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COMMUNITY BOARD NO. 2, MANHATTAN

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November 30, 2020

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

Hon. Corey Johnson
New York City Council Speaker
City Hall
New York, NY 10007

Hon. Andrew Cohen
Chair, Committee on Consumer Affairs and Business Licensing
New York City Council
City Hall
New York, NY 10007

Dear Mayor de Blasio, Speaker Johnson, and Councilmember Cohen:

At its Full Board meeting November 19, 2020, Community Board #2, adopted the following resolution:

Resolution in response to the Mayoral Executive Order No. 153¹ and City Council Int 2127-2020: Expiration of the Outdoor Dining Program² - extending the expiration of the City's current outdoor dining program (Open Restaurants and Open Streets: Restaurants) until September 30, 2021 (self-certified temporary sidewalk seating and self-certified roadway seating), and the replacement of the current outdoor dining program with a permanent program allowing for the use of roadway seating as outdoor dining areas.

Whereas:

1. On March 7, 2020, New York State Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors,
2. New York City Mayor Bill de Blasio's Emergency Executive Order No. 98, issued March 12, 2020, and extended most recently by Emergency Executive Order No. 161, issued November 13, 2020, contains a

¹ Office of the Mayor Emergency Executive Order No. 153: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-153.pdf>

² City Council Bill Int 2127-2020: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4647999&GUID=8A4B065C-C372-4797-A38E-FEF39C3C02D2&Options=ID|Text|&Search=outdoor+dining>

declaration of a state of emergency in the City of New York due to the threat posed by COVID-19 to the health and welfare of City residents, and such declaration remains in effect,

3. Community Board 2 Manhattan (CB2) fervently advocated for and supported measures for temporary outdoor dining to alleviate the economic hardship faced by eating and drinking establishments (in recognition that eating and drinking establishments are an important fabric of our community and the city) – including immediate implementation of a temporary outdoor dining program – vis-à-vis a letter dated June 6, 2020³, which specifically asked for a clear enforcement plan and for a quick and efficient community-review process as well as four types of outdoor dining solutions to maximize equity among operators and outlined potential issues – issues which continue to be concerning for the district – to ensure residents’ quality of life would not be compromised,
4. The Mayor issued Emergency Executive Order No. 126⁴ on June 18, 2020, which established the Open Restaurants program allowing restaurants, bars, and other establishments to use outdoor space on sidewalks and the roadway for additional dining space to support establishments during the pandemic,
5. After the distribution of the June 6, 2020 letter, CB2 was not formally engaged by any city agency to provide feedback on any outdoor dining policy as it relates to our district,
6. CB2 has supported temporary measures to allow its restaurants to generate income, and has withstood the haphazard array of construction, operation, and enforcement in the face of a national crisis, making permanent this emergency arrangement without a comprehensive citywide plan undermines zoning regulations and municipal policies that have been longstanding,
7. This experimental program has revealed many flaws over the last five months, including lack of enforcement by DOT; lack of coordination between NYC DOT and NYS SLA; contradictory guidelines that result from a lack of coordination between city agencies; the disadvantage of law-abiding operators in the face of operators who flout existing guidelines; a rigid self-certification system that fails to accommodate the needs of all operators and leads to inequity among operators; public nuisances; safety concerns regarding safe passage on city sidewalks and streets,
8. CB2 has the highest number of Open Restaurants permits of all community districts (911 Open Restaurants Permits issued⁵) and has the highest number of Open Streets: Restaurants sites (16 Open Streets: Restaurants Permits issued or 18% of all Open Streets: Restaurants sites across all five boroughs and 28% of all Open Streets: Restaurants sites across Manhattan alone⁶),
9. Our elected officials rush to judgment without any formal community review process to permanently privatize public space for only one industry during an unprecedented global pandemic is malfeasance,

³ CB2 Reopening Working Group Letter, dated June 6, 2020:

https://www.dropbox.com/s/x89v7pxhxalza6t/CB2_Outdoor_Dining_Letter_June_2020.pdf?dl=0

⁴ Office of the Mayor Emergency Executive Order No. 126: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-126.pdf>

⁵ DOT Open Restaurants Dashboard, CB2 data pulled November 16, 2020:

