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Gale A. Brewer, Borough President

MANHATTAN BOROUGH BOARD RESOLUTION
September 23, 2021

**RECOMMENDING DISAPPROVAL FOR
AN APPLICATION FROM THE NEW YORK CITY DEPARTMENT OF
TRANSPORTATION AND THE NEW YORK CITY DEPARTMENT OF CITY
PLANNING FOR AN AMENDMENT TO THE ZONING RESOLUTION:
APPLICATION N210434ZRY – OPEN RESTAURANTS/SIDEWALK CAFES**

WHEREAS, During the COVID-19 pandemic the permanent outdoor dining program outlined in the Zoning Resolution was suspended and replaced by the emergency Open Restaurants Program by Local Law 77 of 2020 and Mayoral Emergency Executive Orders 126 and 128; and

WHEREAS, Under this temporary program, over 10,000 restaurants applied to the New York City Department of Transportation (“DOT”) to use sidewalk or street space adjacent to their business location; and

WHEREAS, The proposed zoning text amendment would remove all text related to sidewalk café regulations from the Zoning Resolution, including Article 1, Chapter 4; and

WHEREAS, The DOT would administer a new proposed Open Restaurants program; and

WHEREAS, The City Council would have to review, hold hearings, and vote on the proposed DOT program which would move oversight from the Department of Consumer and Worker Protection (“DCWP”) to DOT, authorize road seating, and codify design guidelines; and

WHEREAS, Because of the extension of Executive Order 126, the emergency Open Restaurants Program will last at least until 2022; and

WHEREAS, This application is to remove the current regulations regarding placement, structure, and physical appearance of cafes; and

WHEREAS, Removing the zoning text on outdoor dining could also remove protections for areas previously deemed unfit for outdoor dining including special districts; and

WHEREAS, Sidewalk widening projects could be alternatively used to create new outdoor dining opportunities decreasing planned pedestrian space; and

WHEREAS, The current zoning text prohibits outdoor eating or dining facilities in residential districts; and

WHEREAS, The proposed action may allow eating and drinking establishments to keep their doors open, leading to more noise on the street; and

WHEREAS, The proposed action would no longer require outdoor dining patrons to be seated; and

WHEREAS, Adequate room on the sidewalk should be designated for use as service aisle so as to not impede pedestrian traffic; and

WHEREAS, Neighborhood residents and other stakeholders have expressed complaints regarding inadequate enforcement of sidewalk passage regulations, hours of operation, and noise; and

WHEREAS, Manhattan Community Board 1 is expected to vote on the proposed zoning text amendment on September 30, 2021 and held a public hearing on the application on September 13, 2021 during which concerns regarding the possibility of Community Board review of the new DOT program, the prioritization of public use for public space, program fees, amount of space allocated to each restaurants and street closures were raised; and

WHEREAS, Manhattan Community Board 2 is expected to vote on the proposed zoning text amendment on September 23, 2021 and held a public hearing on the application on July 29, 2021 during which concerns regarding a lack of opportunity for meaningful Community Board input in the proposed program, and the inappropriateness of the program for small streets were raised; and

WHEREAS, Manhattan Community Board 3 is expected to vote on the proposed zoning text amendment on September 28, 2021 and held a public hearing on the application on July 14, 2021 during which concerns regarding private use of public space, outdoor consumption of alcohol, and a lack of opportunity for meaningful Community Board input in the new program were raised; and

WHEREAS, On July 28, 2021, Manhattan Community Board 4 voted to recommend disapproval of the proposed zoning text amendment, noting issues with the timing of the review of this application and the review of the proposed DOT program, and setting forth conditions, including that the new DOT program exclude outdoor seating on sidewalk widenings; prohibit outdoor dining in residential districts; prohibit open doors and windows with use of amplified music, require that guests be seated outside; prohibit outdoor music; prioritize transportation purposes in the roadway; prevent applicants from being approved for both sidewalk and roadway seating; include a revocation clause tied to compliance; limit deliveries to nighttime or two hours before opening time; include limitations during winter months, except in cases of approval of a wintertime permit; prohibit enclosed structures on the sidewalk; include community board review instead of self-certification; and integrate enforcement within one agency; and

