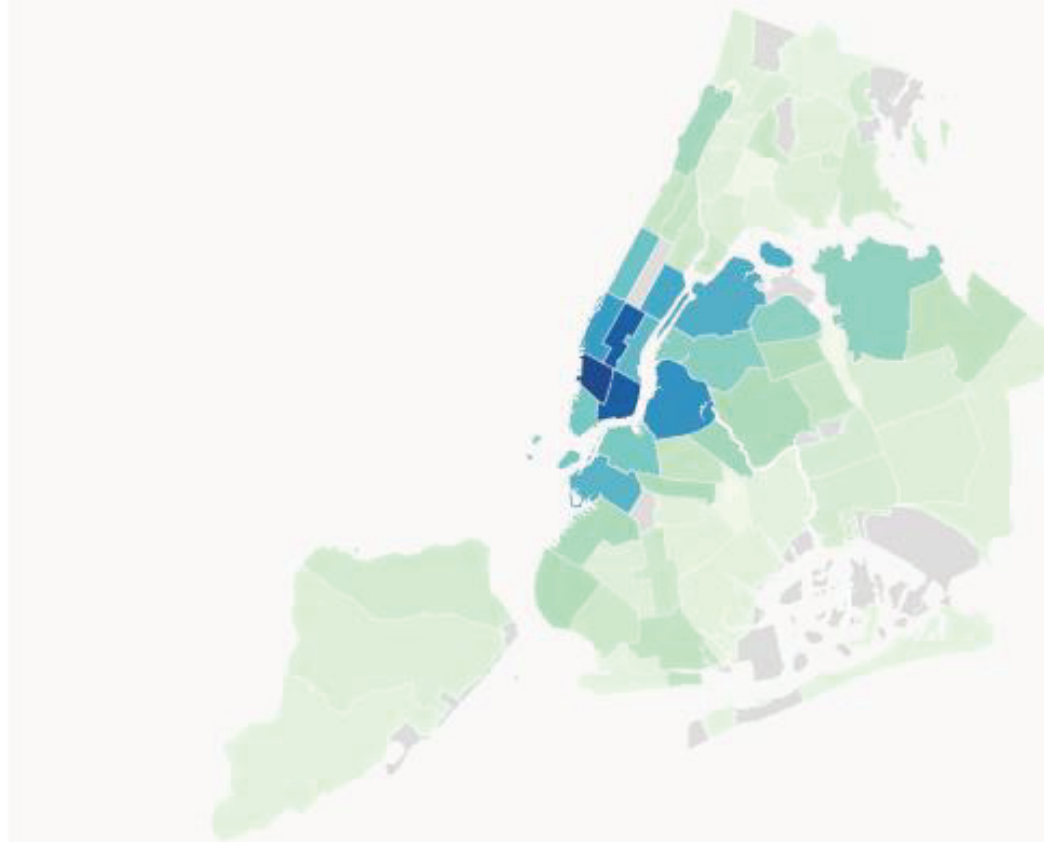
#Sidewalk cafes# are permitted as indicated in the following malls where allowed by the underlying zoning.

Manhattan	#Enclosed Sidewalk Cafe#	#Unenclosed Sidewalk Cafe#
Mulberry Street Mall	No	Yes

Appendix A-2
Map of Open Restaurants Participants by Community District

Total Open Restaurant Applications Approved

1 987



[Get the data](#) • Created with [Datawrapper](#)

[Source: BetaNYC, August 2021](#)

CB2 has 987 self-certified Open Restaurant applications in the Temporary Open Restaurants (TOR) program: the highest number of any community board in the city.

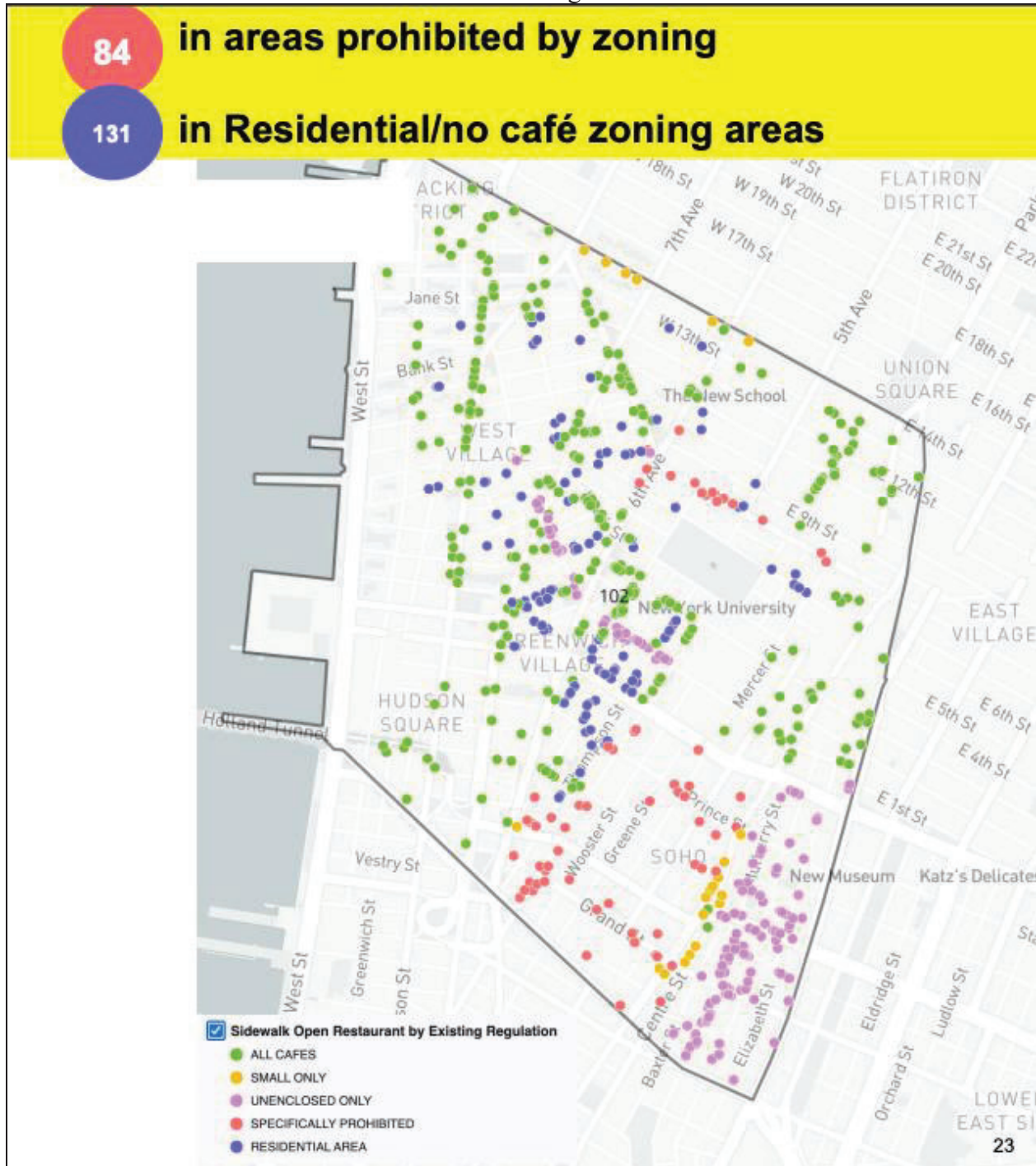
Appendix A-3

Map of Existing Sidewalk Café Regulations in Manhattan Community Board 2, from
[DCP & DOT Presentation on July 19, 2021, page 21](#)



Appendix A-4

Map of Sidewalk Open Restaurants by Existing Regulations in
Manhattan Community Board 2, [DCP & DOT Presentation on July 19, 2021, page23](#):
84 restaurants in areas prohibited by zoning and 131 restaurants in residential/no
café zoning



Appendix B
Bar Chart of Licensed Premises that are Open Restaurants Participants by
Community District

Approved OR with on-premises liquor licenses

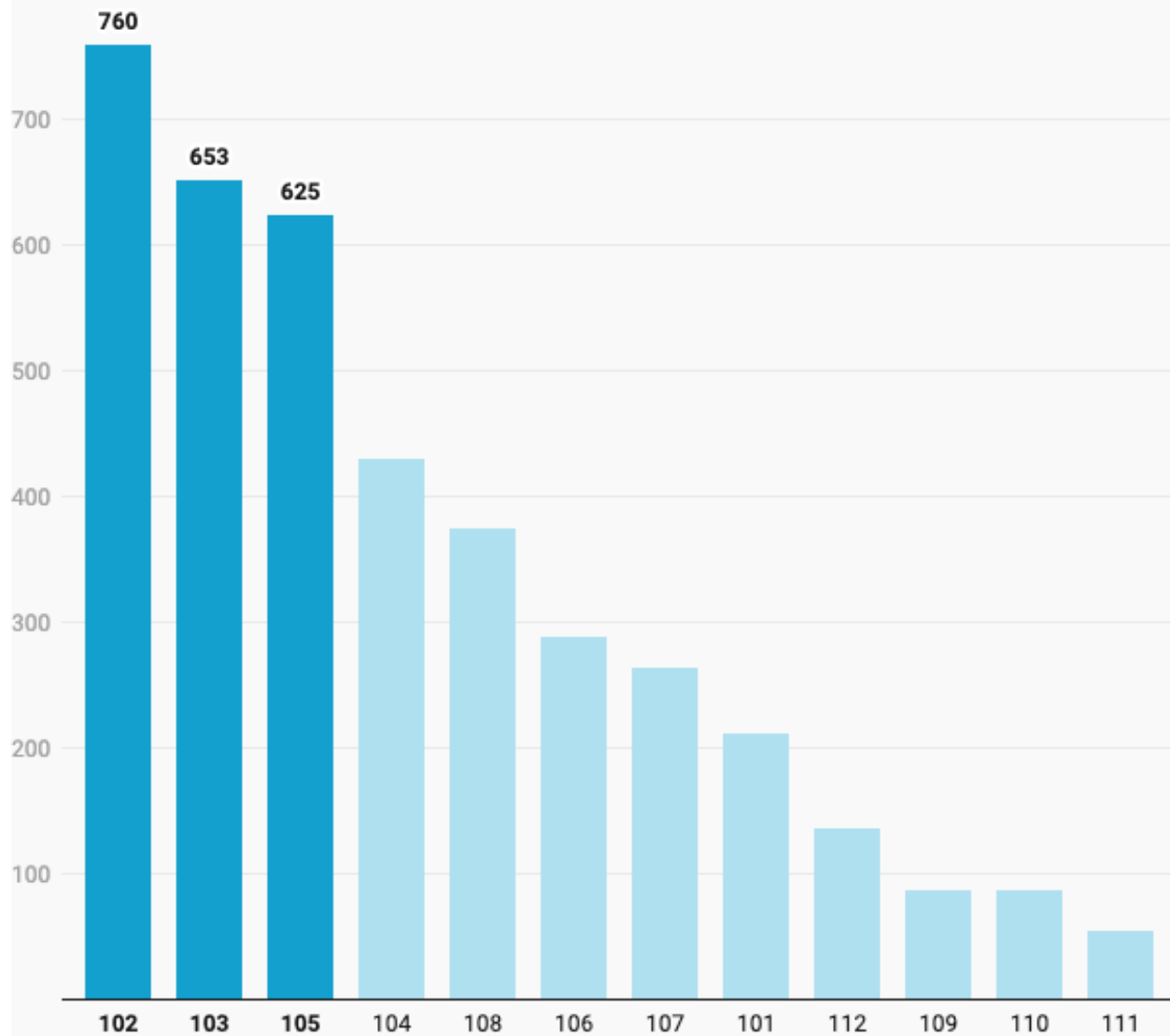


Chart: BetaNYC • Source: NYC Open Data Platform • [Get the data](#) • Created with [Datawrapper](#)

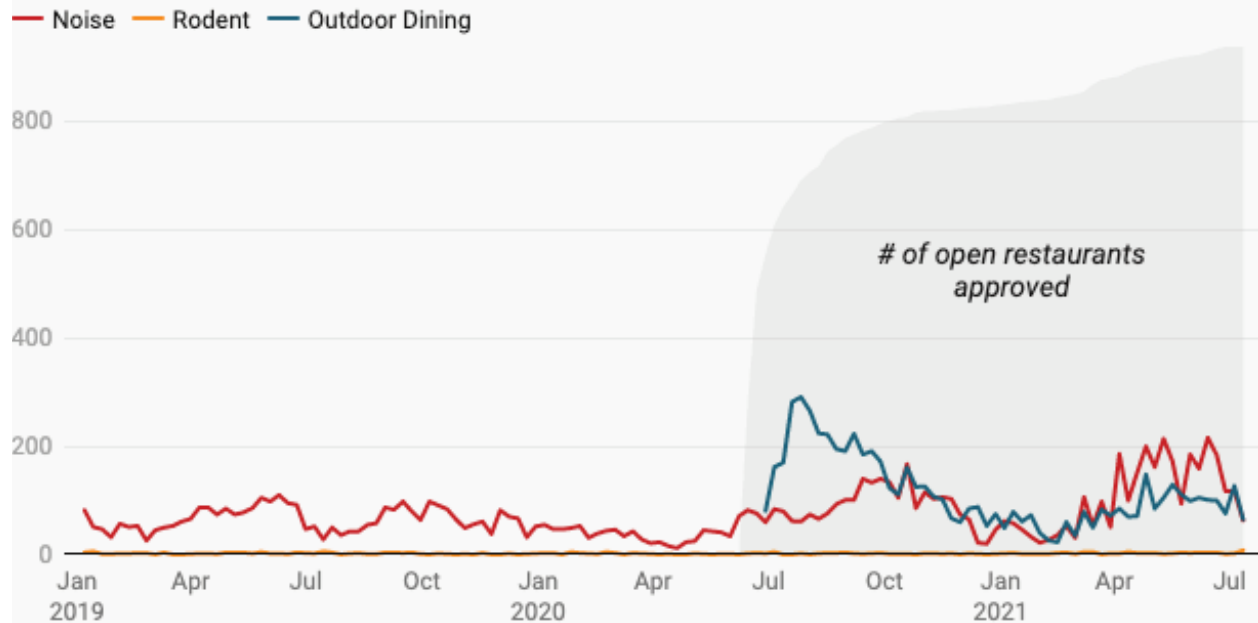
[Source: BetaNYC, August 2021](#)

Appendix C

Manhattan CB2 311 complaints related to Noise, Vermin and Open Restaurants overlaid with the number of CB2 Open Restaurant Participants

Open Restaurants Related Complaints

Noise includes both Commercial and Street/Sidewalk noise. Outdoor Dining complaints are DOT compliance complaints.



Weekly Count in Manhattan Community District 2

Chart: BetaNYC • Source: NYC Open Data Platform • [Get the data](#) • Created with [Datawrapper](#)

[Source: BetaNYC, August 2021](#)

Appendix D

Manhattan CB2 Storefront Analysis: Use Group 6 in Residential Zones



Source: BetaNYC, September 2021

Appendix E

Manhattan CB2 Landmarks Committee Memo on Permanent Open Restaurants

Memo: From Chair and Vice-Chair, Landmarks Committee concerning the proposal for roadbed dining regulations. This document was prepared at the request of the Reopening Working Group and Land Use Committee in their consideration of the Permanent Open Restaurants (POR) Zoning Text Amendment.

We strongly disagree with the EAS determination that the POR proposal will have no potentially significant adverse effect. Any structures in the roadbed would inevitably impact the historic character of the buildings before which they are placed, the streetscape, and the district, for the simple reason that there is no historic precedent for these structures. The negative impact of these structures to the streetscapes and to the essential neighborhood characters within CB2 is significantly magnified when one considers the extreme and unique density of restaurants within the designated historic districts in CB2. A walk down MacDougal, Sullivan, Thompson, or many smaller side streets such as Cornelia Street makes this abundantly clear.

In addition to issues of scale and density, the vagueness of the proposal's guidelines is of concern. Terms such as "planters or similar" offer no aesthetic reassurance and leave plenty of room for fanciful interpretation, which can easily lead to a cacophony of visually dissonant structures being proposed. Any protection against this would necessitate extensive regulations being enacted by the Landmarks Commission, the basis of which are unanticipated within the scope of the Landmarks Law. Given that relatively small scale items such as the materials, size, height, and supports for blade signs are a subject of lengthy regulations, the regulations for the design, color, and materials of platforms, barriers, lighting, and similar considerations would need to be exhaustive and are difficult to imagine being incorporated within the framework of LPC's current structure and staffing. The idea that Fast Track approval by staff would fill this void is highly objectionable. The Fast Track process was never intended for blanket approval of any new construction and specifically addresses small details which are based on extensive historical precedent. Fast Track by staff allows no room for public hearings or community review or consideration by the Commission members and would greatly expand the staff's responsibility for decisions that would have profound consequences within CB2. It is one thing for staff to ensure the historic accuracy of windows of row houses of a certain period, it is quite another to create and enforce a visual vocabulary for structures without precedent in historic districts. A Fast Track process cannot possibly allow for site specificity and cannot accommodate individual evaluation and consideration of the buildings before which any proposed structure is to be placed, the streetscape and the neighborhood.

The Commission and the Community Board staff and Landmarks Committee would certainly have to be expanded for any evaluation beyond a rubber stamp.

Chenault Spence, CB2 Landmarks Chair
Susan Gammie, CB2 Landmarks Vice Chair

Temporary Open Restaurants Program Survey Analysis

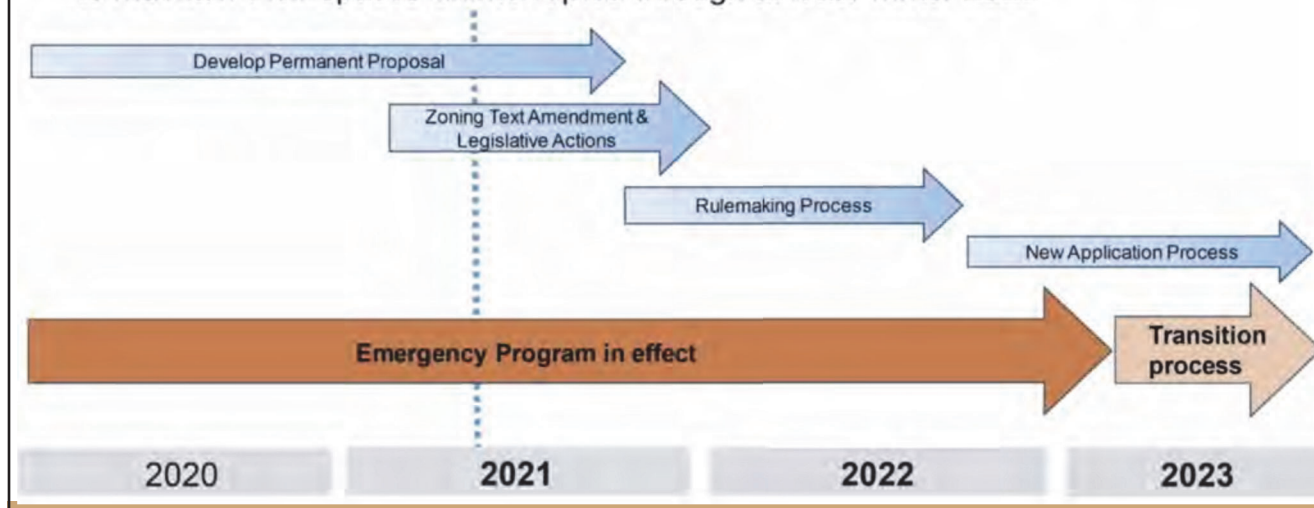
Summer Interns:
Stella FitzGerald, Leo Yablans,
& Dylan Bousquette

August 16, 2021

The Office of New York City Council Speaker Corey Johnson

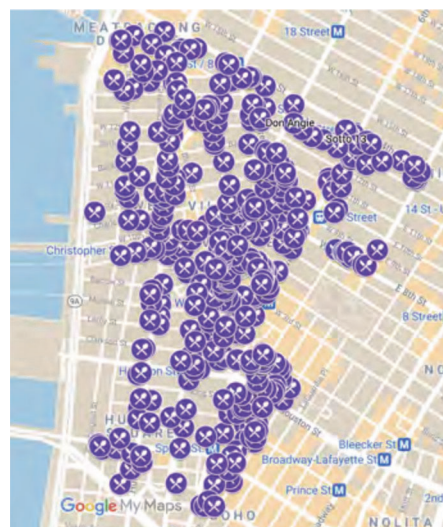
DOT / DCP Timeline

Multiple legal steps will be needed to enact the full permanent program –
with the emergency program remaining in effect and allowing restaurants
to maintain their spaces uninterrupted through at least winter 2022



Executive Summary

- 418 restaurants included in the survey
- CB2/CD3 Overlap (~61% of CB2 restaurants)
- 352 participate in outdoor dining (84%)
- 93% of restaurants were out of compliance with at least one of DOT's guidelines
- Top Recommendations:
 - Increased enforcement for ADA compliance, pedestrian, cyclist, and driver safety, & fire safety.
 - Explore using roadbed seating only on streets 31 feet across (8' + 15' + 8')..
 - Explore using sidewalk seating only on sidewalks greater than 12 feet wide.



https://docs.google.com/presentation/d/1cXnk_3AvJmndNzS_TdoEkT_eRloU7mvNWzx6pC6pCvYI8o/edit?usp=sharing

3

Methodology

Creating the survey¹

- 35 questions based on NYC Department of Transportation guidelines^{2, 3}
- Space to upload photos & additional comments
- Responses linked to google spreadsheet⁴

Conducting the survey

- Used iPhone Measure app to measure the sidewalk, walkway, and width of roadbed seating
- Inspections determined by weather – did not survey when raining
- Surveyed from mid-June through mid-July, 10am to 7pm
- Assessed restaurants during open hours

1. https://docs.google.com/forms/d/e/1FAIpOLdOih2rOcBMila7FMz5fR_3eh6nXcabKFeV_WWRto3itvamlw/viewform

2. <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants-faq.shtml>

3. <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml#siting>

4. <https://docs.google.com/spreadsheets/d/1IFn1PWfXGShxbUSx2Vw5YKCUf8PjXpztIAtnnpA/edit#gid=1798531606>

4

Beyond the Purview of Our Survey

- Data does not capture nighttime conditions
- No assessment of pests (rats, mosquitoes, etc.)
- No assessment of cleanliness or COVID safety requirements
- No assessment of noise (daytime or nighttime)
- Did not distinguish between restaurants and bars in data analysis
- Does not address whether any outdoor dining locations would be feasible during winter months

5

Recommendations: Roadbed Seating Zoning

1. Only allow roadbed seating on streets at least 31 feet across ($8' + 15' + 8'$).



Sullivan Street just above Houston Street, between World's Worst (left) and Bar Moga (right).

