

NYC CPC Review Session 2021-10-04: Transcript of Citywide Non-ULURP Pre- Hearing on Open Restaurants Citywide Text Amendment

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Timecodes below match the timecodes in the live stream video above.

SUMMARY KEYWORDS

restaurants, sidewalk, roadway, rules, zoning, sidewalk cafe, cafes, program, community, setups, city, boards, concerns, outdoor dining, permanent, required, structures, emergency, clear, next slide

SPEAKERS

Benjamin Huff, DCP, Commissioner Levin, DCP Secretary, Carolyn Grossman, DCP, Commissioner Ortiz, Chair Laremont, Erick Gregory, DCP, Julie Schipper, DOT, Commissioner Burney, Commissioner Rampershad

DCP Secretary 1:58:24

The 10th item on our agenda is a pre hearing review of a city wide zoning text amendment. Our presenter is Ben Huff. I want to note that

Chair Laremont 1:58:35

Commissioner Cirilo is recused on this item.

Benjamin Huff, DCP 1:58:41

Hello, good afternoon, commissioners. I'm excited to present today on the open restaurants text amendment. I'm joined by Carolyn Grossman Mar, Eric Gregory and crystal x ski for the DCP project team. And our colleagues Julie shipper of d o t, who will present some updates later in the presentation, and current summer also of d o t, who will join during q&a. Before we discuss the specifics of the zoning proposal, I want to quickly recap some of the high level details of the overall permanent program that d o t Commissioner Guttman presented back in June. So in March 2020, the existing Department of Consumer workforce protection sidewalk cafe program had 1224 cafes actively licensed citywide, mostly unenclosed and the vast majority located in Manhattan. Do t ran a small pilot of 25 Manhattan based street seats. These programs were relatively expensive and hard to access, resulting in the smaller number of them and the concentration in expensive commercial districts of the city. In response to the covid 19 pandemic and to provide support for the hospitality industry and the need to move dining outdoors, New York City He stood up the open restaurants program that allowed for the

emergency use of sidewalks and roadways by restaurants. This was achieved by suspending zoning and rules through executive order that allowed restaurants to conduct outdoor dining in the public right away. To date over 11 and a half 1000 restaurants have participated in the open restaurants program. In particular, the city saw a huge surge of outdoor dining occur in the outer boroughs, and 10,000 other restaurants have used the sidewalk for their outdoor dining setup. The city estimates that 100,000 jobs were saved in the restaurant industry that could have been lost, had the city not allowed the move of dining outdoors. This program by the city was able to not just save restaurants, but also create a sea of change and the potential of our streets and street life. Since the launch of the program in June of 2020, we've learned both positive and negative lessons and those lessons are critical to informing how we proceed with a permanent program. On the positive side, we think the robust use of the emergency program was helped by three things. First, unlike the pre emergency sidewalk cafe program, no geographies were off limits. Any restaurant with ground floor frontage and sidewalk or roadway space that met their criteria can participate. Second, the program was free and easy to access. Unlike the pre COVID sidewalk cafe program, which required months of multiple reviews by multiple agencies. And third element of runway dining gave restaurants brand new options, particularly those that might not have enough room on the sidewalk to accommodate a cafe. I would also like to note some of the challenges the city has seen. First the speed of the rollout and the fact that the program was built from scratch under emergency circumstances created some confusion. As do t learn more about an operating a program like this and the program was extended by the mayor into the winner. Some of the guidance had to change along the way to keep everyone safe. Second, throughout the program do t learn more about the challenge specific to the roadway seating and its interaction with the roadway. For instance, we've heard from other agencies such as FDNY and the MTA, that there were issues with turning radius and safety signs being blocked. And third enforcement has been complicated on multiple fronts. On one hand, you have restaurants who are dealing with a lot feeling squeezed and over, over inspected by too many agencies. On the other hand, you had communities particularly the mobility impaired who are concerned about under enforcement, and requiring that restaurants respond to their concerns. At a high level, the permanent open restaurants program will be run by the Department of Transportation and make available to restaurants the option of sidewalk and roadway seating for outdoor dining. This program will look to balance the many needs of the street and sidewalk, keeping restaurants and other users in mind. Finally, this program will take what has worked and what has not worked in the past. When developing the permanent future guidelines. We anticipate that like in the emergency the future program will be available citywide to any restaurant with ground floor frontage and a D o h MH or Department of Health active license. Both the sidewalk and roadway cafes will be required to be removable and will be subject to clear path and other setting criteria, which we'll go over those proposed rules later. And exact design requirements will be figured out in a design engagement process and rulemaking. In the next few slides, I'll talk in more detail but it's important to underscore that we think the most successful versions of cafes are those that activate but don't privatized the street environment and that allow for street access for other users like street work when needed. For sidewalk cafes, we anticipate that participating restaurants will have year round access to their business frontage for sidewalk cafe seating. The city will publish specific guidelines that will be very clear for restaurants to understand and we think this is the best way to balance the various uses of the sidewalk to maximize feelings of openness, as well as activity to the general public. Most importantly, the size and scale of the cafes is defined by the size of the sidewalk or crime meant for a clear path and other obstructions on it that are in there all cafes be ADA compliant. Part of the design guidelines will be responding to the

