



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 31	# Against: 0	# Abstaining: 1	Total members appointed to the board: 32
Date of Vote: 9/14/2021 12:00 AM		Vote Location: WEBEX	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/12/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	WEBEX

CONSIDERATION: Please see the attached.

Recommendation submitted by	BK CB1	Date: 9/15/2021 10:52 AM
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OPEN RESTAURANTS/SIDEWALK CAFES ZONING TEXT AMENDMENT. New York City is working to create a permanent, streamlined Open Restaurants program. As part of this program, the Department of City Planning and Department of Transportation propose a zoning text amendment **to remove geographic restrictions on where sidewalk cafes can be located within NYC.** To be eligible for a sidewalk café, restaurants would need to meet physical criteria -- such as “clear path” requirements, including ensuring that table and chairs are appropriate distances from fire hydrants and neighboring businesses. The proposal would not change the process for how sidewalk cafes are reviewed by local community boards; but the areas where they can be considered would expand to all neighborhoods. This proposed amendment to NYC’s Zoning Resolution complements proposed legislative changes that would **cut red tape for restaurant owners.** Applications for the sidewalk café program and a new roadway café program would be consolidated under one agency, the Department of Transportation (DOT)

Ms. Alexandra Paty-Diaz and Mr. Ben Huff Presented.

At the full board’s public hearing many board members and residents agreed that the restaurants had suffered through no fault of their own from the shutdowns and needed help getting back on their feet. However, there was much opposition to the overall Open Restaurants plan due to a lack of safety standards regulating the construction of the outdoor sheds, the increase in garbage and noise associated with the use of the sheds and sidewalk cafes, the reduction in parking spaces and size of sidewalk space for pedestrians, and the permanent nature of the amendment. Most speakers felt it was premature to ask for the board’s approval even of this initial request for the text amendment (which is allegedly targeting only the decrease of regulations on restaurants’ ability to apply for permission to have a sidewalk café) until these concerns were met.

The committee acknowledged the recent meeting of community board leaders and the strong opposition to granting this application until the city presented the details of the overall all plan for sidewalk cafes and Open Restaurant regulations. It was noted that restaurants still have time to take advantage of the current emergency regulations. In the meantime, the city should present a plan for oversight, including inspections and enforcement of sanitation and noise regulations. In addition, the city should meet with the land use and SLA committees to discuss whether the plan is a good fit for our neighborhood.

Recommendation:

Deny the application as premature.

18 in favor of the motion to deny.

0 against the motion to deny.



Community Board Ten

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Chair

JOSEPHINE BECKMANN
District Manager

September 21, 2021

Marisa Lago, Chair
New York City Planning Commission
120 Broadway
New York, NY 10271

Re: Open Restaurant Text Amendment
CEQR#21DOT016Y

Dear Chair Lago:

At a duly publicized meeting of Community Board Ten held on Monday, September 20, 2021, members voted overwhelmingly in **OPPOSITION** to the proposed Department of City Planning (DCP) Open Restaurant Text Amendment. I have attached the Zoning and Land Use Committee Report for your review.

While Board Members supported the emergency Open Restaurant program and extension through 2022, they also strongly felt that to completely dispose of current zoning regulations in order to usher in a wide-sweeping “open restaurants plan”, without a publicly reviewed replacement plan, is a reckless move.

The Board motion outlined concerns about the Citywide Open Restaurant Text Amendment, as follows:

1. Removal of Zoning Regulations

- The current proposal removes a codified set of regulations, enacted with good underlying reasons, and does not replace them with any clear zoning regulations regarding where outdoor dining may be permitted.
- Removal of clear path requirements will impact the retail landscape – especially when multiple cafes are located on one block. A post-Covid world will experience more congestion: pedestrian and vehicular. Sidewalks and roadways are, in some areas, impassable.
- ADA requirements are outlined for sidewalk and roadway cafes, but no language addresses the restaurants’ obligation to the disabled who are passing by and who may not be able to navigate through narrow, obstructed spaces.
- Sidewalk clearance and permitted obstructions not clearly defined. Currently, electrical wires for lighting and heat run both - affixed to sidewalk and overhead.
- The pedestrian traffic in Community Board 10 brings vitality to our commercial corridors. Pedestrian traffic will be negatively impacted by this proposal.

ERIC L. ADAMS, BOROUGH PRESIDENT

Community Board Ten

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2. Removal of Community Review

- The deletion of sidewalk café clear path and location requirements from the Zoning Resolution takes away public input/review as to seating placement for sidewalk cafes in residential districts.
- Roadway/curbside café applications will not be subject to public review.

3. Giving-Up of Public Space for Private Use

- Favors restaurants over retail businesses, residential uses, and all other uses
- Disregards practical concerns of roadway and sidewalk use.
- Provides restaurants use of public roadways paid for by the public. There is no transparency regarding fees for permits/applications.
- There is no guarantee that a fee schedule will be established.
- Removal of current zoning and replacement with virtually no zoning restrictions on sidewalk/roadway cafes may lead to unintended unpermitted vendors setting up outdoor stalls and pick-up/drive-through locations at roadway cafes.

3. Major Concerns and Lack of Input from Other City Agencies

- Removal of DOB from Structural Review will result in lack of participation by any engineering or architectural design professionals in the review of the construction of street structures which the City wants to be removable yet strong enough to withstand natural occurrences (wind, snow load, fire, weather deterioration, etc.) and highly likely vehicular impact hazards - all point to significant risk and likely disaster.

4. Clear Path Requirements are Not Clear

- Again, the committee had strong concerns that sidewalks would not be passable. Electrical wires for lighting, heating and entertainment would be obstructions for wheelchair and walker users and for families with strollers and toddlers.

5. Quality of Life and Environmental Concerns for Non-Restaurant Public

- The impact of this and future proposals to the residential quality of life cannot be understated or underestimated. Opposition to this zoning text amendment was based on so many objections and for so many reasons including longstanding street and roadway safety guidelines concepts.
- Noise Complaints - Noise complaints from eating and drinking establishments have increased more than 500% since May 2020. Community Board 10 is a residential district with commercial overlays. When CB10 reviews licensed establishments for SLA permits, they consider the impact of the establishment on the surrounding residential area. Currently there are restaurants advertising outdoor DJs on Friday and Saturday nights. There must be protections for residents.

ERIC L. ADAMS, BOROUGH PRESIDENT

Community Board Ten


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- Lasting impact on traffic flow (public transit, personal vehicles, bicycles, E-bikes & scooters), traffic safety, and pedestrian safety especially in light of the Vision Zero Program

Therefore, on behalf of Board Members, we strongly request that you and the members of the City Planning Commission review our objections and reconsider the proposed Citywide Open Restaurant Text amendment to the Zoning Resolution as we fear communities throughout the city will forever be negatively impacted by these changes.

Sincerely,


Lori Willis
Chair


Josephine Beckmann
District Manager

LW:JB:jb

Att:

cc: Henry Gutman, Commissioner DOT
Mayor Bill deBlasio
Borough President Eric Adams
Council Member Justin Brannan
Council Member Carlos Menchaca
Council Member Rafael Salamanca
NYC Community Boards
Sanmati Naik
Richard Bearak

Zoning and Land Use Committee Report

September 20, 2021

Members of the Zoning and Land Use Committee met to review the Open Restaurant Zoning Text Amendment during 3 meetings this month. September 2nd was a formal presentation by Department of City Planning and DOT which was followed by two additional meetings held on September 14th and 16th.

DCP presenters stated they needed to get this zoning amendment “out of the way” to clear the path for a new DOT permanent “open restaurants” program. A representative from DOT was in attendance to be on hand to answer questions to explain the current concepts for the basic parameters of that program.

Currently, there are many sections within the Zoning Resolution that address and define where sidewalk cafes both enclosed and unenclosed can operate, and the process is overseen by the Department of Consumer Affairs. This proposal by the Department of City Planning seeks to remove those sections and reassign jurisdiction to the Department of Transportation. Most sidewalk cafes currently fall within what is known as “commercial overlays” found within residential districts.

Commercial overlays are mapped within residence districts to serve and protect the community. Typical retail uses include neighborhood grocery stores, restaurants and beauty parlors. Most buildings in our district within the commercial overlay typically have a commercial use limited to one or two floors and must always be located below the residential use. Creating a balance between the quality of life of residents and the prospering of the commercial establishments which provide their much-needed services is and should remain the goal. This is why the current zoning text includes requirements for sidewalk clearance, distances between cafes, prohibited music and amplified sound, and other protections.

The proposed action:

- Removes the definitions of enclosed, unenclosed and small sidewalk cafés thus eliminating limitations on size and design
- Eliminates the regulations on where certain sidewalk cafes are not permitted, including locational criteria (including under elevated subway lines and in such areas as within Community Board 10 along 86th Street from 3rd Avenue to Gowanus Expressway); the clear path requirement around the corners (currently at 8 feet); and the 40 feet minimum distance between sidewalk cafes; physical criteria for enclosed sidewalk cafes
- Removes structural requirements for enclosed cafes; and prohibition of music and noise amplification.
- Adds Outdoor Table Service Areas in roadways and against restaurant facades within most zoning use districts meeting all requirements set forth by the Department of Transportation (which requirement will be set forth in the new as-of-yet undetermined “open restaurants” plan).

- Prohibits enclosed cafes which will no longer be permitted, existing will be grandfathered.
- Does NOT include Community Board review for dining areas under the anticipated “open restaurants” plan
- Department of City Planning stated that “no geography is off limits”.

During our discussion, ZALUC members shared that they fully supported the emergency order to allow outdoor dining during the pandemic because the industry was hit hard. Additionally, members expressed support for the extension of the temporary program to continue through 2022 despite many issues that have arisen and continue with limited and uneven enforcement.

However, it was the overwhelming opinion of the committee that the rush to adopt sweeping changes to the Zoning Resolution to certify this application over the summer without proper public review and prior to having a new permanent program in place is unacceptable.

The changes to the Zoning Resolution are significant and the effects are of great concern to members of the committee. These changes will have a broad impact on our community.

DOT’s premise in seeking these changes is: “let’s take what works and make it permanent”. The committee took exception to that premise as what many in our community are experiencing on our streets and in the public right of way is NOT working for all. While it may be working for restaurants and providing some lessons on how we may enliven our streetscape, but to completely dispose of current zoning regulations in order to usher in a wide-sweeping “open restaurants” plan – absent a publicly reviewed replacement plan – the committee viewed as a reckless move and an abuse of power.

Therefore, ZALUC, having met in quorum, voted to oppose the Open Restaurant Text Amendment, and to share our following concerns with the Department of City Planning:

1. Removal of Zoning Regulations:

The current proposal removes a codified set of regulations, enacted with good underlying reasons, and does not replace them with any clear zoning regulations regarding where outdoor dining may be permitted.

- Removal of clear path requirements will impact the retail landscape – especially when multiple cafes are located on one block. A post-Covid world will experience more congestion: pedestrian and vehicular. Sidewalks and roadways are, in some areas, impassable.
- ADA requirements are outlined for sidewalk and roadway cafes, but no language addresses the restaurants’ obligation to the disabled who are passing by and who may not be able to navigate through narrow, obstructed spaces.

Sidewalk clearance and permitted obstructions not clearly defined. Currently, electrical wires for lighting and heat run both - affixed to sidewalk and overhead.

The pedestrian traffic in Community Board 10 brings vitality to our commercial corridors. Pedestrian traffic will be negatively impacted by this proposal.

2. Removal of Community Review

The deletion of sidewalk café clear path and location requirements from the Zoning Resolution takes away public input/review as to seating placement for sidewalk cafes in residential districts.

Roadway/curbside café applications will not be subject to public review.

3. Giving-Up of Public Space for Private Use Favors restaurants over retail businesses, residential uses, and all other uses and concerns.

Disregards practical concerns of roadway and sidewalk use.

Provides restaurants use of public roadways paid for by the public. There is no transparency regarding fees for permits/applications.

There is no guarantee that fees will be established.

Removal of current zoning and replacement with virtually no zoning restrictions on sidewalk/roadway cafes may lead to unintended unpermitted vendors setting up outdoor stalls and pick-up/drive-through locations at roadway cafes.

