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COMMUNITY BOARD NO. 2, MANHATTAN

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August 1, 2023

RE: Intro 31-C Permanent Outdoor Dining Program

Hon. Marjorie Velázquez
Chair, Committee for Consumer and
Worker Protection (CCWP)
Councilmember, District 13

CCWP Committee Members:

Hon. Shaun Abreu, District 7
Hon. Erik D. Bottcher, District 3
Hon. Gale A. Brewer, District 6
Hon. Amanda Farías, District 18
Hon. Shekar Krishnan, District 25
Hon. Julie Menin, District 5
Hon. Chi A. Ossé, District 36
Hon. Julie Won, District 26

Dear Madam Chair Velázquez, and CCWP Committee Members:

Community Boards support outdoor dining and 53 boards¹ provided input, AND, three critical citywide issues still need to be addressed in the proposed Legislation:

- 1. Density:** Residential areas are treated the same as commercial areas.
- 2. Hours:** In residential areas, the noise from outdoor dining would be permitted until midnight, even though the New York City Noise Code non-construction quiet hours start at 10 p.m.
- 3. Cost:** The fee tier is unrealistically low for lower Manhattan, and roadway cafes will cost the City more money due to the administration of City services around them – the fee tiers do not reflect this.

Also, the new Legislation diminishes Council Members' ability to resolve specific issues for their constituents, and the 40-day notice period is not sufficient for local Community Board review.

We respectfully request that the City Council delay its vote and meaningfully amend the Legislation to address reasonable concerns about Density, Hours, and Cost, as well as provide a way for Council Members to address their constituent concerns.

¹ Based on the 53 Community Boards who responded to the 2021 Permanent Open Restaurants Text Amendment.

Respectfully,



Susan J. Kent, Chair
Manhattan Community Board 2



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



Tammy Meltzer, Chair
Manhattan Community Board 1



Tareake Dorill, Chair
Manhattan Community Board 3



Vikki Barbero, Chair
Manhattan Community Board 5



Jaynemie Capetanakis, Chair
Brooklyn Community Board 10

- c:
- Hon. Jumaane Williams, New York City Public Advocate
 - Hon. Adrienne E. Adams, Speaker, New York City Council
 - Hon. Christopher Marte, New York City Council Member, District 1
 - Hon. Carlina Rivera, New York City Council Member, District 2
 - Hon. Keith Powers, New York City Council Member, District 4
 - Hon. Diana Ayala, New York City Council Member, District 8
 - Hon. Kristin Richardson Jordan, New York City Council Member, District 9
 - Hon. Carmen De La Rosa, New York City Council Member, District 10
 - Hon. Eric Dinowitz, New York City Council Member, District 11
 - Hon. Kevin C. Riley, New York City Council Member, District 12
 - Hon. Pierina Ana Sanchez, New York City Council Member, District 14
 - Hon. Oswald Feliz, New York City Council Member, District 15
 - Hon. Althea Stevens, New York City Council Member, District 16
 - Hon. Rafael Salamanca Jr., New York City Council Member, District 17
 - Hon. Vickie Paladino, New York City Council Member, District 19
 - Hon. Sandra Ung, New York City Council Member, District 20
 - Hon. Francisco Moya, New York City Council Member, District 21
 - Hon. Tiffany Cabán, New York City Council Member, District 22
 - Hon. Linda Lee, New York City Council Member, District 23
 - Hon. James F. Gennaro, New York City Council Member, District 24
 - Hon. Nantasha Williams, New York City Council Member, District 27
 - Hon. Lynn Schulman, New York City Council Member, District 29
 - Hon. Robert F. Holden, New York City Council Member, District 30
 - Hon. Selvena N. Brooks-Powers, New York City Council Member, District 31
 - Hon. Joann Ariola, New York City Council Member, District 32
 - Hon. Lincoln Restler, New York City Council Member, District 33

Hon. Jennifer Gutiérrez, New York City Council Member, District 34
Hon. Crystal Hudson, New York City Council Member, District 35
Hon. Sandy Nurse, New York City Council Member, District 37
Hon. Alexa Avilés, New York City Council Member, District 38
Hon. Shahana Hanif, New York City Council Member, District 39
Hon. Rita Joseph, New York City Council Member, District 40
Hon. Darlene Mealy, New York City Council Member, District 41
Hon. Charles Barron, New York City Council Member, District 42
Hon. Justin Brannan, New York City Council Member, District 43
Hon. Kalman Yeger, New York City Council Member, District 44
Hon. Farah N. Louis, New York City Council Member, District 45
Hon. Mercedes Narcisse, New York City Council Member, District 46
Hon. Ari Kagan, New York City Council Member, District 47
Hon. Inna Vernikov, New York City Council Member, District 48
Hon. Kamillah Hanks, New York City Council Member, District 49
Hon. David Carr, New York City Council Member, District 50
Hon. Joseph C. Borelli, New York City Council Member, District 51