WHEREAS, On July 8, 2021, Manhattan Community Board 5 recommended approval of the proposed zoning text amendment with conditions, including that DCP and DOT use design guidelines to protect high density areas from a loss of public space, that Community Board 5 have the ability to reject rules and regulations in said design guidelines, and that Community

Boards have further opportunity to comment on the proposed DOT program; and

WHEREAS, On September 14, 2021, Manhattan Community Board 6 voted in support of a resolution stating that the Board had no objection to the proposed zoning text amendment and requesting that the Community Board remain an active participant in the crafting of the program; and

WHEREAS, On September 9, 2021, Manhattan Community Board 7 voted to recommend disapproval of the proposed zoning text amendment with the conditions that the application be withdrawn and resubmitted along with completed DOT guidelines, that related legislation to transfer program to DOT be delayed until draft guidelines are created, and noting that all procedures that are not transparent will be rejected by the Community Board; and

WHEREAS, On September 2, 2021, Manhattan Community Board 8 voted to recommend approval of the proposed zoning text amendment; and

WHEREAS, Manhattan Community Board 9 voted to recommend approval of the proposed zoning text amendment on September 16, 2021 with the conditions that Community Boards have input on the proposed DOT program and receive alerts regarding outdoor dining applications, the DOT program include a robust sanitation enforcement program, limit outdoor sound, allow the revocation of a permit if the operator is not in compliance, include rules for electrical equipment, ensure that there is room for emergency vehicles on the roadways, prohibit structures adjacent to roadways with bike lanes, consider existing sidewalk obstructions, include an annual report on safety incidents, and that DOT make an effort to increase residential parking; and

WHEREAS, Manhattan Community Board 10 voted to recommend approval of the proposed zoning text amendment on September 7, 2021, while raising concerns regarding noise, enforcement, and loss of parking spaces; and

WHEREAS, Manhattan Community Board 11 is expected to vote on the application on September 28, 2021; and

WHEREAS, Manhattan Community Board 12 is expected to vote on the application on September 28, 2021 and held a public hearing on the application on September 9, 2021, during which members raised concerns regarding quality of life, expressed support Community Board 4's resolution, and was hesitant about the separate public review processes for the zoning text amendment application and the DOT program; and

WHEREAS, The Manhattan Borough Board acknowledges the importance that outdoor dining played in helping eating and drinking establishments staying afloat during the COVID-19 pandemic, but is concerned about the lack of engagement and opportunity for comment on the proposed permanent DOT Open Restaurants program; and

THEREFORE, BE IT RESOLVED, The Manhattan Borough Board recommends disapproval of Land Use Application N210434ZRY – Open Restaurants / Sidewalk Cafes zoning text amendment unless the Applicants meet following conditions:

1. Consult with all community boards and borough presidents regarding the proposed DOT permanent program, including its applicability in residential and mixed-use districts, particularly in Lower Manhattan and retain the existing sidewalk café regulations in special zoning districts;
2. Provide a plan for enforcement of DOT Open Restaurant regulations as well as sanitation and allow for that plan to be previewed by community boards and borough presidents and ensure that the program is informed by data obtained in more typical, post-pandemic conditions;
3. Complete a study on the impact that the proposed DOT program would have on dry goods retail spaces, and present mitigations as necessary;
4. Allow community boards to review and recommend approval or denial for applications for licenses for sidewalk and roadway dining prior to final DOT approval;
5. Maintain the enclosure requirements for eating and drinking establishments in residential districts;
6. Mandate that DOT include compliance with program guidelines as key criteria for approving renewal applications and use license revocation as an enforcement option;
7. Require restaurants to submit sanitation and rat abatement plans as part of their license application;
8. Prohibit new sidewalk widenings from being used for outdoor dining unless the loss of pedestrian space is included in analysis for the widening, and mitigation measures are ensured;
9. Ensure all sidewalks and roadways remain fully accessible, including maintaining the three-foot service aisle (in addition to the four-foot clearance requirement) and that emergency vehicles have the ability to navigate city streets efficiently;
10. Prohibit restaurants from playing amplified music and require patrons to be seated;
11. Include measures to prevent loss of space or safety for users of bike lanes; and
12. Present a plan to allow other public uses on sidewalks and roadways.

Adopted by the Manhattan Borough Board on the 23rd day of September, 2021

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President
Chair of the Manhattan Borough Board