3. Major Concerns and Lack of Input from Other City Agencies

· Removal of DOB from Structural Review will result in lack of participation by any engineering or architectural design professionals in the review of the construction of street structures which the City wants to be removable yet strong enough to withstand natural occurrences (wind, snow load, fire, weather deterioration, etc.) and highly likely vehicular impact hazards - all point to significant risk and likely disaster.

4. Clear Path Requirements are Not Clear

· Again, the committee had strong concerns that sidewalks would not be passable. Electrical wires for lighting, heating and entertainment would be obstructions for wheelchair and walker users and for families with strollers and toddlers.

5. Quality of Life and Environmental Concerns for Non-Restaurant Public

The impact of this and future proposals to the residential quality of life cannot be understated or underestimated. Opposition to this zoning text amendment was based on so many objections and for so many reasons including longstanding street and roadway safety guidelines concepts.

· Noise Complaints - Noise complaints from eating and drinking establishments have increased more than 500% since May 2020. Community Board 10 is a residential district with commercial overlays. When CB10 reviews licensed establishments for SLA permits, they consider the impact

of the establishment on the surrounding residential area. Currently there are restaurants advertising outdoor DJs on Friday and Saturday nights. There must be protections for residents.

- Lasting impact on traffic flow (public transit, personal vehicles, bicycles, E-bikes & scooters), traffic safety, and pedestrian safety especially in light of the Vision Zero Program
- Communities throughout the city will forever be negatively impacted by these changes

Respectfully submitted,


Doris Cruz

ZALUC Chair



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 8	# Abstaining: 0	Total members appointed to the board: 11
Date of Vote: 6/21/2021 12:00 AM		Vote Location: CB 13 - Land Use Committee meeting	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/21/2021 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	CB13 via Zoom

CONSIDERATION: It was voted down in committee so it never went to the full board.

Recommendation submitted by	BK CB13	Date: 7/29/2021 1:24 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable			
# In Favor: 31	# Against: 0	# Abstaining: 5	Total members appointed to the board: 36
Date of Vote: 9/13/2021 12:00 AM		Vote Location: Webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/9/2021 6:30 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex www.cb14brooklyn.com

CONSIDERATION: Unfavorable conditioned upon fully realized DOT program proposal.

Recommendation submitted by	BK CB14	Date: 9/22/2021 12:10 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 40	# Abstaining: 0	Total members appointed to the board: 40
Date of Vote: 9/13/2021 12:00 AM		Vote Location: webex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/13/2021 6:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Webex

CONSIDERATION: The board has voted against this text amendment, the sidewalks are being blocked, some businesses have abandoned outdoor seating areas that take up valuable parking spaces. The areas is not ADA compliant and has no sanitation enforcement.

Recommendation submitted by	BK CB15	Date: 9/14/2021 12:55 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Unfavorable			
# In Favor: 36	# Against: 2	# Abstaining: 0	Total members appointed to the board: 44
Date of Vote: 9/14/2021 12:00 AM		Vote Location: Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/1/2021 7:00 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	zoom

CONSIDERATION: WHEREAS, the Department of City Planning has proposed a citywide zoning text amendment removing sidewalk café regulations from the Zoning Regulations, increasing geographic eligibility as sidewalk café would become a unified sidewalk and roadway outdoor dining program, allowing DOT (rather than the Department of Consumer Affairs) to administer the outdoor dining program; and
 WHEREAS, pursuant to existing Executive Order the current regimen respecting authorization and regulation of outdoor dining facilities continues, pursuant to its terms, through 2022, thus providing in excess of one calendar year of continued operation;

WHEREAS, at a duly convened and noticed public meeting of the Land Use Committee of Community Board 8 noticed to consider and vote upon the foregoing, the City representatives, including senior officials of the Department of City Planning and DOT, acknowledged that an essential and integral part of the proposed outdoor dining program is a series of regulations, ordinances and other statutory authorization measures that will shape the outdoor dining program, the facilities and services to be authorized and provided thereunder, concerns respecting location, noise, traffic and structural concerns, issues relating to the public safety, public convenience and financial concerns that are inherent in the foregoing illustrated questions and that none of such materials have yet been presented for public review or prepared in such form as to be capable of public review and comment;

THEREFORE BE IT RESOLVED, the viability of public dining and restaurants is a matter of vital concern to the City of New York and its residents and taxpayers, as are the roadway and sidewalk facilities extant or contemplated as part of the outdoor dining program and such matters are an integral part of the concerns and issues set forth above and are inexorably intertwined therewith as well as with the proposed Department of City Plann

Recommendation submitted by	BX CB8	Date: 9/16/2021 11:31 AM
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Jeannine Kiely, *Chair*
Susan Kent, *First Vice Chair*
Valerie De La Rosa, *Second Vice Chair*
Bob Gormley, *District Manager*



Antony Wong, *Treasurer*
Eugene Yoo, *Secretary*
Ritu Chatree, *Assistant Secretary*

COMMUNITY BOARD No. 2, MANHATTAN

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September 27, 2021

Anita Laremont, *Chair*
City Planning Commission
22 Reade Street
New York, NY 10007

Hon. Bill de Blasio
Mayor
City Hall
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*,¹ 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 2014.²

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.
5. 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.
6. 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.
7. At the CB2 public hearing on July 19, 2021,³ 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.
8. 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.”⁴ That is so at odds with the DCWP’s nuanced management of the current Sidewalk Café Program (which also considers neighborhood context) and

¹ NYC DOT [Vision Zero](#).

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

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

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

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."

9. 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.
10. 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

11. 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.
12. 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 prototypes⁵ 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.
13. 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 cafés. For example, currently, many restaurants and bars have outdoor seating capacity in excess of their indoor seating.

⁵ 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.*

WHY PERMANENT OPEN RESTAURANTS WILL HAVE AN OUTSIZE IMPACT ON CB2

14. CB2 is home to the **highest density of liquor licenses, sidewalk cafés and destination eating and drinking establishments in New York City.**⁶ The density of liquor licenses has created and will continue to create quality of life impacts on our residents.
15. 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.
16. 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.
17. 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.⁷
18. 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
19. 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.

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

⁷ Appendix F: *CB2 Landmarks Committee Memo on Permanent Open Restaurants.*

20. An analysis of 311 calls shows that weekly noise complaints within CB2 doubled between June 15, 2020 and June 14, 2021,⁸ coinciding with the launch of the Open Restaurants program.
21. The CB2 community is currently overwhelmed with vermin, which now live under the many roadbed dining structures, and trash, which further exacerbates the problem.
22. The text amendment does not distinguish between bars and restaurants,⁹ 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.
23. 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

24. 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.”¹⁰
25. 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.
26. 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.
27. 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

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

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

¹⁰ 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.

28. 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.
29. 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.
30. 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

31. 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.¹¹
32. There are no studies that support the removal of the Sidewalk Café Program as detailed in Article I, Chapter 4 from the Zoning Resolution.
33. 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.¹²
 - b. Why non-conforming uses in residential areas should be allowed to expand into the public realm, contrary to the underlying residential zoning districts.¹³

¹¹ 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.*

¹² 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.

¹³ 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.¹⁴
 - 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.
34. 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.
 35. No studies on the quality-of-life impacts of outdoor drinking on densely-populated, residential neighborhoods such as those found in CB2.
 36. 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.¹⁵
 37. 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.
 38. 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.
 39. No studies on the impact of the geographic expansion of bars and outdoor consumption of alcohol on streets on neighborhood character in residential zones.
 40. 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.¹⁶
 41. 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

¹⁴ 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.

¹⁵ Appendix D: *CB2 Storefront Analysis: Use Group 6 in Residential Zones*.

¹⁶ 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.
42. 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.
 43. No studies on the impacts of loss of parking on small businesses.
 44. No studies on the impact on traffic flow and vehicle speeds.
 45. No studies regarding air quality issues affecting patrons (e.g., due to slow-moving vehicles).
 46. No studies on negative impacts on public health and safety/roadbed.
 47. 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.
 48. 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.”¹⁷
 49. No studies of whether structures on streets provide protection for diners from accidents involving cars and trucks.
 50. 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.
 51. 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.
 52. 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.
 53. 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.
 54. No prototypes¹⁸ 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

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

¹⁸ NYC DOT, 2021, *Attachment F: Transportation*.

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

55. 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

¹⁹ NYC DOT, 2021, *Attachment F: Transportation*.

²⁰ NYC DOT [Vision Zero](#).

²¹ 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. Vicki Been, Deputy Mayor
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
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
Jennifer Leung, 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 District¹ (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 ¹
Little Italy District	No	Yes

¹ #Unenclosed sidewalk cafes# are allowed on Greenwich Avenue

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

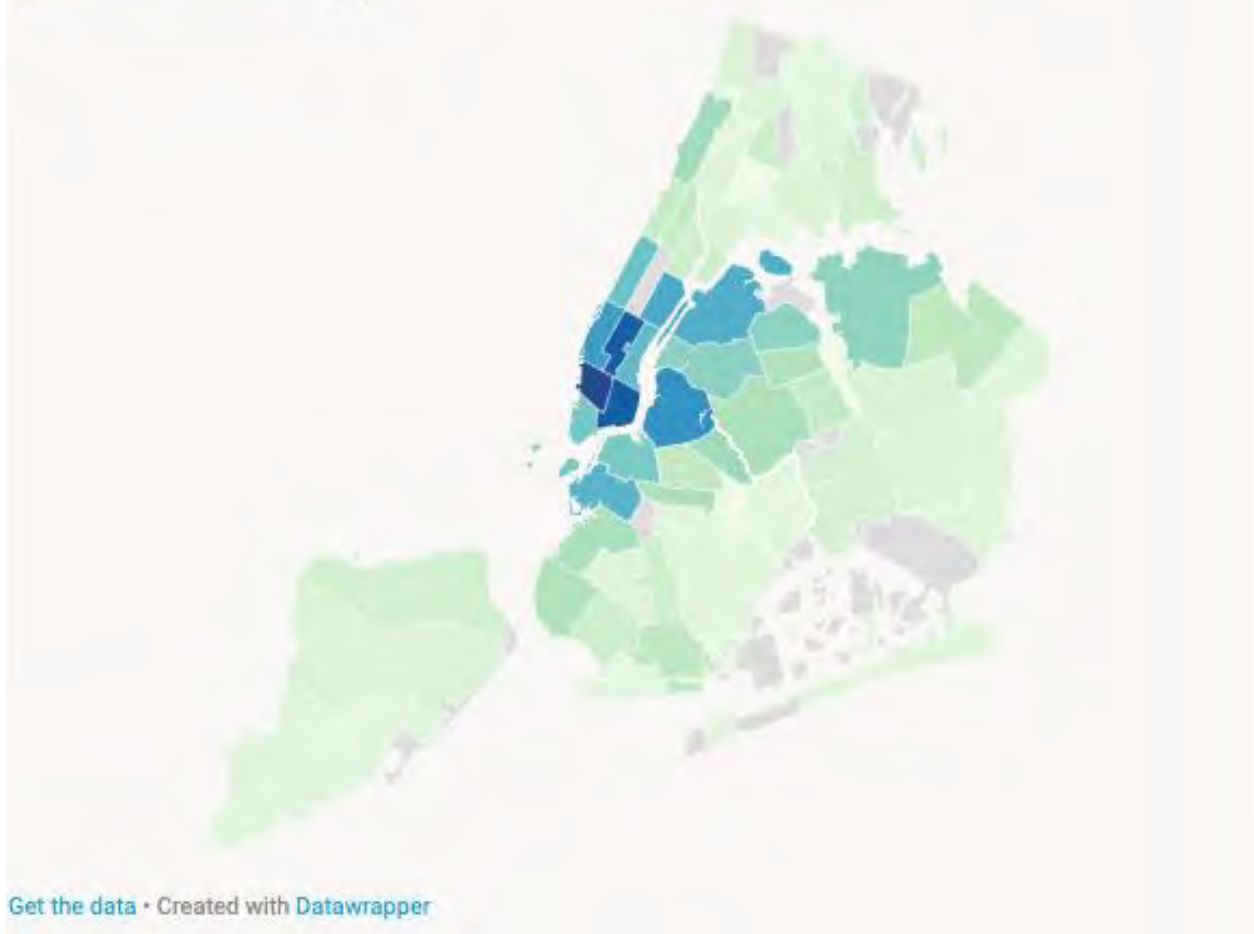
LAST AMENDED 5/5/2004

#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



Get the data • Created with Datawrapper

[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.

