

COMMUNITY BOARD 12 - MANHATTAN

LAND USE COMMITTEE - MEETING MINUTES

Thursday, September 9, 2021 (Virtual via Zoom)

Committee Members Present

Wayne Benjamin, Chair
Tanya Bonner, Assistant Chair
Joel Abreu
James Berlin
Omar Tejada

Committee Members Absent

Rosy Perez (Excused)
Steve Simon (Excused)
Curtis Young (Excused)

Board Members Present

Public Member Present

Vivian Ducat

Staff: Shinelle Paniagua, Community Associate

Guests: Gabriela Biel; Margaret Connors McQuade (Hispanic Society); Natalie Espino (MBPO); Timothy Frasca; Marilu Galvan; Johanna Garcia (Office of Senator Robert Jackson); Bonnie Gordon; Loretta Henke; Ben Huff (DCP); Senator Robert Jackson; Jackie Lazaro (DOT); Carlos Manzueta; Michael McCoy; Cheramie Mondesire; Simon Morgan; Katherine O'Sullivan; Kimberly Rancourt (DOT); Jeanne Ruskin; Amber Stacks; Jose Trucios (DCP); Annie White (DCP)

1. The meeting of the Land Use Committee ("Land Use" or the "Committee") of Community Board 12 Manhattan ("CB12M" or the "Board") was called to order at 7:07 p.m. Committee Chair Wayne Benjamin noted the meeting was not taking place on its regularly scheduled day to avoid conflicts with the Labor Day holiday and Jewish holidays. The Committee will return to its regular meeting schedule (first Wednesday in the month) in October. Benjamin also welcomed new Committee members: Joel Abreu and Curtis Young. Abreu mentioned that he is also a new Board member. Young could not attend the meeting due to a scheduling conflict. The other Committee members also introduced themselves.

Benjamin announced that the American Academy of Arts and Letters (the "Academy") was postponed until the October Committee meeting. For the benefit of new Committee members, Benjamin explained the Academy is located at the landmarked Audubon Terrace complex ("Audubon Terrace"), a group of cultural institutions built from the early 1900s to circa 1930. The design of the Academy's buildings and the Audubon Terrace includes stairs at numerous locations, so there are accessibility issues; this is also true for the buildings occupied by the Hispanic Society of America (the "Hispanic Society"), which is also located at Audubon Terrace. The Academy proposes a renovation project that would link its buildings on the north and south sides of Audubon Terrace, creating an accessible path throughout the buildings. Benjamin said accessibility is something LU has discussed with the Academy and the Hispanic Society for years, and it is finally coming to fruition. And since the buildings are landmarked, any renovation must be approved by the Landmarks Preservation Commission. Thus, a presentation before the Community Board is required to review and comment on the proposed project.

2. Presentation from City Planning on Permanent Open Restaurants Program

Annie White of DCP stated that although the presentation will discuss the Open Restaurants program and the Roadway Dining program, the zoning text amendment only pertained to the Open Restaurants program and introduced Jose Trucios, DCP. Trucios opened the presentation, stating he will be working with Community Boards 12 and 9 and attending the meetings. The PowerPoint presentation was conducted in two parts: Part

One was an overview of the current temporary Open Restaurants Program and lessons learned from that experience, and Part Two discussed the proposed Zoning Text Amendment. They are requesting the Board's approval.

Jackie Lazaro of DOT opened Part One of the presentation. Lazaro said the Permanent Open Restaurants program under DOT would include both sidewalk and roadway cafes. The permanent program's guidelines will be developed using what has and has not worked under the Sidewalk Café Program and the Emergency Open Restaurant Program. Lazaro clarified that DOT and City Planning ask the Board for its opinion on the Sidewalk Café Text Amendment, not the roadway dining portion. And as background, Lazaro explained that pre-COVID, there were far fewer street and sidewalk cafes, and the majority were administered by the New York City Department of Consumer and Worker Protection. DOT ran a pilot program called "Street Seats" that had 25 participants, mainly in Manhattan. The Emergency Open Restaurants Program was launched in the Summer of 2020. Lazaro said the restaurants self-certified for participation and were not required to pay a participation fee, which eliminated the lengthy design review process. The emergency program helped save almost 11,000 restaurants and an estimated 100,000 jobs.

Lazaro said some of the program's successes are that access to the program was easy for restaurants, roadway seating offered restaurants more options if they had limited sidewalk space. All areas of the City were eligible for the program, which had not been the case before. Challenges included maintaining emergency vehicle access, enforcement, communication, consistency of rules, and accommodating all sidewalk and street users, including those with mobility impairments.

