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## COMMUNITY BOARD NO. 2, MANHATTAN

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September 27, 2021

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

Anita Laremont, Chair  
City Planning Commission  
22 Reade Street  
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*,<sup>1</sup> 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.<sup>2</sup>

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.
1. 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.
2. 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.
3. At the CB2 public hearing on July 19, 2021,<sup>3</sup> 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.
4. 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.”<sup>4</sup> That is so at odds with the DCWP’s nuanced management of the

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<sup>1</sup> NYC DOT [Vision Zero](#).

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

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

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

current Sidewalk Café Program (which also considers neighborhood context) and 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."

5. 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.
6. 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**

7. 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.
8. 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 prototypes<sup>5</sup> 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.
9. 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

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<sup>5</sup> 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.*

cafés. For example, currently, many restaurants and bars have outdoor seating capacity in excess of their indoor seating.

## **WHY PERMANENT OPEN RESTAURANTS WILL HAVE AN OUTSIZE IMPACT ON CB2**

10. CB2 is home to the **highest density of liquor licenses, sidewalk cafés and destination eating and drinking establishments in New York City.**<sup>6</sup> The density of liquor licenses has created and will continue to create quality of life impacts on our residents.
11. 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.
12. 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.
13. 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.<sup>7</sup>
14. 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
15. 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.

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

<sup>7</sup> Appendix F: *CB2 Landmarks Committee Memo on Permanent Open Restaurants.*

16. An analysis of 311 calls shows that weekly noise complaints within CB2 doubled between June 15, 2020 and June 14, 2021,<sup>8</sup> coinciding with the launch of the Open Restaurants program.
17. The CB2 community is currently overwhelmed with vermin, which now live under the many roadbed dining structures, and trash, which further exacerbates the problem.
18. The text amendment does not distinguish between bars and restaurants,<sup>9</sup> 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.
19. 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**

20. 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.”<sup>10</sup>
21. 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.
22. 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.
23. 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

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

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

<sup>10</sup> 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.

24. 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.
25. 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.
26. 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**

27. 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.<sup>11</sup>
28. There are no studies that support the removal of the Sidewalk Café Program as detailed in Article I, Chapter 4 from the Zoning Resolution.
29. 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.<sup>12</sup>
  - b. Why non-conforming uses in residential areas should be allowed to expand into the public realm, contrary to the underlying residential zoning districts.<sup>13</sup>

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<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.<sup>14</sup>
  - 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.
30. 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.
  31. No studies on the quality-of-life impacts of outdoor drinking on densely-populated, residential neighborhoods such as those found in CB2.
  32. 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.<sup>15</sup>
  33. 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.
  34. 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.
  35. No studies on the impact of the geographic expansion of bars and outdoor consumption of alcohol on streets on neighborhood character in residential zones.
  36. 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.<sup>16</sup>
  37. 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

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<sup>14</sup> 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.

<sup>15</sup> Appendix D: *CB2 Storefront Analysis: Use Group 6 in Residential Zones*.

<sup>16</sup> 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.
38. 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.
  39. No studies on the impacts of loss of parking on small businesses.
  40. No studies on the impact on traffic flow and vehicle speeds.
  41. No studies regarding air quality issues affecting patrons (e.g., due to slow-moving vehicles).
  42. No studies on negative impacts on public health and safety/roadbed.
  43. 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.
  44. 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.”<sup>17</sup>
  45. No studies of whether structures on streets provide protection for diners from accidents involving cars and trucks.
  46. 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.
  47. 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.
  48. 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.
  49. 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.
  50. No prototypes<sup>18</sup> 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

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

<sup>18</sup> NYC DOT, 2021, *Attachment F: Transportation*.

cross bike lanes and other dangers resulting from crossings through such bike lanes.<sup>19</sup> 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*<sup>20</sup> plan. Bicyclist deaths and pedestrian deaths are up 15% and 13.6% year over year, respectively.<sup>21</sup>

51. 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

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<sup>19</sup> NYC DOT, 2021, *Attachment F: Transportation*.

<sup>20</sup> NYC DOT [Vision Zero](#).