multitudes of street furniture that share the sidewalk. The rules for specific distances are being sourced in part from pre existing DC DWP program and will include distance from life and safety infrastructure like hydrants and other obstructions like cities bike stations, again, which we'll discuss later. The introduction of the roadway option is how There's been that tremendous new opportunity for restaurants. We think the new program should propose that it be allowed as they are now in all areas of the city except where loading bus lanes and other street rules preclude. As with the sidewalk cafes is important that they are removable to allow for storage when street work needs to occur. And it's important that they remain unenclosed to allow for lines of sight between all street users. Pedestrians, between cars and pedestrians, and so that cars can see signs and so on. The city is working to define what kinds of shading and screening can still be allowed and meet that goal of removability and plan to release a visual guidebook that provides specific reference references for restaurants and the general general public. We want to support flexibility and creativity while ensuring safety first, both programs will be as the sidewalk program already is subject to sound rules, including prohibitions on amplified sound and hours of operation. To make this program a reality, there's three steps that need to advance each through a somewhat different process. The first is the removal of location locational prohibitions through a citywide zoning text amendment, allowing restaurants to apply as long as they meet the sidewalk requirements and helping streamline agency review. Second, the team is working with City Council to enact legislation which will move the sidewalk cafe program from DC up to the Department of Transportation, while also updating the admin code rules for how sidewalk cafes will work. Third, the city will create the inaugural set of laws and design guidelines for roadway cafes. We are working towards a completed legal process and the launch of the new application process in late 2022 or early 2023. The current emergency program is expected to be in effect until the launch of the permit program. We expect that restaurants will have ample time to transition into the new program. And communities will continue to have opportunities to provide input and guidance on making this program work for them as well. So to get back to the proposal before the commission today, the proposed text amendment would remove the entirety of article one chapter four of the zoning resolution and related text and special districts and other areas that relate to sidewalk cafes to fully remove zoning from dictating the location of cafes. This will allow any restaurant to apply to do tea for a sidewalk cafe, if they can meet the required clear path and setting criteria. Unnecessary zoning restrictions stand in the way of 1000s of restaurants from participating in outdoor dining pass the emergency. This zoning proposal is key to unlocking the full city wide applicability, and again consolidating control and accountability for the future program under the Department of Transportation. Under the zoning rules, zoning dictates three different kinds of cafes and where in the city they can be located. Most common are unenclosed cafes, which allow for readily removable tables, chairs and fencing with no allowable overhead coverage other than umbrellas or retractable roofs. Second, small sidewalk cafes are unenclosed sidewalk cafes containing no more than a single row of tables and chairs adjacent to the street line and can extend no farther than four and a half feet from the building. The third are enclosed cafes, which are defined as extensions that building into the sidewalk using light building materials and requiring 50% transparency on its walls. zoning held the geographic restrictions of where these cafe types were allowed. The regulations are visible in the city planning Zola map application. And we have created this map here to demonstrate how that zoning works so in yellow are areas where only small cafe types were allowed. Purple are areas where only unenclosed or small cafe types are allowed. And green is where all cafe types are allowed. Importantly, you can see a lot of areas where cafes are not allowed at all, even if the sidewalks are wide and conditions otherwise would have allowed it. So red

are areas specifically prohibited from having cafes in the zoning resolution. And blue is all the residential areas of the city. So during the emergency program of the 11,011 and a half 1000 opened restaurants using sidewalks. Two and a half 1000 restaurants are permitted in areas that would have been prohibited or limited under existing zoning. The proposed text amendment will allow them as long as they meet the requirements outlined by d o t. So looking at the map on the right in red are restaurants in specific areas that were prohibited by zoning. So these include commercial mid blocks certain special districts on streets that contain elevated rail lines and other named congested areas. And again in blue are the non conforming restaurants in residential areas. There are many reasons why these areas were prohibited. But what we've seen during COVID-19 and the emergency order is that cafes can work in many more locations than zoning contemplated. Here you can see photos of sidewalk cafes operating in the emergency program in special districts on streets with elevated rail lines in central business districts, and we have a restaurant on the bottom right, that is a non conforming restaurant in a residential area. zoning does not allow restaurants in residential areas, but many of these restaurants predate the zoning that are in those areas and have remained. We estimate there's about 2900 restaurants citywide in March of 2020 and 1000 participated in the open restaurants program. We think what's more important is that the sidewalk condition and having enough room for pedestrians, and those are siting criteria, not neighborhood criteria. So we really think that zoning is not working and that physical rules would work far better. Otherwise cleanup actions in the text amendment include removing definitions and cruft cross references to cafes, removing text that precludes operable windows that service outdoor restaurants, ensuring that no enclosure provisions require restaurant to be fully endorsed as a condition of zoning district and clarifying that sidewalk widening being text does not conflict with participation in the open restaurants program. As a result of referring the text on June 21, we had a 90 day referral period to accommodate the summer breaks into August and now have completed an extensive outreach process we've presented to well over Well, we've presented well over 100 times. And too many boards, many both to the sort of land use committee or Transportation Committee, as well as the full board, full boards and 45 boards have voted, we have presented to four borough boards, and one borough board has voted as of today. So we've had 20 boards vote favorably or favorably with conditions and 23 unfavorably or unfavorably with conditions and to have waived or had no objection. So there are a lot of comments from a lot of different boards and we have bucketed them into eight categories that we will go through in detail. It's to safe, it's safe to say that almost all boards had these eight concerns. And there are a few boards that had specific comments, and we will try to highlight those in the next part of the presentation. So in general, many boards Express support for helping restaurants and understand that open restaurants were necessary to helping them survive during the restrictive heights of the covid 19 pandemic. But they were worried about the effects the broad permanent changes to the public realm might have on resident quality of life and the ability for the general public to enjoy public space concerns which though in many cases are not germane to the specifics of the text amendment really are critical to the success of the overall program. So we're going to take the unusual step of talking about some of the larger overarching issues first, and then returning to the much more modest technical zoning comment at the end. So for this next section, I'll be joined by DCP and beauty design colleagues. So turning to category one design, many communities are concerned about the physical rules that restaurants will have to obey and how they interact with other users. Some of the concerns or specific rule concerns like ensuring roadway setups can interact with drivers safely, that sanitation pickup and roadway setups do not conflict or that setups and historic districts fit their context. Others are more general concerns about ugliness, especially based on the

lacks rules and limited enforcement for large, often non compliant physically imposing structures, sometimes full buildings, they're proliferated. While concerns have primarily been focused on roadway setups, the concerns have been somewhat universal and mixed with concerns about enforcement. However, from a rules perspective, it is important to distinguish the sidewalk cafe, which have a well established set of design criteria and rules already in law and roadway which are new and have only had emergency rules. So to talk a little bit about the design rules and process we're going to turn it over to Eric Gregory dcp's chief urban designer and Julie Schipper, Deputy Chief of Staff for DLT to discuss

