

**Manhattan Community Board 2 (CB2)**  
**Permanent Open Restaurants Program**  
**Questions Submitted to**  
**Department of City Planning (DCP)**

*DCP responses received on September 16, 2021*

CB2 questions are listed as **Q1, Q2**, etc.

DCP's responses are in **navy blue BOLD** and listed as **R1, R2**, etc. In cases where there is more than one answer to a question, it will be labeled as **R1.1, R1.2**, respectively.

**General**

**Q1:** Timing: What is the timetable for Action 2 (Changes to the Sidewalk Café Program via Local Law and CAPA) and Action 3 (Creation of a Roadway Café Program via Local Law and CAPA) in relation to the adoption of Action 1 (Zoning Text Amendment)? Be more specific than “Fall 2021 - Fall 2022” as currently indicated on DOT site, and give a more concrete timeline.

**R1.1: Following the zoning changes and legal changes, we anticipate rulemaking that will formalize many of the programmatic, design, and application details. DOT is working on drafting and designing the standards now, and once that is complete, we will come back to the boards either in the form of a borough board meeting or committee meeting for input. This will likely take towards the end of this year.**

**Q2:** July 19 CB2 meeting with joint DCP/DOT presentation: What surprised you in what you heard from residents at the Manhattan CB2 July 19 meeting at 75 Morton? Do you anticipate making any changes in light of what you heard at this meeting?

**R2.1: As DOT works to develop the permanent program's rules and guidelines all CBs feedback is extremely important for us to ensure a successful roll out of the permanent program.**

**Q3:** What is the role of community boards during the rulemaking process for Actions 2 and 3 listed above? What is the role of the community board during the application process for the new Sidewalk Café Program? Will Sidewalk Café applications in the Permanent Open Restaurants Program be sent to community boards for review? What is the role of the community board during the application process for the new Roadway Café Program? Will Roadway Café applications in the Permanent Open Restaurants Program be sent to community boards for review?

**R3.1: As mandated by the City Charter, Community Boards will still review Restaurant applications for Sidewalk Café licenses. It is expected that once a restaurant applies to DOT for a license, DOT will review to make sure the application is complete, it will then go to Community Boards for review prior to restaurants receiving a license.**

**R3.2: Applications to the Roadway program will undergo a new process that is still in development.**

**Attachment A: Project Description**

**Q4: Page A-1 (Objectives for the Program)** – Explain how the public right to the street will be retained.

**Q4.1: In the current program restaurants must maintain eight feet of clearance and accessibility to outdoor dining itself. We will have similar accessibility requirements in the permanent program.**

**Q4.2: DOT is in the process of revising the criteria of the pre-COVID Department of Consumer Worker Protection (DCWP) sidewalk café program. A [preliminary list of rules is available here](#). Key elements include:**

- **8' or 50% of sidewalk clear path requirements in most areas of the city**
- **12' or 50% sidewalk clear path requirements in some of the city's most highly trafficked areas**
- **Specific distances from street furniture**
- **A waiver process that would allow restaurants to waive 1-2' of clear path requirements on less trafficked streets where pedestrian and accessibility needs can be met.**

**Q5: Page A-3 (Description of the Proposed Action)** – *“Eligibility would be limited to restaurants with an active DOHMH food service establishment license and ground floor frontage.”* There are places other than what one typically considers a restaurant that have an active DOHMH food service establishment license. Would they qualify? Define “restaurant”. What is meant by ground floor frontage? Please define. For example: does an establishment need to have seated patrons on the ground floor that are served food and drink to be able to extend to the sidewalk/roadbed?

**R5.1: Siting requirements are forthcoming.**

**R5.2: The expectation is to have any restaurant with a DOHMH restaurant grade and ground floor access to the street may have a sidewalk or roadway dining set up. Restaurants will be limited to the business frontage (ground floor).**

**R5.3: [Food Service Establishment Permit](#)**

**R5.4: [Sanitary Grading](#)**

**Q6: Page A-3 (Description of the Proposed Action)** – The EAS states that *“Permanent fully enclosed structures would be prohibited.”* What defines a partially enclosed structure? Will roofs, doors, and windows be allowed on a sidewalk setup against the building or in the amenity zone? Will a partially enclosed structure be allowed in a roadway setup? Will a partially enclosed structure be allowed in a sidewalk setup?