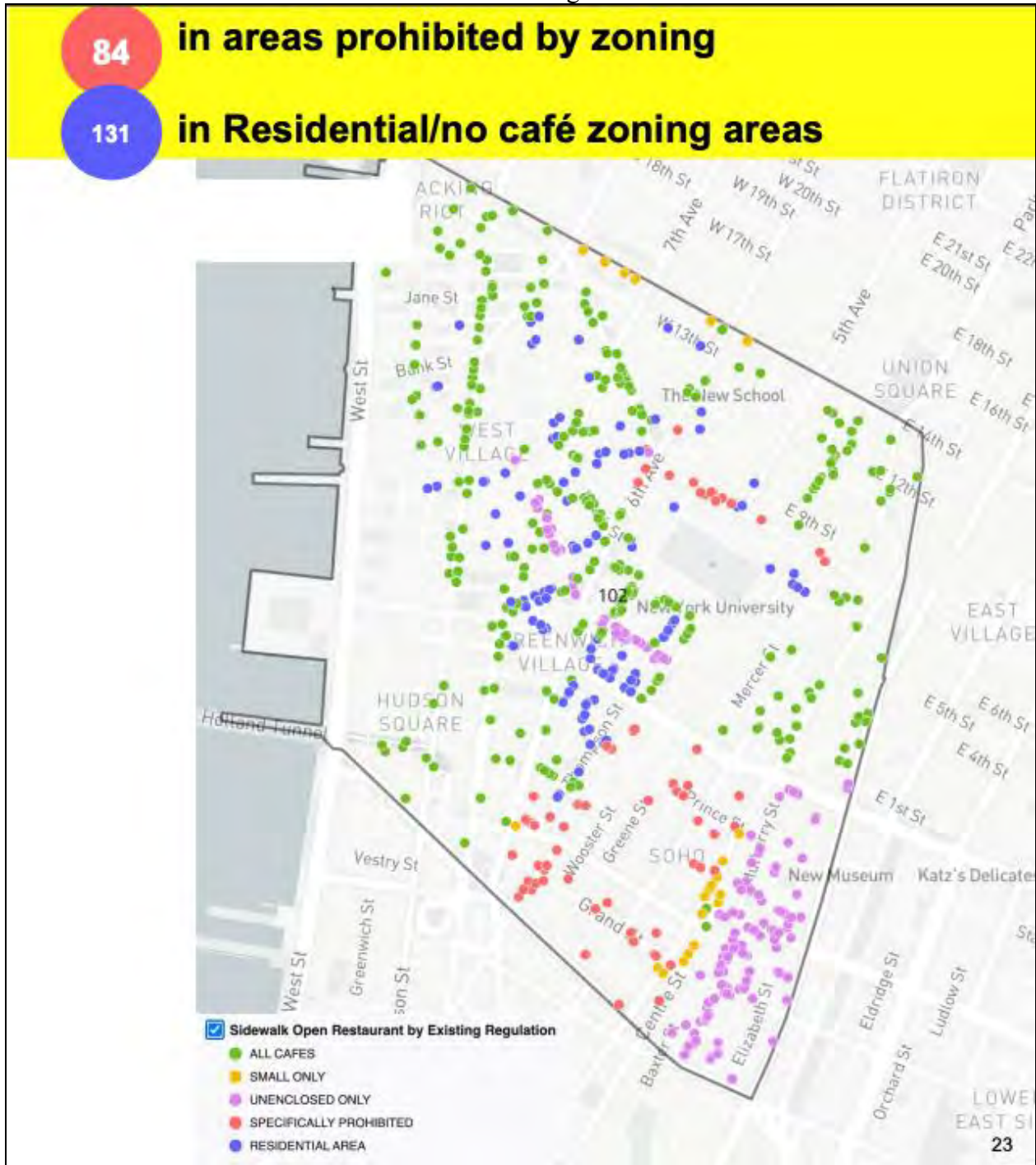
Appendix A-3

Map of Existing Sidewalk Café Regulations in Manhattan Community Board 2, from [DCP & DOT Presentation on July 19, 2021, page 21](#)

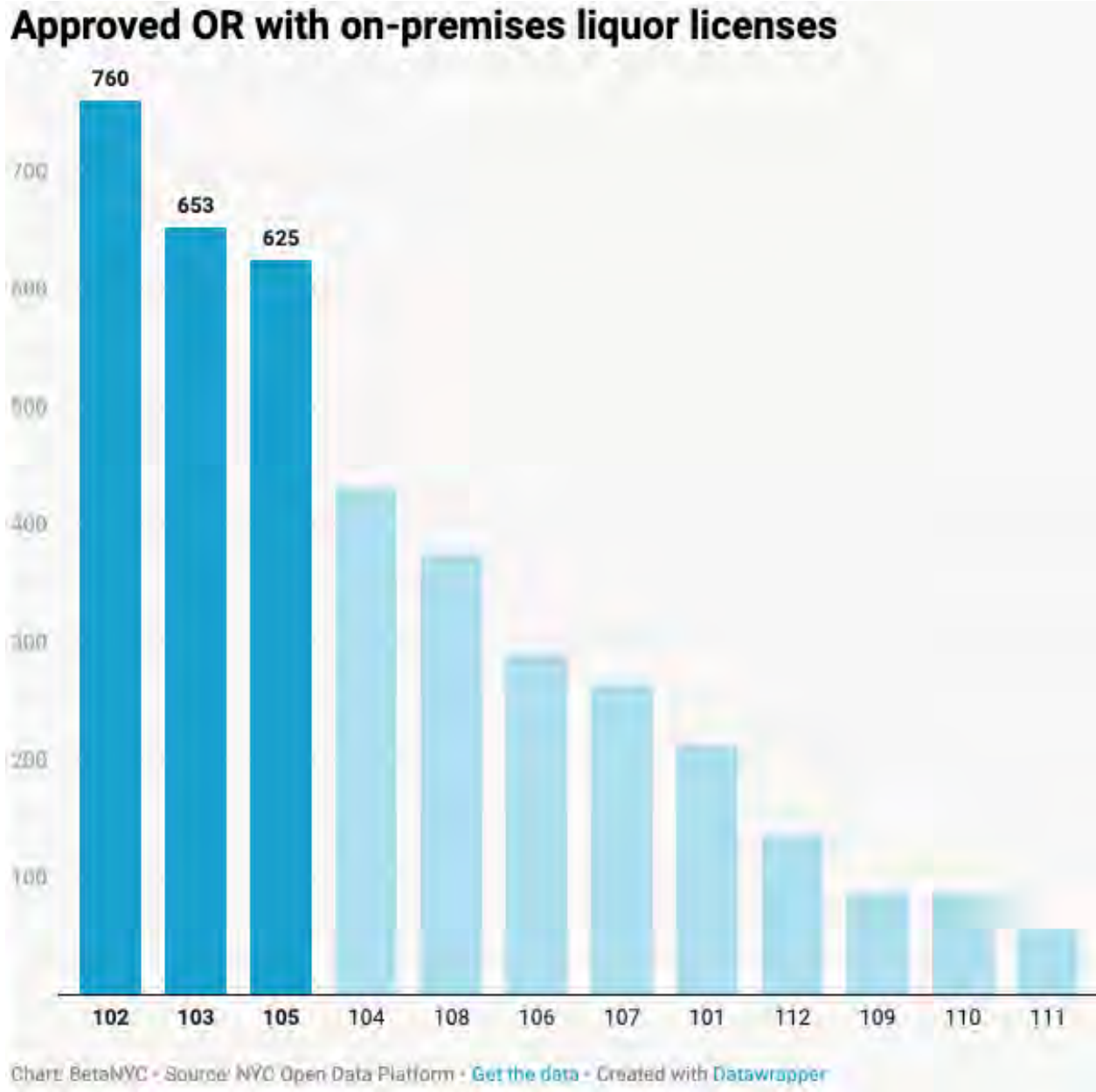


Appendix A-4

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



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



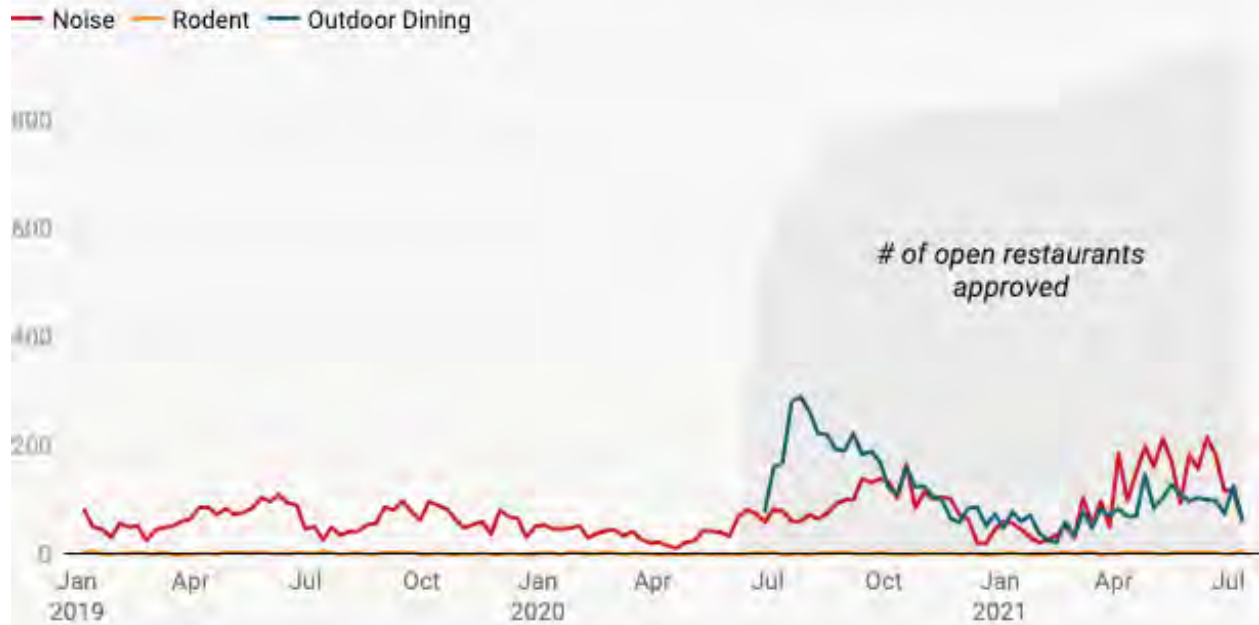
[Source: BetaNYC, August 2021](#)

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 [Datavrapper](#)

[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

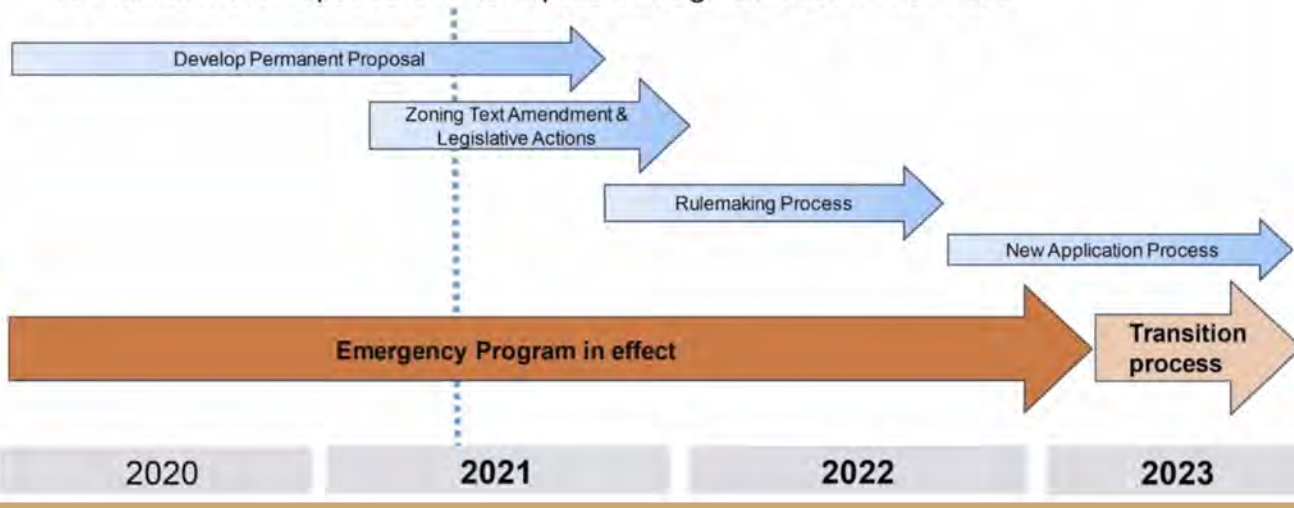
Summer Interns:
Stella FitzGerald, Leo Yablans,
& Dylan Bousquette

