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COMMUNITY BOARD NO. 2, MANHATTAN

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March 31, 2022

Hon. Erik Bottcher
250 Broadway, Suite 1785
New York, NY 10007

Hon. Christopher Marte
250 Broadway, Suite 1815
New York, NY 10007

Hon. Carlina Rivera
250 Broadway, Suite 1820
New York, NY 10007

RE: PRIORITY CONSIDERATIONS FOR PERMANENT OPEN RESTAURANTS RULEMAKING

Dear Councilmember Bottcher, Councilmember Marte, and Councilmember Rivera:

While the ramifications are unclear of the Court's decision in *Kathryn Arntzen et al vs. City of New York* to grant the petition requesting an Environmental Impact Study, we are writing to you to express our concern with the one-size-fits-all approach to the Permanent Open Restaurants (POR) Program. Although we agree that the Permanent Open Restaurants program will help achieve equity for restaurant operators in the outer borough neighborhoods by allowing the geographic expansion of sidewalk and roadway dining as-of-right, we believe that increasing the density of outdoor dining citywide comes at high cost to your council districts, which already have more than 30% of all outdoor dining across the city.

Manhattan Community Board 2 voted almost unanimously – by a vote of 40-1-1 – against the Permanent Open Restaurants Zoning Text Amendment and the expansion of outdoor dining to residential districts. Manhattan Community Board 2 has over 10% of all open restaurants across all five boroughs (59 community boards) and 20% of all open restaurants in Manhattan.

The vision for an equitable economic recovery through the Permanent Open Restaurants program is achieved through the geographic expansion of allowable areas, which will allow outdoor dining to expand significantly into the outer borough neighborhoods where outdoor dining was not previously allowed. However, the equitable economic recovery is not achieved in our community by significantly increasing the total number of tables and chairs for restaurants in outdoor dining on sidewalks and roadways that overwhelms the balance of our community and that allows outdoor dining in residential neighborhoods, as has been overwhelmingly expressed by residents including complaints concerning noise, trash, blocking clear path, and significant restaurant density.

Before the Permanent Open Restaurants applications open up, an equitable economic recovery should also take into consideration that Manhattan Community Board 2 has had a nearly 500% increase in number of eating and drinking establishments participating in outdoor dining to over 1,000 establishments, and parts of lower Manhattan have already achieved an over 200% increase in the number of participating eating and drinking establishments. An expansion of outdoor dining in our already-saturated area and in lower Manhattan disincentivizes expansion of outdoor dining into the outer borough neighborhoods.

Manhattan Community Board 2 has thoroughly reviewed the proposed Permanent Open Restaurants rules presented to City Planning Commission (CPC) in October 2021, the proposed Permanent Open Restaurants rules presented in a February 2022 sworn affidavit from the NYC Department of Transportation's Julie Schipper (Director of Open Restaurants) in response to open litigation, the Temporary Open Restaurants rules, the pre-pandemic Sidewalk Café rules, and the pre-pandemic Sidewalk Café Design Guidelines. Based on our review and analysis, we urge you to review the 10 critical points, in the enclosed document, that should be considered when shaping the POR legislation and developing the rules during the rulemaking process at this early stage. We anticipate further recommendations as the rulemaking process proceeds.

We appreciate your support.

Vote: Passed, with 35 Board Members in favor.

7 Against (C. Dignes, R. Kessler, J. Liff, M. Metzger, Z. Roberts, R. Sanz, A. Zeldin)

1 Abstain (R. Rothstein)

Respectfully,



Jeannine Kiely, Chair
Manhattan Community Board 2



Valerie De La Rosa, Chair
Reopening Working Group
Manhattan Community
Board 2

cc:

Hon. Eric Adams, New York City Mayor
Hon. Jumaane Williams, New York City Public Advocate
Hon. Brad Lander, New York City Comptroller
Hon. Mark Levine, Manhattan Borough President
Hon. Adrienne Adams, Speaker, New York City Council
Hon. Marjorie Velasquez, New York City Council Member
Hon. Brad Hoylman, New York State Senator
Hon. Brian Kavanaugh, New York State Senator
Hon. Deborah Glick, New York State Assembly Member
Hon. Yuh-Line Niou, New York State Assembly Member
Hon. Harvey Epstein, New York State Assembly Member