**R6.1: Siting requirements are forthcoming.**

**R6.2: As part of the design process, the City is determining what forms of partial enclosures will be allowed. On the sidewalk, the expectation is that design rules from the prior DCWP program will be maintained, with limited updates. For roadways, where designs are entirely new, the City is considering what levels of shading and screening are appropriate while maintaining safety and openness to the sidewalk.**

**Q7: Page A-3 (Roadway Seating)** – It is stated that Roadway Seating “*would be prohibited from encroaching on any bike lane.*” The Service Aisle is not addressed in the Proposed Roadway Seating Siting Criteria in Appendix 1. Is it not encroaching if the roadway seating is across a bike lane on streets such as Hudson Street or 7th Avenue, where service has to occur over a bike lane with no buffer zone? The Service Aisle encroaches on a bike lane in this instance.

**R7.1: The siting criteria is still being developed.**

**R7.2: The expectation is that restaurants will not be allowed to set up in No Standing Zones, Delivery Zones, Bus Lanes, Bike Lanes and other areas where the curb is otherwise regulated. [A full list of roadway dining siting criteria will be available here](#) and [current rules on parking in the curblane are available here.](#)**

**Q8: Page A-4 (Sidewalk Seating and Roadway Seating)**

Under Roadway Seating, it is explicitly stated that “*Fully enclosed structures would be prohibited under the proposed roadway seating program.*” Why is this sentence not also included in the Sidewalk Seating directly above? Will permanent fully enclosed structures be allowed on the sidewalk and in the amenity zone?

**Q8.1: Fully enclosed structures will not be allowed in the roadway or on the sidewalk for the permanent OR program. Sidewalk Cafes that were approved pre-pandemic will be grandfathered in, and may retain their enclosed structure (there are currently 102 in the city).**

**Q9: Page A-4 (Discretionary Actions Required)** – Why would any zoning geographic restrictions on sidewalk café eligibility be removed? Aren’t these zoning geographic restrictions currently enforced to provide protection for residents and others in specific vulnerable areas?

**R9.1: Currently, Zoning dictates what areas of the city can, and cannot, have sidewalk cafes. Over the years, many areas of the city have been deemed off-limits, even if a restaurant could otherwise meet the sidewalk siting rules (existing pre-pandemic). The text amendment will remove zoning’s role from regulating the location of cafes, so that in a future program under DOT, any restaurant with a ground floor frontage can apply if their café can meet the specific sidewalk siting rules.**

**R9.2: Additionally, different City initiatives have been inconsistent as to where to allow sidewalk cafes. This is an effort to consolidate the program and align it with siting criteria.**

**Q10:** *Page A-5 (Provisions Administrative Code of the City of NY) – Section 10-125 –*  
RE: consumption of alcohol on streets – Please explain why this is being considered.

**R10.1: New York State Liquor Authority will still be responsible for granting a restaurant a liquor license. Patrons will be able to drink at the sidewalk or roadway cafe, State Laws will be changed to allow this. Similar to POPS where liquor licenses are granted, and alcohol consumption is permitted.**

**R10.2: All cafes seeking liquor licenses for outdoor space will remain subject to state processes. The process for obtaining a liquor license will remain the same with community board approval, etc.**

**Q11:** *Page A-6 (D. Description of Project Area) –* Why would non-conforming restaurants operating in zoning districts not allowing restaurants as-of-right be eligible for POR? Aren't they in residential districts that are set up to avoid the impacts these restaurants bring which would be further exacerbated by the outdoor setups?

**R11.1: We have seen that many of these restaurants have had successful sidewalk cafes during the emergency program and that outdoor dining has been key to their survival. They will lose the ability to apply if we don't amend the zoning. This does not guarantee they will have a sidewalk cafe, only that zoning will not be an impediment in their application process, which will still come before the community board.**

**Q12:** *Page A-7 (General Area of Applicability)* For Manhattan CB2, can you provide a list of eligible block faces in the Existing Program and a list of anticipated eligible block faces in the POR Program

**R12.1:** [Sidewalk Café map](#)

**R12.2: All block faces will be eligible, however a restaurant will have to meet both the clear path requirement and siting criteria. It is difficult for us to have a map that captures all of these requirements that show what will work and what won't but narrow sidewalks (11' or less) unable to meet the clear path or areas where there are hydrants are examples of sidewalks likely not eligible for the permanent program. Siting requirements for the roadway cafes are forthcoming.**

**Q13:** *Page A-7 (General Area of Applicability) –* Have you contemplated putting a cap on outdoor seating capacity as a percentage of indoor seating capacity?