<sup>21</sup> 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. 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  
Vicki Been, Deputy Mayor  
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

## **List of Appendices**

- Appendix A-1** Excerpts - Sidewalk Café Location Prohibitions within Manhattan Community Board 2 specifically noted within NYC Zoning Resolution Article I, Chapter 4
- Appendix A-2** Map of Open Restaurants Participants by Community District
- 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, page 23](#): 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
- Appendix C** Manhattan CB2 311 complaints related to Noise, Vermin and Open Restaurants overlaid with the number of CB2 Open Restaurant Participants
- Appendix D** Manhattan CB2 Storefront Analysis: Use Group 6 in Residential Zones
- Appendix E** Manhattan CB2 Landmarks Committee Memo on Permanent Open Restaurants
- Appendix F** Temporary Open Restaurants Program Survey Analysis of Restaurants Overlapping Manhattan Community Board 2 and Council District 3 by the Office of New York City Council Speaker Corey Johnson, August 2021

## 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 District<sup>1</sup> (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 <sup>1</sup>
Little Italy District	No	Yes

<sup>1</sup> #Unenclosed sidewalk cafes# are allowed on Greenwich Avenue

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

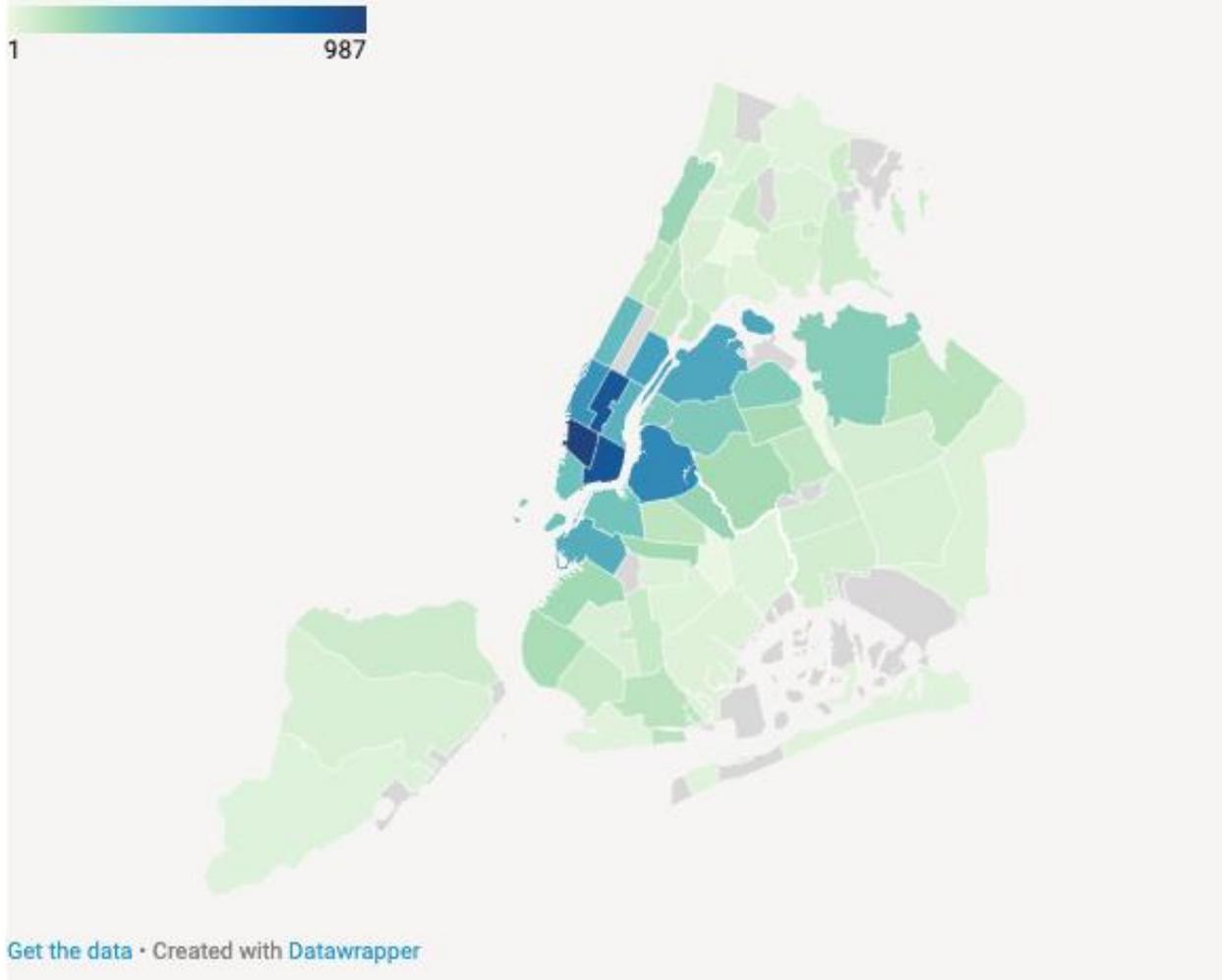
**LAST AMENDED 5/5/2004**

#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



[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

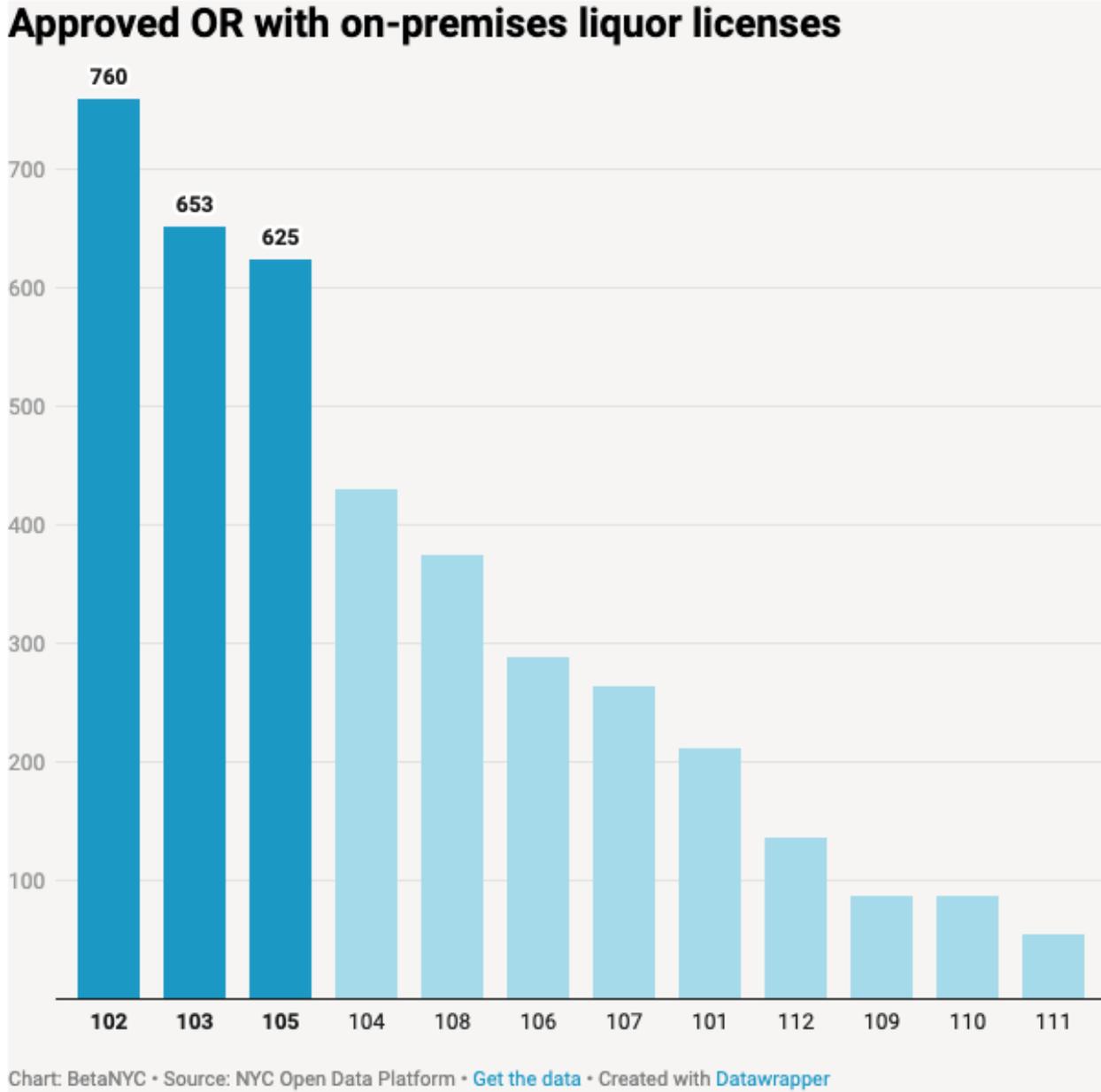
Map of Sidewalk Open Restaurants by Existing Regulations in Manhattan Community Board 2, [DCP & DOT Presentation on July 19, 2021, page23](#): 84 restaurants in areas prohibited by zoning and 131 restaurants in residential/no café zoning

