



## Community Board 12 - Manhattan Washington Heights & Inwood

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Eleazar Bueno, Chairperson  
Ebenezer Smith, District Manager

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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

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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.

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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

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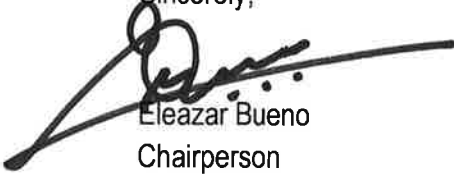
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Resolved: Community Board 12-Manhattan urges the Department of City Planning and the Department of Transportation to draft and circulate for public review the design guidelines and rules and regulations proposed for the Permanent Open Restaurants Program 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