Sullivan Street here is only 24 feet across, with just 10 feet of clearspace.

6

Recommendations: Sidewalk Café Zoning

1. Only allow sidewalk cafés on sidewalks greater than 12 feet wide.*



Moustache Pizzeria - 90 Bedford St, with a 7'5" sidewalk and 3'9" walkway



Westville Hudson - 333 Hudson St, with a 20'8" sidewalk and 10'10" walkway

*Manhattan Community Board 2 requests that 3 foot service lanes for both sidewalk cafés and roadbed dining be considered in calculations and diagrams of sidewalk space. (CB2 Joint Meeting: Land Use Committee and Reopening Working Group, 8/16/2021).

7

Recommendations: Enforcement

1. Implement robust enforcement for:
 - a. Amenity zone seating (sidewalk adjacent to the curb)
 - b. Seating/structures located 15 feet from either side of fire hydrants
 - c. ADA ramps, **or** platforms that are actually flush with the sidewalk
 - d. Roadbed structures extending 8' from curb and 8' from crosswalks
 - e. Roadbed structures extending onto sidewalk
 - f. Seating/structures obstructing utility hardware and street signage
 - g. Seating blocking residential entryways
 - h. Buffer zone between roadbed structures and bike lanes (when seating is on other side of bike lane)
2. Implement a dedicated Open Restaurants Enforcement Unit

8

Recommendations: Improve guidance on where outdoor dining can be located

1. Provide specific instructions to operators re: utility hardware clearance (*i.e. How much clearance does each hardware unit require?*).
1. Provide specific instructions to operators re: street sign clearance with roadbed structures (*i.e. How much vertical and horizontal clearance is required?*).
1. Perform outreach to restaurants once a set of clear guidelines has been implemented.

9

Recommendations: Roadbed Seating Placement

1. Prohibit roadbed structures located in areas designated as “No Standing During Specific Hours” or “Authorized Vehicles Only,” **or** frequently survey to confirm structures are being removed during necessary hours.
2. Conduct a survey among neighborhood residents to study impact of roadbed seating on Alternate Side Parking spaces.
3. Consider converting streets with Commercial Vehicle Parking to Alternate Side Parking.
4. Require restaurants to submit plans to DOT of roadway seating that include the location of existing parking signs, meters, bus stops, bike lanes, utility hardware, and other relevant items.

10

Recommendations: Public Review Process

1. Require DOT and other city agencies to commit to meaningful public review process during the development of the permanent Open Restaurants program.
1. Require DOT to engage in robust public outreach period after the implementation of the permanent Open Restaurants Program.

*Speaker Johnson's Office may make further recommendations for the permanent program as more details become known.

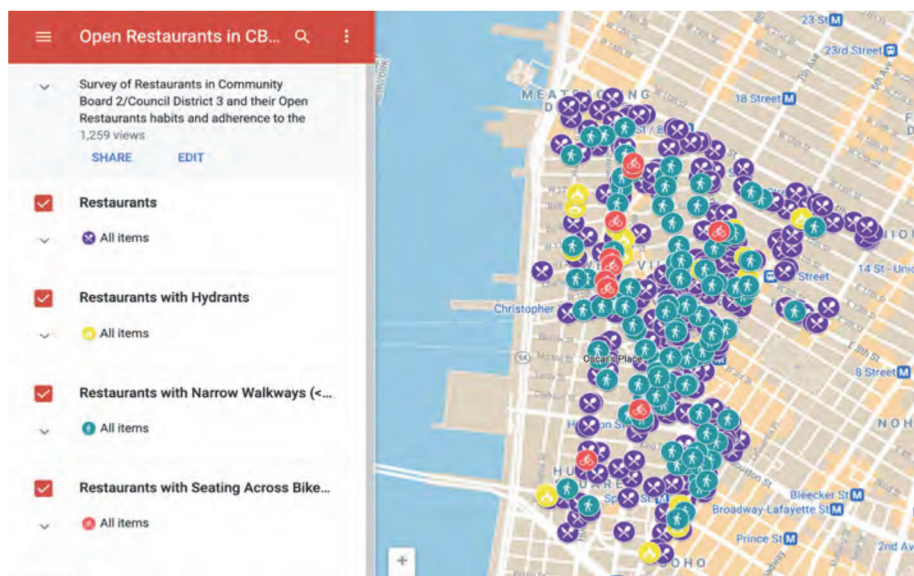
11

Restaurant Density in the CB2/CD3 Overlap



12

Customizable Google Map Marking Restaurants with Violations



<https://www.google.com/maps/d/u/0/viewer?mid=1wugrk3Bxk8pIA9glljA5BXGm8kKPtETs&ll=40.73507904649408%2C-74.00623285826978&z=16>

13

Immediate Concerns

All restaurants in violation of serious concerns have been reported to DOT/the appropriate city agency.

14

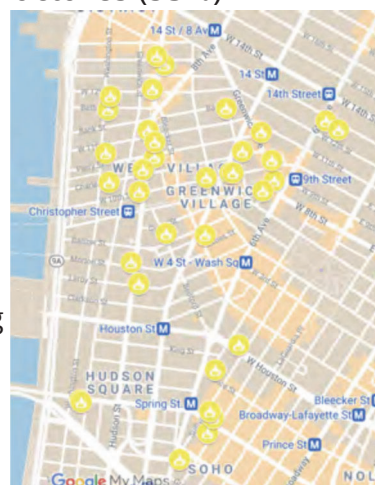
Fire Hydrant Obstruction

DOT GUIDELINES: “[Do] not place seating or barriers within 15’ of a fire hydrant.”

15

Fire Hydrant Obstruction

- 70 restaurants with hydrants in front (17% of all restaurants surveyed)
- 37 are blocked or surrounded by seating and/or structures (53%)
 - 24 hydrants are blocked by sidewalk seating only
 - 7 hydrants are blocked by roadbed seating only
 - Wallsé Next Door
 - Entwine
 - Anton’s Cafe and Wine Bar
 - Casa La Femme
 - Blue Ribbon Brasserie
 - Rahi
 - La Contenta Oeste
 - 6 are blocked by both sidewalk and roadbed seating
 - Wild
 - Petite Boucherie
 - Hudson Bar and Books
 - Waverly Inn
 - Malaparte
 - High Street on Hudson



16

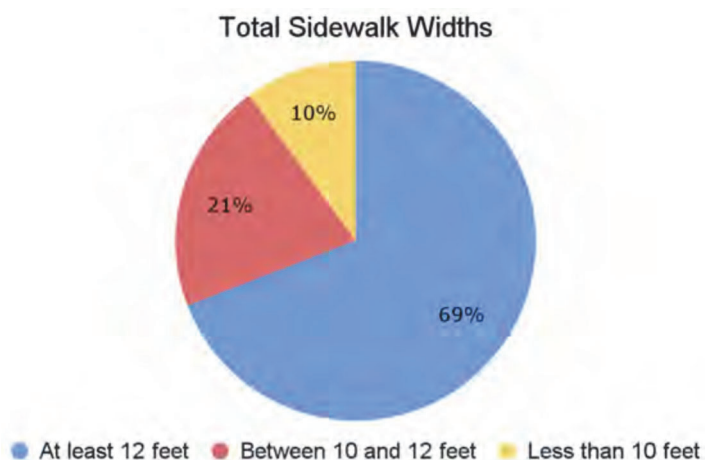
Pedestrian Walkway

DOT GUIDELINES: “Must leave 8 foot clear path for pedestrians.”

17

Sidewalk Widths

- Of the 298 restaurants with sidewalk seating, 206 (69%) are located on sidewalks 12+ feet in total width
- 62 (21%) are located on sidewalks between 10 and 12 feet in total width
- 30 (10%) are located on sidewalks less than 10 feet in total width



18

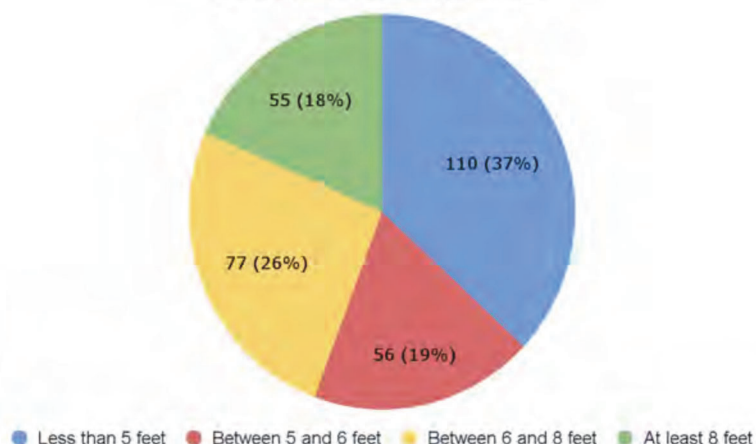
Walkway Widths

Of the 298 restaurants with sidewalk seating:

- 110 have walkways **under 5** feet wide
- 56 have walkways between **5 and 6** feet wide
- 77 have walkways between **6 and 8** feet wide
- 55 have walkways **at least 8** feet wide

Only 18% of restaurants are following the guidelines!

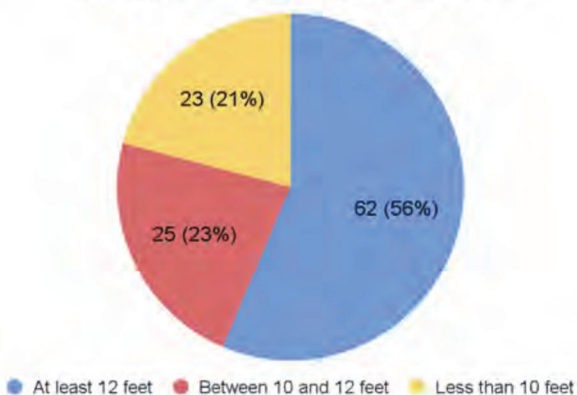
Size of Pedestrian Walkways



19

Sidewalk Widths and Pedestrian Walkways

Sidewalks with Walkways Under 5 Feet



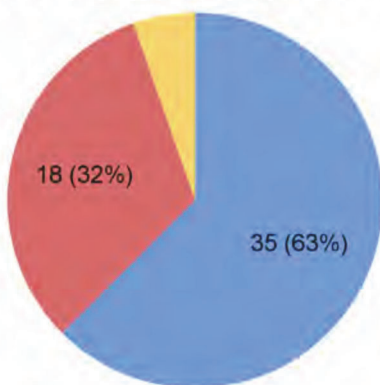
- The narrowest walkway surveyed was 2 feet
 - Lena Wine Bar
 - 142 Sullivan
- 12 restaurants measured between 2 – 3 feet
- 40 measured between 3 – 4 feet
- 58 measured between 4 – 5 feet

When the majority of the narrowest walkways are located on the widest sidewalk, the problem is not the sidewalk.

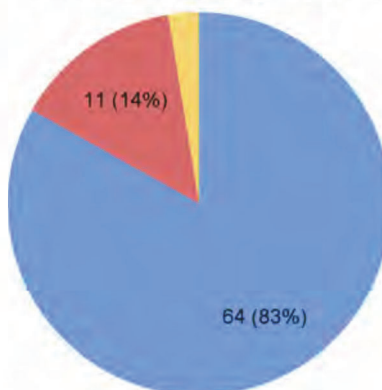
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Sidewalk Widths and Pedestrian Walkways

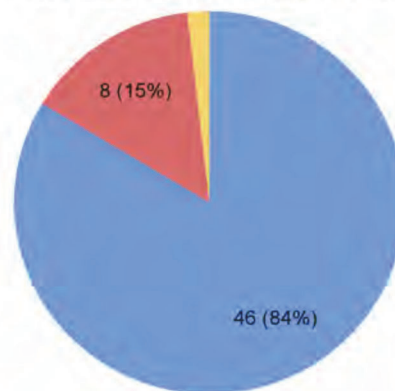
Sidewalks with Walkways 5 - 6 Feet



Sidewalks with Walkways 6 - 8 Feet



Sidewalks with Walkways 8+ Feet



● At least 12 feet ● Between 10 and 12 feet ● Less than 10 feet

21

Sidewalk Widths and Pedestrian Pathways

Average Sidewalk Width: **14'10"**

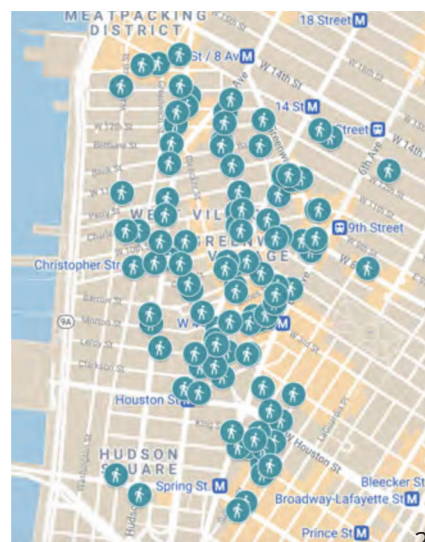
Average Pedestrian Pathway Width: **6'2"**

Median Sidewalk Width: **13'8"**

Median Pedestrian Pathway Width: **5'8"**

Mode of Sidewalk Width: **11'10"**

Mode of Pedestrian Pathway Width: **5'8"**



22

Amenity Zone Seating

DOT GUIDELINES: “All items for outdoor dining must be pressed against the wall of the business or as close as possible.”

*Need clarification for “as close as possible.”

23

Amenity Zone x Pedestrian Pathways

133 restaurants had seating in the amenity zone (45% of restaurants with sidewalk cafés)

- Of the 110 restaurants with walkways less than 5 feet wide, 74 (**67%**) have seating in the amenity zone
- Of the 56 restaurants with 5 – 6 foot walkways, 30 (**54%**) have seating in the amenity zone
- Of the 77 restaurants with 6 – 8 foot walkways, 21 (**27%**) have seating in the amenity zone
- Of the 55 restaurants with walkways over 8 feet, 6 (**11%**) have seating in the amenity zone

24

ADA Access to Roadbed Seating

DOT GUIDELINES: “Install a platform [...] to flush height with the curb” & “Provide a ramp for ADA compliance, which can be made of non-permanent materials.”

25

Roadbed ADA Violations

- Of the 220 restaurants with roadbed seating, 91 (41%) of the roadbed structures are not flush the curb and lack ADA ramps



Ready to Eat



Wallsé Next Door

26

Travel/Emergency Lane in Road

DOT GUIDELINES: The roadway must have a “15’ clear lane” for travel and emergency.

27

15 Foot Travel/Emergency Lane in Road

- Of 220 restaurants with roadbed seating, 101 (46%) are located on streets measuring less than 15 feet across
- In total, there are 29 compromised streets
 - Sullivan (14), West 4th (10), MacDougal (9), Bleecker (8), Bedford (7), Cornelia*(6), West 11th (4), Thompson (4), Perry (4), Christopher (4), Spring* (3), Morton* (3), Barrow (3), Charles (3), Bank (2), West 10th (2) Broome (2), Jane* (2), Waverly* (2), Prince (1), Grove (1), Little West 12th (1), West 12th (1), Downing (1), Renwick (1), Leroy (1), West 8th (1), Bethune (1)
- Per compromised street, there is an average of 3.59 restaurants with roadbed seating
- 5 of these streets are Open Streets, but are not open 24/7

28

Roadbed Structure Extension from Curb

DOT GUIDELINES: Roadbed barriers may be placed “no more than 8’ from the curb.”

29

Roadbed Structures Extending into Street

- Of the 220 restaurants with roadbed seating, 71 (32%) have barriers that extend more than 8 feet from the curb

15 Foot Emergency Lane x Roadbed Extension

- Of the 71 restaurants that extend more than 8 feet from the curb, 19 also lack 15 foot travel/emergency lanes in the road



Oppa Bistro

30

Roadbed Structure Distance from Crosswalk

DOT GUIDELINES: “[Do] not place seating or barriers within 8’ of a crosswalk.”

31

Roadbed Structure Distance from Crosswalk

- Of the 220 restaurants with roadbed seating, 118 (54%) are located near a crosswalk
- Of these 118, 35 (30%) have barriers within 8 feet of a crosswalk



Altesi



12 Chairs

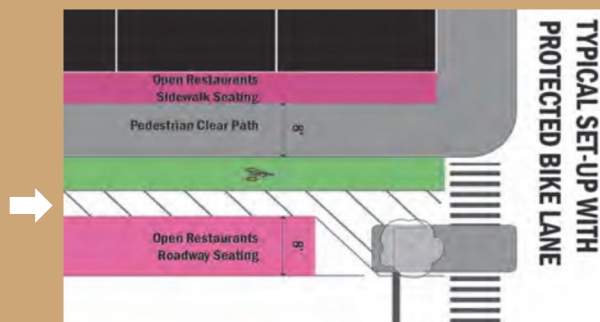


Lola Taverna

32

Roadbed Seating Across Bike Lanes

DOT GUIDELINES: No seating allowed in bike lanes, but seating “may be set up in a floating parking lane in front of an approved business per the diagram below.”



33

Roadbed Seating Across Bike Lanes

- Out of 220 restaurants with roadbed seating, 10 have structures on the other side of bike lanes
 - Westville Hudson
 - Taco Bell Cantina
 - The Lavaux
 - The Butcher's Daughter
 - Laitao
 - Wild
 - Cowgirl
 - Ready to Eat
 - Hudson Bar and Books
 - Baby Brasa



Baby Brasa, lacking the buffer zone

34

Medium Concerns

35

Utility Hardware

DOT GUIDELINES: “Access to and ventilation of utility covers must not be impeded.”

36

Utility Hardware Obstruction

- Of the 352 restaurants with outdoor dining, 57 (16%) block utility hardware, siamese water connections, or subway grates
- Of the 57 instances, 36 were obstructed by sidewalk seating, and 23 by roadbed seating (2 by both)
- Definitely an undercount - cannot see under elevated roadbed structures, also visual obstruction with sidewalk café diners

37

Street Signage

DOT GUIDELINES:

“Structures, tents, or umbrellas may not block any right of way signs or street regulation signs.”

38

Street Sign Obstruction

- Of 220 restaurants with roadbed seating, 52 (24%) of their structures either partially or fully obstruct street signage



Tea and Sympathy



12 Chairs

39

Parking Designations

DOT GUIDELINES:

Allowed: No Parking Anytime; Alternate Side Parking; Metered Parking, Truck Loading Only & Commercial Vehicles Only.

Allowed with Restrictions: No Standing Hotel Loading Zone; Authorized Vehicles Only; No Standing During Specific Days/Hours.

Not Allowed: No Standing Anytime; No Stopping Anytime; Bus Stop; Taxi Stand.

40

Parking Designations

- Of the 220 restaurants with roadbed seating:
 - 122 occupy Alternate Side Parking spots (39%)
 - 66 occupy Metered Parking spots (21%)
 - 46 occupy No Parking During Specific Hours (15%)
 - 21 occupy No Parking Anytime (7%)
 - 19 occupy Truck Loading/Commercial Vehicles Only (6%)
 - 18 occupy No Standing During Specific Hours (6%) **(Not allowed)**
 - 14 occupy No Standing Anytime (5%) **(Not allowed)**
 - 3 occupy Bus Stops (1%) **(Not allowed)**
 - 1 occupies Authorized Vehicles Only During Specific Hours **(Not allowed)**
 - 1 occupies No Standing Hotel Landing Zone **(excused)**
 - 1 occupies No Standing Anytime **(Not allowed)**
 - 0 occupy Taxi Stands

- 37 total violations (17%)

41

Blocking Residence
Entrances
&
Extending Beyond
Storefront

DOT GUIDELINES: Seating
may not block residential
entrances.

DOT GUIDELINES: Seating
may not extend beyond the
business's storefront.

42

Blocking Residence Entrances

- Of the 298 restaurants with sidewalk seating, 10 block the entrance to a residence

Extending Beyond Storefront

- Of the 298 restaurants with sidewalk seating, 106 (36%) have sidewalk seating that extend beyond the storefront
- Of the 220 restaurants with roadbed seating, 124 (56%) have roadbed seating that extend beyond the storefront



The Loyal

43

Comparison with Pre-existing Sidewalk Café Permits

30 Active [Pre-existing Sidewalk Café Permits](#) in the CB2/CD3 Overlap

Hydrant Obstruction

Pre-existing permits: 55%

Open restaurants: 53%

Utility Hardware Obstruction

Pre-existing permits: 20%

Open restaurants: 10%

Amenity Zone Seating

Pre-existing permits: 50%

Open restaurants: 45%

Extend Beyond Storefront

Pre-existing permits: 40%

Open restaurants: 36%

Walkways under 5 Feet

Pre-existing permits: 47%

Open restaurants: 37%

Blocking Residence Entry

Pre-existing permits: 0%

Open restaurants: 3%

44

Summary of Recommendations

1. Implement Open Restaurants Enforcement Unit
2. Street and sidewalk size regulations
 - a. Streets at least 31 feet across
 - b. Sidewalks at least 12 feet across
3. Require restaurants to submit plans to DOT for roadway seating in relationship to street and sidewalk amenities.
4. Require a meaningful public review process *before and after* program implementation.

45

Next Steps

1. Survey of CB2 restaurant and business owners
2. Nighttime quality of life report in collaboration DEP, NYPD, SLA, FDNY
3. Evaluate streets that are less than 31 feet across

46

Thank you!