**R13.1: The expectation is to have outdoor space limited by the amount of ground floor frontage, and width of a sidewalk/roadway setup as defined by siting criteria.**

**Q14:** *Page A-7 (General Area of Applicability)* – Is there any way to set a density limitation?

**R14.1:** There will be additional review when a cluster of restaurants apply at the same block, we also look to work with CBs as applications for sidewalk cafes come for approval to help us identify and troubleshoot issues like overconcentration of sidewalk and roadway applications. Rules and guidelines of the program are still under development, and recommendations from CBs and the public will inform the final rollout of the program.

**Q15:** *Page A-7 (General Area of Applicability)* – Would you consider a carveout for neighborhoods like Manhattan CB2 and Manhattan CB3 where density is extreme?

**R15.1:** Last fall the Mayor announced that Open Restaurants would be a year-round and permanent program. The City Council voted, with overwhelming support, for a permanent program across the five boroughs. For areas of high density of restaurants, DOT will aim to review streets and corridors for local access needs.

**R15.2:** We also expect a reduction in the amount of restaurants utilizing the program as more flexibility for indoor dining increases, in addition to the removal of the self-certification process and the establishment of new rules and guidelines. As the city moves forward with a permanent Open Restaurants program we will ensure that the public and the restaurant industry are aware of the upcoming changes.

**Q16:** *Pages A-11-A-16 (Prototypical Analysis)* – How do the generic prototype configurations allow for treatment of individual sites/areas with their own, differing, specific characteristics? Shouldn't this analysis be fine-tuned to also accommodate sole variations that call for closer attention? (e.g., specific residential locations sensitive to noise).

**R16.1:** DOT is developing the permanent program rules and guidelines; comments and recommendations from CBs and the public will inform the final rollout of the program.

**Q17:** Is any attention being given to temporary outdoor dining setups that didn't work out well and how that would be handled? (e.g., took up too much space, didn't fit on the street, was badly designed, created access and safety problems).

**R17.1:** Yes. It is important to highlight that the emergency program was self-certified and that some restaurants were not compliant with the existing rules and guidelines. If there are any locations you would like to share with us please send them to DOT.

**Q18:** *Page A-17 (Community Facilities and Services)* – Wouldn't access to special community facilities like Health Care, Fire & Police (protection and emergencies) Nursery, Elementary & High Schools & Early

Childhood Programs be significant in terms of the obstructive impact some roadside dining would have in facilitating passage?

**R18.1: DOT is considering additional review when a cluster of restaurants apply at the same block to ensure that safety, visibility, or emergency vehicles are not compromised because of outdoor dining.**

**Q19: Page A-17 (Open Space)** – Wouldn't it be important to assess the adverse impact of the opportunity lost by taking away the potential for providing needed open space for people's use and enjoyment in the public street spaces occupied predominantly by outdoor dining (a commercial use), especially in areas like CB2, an area underserved in open space?

**R19.1: The expected unenclosed cafes that will be allowed through the sidewalk cafe program are expected to be removable, so no permanent loss of public space is expected.**

**Q20: Page A-18 (Hazardous Materials)** – Wouldn't propane heaters and electric heating elements used to warm the street bed dining areas be hazardous because of their inflammability and combustibility and their emissions that pollute the air, which should be evaluated as a highly adverse impact?