**84** in areas prohibited by zoning

**131** in Residential/no café zoning areas



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



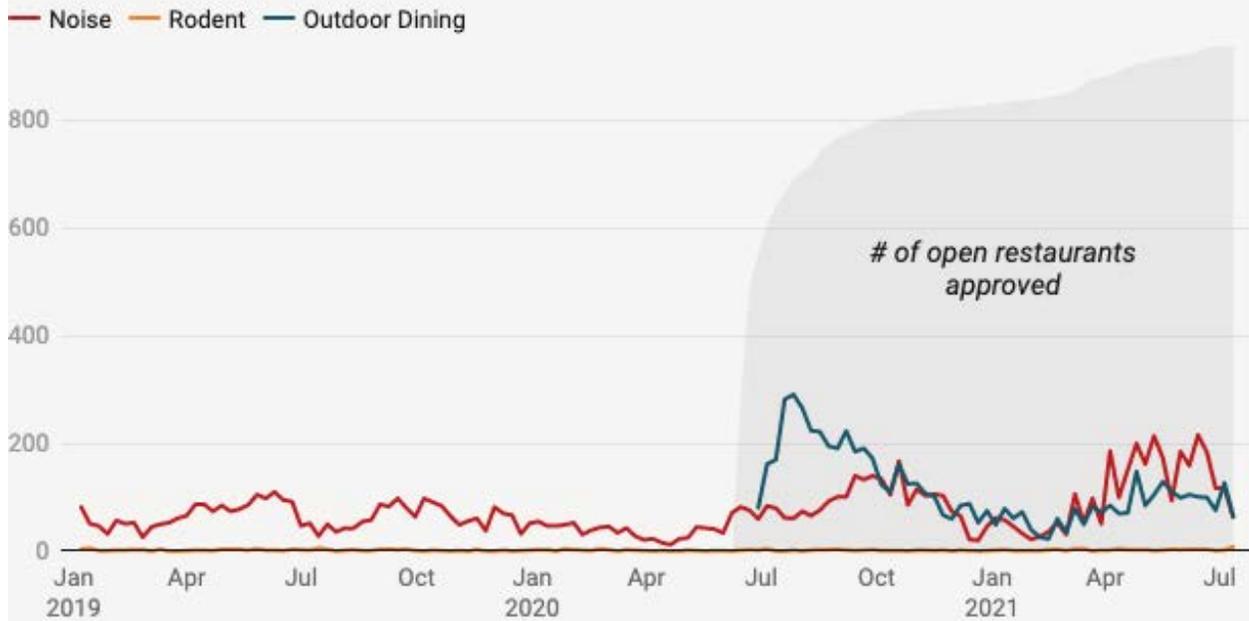
[Source: BetaNYC, August 2021](#)