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PRIORITY CONSIDERATIONS FOR PERMANENT OPEN RESTAURANTS RULEMAKING

1. While Manhattan Community Board 2 has received overwhelming testimony against outdoor dining in residential areas and has a standing position against outdoor dining in residential neighborhoods, if there are going to be exceptions for any type of expansion into residentially-zoned neighborhoods and specifically prohibited areas, the following items must be considered:
 - a. Hours limited to no later than 9pm Sunday-Thursday and 10pm Friday-Saturday in residential-only zoned areas and previously specifically prohibited areas;
 - b. Hours limited to no later than 10pm Sunday-Thursday and 11pm Friday-Saturday in mixed-use residential/commercial zones; any permitted hours after 11pm would be reserved for areas zoned commercial-only without any residential;
 - c. Residential-only zones and previously specifically prohibited areas should be exempt from roadway dining;
 - d. Roadway dining is only eligible in areas where parking is expressly permitted.
 - e. A review of the list of streets and areas in CB2 that were previously specifically prohibited in the Zoning Text under *14-41 Locations Where Certain Sidewalk Cafés Are Not Permitted* and a determination if the conditions that led to their prohibition still exist should be required.
2. Only one outdoor dining use should be allowed in mixed use residential/commercial zones: sideway cafés only or roadway cafés only – not both uses together.
3. Streets and sidewalks that are eligible for outdoor dining should meet the following criteria:
 - a. Sidewalks should be at least twelve-feet (12') wide, which was the requirement in the pre-pandemic Sidewalk Café Program, to allow adequate pedestrian movement including a three-foot (3') service aisle;
 - b. Roadways should be at least thirty-two feet (32') curb to curb that includes a sixteen-foot (16') travel/emergency lane and eight feet (8') on each side.
4. Sidewalk and roadway dining should be seasonal (April 1 to November 1). Seasonal waivers for outdoor dining should not be considered for CB2.
5. Increase the Community Board Review period from 30 days to 45 days as it existed originally in the pre-pandemic Sidewalk Café program; this allows for consideration of all applications under the Community Board calendar review periods. The Community Board Review should include both sidewalk and roadway café applications. Delays in obtaining sidewalk café licenses are not caused by the Community Board Review process. There are 80+ days of optional review phases (DCWP public hearing, City Council call-up and/or City Council review) after the Community Board Review is completed.
6. Safety for restaurant workers, patrons, bikers, and pedestrians should be ensured by prohibiting roadway dining and service across DOT bike lanes and prohibiting roadway dining in floating parking lanes. There is no safe ADA access with service across a bike lane.

7. All Permanent Open Restaurants applicants should provide new diagrams for sidewalk seating and roadway seating clearly outlining the eight-foot (8') clear path for pedestrian passage and separately, the three feet (3') for the service aisle, both of which were standard requirements in the pre-pandemic Sidewalk Café Program, in addition to providing the location and dimensions of all tables, chairs, and sidewalk obstructions.
8. Create a specific dimensional clearance to protect ground-floor residents. Any outdoor dining setup should be twenty-five feet (25') from all ground-floor residential windows or entryways. No service should occur across a residential entryway. No one should have to have their life impacted or on display to strangers eating directly outside the windows to their homes or be subjected to excessive noise of diners directly outside their windows.
9. There should be a patron bathroom available (indoors) for all outdoor seating.
10. While platforms have been identified as a tool to achieve ADA compliance in roadway dining setups, we ask that design guidelines address standing water and drainage issues as well as mitigate rat and vermin infestation. The Department of Health and Mental Hygiene (DOHMH) and the Department of Sanitation (DSNY) have continuously pointed out that excess trash and platforms in roadway dining setups are the number one cause of rat and vermin. We also ask that clear design guidelines and regulations be implemented to assure that roadway dining setups are removable to address routine roadway needs such as street cleaning with adequate frequency and any access needed by utility and city services and annual road paving.