**R20.1: Propane heaters are not anticipated to be part of the permanent program, which will be seasonal in nature. Heaters will be allowed for sidewalk cafes as they were allowed in the DCWP program but will not be allowed for roadway cafes.**

**R20.2: [Refer to NYC DOB's 2020-017 Bulletin for information about when permits are required for reopening restaurants and bars \(issued October 14, 2020\)](#)**

#### **Attachment B - Land Use, Zoning, and Public Policy**

**Q21: Page B-18 (Policy 7: Minimize environmental degradation and negative impacts on public health from solid waste, toxic pollutants, hazardous materials, and industrial materials that may pose risks to the environment and public health and safety.)** Who will be responsible for vermin control in the POR situation? We have had reports of rats running around in the sheds while diners are eating.

**R21.1: DOT is working with the DOHMM, and DSNY on permanent program guidelines. You can reference DOH's How to Reduce Pests When Offering Outdoor Dining info sheet [here](#).**

**Q22: Page B-18 (Policy 7: Minimize environmental degradation and negative impacts on public health from solid waste, toxic pollutants, hazardous materials, and industrial materials that may pose risks to the environment and public health and safety.)** What provisions are being made for street cleaning and other maintenance?

**R22.1: DOT is coordinating with DSNY on sanitation needs.**

**Attachment C – Socioeconomic Conditions / Attachment I – Neighborhood Character**

**Q23:** Please explain why potential displacement of retail, neighborhood businesses by restaurants because of the higher rental revenues restaurants can command with POR would not have a significant adverse impact on both socioeconomic conditions and neighborhood character, not to mention general quality of life?

**R23.1:** The proposed text amendment will not allow the creation of new restaurants in areas where they are not currently allowed, for example residential areas. Additionally, not all retail spaces allow for restaurants to operate as of right, a variance or rezoning might be necessary in the case a former retail space would like to allow for USE GROUP 6.

**Q24:** Manhattan CB2, under the existing Sidewalk Cafe Program, has 43,456 SF of sidewalk cafes (source: OpenData NYC pulled on July 18, 2021). Under the Temporary Open Restaurants Program, CB2 has 441,146 SF of roadway cafes and sidewalk cafes. This represents an increase of 931% in sidewalk and roadway cafe SF in Manhattan CB2. What are the mitigation tactics for ensuring that streets in Manhattan CB2 with Use Group 6 do not incentivize landlords to favor a restaurant over other neighborhood retail which has the potential to turn a Use Group 6 street into a row of restaurants?

**R24.1:** The zoning text amendment is not changing where restaurants are allowed, it is only removing sidewalk cafe regulations as being a barrier for restaurants to apply for sidewalk cafes. In areas that have USE group 6, by nature zoning has never been a tool to incentivize them one use or another.

**Attachment D – Historic and Cultural Resources**

**Q25:** Are there any provisions for POR in historic districts? Since many of the roadway restaurants are constructed of shoddy materials and look like shacks or shanties, which would destroy the visual character, sightlines, and harmony of the Greenwich Village, South Village, SoHo Cast Iron, Gansevoort Market, MacDougal-Sullivan Gardens, Sullivan-Thompson, and Charlton-King-Van Dam Historic Districts in CB2, what criteria will LPC use to determine what is suitable for installation?

**R25.1:** Design guidelines will have clear guidance on additional requirements in Landmarked districts if there is any.

**Attachment E – Urban Design and Visual Resources / Attachment I - Neighborhood Character**

**Q26:** Since many of the roadway restaurants are constructed of shoddy materials and look like shacks or shanties, which would destroy the visual character, sightlines, and harmony of CB2, shouldn't the impact of these roadway structures be considered both in terms of their negative effect on the streetscape and general visual environment as well as their adverse impact in obstructing visibility of visual resources, e.g. from one side of the street to the other? Shouldn't that require a more in-depth study of such impacts and strict requirements for compliance with guidelines?

**R26.1: DOT is developing the permanent program rules and guidelines (including design guidelines and best practices). Additionally, DOT is considering what levels of shading and screening are appropriate while maintaining safety and openness to the sidewalk.**

**Q27:** Has the Department of City Planning and/or the Department of Transportation done any study or surveys to evaluate what would be the best use of the street space either in each district and/or within the varied neighborhoods of the districts? Why is it being assumed that roadway dining is the best use of the street everywhere?