### 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.



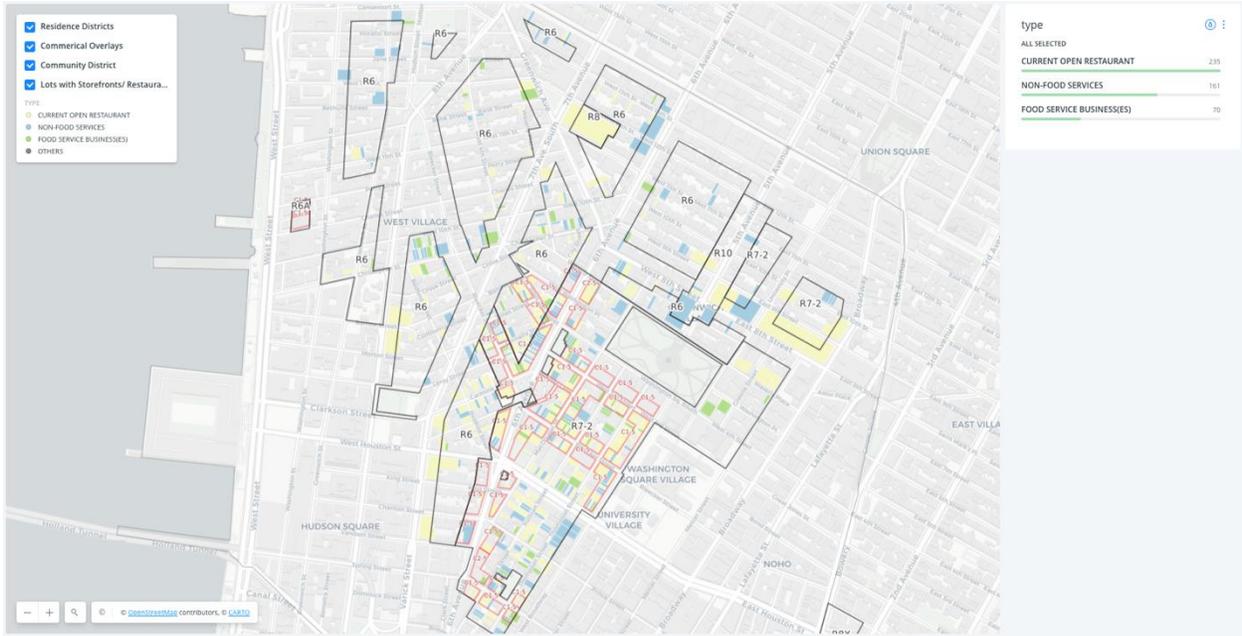
Weekly Count in Manhattan Community District 2

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.



3

## Methodology

### Creating the survey<sup>1</sup>

- 35 questions based on NYC Department of Transportation guidelines<sup>2, 3</sup>
- Space to upload photos & additional comments
- Responses linked to google spreadsheet<sup>4</sup>

### 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/1FAIpOL\\_SdOih2rOcBMila7FMz5fR\\_3eh6nXcabKFeV\\_WWRtp3jtvamlw/viewform](https://docs.google.com/forms/d/e/1FAIpOL_SdOih2rOcBMila7FMz5fR_3eh6nXcabKFeV_WWRtp3jtvamlw/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/1lEn1PWfIxGShxbUSx2Vw5YKcUf8PoJXpZotlAtnnpA/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.