Erick Gregory, DCP 2:15:02

Thanks, Ben. Good afternoon, commissioners. My name is Eric Gregory. I'll be speaking primarily on the proposed rules for the sidewalk seating. And then I'll hand it off to our duty colleague Julie shipper, who will share updates on the roadway seating and what the forthcoming engagement on design process will look like that will inform future rulemaking. Next slide. Many of the sidewalk elements we interact with each day are overseen by the Department of Transportation. Their street design manual provides siting guidelines for bus shelters, street lamps, traffic signals, new standards, and many other components. Balancing needs a variety of uses and functions on our sidewalks is key to ensure that they are safe, accessible and accommodate pedestrian flows while while remaining vibrant and lively. Next slide. It's important to mention briefly how the arrangement of various elements or zones work across the sidewalk from the building frontage to the curb line. As we walk through the site and criteria, each of these areas plays an important role. The seating and service area adjacent to the restaurant or building frontage as seen at the right is then followed by the clear path, which allows for the free flowing and accessible movement of pedestrians. Within that the amenity zone runs adjacent to in parallel with the curb where we find trees, the street trees, traffic lights and other furniture and finally the curb line where the roadway seating happens. Next slide. While most focus while most of the focus publicly has been on the roadway seating there's been a wide variety of setups on our sidewalks some resembling what we saw before the emergency order, and many going beyond what was previously seen or allowed under the sidewalk cafe program administered by DC WP. These range from seating and the amenity zone to shade structures bolted to the sidewalk to fall on enclosures. Next slide has been mentioned earlier the existing sidewalk rules sidewalk cafe program administered by the Department of Consumer and workforce protection or DC WP has rules and guidance in place that dictate how a cafe been decided. We want to replicate the look and feel for moveable tables and chairs, barriers and planters of what we saw on our sidewalks before the emergency order. And what we will see established in a new permanent open restaurant program run by the Department of Transportation as we go through the design criteria will be with the will begin with the siting criteria rules that will not change followed by those that will be adjusted and close with addition additions that bring the program in alignment with the sidewalk design manual and what we have learned from the emergency open restaurants. Next slide. From our perspective, we need to start from the premise of a return to ensuring sidewalks remain free and clear and open a permanent obstructions. This is also the case in the emergency rules. But we understand that there has been confusion on this critical point and is led to some problematic structures on our sidewalks, like you see here on the right to reconfirm while we are looking to make a program that includes as many potential restaurant setups in the future as possible. That does not mean that structures like this or any structures permanently affixed to the sidewalk can remain in perpetuity. Many restaurants will likely need to modify their setups to come back into compliance. Next slide. I shared earlier that the previously stated amenity zone is where a vast majority

of sidewalk furniture such as bike racks, bus stops, and other items are located. During the emergency program, many sidewalks set up to use the amenity zone for additional seating, whether it is an extension of the roadway setup or those setups on the sidewalk. This will not be allowed as we move into the permanent program. Next slide. Several deciding rules are coordinated distances from sidewalk furniture and elements will carry over and remain unchanged. Here are some visual examples of elements whose dimensional clearance is defined by the sidewalk cafe program will not change. So this includes perimeter fencing distances to fire hydrants or parking meters exhausts ducks and also guide guidelines for umbrellas and retractable awnings. Next slide. So this list is kind of just gives you more of the actual dimensions of some of those items. So you'll notice that there's going forward you know, all sidewalk setups will have to be level with the sidewalk so again, no platforms they must be we must ensure ADA accessibility there's a host of dimensions under the under the current DCP W. DC WP programs for building edge and distances from primary entrances and also not to not to block certain aspects as well as the setups themselves so that the person Under fence height for instance, must remain it at two and a half feet in height. Next slide. So unlike the majority of sidewalk rules, so arbitrary of sidewalk rules remain unchanged, that that is revert to what was already under the DC WP rules. The city team has identified a few places where the rules would rules changes would make sense. And that have arisen since we have seen new issues crop up under the temporary rules. And as we have thoroughly reviewed the DC WP rules which had not been updated in some time. Next slide. Perhaps the most critical dimension is the clear path under the existing rule, which has geographical limit limitations overall, the sidewalks greater than 16 feet or must have 50% of the sidewalk with clear sidewalks less than 16 feet must have an eight foot clearance there. It's worth noting that there was a prohibition on sidewalks where with less than 12 feet, the open restaurants rule did away with all of that and just said eight feet everywhere was the rule. So when we think about the proposed rule for the permanent open restaurants will reflect that will reflect that of the DC DWP program with adjustments to account for high pedestrian traffic areas and select central business districts corridors that were previously prohibited or limited by such small designations. This is also balanced against not making the rules too restrictive in too many locations. As we know that, that even eight feet when strictly enforced may be difficult for many restaurants on narrow sidewalks to adhere to. We do know that there's many open restaurants that are on sidewalks of less than 11 feet. So every foot will make a huge difference here. But we think this proposal strikes the right balance of inclusion and protection for pedestrians. So as you can see in the map on the left, those areas that are highlighted in blue are these corridors within higher traffic, central district business district type areas, which will have the 12 foot clear path requirement, all of the areas which are highlighted in gray and by nature, not you can tell here because there's a lot of them will be eight feet throughout the city. Next slide. So this is just a graphic representation that kind of walks through this in a little bit more detail. So again, working from left to right, there'll be instances where sidewalks from a range from 11 to 15 feet. Again, you'll have to have eight feet or 50% clear. So what's depicted here as if we did a small sidewalk cafe of just a couple tables and chairs. Moving to the center image, this is what would kind of be shown for a sidewalk in the areas that was highlighted blue, so it had been as a central business district or high traffic area, you would need to provide 12 feet clearance of clear path or 50% if it was greater than 15 feet. And then finally just another depiction of a 15 foot wide sidewalk where we would see you know a larger sidewalk cafe, which still allows for about seven feet in this case, while providing the eight foot clearance. Next slide. And limited instances within residential areas. Many side street restaurants are not able to access the roadway seating due to conflicts with bike lanes hydrants are no standing zones. These low foot