**R27.1: There is no study done that has determined the best use of space for each block of the city. This zoning text amendment was proposed to help support a permanent open restaurants program. It was determined that unnecessary zoning restrictions will prevent restaurants currently using the emergency program from doing so in a non emergency setting. They will still have to meet siting criteria and clear path requirements, but zoning should not be an additional requirement for the ability to apply for a sidewalk cafe.**

**Attachment F – Transportation**

*NOTE: DCP did not answer the questions in this section individually, and so the responses here are numbered without a corresponding question affiliated with the responses.*

**R28.1: \*\*\*DOT is developing the design criteria and working with other City agencies, including FDNY , DSNY, and MTA to ensure safety and emergency access. The city is reviewing the design rules for the new program. The expectation is that servicing tables from the clear path would remain a violation.**

**R28.2: NYPD collects collision data, which is posted on the NYC Open Data site. DOT compiles Vision Zero data on our website here: <https://www1.nyc.gov/html/dot/html/about/datafeeds.shtml>**

**R28.3: The [Vision Zero Crash & Interventions Map](#) is an interactive tool that shows detailed information on traffic injury and fatality crashes in New York City, and highlights how the city is responding every day to make our streets safer. The map displays crash types, dates and locations and highlights Vision Zero initiatives such as Arterial Slow Zones, planning workshops and expanded traffic enforcement, major safety projects, as well as other long running safety programs. The data used in the map is available in the links below (see the online map for more information about the data creation and sources).**

**R28.4: [Traffic Crash Data](#)**

**R28.5: [All other Vision Zero View data](#) (street design projects, outreach events, speed limits)**

*Page F-2 (Table F-1 - Sidewalk Width Assumptions for Sidewalk Analyses by Prototype)* Why are sidewalk widths narrower in the Action mode? Doesn't this go completely against Vision Zero which advocates more pedestrian comfort and access (hence, more pedestrian space), not less?

*Page F-7 (Table F-6 - Sidewalk Effective Width Assumptions)* – Why is an allowance for obstructions given and 2.5 ft. shy distance within the clear path of 8 ft., reducing the effective width to 3.5 ft., which would severely reduce pedestrian space?

NYCDOT’s Street Design Manual advocates for safety for street users, pedestrian mobility, and access. Why has there been no consideration of these important transportation concerns for the street in the Transportation assessment of the EAS?

Crossing at intersections can be dangerous because the visibility of approaching vehicles is often obscured by the outdoor dining structures. Why has there been no analysis of street visibility?

Has any assessment been made of the number of and effect of collisions and near-collisions in narrow streets between vehicles and temporary open restaurant setups sticking out too far into the street?

What is the safety record for accidents due to vehicular collisions with existing roadway dining setups?

Can DOT extrapolate based on the data the number of weekly/monthly/yearly incidents and severity? Have there been any fatalities attributed to roadway dining setups during the emergency order period?

What mitigation is being considered to protect diners and restaurant workers from vehicle-related accidents? What measures would protect against an intentional act involving a vehicle?

#### **Attachment H: Noise**

**Q29:** Where is the prohibition on sound and TVs, amplified or not?

**R29.1: Amplified sound is not allowed under the emergency Open Restaurants program, and will not be allowed for the permanent program. Please refer to guidance here:**

<https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Design-Regulations-Guide.pdf>

**Q30:** *Page H-3 (Probable Impacts of the Proposed Action)* – MEND NYC is used as a mitigation control for noise in the Permanent Open Restaurants Program. How does the result of a MEND mediation process affect SLA (NY State Liquor Authority) stipulations? Is MEND conducted in private or in a open meeting session? Where is the result of MEND mediation publicly posted? How many MEND cases have been heard and settled in Manhattan CB2 since the program’s inception?

**R30.1:** *DCP: we are waiting on an answer from the Department of Environmental Protection (DEP) on this question. This document will be updated upon receipt.*

## **Appendix 1: Proposed Zoning Text**

**Q31:** Why not adjust the zoning text to make exceptions and allow for the additional outdoor dining where it works and was previously prohibited - for example, under elevated railways (everywhere or only in specific areas). Exceptions have been made before - why not continue amending in that manner?