August 16, 2021

The Office of New York City Council Speaker Corey Johnson

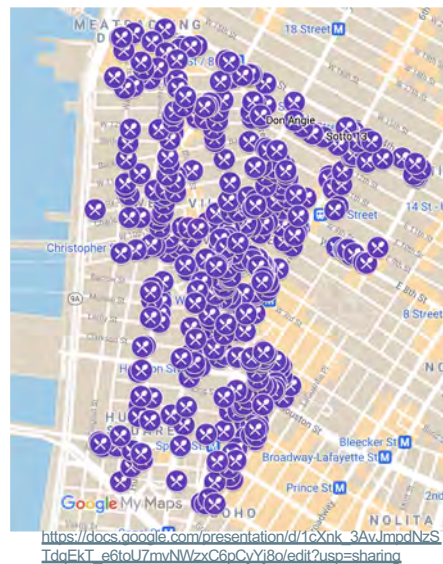
DOT / DCP Timeline

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 survey¹

- 35 questions based on NYC Department of Transportation guidelines^{2, 3}
- Space to upload photos & additional comments
- Responses linked to google spreadsheet⁴

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_SdQlh2rOcbMila7FMz5fR_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 Wurst (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.

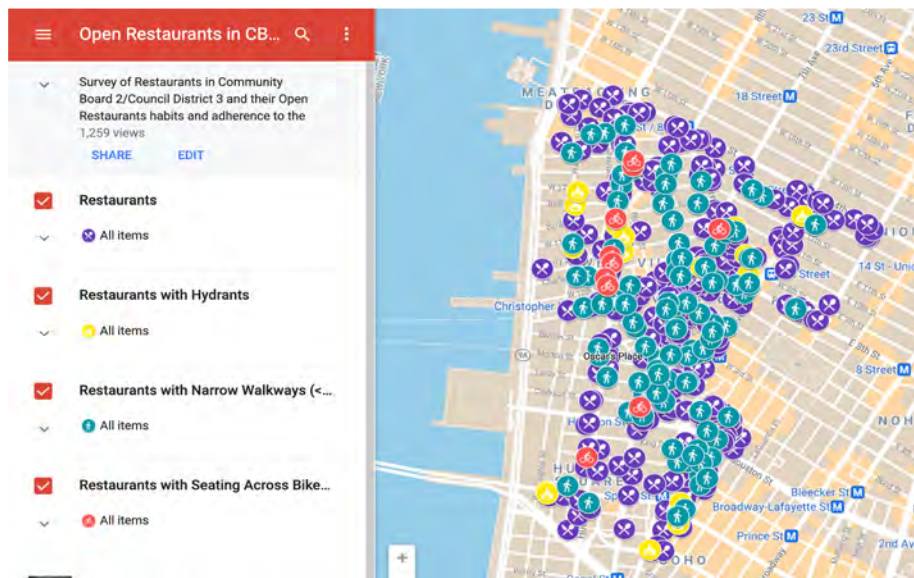
11

Restaurant Density in the CB2/CD3 Overlap



12

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

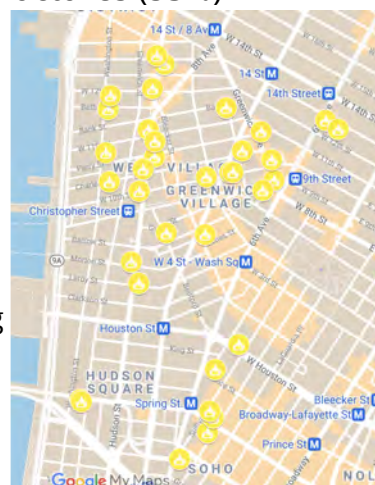
Fire Hydrant Obstruction

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

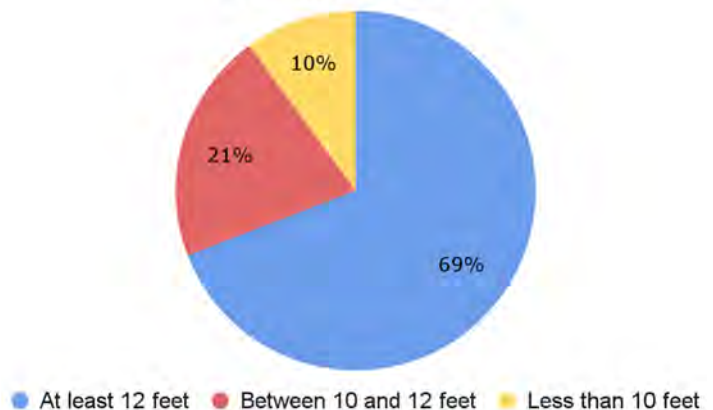
DOT GUIDELINES: “Must leave 8 foot clear path for pedestrians.”

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

Total Sidewalk Widths

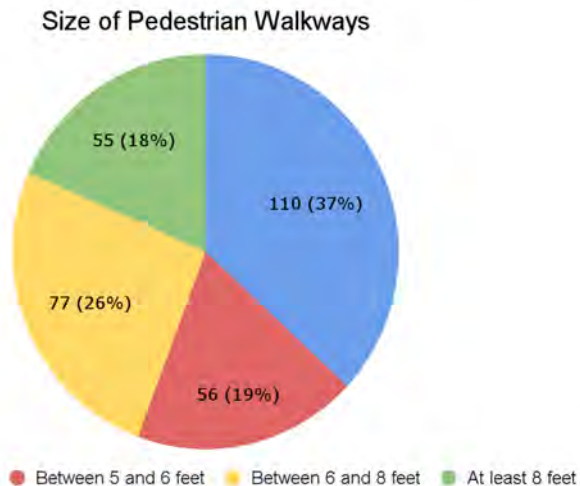


18

Walkway Widths

Of the 298 restaurants with sidewalk seating:

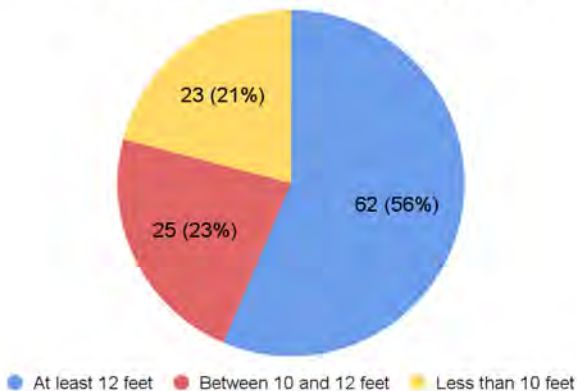
- 110 have walkways **under 5** feet wide
- 56 have walkways between **5 and 6** feet wide
- 77 have walkways between **6 and 8** feet wide
- 55 have walkways **at least 8** feet wide



Only 18% of restaurants are following the guidelines!

Sidewalk Widths and Pedestrian Walkways

Sidewalks with Walkways Under 5 Feet

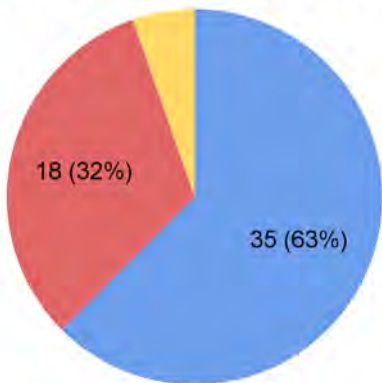


- The narrowest walkway surveyed was 2 feet
 - Lena Wine Bar
 - 142 Sullivan
- 12 restaurants measured between 2 – 3 feet
- 40 measured between 3 – 4 feet
- 58 measured between 4 – 5 feet

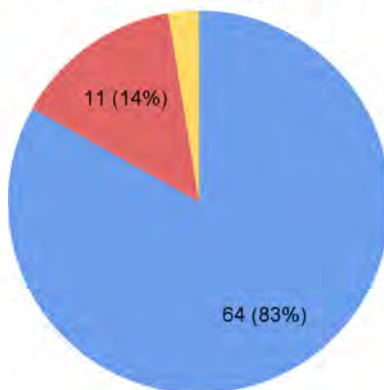
When the majority of the narrowest walkways are located on the widest sidewalk, the problem is not the sidewalk.

Sidewalk Widths and Pedestrian Walkways

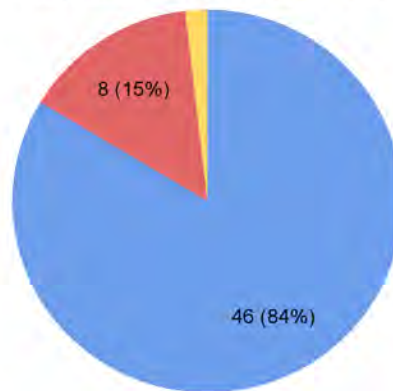
Sidewalks with Walkways 5 - 6 Feet



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"**

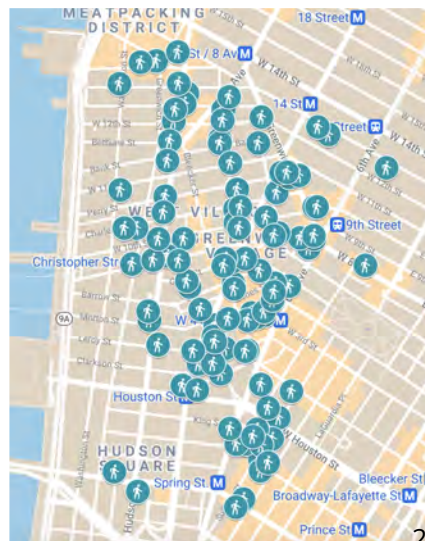
Average Pedestrian Pathway Width: **6'2"**

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



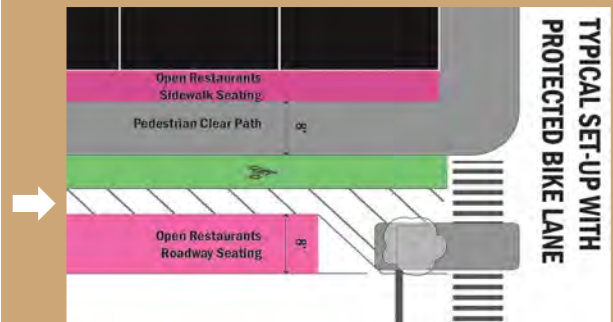
12 Chairs



Lola Taverna

Roadbed Seating Across Bike Lanes

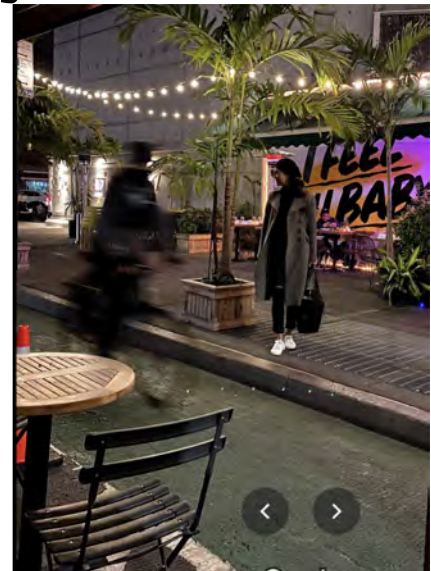
DOT GUIDELINES: No seating allowed in bike lanes, but seating “may be set up in a floating parking lane in front of an approved business per the diagram below.”