<https://experience.arcgis.com/experience/ba953db7d541423a8e67ae1cf52bc698>

⁶ DOT Open Streets Restaurants: <https://www1.nyc.gov/html/dot/html/pedestrians/openstreets-restaurants.shtml>

10. Self-certification for the temporary outdoor dining program was a short-term solution, revealing over the last five months vulnerabilities in enforcement that have led to issues of egregious non-compliance documented and observed,
11. Guidance on the outdoor dining program is not synthesized in one place and is distributed in piecemeal by different agencies,
12. Sidewalk space is inappropriately being used for tables: tables are consistently set up on curbside of sidewalk in direct disregard of clear guidelines (in diagrams in both Open Restaurants and Open Streets: Restaurants) and in some cases, there are double parallel rows of tables (tables at the curb parallel to tables next to the building⁷,
13. Tent enclosures or awnings that extend from the building across the entire sidewalk to the curb with support posts on sidewalks holding up tents or awnings, further minimize the sidewalk space due to incomplete guidance on where the support structures can be placed; in all cases, these enclosures that are extensions of the building to the sidewalk curb, inadvertently, privatize the public sidewalk space by forcing residents to walk through an “outdoor room” to use a public sidewalk right-of-way that has been severely reduced below the required 8-foot clearance, potentially compromising the public safety and public health of the community at a time when COVID-19 cases and hospitalizations in the city are on the rise⁸
 - a. Incomplete guidance on sidewalk enclosures is costly for operators who have already made a significant investment in and have constructed sidewalk enclosures, and operators were not informed that sidewalk it was not until the Office of Nightlife’s Multi-Agency Town Call on November 18, 2020, where both Judy Chang (DOT) and Steven Picker (SBS/Food & Beverage) confirmed that enclosed structures on sidewalks are not permitted.⁹
14. Whereas, there is a lack of clarity of the definition of 100% capacity in the case of outdoor enclosed structures, which in turn makes it impossible determine compliance with indoor dining guidelines where restaurants also have outdoor space; guidelines are ambiguous in defining the correct reduction of tables and the correct space between them,
15. CB2 has the highest number of landmarked districts in the city (Greenwich Village Historic District, Gansevoort Market Historic District, SoHo-Cast Iron Historic District, Charlton-King-Vandam Historic District, MacDougal-Sullivan Gardens Historic District, NoHo Historic District, South Village Historic District, Sullivan-Thompson Historic District, and partially the Bowery Historic District), all of which have been fiercely protected through a formal community review process, and yet face severe aesthetic consequences under a permanently disfigured streetscape of mismatched structures of various materials, heights, and densities,
16. CB2 recognizes that the outdoor dining structures in the roadway and on the sidewalks were initially intended to be temporary solutions built on a budget; however, there is now no process nor cure for

⁷ DOT Open Restaurants Siting Criteria Diagram: <https://www1.nyc.gov/html/dot/images/pedestrians/open-restaurants-application-detailed-specs.jpg>

⁸ City of New York COVID-19 Data: <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>

⁹ Office of Nightlife Multi-Agency Town Call, November 18, 2020: <https://www.facebook.com/nycnightlifegov/posts/3390338844419322>

the permanent aesthetic corruption of building structures emerging from historic streetscapes in the roadway and on the sidewalk,