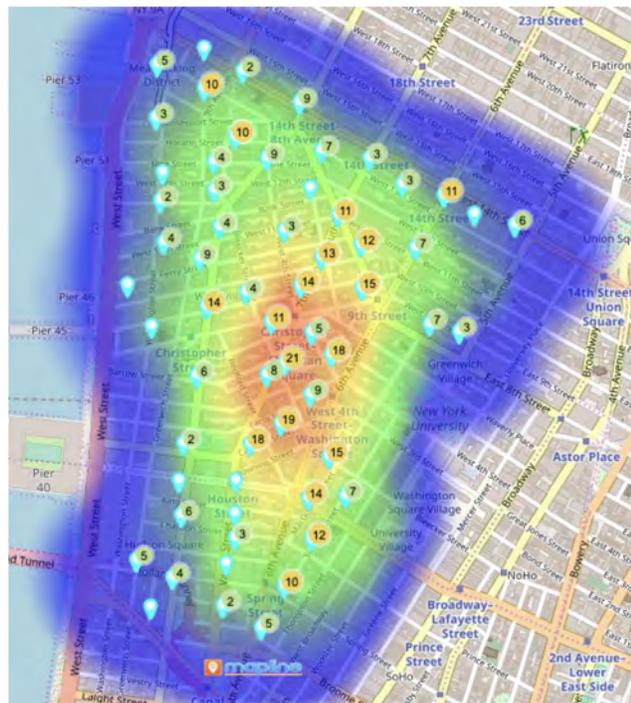
10

# Recommendations: Public Review Process

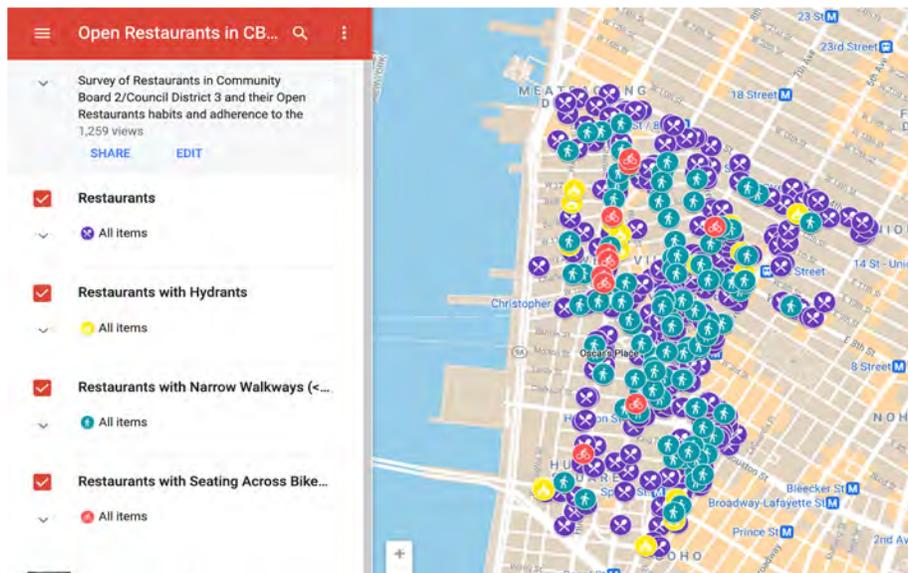
1. Require DOT and other city agencies to commit to meaningful public review process during the development of the permanent Open Restaurants program.
  
1. Require DOT to engage in robust public outreach period after the implementation of the permanent Open Restaurants Program.

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

## Restaurant Density in the CB2/CD3 Overlap



# Customizable Google Map Marking Restaurants with Violations



<https://www.google.com/maps/d/u/0/viewer?mid=1wugrk3Bxk8pIA9glljA5BXGm8kKPtFTs&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

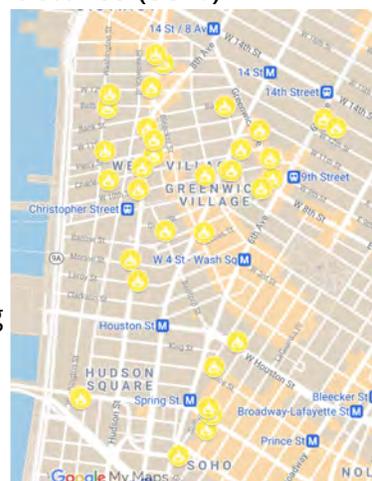
## Fire Hydrant Obstruction

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

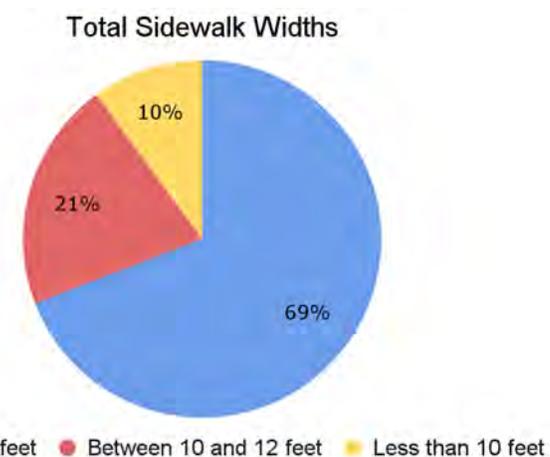
## Pedestrian Walkway

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

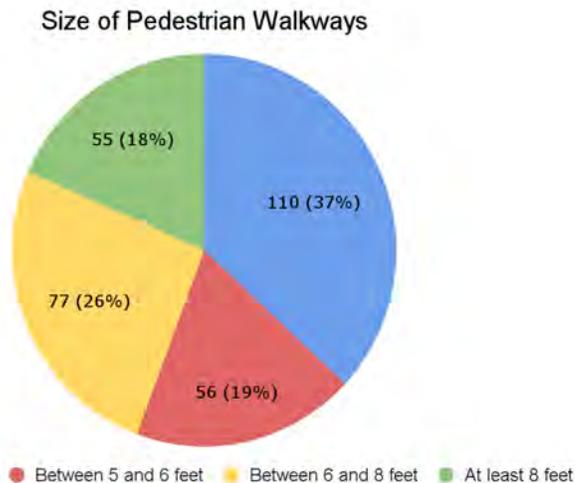


18

# Walkway Widths

Of the 298 restaurants with sidewalk seating:

