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November 1, 2022

Hon. Erik Bottcher
250 Broadway, Suite 1705
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:

We are following up on our unanswered letter from March 31, 2022 that outlines Manhattan Community Board 2's *Priority Considerations for Permanent Open Restaurants Rulemaking*. These critical points remain our primary areas of concern. (See attached).

In reviewing the proposed Intro 31-A that was released on September 30, 2022, **CB2 reiterates the following recommendations** as stated in the *CB2 Priority Considerations for Permanent Open Restaurants Rulemaking*:

- **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 timely consideration of all applications under Community Board calendar review periods during regularly scheduled monthly Board meetings. The Community Board Review should include both sidewalk and roadway café applications. Your offices are clearly aware that proper review can only occur if the process matches the monthly calendars of Community Boards. This is not an area for negotiation for a successful working program. Delays in obtaining sidewalk café licenses are not caused by the Community Board Review process. There are 80+ additional days of optional review phases (DCWP public hearing, City Council call-up and/or City Council review) after the Community Board Review is completed.
- **All Outdoor Dining Hours limited to no later than 10pm Sunday–Thursday and 11pm Friday–Saturday in mixed-use residential/commercial zones and earlier hours as outlined for residentially only zoned area**; any permitted hours after 11pm would be reserved for areas zoned commercial-only without any as of right residential use. We encourage changes

in the legislation to specifically address residential use. We encourage changes in the legislation to specifically address residentially zoned areas due to the unique impacts from non-conforming eating and drinking uses.

- 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.
- **There should be a patron bathroom available (indoors) for all outdoor seating**. Current City laws require patron bathrooms only for establishments with more than 20 indoor seats.

Furthermore, **we strongly support the following changes made to the legislation** consistent with the *CB2 Priority Considerations for Permanent Open Restaurants Rulemaking*:

- **Roadway cafes shall not operate on any day from November 1 to March 31, inclusive.**

Regarding the portion of legislation designating the Department of Consumer and Worker Protection (DCWP) as the agency that oversees the Permanent Open Restaurants Program:

- Pre-pandemic, **CB2 had the highest number of sidewalk cafes in the city (17%)** as part of DCWP's Sidewalk Café Program. **CB2 had a positive working relationship with DCWP over many decades**, those previous regulations and oversight by DCWP produced a **successful balance between CB2's commercial and heavily residential uses**.¹

At this critical juncture, we hope you are able to review the attached *CB2 Priority Considerations for Permanent Open Restaurants Rulemaking*.

We anticipate further recommendations as the process of rulemaking unfolds over the next year and look forward to engaging with the Council and City Agencies in a transparent, collaborative, and open process.

Respectfully,



Jeannine Kiely, Chair
Manhattan Community Board 2



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

Attachment: *Manhattan Community Board 2 (CB2) Priority Considerations for Permanent Open Restaurants Rulemaking*

¹ Manhattan Community Board 2, *Resolution on the Permanent Open Restaurants Zoning Text Amendment*, September 27, 2021.

cc:

Hon. Eric Adams, New York City Mayor
Hon. Jerrold Nadler, U.S. Congressman
Hon. Jumaane Williams, New York City Public Advocate
Hon. Brad Lander, New York City Comptroller
Hon. Mark Levine, Manhattan Borough President
Hon. Ydannis Rodriguez, New York Department of Transportation Commissioner
Hon. Vilda Vera Mayuga, New York Department of Consumer Worker Protection
Commissioner
Hon. Adrienne Adams, Speaker, New York City Council
Hon. Marjorie Velasquez, New York City Council Member, Chair - Committee on
Consumer and Worker Protection
Hon. Keith Powers, New York City Council Member
Hon. Julie Menin, New York City Council Member, Committee on Consumer and Worker
Protection
Hon. Amanda Fariás, New York City Council Member, Committee on Consumer and
Worker Protection
Hon. Chi A. Ossé, New York City Council Member, Committee on Consumer and Worker
Protection
Hon. Gale A. Brewer, New York City Council Member, Committee on Consumer and
Worker Protection
Hon. Julie Won, New York City Council Member, Committee on Consumer and Worker
Protection
Hon. Shaun Abreu, New York City Council Member, Committee on Consumer and Worker
Protection
Hon. Shekar Krishnan, New York City Council Member, Committee on Consumer and
Worker Protection
Hon. Brad Hoylman, New York State Senator
Hon. Brian Kavanagh, 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
Tammy Meltzer, Manhattan Community Board 1 Chair
Paul Rangel, Manhattan Community Board 3 Chair

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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.