Questions?



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

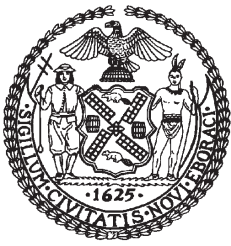
RECOMMENDATION: Unfavorable			
# In Favor: 20	# Against: 14	# Abstaining: 3	Total members appointed to the board: 50
Date of Vote: 9/28/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	MN CB3	Date: 9/29/2021 11:27 AM
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THE CITY OF NEW YORK MANHATTAN COMMUNITY BOARD 3

59 East 4th Street - New York, NY 10003

Phone (212) 533-5300

www.cb3manhattan.org - mn03@cb.nyc.gov

Alysha Lewis-Coleman, Board Chair

Susan Stetzer, District Manager

Citywide Text Amendment: Open Restaurants

WHEREAS, The Open Restaurants Program was created as an emergency response to mitigate the negative impacts of the COVID-19 pandemic on the economy and the restaurant industry to promote safer outdoor space and social distancing for customers to address the temporary prohibitions on indoor dining, and allowed business owners to create additional outdoor seating adjacent to their businesses on the sidewalk, and in front of the businesses in the roadbed, and

Regarding changes to the sidewalk café text amendment

WHEREAS, The City is now proposing guidelines to the permanent Open Restaurants program that will greatly impact the quality of life and economic development of Community District 3, which consist of the following changes to the zoning text:

- removal of all geographical restrictions to sidewalk cafes, which would remove protections for residentially-zoned areas,
- changes to the sidewalk café program, and
- the implementation of a permanent roadbed dining program; and

WHEREAS, Indoor dining restrictions were lifted on May 19, 2021, allowing restaurants to resume full dining capacity inside as well as full capacity outdoor seating, which has alleviated financial hardship caused by reduced seating, and

WHEREAS, Outdoor dining as part of the Open Restaurants Program was also enacted in part to prevent loss of jobs, but now restaurants are contending with the difficulty in hiring staff, indicating that availability of staff, not loss of jobs, is a concern for the restaurant industry and our City, and

WHEREAS, The NYC Zoning Resolution creates districts and prescribes trades and industries that are excluded or subjected to special regulations in order to preserve neighborhood character and ensure public health, safety, and welfare, and

WHEREAS, Residential districts are protected against the encroachment of other uses or industries that might change the character of the district and/or bring harmful nuisances, such as air pollution, traffic, or noise, and

WHEREAS, Open Restaurant structures are often of significant size, and have a strong visual presence on the streets, including within CD 3's historic districts, and one of the mandates of the NYC Landmarks Preservation Commission is to assure that new construction within historic districts are visually compatible with the historic buildings that define the streetscapes, and the proposed Permanent Open Restaurants Program (POR) does not address the lack of LPC review, and

WHEREAS, Article I, Chapter 4 of the Zoning Resolution explicitly states that its purpose is to "discourage sidewalk cafes in locations where they are inappropriate, and to promote and protect public health,

safety, general welfare and amenity," and "to preserve and enhance the character of neighborhoods throughout the City," and

WHEREAS, The proposed Open Restaurant Citywide text amendment will delete Article I, Chapter 4: Sidewalk Café Regulations in its entirety from the NYC Zoning Resolution, thereby eliminating geographic restrictions on outdoor seating that protect residential districts from the increased activity and noise pollution that commercial use generates, and

WHEREAS, The Zoning Resolution, in Article V, Chapter 2, section 52-34 clearly states that non-conforming food and drink establishments shall be limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a completely enclosed building, in order to protect the character of residential districts, and to protect the welfare of residents.

WHEREAS, CD 3 relies on the restrictions of Article I, Chapter 4, and Article V, Chapter 2, to address and mitigate the recent trend of increased late-night noise and parties in residential districts, maintain the character of residential districts, and restrict the increase of non-conforming businesses in a residential area to avoid noise on residential streets and the harm to district residents, and

WHEREAS, Article V, Chapter 2 of the Zoning Resolution states that non-conforming uses can remain as grandfathered uses, and can be changed, but generally only to uses that maintain, reduce, or eliminate the degree of non-conformance. In a residential district, these restrictions help protect district residents from further encroachment of commercial activity and the noise it brings, and the removal or subversion of these restrictions will exacerbate noise issues that have significantly affected and harmed residents since Open Restaurants came into effect, and will threaten residents' rights to peace and quiet, and

WHEREAS, While the POR program will benefit the City and many of its communities, one size does not fit all and the program will have inequitable impacts to different communities. CD 3 has an exceptionally high density of food and drink establishments and non-conforming food and drink establishments in residential districts. CD 3 currently has 674 restaurants with outdoor seating as reported by Department of City Planning, 191 of which would have been prohibited under current zoning, and 134 of which are nonconforming in residential districts.

WHEREAS, CD 3 has the second highest number of non-conforming food and drink establishments of the 59 community boards, and the proposed text amendment would have a disproportionate and inequitable impact on the residents of CD 3 as it does not allow for community-based planning to develop programs and regulations that take into account disparities across communities, and

WHEREAS, CD 3 historically has been one of the top two districts in the City with the most commercial noise complaints at bars and restaurants, but had seen a slight improvement in pre-COVID years. Since the Open Restaurants Program was instituted, commercial noise complaints have increased 87.5 percent. (3,288 in FY 2019 pre-COVID to 6,155 in FY 2021), and

WHEREAS, The most significant and common complaint since the implementation of the Open Restaurants program has been the associated noise. The City has proven unable to respond and mitigate noise complaints; police have not been able to enforce noncompliance of the current Open Restaurants regulations as these rules are constantly changing, not communicated, and unclear to enforcement agencies, businesses, and the community alike. We are told that DOT will be enforcing the

new Permanent program, but the DOT is not trained nor equipped nor experienced in charging commercial noise violations and applying the amount of enforcement that will be needed. The current program blatantly exhibits that the effort is well beyond the limits of any agency

WHEREAS, The proposed text amendment does not address these concerns, and Community Boards are now in position of voting on a text amendment before the agencies have developed programs for implementation and enforcement, nor presented such programs to community boards for consideration and approval, and

Unintended economic impact

WHEREAS, The proposed text amendment and POR will increase the square footage available exclusively to ground floor food and drink retail spaces, and therefore some landlords will prefer to rent to and profit most by renting only to eating / drinking establishments. CD 3 has been suffering from loss of retail services to serve residents and other small businesses, which will only be greatly exacerbated by the proposed text amendment. That is, making this program permanent would increase the trend of commercial spaces converting to food and drink establishments, creating one class of business unequally capable of paying higher rent because of its allowance to use public sidewalks and roadbeds for expansion, and

WHEREAS, The proposed text amendment will create inequities between those food and drink businesses able to take advantage of municipal space and those that can't due to bus stops, street furniture, and other static physical limitations. Since the current program was implemented, CD 3 and elected officials' offices have received calls from businesses not able to compete with their neighbors because of the above-mentioned restrictions, and

Current complaints regarding Open Restaurants

WHEREAS, The emergency rollout of Open Restaurants resulted in many complaints from residents and businesses not participating in the program. Sheds erected by restaurants have taken over both commercial streets and residential side streets, sometimes occupying whole blocks. There is a lack of enforcement for guidelines for roadbed sheds in design of the structures as well as adherence to using only frontage of the businesses, which has caused the following issues:

- Although the sheds are outdoors and do not need to comply with indoor requirements such as proof of vaccination, many are completely enclosed, have less ventilation and social distancing than indoor dining, resulting in public health hazards, and
- Sheds cut off sightlines on the streets, especially narrow residential streets targeted by the proposed text amendment, harming other businesses as well as resulting in loss of light and destroying the character of this CD 3 residential neighborhoods, and
- There is increased accumulations of uncollected trash, and
- Outdoor dining and constructions have blocked sidewalks, and created a lack of accessibility, especially in regard to ADA requirements, and
- There have been instances where fire engines could not pass by the sheds in CD 2. Many residents also feel threatened by fire, electrical, and tripping hazards created by noncompliant installation of electricity and heating apparatuses in the sheds, and
- There have been complaints regarding the use of sheds after hours as encampments and locations for drug use, and

- Residents have also complained about loss of parking, and businesses have complained about inability of customers to park, and
- The roadbed sheds also prevent the creation of curbside loading zones, which CB 3 requested from DOT's Neighborhood Loading Program to address an increase in the number of deliveries occurring in the district, and

Voting on proposal without developed operational guidelines and without plans for community input for future guidelines, plans, and new programs

WHEREAS, There is no plan for enforcement of roadbed guidelines nor provision for additional staff that will be needed to inspect and enforce. This would include DOHMH for both food prep and licenses and other health concerns as well as rodent inspections, DSNY inspections, DEP noise inspections and enforcement, and

Additional Concerns

WHEREAS, Businesses have expressed concern regarding a lack of transparency and plans regarding hearings and appeals. DCWP hearings were transferred to OATH as an effort to help businesses navigate the adjudication process, but the proposed text amendment does not provide any information regarding whether enforcement will be handled by an agency or by OATH, and have also expressed concern that the DOT agencies in each of the five boroughs will have different enforcement priorities and not have a consistent citywide enforcement policy, and

Comments on the Environmental Assessment Statement

WHEREAS, Separate from the proposed text amendment, the EAS has findings that require community board comment. However, we have been informed by City Planning that there is not a process to comment on the EAS, so comments should be included with the text amendment. We have not been given assurances that comments will be taken into account or answered. Community Board 3 submits the following comments to the EAS:

- The Environmental Assessment Statement (EAS) acknowledges that there will be an introduction of new noise in the form of outdoor restaurant seating as a result of the text amendment (p. H-1, 111/176). The EAS claims that the proposed POR program would strengthen and enhance the existing controls to limit the noise emanating from outdoor restaurant seating. However, this is not only unreasonably optimistic, historically we have learned through unprecedented number of complaints that the City has not been able to control the noise and noncompliance associated with the Open Restaurants program after more than a year of educating businesses. It would be impossible to hire enough inspectors to enforce regulations; after more than a year of Open Restaurants, the City has shown inability to strengthen controls so that a majority of the businesses comply within guidelines and control noise. Rules are still poorly communicated, difficult to locate, unclear and conflicting. CB 3 has found through years of working on this issue that the only way to reduce late night noise from bars and restaurants is to contain the noise indoors by reducing outdoor use and to reduce late night hours of operations, specifically stopping outdoor use at 10 pm, prohibiting all outdoor sound, having designated and specialized enforcement that works in a collaborative fashion with community boards, and
- The EAS refers to the implementation of roadbed sheds in the plan. However, the sheds are not part of the text amendment and there is no process for opportunity for communities or community boards to participate in planning for roadbed sheds in their community. There is no plan for

roadbed sheds to come before community boards to give communities a voice in planning for use of public land as has always been their right under ULURP. As stated previously, CD 3 has the second highest number of nonconforming businesses in the City. We currently have entire residential blocks lined with sheds that would become permanent under the proposed plan. This would negatively impact quality of life for residents and harm retail diversity in the district as many retail spaces are unable to compete with higher rent that will be expected with increased sidewalk and roadbed footage granted to food and drink establishments by the Open Restaurants program, and

- The reasonable worst case development scenario: EAS states the proposed action will not increase the number of restaurants. CB 3 disputes this assumption. As stated earlier, property will be more valuable to landlords as expanded capacity will allow landlords to charge higher rent. Areas of CD 3 have been trending toward a higher percentage of eating drinking businesses for years, crowding out local services. As documented in years of District Needs Statements, this has resulted in many blocks with majority eating drinking businesses that do not open until 5:00 p.m. This creates blighted streets during the day, no foot traffic, and an environment making daytime retail not viable. Restaurant concentration designates blocks with more than 8 restaurants as are classified as high concentration blocks. The map of nonconforming businesses included in the EAS shows an almost solid block of restaurants in some areas of CD 3. Additionally, commercial overlays and commercial streets have high restaurant concentrations. The expansion onto residential sidewalks and into streets in a neighborhood with an extremely high concentration of restaurants will alter the character of the neighborhood.
- The EAS assumes that the concentration of restaurants on a block will not change the number of restaurants as a result of POR implementation. As stated earlier, CB 3 disputes this, and
- The Solid Waste assessment assumes that the implementation of the POR program will not generate more than 50 tons of solid waste per week. This figure has no meaning for most of us, but we can attest that the open restaurant has produced significantly more garbage that we now see on the street. Because there is often no street space to put garbage out, it is placed in the street outside the sheds in travel lanes. BIDS complain about this because cars run over the garbage and it is spread over the street. Additionally, restaurants have much more garbage and because of lack of space, this is kept on the street often between structures. Although the EAS claims that restaurants place garbage only during off-hours, we see that because of the amount of garbage it is placed outside at all times, even though this does not contribute to the dining experience. There are many complaints to the community board about uncollected and uncontained garbage. As the Department of Health has been telling us for years, more food means more rats. People are reporting more rats and the Department of Health indexing reports has increased findings of rats since COVID. While this cannot all be directly related to Open Dining, more food is correlated to more rats, and
- The EAS states that there is not expected to have significant adverse contextual or visual impact on existing visual resources. However, the residents have responded that roadbed structures have real adverse impact on their streets. The structures are a collection of often unsightly sheds blocking view and creating dark canyons. Residents and other businesses alike report a significant negative visual impact from the sheds, and
- In addition to the deletion of the residential zoning protections in the zoning amendment, the EAS describes additional text changes that will impact residential and commercial overlay zones that were not presented by the City to the community boards. The change with the most impact that was not presented to the Board as part of the zoning text amendment is store front or store windows associated with eating and drinking establishments may be opened to serve customers outside the building. (Previous zoning protection required that all use be located within completely enclosed building). There are no hour limitations for the open windows or store front. The zoning

text still allows music within eating and drinking establishments, therefore the City is now allowing open façade in residential and commercial overlays while there is music, which is guaranteed to cause quality of life problems for residents, so

Therefore be it resolved that Community Board 3 does not support the proposed text amendment from the Zoning Text, due especially to its adverse impact on Community Board 3 with its concentration of non-conforming restaurants in residential districts, and does not support the implementation of the Permanent Open Restaurants Program as presented, and

Therefore be it also resolved that Community Board 3 strongly objects to the City bringing the text amendment related to the Permanent Open Restaurant Program before us for approval without having developed specifics related to its implementation and enforcement and without any guarantee that future guidelines and plans related to the proposal will be brought to the community and community boards for review and input.



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

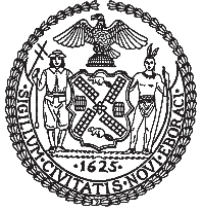
RECOMMENDATION: Unfavorable			
# In Favor: 29	# Against: 0	# Abstaining: 4	Total members appointed to the board: 50
Date of Vote: 7/28/2021 12:00 AM		Vote Location: 119 9th Avenue	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/28/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Fulton Center - 119 9th Avenue

CONSIDERATION: Please see attached letter.

Recommendation submitted by	MN CB4	Date: 8/12/2021 1:11 PM
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LOWELL D. KERN
Chair

JESSE R. BODINE
District Manager

CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

424 West West 33 Street, Suite #580
New York, NY 10001
tel: 212-736-4536
www.nyc.gov/mcb4

September 1, 2021

Marisa Lago, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Open Restaurants Zoning Text Amendment

Dear Chair Lago,

On July 14, 2021, the Department of City Planning (DCP) presented its proposed Permanent Open Restaurants Zoning Text to Manhattan Community Board 4's (MCB4) Clinton/Hell's Kitchen Land Use Committee.

The proposed text amendment seeks to develop guidelines to extend permanently the emergency open restaurants order issued in 2020.

At its Full Board meeting on July 28th, MCB4 reaffirmed the Committee's strong objection to the process of developing the proposal and the failure of the proposal to consider the unintended, and potentially negative, consequences of its adoption¹. By a vote of 29 in favor, 0 opposed, 4 abstaining, and 0 present but not eligible to vote, the Board recommended **not** to approve the text amendments.

The failure of DCP to engage with the community or the Board before formulating the proposal, coupled with the fact that operational guidelines by the Department of Transportation have not been developed or even discussed with the larger community, were added reasons for the Board to recommend the text amendments be rejected. No compelling evidence was presented to show the proposal, should it be implemented, would financially benefit the City. And no assurance was offered that eliminating the current zoning regulations — thereby wiping out years of work the Board's Business License and Permits Committee spent developing workable stipulations —

¹ MCB4's Transportation Planning Committee wrote a separate letter on transportation concerns related to the Proposed Open Restaurants Text Amendment

would not adversely affect the quality of life and safety of residents and visitors to our residential neighborhoods.

A PROPOSAL TO ELIMINATE PROTECTION

Three main actions are needed to facilitate the future program — removal of locational prohibitions, changes to the Sidewalk Café Program, and the creation of a Roadway Café Program. The text amendment would expand the universe of allowed “geographies” for sidewalk cafés; remove other zoning text that enables sidewalk cafés; and grandfather existing enclosed cafés.

The Board strongly objects to the elimination of the current zoning rules governing the placement of sidewalk cafés without adequate protections in place.

The proposed changes intend to remove references to sidewalk cafes from the zoning text based on the premises that legislation and rules will be substituted, and the Department of Transportation will take over the administration of this program. The following sections are affected: ZR, Article 1, Chapter 2, and 4, ZR Sections 22-00, 32-411, 33-05 & 43-03, 52-34, 73-243, 83-05 97-03, 97-13, 97-14, 97-412, 109-02, 117-03, 117-05.

This is an extensive action which has the potential to affect quality of life for many and encroach on scarce transportation resources. It should not be rushed through.

Under the Clinton Special District, ZR 96-106, existing storefronts are grandfathered in even if they have been vacant for two years. ZR 96-106, Special Regulations for Existing Storefronts, states that any "vacant ground floor store in an underlying Residence District may change to a conforming use or to a use listed in Use Group 6". This includes "retail and service establishments that serve local shopping needs, such as food and small clothing stores, beauty parlors and dry cleaners." Therefore, a mid-block restaurant occupying an existing storefront within a wholly residential district would be able to install either a sidewalk café or curbside dining in the middle of a residential block, immediately adjacent to ground-floor apartment windows. This regulation would create a conflict in uses.

In fact, by eliminating the sidewalk café language, this process is also removing protections to communities on many streets and special districts where sidewalk cafes were not permitted — protections which DCP now calls “outdated geographic prohibitions on where sidewalk cafes can be located.” This is being done without providing at the same time a substitute law to protect those same communities. This creates the risk that necessary protections communities have relied upon for years will be lost when legislation is passed.

Examples abound:

- In districts with heavy pedestrian volumes near Grand Central Station or the Port Authority Bus Terminal, sidewalk cafés are not permitted. With this zoning, they would become permitted and

there is no guarantee that siting guidelines will be adequate to prevent installation in such areas. In fact, based on the draft we have seen, we know they will not.

- In districts like Hudson Yards, where sidewalk widening was mandated by the zoning on certain avenues in anticipation of high volume of pedestrians because of the exceptionally high-density of office buildings, the protection will be gone as well.
- In the West Chelsea Special District sidewalk cafes are only allowed on "wide streets" because the narrow streets have proven inadequate for sidewalk cafes.
 - In residential streets with grandfathered non-conforming uses sidewalk cafes would now be permitted.

The rezoning and the legislation should go hand in hand, and one should not be reviewed and approved without the other one.

SIDEWALK WIDENING IS FOR PEDESTRIANS, NOT CAFES

The proposed text adds the following: *33-05 and 43-03 Outdoor Table Service Areas*
- *Notwithstanding any other provisions of this Resolution, outdoor table service areas, associated with eating and drinking establishments, meeting all requirements set forth by the Department of Transportation shall be permitted within any required sidewalk widening areas.*

Sidewalk widening requirements apply in certain districts which are exceptionally congested, like the Times Square area. New buildings facades are recessed by 10 to 15 ft to widen sidewalks in order to relieve pedestrian overcrowding. In exchange the developer gets bonus height or FAR.

•

Other sections of the zoning text are pretty explicit: "No *street* trees are permitted on a sidewalk widening. No vehicle storage, parking or storage of trash is permitted on a sidewalk widening. Gratings may not occupy more than 50 percent of the sidewalk widening area nor be wider than one half the width of the sidewalk widening."

•

Permitting the widened space to be used for sidewalk cafes is double dipping because the buildings already got the bonuses AND would be taking back the community benefit: it is also counter to the goal and sets up a bad precedent for future sidewalk extensions that are also designed to ease pedestrian crush.

•

A current example is the proposal for the Penn Complex where all buildings would be recessed by 5 to 15 ft to accommodate the massive volume of pedestrians. With this proposed clause, the buildings could both get bonuses and take back the space for sidewalk cafes in the future. Pedestrians and commuters would once again be squeezed.

While the City spends millions expanding sidewalks, this clause would hand over sidewalk space designed to alleviate congestion for pedestrians to landlords who already benefitted from their bonus. The Board finds this altogether a bad idea and a bad precedent.

Sidewalk cafes must not be installed on sidewalk widenings.

CAFES ON RESIDENTIAL STREETS

Current zoning does not permit sidewalk cafes in residential districts. (See Zoning Resolution Article I, chapter 4, section 14-011). This prohibition has a sound basis in public policy: Even if a grandfathered eating or drinking establishment is permitted in a residential district, allowing that establishment also to have a sidewalk cafe would add significantly to the disruption of a reasonable residential quality of life.

MCB4 has spent hundreds of hours mediating issues related to noise from eating and drinking establishments. It is our experience that outdoor operations on very residential streets create many quality of life issues that affect hundreds of residents.

Accordingly, MCB4 urges that the prohibition of any outdoor eating or drinking facilities in residential districts be preserved in the Zoning Resolution. We further request that restaurant space in an otherwise residential district not be permitted under the Open Restaurants program. The zoning should continue to require such establishments to be within a #completely enclosed building# and not be subject to the enclosure provisions of Section 32-411.