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

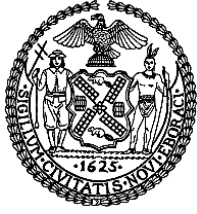
Next Steps

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?



LOWELL D. KERN
Chair

JESSE R. BODINE
District Manager

CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR

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tel: 212-736-4536
www.nyc.gov/mcb4

September 1, 2021

Marisa Lago, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Open Restaurants Zoning Text Amendment

Dear Chair Lago,

On July 14, 2021, the Department of City Planning (DCP) presented its proposed Permanent Open Restaurants Zoning Text to Manhattan Community Board 4's (MCB4) Clinton/Hell's Kitchen Land Use Committee.

The proposed text amendment seeks to develop guidelines to extend permanently the emergency open restaurants order issued in 2020.

At its Full Board meeting on July 28th, MCB4 reaffirmed the Committee's strong objection to the process of developing the proposal and the failure of the proposal to consider the unintended, and potentially negative, consequences of its adoption¹. By a vote of 29 in favor, 0 opposed, 4 abstaining, and 0 present but not eligible to vote, the Board recommended **not** to approve the text amendments.

The failure of DCP to engage with the community or the Board before formulating the proposal, coupled with the fact that operational guidelines by the Department of Transportation have not been developed or even discussed with the larger community, were added reasons for the Board to recommend the text amendments be rejected. No compelling evidence was presented to show the proposal, should it be implemented, would financially benefit the City. And no assurance was offered that eliminating the current zoning regulations — thereby wiping out years of work the Board's Business License and Permits Committee spent developing workable stipulations —

¹ MCB4's Transportation Planning Committee wrote a separate letter on transportation concerns related to the Proposed Open Restaurants Text Amendment

would not adversely affect the quality of life and safety of residents and visitors to our residential neighborhoods.

A PROPOSAL TO ELIMINATE PROTECTION

Three main actions are needed to facilitate the future program — removal of locational prohibitions, changes to the Sidewalk Café Program, and the creation of a Roadway Café Program. The text amendment would expand the universe of allowed “geographies” for sidewalk cafés; remove other zoning text that enables sidewalk cafés; and grandfather existing enclosed cafés.

The Board strongly objects to the elimination of the current zoning rules governing the placement of sidewalk cafés without adequate protections in place.

The proposed changes intend to remove references to sidewalk cafes from the zoning text based on the premises that legislation and rules will be substituted, and the Department of Transportation will take over the administration of this program. The following sections are affected: ZR, Article 1, Chapter 2, and 4, ZR Sections 22-00, 32-411, 33-05 & 43-03, 52-34, 73-243, 83-05 97-03, 97-13, 97-14, 97-412, 109-02, 117-03, 117-05.

This is an extensive action which has the potential to affect quality of life for many and encroach on scarce transportation resources. It should not be rushed through.

Under the Clinton Special District, ZR 96-106, existing storefronts are grandfathered in even if they have been vacant for two years. ZR 96-106, Special Regulations for Existing Storefronts, states that any "vacant ground floor store in an underlying Residence District may change to a conforming use or to a use listed in Use Group 6". This includes "retail and service establishments that serve local shopping needs, such as food and small clothing stores, beauty parlors and dry cleaners." Therefore, a mid-block restaurant occupying an existing storefront within a wholly residential district would be able to install either a sidewalk café or curbside dining in the middle of a residential block, immediately adjacent to ground-floor apartment windows. This regulation would create a conflict in uses.

In fact, by eliminating the sidewalk café language, this process is also removing protections to communities on many streets and special districts where sidewalk cafes were not permitted — protections which DCP now calls “outdated geographic prohibitions on where sidewalk cafes can be located.” This is being done without providing at the same time a substitute law to protect those same communities. This creates the risk that necessary protections communities have relied upon for years will be lost when legislation is passed.

Examples abound:

- In districts with heavy pedestrian volumes near Grand Central Station or the Port Authority Bus Terminal, sidewalk cafés are not permitted. With this zoning, they would become permitted and

there is no guarantee that siting guidelines will be adequate to prevent installation in such areas. In fact, based on the draft we have seen, we know they will not.

- In districts like Hudson Yards, where sidewalk widening was mandated by the zoning on certain avenues in anticipation of high volume of pedestrians because of the exceptionally high-density of office buildings, the protection will be gone as well.
- In the West Chelsea Special District sidewalk cafes are only allowed on "wide streets" because the narrow streets have proven inadequate for sidewalk cafes.
 - In residential streets with grandfathered non-conforming uses sidewalk cafes would now be permitted.

The rezoning and the legislation should go hand in hand, and one should not be reviewed and approved without the other one.

SIDEWALK WIDENING IS FOR PEDESTRIANS, NOT CAFES

The proposed text adds the following: *33-05 and 43-03 Outdoor Table Service Areas - Notwithstanding any other provisions of this Resolution, outdoor table service areas, associated with eating and drinking establishments, meeting all requirements set forth by the Department of Transportation shall be permitted within any required sidewalk widening areas.*

Sidewalk widening requirements apply in certain districts which are exceptionally congested, like the Times Square area. New buildings facades are recessed by 10 to 15 ft to widen sidewalks in order to relieve pedestrian overcrowding. In exchange the developer gets bonus height or FAR.

- Other sections of the zoning text are pretty explicit: "No *street* trees are permitted on a sidewalk widening. No vehicle storage, parking or storage of trash is permitted on a sidewalk widening. Gratings may not occupy more than 50 percent of the sidewalk widening area nor be wider than one half the width of the sidewalk widening."

- Permitting the widened space to be used for sidewalk cafes is double dipping because the buildings already got the bonuses AND would be taking back the community benefit: it is also counter to the goal and sets up a bad precedent for future sidewalk extensions that are also designed to ease pedestrian crush.

- A current example is the proposal for the Penn Complex where all buildings would be recessed by 5 to 15 ft to accommodate the massive volume of pedestrians. With this proposed clause, the buildings could both get bonuses and take back the space for sidewalk cafes in the future. Pedestrians and commuters would once again be squeezed.

While the City spends millions expanding sidewalks, this clause would hand over sidewalk space designed to alleviate congestion for pedestrians to landlords who already benefitted from their bonus. The Board finds this altogether a bad idea and a bad precedent.

Sidewalk cafes must not be installed on sidewalk widenings.

CAFES ON RESIDENTIAL STREETS

Current zoning does not permit sidewalk cafes in residential districts. (See Zoning Resolution Article I, chapter 4, section 14-011). This prohibition has a sound basis in public policy: Even if a grandfathered eating or drinking establishment is permitted in a residential district, allowing that establishment also to have a sidewalk cafe would add significantly to the disruption of a reasonable residential quality of life.

MCB4 has spent hundreds of hours mediating issues related to noise from eating and drinking establishments. It is our experience that outdoor operations on very residential streets create many quality of life issues that affect hundreds of residents.

Accordingly, MCB4 urges that the prohibition of any outdoor eating or drinking facilities in residential districts be preserved in the Zoning Resolution. We further request that restaurant space in an otherwise residential district not be permitted under the Open Restaurants program. The zoning should continue to require such establishments to be within a #completely enclosed building# and not be subject to the enclosure provisions of Section 32-411.

It is crucial that this as well as the other provisions in this letter, remain in the zoning text or be added to the new legislation

The prohibition of any outdoor eating or drinking facilities in residential districts must be preserved in the Zoning Resolution.

OPEN THE WINDOWS, SHARE THE NOISE

32-411 & 32-412

In C1, C5, C6-5 or C6-7 Districts C1 C5 C6-5 C6-7

In other Commercial Districts C2 C3 C4 C6-1 C6-2 C6-3 C6-4 C6-6 C6-8 C6-9 C8

“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#.”

Storefronts and store windows already are permitted to be open, as attested by the hundreds of French doors and garage doors that have been approved by the Department of Building and the successful operation of sidewalk cafes under current zoning. This paragraph seems to give to eating and drinking establishments the right to open their doors and windows regardless of the noise or impact on the community.

While the noise code would govern, there are only two Department of Environmental Protection (DEP) inspectors in the City and NYPD has great difficulty enforcing these issues. As you are well aware, noise complaints are the most frequent complaints in the City. Although MCB4 has been successful in requesting that many establishments keep French doors and garage doors closed for noise reasons, were this zoning change implemented, future establishments could point to this provision and argue that zoning explicitly permitted them to keep doors and windows open.

The language should be removed or changed to: “all such #uses# shall be located within #completely enclosed buildings# except for those #uses# permitted by the Department of Transportation in an area adjacent or in front of the store front associated with eating and drinking establishments

Opening doors and windows should remain prohibited when amplified sound is used inside.

PLEASE BE SEATED

The definition of doors and windows is crucial in particular when read in the context of section 52-34 Commercial Uses in Residence Districts:

In all #Residence Districts#, a #non-conforming use# listed in Use Group 6, 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed, initially or in any subsequent change, only to a conforming #use# or to a #use# listed in Use Group 6. In the case of any such change, the limitation on #floor area# set forth in Section 32-15 (Use Group 6) shall not apply. Eating or drinking ~~places,~~ establishments with musical entertainment, but not dancing, thus permitted as a change of #use#, shall be limited ~~exclusively to the sale of food or drink for on-premises consumption by seated patrons within a #completely enclosed building#~~ subject to the enclosure provisions of Section 32-411.

The language, combined with the section above, allows establishments with music to no longer require that patrons to be seated, allows them to do so in an establishment with open doors and windows and in a sidewalk café in residential district. This is a recipe for disaster for those residential districts. Up to now, sidewalk cafes have always required patrons to be seated and it is a very useful feature. Standing patrons will typically exceed the maximum occupancy allowed, have a tendency to drift into the rest of the sidewalk further reducing the right of way, and are typically more rowdy than seated patrons.

Also, music has never been allowed in sidewalk cafes. This makes sense as the music affects all users of the street and residents living above and its volume level increases to cover traffic noise or music from competing establishments. Currently on Restaurant Row, one cannot have a quiet dinner as every other establishment blasts music that can be heard from 500’ away.

It may have escaped City Planning, but thousands of our residents live above bars, restaurants, and cafés on our avenues and streets. They should not be forced to suffer day and night amplified music played on the sidewalk.

In both residential and commercial districts, it is crucial that the clause concerning “seated patrons only” and music restricted to indoor with doors and windows closed be retained. The sentence “~~limited exclusively to the sale of food or drink for on-premises consumption by seated patrons within a #completely enclosed building#~~” should be retained and “~~subject to the enclosure provisions of Section~~” removed.

The requirement that patrons be seated, and no music be permitted in sidewalk cafes must remain.

A SIDEWALK IS NOT A SERVICE AISLE

In its prior letters on the Open Restaurants program, MCB4 has proposed critical changes to the siting criteria, including width of the right of way and definition of obstructions, that we believe would better balance the interests of the residential/pedestrian community and eating and drinking establishments. Although we understand that proposed siting criteria are not currently under consideration, a draft of those criteria was included in the circulated materials, and MCB4 wishes to comment early on with respect to another particularly problematic proposed change.

Current sidewalk café rules require a three-foot service aisle in addition to the eight-foot pedestrian clear path. The proposed siting criteria appear to eliminate that mandatory service aisle and, instead of specifying the dimensions of the service aisle, state: “Assumes service aisle is within café designated area.” MCB4 believes that the dimensions of a mandatory service aisle within the sidewalk café footprint, ideally the current three feet, must be specified.

MCB4 has seen that sidewalk café operators, naturally eager to maximize revenue, squeeze as many chairs and tables as possible into every square inch of their allocated sidewalk café footprint. Without the requirement of a mandatory service aisle with explicitly stated dimensions, establishments are likely to eliminate the service aisle, with their patrons being served from the pedestrian clear path – defeating the purpose of the pedestrian clear path and further invading the very limited sidewalk space reserved for pedestrians.

A service aisle must be explicitly designated and required.

CONCLUSION

MCB4 is on record for supporting the 2020 emergency order for Open Restaurants and sidewalk cafes. We have written in support multiple times and made constructive suggestions on how to ameliorate the program.