traffic areas to low foot traffic areas tend to tend to have variations in sidewalk with the corners or narrow or narrow and there are a number of restaurants that fall within this band. Providing a waiver process would ensure that these businesses could still access the program while also ensuring safe, accessible navigation of the sidewalk. Proposed waiver application criteria listed here has been developed with the mayor's office of people with disabilities to ensure that minimum clear path requirements are maintained and enforced. So the proposed rule here would would be again for primary residential and local commercial areas, which may submit the request to reduce the clear path from eight feet to no less than six feet. This will be a case by case basis working in concert with DOT in the mayor's office for persons with disability. And the example shown here is kind of a neighborhood level restaurant where there's a pinch point at a traffic sign of six feet. So this would allow their setup to continue in this case that they would apply and get granted a waiver. Next slide. Another area of focus is the service aisle. So this is a another novel issue that's arisen from CUNY board feedback is rules around the service aisle. In the DC KW DC web program, a three foot IO is required regardless of cafe size as required regardless of cafe size. Eyes open restaurants has not published rules on a service aisle, which on one hand has contributed to more limited limited service use and more single table setups on narrow streets, but also to significant uses of clear path for servicing, which is a challenge particularly in high traffic areas. Next slide. Another area is corner lot lines. So this would accommodate pedestrian overflow at the intersection by freeing up the corner of the building from any obstruction. So the existing rule, sidewalks must be nine feet from the point on a corner lot. Open restaurants rule corner conditions didn't clearly specify but seating may not exceed the business frontage. And so going forward, we're proposing all seating must be contained within the building frontage and at least nine feet from the point on a corner lot. Next slide. For city bikes, there was no price level for the existing or for the previous program, which can now be addressed. City city bikes on sidewalks is not widely spread throughout the city. So this is unique instance, specific Clearance we necessary to maintain sidewalk accessibility and safety. So again, no rule an existing program, the open restaurants, emergency rule was a was a no may not block. And here we're providing a 10 foot clearance. Next slide. So here's a grouping of a few elements listed here that that had differing dimensional clearances without the dude do t sidewalk design manual. And so here the proposed rule will bring these into an alignment and these clearances shown reflected proposed clearances. that will that will see moving forward. Next slide. And lastly, for sidewalks some sidewalk elements, sidewalk elements within the existing DC web program had specific dimensional clearances that during the emergency order were simplified and tied to the clear path like traffic signals streetlights and treat pets. Or they were to not walk along building frenches. frontage is like freight and service entries, or other ground floor entries such as retail. So these are all all things that we're looking to clean up and simplify as we move forward into the permanent program. And with that, I'll pass it on to Julie

Julie Schipper, DOT 2:27:31

sarek. I hope everyone can hear me. And thank you to the commission for having us here today, as Eric discussed, while sidewalk cafes have a much longer tradition in this city. And that's a clear set of legacy design rules to rely upon. A range of novel issues are raised by roadway setups and our new vernacular in our street design and necessitate thoughtful consideration as we build a permanent design framework. And so the approach we're taking is to step back and define the principles for the final rules from which we begin the engagement process for putting forward the final guidelines rule package is an instruction manuals that will guide the program. Next slide please. As the rules for the

permanent program are being developed do t and DCP have spent the last few months presenting updates on the program to the community boards. The two agencies have been given a lot of feedback through these meetings and have taken a deep look into what has been successful in the emergency program and what has not been successful. Through this process we have come up with a number of principles we will take into account in our design process I will go into in deeper into these principles in the coming slides. Next slide please. So first on safety. Safety is of course of utmost importance here and critical to making the program successful. In order to ensure the safety of the structure is clear guidance will be given on the height, width and weight requirements of the barriers. As this guidance is developed, we understand we need to be mindful that the barriers may need to be moved and stored and the desire for creativity. We will touch on this more throughout the presentation particularly when we talk about the design process. Next slide please. Accessibility it is of it is important to make sure that these setups are truly accessible and made available for all New Yorkers and users of the program. Throughout the emergency program, we have heard about mixed experiences with structures that use ramps and structures that have had flush grades with the sidewalk for the final program will be looking closely at platform and ramp requirements and working closely with the Mayor's Office for People with Disabilities to ensure seamless openness while also allowing for removability and cleaning and looking particularly to maximize openness along the curb line of the steps. Next slide please. sightlines another aspect of safety that needs to be addressed in the rules for the final program is sightlines. We need to ensure a balance between the amount of setup that may be conflicting with other things like seeing sights turn drivers turning, while making sure voter cool elements and structures are not blocking safety signage. You can see here the structure is potentially conflicting with the tree and blocking our safety regulation signs, which is a challenge. We will also be looking at those aerial relationships between roadway and buildings that potentially have safety or privatizing effects. Next slide please. Do T and DCP have been working closely with FDNY and NYPD to make sure this program meets all of their safety requirements. The width of setups on narrow streets is creating a particular challenge for emergency vehicles to access both streets and when turning. We will be looking at potential adjustments to max steps of the setups in certain conditions, and then setting back further from intersections were needed to facilitate appropriate emergency access. Next slide. So thinking about seasonality and inclement winter weather the city is proposing that the new program will not operate during colder months but with some opportunity for a hardship waiver that would allow restaurants to keep their setups in place. The seasonality of the roadway program would allow for other city operational needs to continue such as snow cleanup and construction. For now all restaurants will be able to keep operating uninterrupted through this upcoming winter season through our emergency program. Next slide. It is pretty remarkable how much we have going on on our streets, bike lanes, bus lanes, loading zones, construction and now restaurants. One of the main principles we will need to consider throughout our design process is the interaction and balancing the use of space between all of these different priorities. Next slide. I'm now going to switch gears to talk about our upcoming design process in order to develop the guidelines and inform rulemaking for this program. Next. We know this program will be most successful when receiving feedback from all of our different partners. So the first step of engagement here will be to set up an interagency task force with representatives from a number of different different city agencies which you can see here. Do T and DCP. In partnership with RPA design trust and tri state transportation campaign will plan to host a series of in person and remote roundtable events throughout the fall and winter. These discussions were offer opportunities for New Yorkers to share their thoughts on the open restaurants program and give input into the final rules

which will balance creativity, feasibility and cost as they seek to ensure comfort and safety for all New Yorkers and users of this program. Next slide. Following our engagement process, draft design guidelines will be released. This will be followed with a robust community and borrow level engagement process to gain as much feedback as possible in advance of the Kappa the full Kappa rulemaking process. Following the adoption of the Kappa rules, d o t will publish final design rules and an easy to use application. I encourage you all to visit our website and yc.gov slash open restaurants for more updated information. I'll now turn it back over to Ben to continue talking about the exceptions

Erick Gregory, DCP 2:33:19
process.