It is crucial that this as well as the other provisions in this letter, remain in the zoning text or be added to the new legislation

The prohibition of any outdoor eating or drinking facilities in residential districts must be preserved in the Zoning Resolution.

OPEN THE WINDOWS, SHARE THE NOISE

32-411 & 32-412

In C1, C5, C6-5 or C6-7 Districts C1 C5 C6-5 C6-7

In other Commercial Districts C2 C3 C4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9 C8

“all such #uses# shall be located within #completely enclosed buildings# except for store fronts or store windows, associated with eating and drinking establishments, which may be opened to serve customers outside the #building#.”

Storefronts and store windows already are permitted to be open, as attested by the hundreds of French doors and garage doors that have been approved by the Department of Building and the successful operation of sidewalk cafes under current zoning. This paragraph seems to give to eating and drinking establishments the right to open their doors and windows regardless of the noise or impact on the community.

While the noise code would govern, there are only two Department of Environmental Protection (DEP) inspectors in the City and NYPD has great difficulty enforcing these issues. As you are well aware, noise complaints are the most frequent complaints in the City. Although MCB4 has been successful in requesting that many establishments keep French doors and garage doors closed for noise reasons, were this zoning change implemented, future establishments could point to this provision and argue that zoning explicitly permitted them to keep doors and windows open.

The language should be removed or changed to: “all such #uses# shall be located within #completely enclosed buildings# except for those #uses# permitted by the Department of Transportation in an area adjacent or in front of the store front associated with eating and drinking establishments

Opening doors and windows should remain prohibited when amplified sound is used inside.

PLEASE BE SEATED

The definition of doors and windows is crucial in particular when read in the context of section 52-34 Commercial Uses in Residence Districts:

In all #Residence Districts#, a #non-conforming use# listed in Use Group 6, 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed, initially or in any subsequent change, only to a conforming #use# or to a #use# listed in Use Group 6. In the case of any such change, the limitation on #floor area# set forth in Section 32-15 (Use Group 6) shall not apply. Eating or drinking ~~places,~~ establishments with musical entertainment, but not dancing, thus permitted as a change of #use#, shall be ~~limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a #completely enclosed building#~~ subject to the enclosure provisions of Section 32-411.

The language, combined with the section above, allows establishments with music to no longer require that patrons to be seated, allows them to do so in an establishment with open doors and windows and in a sidewalk café in residential district. This is a recipe for disaster for those residential districts. Up to now, sidewalk cafes have always required patrons to be seated and it is a very useful feature. Standing patrons will typically exceed the maximum occupancy allowed, have a tendency to drift into the rest of the sidewalk further reducing the right of way, and are typically more rowdy than seated patrons.

Also, music has never been allowed in sidewalk cafes. This makes sense as the music affects all users of the street and residents living above and its volume level increases to cover traffic noise or music from competing establishments. Currently on Restaurant Row, one cannot have a quiet dinner as every other establishment blasts music that can be heard from 500’ away.

It may have escaped City Planning, but thousands of our residents live above bars, restaurants, and cafés on our avenues and streets. They should not be forced to suffer day and night amplified music played on the sidewalk.

In both residential and commercial districts, it is crucial that the clause concerning “seated patrons only” and music restricted to indoor with doors and windows closed be retained. The sentence “~~limited exclusively to the sale of food or drink for on premises consumption by seated patrons within a #completely enclosed building#~~” should be retained and “~~subject to the enclosure provisions of Section~~” removed.

The requirement that patrons be seated, and no music be permitted in sidewalk cafes must remain.

A SIDEWALK IS NOT A SERVICE AISLE

In its prior letters on the Open Restaurants program, MCB4 has proposed critical changes to the siting criteria, including width of the right of way and definition of obstructions, that we believe would better balance the interests of the residential/pedestrian community and eating and drinking establishments. Although we understand that proposed siting criteria are not currently under consideration, a draft of those criteria was included in the circulated materials, and MCB4 wishes to comment early on with respect to another particularly problematic proposed change.

Current sidewalk café rules require a three-foot service aisle in addition to the eight-foot pedestrian clear path. The proposed siting criteria appear to eliminate that mandatory service aisle and, instead of specifying the dimensions of the service aisle, state: “Assumes service aisle is within café designated area.” MCB4 believes that the dimensions of a mandatory service aisle within the sidewalk café footprint, ideally the current three feet, must be specified.

MCB4 has seen that sidewalk café operators, naturally eager to maximize revenue, squeeze as many chairs and tables as possible into every square inch of their allocated sidewalk café footprint. Without the requirement of a mandatory service aisle with explicitly stated dimensions, establishments are likely to eliminate the service aisle, with their patrons being served from the pedestrian clear path – defeating the purpose of the pedestrian clear path and further invading the very limited sidewalk space reserved for pedestrians.

A service aisle must be explicitly designated and required.

CONCLUSION

MCB4 is on record for supporting the 2020 emergency order for Open Restaurants and sidewalk cafes. We have written in support multiple times and made constructive suggestions on how to ameliorate the program.

However, we strongly object to the process the City is using to roll out this new permanent program. Even though removing references to sidewalk cafés from the zoning text may seem innocuous, we cannot support it unless the provisions related to special districts and excluded areas, sidewalk widening, doors and windows and grandfathered commercial use in residential districts are properly addressed in the zoning or by an adequate substitute in the legislation — an adequate substitute that does not adversely affect the quality of life, sanitation, and safety of our

residential neighborhoods. And that a transparent and formal public review process be required before the siting of sidewalk and roadside cafés.

This letter deals mainly with the proposed zoning text changes. The Board expects further discussion about the effect the expansion of open sidewalk restaurants would have on pedestrians, bike lanes, traffic, sanitation, fire and police emergency response, and residential quality of life.

As one of the districts in the City with the greatest concentration of sidewalk cafes, we are requesting that the rezoning and the legislation go hand in hand, that one not be approved without the other, that the Department of Transportation undertake public consultations as soon as possible to hear our input to the legislation and administration and operation of the proposed permanent program.

Sincerely



Lowell D. Kern
Chair
Manhattan Community Board 4



Jean Daniel Noland
Chair
Clinton/Hell's Kitchen Land Use Committee

Cc: Hon. Jerrold Nadler, U.S. Representative
Hon. Brad Hoylman, NYS Senator
Hon. Linda Rosenthal, NYS Assembly Member
Hon. Richard Gottfried, NYS Assembly Member
Hon. Corey Johnson, Speaker, City Council
Hon. Gale Brewer, Manhattan Borough President
Henry Gutman, Commissioner, NYC Department of Transportation



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f favorable			
# In f avor: 26	# Against: 0	# Abstaining: 1	Total members appointed to the board: 48
Date oFVote: 7/8/2021 12:00 AM		Vote Location: 71 West 23rd Street, NY NY	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing: 7/8/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	71 West 23rd Street

CONSIDERATION: CB5 resolution attached.

Recommendation submitted by	MN CB5	Date: 7/13/2021 11:15 AM
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MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Marisa Maack, District Manager

July 09, 2021

Marisa Lago
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Open Restaurants Text Amendment presented by Department of City Planning (DCP) and the Department of Transportation (DOT)

Dear Chair Lago:

At the regularly scheduled monthly Community Board Five meeting on Thursday, July 08, 2021, the following resolution passed with a vote of 26 in favor; 0 opposed; 1 abstaining:

WHEREAS, Before COVID-19 and the Summer of 2020, unenclosed, small, and enclosed sidewalk cafes were only allowed when certain conditions were met, and required a lengthy and costly application process; and

WHEREAS, COVID-19 upended the restaurant industry as government regulations and public health guidance forced restaurants to shut down indoor service for many months; and

WHEREAS, During the summer of 2020, New York City suspended existing sidewalk café rules to allow restaurants to open outdoor seating, saving over 10,000 restaurants and 100,000 jobs and eliminating cumbersome processes; and

WHEREAS, Due to the impact and popularity of extending outdoor seating (the “Open Restaurants” program), the Mayor announced in fall 2020 that the Open Restaurants program would be permanent; and

WHEREAS, Three legal changes are required to make this program permanent: (1) a Local Law to establish the program’s authority under the Department of Transportation; (2) a zoning text amendment to allow more locations to be eligible for a sidewalk café; and (3) Agency rulemaking to establish all the design, application, and process specifics (the “design guidelines”); and

WHEREAS, While these changes are being evaluated and enacted, the temporary program will be extended through the winter of 2022, allowing restaurants to continue to operate outdoor spaces; and

WHEREAS, In this resolution and vote, Community Board Five (CB5) Land Use, Transportation, Public Safety, and Parks committees jointly decided to provide input on only the *zoning* aspects of the Open Restaurants text amendment, or the first and second proposed changes as noted above: (1) A Local Law to

establish the program’s authority under the Department of Transportation and (2) a zoning text amendment to allow more locations to be eligible for a sidewalk café; and

WHEREAS, Change one (1) would move the regulation of sidewalk cafes from the Department of City Planning (DCP) to the Department of Transportation (DOT), consolidating sidewalk café applications, regulations, and enforcement under a single agency; and

WHEREAS, As a result of proposed change two (2), the siting changes of the zoning text amendment would be removed, permitting sidewalk cafes in previously restricted areas of CB5; and

WHEREAS, CB5 is supportive of a DOT-driven enforcement team empowered to write citations for violations including busway obstruction, sidewalk obstruction, and building over streetscape elements, and urges DOT to use this role to ensure restaurants are following regulations, including appearance, hours of operations, noise, and use of public space; and

WHEREAS, CB5 is generally supportive of the proposed zoning text amendments, but urges DCP and DOT to utilize the “design guidelines” to protect high-density areas and the public space now removed from the zoning, and

WHEREAS, CB5 reserves the right to reject program rules and criteria in the “design guidelines” if they don’t adequately supplement some of these zoning changes; and

WHEREAS, While CB5 is only currently weighing in on the zoning aspects of the text, CB5 would like to provide input on the third (3) proposed change—the design, application, and process specifics—at a future date, and requests that DCP and DOT come back to CB5 for review once the “design guidelines” are drafted; and

WHEREAS, Although this resolution addresses only the zoning text amendments to establish the Open Restaurants program, it is essential to establish public participation through Community Boards in the creation and approval of the design, application, and process specifics of the Open Restaurants program, and similarly the rights of the public through Community Boards to coordinate with the Department of Transportation on the approval and issuance of licenses under that program and with the right to comment on waivers from the established regulations and process; therefore be it

RESOLVED, Community Board Five **recommends approval** of the *zoning* aspects of the Open Restaurants text amendment, or the first and second proposed changes as noted above: (1) A Local Law to establish the program’s authority under the Department of Transportation and (2) a zoning text amendment to allow more locations to be eligible for a sidewalk café; and be it further

RESOLVED, That Community Board Five requests that Community Boards be given a role in the creation and approval of the design, application, and process specifics of the Open Restaurants program, as well as the right to comment on the approval and issuance of licenses under that program and any waivers from the established regulations and process; and be it further

RESOLVED, that Community Board Five requests that the Department of Transportation begin more aggressively enforcing the existing regulations to address any currently noncompliant Open Restaurants operations.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Nicholas Athanail
Chair, Public Safety & Quality of Life Committee



Layla Law-Gisiko

Chair, Land Use, Housing & Zoning Committee



E.J. Kalafarski

Chair, Transportation/Environment Committee



Clayton Smith
Chair, Parks and Public Spaces Committee

CC: Hon. Corey Johnson, New York City Council Speaker
Hon. Brad Hoylman, New York State Senator, 27th District
Hon. Robert Jackson, New York State Senator, 31st District
Hon. Richard Gottfried, New York Assembly Member, 75th District
Hon. Liz Krueger, New York Senator, 28th District
Hon. Carlina Rivera, New York Councilmember, District 2
Hon. Keith Powers, New York Councilmember, District 4
Gale Brewer, Manhattan Borough President



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: No Objection			
# In f avor: 41	# Against: 0	# Abstaining: 0	Total members appointed to the board: 41
Date oFVote: 9/14/2021 12:00 AM		Vote Location: On Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing: 8/23/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	On Zoom: https://zoom.us/webinar/register/WN_tIU0jHu9Si-e0GzveFchtg

CONSIDERATION: BE IT RESOLVED that Manhattan Community Board Six finds no objection with the proposed text amendment;

BE IT FURTHER RESOLVED that DOT continue to work with Manhattan Community Board Six as active participants as the agency builds out the new program, which would address but not be limited to: licensing rules and regulations, sunset provisions, design standards, and sustainability measures.

See attached resolution for full recommendation.

Recommendation submitted by	MN CB6	Date: 9/16/2021 11:22 AM
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KYLE ATHAYDE
CHAIR

SANDRO SHERROD, FIRST VICE CHAIR
MARK THOMPSON, SECOND VICE CHAIR



JESÚS PÉREZ
DISTRICT MANAGER

BRIAN VAN NIEUWENHOVEN, TREASURER
BEATRICE DISMAN, ASST. TREASURER
SEEMA SHAH, SECRETARY
MATT BONDY, ASST. SECRETARY

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
211 EAST 43RD STREET, SUITE 1404
NEW YORK, NY 10017

VIA E-MAIL

September 16, 2021

Marisa Lago, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Edward F. Pincar Jr.
Manhattan Borough Commissioner
NYC Department of Transportation
59 Maiden Lane, 37th Floor
New York, NY 10038

No objection to a Citywide Text Amendment that would create a permanent Open Restaurants program administered by the New York City Department of Transportation

At the September 14, 2021 Full Board meeting of Manhattan Community Board Six, the Board adopted the following resolution:

WHEREAS, on August 23, 2021, Manhattan Community Board Six (CB6) heard a presentation from the Department of City Planning (DCP) regarding the proposed Permanent Open Restaurants Text Amendment;

WHEREAS, during the summer of 2020, New York City enacted an emergency program that allowed for restaurants to serve diners outdoors. The program provided a vital lifeline to the industry, which helped save almost 11,000 restaurants and upwards of 100,000 jobs;

WHEREAS, due to the popularity of this program from both establishments and patrons alike, the New York City Council voted to establish a permanent outdoor dining program in October of 2020. The permanent program requires a series of legal changes, which first requires a text amendment to update the zoning text that would remove geographic restrictions to sidewalk cafés. This would be followed by transferring control of the sidewalk café program from the NYC Department of Consumer and Worker Protection to the NYC Department of Transportation (DOT), which would be coupled with a new set of requirements for the new program and culminating with the full

implementation of the new Roadway Café program by DOT. The emergency program will remain in effect through at least the winter of 2022, allowing transition time for the permanent program to be put into effect;

WHEREAS, this resolution focuses solely on the proposed citywide zoning text amendment, which would update the zoning code relating to sidewalk cafés and eliminate the current geographic restrictions. These changes are the first steps in establishing the new permanent program;

WHEREAS, CB6 is generally supportive of the Open Restaurants Program, as it seeks to transform the public realm through outdoor dining and activated streets. DOT should remain in close contact with the Board as it develops rules and regulations for this program;

THEREFORE, BE IT RESOLVED that Manhattan Community Board Six finds no objection with the proposed text amendment;

BE IT FURTHER RESOLVED that DOT continue to work with Manhattan Community Board Six as active participants as the agency builds out the new program, which would address but not be limited to: licensing rules and regulations, sunset provisions, design standards, and sustainability measures.

VOTE: 41 In Favor 0 Opposed 0 Abstention 1 Not Entitled

Best regards,

A handwritten signature in blue ink, appearing to read 'Jesús', with a stylized flourish at the end.

Jesús Pérez
District Manager

Cc: Hon. Gale Brewer, Manhattan Borough President
Hon. Carlina Rivera, Council Member
Hon. Keith Powers, Council Member
Hon. Ben Kallos, Council Member
Azka Mohyuddin, City Planner, NYC Department of City Planning
Scott Williamson, City Planner, NYC Department of City Planning
Colleen Chattergoon, Senior Borough Planner, NYC Department of Transportation



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

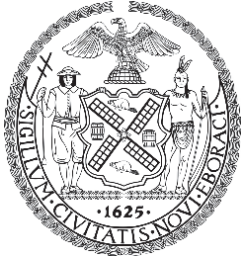
RECOMMENDATION: f favorable			
# In f avor: 21	# Against: 17	# Abstaining: 3	Total members appointed to the board: 50
Date oFVote: 9/9/2021 12:00 AM		Vote Location: Virtual Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing:		
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>	
Public Hearing Location:		

CONSIDERATION: See Attachment.

Recommendation submitted by	MN CB7	Date: 10/20/2021 3:27 PM
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THE CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD 7

250 West 87th Street, New York, NY 10024 • Phone (212) 362-4008

Website: <https://nyc.gov/mcb7> • E-mail: mn07@cb.nyc.gov

Steven Brown, Board Chair

Michelle P. Booker, District Manager

RESOLUTION

Date: September 9, 2021

Committee of Origin: Land Use

Re: N 210434 ZRY Proposed Open Restaurants Text Amendment,

<https://www1.nyc.gov/site/planning/plans/open-restaurants/open-restaurants-overview.page>

Full Board Vote: 21 In Favor 17 Against 3 Abstentions 0 Present

Committee: 9-0-0-0. Non-Committee Board Members: 1-2-2-0.

The following facts were presented to Community Board 7's Land Use Committee:

The NYC Department of City Planning (DCP) and the NYC Department of Transportation (DOT) are proposing the elimination, in its entirety, of *Chapter 4 – Sidewalk Café Regulations* of Article 1 of the Zoning Resolution (ZR). Chapter 4 addresses primarily: 1) city blocks and neighborhoods which are off-limits to cafes; 2) the structure and placement of enclosed cafes; and 3) delegation to the Department of Consumer and Worker Protection (DCWP), of the authority to grant rules relating to sidewalk cafes and to grant or deny café license applications. The proposed ZR amendment would permanently eliminate all location-based restrictions on cafes and remove the authority of DCWP to regulate cafes. .

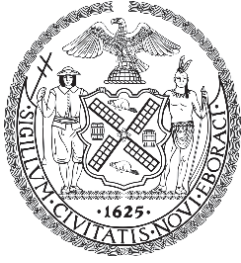
DCP and DOT stated that the ZR amendment would be the first step toward rethinking and redesigning café guidelines, particularly in view of the expanded presence of cafes brought about by relaxation of the rules during the pandemic. The next step would be a City Council resolution permanently transferring authority over cafes from DCWP to DOT, only then to be followed by the development of new guidelines by DOT. DOT stated its intention to streamline the application process and to formalize the status of roadway cafes, which have come into widespread use during the pandemic.

DCP and DOT indicated that the timing of such proposal was originally accelerated due to the anticipated ending of Emergency Executive Order 126 on October 31, 2020 which suspended certain provisions of the Administrative Code, the Rules, and the Zoning Resolution of the City of New York and directed DOT to “*establish and administer a program to expand seating options for restaurants, bars and other establishments in certain outdoor areas, including the sidewalk, curbside and street space ...the Open Restaurants Program (OPR).*” However, On September 25, 2020, Mayor de Blasio extended the Executive Order and announce it would be year-round and ultimately permanent. A DOT representative indicated it would look to local communities for input,, but at this stage there are no assurances that community boards (and the communities they serve) will have the opportunity to participate as DOT develops new guidelines, or that such new guidelines will include opportunities for community boards (or the communities they serve) to provide input and guidance on the substance of any proposed outdoor dining facilities on an application-by-application basis, as currently provided for in DCWP rules.

Passage of the proposed text amendment would have no immediate effect because the current Covid-19 emergency rules have eliminated the need for café applications and approvals through December 2022.

The following facts and concerns were taken into consideration:

- i. The present application may be the last opportunity community boards have to weigh in on this issue, which has profound impact on everyday life in our communities. CB 7 does not wish to



Steven Brown, Board Chair

Michelle P. Booker, District Manager

- relinquish its seat at the table or its essential opportunity to weigh in on location issues or the appropriate agency to oversee cafes before it has had an opportunity to examine and provide meaningful comment on DOT's proposed guidelines.
- ii. Due to the extension of Executive Order 126, there is no longer any urgency to the proposed amendment. Until at least year-end 2022, the zoning text of Chapter 4, including the geographic restrictions on location of cafes have been made null and void as per Executive Order 126. Prior to permanently deleting this text, CB 7 believes the first step in the process should be the creation of proposed guidelines, followed by City Council approval of the change in authority and an only then an amendment to the ZR.
 - iii. The current amendment application takes no position on any of the issues which may provoke controversy once the guidelines are proposed. Accordingly, Community Board 7 will not comment at this time on any specifics regarding the placement, structure, and physical appearance of cafes, all of which are proposed to be addressed by DOT, except that CB7 rejects any procedure which precludes community board review of the DOT guidelines before they take effect, and the siting and issuance of permits for roadside cafes, assuming they are allowed under the new guidelines.
 - iv. Community Board 7 enthusiastically approves efforts by the Applicants to rationalize and update café guidelines. We are mindful and sympathetic to the plight of restaurants during the pandemic and the need to stretch the rules to permit as much outdoor dining as possible. We support continuation of the temporary emergency.

WHEREFORE, BE IT RESOLVED THAT Community Board 7, Manhattan:

Disapproves the proposed Zoning Text Amendment to eliminate Article 1, Chapter 4 and related provisions of the Zoning Resolution at this time, and has the following comments:

1. Community Board 7, Manhattan, urges DCP and DOT to withdraw the current ULURP until such time as proposed café guidelines have been circulated by DOT and community boards have had an opportunity to consider and provide advice on the guidelines;
2. Community Board 7, Manhattan urges the City Council to delay any legislation which transfers authority over cafes from DCWP to DOT until such time as DOT has circulated at least preliminary proposed regulations;
3. Community Board 7, Manhattan commends the applicants for embarking on a process to overhaul café guidelines and takes no position at this time on whether DCWP, DOT or some other agency is best suited to lead this process; and
4. Community Board 7, Manhattan will object to any procedures which are not fully transparent, which fail to give community boards an opportunity to influence the proposed guidelines (which may differ from community to community) or will be proposed by which deprives community boards of the opportunity to review individual applications for sidewalk or roadway licenses, as well as guidelines for their siting, manner of construction, appearance, and adequacy of safety features.