However, we strongly object to the process the City is using to roll out this new permanent program. Even though removing references to sidewalk cafés from the zoning text may seem innocuous, we cannot support it unless the provisions related to special districts and excluded areas, sidewalk widening, doors and windows and grandfathered commercial use in residential districts are properly addressed in the zoning or by an adequate substitute in the legislation — an adequate substitute that does not adversely affect the quality of life, sanitation, and safety of our

residential neighborhoods. And that a transparent and formal public review process be required before the siting of sidewalk and roadside cafés.

This letter deals mainly with the proposed zoning text changes. The Board expects further discussion about the effect the expansion of open sidewalk restaurants would have on pedestrians, bike lanes, traffic, sanitation, fire and police emergency response, and residential quality of life.

As one of the districts in the City with the greatest concentration of sidewalk cafes, we are requesting that the rezoning and the legislation go hand in hand, that one not be approved without the other, that the Department of Transportation undertake public consultations as soon as possible to hear our input to the legislation and administration and operation of the proposed permanent program.

Sincerely



Lowell D. Kern
Chair
Manhattan Community Board 4



Jean Daniel Noland
Chair
Clinton/Hell's Kitchen Land Use Committee

Cc: Hon. Jerrold Nadler, U.S. Representative
Hon. Brad Hoylman, NYS Senator
Hon. Linda Rosenthal, NYS Assembly Member
Hon. Richard Gottfried, NYS Assembly Member
Hon. Corey Johnson, Speaker, City Council
Hon. Gale Brewer, Manhattan Borough President
Henry Gutman, Commissioner, NYC Department of Transportation

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Marisa Maack, District Manager

July 09, 2021

Marisa Lago
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: Open Restaurants Text Amendment presented by Department of City Planning (DCP) and the Department of Transportation (DOT)

Dear Chair Lago:

At the regularly scheduled monthly Community Board Five meeting on Thursday, July 08, 2021, the following resolution passed with a vote of 26 in favor; 0 opposed; 1 abstaining:

WHEREAS, Before COVID-19 and the Summer of 2020, unenclosed, small, and enclosed sidewalk cafes were only allowed when certain conditions were met, and required a lengthy and costly application process; and

WHEREAS, COVID-19 upended the restaurant industry as government regulations and public health guidance forced restaurants to shut down indoor service for many months; and

WHEREAS, During the summer of 2020, New York City suspended existing sidewalk café rules to allow restaurants to open outdoor seating, saving over 10,000 restaurants and 100,000 jobs and eliminating cumbersome processes; and

WHEREAS, Due to the impact and popularity of extending outdoor seating (the “Open Restaurants” program), the Mayor announced in fall 2020 that the Open Restaurants program would be permanent; and

WHEREAS, Three legal changes are required to make this program permanent: (1) a Local Law to establish the program’s authority under the Department of Transportation; (2) a zoning text amendment to allow more locations to be eligible for a sidewalk café; and (3) Agency rulemaking to establish all the design, application, and process specifics (the “design guidelines”); and

WHEREAS, While these changes are being evaluated and enacted, the temporary program will be extended through the winter of 2022, allowing restaurants to continue to operate outdoor spaces; and

WHEREAS, In this resolution and vote, Community Board Five (CB5) Land Use, Transportation, Public Safety, and Parks committees jointly decided to provide input on only the *zoning* aspects of the Open Restaurants text amendment, or the first and second proposed changes as noted above: (1) A Local Law to

establish the program’s authority under the Department of Transportation and (2) a zoning text amendment to allow more locations to be eligible for a sidewalk café; and

WHEREAS, Change one (1) would move the regulation of sidewalk cafes from the Department of City Planning (DCP) to the Department of Transportation (DOT), consolidating sidewalk café applications, regulations, and enforcement under a single agency; and

WHEREAS, As a result of proposed change two (2), the siting changes of the zoning text amendment would be removed, permitting sidewalk cafes in previously restricted areas of CB5; and

WHEREAS, CB5 is supportive of a DOT-driven enforcement team empowered to write citations for violations including busway obstruction, sidewalk obstruction, and building over streetscape elements, and urges DOT to use this role to ensure restaurants are following regulations, including appearance, hours of operations, noise, and use of public space; and

WHEREAS, CB5 is generally supportive of the proposed zoning text amendments, but urges DCP and DOT to utilize the “design guidelines” to protect high-density areas and the public space now removed from the zoning, and

WHEREAS, CB5 reserves the right to reject program rules and criteria in the “design guidelines” if they don’t adequately supplement some of these zoning changes; and

WHEREAS, While CB5 is only currently weighing in on the zoning aspects of the text, CB5 would like to provide input on the third (3) proposed change—the design, application, and process specifics—at a future date, and requests that DCP and DOT come back to CB5 for review once the “design guidelines” are drafted; and

WHEREAS, Although this resolution addresses only the zoning text amendments to establish the Open Restaurants program, it is essential to establish public participation through Community Boards in the creation and approval of the design, application, and process specifics of the Open Restaurants program, and similarly the rights of the public through Community Boards to coordinate with the Department of Transportation on the approval and issuance of licenses under that program and with the right to comment on waivers from the established regulations and process; therefore be it

RESOLVED, Community Board Five **recommends approval** of the *zoning* aspects of the Open Restaurants text amendment, or the first and second proposed changes as noted above: (1) A Local Law to establish the program’s authority under the Department of Transportation and (2) a zoning text amendment to allow more locations to be eligible for a sidewalk café; and be it further

RESOLVED, That Community Board Five requests that Community Boards be given a role in the creation and approval of the design, application, and process specifics of the Open Restaurants program, as well as the right to comment on the approval and issuance of licenses under that program and any waivers from the established regulations and process; and be it further

RESOLVED, that Community Board Five requests that the Department of Transportation begin more aggressively enforcing the existing regulations to address any currently noncompliant Open Restaurants operations.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Nicholas Athanail
Chair, Public Safety & Quality of Life Committee



Layla Law-Gisiko

Chair, Land Use, Housing & Zoning Committee



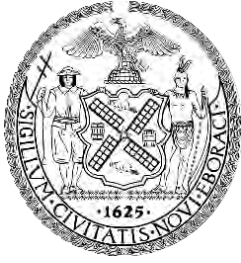
E.J. Kalafarski

Chair, Transportation/Environment Committee



Clayton Smith
Chair, Parks and Public Spaces Committee

CC: Hon. Corey Johnson, New York City Council Speaker
Hon. Brad Hoylman, New York State Senator, 27th District
Hon. Robert Jackson, New York State Senator, 31st District
Hon. Richard Gottfried, New York Assembly Member, 75th District
Hon. Liz Krueger, New York Senator, 28th District
Hon. Carlina Rivera, New York Councilmember, District 2
Hon. Keith Powers, New York Councilmember, District 4
Gale Brewer, Manhattan Borough President



THE CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD 7

250 West 87th Street, New York, NY 10024 • Phone (212) 362-4008

Website: <https://nyc.gov/mcb7> • E-mail: mn07@cb.nyc.gov

Steven Brown, Board Chair

Michelle P. Booker, District Manager

RESOLUTION

Date: September 9, 2021

Committee of Origin: Land Use

Re: N 210434 ZRY Proposed Open Restaurants Text Amendment,

<https://www1.nyc.gov/site/planning/plans/open-restaurants/open-restaurants-overview.page>

Full Board Vote: 21 In Favor 17 Against 3 Abstentions 0 Present

Committee: 9-0-0-0. Non-Committee Board Members: 1-2-2-0.

The following facts were presented to Community Board 7's Land Use Committee:

The NYC Department of City Planning (DCP) and the NYC Department of Transportation (DOT) are proposing the elimination, in its entirety, of *Chapter 4 – Sidewalk Café Regulations* of Article 1 of the Zoning Resolution (ZR). Chapter 4 addresses primarily: 1) city blocks and neighborhoods which are off-limits to cafes; 2) the structure and placement of enclosed cafes; and 3) delegation to the Department of Consumer and Worker Protection (DCWP), of the authority to grant rules relating to sidewalk cafes and to grant or deny café license applications. The proposed ZR amendment would permanently eliminate all location-based restrictions on cafes and remove the authority of DCWP to regulate cafes. .

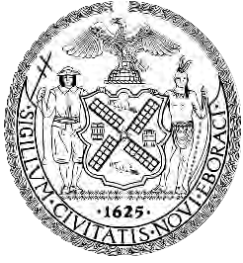
DCP and DOT stated that the ZR amendment would be the first step toward rethinking and redesigning café guidelines, particularly in view of the expanded presence of cafes brought about by relaxation of the rules during the pandemic. The next step would be a City Council resolution permanently transferring authority over cafes from DCWP to DOT, only then to be followed by the development of new guidelines by DOT. DOT stated its intention to streamline the application process and to formalize the status of roadway cafes, which have come into widespread use during the pandemic.

DCP and DOT indicated that the timing of such proposal was originally accelerated due to the anticipated ending of Emergency Executive Order 126 on October 31, 2020 which suspended certain provisions of the Administrative Code, the Rules, and the Zoning Resolution of the City of New York and directed DOT to “*establish and administer a program to expand seating options for restaurants, bars and other establishments in certain outdoor areas, including the sidewalk, curbside and street space ...the Open Restaurants Program (OPR).*” However, On September 25, 2020, Mayor de Blasio extended the Executive Order and announce it would be year-round and ultimately permanent. A DOT representative indicated it would look to local communities for input,, but at this stage there are no assurances that community boards (and the communities they serve) will have the opportunity to participate as DOT develops new guidelines, or that such new guidelines will include opportunities for community boards (or the communities they serve) to provide input and guidance on the substance of any proposed outdoor dining facilities on an application-by-application basis, as currently provided for in DCWP rules.

Passage of the proposed text amendment would have no immediate effect because the current Covid-19 emergency rules have eliminated the need for café applications and approvals through December 2022.

The following facts and concerns were taken into consideration:

- i. The present application may be the last opportunity community boards have to weigh in on this issue, which has profound impact on everyday life in our communities. CB 7 does not wish to



Steven Brown, Board Chair

Michelle P. Booker, District Manager

- relinquish its seat at the table or its essential opportunity to weigh in on location issues or the appropriate agency to oversee cafes before it has had an opportunity to examine and provide meaningful comment on DOT's proposed guidelines.
- ii. Due to the extension of Executive Order 126, there is no longer any urgency to the proposed amendment. Until at least year-end 2022, the zoning text of Chapter 4, including the geographic restrictions on location of cafes have been made null and void as per Executive Order 126. Prior to permanently deleting this text, CB 7 believes the first step in the process should be the creation of proposed guidelines, followed by City Council approval of the change in authority and an only then an amendment to the ZR.
 - iii. The current amendment application takes no position on any of the issues which may provoke controversy once the guidelines are proposed. Accordingly, Community Board 7 will not comment at this time on any specifics regarding the placement, structure, and physical appearance of cafes, all of which are proposed to be addressed by DOT, except that CB7 rejects any procedure which precludes community board review of the DOT guidelines before they take effect, and the siting and issuance of permits for roadside cafes, assuming they are allowed under the new guidelines.
 - iv. Community Board 7 enthusiastically approves efforts by the Applicants to rationalize and update café guidelines. We are mindful and sympathetic to the plight of restaurants during the pandemic and the need to stretch the rules to permit as much outdoor dining as possible. We support continuation of the temporary emergency.

WHEREFORE, BE IT RESOLVED THAT Community Board 7, Manhattan:

Disapproves the proposed Zoning Text Amendment to eliminate Article 1, Chapter 4 and related provisions of the Zoning Resolution at this time, and has the following comments:

1. Community Board 7, Manhattan, urges DCP and DOT to withdraw the current ULURP until such time as proposed café guidelines have been circulated by DOT and community boards have had an opportunity to consider and provide advice on the guidelines;
2. Community Board 7, Manhattan urges the City Council to delay any legislation which transfers authority over cafes from DCWP to DOT until such time as DOT has circulated at least preliminary proposed regulations;
3. Community Board 7, Manhattan commends the applicants for embarking on a process to overhaul café guidelines and takes no position at this time on whether DCWP, DOT or some other agency is best suited to lead this process; and
4. Community Board 7, Manhattan will object to any procedures which are not fully transparent, which fail to give community boards an opportunity to influence the proposed guidelines (which may differ from community to community) or will be proposed by which deprives community boards of the opportunity to review individual applications for sidewalk or roadway licenses, as well as guidelines for their siting, manner of construction, appearance, and adequacy of safety features.