Benjamin Huff, DCP 2:33:23

So thanks, Eric, and Julie for all that information. So in addition to concerns on design communities also expressed concerns about current operational challenges continuing into the permanent program. A major concern for a lot a lot of community boards expressed was cleanliness and vermin population. On this, the city team has been working with the Department of Health which has issued specific guidance to restaurants on maintaining cleanliness and their outdoor setups, and is continuing to look at whether additional design rules can assist. In particular department of health has cited the need for cleaning under roadway platforms, which is yet another reason why removability of setup setups will be key in the permanent program. Communities are also concerned about hours of operation which while they are limited now and would be under the permanent program are abused as is the noise policy. communities have expressed concern about trash pickup being more frequent and feeling that outdoor cafes were contributing to the uncleanliness of streets generally. And finally, residents are concerned about the overall number of restaurants participating and if it makes sense to cap the amount on a particular block. Although we don't anticipate capping the number of restaurants per block per block. Do t does plan to review areas of clusters of outdoor dining to ensure it does not impact safety or access to the street. So many of these issues come down to the overarching concern for adequate enforcement. To accomplish this program, d o t will be hiring additional staff to create a dedicated open restaurants This will include hiring additional inspectors that will have support from borough offices to coordinate and address the needs of specific neighborhoods. The focus of this team will be compliance of setups and adherence to the design guidelines. NYPD will continue to primarily respond to late night noise issues or criminal behavior. The Department of Sanitation will continue to, you know service trash pickups, and can enforce any infractions on the failure of restaurants to properly dispose waste. And Department of Health has been expanding their letter grade inspections to include outdoor dining setups, and to ensure that these outdoor setups are safe for dining. So in the new program, the agencies will work together so infractions at all these levels can be referred back to the Department of Transportation, so open restaurants team. So for instance, if a restaurant routinely being identified by department of health as keeping its outdoors, unclean, that information will be referred back to do t to be aware and consider re vocation of a license. Similarly, if NYPD finds a restaurant routinely being issued, issues for after hours d o t will be receiving that information and will be up to them to work those infractions into its review process, as well as with the Office of nightlife that will play a role support role and mediation. Overall, the goal is to set up a new team with the technology information and capacity to well regulated program that is now and will likely continue to be of considerable size. Okay, so switching to another issue, there was a lot of concern at community boards that the city has created a

windfall of benefits for restaurants and not other retail uses. The concern is by allowing only restaurants the use of public space, other retail uses will suffer and shift the balance of streets to favor restaurant use. We should just you know stepping back a second from that argument. overall business at New York City restaurants have not reached pre pandemic level and may not for some time. DCP has done some analysis MasterCard credit card data, which indicates transactions and spending volume at restaurants in the NYC area. Although this research is preliminary, we see that spending at restaurants is roughly 70% of what they were a pre pandemic levels. We think this is partly from business just shifting from indoors to outdoors, due to some aversions or continued restrictions on indoor dining, and the overall reduction of visitors and tourists to the city. As far as an effect on retail diversity, there are two facts that we are mindful of First, there is much evidence that restaurants benefit commercial corridors and retail as they bring in additional foot traffic. Second, that while we hope for a robust use of the future program, there are a number of reasons to believe that the current emergency usage is a high watermark of outdoor dining. Namely, the current program is free, has minimal process and liberal rules and enforcement and a strong necessity for us because of restrictions on indoor dining. DCP has taken a look at sidewalk with city wide and we think we particularly think that enforcement of the clear path will be hard to meet when restaurants have to document that they can maintain the clear path requirement. In the future there will almost certainly be more cafes than there were pre COVID. But we are assuming that there will be less cafes than exist in the emergency program. We also understand that New York City retail mix has been affected by many different factors prior to the covid 19 pandemic. This is a graph from city plannings 2017 resale study. The effects of e commerce has had a negative effect on dry goods retail for some time, and is likely to continue irrespective to the addition of outdoor dining. While we understand the concern of community members that want other uses to benefit from public space that is not covered in this text Amendment, which is specifically focused on sidewalk cafe regulations. Another particular concern of some communities is the ability for non conforming restaurants in residential districts to now be able to apply to the sidewalk cafe program. The concern is not so much that about the restaurants in residential districts that already exists, but rather the potential for large scale conversion of non conforming commercial space in residential districts into restaurants. This is particularly a concern in neighborhoods where there is a large amount of non conforming commercial space. And we can see that here in Manhattan community boards two, three, and Brooklyn community board one. In response to this, the project team has spoken with commercial real estate brokers who specialize in restaurant leases. We understand from these conversations that converting anonymous Restaurants space to a restaurant space is very costly. Taking a raw retail space will require gas hookups, additional bathrooms, and full build outs of restaurants that require a lot of upfront capital, making conversion unlikely. Second, outdoor dining does not guarantee does not promise guaranteed business for restaurant, as it is dependent on many things chiefly weather. In this case, Berger said is difficult to factor outdoor dining into the base lease costs, and instead charges as a percentage of profit rather than additional overall cost for the space. So outdoor dining areas are challenging to maintain spaces, they're challenging spaces to maintain. And we've mentioned before the city will be charging a fee for the use of this space. So for these reasons, we feel allowing restaurants to have outdoor dining will not be a major factor in shifting non conforming commercial spaces to mostly restaurants. Many if not all, community boards were concerned about their level of input in the process and oversight. They are also concerned they won't be part of the roadway cafe program and overall confusion on exactly how the future application process will work. There's been widespread misinterpretation that community boards will be removed from the sidewalk cafe process.