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f favorable			
# In f avor: 25	# Against: 19	# Abstaining: 0	Total members appointed to the board: 42
Date oFVote: 8/2/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing: 8/2/2021 6:30 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom

CONSIDERATION:

Recommendation submitted by	MN CB7	Date: 8/25/2021 11:97 AM
-----------------------------	--------	--------------------------

Russell Squire
Chair

Will Brightbill
District Manager



**The City of New York
Community Board 8 Manhattan**

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New York, N.Y. 10022-1106
(212) 758-4340
(212) 758-4616 (Fax)
www.cb8m.com – Website
info@cb8m.com – E-Mail

September 26, 2021

Marisa Lago, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Open Restaurants / Sidewalk Cafes Text Amendment (ULURP # N210434ZRY). Deadline September 28, 2021

At the Land Use Committee meeting of Community Board 8 Manhattan held on September 2, 2021, the board approved the following resolution by a vote of 27 in favor, 15 opposed, 0 abstentions, and 0 not voting for cause.

WHEREAS, the special permit would allow the NYC Department of Transportation to administer the Permanent Open Restaurant program (POR), and

WHEREAS, the proposed text amendment will remove sidewalk café regulations from the Zoning Resolution to increase geography eligibility as sidewalk cafes will become part of a unified sidewalk and roadway outdoor dining program administered at DOT,

THEREFORE, BE IT RESOLVED that Community Board 8 Manhattan **APPROVES** the application for a text amendment as presented.

Please advise our office of any action taken on this matter.

Sincerely,

Russell Squire

Russell Squire
Chair

cc: Honorable Bill de Blasio, Mayor of the City of New York
Honorable Carolyn Maloney, 12th Congressional District Representative
Honorable Gale Brewer, Manhattan Borough President
Honorable Liz Krueger, NYS Senator, 28th Senatorial District
Honorable José M. Serrano, NYS Senator, 29th Senatorial District
Honorable Dan Quart, NYS Assembly Member, 73rd Assembly District
Honorable Rebecca Seawright, NYS Assembly Member 76th Assembly District
Honorable Robert J. Rodriguez, NYS Assembly Member 68th Assembly District
Honorable Ben Kallos, NYC Council Member, 5th Council District
Honorable Keith Powers, NYC Council Member, 4th Council District



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional favorable			
# In favor: 29	# Against: 0	# Abstaining: 2	Total members appointed to the board: 48
Date of Vote: 9/16/2021 12:00 AM		Vote Location: Zoom/Webinar	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/16/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom/Webinar

CONSIDERATION: Please see attached MCB9 Conditional Favorable resolution re: ULURP Number N 210434 ZRY - DCP Zoning Text Amendment.

Recommendation submitted by	MN CB9	Date: 9/21/2021 4:07 PM
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THE CITY OF NEW YORK
COMMUNITY BOARD 9
MANHATTAN

Morningside Heights
Manhattanville
Hamilton Heights

September 20, 2021

Hon. Kenneth J. Knuckles, Esq.
Vice Chairman
Department of City Planning
Equitable Life Building
120 Broadway, 31st Floor
New York, New York 10271

Dear Vice Chairman Kenneth J. Knuckles, Esq.,

At its regularly scheduled General Board Meeting/Public Hearing held remotely on Thursday, September 16, 2021, Manhattan Community Board No. 9 (MCB9) passed the following resolution: DCP Zoning Text Amendment (ULURP Number N 210434 ZRY) "Open Restaurants" by a vote of 29 in favor, 0 opposed 2 abstentions:

WHEREAS the text of the New York City Zoning Resolution currently establishes regulations of sidewalk cafes in Article I, Chapter 4, in order to advance the stated goals of:

- a) [Ensuring] adequate space for pedestrians on the sidewalk adjacent to sidewalk cafes.
- b) [Promoting] sidewalk cafes as visual amenities that better relate to the streetscape.
- c) [Preserving] and [enhancing] the character of neighborhoods throughout the City.
- d) [Simplifying] administrative regulations and [strengthening] enforcement procedures for sidewalk cafes and [ensuring] that such requirements are effective, efficient, and enforceable.
- e) [Promoting] the most desirable use of land and thus [conserving] the value of land and buildings and thereby [protecting] the City's tax revenues.

and generally permits such cafes areas zoned for commercial use other than C3 districts, while leaving design details for sidewalk cafes to the Department of Consumer Affairs; and

WHEREAS the Department of City Planning (DCP) has proposed in its "Open Restaurants Text Amendment" (ULURP Number N 210434 ZRY) to largely remove such regulations from the zoning code in favor of transitioning the regulation of such cafes to the Department of Transportation (DOT); and

WHEREAS most areas in Manhattan Community District 9 (MCD9) which are zoned to allow for restaurant operation already allow sidewalk cafes; and

WHEREAS the few restaurants operating as grandfathered nonconforming uses within residential districts lacking a commercial overlay generally add to the street life and character of their blocks in a positive way; and

WHEREAS the proposed Open Restaurants plan would eliminate applications for new enclosed sidewalk cafes, which MCB9 has voted to oppose in the past; and

WHEREAS the COVID-19 pandemic has dealt enormous damage to small businesses, including restaurants, in MCB9 and across the City, while forcing residents and businesses alike to adapt to new practices, including outdoor dining and roadbed dining; and

WHEREAS MCB9 continues to suffer from a loss of parking space for residents due to DOT street redesigns, use of existing parking for car rental and car share operations, new scooter parking, and will likely see further reduction in parking available to residents as commuters park their cars in MCB9 to avoid the proposed congestion pricing zone in Midtown and Lower Manhattan; and

WHEREAS DOT has refused to expand diagonal parking on 120th Street west of Broadway; and

WHEREAS the Open Restaurants program as currently implemented in its emergency form has seen rapidly-changing rules, uneven enforcement, and confusing jurisdictional overlaps by City agencies as it was rolled out during the pandemic emergency; and

WHEREAS MCB9 recognizes concerns about sanitation, sidewalk clearance, noise issues, and other challenges and impositions posed by outdoor dining are real and must be mitigated; and

WHEREAS as part of the transition of regulation from DCP to DOT, DOT would ensure adequate sidewalk clearance, accessibility measures for those with wheelchairs and other assistive devices, roadway clearance, visibility of street signs for vehicle drivers, and sanitation enforcement; and

WHEREAS the proposal as outlined by DCP explicitly “would not change the process for how sidewalk cafes are reviewed by local community boards;” and

WHEREAS MCB9 strongly supports the contributions to an active and engaging street life brought by outdoor dining;

THEREFORE BE IT RESOLVED that MCB9 supports the proposed Open Restaurants Text Amendment (ULURP Number N 210434 ZRY) with the following conditions:

1. The Department of Transportation must formally require public and Community Board input on the initial rulemaking and subsequent amendments to the rules governing outdoor dining, similar to the ULURP process that changes to the current regulations existing in the Zoning Resolution must undergo;
2. Community Boards must be notified of outdoor dining applications and applicants must be required to appear before Community Boards for Community Boards’ advisory recommendations on sidewalk and roadway cafes and any other form of outdoor dining, as is currently the process for the sidewalk cafes as indicated in the Zoning Resolution;
3. Rules regulating outdoor dining must be coupled with robust and funded sanitation inspection and enforcement programs to ensure outdoor dining does not contribute to community issues with rats, insects, and other pests;
4. Rules regarding outdoor dining must limit outdoor dining to reasonable hours of operation and prohibit amplified sound, with the opportunity for the Community Board and DOT to include

Hon. Kenneth J. Knuckles, Esq.

September 20, 2021


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stipulations requiring modified hours in problem areas or for problem establishments to mitigate noise issues;

5. Rules regarding outdoor dining must include a provision allowing DOT to revoke or modify an outdoor dining permit for an establishment with frequent and unaddressed problems regarding noise, sanitation, sidewalk obstruction, safety issues, or other burdens to the community;
6. DOT rules must ensure safety of electrical cabling, electrical and heat safety, and clear walkways;
7. DOT rules must provide for an evaluation to ensure that roadway dining does not unduly reduce or block roadway clearance for emergency vehicles;
8. DOT rules must not permit roadway dining adjacent curbside bike lanes (bike lanes in between sidewalk and dining area), due to safety issues posed to diners, servers, and cyclists;
9. DOT rules shall explicitly account for additional temporary sidewalk obstructions like building scaffolding in requiring adequate sidewalk clearance;
10. DOT shall produce an annual safety report on safety incidents involving sidewalk and roadway cafes (traffic accidents, fires, weather-related damages/collapses) with details for each community district;
11. DOT to make efforts to increase residential parking where feasible in MCB9 by expanding diagonal parking on appropriate streets including W 120th Street and working with MCB9 to consider locations where parking might reasonably be accommodated, such as Convent Avenue at W 146th Street;

If you have any questions and/or further information is needed, please do not hesitate contacting me or District Manager, Eutha Prince, at the board office (212) 864-6200.

Sincerely,


Barry Weinberg
Chair

cc: Hon. Bill De Blasio, Mayor
Hon. Scott Stringer, NYC Comptroller
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Brian Benjamin, State Senator
Hon. Robert Jackson, State Senator
Hon. Daniel J. O'Donnell, Assembly Member
Hon. Inez Dickens, Assembly Member
Hon. Al Taylor, Assembly Member
Hon. Mark Levine, City Council Member
Hon. Bill Perkins, City Council Member
Mr. Zead Ramadan, Interim Executive Director, West Harlem Development Corporation



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable			
# In Favor: 25	# Against: 1	# Abstaining: 9	Total members appointed to the board: 50
Date of Vote: 9/28/2021 12:00 AM		Vote Location: video conference	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/22/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	zoom.us/webinar/register/WN_lv4SMResQD2RCBE9Rzi0tA

CONSIDERATION: opposed with conditions

Recommendation submitted by	MN CB11	Date: 10/1/2021 10:36 AM
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COMMUNITY BOARD ELEVEN

BOROUGH OF MANHATTAN
1664 PARK AVENUE
NEW YORK, NY 10035
TEL: 212-831-8929
FAX: 212-369-3571
www.cb11m.org

Nilsa Orama
Chair

Angel D. Mescaín
District Manager

September 29, 2021

Marisa Lago
Director
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: Recommendation on Land Use Application N 210434 ZRY- Open Restaurants Text Amendment

Dear Director Lago,

Community Board 11 (CB11) appreciates the opportunity to review and comment on the Department of City Planning's proposed Open Restaurants Text Amendment.

The Department of City Planning (DCP) together with the Department of Transportation (DOT) is proposing a zoning text amendment to facilitate a component of a permanent citywide Open Restaurants program. Specifically, the zoning text amendment would delete Article 1, Chapter 4 of the Zoning Resolution in its entirety, which would have the effect of removing geographic limitations to where restaurants can apply for sidewalk cafes.

The proposed zoning text amendment would affect every community district within the City. The proposed action would remove the definitions of sidewalk cafes from the Zoning Resolution and any mentions of them in special districts, as well as other clean-up text to fully remove any zoning prohibitions related to the operation of sidewalk cafes.

Description of the Proposed Action

The Proposed Action would also remove any zoning geographic restrictions on sidewalk café eligibility in the program to allow any restaurant with an active DOHMH food service establishment license and ground floor frontage to apply for an Open Restaurant permit so long as they meet the siting criteria as established in the proposed DOT permanent Open Restaurants program.

Actions Necessary to Facilitate the Project

Revisions to provisions of the New York City Zoning Resolution (ZR) to the extent necessary to provide for the implementation, administration and operation of the Open Restaurants Program, including:

- ZR, Article 1, Chapter 2, relating to sidewalk café definitions;
- ZR, Article 1, Chapter 4, relating to sidewalk cafe regulations;
- ZR Section 22-00, to the extent that a sidewalk café may not be enlarged in R10H Districts;
- ZR Section 32-411, to the extent such section does not allow for operable windows;
- ZR Section 33-05 & 43-03, to clarify the compatibility of DOT café programs and sidewalk widening;
- ZR Section 52-34, to the extent such section requires certain eating and drinking establishment uses in Residence Districts to be located within completely enclosed buildings;
- ZR Section 73-243, to extent BSA special permit provisions allowing for eating and drinking establishments would preclude operable windows;
- ZR Section 83-05 to extent that it would preclude operable windows in a Limited Commercial District; • ZR Section 97-03, 97-13, 97-14, 97-412 to the extent such section limits the locations of sidewalk cafes in the Special 125th Street District;
- ZR Section 109-02, to the extent such section imposes any condition on the use of public streets and sidewalks for the maintenance of sidewalk cafes or outdoor cafes by restaurants in the Special Little Italy District; and
- ZR Section 117-03, 117-05, to the extent such section limits the locations of sidewalk cafes in the Special Long Island City Mixed Use District.

Community Board Recommendation

Community Board 11 met on September 28, 2021 and voted to recommend that this application be rejected with the following conditions:

1. the NYC Department of Transportation ensure that community boards have an engagement process for approvals of the sidewalk cafe permits
2. the NYC Department of Transportation provide an enforcement method for sidewalk cafes and ensure proper safety regulations for pedestrian walkway, street lighting, and sanitation concerns
3. that a government agency with more experience in this regard would be appointed to oversee the permit approval process

Full Board Vote: In Favor: 25; Opposed: 1; Abstentions: 9; Present not Voting: 1

If you have any questions regarding our recommendation, please contact Angel Mescaín, District Manager, at 212-831-8929 or amescain@cb11m.org.

Sincerely,



Nilsa Orama
Chair

cc: Hon. Gale A. Brewer, Manhattan Borough President (via email)
Hon. Diana Ayala, New York City Council (via email)

Hon. Bill Perkins, New York City Council (via email)
Hon. Ben Kallos, New York City Council (via email)
Hon. Keith Powers, New York City Council (via email)
Hon. Brian Benjamin, New York State Senate (via email)
Hon. Jose M. Serrano, New York State Senate (via email)
Hon. Robert J. Rodriguez, New York State Assembly (via email)
Hon. Inez Dickens, New York State Assembly (via email)
Elsie Encarnacion, Community Board 11 (via email)
Judith Febbraro, Community Board 11 (via email)



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor:	# Against:	# Abstaining:	Total members appointed to the board:
Date of Vote: 5/23/2021 9:00 P8		Vote Location:	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:		
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>	
Public Hearing Location:		

CONSIDERATION:

Recommendation submitted by	8 N Cb 12	Date: 5/23/2021 12:07 P8
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Community Board 12 - Manhattan Washington Heights & Inwood

530 West 166th St. 6th Floor, New York, NY 10032

Phone: (212) 568-8500, Fax: (212) 740-8197

Website: www.nyc.gov/mcb12

Eleazar Bueno, Chairperson
Ebenezer Smith, District Manager

September 23, 2021

Hon. Marisa Lago, Chair
New York City Department of City Planning
120 Broadway
31st Floor
New York, NY 10271

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE
PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

Dear Chair Lago:

At the Executive Committee Monday, September 23, 2021, Community Board 12 Manhattan, Executive Committee, passed the following resolution with a vote of 11 in favor, 0 opposed, 0 abstentions, not supporting the adoption of the associated Permanent Open Restaurants Zoning Text Amendment at this time; and urging the Department of City Planning and the Department of Transportation to draft and circulate for public review the design guidelines and rules and regulations proposed for the Permanent Open Restaurants Program before seeking to adopt the Zoning Text Amendment. Provisional approval is hereby given subject to the passage at the September 28, 2021, General Meeting.

Whereas: During the COVID-19 ban on indoor dining the City of New York (the "City") suspended existing outdoor dining regulations, including zoning location rules, to create an emergency outdoor dining program (the "Emergency Open Restaurants Program" or the "Emergency Program") that provided an economic lifeline to over 11,000 participating restaurants citywide and allowed city residents the opportunity to enjoy outdoor dining at a time when indoor gatherings posed a public safety hazard. The Emergency Program remains in effect into 2022. The City, working through the Department of City Planning ("DCP") and the Department of Transportation ("DOT"), proposes to transition the emergency program into a permanent open restaurants program (the "Permanent Open Restaurants Program" or the "Permanent Program"). As part of the Program, all geographic restrictions imposed by zoning where sidewalk cafes can be located would be removed from the NYC Zoning Resolution. Additionally, the administration of the sidewalk café program would move from the Department of Consumer Affairs and Workforce Protection to DOT, the application process for a sidewalk café would be streamlined, and rules would be created for a permanent roadway dining program. On June 21, 2021, DCP released the Permanent Open Restaurants Zoning Text Amendment (the "Text Amendment") for public review. Community Boards and Borough Presidents have until September 27, 2021, to provide comments; and

Hon. Marisa Lago, Chair

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

September 23, 2021

Page 2

Whereas: Although DCP is not responsible for the approval of sidewalk cafés, zoning regulates where sidewalk cafés can be located and what type and size of café is allowed, i.e.: unenclosed sidewalk café, small unenclosed sidewalk café, enclosed sidewalk café. Under current zoning, sidewalk cafes are prohibited in large sections of Brooklyn, Queens, Staten Island, and the Bronx. Geographic areas where sidewalk cafes are permitted under zoning are concentrated in Manhattan, western sections of Queens and Brooklyn and certain thoroughfares in the Bronx and Staten Island. The intent of the Permanent Program is to create a new program under DOT that includes both sidewalk cafes and roadway cafes, balances the needs of the street and sidewalk, and uses what worked under the Emergency Program to create guidelines for the Permanent Program; and

Whereas: The Zoning Text Amendment would delete Article 1, Chapter 4 of the Zoning Resolution in its entirety, effectively removing all zoning location restrictions on sidewalk cafes, removing any language that prevents sidewalk cafés in Special Zoning Districts, removing certain text pertaining to enclosure provisions, text that precludes operable windows that serve restaurants, clarifying the sidewalk width text to ensure no conflict with the Permanent Program that would preclude or limit the outdoor dining under the Permanent Open Restaurants Program, and would clean up other zoning references and definitions that are required to enable the Permanent Open Restaurants Program. With the removal of zoning restrictions, DOT would be responsible for administering the Permanent Program and the approval of sidewalk cafes would focus on matters pertaining to their siting and location. DOT would be responsible for enforcing requirements pertaining to ADA compliance, clear paths, and the location of barriers. NYPD would continue to be responsible for enforcing noise regulations. The Department of Sanitation would continue to be responsible for regulating garbage removal by private carters; and

Whereas: The Emergency Program succeeded in making it possible to locate sidewalk cafés in all areas of New York City, eliminating lengthy application and approval processes, attracting the participation of over 11,000 restaurants (approximately 51% of which are outside of Manhattan), and saving an estimated 100,000 restaurant-related jobs. Challenges to the Emergency Program include the clarity, consistency, and communication of applicable rules; maintaining access for emergency vehicles, not blocking street signage; enforcement, balancing the interest of all sidewalk and street users; maintaining clear and accessible paths for persons with mobility disabilities; and also balancing the interests of local residents with that of restaurant owners and patrons; and

Whereas: On September 9, 2021, representatives of DCP and DOT presented the Text Amendment to Community Board 12M's Land Use Committee ("Land Use" or the "Committee"). The Committee questioned why city agencies having jurisdiction have not to-date more satisfactorily addressed the challenges encountered by the Emergency Program and how these challenges would be addressed in the context of the Permanent Program.

Hon. Marisa Lago, Chair

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE
PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

September 23, 2021

Page 3

Among the concerns cited by the Committee is DOT's lack of responsiveness to requests for it to attend a meeting of the Washington Heights and Inwood Task Force on Noise in February 2021 to discuss noise and quality-of-life issues (Manhattan Borough President Gale Brewer attended the meeting in person, the Mayor's Office and various city agencies such as NYPD, DEP and FDNY were represented as were the Public Advocate and the Manhattan District Attorney) and its subsequent failure to follow up with the task force on those matters. The Committee also questioned how enforcement efforts will be improved for the balance of the Emergency Program, and then, as the proposed Permanent Program is commenced, how business owners will be informed of the rules and regulations applicable to the Permanent Program, and what actions will be taken to ensure garbage is not stored near outdoor eating areas. The Manhattan Borough President's Office also requested clarification of various aspects of the operation of the Emergency Program, including self-certification by participating restaurants, enforcement of clear path requirements, and the general enforcement of applicable rules and regulations; and

Whereas: The Permanent Program would grandfather existing enclosed sidewalk cafes but would prohibit new enclosed sidewalk cafes. The informational materials available for public review give little attention to this significant provision of the Permanent Program. DCP and DOT advised that requests for the approval of enclosed sidewalk cafés have declined, but that is not a reason to prohibit new ones. Establishing an enclosed sidewalk café should remain a business decision subject to applicable municipal rules and regulations. Similarly, stating that because of COVID-19, City government wants to move everything outside does not make sense since indoor dining will continue, unenclosed sidewalk cafes are seasonal, and restaurant patrons cannot enjoy unenclosed sidewalk cafes during periods of inclement weather; and

Whereas: The Permanent Program would include both sidewalk cafes and roadway dining. Under the Emergency Program, many restaurants implemented sidewalk and roadway cafes. The Permanent Program must carefully consider the collective impact of each on local residents and all users of the street and sidewalk, included enforceable mechanisms for mitigating adverse impacts, and ensure that the agencies having responsibility for enforcement diligently perform their duties. DCP and DOT advised the Committee that design guidelines and rules and regulations for the Permanent Program will be established, but they were not circulated for review and comment, and, at this juncture, may not yet be drafted. It is premature to advance the Text Amendment at this time absent any public review of the design guidelines and the rules and regulations that would govern the administration of the Permanent Program or thorough consideration of how the challenges experienced in the course of the Emergency Program will be addressed in the Permanent Program; now, therefore, be it

Resolved: Community Board 12-Manhattan understands the intent of the Permanent Open Restaurants Program proposed by the Department of City Planning and the Department of Transportation but does not support adoption of the associated Permanent Open Restaurants Zoning Text Amendment at this time; and be it further

Hon. Marisa Lago, Chair

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE
PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

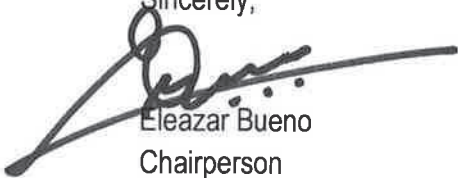
September 23, 2021

Page 4

Resolved: Community Board 12-Manhattan urges the Department of City Planning and the Department of Transportation to draft and circulate for public review the design guidelines and rules and regulations proposed for the Permanent Open Restaurants Program before seeking to adopt the Zoning Text Amendment; and be it further

Resolved: Community Board 12-Manhattan urges the Department of City Planning and the Department of Transportation, after they have considered and responded to public comments provided on the proposed design guidelines, rules and regulations, to undertake and monitor a pilot program that uses the approved design guidelines, rules and regulations to evaluate their effectiveness before seeking to implement a Permanent Open Restaurants Program.