The permanent program will have DOT administer both the Sidewalk and Roadway seating programs, with DOT enforcing barriers, clear paths, and ADA compliance, with NYPD continuing to implement noise, and with DSNY in charge of regulating garbage removal. As part of the rules of the proposed permanent program, the City is offering to require an 8-foot clear path, or half the sidewalk's width – whichever is greater. In some areas with higher foot traffic, the City proposes 12 feet or half the sidewalk width. Lazaro said the City would look at a waiver to go down to six feet in coordination with ADA requirements. No fully enclosed structures will be allowed under the permanent Roadway Café Seating program, Lazaro said. Additionally, the City is proposing the new program will not operate in the winter months, with an option for a hardship waiver. Lastly, Lazaro said the application and administration process under DOT would include more detailed design guidance, a streamlined application process with shorter public review periods than pre-COVID, and 4-year licenses with periodic compliance checks. The current emergency program is expected to remain in place at least through 2022.

Trucios then presented an overview of the Permanent Open Restaurants Zoning Text Amendment. The Zoning Text Amendment would remove zoning restrictions about the location of sidewalk cafes, any language preventing sidewalk cafes in particular districts, remove or modify rules around enclosures, operable windows serving restaurants, and clarify language about sidewalk widenings that would limit outdoor dining. Under the Permanent Program, restaurants citywide could apply to DOT to locate a sidewalk café. He also noted that 11,500 restaurants participated in the emergency program, with 10,000 using the sidewalk. And whereas sidewalk cafes are currently limited by zoning, under the emergency program, 2,500 restaurants that would not have been eligible or be limited could establish sidewalk cafes. Trucios said the zoning proposal would grandfather in restaurants in residential districts and allow sidewalk cafes in previously restricted or limited areas if the restaurants can meet the sidewalk conditions. Trucios said an estimated 1,000 are participating in the program in residential areas. In Community District 12, sidewalk cafes are currently allowed primarily along St. Nicholas Avenue, Broadway, and Amsterdam Avenue. The number of sidewalk cafes grew from 24 pre-COVID to 65 under the Open Restaurants program, including 26 in residential/no café zoning areas and five in other areas prohibited by zoning.

Benjamin relayed questions he received from Committee member Young. They had concerns about sanitation, how those issues will be handled, and how noise will be addressed – particularly restaurants with apartments above them. Trucios said DOT would be the overarching agency for all the sidewalk cafes and roadway programs, but the first response for enforcement will be NYPD/311. He said DOT is buffing up its enforcement unit, which will review structures. Trucios said he would like CBs to provide a list of problematic locations so enforcement can be done.

Benjamin wondered why the prohibition of enclosed sidewalk cafes makes sense, saying he feels this should be a business decision whether to apply for it. Trucios said there was a need to move things outdoors and that his agency is not seeing many applications for sidewalk cafes. Trucios noted that there are currently 122 enclosed cafes that will be grandfathered in and allowed to continue to operate, but that no additional licenses will be granted.

Committee Member Tanya Bonner said she would not favor the amendment, mainly due to the temporary program's impact on the community. While the program had provided a service to restaurants that needed an option when things were shut down, there has not been appropriate regulation from DOT or the NYPD. She noted videos of restaurants blasting music outside and having singers and bands outside - with no limitation. Bonner said she has repeatedly reached out to DOT as chair of the Washington Heights-Inwood Task Force on Noise and does not hear back from them. She finds it disrespectful and said it does not bode well for the proposed permanent program if DOT is not willing to respond to the concerns of community members in the current temporary program. Trucios said a part of the problem was the self-certification process that caught the agencies off guard. Kimberly Rancourt of DOT said she is aware of Bonner's outreach and that the agency has had internal conversations about that. Bonner said the Task Force had invited DOT to past meetings to discuss the noise and other quality of life issues and that all the other relevant agencies showed up in February 2021 to a Task Force meeting except for DOT.

Committee Member Omar Tejada said his concerns also center around enforcement, stating that many businesses on Broadway have speakers playing in the outside enclosures and noting an area along Broadway between 177th and 178th Streets as being particularly problematic in terms of the sidewalk having an extremely limited clear path for pedestrians. Tejada said the lack of enforcement indicates a lack of checks on the businesses to ensure compliance. Rancourt said DOT's focus has been on safety issues in the roadways, but they are starting to ramp up enforcement that includes increasing staff and resources.

Vivian Ducat said the garbage overflow situation generated from buildings next to the restaurants is "disgusting." Ducat desires more trash pickups and more bins that are separate from the outside eating spaces. Trucios said he does not know what will be in place in the permanent program, but they are working on it. Ducat noted that the garbage issue is not often due to the restaurants themselves but situated next to buildings with an overflow of garbage.