**R31.1:** In many cases the city was asked for rezonings to accommodate sidewalk cafes in various districts, usually through a commercial overlay. This was a burdensome process for restaurant owners. 2,500 restaurants have participated in outdoor dining during the emergency program, and they stand to lose their ability to even apply for a sidewalk cafe in the permanent program if the zoning text does not change. This will not guarantee they get a sidewalk cafe, only that they will have the ability to apply.

**Q32:** The original zoning text went to great lengths to state-specific areas where sidewalk cafés weren't permitted. There were years of negotiations that went into excluding certain streets in CB2 for legitimate reasons. What has changed? The hardship of the pandemic experienced by the restaurants and, by the way, many of our other retail businesses, not to mention our many cultural and arts retail places, is not a reason to deem a location better suited to outdoor dining now than it was before. And if by chance a certain block or street has changed where outdoor dining would now work, why not amend the zoning text to reflect that?

**R32.1:** Through this proposal, the city feels it is sidewalk conditions, and not neighborhood conditions that best determine whether a sidewalk cafe will work or not. Sidewalk cafe regulations first came into the Zoning Resolution in 1980, and has since been amended and changed many times. The reason certain areas were left out has mostly been lost to time and not kept up with the changing pace of commercial activity. This will not legalize that every restaurant can have a cafe, they will still have to go through a process, zoning will not work as a barrier for if they can apply.

**Q33:** Why add language to zoning text that allows for eating and drinking establishments to open their façade (i.e. operable windows) to serve customers outside? This permits french/accordion doors and open windows with no additional restriction on interior music to coincide with a full or partial open façade.

**R33.1:** The text was written to not conflict with outdoor dining. Restaurants will still be expected to follow the Noise code.

**Q34:** Regarding, enclosed sidewalk cafés - they are removing the definition and all other sections pertaining to them (as they are with all sidewalk cafés). As pre-existing enclosed sidewalk cafés will be permitted, in regards to the removal of Section 14-121, *Structural Requirements for Enclosed Sidewalk Cafés* - what if an owner of a premises that has an enclosed sidewalk café renovates their restaurant. With the removal of these guidelines, and that no new enclosed sidewalk cafés are permitted in the future and therefore no new proposed "rules" governing them, what ensures that the guidelines that

were thoughtfully set out in the zoning text (now removed) are adhered to? Specifically, 14-123 and 14-124.

**R34.1: As an enclosed cafe is essentially an expansion of the building, the renovation is still required to undergo Department of Buildings review. The pre-COVID sidewalk café program, design standards, review and enforcement rules, exist under the Department of Consumer and Workforce Protection. These rules would be transferred and updated via Local Law.**

**Q35:** In Section 32-411, it states that: *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#.* Is the three-foot (3') Service Aisle being removed from the Proposed Permanent Open Restaurants Siting Criteria because of the inclusion of operable window usage (the underlined text above that is being added to the Proposed POR Zoning Text Amendment) that allows service from inside the restaurant directly through open windows to the sidewalk cafe outside? Will operators be allowed to set up sidewalk seating such as bar stools underneath an operable window where the operable window can double as "bar seating" outside on the sidewalk?

**R35.1: The siting criteria is still under development.**

**Q36:** Allowing operable windows as-of-right means all interior restaurant music and customer noise will be audible to residences, referred to in the EAS on page H-12 as "nearby noise-sensitive receptors." However, the EAS found no impact on noise for the proposed action. Why are operable windows being allowed as-of-right?

**R36.1: Operable windows are expected to be closed when not being used for outdoor dining purposes. Sidewalk cafes are expected to adhere to the Noise Code.**

**Q37:** The zoning text previously stated that one of the general purposes (Section 14 00) of the sidewalk café regulations was to "strengthen enforcement procedures." Please provide details on how DOT staffing for enforcement will be increased. Will existing staff (e.g. from DCP & DCWP) be transferred to DOT? Approximately how many? Will additional staff be hired? Approximately how many? What staff responsibilities are anticipated?

**R37.1: DOT received appropriate funding for the program in the Mayor's budget, and if more will be needed, we will discuss within the Administration.**

**Q38:** If the removal of all of this language (strikethrough text in Ch 4) from the zoning and there are pre-existing enclosed sidewalk cafes that were in place pre-pandemic, what are the rules for pre-existing enclosed sidewalk cafes moving forward? What happens if a new tenant takes over a pre-existing enclosed sidewalk cafe and wants to make an alteration?