Sincerely,



Eleazar Bueno
Chairperson

cc: Hon. Bill de Blasio, Mayor
Hon. Jumaane Williams, Public Advocate
Hon. Scott M. Stringer, Comptroller
Hon. Brian Benjamin, State Senator
Hon. Robert Jackson, State Senator

Hon. Gale Brewer, Manhattan Borough President
Hon. Al Taylor, Assembly Member
Hon. Carmen De La Rosa, Assembly Member
Hon. Ydanis Rodriguez, Council Member
Hon. Mark Levine, Council Member



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 11	# Against: 22	# Abstaining: 1	Total members appointed to the board: 33
Date of Vote: 9/21/2021 12:00 AM		Vote Location: Zoom virtual meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/21/2021 6:30 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom Meeting

CONSIDERATION: The Board (C B 1, Queens) voted to recommend approval of the application with 11 in favor, 22 opposed to the application and 1 not voting for cause. The motion was defeated.

Recommendation submitted by	QN CB1	Date: 10/13/2021 4:26 PM
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City of New York
Community Board #1, Queens
The Pistilli Grand Manor
45-02 Ditmars Boulevard, LL Suite 1025
Astoria, N.Y. 11105
Tel: 718-626-1021, Fax: 718-626-1072
E-mail: qn01@cb.nyc.gov

Donovan Richards
Borough President, Queens
Maricela Cano
Director, Community Boards
Marie Tomiali
Chairperson
Florence Koulouris
District Manager

EXECUTIVE BOARD

Marie Tomiali
Chairperson

First Vice Chairperson
Amy Hau
Second Vice Chairperson
Richard Khuzami
Third Vice Chairperson
Avninder Aujla
Executive Secretary
Thomas Ryan
Sergeant-at-Arms

COMMITTEES & CHAIRPERSONS

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Public Safety
Ann Bruno
Antonio Meloni
Transportation
Mitchell Waxman

September 23, 2021

Honorable Marisa Lago
Chair
NYC City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271

RE: **N 210434 ZRY Open Restaurant Zoning Text Amendment**

Dear Chair Lago:

On September 21, 2021, Community Board I Queens (CBIQ) held a duly advertised virtual public hearing on the referenced application. With a quorum present and following a presentation on the proposed text amendment, the Board voted by roll call on a motion to recommend approval of application N 210434 ZRY with 11 in favor, 22 opposed and 1 not voting for cause. The motion was defeated.

Background and Public Review

On June 21, 2021, the City Planning Commission referred out for community review and comment the proposed citywide Open Restaurants Zoning Text Amendment, filed by the NYC Department of City Planning (DCP) and the NYC Department of Transportation (DOT). If approved, the text change would delete Article 1, Chapter 4 Sidewalk Café Regulations from the Zoning Resolution as well as all other zoning text related to sidewalk cafes.

On September 1, 2021, the Board's Land Use and Zoning Committee held a virtual public informational session on the amendment with a DCP presentation. The committee did not issue a recommendation for the Board on the ULURP application. Although most of the discussion centered on the open restaurant program, the following comments were made on the zoning text amendment:

- Eliminating the text now is a premature action if there are no substitute guidelines ready for review with community input.
- Eliminating the café zoning text will leave no locational guidelines in place except commercial zones and additional criteria might be needed for certain locations to address unique sidewalk or density issues.
- The future is unclear for sidewalk and roadway cafes located in residential zones: which ones would be grandfathered under the permanent program and will legal-nonconforming restaurants be permitted to apply for café or roadway licenses. A recommendation was made to assure that restaurants in residential areas with commercial overlays would be allowed sidewalk and roadway cafes.

At CBIQ's public hearing on September 21, 2021, DCP representatives presented the text and provided more information about the permanent restaurant program. The text amendment would eliminate locations in the city where sidewalk cafes are now prohibited from locating, as well as sidewalk clearance requirements. As a result of the text amendment, jurisdiction over cafes would be transferred to DOT to keep the temporary Open Restaurant Program operating and to create a permanent program. DOT is devising guidelines that would streamline the current application and approval process, set standards and criteria for approving sidewalk and roadway cafes and revise clear path requirements and waivers for pedestrian rights of way. DOT will be responsible for administering the program, granting revocable consent for both sidewalk and roadway seating as well as program enforcement.

BOARD MEMBERS (cont.)

Helene Abiola
Rose Anne Alafogiannis
George Alexiou
Louise Bordley
Shoma Brahmanandam
Irak Dahir Cehonski
Jean Marie D'Alleva
Dean O. Feratovic
Shahenaz Hamde
Helen Ho
Vanessa Jones-Hall
Nancy Konipol
Amr Kotb
Jerry Kril
Cristina Lastres
Diana Limongi
Chelsea Lopez
Hannah Lupien
Jeffrey Martin
Amin Mehedi
Doreen Mohammed
Mary O'Hara
Dino Panagoulas
Juliet Payabyab
Yawne Robinson
Brian Romero
Andre Stith
Rod Townsend
Rosemary Yelton

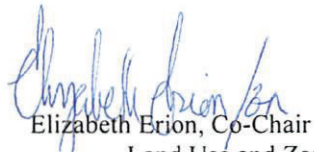
There were no public speakers on the text amendment at the public hearing, but comments and questions from board members concerned current operations and the future permanent Open Restaurant program:

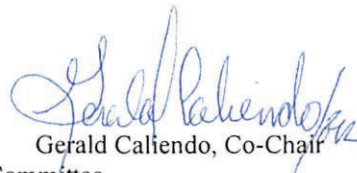
- o New design guidelines are not yet complete and are being written without community input;
- o Design guidelines, construction standards and DOB review are needed for street structures; perhaps even aesthetic standards since structures are in a public right of way;
- o Future disposition is unknown for those roadway and sidewalk cafes that were built under the temporary program for which significant financial investment was made to build permanent structures;
- o Current rules are not enforced, and abuses are ignored: sidewalk space with excess tables and chairs, menu boards, decorative planters and cordoned areas on the sidewalk for diners' queues waiting for tables that significantly restrict mobility in the pedestrian right of way;
- o Enforcement is and has always been non-existent for noise, music and compliance with existing license; there are quality of life issues for residents above ground floor restaurants;
- o Public review of new sidewalk and roadway cafes must still go through ULURP;
- o Disposition of unlicensed enclosed cafes built during temporary restaurant program;
- o Should there be a sunset for the roadway component of the Open Restaurants Program; this began to boost employment and recoup lost revenue;
- o Should the program be seasonal - sidewalk and roadway cafes removed from October to April;
- o Maintain Community Board review of sidewalk and roadway cafes and apply fast review for change of business name/owner;

These comments forwarded to DCP and DOT for consideration to relate community concerns about the operations of the temporary Outdoor Restaurant Program and to allow the community board input into the proposed permanent program guidelines.

Sincerely,


Marie Torniali
Chairperson


Elizabeth Erion, Co-Chair
Land Use and Zoning Committee


Gerald Caliendo, Co-Chair
Land Use and Zoning Committee

cc: Honorable Donovan Richards, Queens Borough President
Honorable Michael Gianaris
Honorable Jessica Ramos
Honorable Zohran Mamdani
Honorable Catherine Nolan
Honorable Brian Barnwell
Honorable Jimmy Van Bramer
Mr. Frank B. Perez, New York City Council, District 22
Mr. Irving Poy, Director, Land Use, BPQ
Ms. Alexis Wheeler, Director, Queens Office DCP
Ms. Sarit Platkin, DCP



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 21	# Against: 8	# Abstaining: 1	Total members appointed to the board: 48
Date of Vote: 9/9/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/9/2021 6:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Virtual on Zoom

CONSIDERATION: With a quorum present the recommendation was to oppose the application at this time.

Recommendation submitted by	QN CB2	Date: 9/30/2021 11:31 AM
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Donovan Richards
Queens Borough President

September 10, 2021

Ms. Marisa Lago
Director
Department of City Planning
City Planning Commission
Calendar Information Office
120 Broadway, 31st Floor
New York, NY 10271

RE: **DCP - Citywide Proposed Open Restaurants Text Amendment ULURP # N210434ZRY**

Dear Ms. Lago:

On September 9, 2021, Community Board 2 held a public hearing concerning the Citywide Proposed Open Restaurants Text Amendment ULURP # N210434ZRY.

At that meeting with a quorum present a motion was made and seconded to oppose the application at this time.

The vote was 21 in favor; 8 opposed, and 1 abstention.

If you have any questions, please contact CB 2.

Sincerely,


Debra Markell Kleinert
District Manager

DMK/mag

cc: Honorable Alexandria Ocasio-Cortez, US Congress
Honorable Carolyn B. Maloney, US Congress
Honorable Grace Meng, US Congress
Honorable Nydia M. Velazquez, US Congress
Honorable Michael Gianaris, NY State Senate
Honorable Brian Barnwell, NYS Assembly
Honorable Jessica Gonzalez-Rojas, NYS Assembly

Community Board No. 2

43-22 50th Street, 2nd Floor
Woodside, New York 11377

(718) 533-8773

Fax (718) 533-8777

Email qn02@cb.nyc.gov

www.nyc.gov/queenscb2

Lisa Deller
Chairperson

Debra Markell Kleinert
District Manager

Honorable Catherine T. Nolan, NYS Assembly
Honorable Robert Holden, NYC Council Member
Honorable Jimmy Van Bramer NYC Council Member
Honorable Daniel Dromm, NYC Council Member
Honorable Donovan Richards, Queens Borough President of the Borough of Queens
Irving Poy, Queens Borough President's office
Victoria Garvey, Queens Borough President's Office
Alexis Wheeler, Department of City Planning
Teal Delys, Department of City Planning
Lisa Deller, Chairperson, Community Board 2
Christine Hunter, Co-Chair, Land Use Committee
Nicole Garcia, NYC Department of Transportation
Gretha Suarez, NYC Department of Transportation

DCP ULURP Project Application – Citywide Proposed Open Restaurants Text Amendment



COMMUNITY BOARD No. 3, Q.
82-11 37th Avenue, Suite 606
Jackson Heights, New York 11372
Telephone: (718) 458-2707 Fax: (718) 458-3316
Website: www.CB3QN.NYC.GOV
Email: Communityboard3@nyc.rr.com

September 23, 2021

Open Restaurants Text Amendment

Queens Community Board 3 held a public hearing for DCP's Open Restaurant Text Amendment on Thursday, September 23, 2021 at its full board meeting. The motion to disapprove the aforementioned proposal was passed with a vote of 30 In Favor 5 Opposed 0 Abstentions.

Queens Community Board3 supports our local restaurants and acknowledges the serious impact that Covid-19 has had on their businesses. However, in reviewing DCP's current proposed Open Restaurant text amendment, we believe that further development is required.

Queens Community Board 3 recommends that the Open Restaurants Text Amendment be disapproved because of the following concerns:

- DOT, DOB and DCA working jointly would have a better handle on the oversight of Open Restaurants.
- The proposed amendment does not mention how the rules/policies would be enforced, nor whether sufficient enforcement personnel will be hired to oversee the implementation of the agency's policies.
- Will permitting fees be affordable to all small businesses?
- All sidewalks/streets are not conducive for Sidewalk /Street Cafe uses.
- Has there been a study to determine the impact reduced parking would have on local businesses?

Queens Community Board3 cannot support the current text amendment that has been offered; there are far too many issues that have not been addressed or left out of the proposal. It is suggested DCP revisit this matter.

We thank DCP for the opportunity to comment on the application. We look forward to working with the agency to come up with a workable solution.

Sincerely,



Renetta English

Queens Community Board 3



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional favorable			
# In favor: 23	# Against: 11	# Abstaining: 0	Total members appointed to the board: 34
Date of Vote: 9/14/2021 12:00 AM		Vote Location: via Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: Hire Inspectors for bi-monthly inspections for sidewalk cafes; Which city agency would enforce and follow-up to ensure restaurants follow guidelines. DOT is already overwhelmed. Noise complaints directly forwarded to DOT as central monitoring agency.
Smokers: where would they smoke? What are those requirements? Outside smoking will add to pollution.
Outdoor cafes take away from public space. More studies needed.
Liability--if someone falls or accident occurs, who assumes liability?
Would the cafe extend to street level and/or encroach onto neighboring businesses;
Water clogging drainage systems; Pedestrian and parking spaces removed;
Are the outdoor cafes for vaccinated or unvaccinated persons; Quality of Life issues not addressed; Noise

Recommendation submitted by	QN CB4	Date: 9/27/2021 2:01 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional favorable			
# In favor: 32	# Against: 6	# Abstaining: 0	Total members appointed to the board: 50
Date of Vote: 9/14/2021 12:00 AM		Vote Location: Remote via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/14/2021 7:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	68-02 Metropolitan Avenue Middle Village, NY 11379

CONSIDERATION: Queens Community Board 5, Queens is in favor of the Proposed Open Restaurants/Sidewalk Cafes Citywide Zoning Text Amendment, with the following considerations:

1) That there be a minimum of 5 feet of sidewalk passage, adjacent to the outdoor dining area, for a pedestrian to safely walk through.

2) That food must be served in the outdoor open restaurant/sidewalk cafe, and that the outdoor area not be solely for the consumption of alcoholic beverages.

3) The outdoor open restaurants/sidewalk cafes should close no later than 10pm Sunday through Thursday, and no later than Midnight on Fridays and Saturdays.

4) That additional liquor license fees be waived for the additional space used for open restaurants/sidewalk cafes.

Recommendation submitted by	QN CB5	Date: 9/23/2021 3:27 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f avorable			
# In f avor: 19	# Against: 9	# Abstaining: 0	Total members appointed to the board: 46
Date oF Vote: 9/23/2021 12:00 AM		Vote Location: WebEx - https://tinyurl.com/cb6sept21	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oF Public Hearing: 9/23/2021 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	WebEx - https://tinyurl.com/cb6sept21

CONSIDERATION:

Recommendation submitted by	QN CB6	Date: 9/27/2021 3:52 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 40	# Against: 0	# Abstaining: 0	Total members appointed to the board: 40
Date of Vote: 9/13/2021 12:00 AM		Vote Location: Virtual/Audio	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/13/2021 7:00 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Community Board 7 Office Virtual Public Hearing Meeting

CONSIDERATION: See attached!

Recommendation submitted by	QN CB7	Date: 9/21/2021 10:28 AM
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Donovan Richards, Jr.
Queens Borough President

Community Board 7

Borough of Queens

Bay Terrace, College Point, Beechhurst, Flushing
Malba, Queensborough Hill, Whitestone and Willets Point

133-32 41st ROAD · 3rd FLOOR · FLUSHING, NY 11355

Ph: (718) 359-2800

Fax: (718) 463-3891

Email: qn07@cb.nyc.gov

<https://www1.nyc.gov/queenscb7>

Eugene T. Kelty Jr.

Chairperson

Marilyn McAndrews

District Manager

September 14, 2021

Alexis Wheeler, Director
Department of City Planning
Office of the Borough President
120-55 Queens Boulevard
Kew Gardens, NY 11424

Director Wheeler:

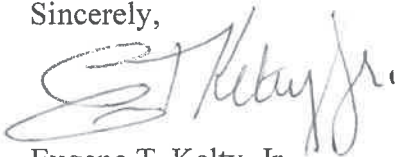
Members of our Board felt the Open Restaurant Text Amendment was premature and a knee-jerk reaction to the COVID crisis. They felt the Mayor's current Emergency Order could remain in effect until further thought could be provided to the Amendment.

However, **CB7Q was unanimous (40-0) to disapprove the Open Restaurant Text** for the following reasons:

1. There should be a 2-year Sunset Provision on the Open Restaurant Amendment to determine whether it has merit, or if this is a knee-jerk reaction to COVID.
2. DOT should continue to be the Agency to approve street permits, but DOB must be the Agency that approves structures.
3. There are many streets where this Text would be a nightmare, such as Main Street in Flushing and 40th Road in Flushing.
4. There should be a Grace Period before fines are levied to allow restaurants an opportunity to understand and completely comply with new regulations. After the Grace Period, fines should be levied, and repeat offenders should have privileges suspended, and ultimately should have permits permanently revoked.
5. Fines that are collected should remain in a "Restaurant Fund" and not in the General Fund.

6. Smoking should not be allowed in outdoor Open Restaurants.
7. Open Restaurants should remain a prohibited item in Special Districts.
8. Too many parking spaces are being removed, which will hurt neighboring businesses from attracting shoppers and patrons, day and night.
9. Corner intersections should be daylighted wherever street-structures are proposed to prevent accidents as vehicles come around the corner.
10. Concern about lapse of Article 4 Chapter 1 before Open Restaurant Text is fully enacted.

Sincerely,



Eugene T. Kelty, Jr.
Chairman of the Board

cc: DOT Queens Commissioner Nicole Garcia
CPC Commissioners
Congresswoman Grace Meng
Congressman Tom Suozzi
Congresswoman, Alexandria Ocasio-Cortez
State Senator John Liu
State Senator Toby Stavisky
State Senator Jessica Ramos
State Assemblyman Davis Weprin
State Assemblywoman Nily Rozic
State Assemblyman Edward Braunstein
State Assemblyman Daniel Rosenthal
State Assemblyman Ron Kim
Council Member Paul Vallone
Council Member Peter Koo
Council Member Francisco Moya
Council Member James Gennaro



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f favorable			
# In f avor: 16	# Against: 14	# Abstaining: 0	Total members appointed to the board: 50
Date oFVote: 9/14/2021 12:00 AM		Vote Location: Virtual Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing: 9/14/2021 7:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Virtual

CONSIDERATION:

Recommendation submitted by	QN CB8	Date: 10/6/2021 1:03 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional favorable			
# In favor: 41	# Against: 0	# Abstaining: 0	Total members appointed to the board: 41
Date of Vote: 9/14/2021 12:00 AM		Vote Location: Remote Zoom Meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/14/2021 7:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Virtual Zoom Meeting

CONSIDERATION:

Recommendation submitted by	QN CB9	Date: 9/21/2021 9:22 AM
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COMMUNITY BOARD NO. 9

Queens Borough Hall
120-55 Queens Boulevard, Room 310-A
Kew Gardens, NY 11424

(718) 286-2686

Fax (718) 286-2685

Email: qn09@cb.nyc.gov

Website: www.nyc.gov/queenscb9

Kenichi Wilson, Chairperson * James S. McClelland, District Manager * Donovan Richards, Borough President

September 14, 2021

CB9Q Land Use & Housing Committee Recommendation on Open Restaurants Zoning Text Amendment N210434ZRY

Community Board 9Q approves the concept of open restaurants, which can enhance the urban experience and provide additional economic benefits to the local business community.

However, without a defined zoning text, it is unclear if the program will be an amenity or a detriment to the community. The board is endorsing this concept, but there are concerns about enforcement, monitoring, and the role of community boards. In the absence of zoning text, the board supports the program, but needs more detail to understand the impact.

Because zoning text amendments generally produce an as of right situation, we are also concerned that community boards throughout the city may find themselves having to depend on cease-and-desist orders that will be generated and overseen by Dept of Transportation (DOT).



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 30	# Abstaining: 0	Total members appointed to the board: 50
Date of Vote: 9/2/2021 12:00 AM		Vote Location: Old Mill Yacht Club: 163-15 Cross Bay Blvd., Howard Beach NY 11414	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: CB10 voted not to approve this text amendment.

Recommendation submitted by	QN CB10	Date: 9/13/2021 3:38 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 17	# Against: 19	# Abstaining: 0	Total members appointed to the board: 36
Date of Vote: 9/13/2021 12:00 AM		Vote Location: Via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	QN CB11	Date: 9/14/2021 3:35 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f favorable			
# In f avor: 13	# Against: 13	# Abstaining: 1	Total members appointed to the board: 50
Date oFVote: 9/15/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing: 9/15/2021 9:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Zoom

CONSIDERATION: Property owner should address sidewalk issues before entering into open restaurant program

Recommendation submitted by	QN CB12	Date: 9/22/2021 10:10 AM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: f aiver oFREcommendation			
# In Favor: 15	# Against: 7	# Abstaining:	Total members appointed to the board: 50
Date oFVote: 9/9/2021 12:00 AM		Vote Wbcation: Web ex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date oFPublic Hearing: 9/9/2021 7:15 PM	
f as a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Wbcation:	Knights of Columbus hall 333 Beach 90 street

CONSIDERATION: The board had concerns: no real community board role in new process of approving or renewing sidewalk permits. The board also was concerned about the safety of street cafe location and the loss of parking which will hurt other businesses on the street adjacent to street cafe seating .

Recommendation submitted by	QN CB14	Date: 9/10/2021 10:18 AM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 25	# Against: 0	# Abstaining: 1	Total members appointed to the board: 40
Date of Vote: 10/12/2021 12:00 AM		Vote Location: Virtual	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: The motion passed to deny the application as follows:

Motion to deny as follows:

Whereas, the New York City Department of City Planning is proposing zoning text amendment called the Open Restaurant Text Amendment which would completely remove the definition of and any mention of sidewalk cafes in the zoning resolution, including in Special Districts, and

Whereas, the current emergency order suspends all zoning related restrictions relating to sidewalk cafes and,

Whereas, the emergency order extends through 2023

Be it hereby resolved that Community Board #1 SI request this application be withdrawn for a period of 1 year for further review and impacts specific to Special Districts and the Department of Transportation should continue to work on a permanent open restaurant program.