Endnotes

Density

- Residential areas are treated the same as commercial areas.²
- Bars and restaurants in residential areas have no restrictions on open facades.³
- Back-to-back roadbed structures along a single street are not addressed.
- The removal of zoning restrictions has enhanced opportunity and equity⁴ in many other communities⁵; however, it has brought unresolved density issues⁶ to other parts of the city⁷.
 - Lower Manhattan had a high density of the pre-pandemic sidewalk cafés with relatively few issues because of a robust city program that was clearly defined, properly enforced with zoning restrictions for residential areas and relevant commercial areas.⁸
 - The three boards with the most experience in viable outdoor dining programs, pre-COVID – Manhattan CB1, Manhattan CB2, and Manhattan CB3 with 43% of pre-pandemic sidewalk cafes in Manhattan – have not had their reasonable recommendations heeded.
- No opportunity for community board participation⁹ during the agency rulemaking process.
- The impacts of commercial containerized garbage regulations for eating and drinking establishments that go into effect today, August 1, 2023, have not been considered in the allocation of sidewalk or roadbed uses.

Hours

- The noise of outdoor dining in residential areas is not mitigated.¹⁰
- Non-conforming eating and drinking establishments in residential-only areas and residential areas with commercial overlays are treated the same as those in commercial districts. Residential areas have absolutely no protection from the noise as a result of midnight closing times, seven days a week.¹¹

Cost

- Median commercial real estate rents based on U.S. Census tracts do not accurately capture the value of the land and buildings¹² in lower Manhattan, where the proposed fee tier cost is 26% less than the pre-pandemic sidewalk café program. This low pricing structure will forever change the balance of the mix of retail uses to favor eating and drinking. The fee tier is unrealistically low¹³ for lower Manhattan.

² Manhattan CB 1, Manhattan CB 2, Manhattan CB 3, Manhattan CB 4 resolutions on outdoor dining: 2021, 2022, and 2023.

³ ZR 32-411 in the City of New York Zoning Regulations, Article 3, Chapter 2, Use Regulations

⁴ Brooklyn CB 8 resolution on outdoor dining: 2021.

⁵ Moss, M.L. and Sonkowsky, D.T., NYU Wagner Report on Open Restaurants, December 2022: “low-income community districts doubled their share of outdoor dining,” pg. 5.

⁶ Manhattan CB 2 had a +539% increase in outdoor dining cafes from the pre-pandemic sidewalk program.

⁷ Manhattan CB 1, Manhattan CB 2, Manhattan CB 3, Manhattan CB 4 resolutions from 2021, 2022, and 2023.

⁸ The problem of getting compliance into the current Legislation has proven difficult. There are no escalating fines and no provision for padlocking, two mitigation tactics which warded off bad actors in the pre-pandemic sidewalk program, particularly in lower Manhattan.

⁹ Bronx CB 10, Queens CB 1, Manhattan CB 2, Manhattan CB 3, and Manhattan CB 11 resolutions on outdoor dining: 2021, 2022, and 2023.

¹⁰ Manhattan CB 1, Manhattan CB 2, Manhattan CB 4, Manhattan CB 6 resolutions on outdoor dining: 2021, 2022, and 2023.

¹¹ Manhattan CB 2, Manhattan CB 3, Manhattan CB 4 resolutions on outdoor dining: 2021, 2022, and 2023: asked for a 10pm closing time in residential areas Sunday – Thursday. Both Manhattan CB 2 and Manhattan CB 3 have the highest number of roadway and sidewalk cafes in this program that are non-conforming uses in residential areas and are residential areas with commercial overlays. Manhattan CB 6 resolution on outdoor dining 2021: asked for hours commensurate with stipulations from the local community board.

¹² City of New York Zoning Regulations, Article 1, Chapter 4, Sidewalk Café Regulations states under *14-00 General Purposes* the following: *e. “To promote the **most desirable use of land** and thus to **conserve the value of land and buildings** and thereby **protect the City’s tax revenues.**”*

¹³ Manhattan CB 2, Manhattan CB 4, and Manhattan CB 5 resolutions on outdoor dining: 2021, 2022, and 2023.