**R38.1: The expectation is that design rules from the prior DCWP program will be maintained, with limited updates. [DCWP overview](#)**

**Appendix 1: Permanent Open Restaurant Siting Criteria**

**Q39:** Clear Path: The amount of “clear path” allowable under the POR has been misrepresented. The 3’ service lane required under DCWP guidance does not appear in any of the POR proposed scenarios. Under current DCWP rules, a 3’ service lane must be WITHIN the restaurant’s portion of the sidewalk cafe -- and not within the pedestrian clear path. The drawings on page X in the EAS fail to show a dedicated 3’ service lane in addition to the 8’ clear path. Therefore, can you commit to correcting this error in the Proposed Permanent Open Restaurants Program Siting Criteria in EAS Appendix A to ensure that the Pedestrian Clear Path, the Service Lane and the seating space for diners are correctly apportioned? To avoid conflict between servers and pedestrians?

\*Attached Graphic

**Q39:** Service Aisle in Sidewalk Cafés: Why is the three-foot service aisle (currently outlined in the existing sidewalk cafe guidelines) being eliminated? In the Proposed Permanent Open Restaurants Sidewalk Seating Rules, the service aisle is listed with the following assumption: “assumes service area is within café designated area.”

**R39.1: We are not proposing eliminating the service aisle, we are assuming most will have service within the outdoor dining setup but for those that do not they will be expected to have a 3’ service aisle that is not included in the clear path measurement.**

**Q40:** How does the 8-foot pedestrian clear path work on a sidewalk that is less than 12 feet wide with a three-foot service aisle? Why has the width of a service aisle in the POR Program been eliminated as a specific measurement?

**R40.1: DOT is in the process of revising the criteria of the pre-COVID DCWP sidewalk café program. A [preliminary list of rules is available here](#). Key elements include:**

- o **8’ or 50% of sidewalk clear path requirements in most areas of the city**
- o **12’ or 50% sidewalk clear path requirements in some of the city’s most highly trafficked areas**
- o **Specific distances from street furniture**
- o **A waiver process that would allow restaurants to waive 1-2’ of clear path requirements on less trafficked streets where pedestrian and accessibility needs can be met.**

**Q41:** Why would the three-foot service aisle be eliminated when its exclusion directly contradicts the adherence of the POR Program to “*all local, state, and federal requirements relating to accessibility for*

*people with disabilities, including path of travel, minimum table heights, and clearance requirements” as indicated on page A-3*

**R41.1: Restaurants will not have to maintain a service aisle if the restaurant is self-service or can provide service within the sidewalk cafe area. Sidewalk cafes that have a seating arrangement that does not allow for service within the cafe boundary will have to provide a service aisle.**

**Q42:** Clear Path: How do you plan on upholding the POR Program’s adherence to “*all local, state, and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table heights, and clearance requirements*” when DCP and DOT indicated at the July 19 CB2 meeting that waivers could be granted for clear paths as small as 5 feet? How will these waivers be granted and will the community have an opportunity to comment on a waiver before it is granted?

**R42.1: The siting criteria is under development. We are considering waiving 1-2’ of clear path requirements on less trafficked streets where pedestrian and accessibility needs can be met. We anticipate these applications to be co-reviewed with the Mayor’s Office for People with Disabilities (MOPD).**

**Q43:** Clear Path: Can you commit to correcting this error in the Proposed Permanent Open Restaurants Program Siting Criteria in EAS Appendix A to ensure that the Pedestrian Clear Path, the Service Aisle, and the seating space for diners are correctly apportioned? To avoid conflict between servers and pedestrians?

**R43.1: This has been corrected. Restaurants will not have to maintain a service aisle if the restaurant is self-service or can provide service within the cafe area.**

**Q44:** Service Aisle in Roadway Cafés: There is no mention of Service Aisle dimensions in the Proposed Roadway Seating Siting Criteria. Why?