Russell Squire
Chair

Will Brightbill
District Manager



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**The City of New York
Community Board 8 Manhattan**

September 26, 2021

Marisa Lago, Chair
City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Open Restaurants / Sidewalk Cafes Text Amendment (ULURP # N210434ZRY). Deadline September 28, 2021

At the Land Use Committee meeting of Community Board 8 Manhattan held on September 2, 2021, the board approved the following resolution by a vote of 27 in favor, 15 opposed, 0 abstentions, and 0 not voting for cause.

WHEREAS, the special permit would allow the NYC Department of Transportation to administer the Permanent Open Restaurant program (POR), and

WHEREAS, the proposed text amendment will remove sidewalk café regulations from the Zoning Resolution to increase geography eligibility as sidewalk cafes will become part of a unified sidewalk and roadway outdoor dining program administered at DOT,

THEREFORE, BE IT RESOLVED that Community Board 8 Manhattan **APPROVES** the application for a text amendment as presented.

Please advise our office of any action taken on this matter.

Sincerely,

Russell Squire

Russell Squire
Chair

cc: Honorable Bill de Blasio, Mayor of the City of New York
Honorable Carolyn Maloney, 12th Congressional District Representative
Honorable Gale Brewer, Manhattan Borough President
Honorable Liz Krueger, NYS Senator, 28th Senatorial District
Honorable José M. Serrano, NYS Senator, 29th Senatorial District
Honorable Dan Quart, NYS Assembly Member, 73rd Assembly District
Honorable Rebecca Seawright, NYS Assembly Member 76th Assembly District
Honorable Robert J. Rodriguez, NYS Assembly Member 68th Assembly District
Honorable Ben Kallos, NYC Council Member, 5th Council District
Honorable Keith Powers, NYC Council Member, 4th Council District



Community Board 12 - Manhattan Washington Heights & Inwood

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Website: www.nyc.gov/mcb12

Eleazar Bueno, Chairperson
Ebenezer Smith, District Manager

September 23, 2021

Hon. Marisa Lago, Chair
New York City Department of City Planning
120 Broadway
31st Floor
New York, NY 10271

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

Dear Chair Lago:

At the Executive Committee Monday, September 23, 2021, Community Board 12 Manhattan, Executive Committee, passed the following resolution with a vote of 11 in favor, 0 opposed, 0 abstentions, not supporting the adoption of the associated Permanent Open Restaurants Zoning Text Amendment at this time; and urging the Department of City Planning and the Department of Transportation to draft and circulate for public review the design guidelines and rules and regulations proposed for the Permanent Open Restaurants Program before seeking to adopt the Zoning Text Amendment. Provisional approval is hereby given subject to the passage at the September 28, 2021, General Meeting.

Whereas: During the COVID-19 ban on indoor dining the City of New York (the "City") suspended existing outdoor dining regulations, including zoning location rules, to create an emergency outdoor dining program (the "Emergency Open Restaurants Program" or the "Emergency Program") that provided an economic lifeline to over 11,000 participating restaurants citywide and allowed city residents the opportunity to enjoy outdoor dining at a time when indoor gatherings posed a public safety hazard. The Emergency Program remains in effect into 2022. The City, working through the Department of City Planning ("DCP") and the Department of Transportation ("DOT"), proposes to transition the emergency program into a permanent open restaurants program (the "Permanent Open Restaurants Program" or the "Permanent Program"). As part of the Program, all geographic restrictions imposed by zoning where sidewalk cafes can be located would be removed from the NYC Zoning Resolution. Additionally, the administration of the sidewalk café program would move from the Department of Consumer Affairs and Workforce Protection to DOT, the application process for a sidewalk café would be streamlined, and rules would be created for a permanent roadway dining program. On June 21, 2021, DCP released the Permanent Open Restaurants Zoning Text Amendment (the "Text Amendment") for public review. Community Boards and Borough Presidents have until September 27, 2021, to provide comments; and

Hon. Marisa Lago, Chair

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

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Whereas: Although DCP is not responsible for the approval of sidewalk cafés, zoning regulates where sidewalk cafés can be located and what type and size of café is allowed, i.e.: unenclosed sidewalk café, small unenclosed sidewalk café, enclosed sidewalk café. Under current zoning, sidewalk cafes are prohibited in large sections of Brooklyn, Queens, Staten Island, and the Bronx. Geographic areas where sidewalk cafes are permitted under zoning are concentrated in Manhattan, western sections of Queens and Brooklyn and certain thoroughfares in the Bronx and Staten Island. The intent of the Permanent Program is to create a new program under DOT that includes both sidewalk cafes and roadway cafes, balances the needs of the street and sidewalk, and uses what worked under the Emergency Program to create guidelines for the Permanent Program; and

Whereas: The Zoning Text Amendment would delete Article 1, Chapter 4 of the Zoning Resolution in its entirety, effectively removing all zoning location restrictions on sidewalk cafes, removing any language that prevents sidewalk cafés in Special Zoning Districts, removing certain text pertaining to enclosure provisions, text that precludes operable windows that serve restaurants, clarifying the sidewalk width text to ensure no conflict with the Permanent Program that would preclude or limit the outdoor dining under the Permanent Open Restaurants Program, and would clean up other zoning references and definitions that are required to enable the Permanent Open Restaurants Program. With the removal of zoning restrictions, DOT would be responsible for administering the Permanent Program and the approval of sidewalk cafes would focus on matters pertaining to their siting and location. DOT would be responsible for enforcing requirements pertaining to ADA compliance, clear paths, and the location of barriers. NYPD would continue to be responsible for enforcing noise regulations. The Department of Sanitation would continue to be responsible for regulating garbage removal by private carters; and

Whereas: The Emergency Program succeeded in making it possible to locate sidewalk cafés in all areas of New York City, eliminating lengthy application and approval processes, attracting the participation of over 11,000 restaurants (approximately 51% of which are outside of Manhattan), and saving an estimated 100,000 restaurant-related jobs. Challenges to the Emergency Program include the clarity, consistency, and communication of applicable rules; maintaining access for emergency vehicles, not blocking street signage; enforcement, balancing the interest of all sidewalk and street users; maintaining clear and accessible paths for persons with mobility disabilities; and also balancing the interests of local residents with that of restaurant owners and patrons; and

Whereas: On September 9, 2021, representatives of DCP and DOT presented the Text Amendment to Community Board 12M's Land Use Committee ("Land Use" or the "Committee"). The Committee questioned why city agencies having jurisdiction have not to-date more satisfactorily addressed the challenges encountered by the Emergency Program and how these challenges would be addressed in the context of the Permanent Program.

Hon. Marisa Lago, Chair

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

September 23, 2021

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Among the concerns cited by the Committee is DOT's lack of responsiveness to requests for it to attend a meeting of the Washington Heights and Inwood Task Force on Noise in February 2021 to discuss noise and quality-of-life issues (Manhattan Borough President Gale Brewer attended the meeting in person, the Mayor's Office and various city agencies such as NYPD, DEP and FDNY were represented as were the Public Advocate and the Manhattan District Attorney) and its subsequent failure to follow up with the task force on those matters. The Committee also questioned how enforcement efforts will be improved for the balance of the Emergency Program, and then, as the proposed Permanent Program is commenced, how business owners will be informed of the rules and regulations applicable to the Permanent Program, and what actions will be taken to ensure garbage is not stored near outdoor eating areas. The Manhattan Borough President's Office also requested clarification of various aspects of the operation of the Emergency Program, including self-certification by participating restaurants, enforcement of clear path requirements, and the general enforcement of applicable rules and regulations; and

Whereas: The Permanent Program would grandfather existing enclosed sidewalk cafes but would prohibit new enclosed sidewalk cafes. The informational materials available for public review give little attention to this significant provision of the Permanent Program. DCP and DOT advised that requests for the approval of enclosed sidewalk cafés have declined, but that is not a reason to prohibit new ones. Establishing an enclosed sidewalk café should remain a business decision subject to applicable municipal rules and regulations. Similarly, stating that because of COVID-19, City government wants to move everything outside does not make sense since indoor dining will continue, unenclosed sidewalk cafes are seasonal, and restaurant patrons cannot enjoy unenclosed sidewalk cafes during periods of inclement weather; and

Whereas: The Permanent Program would include both sidewalk cafes and roadway dining. Under the Emergency Program, many restaurants implemented sidewalk and roadway cafes. The Permanent Program must carefully consider the collective impact of each on local residents and all users of the street and sidewalk, included enforceable mechanisms for mitigating adverse impacts, and ensure that the agencies having responsibility for enforcement diligently perform their duties. DCP and DOT advised the Committee that design guidelines and rules and regulations for the Permanent Program will be established, but they were not circulated for review and comment, and, at this juncture, may not yet be drafted. It is premature to advance the Text Amendment at this time absent any public review of the design guidelines and the rules and regulations that would govern the administration of the Permanent Program or thorough consideration of how the challenges experienced in the course of the Emergency Program will be addressed in the Permanent Program; now, therefore, be it

Resolved: Community Board 12-Manhattan understands the intent of the Permanent Open Restaurants Program proposed by the Department of City Planning and the Department of Transportation but does not support adoption of the associated Permanent Open Restaurants Zoning Text Amendment at this time; and be it further

Hon. Marisa Lago, Chair

Re: OPPOSING, AT THIS TIME, THE ADOPTION OF THE DEPARTMENT OF CITY PLANNING'S PROPOSED CITYWIDE PERMANENT OPEN RESTAURANTS ZONING TEXT AMENDMENT

September 23, 2021

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Resolved: Community Board 12-Manhattan urges the Department of City Planning and the Department of Transportation to draft and circulate for public review the design guidelines and rules and regulations proposed for the Permanent Open Restaurants Program before seeking to adopt the Zoning Text Amendment; and be it further

Resolved: Community Board 12-Manhattan urges the Department of City Planning and the Department of Transportation, after they have considered and responded to public comments provided on the proposed design guidelines, rules and regulations, to undertake and monitor a pilot program that uses the approved design guidelines, rules and regulations to evaluate their effectiveness before seeking to implement a Permanent Open Restaurants Program.

Sincerely,



Eleazar Bueno
Chairperson

cc: Hon. Bill de Blasio, Mayor
Hon. Jumaane Williams, Public Advocate
Hon. Scott M. Stringer, Comptroller
Hon. Brian Benjamin, State Senator
Hon. Robert Jackson, State Senator

Hon. Gale Brewer, Manhattan Borough President
Hon. Al Taylor, Assembly Member
Hon. Carmen De La Rosa, Assembly Member
Hon. Ydanis Rodriguez, Council Member
Hon. Mark Levine, Council Member



**City of New York
Community Board #1, Queens**

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Donovan Richards
Borough President, Queens
Maricela Cano
Director, Community Boards
Marie Tomiali
Chairperson
Florence Koulouris
District Manager

EXECUTIVE BOARD

Marie Tomiali
Chairperson

First Vice Chairperson
Amy Hau
Second Vice Chairperson
Richard Khuzami
Third Vice Chairperson
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Executive Secretary
Thomas Ryan
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Evie Hantzopoulos
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Marie Tomiali
Parks/Recreation/Cultural
Katie Ellman
Kathleen Warnock
Public Safety
Ann Bruno
Antonio Meloni
Transportation
Mitchell Waxman

September 23, 2021

Honorable Marisa Lago
Chair
NYC City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271

RE: **N 210434 ZRY Open Restaurant Zoning Text Amendment**

Dear Chair Lago:

On September 21, 2021, Community Board 1 Queens (CBIQ) held a duly advertised virtual public hearing on the referenced application. With a quorum present and following a presentation on the proposed text amendment, the Board voted by roll call on a motion to recommend approval of application N 210434 ZRY with 11 in favor, 22 opposed and 1 not voting for cause. The motion was defeated.