And that is not the case. Although community boards have not been involved in the emergency program we expect in the permanent program community boards will have the same power over sidewalk cafes, as mandated by the city charter. And as required in the DC WP program. The application process has not been done in a year and a half. And many of these community boards have sort of forgotten how it worked. But we felt the overall process did work. And we are adopting most of what of that for the sidewalk cafe portion of the permanent open restaurants program. Restaurants will have to apply, go through community review, be given a license and we'll have to redo the enforcement process that we discussed earlier that will be occurring the entire time the restaurants are operating the outdoor space. Our understanding of the charter is that roadway rules will have to come to the public for input through a community process. But we do not expect that the public will review each roadway cafe. So a few technical zoning issues have arisen in community and borough board comments. So first, on sidewalk widening we've heard the concern that amendments to 3305 and 4303, which would make it clear that sidewalk widening provisions don't preclude participation in open restaurants should not be allowed because widenings not widening should not be allowed to be recouped for private use again, this was a particular concern and Manhattan community board for we don't think that it makes sense to consider how a sidewalk was built as part of the consideration for participation in the program. We think the setting criteria should apply to the lay understanding of a sidewalk from building dickered line regardless of ownership condition. Requiring otherwise could produce a number of perverse outcomes for instance, pushing a cafe outboard of a building line to avoid the widened portion, or creating a large clear path requirement. Or even excluding a restaurant from participation because it's in a building with widening even if it's next door neighbor with less sidewalk width is not subject to the same exclusion. What we do think makes sense is to address the need for more clarity in high traffic areas, especially those areas which will be new to the program or previously limited to the small cafe designation. That is why the 12 foot requirement makes sense in those cases. This is also why the continuance of the 50% clear path rule makes sense, because in a case where I would sidewalk widening either required or voluntary results in a sidewalk that is wider than 16 feet or 24 feet in a high traffic zone. The 50% requirement make sure that a large portion of the wide sidewalks is set aside. So for instance, if I you know if I was 11 feet but my widening required me to set back to create a 20 foot sidewalk, my clear path requirement will be 10 feet in that eight feet. Second, in a few locations such as C one and C five districts and non conforming commercial uses in our districts. we've modified the text to ensure that that eating and drinking establishments do not need to be fully enclosed building particularly to allow for indoor outdoor integration. We've heard on one end of the spectrum concern that allowing facades to be opened up is an effective encouragement to do so which may create more noise challenges as well as energy and efficiency. On the other hand, we've heard comments that we should have gone further and made all uses eligible for facade flexibility idea being that treating some use is different in some districts is really an anachronism and somewhat arbitrary. In terms of the first concern, we note that noise codes and energy codes will still apply, and that being allowed under zoning has not been sufficient in any case for violations of those two codes. And to the idea of liberalizing for other uses, it's an interesting point, this text was focused on enabling outdoor dining, and it would be out of scope to address other uses at this point, but it will be interesting to hear if this is presenting a challenge to other commercial uses. Finally, last but not least, it was noted that in changing the enclosure provisions, we have removed the word seated dining in one area, leading one community board to be concerned that we are removing critical constraint on more club like eating and drinking establishments. While we believe in practice that this clause was not relevant to the

enforcement on seated patrons and cafes, we do believe that the the reestablishment of clear site plan review process for cafes, which will require the documentation of tables and chairs will be a check against more densely packed seating area. So our final issue that we want to cover is that we've heard from community boards, why don't we move faster to the permanent program? Why does the temporary program have to last so long? conversely, some community boards have had a concern that they had to vote on a text amendment before the sidewalk and roadway cafe rules are decided. These community boards have a desire to see the new rules in action and see if they work to improve the issues they have documented and have a sunset clause if they do not. In this sense, we've been criticized as moving both too fast and too slow. Do tea and DCP are following the process for you up for this text amendment, as well as for the Kappa rulemaking for the rest of the permanent program. We also need to be considerate of the effect that rule changes, enforcement and a new program launch will have on restaurants currently using the emergency program and want to provide them enough time to transition to the permanent program, if they choose to do so. At the same time, many restaurants are in a lurch and stand to lose the ability to apply to the permanent program. If not, if we do not make these zoning changes, it is important that we give them the comfort that the permanent program is moving forward. So while we are sympathetic to the idea of having perfect information now, and that would be nice. We think it's really important to take the time to get the sidewalk and cafe, sidewalk and roadway rules, right. But it should not stop us with moving forward with this zoning proposal component. So with that, on behalf of the project team, I'd like to say thank you for hearing our proposal. And the project myself and the project team are ready for any questions you may have.

Chair Laremont 2:48:01

Thank you very much, then Eric and Julie, for that very comprehensive presentation. So I would like to call on the commission. Whoever has any questions. Commissioner Bernie.

Commissioner Burney 2:48:23

Thank you. Thank you. Yeah, I'd like to second that compliment on the presentation really very good and very thorough. Obviously lots of issues and lots of problems to overcome. And I'm sure over time, it will start to work itself out. These things are not sold overnight. And I think as we get more experienced, then we'll find more solutions. I'm pretty optimistic about the long term outcome. I just have one question about this issue of, I mean, obviously, the structures that we have now, they're pretty slapdash, and, you know, cheap and quick and dirty, right? And obviously, they were put up in a hurry during the pandemic. When we move into a more permanent situation, I can see vendors restaurants, being far more willing to invest in much better structures, more permanent, more better looking, better designs and so on. But that may be in conflict with this idea about seasonal removal. Are we really going to be asking them to spend a lot of money on a much better structure and then have them take it down so that we can clear the snow that might be something we need to think about a little bit? That was just one quick thought but thank you for the rest of it.

Carolyn Grossman, DCP 2:49:38

I can take a question. Thank you, commissioners, Carolyn Grossman. appreciate the feedback. This is an issue that I think the teams are rightly giving a lot of thought to. It really is critical that the that the setups on the roadway. Be removable, both leaks. It is required that they that we not have permanently affixed structures in in the roadway, as well as as a practical consideration for all of the road work,

utilities work that may need to occur in the sidewalk, as well as some other issues like cleanliness, that have come up along the program. So we do think it's really important that they be removable, I would say, we don't think it is impossible to have creative, incredible inspiring design in a removable context. And we have seen many examples of that in our streets as well. But we agree that it's not that there are many right now that are not fully removable. And so I think part of the work that we will be doing as we engage in the next steps with the design community is thinking about how to encourage the best of design with removability. And just to give you a few examples of things we have seen, water barriers are things that are both heavy enough to be safe, and light enough to be removable, when they are empty. We have seen, of course, some are using construction barriers, but there are examples out there of much more creative and aesthetically interesting uses of water barriers, that is something that we want to explore. We've seen shading and struck and, and screening that is not permanently affixed, but allow you know using fabric and other textile materials that are much easier to remove. But but but similarly have a lot of aesthetic value. So we think that there's a lot of things that can be encouraged and continue to develop that vernacular, while also making the streets ultimately available when Con Ed has a gas leak and needs to come in. And and and and take and take sidewalk up that those two things should not be in, in contradiction,

Commissioner Burney 2:51:57

right? So just to say, then your design guidelines should make it clear that these need to be demountable structures, and they'll they'll build that into whatever design they're doing. So

Carolyn Grossman, DCP 2:52:06

that's what Yes, and and many setups, as Eric noted, many may need to modify. But we think that there's, you know, that myth that a lot of the good ones are going to be able to modify within reason, right, they're still the perimeter barriers may be very similar, but you may need to take down some of the overhead structure and rethink how that's handled, for instance.

Chair Laremont 2:52:27

Good, thank you. Thank you, Carolyn. Um, Commissioner Ortiz,

Commissioner Ortiz 2:52:34

I Yes. You You mentioned at the tail end sentiment about fees. And, you know, and I hadn't heard much about it in the beginning, what is the what are you thinking about in terms of a fee structure? Or did I misunderstand what the goodness?