Abreu said he liked the idea of the Open Restaurants Program because it allowed the vibrancy of the restaurants and the community to come back. However, he wants to know if a manual and training for businesses old and new will be a part of the permanent program. Rancourt said they are still developing the permanent program, and the details need to be worked out. She said she would take the training suggestion back to DOT.

Natalie Espino of the Manhattan Borough President's Office (MBPO) wanted clarity on how an establishment will be determined to be suitable for the permanent program, mainly because she is hyperaware of the impact of the current program on those with mobility issues due to her care on weekends for a mobility-impaired young relative who uses a wheelchair. She is concerned about continuing to run into areas with not enough space for a child-sized wheelchair to pass. Rancourt acknowledged that in the first year of the temporary program, the agency was not enforcing the sidewalk rules as they were the ones for roadways but said they are ramping this up.

Ducat asked if there is a way to monitor businesses in the program to the 311 apps. And Benjamin stated that the Zoning Text Amendment seems rushed, compared to the other text amendments proposed by DCP and considered by community boards earlier this year. Why not do more homework and come back with something a little more baked? He asked. Trucios said there was a lot of pressure to get the program up and going to assist restaurants in surviving the pandemic and that they were not expecting the executive order to happen when it did.

Katherine O'Sullivan, who said she is speaking on behalf of Moving Forward Unidos, which is a member of The Coalition United for Equitable Urban Policy, an association of neighborhood groups trying to bring about more participatory policy decisions by the City, said making the program permanent is just a giveaway of our streets to the liquor industry. Trucios said the liquor licenses would still have to come before the Board for review. The sidewalk café review process will continue to go before the Board for approval - including how and where they operate. Trucios said the proposed Zoning Amendment is necessary to open the sidewalk cafes in previously prohibited areas. Rancourt reiterated that the idea was to open it up to make it more possible in more locations as there are areas that currently cannot have sidewalk cafes.

Committee Member James Berlin said the reality is we must go by what we see now - not a future vision. Berlin said most people live in apartments and have the right to sleep at night in peace and not see rats running around. He worries that in places that were once quiet, people will not be able to sleep anymore once the cafes open everywhere.

Benjamin noted that Community Board comment is due by September 27 – the day before the Board's General meeting. Therefore, the Board's Executive Committee will need to vote on a resolution, and then the entire Board will ratify it on the 28th.

After a brief discussion of a potential direction for a Committee resolution for or against the proposal, the Committee agreed to put forth a resolution that expressed that while the Committee understands and appreciates the intent, more work is needed to develop a more detailed plan before the Committee can consider voting in favor of it. The motion was moved by Berlin and seconded by Bonner.

The Committee vote was as follows:

	<u>For</u>	<u>Against</u>	<u>Abstaining</u>
Committee Members	6	0	0
Board Members	0	0	0
Members of the Public	1	0	0

3. Discussion of FY23 Budget Priorities

Benjamin reminded the Committee that it had only two budget items in the previous year: One Capital and one Expense item. The Expense Budget item requested that additional DCP planning staff be dedicated to working with community residents and the Community Board to formulate and implement a community-based neighborhood preservation plan for Washington Heights and Inwood, exclusive of any work they are undertaking in connection with EDC's Inwood Rezoning plan. Benjamin said the response from the Mayor's Office was for the Committee to contact DCP's Borough Office to discuss the request. Benjamin noted that the Committee has talked with DCP for several years to move forward with a refreshed neighborhood planning strategy and pointed out that the rezoning plan did not include or follow any tenets outlined in the study the Committee completed with City College in 2007. Annie White of DCP said what will be a factor is the priorities for zoning and land use, growth and preservation in the next Mayoral administration, and

whether the agency's priorities will be in line with the community's plan. Benjamin said this Community Board had been ignored in terms of its planning priorities. White said DCP is always willing to have the conversation and desires a proposal be brought to them in a future meeting. Benjamin suggested scheduling a single-agenda item meeting to discuss the issue.

Benjamin reminded me that the request was to allocate funds to support a planning development initiative for vacant city-owned land and buildings to develop more affordable housing on the Capital Budget side. This request was focused on HPD, Benjamin noted. He said the response from the Mayor's Office to that request is that "the agency will accommodate this within existing resources." Benjamin said he would like to inquire about what HPD is doing in response to this request.

The Committee agreed that the Committee should continue to advance the two budget priorities. The Committee will engage with DCP and HPD to see what can be done to move those priorities forward.

4. Old Business

None

5. New Business:

None

A motion to adjourn was made by Berlin and seconded by Abreu. The meeting was adjourned at 8:51 p.m.

Minutes prepared by: Tanya Bonner