17. Propane heaters were previously illegal and were made permanently legal by the Mayor's Executive Order No. 153,
18. CB2 residents voiced concerns regarding the following as they relate to outdoor dining:
 - Complete lack of enforcement by DOT;
 - Complete lack of community input on transitioning a temporary program to a permanent one;
 - Sanitation: decline in pick up at corner baskets and overall increase in trash in and around the district;
 - Seniors aging in place;
 - Traffic congestion;
 - Climate impact of outdoor heaters;
 - Equity for all uses of the public roadway: cyclists and public sidewalk: pedestrians; and
 - No resident guidance for making the outdoor dining program a success.
19. A lack of enforcement has placed much undue burden on CB2 residents to file complaints with 311 regarding multiple egregious violations of the Open Restaurants and Open Streets: Restaurants guidance¹⁰ provided by DOT, but most 311 cases are closed with little or no curing of the violation,
 - Blocked residential entryways;
 - Sidewalk egress less than the allotted 8-foot clearance;
 - Egregious violations of the DOT Siting Criteria, including tables next to curb (not in the roadway and not next to the building);
 - Lack of social distancing;
 - Noise;
 - Amplified music, and
 - 20-pound propane heaters stored next to residential buildings in unlocked metal cages.
20. CB2 311 complaints regarding Noise-Street increased 46% year-over-year and Noise-Commercial increased 32% year-over-year (reporting period: June 16, 2020-November 16, 2020 vs. June 16, 2019-November 16, 2019)¹¹.
21. A CB2 survey of residents¹² indicated that lack of sidewalk egress was the number one issue with the outdoor dining program, irrespective of complete and utter disregard by the City for community input in evaluating the efficacy of the temporary outdoor dining program over the last five (5) months,
22. The transition of the temporary outdoor dining program (Open Restaurants and Open Streets: Restaurants) to a permanent outdoor dining program without building a clear enforcement plan and process for community input is a complete disenfranchisement of the residents in CB2 during a global pandemic, especially those who live in residential zones, where commercial overlays place eating and drinking establishments on heavy residential streets,

¹⁰ DOT Open Restaurants page: <https://www1.nyc.gov/html/dot/html/pedestrians/openrestaurants.shtml#updates>

¹¹ BoardStat, Manhattan Community Board 2, 311 Data on Noise: <https://boardstat.beta.nyc/manhattan>

¹² CB2 October Resident Survey on Outdoor Dining.

23. A completely flagrant lack of enforcement by DOT over the last five (5) months gives CB2 residents absolutely no confidence in a permanent version of this program,
24. Outdoor dining program guidance is haphazardly issued by multiple agencies in an untimely manner, causing operators to undertake unnecessary increased costs in order to mitigate contradictory guidelines,
25. Operators who are following the guidance issued as-is are at a disadvantage to operators who explicitly violate the guidance,
26. Under DOT's current self-certification system for participation in the outdoor dining program, there is not an opportunity for exceptions to be made, leading to inequity for certain operators to participate in the program causing undue economic hardship,
27. DOT has issued no fines¹³ during the duration of the outdoor dining program and Commissioner Trottenberg is seeking a lax approach to enforcement by the State Liquor Authority (SLA),¹⁴
28. DOT receives complaints from three different sources (311, DOT Borough Commissioners' offices, and Consumer Affairs and Business Licensing Committee Chairperson Cohen's office)¹⁵
29. There is no enforcement coordination between DOT and SLA,
30. A severe lack of a cohesive enforcement plan from June - November 2020 has given residents no confidence in DOT's ability to manage a permanent version of the Open Restaurants and Open Streets: Restaurants programs, and
31. Permanency should not be considered until the program has operated during all seasons and the effects of year-round operation are known, and

Therefore, be it resolved:

1. Community Board 2 strongly urges the City to stop the process of making the outdoor dining program (Open Restaurants and Open Streets: Restaurants programs) permanent in order to conduct an evaluation of the immediate past seasons (Summer 2020 and Fall 2020) and to establish a formalized community review process,

Be it further resolved:

¹³ Transcript: City Council Committee on Consumer Affairs and Business Licensing Meeting, September 30, 2020, quoted from DOT Commissioner Polly Trottenberg, pg. 48, line 4

<https://legistar.council.nyc.gov/View.ashx?M=F&ID=8857610&GUID=D3A74677-3635-4F4B-9917-BEB2F1F19201>

¹⁴ Transcript: City Council Committee on Consumer Affairs and Business Licensing Meeting, September 30, 2020, quoted from DOT Commissioner Polly Trottenberg, pg. 62, lines 21-22

<https://legistar.council.nyc.gov/View.ashx?M=F&ID=8857610&GUID=D3A74677-3635-4F4B-9917-BEB2F1F19201>

¹⁵ Transcript: City Council Committee on Consumer Affairs and Business Licensing Meeting, September 30, 2020, quoted from DOT Commissioner Polly Trottenberg, pg. 117, line 14

<https://legistar.council.nyc.gov/View.ashx?M=F&ID=8857610&GUID=D3A74677-3635-4F4B-9917-BEB2F1F19201>