**R44.1: The siting criteria is still being developed.**

**Q45:** Contiguous Sidewalk Cafés and Residential Entrances: Why have you allocated zero (0”) space between contiguous cafes on the sidewalk? There are blocks-long shacks on several sidewalks in Manhattan CB2, which also block residential entrances. It is dangerous if anyone has to access or leave the sidewalk quickly. Are there any anticipated limits to increases in sidewalk cafés where the restaurant is within X feet of another outdoor seating setup—similar to the 500’ rule?

**R45.1: The siting criteria is still being developed.**

**Q46:** Contiguous Roadway Cafes: Why have you not addressed contiguous roadway cafes in the Proposed Roadway Seating Siting Rules in the EAS? There are blocks-long shacks that are contiguous

along several streets in Manhattan CB2. Are there any anticipated limits to increases in roadway cafés where the restaurant is within X feet of another outdoor seating setup—similar to the 500’ rule?

**R46.1: DOT is considering additional review when a cluster of restaurants apply at the same block to ensure that safety, visibility, or emergency vehicles are not compromised because of outdoor dining**

**Q47:** Tree Pits: Why are Tree Pits without fencing/guards not required to have an 8’ clear path like Tree Pits with fencing/guards? A person on foot, with a walker, in a wheelchair can’t easily walk in the tree pit and can’t walk through the tree.

**R47.1: The City is reviewing all the design rules for the new program, including updating the required list of obstructions in the DCWP administrative rules. The full expectation is that guarded tree pits, street furniture, and other infrastructure will remain key elements from which restaurants measure adequate clearances.**

**Q48:** Setups: Are there any requirements that solid structures are not to be built higher than the Perimeter Fence Height (30” for sidewalks to 36” for roadway)?

**R48.1: The siting criteria is still being developed.**

**Q49:** Residential Entrances: Several residential entrances in Manhattan CB2 are delineated by stoops, steps, and/or stairs, however, the Sidewalk Seating Criteria indicates that zero (0’) is needed for building projections, which is a conflict with primary building entrances guidance which is (5’). Why aren’t residential entrances explicitly called out to not be blocked in the Proposed Sidewalk Seating Siting Rules? Both [Taxi Stands] and [No Standing Anytime/No Stopping Anytime, Bike Lane, Bus Lane/Stop, or Car Share Space] are explicitly called out as “Cannot Block” in the Proposed Roadway Seating Siting Rules. Why are Residential Entrances not a separate category in both the Proposed Sidewalk Seating Siting Rules and the Proposed Roadway Seat Siting Rules with the specific callout of “Cannot Block” which would align with the current DOT guidelines for the Temporary Open Restaurants Program?

**R49.1: The siting criteria and program guidelines are still being developed.**

**Q50:** Other Entrances: Why has zero (0’) space been allocated for freight elevators, service entrances, or retail entrances? There may be more than one business or interest (in the case of a mixed-use building) on the ground floor of a building.

**R50.1: The City is reviewing all the design rules for the new program, including updating the required list of obstructions in the DCWP administrative rules. The full expectation is that guarded freight elevators, service entrances, retail entrances and other infrastructure will remain key elements from which restaurants measure adequate clearances.**

**Q51:** Residential Buildings: Are there any anticipated limits to increases in outdoor seating where the restaurant is in a residential building? Are there any anticipated limits to increases in outdoor seating where the restaurant is within X feet of a residential building?

**R51.1: Restaurants are limited to their business frontage, siting criteria and clear path requirements. Sidewalk cafes are expected to have a clearance from things like principal apartment entrances.**

**Q52:** The Proposed Roadway Seating Siting Rules state the height and width of protective barriers, but also state shelter not to exceed 400 SF. Does that mean that roadway setups cannot exceed 400 SF in entirety for each establishment? Does this mean no solid structure (fully enclosed with four walls, roof, and doors) can be built higher than the maximum 2.5'–3' height of the protective barrier?

**R52.1: The siting criteria is still being developed.**

**Q53:** Enforcement of the Proposed Permanent Open Restaurant Siting Criteria for Sidewalk Seating and Roadway Seating: How will requirements be enforced? Special staff? Approximately how many? Will a schedule of inspections be established? What is that anticipated to be? Weekly? Monthly? Different days of the week? Different times of day? What penalties are anticipated for infractions?

**R53.1: DOT is ramping up Open Restaurants staff, including a dedicated enforcement team.**