Julie Schipper, DOT 2:52:55

Yep, then I can take this one. Um, so deity is working closely now with OMB and city hall to come up with a fee structure for the program that city hall has made it very clear that they want this program to be affordable and accessible to as many restaurants as possible. So cheaper than the current sidewalk cafe program, but still something that we're looking into? I don't know the exact details of what the fee will be.

Commissioner Ortiz 2:53:22

Is there any guidance that this be revenue neutral? I mean, many of these are parking spaces on commercial streets that, you know, are parked or paid for parking spaces. So are we as a city, I mean, we have some budget issues as a city because of COVID. To begin with, but I would hate for this to impact, you know, I would like it to be revenue neutral. And I would like to see an analysis of that. So whatever the fee is, you know, enables us to make that determination.

Julie Schipper, DOT 2:53:53

That's a great point, we are having our some economists that we have here at U of T working on that analysis right now. Right.

Commissioner Ortiz 2:54:05

So the other thing is, you know, I also share the concerns, I share my excitement about this, because I think this is really valuable, you know, and I also share concerns about the conditions of the structures. And you know, the other day I was walking around in my neighborhood and queens and I took a picture of a fully enclosed structure with locked doors that was being used for storage by the restaurant. I mean, it's clearly in flagrant violation. You know, and, and so, could you just speak in really layman's terms, what what kind of community do I guess, to prevent an actor from doing i think i think paying for the space watch would be important because you value something you pay for. So we'll see that but, you know, to prevent an actor who might have a proclivity towards, you know, crappy, crappy outdoor space. Or after it's in place, you know, what, where does the community? have a say, on one side, either before or after? And is this technically as of right? Or could you explain that? It's not as of right if the community can wash and application, so I just want to understand just the community's role.

Julie Schipper, DOT 2:55:24

So I can start and Carolyn, if you want to jump in on on anything I may miss. So it is not as of right, the temporary program is and I think you're right that once the community and once the restaurants rather are paying for this space, that they will be a little bit more, they'll be adhering to the rules in a better way. With that said, we also will have a much stricter enforcement team Instagram enforcement guidelines when the permanent program is in place. So right now, you know, we have, you know, that the restaurants are suffering and we have been enforcing, but have not been, up until recently have not been giving fines or removing structures, we are starting to do that now for the most egregious actors. And but in the permanent program. restaurants that are not following the rules will be given fines will be removed, depending on the the depending on what what they're they're not adhering to. And so I think that's that's the first thing. And then, Carolyn, do you want to talk a little bit about the community's involvement?

Carolyn Grossman, DCP 2:56:35

Sure. So So Commissioner, I think the way we understand it, it's a little different than zoning, there's no there's no as of right condition here because of the city will ultimately have to affirmatively choose to give a license and a verb vocable consent to an entity, but that power will lie with duty, which is required to refer an application on an advisory basis to community boards. So I will do it will you know, it does not have to give out the the license, I think the presumption will be that that applications that are consistent with the the guidance of the program, unless they're sort of documented bad actors will be given the presumption of approval. The so the Community Board does not have the you know, an

effective veto over over a cafe. That being said, under the DC WP program, as well as any other program where we're referrals are provided to community boards, evidence and information that the community board provides will be taken seriously by the by the by the grantee, and there's no there's no absolute requirement that do t, provide that licensure in the future. So, you know, we can come back and sort of talk about this, but I think what we're, what we're anticipating is, you know, where there may be documented cases of abuse, right, have, you know, a restaurant coming in, that had many noise complaints in the past or, or, or particular, you know, notorious, you know, sanitation challenges, that those are all pieces of information that could ultimately affect the the review. However, it will not be in the community board's purview, let's say, to say, you know, a cafe can't be set up in a way that is consistent with the rules and guidelines that are put forward by the program, just as it wasn't under DC WP, if you're consistent, you know, if the if the if there are promulgated rules for how much space, what kinds of setups that you should have, that that those would be the those would be the guiding rules of the program in all conditions.

Commissioner Ortiz 2:58:47

Before but once there, and I understand that as a as right, I mean, if they've generally follow the rules are generally generally going to be able to get approval, once they're in place, what what role does a community board potentially have in raising concerns and elevating those concerns? About You know, bad actors?

Julie Schipper, DOT 2:59:12

I think, you know, raising the concerns to do t into our bar offices will be a big part of this program. And I think, you know, working the community boards working and working with our borough offices, and then the bar offices passing it along to our inspection team and because now we'll have a dedicated team that is really just for this program, will be able to go out and speak much faster than Manson.

Commissioner Ortiz 2:59:37

I mean, I would I would like there to be a way in which, you know, community can you know, absolutely have some some say afterwards, you know, right now, it seems like it's discretionary. Right. They, you know, their their approval is is advisory. You know, they have significant Started afterwards which are legitimate about noise and disruption. You know, again, it's discretionary. You know, under what conditions do we say that? Absolutely, you know, if they do not do XYZ and alleviate these complaints or concerns that the location of problematic location will be shut down, you know, I'd like to understand that because i think i think we're going to have, we're letting this, you know, we're letting this happen across the entire city. And we're going to have many, many instances where we need a lever, the city and communities need a lever to be able to shut someone down. And I think we're gonna want that and you know, you're gonna have to jump over hoops. It's, you know, that, but I think we have to retain that. Right, and communities need to somehow be able to participate and force that discussion.

Carolyn Grossman, DCP 3:01:01

Thank you for the for the comments, Commissioner, we can certainly take that back, I think, again, just to confirm do t will have the right to shut down bad actors, and the communities will have the ability to provide that information that informs do t. Right. So that, you know, I think that's the the principle that we're working for is to make is to make sure that that information flow, about potential violations is

getting to the place and to the inspectors and the decision teams that need it. And that that review is happening on the on on the right level of basis with enough teeth, the duty can act on that information. I think what you're describing is something that's sort of more mandatory, like, you know, something beyond, you know, noise code violations will affect the review of whether you get to continue, but rather like a three strike out policy, you're

Commissioner Ortiz 3:01:47

precisely just some much clearer guidance on on what you have to adhere to, for both that the restaurant to know, you know, I have to comply or else because otherwise I just see a lot of conflict.