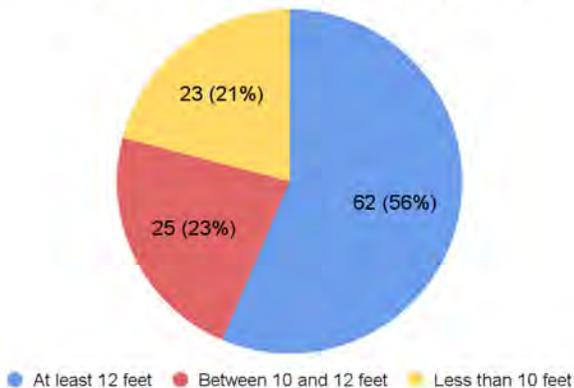
- 110 have walkways **under 5** feet wide
- 56 have walkways between **5 and 6** feet wide
- 77 have walkways between **6 and 8** feet wide
- 55 have walkways **at least 8** feet wide



*Only 18% of restaurants are following the guidelines!*

# Sidewalk Widths and Pedestrian Walkways

Sidewalks with Walkways Under 5 Feet

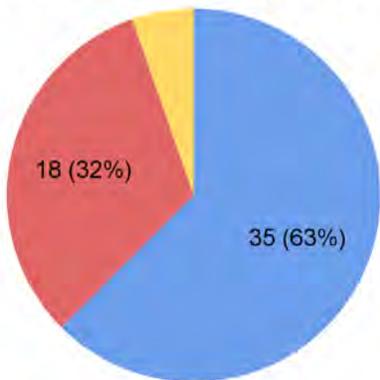


- The narrowest walkway surveyed was 2 feet
  - Lena Wine Bar
  - 142 Sullivan
- 12 restaurants measured between 2 – 3 feet
- 40 measured between 3 – 4 feet
- 58 measured between 4 – 5 feet

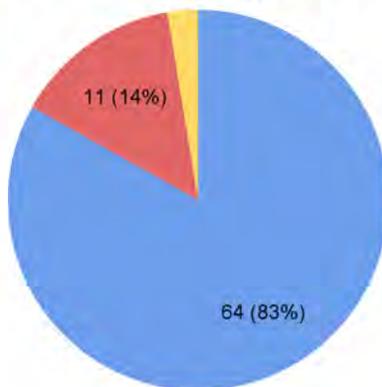
*When the majority of the narrowest walkways are located on the widest sidewalk, the problem is not the sidewalk.*

# Sidewalk Widths and Pedestrian Walkways

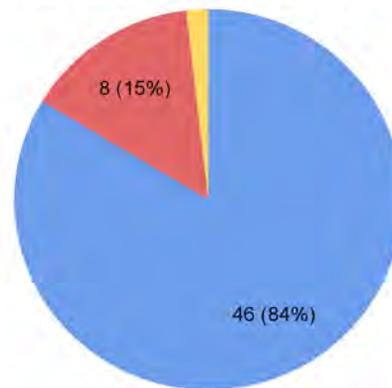
Sidewalks with Walkways 5 - 6 Feet



Sidewalks with Walkways 6 - 8 Feet



Sidewalks with Walkways 8+ Feet



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

# 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"**



## 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.”

## 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



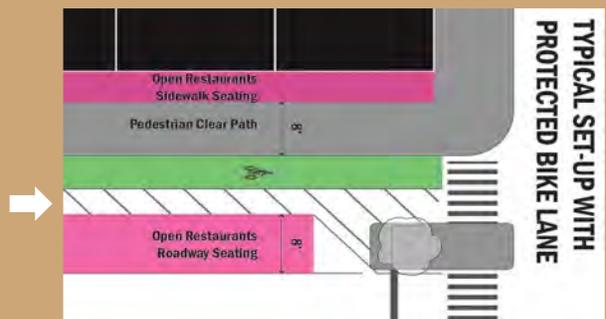
12 Chairs



Lola Taverna

## 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.

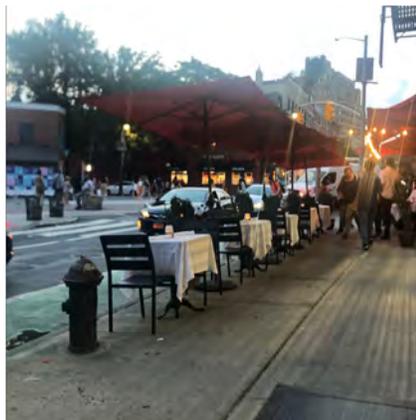
42

## 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

## 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%

## 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?