Recommendation submitted by	SI CB1	Date: 10/13/2021 3:00 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 10	# Against: 11	# Abstaining: 1	Total members appointed to the board: 30
Date of Vote: 10/19/2021 12:00 AM		Vote Location: zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:		
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>	
Public Hearing Location:		

CONSIDERATION:

Recommendation submitted by	SI CB2	Date: 10/20/2021 5:37 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 25	# Against: 0	# Abstaining: 0	Total members appointed to the board: 25
Date of Vote: 9/28/2021 12:00 AM		Vote Location: Webex Teleconference	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/8/2021 7:00 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex Teleconference

CONSIDERATION: Unanimously opposed to Open Restaurants/Sidewalk Cafes N210434ZRY

Recommendation submitted by	SI CB3	Date: 9/30/2021 9:35 AM
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*The
City
of
New York*



BOROUGH OF STATEN ISLAND COMMUNITY BOARD 3

655-218 Rossville Avenue, Staten Island, N.Y. 10309

Telephone: (718) 356-7900

Email: sicb3@cb.nyc.gov

Website: www.nyc.gov/sicb3

September 28, 2021

RECOMMENDATION Open Restaurants/Sidewalk Cafes (Non-ULURP)

Whereas, Community Board 3 after extensive review and discussion of the Department of City Planning and the Department of Transportation's Permanent Open Restaurants Text Amendment have concluded that this amendment is impulsive and does not serve the best interest of the people they represent for the following reasons.

Therefore, be it Resolved; Community Board 3 hereby **DENIES** the Application as presented.

Community Board 3's concerns are with the roadway cafes, and it is our recommendation to withdraw this part of the program in its entirety, except in cases where streets are permanently closed to traffic.

1. **Safety.** The idea that placing seating on the street is safe is ludicrous. As mentioned during the DCP/DOT presentation, no number of removable barricades will prevent a tragedy when someone accidentally drives into them. With Vision Zero in place, and the speed limits in areas being reduced to even 25 m/p/h, the damage that can be caused by a vehicle traveling 25 m/p/h could be tragic. This doesn't even consider someone speeding and/or intoxicated.
2. **Parking.** Permanently removing parking on busy streets will cause hardships for the businesses that depend on it for their customers, will continue to cause double and triple parking as people just "run in" (look at 3rd avenue in Bay Ridge), and honestly, should be looked at for environmental concerns too, as people will spend so much more time circling looking for parking spots. We honestly can't imagine that most CBs won't be against this. Imagine the uproar from a busier area, like Smith Street in Brooklyn? People already spend hours looking for parking.
3. **Snow.** The idea that each of these businesses will disassemble and reassemble these structures every time it snows is simply not believable. And yes, if they are water filled barriers, and they are spilled out onto the street and sidewalk before every storm, it will cause slipping hazards on the sidewalk for pedestrians, and hidden ice under the snow for vehicles (even if they are filled with rock salt, which, as Tom stated, dissolves). Also worth noting, that anything that can be removed and relocated in the event of a snow event, would not be sturdy enough to withstand damage from a vehicle, high winds, downpours, etc. And if they are left in place during a snow event the roofs of these "structures" will not be able to withstand a large amount of heavy wet snow. Also, where are these businesses keeping these structures when they break them down during every single snowstorm?

4. Cleanliness. We know we don't have a lot of broom trucks in Staten Island, but in the rest of the city, we think these roadway structures will prevent proper cleaning.
5. Back to safety. In order to place these structures in the street, or anywhere not directly connected to the building, they would have to run electrical wires either overhead or taped to the ground. Overhead wires would be exposed to the elements, and anybody carrying anything tall, or on the ground would be endangered by a tripping hazard.
6. Aesthetics. With no rules in place as to aesthetics, we will continue to see hastily thrown up green plywood structures...
7. Enforcement. Are they really dividing up enforcement with 3 different City agencies for the same structure...?
8. Rodents and wildlife. These are not closed structures, and there is nothing preventing wildlife from hunkering down in them every night. I'd prefer to have my meals where any number of rats, mice, racoons, etc., don't spend their nights, just to be wiped off with a dirty cloth in the morning.

Enter into DCP record that the following questions and concerns from CB3 Land Use Meeting September 8, 2021, have not been answered.

Excerpt from Land Use Meeting Minutes:

1. QUESTION Are these cafes allowed in residential neighborhoods?
RESPONSE No new restaurants are allowed to open in residential neighborhoods. Those restaurants at the ends of commercial districts can now apply for sidewalk cafes but weren't allowed to in the past.
2. QUESTION Set-back requirements for buildings? Are structures being built according to building code (electricity, water, structurally sound...)?
RESPONSE Still in the development phases of finalizing permanent program. Case by case basis. A unit within DOT is dedicated to this enforcement. In commercial districts there are no set-back requirements.
3. QUESTION Will sidewalks be expanded to accommodate the café?
RESPONSE DOT will check on that.
4. QUESTION Who enforces street cafes now? Have you issued any violations?
RESPONSE There were sixty-three 311 complaints, and all were resolved.
5. QUESTION If something is not in compliance will DOT have the power to close the structure? What is the sanction for non-compliance?
RESPONSE Rules will be enforced but are in design phases now.
6. QUESTION Will this 'task force' be trained? What is the training program?
RESPONSE Inspectors are required to have a knowledge of what they are enforcing.
7. QUESTION If you are adding occupancy to a restaurant, will the number of restrooms be adjusted to accommodate increase?
RESPONSE Noted
8. Why give waivers in off-season? These structures need to come down in the winter. They shouldn't remain.

9. QUESTION Are there going to be standards for the structures? Materials, barriers, maintenance of structures, electrical, removal for snow removal?
RESPONSE DOT will provide the water-filled barriers. Electrical inspections will be done by the DOT force. Will ask restaurant to break down structure if a snow event is forecasted.
10. Snow was an issue last year. Water barriers must be used in groups. One is not enough. Or else come up with another option.
11. Lighting and noise ordinances – In mixed use areas will these cafes cause quality of life concerns.
12. DOT- Amplified sound is not allowed. Must close at 1:00am on weekends and midnight on weekdays.
13. In mixed use zones midnight is too late on weeknights.
14. The temporary barriers freeze in winter and barriers crack. They need antifreeze. If an establishment has to breakdown the structure in winter, they must now drain the barriers. Where will this be done without causing a ponding and freezing situation?
15. QUESTION Has anyone investigated the effect of these structures on water run-off? Some are very large. Can they redirect storm water and cause basement flooding?
RESPONSE DOT will find out.
16. The city is encroaching on the public property that we the citizens used to enjoy; taking away from the public to give to a private entity.
17. This program takes away parking spaces. So, while it benefits the restaurants, it hurts other businesses on the block.
18. Why do we have to continue street cafes? It was helpful during pandemic. No need for it to continue.
19. QUESTION Will electrical inspections be done by DOT Electricians?
RESPONSE DOT will get back to us with their title.
20. Some of these structures have become homeless encampments. Is there a mechanism in the text amendments that they can remove homeless from the structure? Hopefully there are no squatters' rights here.
RESPONSE DOT- will bring that back for clarification. Most of these structures are seasonal.
21. QUESTION Prior to the pandemic, the filing process for street cafes was very costly. Is there going to be a fee for the applications going forward?
RESPONSE Not sure yet, information coming.
22. QUESTION Where do the parking lot cafes fit in to all this?
RESPONSE DCP- That is part of the emergency order. It overrides zoning right now.
RESPONSE DCP is working with DOT and DOB and CB3 to make sure safety standards are being maintained. The permanent program is for roadways and sidewalks.
23. QUESTION Is there an expiration date on the emergency order?
RESPONSE Runs through winter of 2022.



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable

# In Favor: 10	# Against: 5	# Abstaining: 3	Total members appointed to the board: 18
Date of Vote: 11/3/2021 12:00 AM		Vote Location: Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 11/3/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex

CONSIDERATION: Conditional favorable

Recommendation submitted by	BK BP	Date: 11/9/2021 5:32 PM
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November 9, 2021

Anita Laremont
Director
New York City Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: Health and Fitness and Open Restaurants/Open Cafés Zoning Text Amendments

Dear Director Laremont:

At its stated meeting on November 3, 2021, the Brooklyn Borough Board (“Borough Board”) adopted the enclosed resolutions by votes of 14 yes, four no, and one abstention, for the Health and Fitness proposal, and 10 yes, five no, and three abstentions for the Open Streets/Open Cafés proposal

I applaud the New York City Department of City Planning (DCP) for developing this zoning text amendments with the intent to ease the establishments of health and wellness businesses, as well ease restrictions where they have precluded outdoor dining and where commercial use has lawfully existed. Both proposals have intent to promote job growth and/or retention during a time in which the City is still recovering from the devastating effects of COVID-19.

While each proposal has its clear benefits, the Borough Board believes certain amendments would strengthen each proposal. With regard to Health and Fitness, the Borough Board believes that the path for establishing operations should respect those community boards (CB) whose members have legitimate concerns based on ongoing unlawful operations, as well as believing that their input assures minimal quality-of-life disruption where fitness facilities would be established. For those CBs, the existing requirement to obtain a special use permit from the New York City Board of Standards and Appeals (BSA) would be expected to incorporate the proposed terminology and expand the applicability to C1 commercial overlay districts.

In addition, where such facilities would become as-of-right, the regulations should be further modified in terms of what was proposed by DCP to address the potential for health and fitness establishments creating objectionable noise in adjacent uses, as well as higher-intensity uses, such as gyms involving

the use of exercise machines and weights. These facilities would be subject to additional noise attenuation requirements and enclosure criteria. With regard to gymnasiums where the predominant use of floor space involves exercise equipment or weights, the proposed excess of 50 percent standard is inadequate. It should be further modified to define health and fitness establishments as containing high-intensity uses when the overall floor space is in excess of 2,000 square feet (sq. ft.) and more than 1,000 sq. ft. of floor space where it involves the use of exercise equipment or weights. Such space shall be subject to the supplemental use regulations of New York City Zoning Resolution (ZR) 32-413, which would mandate a report from an acoustical engineer to verify to the New York City Department of Buildings (DOB) prior to the issuance of a Certificate of Occupancy (C of O) in terms of meeting specified noise and vibration standards. However, the Borough Board takes issue with such acoustical engineer only being responsible for design verification. Instead of limiting that role to design, construction verification should also be part of such role.

In terms of addressing unlicensed physical treatment administered by a person who is not a health care professional licensed by the State of New York, such definition does not adequately define the meaning of what is deemed under supervision. The Borough Board believes that clarification should set forth that additional treatment practitioners be limited to not more than three unlicensed associates with limited permits, per licensed on-site supervisor.

As for where massage services would be lawful in a residence district, there needs to be restrictions on the hours of operation to not be before 7:00 AM or after 10:00 PM.

With regard to Open Restaurants/Open Cafés, the Brooklyn Borough Board does not support the removal of permanent rules during the tenure of the temporary emergency Open Restaurant Programs given the absence of rules that are intended to be promulgated by the New York City Department of Transportation (DOT) to replace the existing permanent rules. Though, the Brooklyn Borough Board is in support of legalizing eating and drinking establishment operations that would best reflect functional operations to serve customers outside the building,

Meanwhile, City departments, such as the New York City Department Small of Business Services (SBS) and New Yor City Department of Transportation (DOT), should provide appropriate resources to businesses operating in underserved communities that have been hardest hit by COVID-19 with the intent to promote participation of outdoor dining as a means to support small businesses and job creation in the restaurant industry as well as activate city streets.

Before the City Council would be adopting any proposal to amend the ZR to remove restrictions in spaces they have precluded outdoor dining where commercial use lawfully exists, DOT should establish a public participation process that would enable the development of rules to be promulgated by DOT. These would include multiple opportunities to weigh in before draft rules are put forth for public comment. DCP should then again propose these aspects of its zoning text amendment for removing the linkage between sidewalk cafés and commercial zoning designation when DOT is prepared to promulgate permanent sidewalk café and restaurant seating within the street bed. At that time, such DCP text change should take into consideration whether enclosed building operations would allow for seasonally-opened façades based on meeting acoustical standards of the City's Noise Code.

Should you have any questions, your office may contact my director of Land Use, Richard Bearak, at (718) 802-4057. Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Eric L. Adams". The signature is written in a cursive, flowing style.

Eric Adams
Brooklyn Borough President

EA/rb
enc.

cc: Honorable Corey Johnson, Speaker, New York City Council
Members of the Brooklyn Borough Board
Winston Von Engel, Brooklyn Office Director, New York City Department of City Planning
Frank Ruchala Jr., Director, Zoning Division, New York City Department of City Planning

Brooklyn Borough Board Resolution: November 3, 2021

Whereas, in accordance with Local Law 114 of 2020 enacted by City Council and Mayoral directives, the City seeks to establish a Permanent Open Restaurants (POR) program to succeed the temporary emergency program. The program is anticipated to allow for the New York City Department of Transportation (DOT) to administer a sidewalk and roadway outdoor dining program on a citywide basis, and to establish physical rules and operational criteria and administrative procedures that balance both the goal of ease of use and the multiple users and demands upon street space. The full program is anticipated to require additional legislative actions as well as DOT agency rulemaking for implementation. Existing non-conforming restaurants that operate in zoning districts that do not allow restaurants as-of right would also be eligible for the POR program.

Whereas, as a component of this overall legislative package, DOT and New York City Department of City Planning (DCP) are jointly proposing to amend the New York City Zoning Resolution (ZR) to remove locational prohibitions from the zoning rules in order to allow citywide potential applicability based on DOT siting criteria. DCP has prepared the Open Restaurants text amendment that proposes to remove Article 1, Chapter 4, and all other text related to sidewalk café regulations from the ZR. The proposed text amendment would no longer require restaurants to have appropriate zoning to apply for the sidewalk café program. If this text amendment is adopted, any restaurant with an active New York City Department of Health and Mental Hygiene (DOHMH) food service establishment license and ground floor frontage seeking to open a sidewalk café would be required to apply for approvals from the proposed DOT POR program for an Open Restaurant permit as long as they meet the siting criteria as established by DOT.

Whereas, the intent is to support small businesses and job creation in the restaurant industry, activate city streets, and simplify and streamline City rules for outdoor dining under a single agency.

Whereas, following the onset of the COVID-19 pandemic in 2020, the permanent outdoor dining program was suspended and replaced by a temporary program per Local Law 77 of 2020 and Mayoral Emergency Executive Orders 126 and 128. The temporary Open Restaurants Program is an emergency citywide program to expand outdoor seating options for food service establishments to maintain public health and safety, enhance social distancing, and help them rebound in difficult economic times. Under the temporary program, individual food service establishments may apply to DOT and self-certify to use the sidewalk or curb parking lane on the roadway adjacent to their business. As of March 2021, there were 10,131 self-certified emergency open restaurant applications recorded citywide. Of these, 1,042 were for roadway seating only; 4,151 were for sidewalk seating only, and 5,579 included both roadway and sidewalk seating.

Whereas, ZR Article I, Chapter 4 Sidewalk Cafés, governs locations, notes that criteria for unenclosed sidewalk cafés is under the jurisdiction of the New York City Department of Consumer Affairs (DCA), though, small sidewalk cafés are further regulated by the ZR.

The Brooklyn Borough Board does not support the removal of permanent rules during the tenure of the temporary emergency Open Restaurant Programs given the absence of rules that are intended to be promulgated by DOT to replace the existing permanent rules.

Whereas, the proposed zoning text amendment would modify ZR Sections 32-411, 52-34, 73-243, to allow for operable windows to serve customers outside the building.

The Brooklyn Borough Board supports legalizing eating and drinking establishment operations that would best reflect functional operations to serve customers outside the building, and while not supporting the removal of Article I, Chapter 4, would support modifications to ZR Sections 32-411, 52-34, 73-243.

Be it further resolved that:

1. City departments, such as the New York City Department Small of Business Services (SBS) and New York City Department of Transportation (DOT), should provide appropriate resources to businesses operating in underserved communities that have been hardest hit by COVID-19
2. DOT should establish a public participation process that would enable the development of rules to be promulgated by DOT to include multiple opportunities to weigh in before draft rules are put forth for public comment
3. DCP should not refer a zoning text change for removing the linkage between sidewalk cafés and commercial zoning designation until such time that DOT is prepared to promulgate permanent sidewalk café and restaurant seating within the street bed, and that such text change take into consideration whether enclosed building operations should allow for seasonally-opened façades based on meeting acoustical standards of the City's Noise Code



BOROUGH PRESIDENT RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes	
Applicant: DCP - Department of City Planning (NYC)	Applicant's Administrator: DCP - Department of City Planning (NYC)
Application # N210434ZRY	Borough: Citywide
CEQR Number: 21DOT016Y	Validated Community Districts: CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable

Please attach any further explanation of the recommendation on additional sheets as necessary

CONSIDERATION: Borough President Ruben Diaz Jr. recommends approval

Recommendation submitted by	BX BP	Date: 11/8/2021 9:38 AM
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**BOROUGH PRESIDENT
RECOMMENDATION**

CITY PLANNING COMMISSION
22 Reade Street, New York, NY 10007
Fax # (212)720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

APPLICATION # N 210434 ZRY-Open Air Restaurants/Sidewalk Cafes

PLEASE SEE ATTACHMENT FOR PROJECT BRIEF

COMMUNITY BOARD NO. Citywide

BOROUGH: BRONX

RECOMMENDATION

- ☒ **APPROVE**
- ☐ **APPROVE WITH MODIFICATIONS/CONDITIONS (List below)**
- ☐ **DISAPPROVE**

EXPLANATION OF RECOMMENDATION-MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

PLEASE SEE ATTACHMENT FOR BOROUGH PRESIDENT'S RECOMMENDATION



BOROUGH PRESIDENT

11/5/21

DATE

BRONX BOROUGH PRESIDENT'S RECOMMENDATION
APPLICATION NO: N 210434 ZRY
OPEN RESTAURANTS / SIDEWALK CAFES

PROJECT BRIEF

The New York City Department of Transportation (DOT) and Department of City Planning (DCP) are proposing a citywide zoning text amendment that will allow the DOT to administer the Permanent Open Restaurant program (POR). The proposal will remove sidewalk café regulations from the Zoning Resolution to increase geography eligibility as sidewalk cafes will become part of a unified sidewalk and roadway outdoor dining program administered at DOT.

BACKGROUND

Recognizing the severe impact on dining establishments across the City of New York prompted by the Covid 19 pandemic, numerous emergency measures were taken by the Mayor's office. These actions included establishing the current Open Air Restaurants Program (Emergency Executive Orders 126 and 128, and Local Law 77 of 2020). Pursuant to this temporary order, zoning restrictions were set aside in favor of allowing individual food service establishments to provide for exterior dining. Under this emergency declaration, the New York City's Department of Transportation was charged with administering this process. Approval of this application would seek to establish the adoption of new provisions which would ultimately provide for the permanent inclusion of outdoor dining throughout New York City.

This zoning proposal would:

- Delete Zoning Resolution, Article 1, Chapter 4 in its entirety, effectively removing all zoning locations restrictions on sidewalk cafes;
- Remove language that prevents sidewalk cafes in Special Districts
- Remove rules that would preclude or limit outdoor dining under the Open Restaurants program.
- Grandfather existing enclosed cafes

The overall objective of this zoning text amendment would be to allow any restaurant anywhere in the city to apply to the Department of Transportation for the installation of a sidewalk café. This objective would be realized by:

- Establishing a DOT Office overseeing sidewalk and roadway café programs
- Providing a design guidance package with detailed visuals
- Streamlining the application via online filing
- Issuing a 4-year license subject to periodic compliance checks

Guidelines to be considered include, but not limited to the following:

- Public safety, access to fire hydrants, visibility of traffic are maintained
- ADA compliance
- Assure sturdy barriers are installed
- Prohibit fully enclosed structures
- Maintain a minimum sidewalk width of eight feet or 50% of the sidewalk
- Require that furniture or shading must be removable
- Structures installed in the bed of a street are removed during winter months
- Seating at sidewalk cafes must be against the building wall
- Outdoor cafes must be in the restaurant's frontage

Bronx Emergency Open Restaurants:

Responding to the Covid emergency the following profile is in place:

Sidewalk Cafes:	249
Bed of Street:	36
Both:	313

Currently,

109 are in areas prohibited by zoning

58 are in residential/no café zoning area

ENVIRONMENTAL REVIEW

This application was reviewed pursuant to CEQR and SEQR and received a Negative Declaration.

BRONX COMMUNITY BOARD'S RECOMMENDATION

The following represents votes taken on this matter by Bronx Community Boards. Whereas numerous community boards voted in favor of a motion to oppose this application, shown below is the intent of each board to either approve the proposed zoning text change or deny it.

Community Board #1:	2 in favor, 25 against, 1 abstaining
Community Board #2:	27 in favor, 0 against, 0 abstaining
Community Board #3:	Land Use & Economic Development Committee Recommends approval
Community Board #4:	22 in favor, 6 against, 4 abstaining
Community Board #5:	16 in favor, 0 against, 4 abstaining
Community Board #6:	5 in favor, 6 against, 14 abstaining
Community Board #7:	17 in favor, 5 against, 3 abstaining
Community Board #8:	2 in favor 36 against, 0 abstaining
Community Board #9:	4 in favor, 0 against, 0 abstaining
Community Board #10:	0 in favor,10 against, 0 abstaining
Community Board #11:	No submission
Community Board #12:	31 in favor, 0 against, 0 abstaining

BRONX BOROUGH BOARD

The Bronx Borough Board convened on October 28, 2021. A vote recommending approval of this application was 8 in favor, 2 opposed and 1 abstaining.