1. CB2 supports advancing towards a permanent outdoor dining program **only if the following criteria are met:** an evaluation of the existing temporary outdoor dining program with residents and operators, a plan for a formalized community review process of outdoor dining, and an enforcement plan,
2. CB2 without reserve does not support the outright privatization of public space which gives away public right-of-way to one industry without any public input and recognizes that while the intention of this giveaway of public space is to benefit the temporary economic hardship faced by eating and drinking establishment operators, it is ultimately the property owners that will benefit from the free public land,
3. While CB2 supports more outdoor seating in the district, we recognize that this can't be a one-size fits all approach, that there may be areas where outdoor dining does not work and areas where all aspects of outdoor dining work well and that this will need further evaluation,
4. CB2 asks for clearer guidance on tent enclosures and built structures that are in the roadways and sidewalks, and specifically asks for the elimination of enclosures and structures that extend from the building to the sidewalk curb that create "rooms" over the entire sidewalk, leaving pedestrians no choice but to either walk through the "room" which usually has less than the required 8-foot sidewalk egress clearance inside of the "room,"
5. CB2 asks for a planning study to determine the best uses for creating more equitable outdoor dining opportunities in our district that enhance quality of life for residents and create more economic opportunities for all business industries within our district,
6. CB2 strongly urges immediate enforcement of the propane heater tank weight limits stored on-site and additionally asks for a review of the propane heaters at the end of the Winter season to address whether or not propane heaters should be allowed permanently and if so, how the updated guidance can accommodate that use more efficiently for operators,
7. CB2 calls for the immediate evacuation of all outdoor dining apparatus that currently blocks residential entryways (tents, structures, dining tables, etc.) without hesitation and swiftly by unquestionably enforcing the current guidance outlined by DOT that prohibits blocked residential entryways,
8. CB2 strongly recommends that the outdoor dining program administration fully transition to the Department of Consumer Worker Protection (DCWP) to manage the program because of the existing synchronicity between the management of the sidewalk cafe licensing program by DCWP and the management of liquor licenses by the SLA in a system that has proven successful for all parties involved,
9. CB2 supports a centralized process for complaints that aggregates 311 data and SLA complaints, a one-stop shop for the next iteration of the outdoor dining program,
10. CB2 strongly urges the next stage of the outdoor dining program to adopt stipulations similar to the liquor licensing process used by the SLA in order to formalize a process where the Community Board continues to be the quick and efficient forum to align residents and operators towards an equitable solution that does not diminish quality of life and promotes much needed economic vitality,

11. CB2 urgently demands a clear and concise enforcement plan for operators and residents with one agency responsible for the oversight because the multi-agency approach thus far has proven to be completely ineffective, and
12. CB2 strongly supports an expeditious community review process moving forward to create more equitable opportunities for operators to participate in the outdoor dining program (and additionally offered this back in our letter dated June 6, 2020) and to ensure that quality of life for residents is sustained,

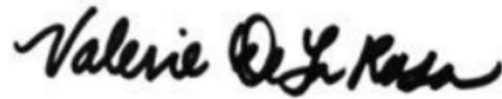
**Vote: Passed, with 43 Board Members in favor.
3 Against (M. Metzger, R. Sanz, A. Zeldin)**

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

Sincerely,



Carter Booth, Chair
Community Board #2, Manhattan



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

CB/EM

cc: Hon. Jerrold L. Nadler, Congressman
Hon. Nydia M. Velázquez, Congresswoman
Hon Carolyn Maloney, Congresswoman
Hon. Brad Hoylman, NY State Senator
Hon. Brian Kavanagh, NY State Senator
Hon. Deborah J. Glick, NY State Assembly Member
Hon. Yuh-Line Niou, NY State Assembly Member
Hon. Scott Stringer, NYC Comptroller
Hon. Gale Brewer, Manhattan. Borough President
Hon. Margaret Chin, NYC Council Member
Hon. Carlina Rivera, NYC Council Member
Polly Trottenberg, Commissioner, NYC DOT
Ed Pincar Jr., Manhattan Borough Commissioner, NYC DOT
Lorelei Salas, Commissioner, NYC DCWP
Ariel Palitz, Office of Nightlife, NYC MOME
Andrew Rigie, Executive Director, NYC Hospitality Alliance