Background and Public Review

On June 21, 2021, the City Planning Commission referred out for community review and comment the proposed citywide Open Restaurants Zoning Text Amendment, filed by the NYC Department of City Planning (DCP) and the NYC Department of Transportation (DOT). If approved, the text change would delete Article 1, Chapter 4 Sidewalk Café Regulations from the Zoning Resolution as well as all other zoning text related to sidewalk cafes.

On September 1, 2021, the Board's Land Use and Zoning Committee held a virtual public informational session on the amendment with a DCP presentation. The committee did not issue a recommendation for the Board on the ULURP application. Although most of the discussion centered on the open restaurant program, the following comments were made on the zoning text amendment:

- Eliminating the text now is a premature action if there are no substitute guidelines ready for review with community input.
- Eliminating the café zoning text will leave no locational guidelines in place except commercial zones and additional criteria might be needed for certain locations to address unique sidewalk or density issues.
- The future is unclear for sidewalk and roadway cafes located in residential zones: which ones would be grandfathered under the permanent program and will legal-nonconforming restaurants be permitted to apply for café or roadway licenses. A recommendation was made to assure that restaurants in residential areas with commercial overlays would be allowed sidewalk and roadway cafes.

At CBIQ's public hearing on September 21, 2021, DCP representatives presented the text and provided more information about the permanent restaurant program. The text amendment would eliminate locations in the city where sidewalk cafes are now prohibited from locating, as well as sidewalk clearance requirements. As a result of the text amendment, jurisdiction over cafes would be transferred to DOT to keep the temporary Open Restaurant Program operating and to create a permanent program. DOT is devising guidelines that would streamline the current application and approval process, set standards and criteria for approving sidewalk and roadway cafes and revise clear path requirements and waivers for pedestrian rights of way. DOT will be responsible for administering the program, granting revocable consent for both sidewalk and roadway seating as well as program enforcement.

BOARD MEMBERS (cont.)

Helene Abiola
Rose Anne Alafogiannis
George Alexiou
Louise Bordley
Shoma Brahmanandam
Irak Dahir Cehonski
Jean Marie D'Alleva
Dean O. Feratovic
Shahenaz Hamde
Helen Ho
Vanessa Jones-Hall
Nancy Konipol
Amr Kolb
Jerry Kril
Cristina Lastres
Diana Limongi
Chelsea Lopez
Hannah Lupien
Jeffrey Martin
Amin Mehedi
Doreen Mohammed
Mary O'Hara
Dino Panagoulis
Juliet Payabyab
Yawne Robinson
Brian Romero
Andre Stiith
Rod Townsend
Rosemary Yelton


There were no public speakers on the text amendment at the public hearing, but comments and questions from board members concerned current operations and the future permanent Open Restaurant program:

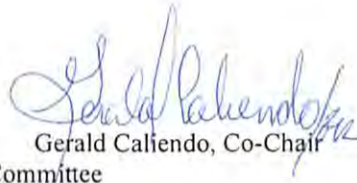
- o New design guidelines are not yet complete and are being written without community input;
- o Design guidelines, construction standards and DOB review are needed for street structures; perhaps even aesthetic standards since structures are in a public right of way;
- o Future disposition is unknown for those roadway and sidewalk cafes that were built under the temporary program for which significant financial investment was made to build permanent structures;
- o Current rules are not enforced, and abuses are ignored: sidewalk space with excess tables and chairs, menu boards, decorative planters and cordoned areas on the sidewalk for diners' queues waiting for tables that significantly restrict mobility in the pedestrian right of way;
- o Enforcement is and has always been non-existent for noise, music and compliance with existing license; there are quality of life issues for residents above ground floor restaurants;
- o Public review of new sidewalk and roadway cafes must still go through ULURP;
- o Disposition of unlicensed enclosed cafes built during temporary restaurant program;
- o Should there be a sunset for the roadway component of the Open Restaurants Program; this began to boost employment and recoup lost revenue;
- o Should the program be seasonal - sidewalk and roadway cafes removed from October to April;
- o Maintain Community Board review of sidewalk and roadway cafes and apply fast review for change of business name/owner;

These comments forwarded to DCP and DOT for consideration to relate community concerns about the operations of the temporary Outdoor Restaurant Program and to allow the community board input into the proposed permanent program guidelines.

Sincerely,


Marie Torniali
Chairperson


Elizabeth Erion, Co-Chair
Land Use and Zoning Committee


Gerald Caliendo, Co-Chair

cc: Honorable Donovan Richards, Queens Borough President
Honorable Michael Gianaris
Honorable Jessica Ramos
Honorable Zohran Mamdani
Honorable Catherine Nolan
Honorable Brian Barnwell
Honorable Jimmy Van Bramer
Mr. Frank B. Perez, New York City Council, District 22
Mr. Irving Poy, Director, Land Use, BPQ
Ms. Alexis Wheeler, Director, Queens Office DCP
Ms. Sarit Platkin, DCP



Donovan Richards
Queens Borough President

September 10, 2021

Ms. Marisa Lago
Director
Department of City Planning
City Planning Commission
Calendar Information Office
120 Broadway, 31st Floor
New York, NY 10271

Community Board No. 2

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Lisa Deller
Chairperson

Debra Markell Kleinert
District Manager

RE: **DCP - Citywide Proposed Open Restaurants Text Amendment ULURP # N210434ZRY**

Dear Ms. Lago:

On September 9, 2021, Community Board 2 held a public hearing concerning the Citywide Proposed Open Restaurants Text Amendment ULURP # N210434ZRY.

At that meeting with a quorum present a motion was made and seconded to oppose the application at this time.

The vote was 21 in favor; 8 opposed, and 1 abstention.

If you have any questions, please contact CB 2.

Sincerely,



Debra Markell Kleinert
District Manager

DMK/mag

cc: Honorable Alexandria Ocasio-Cortez, US Congress
Honorable Carolyn B. Maloney, US Congress
Honorable Grace Meng, US Congress
Honorable Nydia M. Velazquez, US Congress
Honorable Michael Gianaris, NY State Senate
Honorable Brian Barnwell, NYS Assembly
Honorable Jessica Gonzalez-Rojas, NYS Assembly

Honorable Catherine T. Nolan, NYS Assembly
Honorable Robert Holden, NYC Council Member
Honorable Jimmy Van Bramer NYC Council Member
Honorable Daniel Dromm, NYC Council Member
Honorable Donovan Richards, Queens Borough President of the Borough of Queens
Irving Poy, Queens Borough President's office
Victoria Garvey, Queens Borough President's Office
Alexis Wheeler, Department of City Planning
Teal Delys, Department of City Planning
Lisa Deller, Chairperson, Community Board 2
Christine Hunter, Co-Chair, Land Use Committee
Nicole Garcia, NYC Department of Transportation
Gretha Suarez, NYC Department of Transportation

DCP ULURP Project Application – Citywide Proposed Open Restaurants Text Amendment



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable			
# In Favor: 32	# Against: 6	# Abstaining: 0	Total members appointed to the board: 50
Date of Vote: 9/14/2021 12:00 AM		Vote Location: Remote via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 7/14/2021 7:30 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	68-02 Metropolitan Avenue Middle Village, NY 11379

CONSIDERATION: Queens Community Board 5, Queens is in favor of the Proposed Open Restaurants/Sidewalk Cafes Citywide Zoning Text Amendment, with the following considerations:

- 1) That there be a minimum of 5 feet of sidewalk passage, adjacent to the outdoor dining area, for a pedestrian to safely walk through.
- 2) That food must be served in the outdoor open restaurant/sidewalk cafe, and that the outdoor area not be solely for the consumption of alcoholic beverages.
- 3) The outdoor open restaurants/sidewalk cafes should close no later than 10pm Sunday through Thursday, and no later than Midnight on Fridays and Saturdays.
- 4) That additional liquor license fees be waived for the additional space used for open restaurants/sidewalk cafes.

Recommendation submitted by	QN CB5	Date: 9/23/2021 3:27 PM
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Donovan Richards, Jr.
Queens Borough President

Community Board 7

Borough of Queens

Bay Terrace, College Point, Beechhurst, Flushing
Malba, Queensborough Hill, Whitestone and Willets Point

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Eugene T. Kelty Jr.

Chairperson

Marilyn McAndrews

District Manager

September 14, 2021

Alexis Wheeler, Director
Department of City Planning
Office of the Borough President
120-55 Queens Boulevard
Kew Gardens, NY 11424

Director Wheeler:

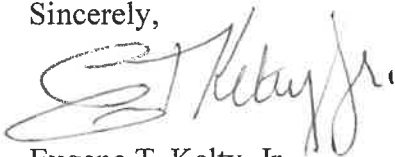
Members of our Board felt the Open Restaurant Text Amendment was premature and a knee-jerk reaction to the COVID crisis. They felt the Mayor's current Emergency Order could remain in effect until further thought could be provided to the Amendment.

However, **CB7Q was unanimous (40-0) to disapprove the Open Restaurant Text** for the following reasons:

1. There should be a 2-year Sunset Provision on the Open Restaurant Amendment to determine whether it has merit, or if this is a knee-jerk reaction to COVID.
2. DOT should continue to be the Agency to approve street permits, but DOB must be the Agency that approves structures.
3. There are many streets where this Text would be a nightmare, such as Main Street in Flushing and 40th Road in Flushing.
4. There should be a Grace Period before fines are levied to allow restaurants an opportunity to understand and completely comply with new regulations. After the Grace Period, fines should be levied, and repeat offenders should have privileges suspended, and ultimately should have permits permanently revoked.
5. Fines that are collected should remain in a "Restaurant Fund" and not in the General Fund.

6. Smoking should not be allowed in outdoor Open Restaurants.
7. Open Restaurants should remain a prohibited item in Special Districts.
8. Too many parking spaces are being removed, which will hurt neighboring businesses from attracting shoppers and patrons, day and night.
9. Corner intersections should be daylighted wherever street-structures are proposed to prevent accidents as vehicles come around the corner.
10. Concern about lapse of Article 4 Chapter 1 before Open Restaurant Text is fully enacted.

Sincerely,



Eugene T. Kelty, Jr.
Chairman of the Board

cc: DOT Queens Commissioner Nicole Garcia
CPC Commissioners
Congresswoman Grace Meng
Congressman Tom Suozzi
Congresswoman, Alexandria Ocasio-Cortez
State Senator John Liu
State Senator Toby Stavisky
State Senator Jessica Ramos
State Assemblyman Davis Weprin
State Assemblywoman Nily Rozic
State Assemblyman Edward Braunstein
State Assemblyman Daniel Rosenthal
State Assemblyman Ron Kim
Council Member Paul Vallone
Council Member Peter Koo
Council Member Francisco Moya
Council Member James Gennaro



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 0	# Against: 30	# Abstaining: 0	Total members appointed to the board: 50
Date of Vote: 9/2/2021 12:00 AM		Vote Location: Old Mill Yacht Club: 163-15 Cross Bay Blvd., Howard Beach NY 11414	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION: CB10 voted not to approve this text amendment.

Recommendation submitted by	QN CB10	Date: 9/13/2021 3:38 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	Citywide
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Unfavorable			
# In Favor: 17	# Against: 19	# Abstaining: 0	Total members appointed to the board: 36
Date of Vote: 9/13/2021 12:00 AM		Vote Location: Via Zoom	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing:	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	

CONSIDERATION:

Recommendation submitted by	QN CB11	Date: 9/14/2021 3:35 PM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Open Restaurants / Sidewalk Cafes			
Applicant:	DCP - Department of City Planning (NYC)	Applicant's Primary Contact:	DCP - Department of City Planning (NYC)
Application #	N210434ZRY	Borough:	
CEQR Number:	21DOT016Y	Validated Community Districts:	CY00

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Waiver of Recommendation			
# In Favor: 15	# Against: 7	# Abstaining:	Total members appointed to the board: 50
Date of Vote: 9/9/2021 12:00 AM		Vote Location: Web ex	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 9/9/2021 7:15 PM	
Was a quorum present? No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	Knights of Columbus hall 333 Beach 90 street

CONSIDERATION: The board had concerns: no real community board role in new process of approving or renewing sidewalk permits. The board also was concerned about the safety of street cafe location and the loss of parking which will hurt other businesses on the street adjacent to street cafe seating .

Recommendation submitted by	QN CB14	Date: 9/10/2021 10:18 AM
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