Carolyn Grossman, DCP 3:02:01

And just to confirm, again, the rules said under DC WP and we'll say in the future, that you have to you have to comply with the noise code. So that that we are trying to make extraordinarily clear that violations won't be tolerated and that under the future licensure program, the enforcement will be souped up around that we have not talked about, you know, how many violations will result in a forfeiture? We've just said that the violation is not is a violation of your license. So I think, you know, it's I would just want to distinguish making the rules clear from making the acceleration of sort of punitive measures, mandatory versus flexible. But I think it's a good point,

Commissioner Ortiz 3:02:50

I think I think it's defining a threshold that, you know, we have a baseline threshold that we acknowledge if you've gotten 10 to 15 complaints, you know, or etc, because I didn't think once a little bit more say, Thank you. I appreciate that, Carolyn.

Commissioner Levin 3:03:09

Commissioner lemon. Thank you just following along on that line of questioning, it occurs to me, is there going to be a term to these licenses, if the license has to come up for renewal? That could be an effective way of forcing the review that Commissioner Ortiz is correctly seeking to bake into the process?

Julie Schipper, DOT 3:03:31

Yes, so there will be a renewal. You'll have to reapply every year, but there will be every four years, but there will be an every year relook from the D o t team. So do t will really look at the application and make sure that everyone is in compliance and has been doing the right thing. And if they're not, then come back to the restaurant. And you know, either the restaurant

Commissioner Levin 3:03:56

will live for your renewals be referred to the community board, or the community will be told that the renewal process is underway. And if you have any issues, please let us know. Yep. Good. Thank you.

Benjamin Huff, DCP 3:04:08

And another thing, you know we occurred to us as we were going through the public review process is that when the restaurants go for their liquor license, they'll have to kind of describe to the community

how they plan to use their outdoor dining. And so they'll there'll be an opportunity for them to ask a lot of questions about how the outdoor dining setup will happen in the liquor license application as well.

Chair Laremont 3:04:33

Thank you, Commissioner romper shout.

Commissioner Rampershad 3:04:36

Yes, thank you. I had some of the same similar comments that Commissioner Ortiz had and Commissioner 11 had. I do also share excitement and concern. But one of the things I'm wondering or thinking about and I brought this up the last time this came up was I know the OT is planning on hiring additional inspectors examiners I was just wondering, I see that it was 11,500 restaurants that participates According to this, the SciShow that we have, as of today, do you know how many of those would not be in compliance? And I'm worried I'm just a little concerned about the enforcement and in terms of the number of inspectors that will be hired to, I guess, supervise and maintain Is there a set criteria already formed? Like they're going to come out every 30 days, 60 days, if restaurants a non compliance and issue them a, I guess a warning to bring it in? Is there any idea how that's gonna work?

Julie Schipper, DOT 3:05:29

We are still putting together exactly what what their roles will be and exactly how that will work. We do have the number of not in compliance, but I don't have it for you this second. But I can get that to you.

Commissioner Rampershad 3:05:45

Okay, so another just general hypothetical situation to give you too, okay, if I'm a restaurant, I'm under an elevated train, Liberty Avenue, Roosevelt Avenue, Jamaica Avenue, and I have, I'm utilizing the street, and MTA wants to do trackwork. How would that be coordinated? Because I live on, I live right off of Jamaica Avenue, I see a lot of restaurants and they were doing a lot of track work. And I don't know how they're coordinating their restaurants. How will you guys anticipating that move? And another situation just a hypothetical, because I work in architectural field as well. You have a restaurant next door to me that's utilizing it. I'm doing a new building next door, I got to put up a sidewalk shed? How would that impact the adjacent neighbor? If I had to do a street closing for new construction of doing a 20 story building 10 storey build? How would that affect? Is that also being thought of and these rules and regulations that you're going to be putting out in I guess, 2022 or 2023? Yes,

Julie Schipper, DOT 3:06:39

it is being sought out. And we are really looking right now at you know, priorities throw out the street, and construction is obviously one of them. One of the so far through the temporary program they've been restaurant or construction workers have been working with our inspection team. And they've been kind of coordinating together through that. Obviously, with this becoming permanent, it needs to be a much simpler, seamless process. And one of the things that will be in the in our application is information and also a consent from the restaurants that if work needs to be done. There will need to be some coordination between between the construction companies, d o t, and

Commissioner Rampershad 3:07:28

it is my last comment or question with regards to the application process. If I'm a new business owner, I apply do I already have and I assume they do the width of every street sidewalk in the city of New York. Is that something that you have an incident in your database? So how do you how do you confirm that if I have a 15 foot sidewalk, do you need the app the applicant to provide a survey, or is that something you guys have in your system already.

Carolyn Grossman, DCP 3:07:56

So so I can take that it's actually something that DCP and do t have been working together on throughout COVID, it would be nice if we had that perfect map of the city. But sidewalk conditions change, even within an individual block, sometimes based on private, private construction as well. So the city does not have a perfect map of curb to building line, sidewalk widths after as a result of some data work that's been done during COVID, we have a pretty good map that we've been using for estimates for this, for the work that we've been doing here as well as other sidewalk and open street planning through the city. However, it's not just the curb to building with, as you know, it's the nature of the obstructions that appear on it. And there are some that we are able to map effectively, and there are others that we may miss. And so it will still be reliant on an individual applicant to be part of self certifying the obstructions that are out there. There may be there may be times where community input affects that right that Oh, the diagram missed, you know, a hydrant at this location that's really salient For details, or there may be times where an in person inspections affect that as well. But ultimately, it's going to be a combination of the city's own data resources, which we think can help and create some base information that hadn't existed in the pre COVID period. But it's it's but it will need to be supplemented by you know individual site information

Commissioner Rampershad 3:09:33

you may have, you may just tell them to just get a maybe an architectural survey or something like that just just to help you guys out with that situation.

Carolyn Grossman, DCP 3:09:41

The goal is to make is to try and not require engineering and professional expertise as part of the application process because we know that that's been an expense borne by restaurants in the past. So if possible, we're looking to make to make that to lessen that through technology. sight planning that can be done at a more lay level. But yes, that that is always a possibility that there may be circumstances where that's required. Okay.

Commissioner Rampershad 3:10:07

Thank you so much.

Chair Laremont 3:10:10

Thank you. Are there any additional questions from the commission for this slide? Well, seeing none of this is on for hearing on Wednesday, we expect that there'll be very keen interest in lots of people talking about this this item on Wednesday, so it'd be prepared. The 11th item