BRONX BOROUGH PRESIDENT'S PUBLIC HEARING

A virtual public hearing was convened by the Bronx Borough President on October 14, 2021. Representatives of applicants were present and spoke in favor of this application. There were no members of the public who spoke out on this matter and the hearing was closed.

BOROUGH PRESIDENT'S RECOMMENDATION

Covid 19 presented the City of New York with countless challenges as well as opportunities. The matter of “rescuing” the city’s restaurant industry is a prime example of both a challenge and opportunity. In brief, by declaring an emergency prompted by the pandemic, the cumbersome process mandated by the Zoning Resolution allowing outdoor dining were set aside. In its place, a set of temporary provisions were adopted that suspended zoning requirements, thereby allowing for the immediate installation of exterior dining locations across the city. Recognizing that these exterior locations would impact both sidewalk and roadbed functions, the city’s Department of Transportation was charged with oversight.

By endorsing this application, I acknowledge the demonstrated benefits of what to date is an emergency measure and favor the long term goal of eliminating zoning restrictions associated with allowing for exterior dining. Furthermore, I acknowledge that it would ultimately be the city’s Department of Transportation that would oversee how and where exterior dining sites could be installed.

Having said this, there are many specifics which I believe need to be addressed, none the least of which is, how will local elected officials and community boards oversee what is otherwise decided by the Department of Transportation. In other words, what local oversight will be in place. I believe resolving this question is absolutely critical.

I also realize that adoption of this zoning text amendment is an essential “first step,” I do believe however, it is entirely appropriate to raise logistical concerns as how open air restaurants/sidewalk cafes will actually function if they are to be considered “permanent.”

- This provision adds dining capacity to a restaurant. Will there be any consideration given to kitchen facilities, most importantly its size and how it functions safely.
- Installation of any exterior area will require access to electricity. How will this need be addressed...i.e. the possible need for a generator, installation of electric cables that draw current from inside the established restaurant.

- It is essential that noise associated with outdoor music be strictly enforced. This is especially relevant in communities that are predominantly residential. Likewise, where more than one dining facility is located on the same block, noise pollution is an issue for which strict rules must also be enforced. Regrettably, in many Bronx communities such noise intrusions are entirely ignored by those charged with enforcing such provisions.
- What if any consideration will be given to those restaurants where sidewalk widths and other constraints do not allow for sidewalk cafes at a specific location whereas at an adjacent site these constraints are not present. One such constraint might be the location of a street tree that reduces sidewalk width.

Given the documented success of what made it possible for restaurants across the city to provide for exterior dining, I believe this application warrants my support.

I recommend approval of this application.



BOROUGH PRESIDENT RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes	
Applicant: DCP - Department of City Planning (NYC)	Applicant's Administrator: DCP - Department of City Planning (NYC)
Application # N210434ZRY	Borough: Citywide
CEQR Number: 21DOT016Y	Validated Community Districts: CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable

Please attach any further explanation of the recommendation on additional sheets as necessary

CONSIDERATION:

Recommendation submitted by	MN BP	Date: 10/13/2021 4:42 PM
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OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

October 13, 2021

**Recommendation on the ULURP Application No. N210434ZRY
Open Restaurants / Sidewalk Cafés
by the New York City Department of Transportation and the New York City of
Department of City Planning**

PROPOSED ACTIONS

The New York City Department of Transportation (“DOT”) and the New York Department of City Planning (“DCP”) (together the “Applicants”) are seeking a city-wide zoning text amendment (the “Proposed Action”) to remove text related to sidewalk café regulations from the Zoning Resolution, including Article 1, Chapter 4.

If the Proposed Action is adopted, the zoning regulations that govern existing sidewalk cafés would be removed with the intention of introducing legislation to create a permanent Open Restaurants program that transfers oversight and administration from the New York City Department of Consumer and Worker Protection (“DCWP”) to DOT. Applicants to the DOT program would no longer be required to conform with zoning regulations when they apply.

BACKGROUND

Existing Sidewalk Café and Street Seats Program

A 1976 amendment to the City Charter required sidewalk café applications, which included a revocable consent, to go through the Uniform Land Use Review Procedure (“ULURP”), which included community board review. In 1980, the process was streamlined with the addition of Article 1, Chapter 4 to the Zoning resolution. At the same time, changes to the City Charter and the City Administrative Code were approved by the City Council removing the requirement for these applications to go through ULURP. In its place, § 2-44 of the Administrative Code was added in 1980. This section outlines the process, now administered by DCWP, which applicants must follow to obtain a revocable consent.

The current permanent outdoor dining program (the “Existing Program”) is administered through two different City agencies. The permanent sidewalk café program is administered by the New York City DCWP and the Street Seats program is administered by DOT. Out of approximately 27,000 restaurants in the City of New York, 1,224 have active permits for sidewalk cafés under the DCWP administered program and 25 have active permits for the Street Seats program.

The DCWP sidewalk café license is governed by provisions set forth in the Zoning Resolution. Without the currently active emergency Open Restaurants program, unenclosed sidewalk cafés

would be permitted in all R10H districts, all commercial districts other than C3 districts, and in manufacturing districts where eating and drinking establishments are permitted. A number of restrictions on the geographic applicability of unenclosed sidewalk cafés are included in the Zoning Resolution, and several special permits also restrict their use. Enclosed cafés are generally permitted except in certain special districts. Areas that predominantly allow only unenclosed cafés are located in East Harlem, West Midtown, and the Financial District. Small sidewalk cafés are also permitted on specified streets included in the Zoning Resolution, particularly concentrated in Midtown and Chelsea.

The follow special zoning districts in Manhattan permit unenclosed and enclosed sidewalk cafés:

	Enclosed Sidewalk Cafés	Unenclosed Sidewalk Cafés
125 th Street District	No	No
Battery Park City District	Yes	Yes
Clinton District	No	Yes
East Harlem Corridor District	No	Yes
Enhanced Commercial District 2	Yes	Yes
Enhanced Commercial District 3	Yes	Yes
Hudson Square District	Yes	Yes
Inwood District	No	Yes
Limited Commercial District	No	No
Lincoln Square District	No	Yes
Little Italy District	No	Yes
Lower Manhattan District	No	Yes
Manhattanville Mixed Use District	No	Yes
Transit Land Use District	Yes	Yes
Tribeca Mixed Use District	Yes	Yes
United Nations Development District	No	Yes
West Chelsea District	No	Yes

Additionally, the Zoning Resolution identifies specific streets that do not allow any sidewalk café, streets that do not allow enclosed sidewalk cafés, and streets that only allow small sidewalk cafés.

Under the Administrative Code, sidewalks with cafés are subject to clear pedestrian path requirements. The minimum clear path for all locations is 8 feet or 50% of the sidewalk width, whichever is greater. Further, DWCP regulations govern sign display, railing and decorative accessories, table and chair count, railings, fences, planters, valences, canopies, awnings, and heaters.

Approval from the New York Landmarks Preservation Commission (“LPC”) is required for a sidewalk café in a historic district, or a sidewalk café located in or next to a landmarked building or district. LPC currently approves moveable sidewalk cafes and furniture at the staff level, meaning a public hearing and community board notification are not required. Moveable, non-

permanent sidewalk cafe furniture does not require an LPC permit. Under the DWCP program, all businesses must have a sidewalk café license and revocable consent to operate a sidewalk café.

The Administrative Code includes the ability for community boards to suggest revisions or raise objections within the required revocable consent petition approval process for sidewalk cafés. DCWP is responsible for holding a public hearing before granting the consent.

The existing DOT administered Street Seats is a seasonal program that allows businesses, Business Improvement Districts (“BIDs”), and other nonprofits to apply for a permit to place seating in the roadbed along the curb line or on wide sidewalks from March through December. The seating must be approved by both the property owner and the local community board. Design guidelines require that the arrangement not obstruct the sidewalk, be a pleasant place to sit, be appropriate for existing street conditions, and be outside of a parking zone that is a moving traffic lane at any time of day.

Emergency Open Restaurants Program

In response to the COVID-19 pandemic, the permanent regulations regarding outdoor dining and sidewalk cafés were suspended pursuant to an amendment to Local Law 77 of 2020 and emergency executive orders 126 and 128, which were issued by Mayor Bill de Blasio on June 18, 2020 and June 27, 2020, respectively. In its place, a temporary Open Restaurants Program (the “Temporary Program”) was established as an emergency measure to allow for safe social distancing for diners and to help restaurants recover financially from the loss of business that resulted from the pandemic. Under the Temporary Program, DOT established an application process for food service establishments to use adjacent sidewalk and curb parking for outdoor seating. As of September 2021, there are 11,866 self-certified active Open Restaurant permits reported citywide. Of these permits, 1,200 are for structures that only occupy roadways; 4,281 are for structures that only occupy sidewalks; and 6,025 are for structures that occupy both. DCP estimates that about 2,500 restaurants currently taking advantage of sidewalk or roadway seating under the Temporary Program would not have been able to open under prior zoning regulations.

Since the Temporary Program has been enacted, outdoor seating approved under Street Seats has been allowed to operate under the Open Restaurants program if the participating business goes through the required self-certification process.

For restaurants that face closure, DOT has indicated that it sends a 30-day removal notice to the business when they identify an abandoned structure. After 30 days, the City is responsible for its removal--a process that involves both DOT and the Department of Sanitation (“DSNY”). If there are restaurants currently operating outdoor seating that decline to participate in the proposed Open Restaurants program or are ineligible for that program, those restaurants are responsible for the removal of any erected temporary structures.

The Temporary Program will stay in effect until 2022.

Proposed Permanent Open Restaurants Program

In order to allow for a permanent Open Restaurants program managed by DOT, the laws which regulate non-emergency outdoor dining must be changed and the Proposed Action needs to be approved. DCP and DOT have announced a six-month citywide design engagement process that will culminate in the release of the design guidelines for the program in spring 2022. After the expiration of the Temporary Program in 2022, the permanent Open Restaurants program is planned to commence in 2023.

While DOT has provided a general indication of what the permanent Open Restaurants program will look like in public meetings, the text of the program and design guidelines are not yet available. General commitments for sidewalk seating include ADA compliance, variable clear path and siting criteria/distance from obstructions based on pedestrian volume and sidewalk width, removable chairs, tables and barriers, seating against building wall, and a requirement that structures only be allowed along a restaurant's frontage. General commitments for roadway café seating include ADA compliance, citywide applicability of the program in parking lanes except in prohibited zones, public safety requirements, such as visibility of traffic signs and access to hydrants, guidance and enforcement of sound, a ban on fully enclosed structures, and a fee structure. Additionally, DOT has indicated that sidewalk seating applications would still be referred to community boards, and sidewalk seating siting rules, as governed by the Administrative Code, would not be changed.

The proposed permanent Open Restaurants program would allow for City operations such as snow removal from sidewalks and streets to continue in the winter, maintain a standard for seasonal safety such as guidelines for outdoor heaters, and waivers are being considered for winter months.

A unified DOT office would administer both sidewalk and roadway seating programs, with the first formal procedure for approving roadway seating for outdoor dining. The agency's administration would rely in part on a detailed design guideline package that includes a streamlined online application process, a shortened review period that still allows public review, and a 4-year license window with periodic compliance checks and the ability to fine or remove bad actors. Additionally, the new program would give DOT greater flexibility in site-specific conditions that would make outdoor seating a helpful activation of the street.

The Applicants have not yet provided specific details on what standards restaurants would have to follow to renew a permit, how community boards would have opportunity to comment on the DOT plan and/or specific sidewalk and roadway seating as they are proposed, and specific plans for enforcement.

COMMUNITY BOARD RECOMMENDATIONS

The Open Restaurants / Sidewalk Cafés application was certified by DCP on June 21, 2021 and referred to all Manhattan community boards for comment. Boards were given a 60-day period to review the application and submit a resolution recommending support or opposition.

As of the time of submission, all Manhattan Community Boards voted on and submitted resolutions regarding the application.

Manhattan Community Boards 1, 2, 3, 4, 7, 11, and 12 submitted unfavorable recommendations including the following conditions and comments¹:

- DOT should commence public outreach and consultations for proposed legislation as soon as possible;
- Permits should be granted for a sidewalk café or roadway seating, not both for a single business;
- Licenses should include an at-will revocation and/or a suspension clause, with a short notice period as to not impede utility or street work, or street design improvements;
- A curbside plan for each block should consider the space needed for key functions such as fire and EMS access, oil tank refilling, business and residential deliveries, and garbage storage and pick-up, even if located in legal parking;
- DOT should provide stricter guidance on seasonality, requiring enclosures to be removed in winter except in the case of locations that are suitable for year-round use;
- Enclosed cafés should not be allowed on sidewalks and structures in parking lanes should be as open and transparent as possible;
- Review by community boards should replace self-certification of applications;
- A single agency should be tasked with enforcement, including noise, design, placement, storage, and sidewalk encroachments, as well as rules regarding electrical and gas installations;
- License revocation should be an enforcement option;
- The Applicants should not remove current zoning regulations governing the applicability and placement of sidewalk cafés without adequate protections in place;
- The Applicants should present the legislation to enact the permanent Open Restaurants program in tandem with this proposed zoning text amendment;
- Community boards should be allowed to review DOT guidelines for permanent Open Restaurants program;
- Sidewalk widenings intended for additional pedestrian flow should not be used to accommodate new sidewalk cafés;
- Outdoor eating and drinking facilities should continue to be prohibited on residential streets;
- Patrons in Open Restaurants must remain seated and there should be no amplified sound allowed outdoors;
- Eating and drinking facilities should be prohibited when the operator uses amplified sound; and
- Service aisles should be explicitly designated and required.

¹ This list of conditions and comments is an aggregation. Not all community boards listed included these items in their resolutions.

Manhattan Community Boards 5, 9, and 10 submitted favorable recommendations including the following conditions²:

- DOT should improve enforcement of existing regulations for noncompliant Open Restaurants;
- Community boards should be given the opportunity to comment on license applications and any waivers from proposed regulations; and
- Community boards should have a role in the creation of the future permanent Open Restaurants program, including design, application, and process specifics.

Manhattan Community Board 8 submitted a favorable recommendation without conditions.

Manhattan Community Board 6 submitted a recommendation of no objection with the following condition:

- DOT should continue to include Manhattan Community Board 6 as active participants in designing the proposed permanent Open Restaurants program.

BOROUGH BOARD RECOMMENDATION

The Manhattan Borough Board received a presentation from DCP and DOT about the proposed text amendment at its September 23, 2021 meeting. During the meeting, members raised questions and concerns that were addressed by DCP and DOT. Concerns included the noise impacts of sidewalk and roadway dining under the Temporary Program, how the proposed permanent program would be enforced, increased vermin, and the rollout of the zoning text amendment before a completed draft plan for the permanent program is available.

Informed by these questions and the responses from the agencies, the Manhattan Borough Board voted to approve a resolution to recommend disapproval of the application with conditions. The conditions are as follows:

- Consult with all community boards and borough presidents regarding the proposed DOT permanent program, including its applicability in residential and mixed-use districts, particularly in Lower Manhattan and retain the existing sidewalk café regulations in special zoning districts;
- Provide a plan for enforcement of DOT Open Restaurant regulations as well as sanitation and allow for that plan to be previewed by community boards and borough presidents and ensure that the program is informed by data obtained in more typical, post-pandemic conditions;
- Complete a study on the impact that the proposed DOT program would have on dry goods retail spaces, and propose mitigations as necessary;
- Allow community boards to review and recommend approval or denial for applications of licenses for sidewalk dining and roadbed dining prior to final DOT approval;

² This list of conditions and comments is an aggregation. Not all community boards listed included these items in their resolutions.

- Maintain the enclosure requirements for eating and drinking establishments in residential districts;
- Include compliance with program guidelines as key criteria for approving renewal applications and use license revocation as an enforcement option;
- Require restaurants to submit sanitation and rat abatement plans as part of their license application;
- Prohibit new sidewalk widenings from being used for outdoor dining unless the loss of pedestrian space is included in an analysis for the widening, and mitigation measures are ensured;
- Ensure all sidewalks and roadways remain fully accessible, including maintaining the three-foot service aisle (in addition to the four-foot clearance requirement) and that emergency vehicles have the ability to navigate city streets efficiently;
- Prohibit restaurants from playing amplified music and require patrons to be seated;
- Include measures to prevent loss of space or safety for users of bike lanes; and
- Present a plan to allow other public uses on sidewalks and roadways.

BOROUGH PRESIDENT’S COMMENTS

Restaurants were among the hardest hit businesses during the COVID-19 pandemic. As indoor spaces were subject to closures due to emergency health measures, eating and drinking establishments across New York City faced a significant loss in revenue, and many were forced to close permanently.

The temporary Open Restaurants program has been a success in many ways. It helped to reopen businesses when health guidelines allowed, and provided outdoor, socially distanced space for residents and visitors to the city. Despite issues with the program, such as inconsistent enforcement, the speed with which DOT was able to adapt to the present conditions was admirable.

However, the rollout for the proposed permanent Open Restaurants program has not allowed for ample community and stakeholder input. By asking for approval of the proposed zoning text amendment without providing a detailed description of the permanent DOT program that would replace it, the Applicants are asking the public to take a leap of faith. Before being able to recommend approval to remove the zoning governing sidewalk cafés, there are several questions about its replacement that need to be addressed.

The Temporary Program has had enforcement issues as noted above. On blocks with Open Restaurant structures, some residents have been faced with unacceptable noise levels, unruliness, and litter. These same communities have lacked an opportunity to weigh in on new additions to the proposed Open Restaurants program. In presentations, DOT has indicated that they would handle enforcement of barriers, clear paths, and ADA compliance, while the New York Police Department (“NYPD”) would continue to enforce noise regulations, and DSNY would continue to be responsible for garbage removal. In addition to disagreeing that NYPD is the best City agency for dealing with quality-of-life issues, I worry that DOT does not currently have the capacity to ensure the compliance of over 10,000 restaurants.

In addition to noise, there have been complaints about trash on the street and a subsequent increase in the number of vermin. DOT has indicated in public meetings that DSNY is responsible for trash collection, but there should be additional support made for restaurants to proactively mitigate these impacts. DOT, in coordination with DSNY, should commit to developing a citywide trash collection plan for the Open Restaurants Program and create resources that restaurants can refer to for guidance on managing trash and vermin.

As part of this zoning change, DOT must have a plan in place. DOT should evaluate applications based on their noise impact and should closely evaluate and enact different standards for outdoor dining in residential neighborhoods. I was pleased to hear that DOT intends to consider compliance in evaluating the renewal of Open Restaurants applications, but details on the criteria which would lead to license revocation are missing. A detailed enforcement plan must be made available for public review. With the removal of the text in the Zoning Resolution, certain geographic restrictions on sidewalk cafés would be permanently lifted. Currently, there is a prohibition of or limit on sidewalk cafés in certain special districts such as the Special Hudson Yards, West Chelsea, and East Harlem Corridor Districts. During the Temporary Program, these zoning measures were overridden, and with the Proposed Action, they would be permanently removed.

Some of these geographic restrictions were meant to ensure that sidewalk widenings that were intended to improve pedestrian flow were not used for sidewalk cafés. This was the case in Hudson Yards. Additionally, in the West Chelsea Special District, sidewalk cafés are only allowed on “wide streets” as narrower streets were deemed inappropriate for outdoor dining. As indicated in the presentation at the City Planning Commission review session, the required pedestrian clear path would be larger for select CBD corridors. However, there needs to be greater attention paid to specific local conditions. Some sidewalks may remain inappropriate for sidewalk seating.

As eating and drinking establishments are given a right to use public sidewalk and street space with the proposed program, DOT and DCP should continue to explore other potential uses of that space. There should be additional study of how other small retail establishments, and community and cultural groups could make use of repurposed street space. Also, the impact of sidewalk and roadway dining on dry goods retail should be evaluated. While the use of this space for seating is good for the restaurant industry, which was particularly affected by the pandemic, it’s important to mitigate any negative effect it may have on adjacent businesses, in a permanent program. Additionally, outdoor seating should not take precedence over planned expansion to bike lanes or bus routes.

These concerns, along with issues raised by Community Boards and other stakeholders, could be addressed with further consideration if the proposed DOT program were available for review alongside the proposed zoning text amendment. While some general guidelines regarding future plans for the program have been shared in public presentations, it is difficult to make comments on what should or should not be included in the replacement to the current zoning regulations without more information. I support a permanent outdoor dining program, but for the stated reasons, I cannot support this application in its current form.

Parenthetically, I note that the proposed regulatory structure involves multiple agencies and will require a high degree of coordination to succeed. This type of arrangement illustrates why such oversight would be best coordinated by an office of the Public Realm Czar as I have recommended in the past.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **disapproval** of ULURP Application No. N210380ZRY unless the following conditions are met:

1. Require that all community boards and borough presidents be allowed to comment on the DOT proposed permanent Open Restaurant program in advance on the approval of the zoning text amendment;
2. Consult with all community boards and borough presidents regarding the applicability of proposed permanent Open Restaurant program in residential and mixed-use districts, particularly in Lower Manhattan, and further evaluate the existing sidewalk café regulations in special zoning districts;
3. Ensure that all sidewalks remain fully accessible and that emergency vehicles have the ability to navigate the street effectively and provide a more detailed plan for enforcement;
4. Complete a study on the impact that the proposed DOT program would have on dry goods retail spaces, and present mitigations as necessary;
5. Present a plan to allow other public uses on sidewalks and roadways;
6. Prioritize bike lane and bus lane expansion over roadway dining in accordance with the DOT 5-year transportation plan;
7. Require restaurants to comply with noise restrictions, have windows and doors closed while playing amplified music indoors, prohibit amplified music outside, and require patrons to be seated;
8. Present citywide sanitation plan and vermin control guidelines for restaurants;
9. Include compliance with program guidelines as key criteria for approving renewal applications and use license revocation as an enforcement option, thereby eliminating the need for NYPD involvement regarding enforcement issues;
10. Prohibit seating on the roadway or sidewalk in a location that would impede passage in a bike lane; and
11. Reduce hours of operation for outdoor dining in residential areas.



Gale A. Brewer
Manhattan Borough President