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## COMMUNITY BOARD NO. 2, MANHATTAN

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November 17, 2023

Ms. Michelle Craven  
Assistant Commissioner  
Office of Cityscape and Franchises  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

Dear Assistant Commissioner Craven:

At its Full Board meeting on November 16, 2023, Manhattan Community Board 2, (MCB2) adopted the following two resolutions:

1. Resolution regarding Dining Out NYC Regulations for Sidewalk Cafes
2. Resolution regarding Dining Out NYC Regulations for Roadway Cafes

### Resolution Number 1 of 2

Resolution regarding Dining Out NYC Regulations for **Sidewalk Cafes**

Whereas:

1. Local Law 121 of 2023 (the “legislation”) establishes a permanent outdoor dining program, Dining Out NYC, to be administered by the New York City Department of Transportation (NYCDOT);
2. Dining Out NYC will replace the Temporary Open Restaurants Program, including a transition period for eating and drinking establishment operators to apply for the permanent program;

3. NYCDOT has proposed rules (the “regulations”) to administer, govern, and oversee Dining Out NYC and the transition from the Temporary Open Restaurants Program (the “temporary program”) to Dining Out NYC;
4. The regulations would set requirements for sidewalk cafes, including rules about licenses, design, operations, and enforcement;
5. Outdoor seating should be a complement to the interior seating, of an eating and drinking establishment, not be the main focal point visually or economically;

### **General Requirements: Sidewalk Cafe**

#### **Definition of a Sidewalk Cafe**

6. The regulations do not clearly define the location of a sidewalk cafe as being adjacent to a building and a building line of a ground-floor restaurant;

#### **Definition of and Context within a Historic District**

7. The regulations reference “historic districts” but do not define what a historic district is;
8. The regulations reference what is physically attached to a building within a historic district;
9. Designation reports for historic districts specifically include the streetscape as contributing criteria;

#### **Landmark Preservation Commission Review**

10. The regulations indicate that LPC has to make a determination on a sidewalk cafe application within 10 business days from receipt of a complete application;
11. The regulations indicate that a public hearing is required if LPC determines that such a sidewalk cafe may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district;

### **Blanket Waiver of the Regulations**

12. The regulations allow the Commissioner to waive any part of the Dining Out NYC regulations in the interest of public safety and convenience;
13. The regulations define “Commissioner” as the Commissioner of Transportation, or their authorized designee;

### **Revocable Consent Requirements for Sidewalk Cafes**

#### **Community Board Review**

14. The Community Board Review period is 40 days for sidewalk cafes;
15. Operators with sidewalk café licenses from the previous sidewalk cafe program (dating before March 2020) are required to reapply for Dining Out NYC;

#### **Site Plan and Drawings: Trash Containers**

16. The regulations require a site plan comprised of an accurate drawing depicting required clearances, the spaces to be occupied, and the locations of tables, chairs, barriers, and vertical elements for the sidewalk cafe;
17. The Department of Sanitation (DSNY) requires food-related businesses to use rigid containers (55 gallons or less) with secure lids for putrescible waste;
18. DSNY also now requires all commercial businesses to use rigid containers (55 gallons or less) with secure lids for putrescible waste;
19. Starting November 1, 2023, all business improvement districts (BID) are required to use rigid containers (55 gallons or less) with secure lids for all waste picked up by the BID if the BID will not drop off garbage bags at their local sanitation district garage;
20. Starting in 2024, DSNY will require all residential buildings with nine (9) or fewer units to use rigid containers (55 gallons or less) with secure lids for putrescible waste;

21. The Dining Out NYC regulations do not require eating and drinking establishment operators to outline in their site plan or drawing where they intend to store the rigid containers or “receptacles with form-fitting lids” (as referenced in the regulations) when in use for active pick-up from a commercial carter and when not in use for storage purposes or where, if applicable, other commercial or residential tenants of the same building will place their containers for pickup or store their containers in the immediate vicinity of the eating and drinking establishment.

**Design Requirements // Siting Requirements: Sidewalk Cafes**

**Clear Path**

22. CB2 applauds the use of the NYCDOT Pedestrian Mobility Plan, which outlines four corridor categories of street types (Baseline, Community Connector, Regional Corridor, and Global Corridor) in the regulations. Clear path requirements for each street type are outlined in the regulations.

- a. The regulations indicate that sidewalk cafes located on Regional Corridors have a 10-foot clear path requirement, however, the clear path requirement can be reduced to 8 feet if “maintenance of a 10-foot clear path after installation of such a sidewalk cafe is not feasible.”
  - i. Examples of Regional Corridor streets that in CB2:
    - 1. Bleecker St. from 6th Ave. to Bowery
    - 2. Christopher St. from Hudson St. to 6th Ave.
    - 3. MacDougal St. from W Houston St. to West 4th St./Washington Square S St.
    - 4. Mulberry St. from E Houston St. to Canal St.
    - 5. Carmine St. from Varick St. to 6th Ave.
    - 6. West 8th St. from 6th Ave. to 5th Ave.
  - ii. This means that smaller side streets in CB2 that are classified as Regional Corridors would have the same clear path requirement as

other Regional Corridor streets such as Hudson St., Seventh Ave., and Sixth Ave.

- b. Community Connector Corridor streets require a minimum of eight-foot (8') clear path in the regulations;
  - i. The regulations require an 8-foot (8') clear path for Community Connector Corridors, which leaves only two feet (2') for a sidewalk cafe to be sited on a sidewalk that is the minimum sidewalk width for Community Connector Corridors (10 feet, 10') with no room for a three-foot (3') service aisle.
  - ii. The clear path requirement for Community Connector Corridor streets is reduced from 10-feet (10') outlined in the Pedestrian Mobility Plan to an eight-foot (8') clear path requirement in the Dining Out NYC regulations;
  - iii. The pre-pandemic Sidewalk Cafe program required a minimum of a 12-foot (12') sidewalk width for eligibility in order to maintain a minimum 8-foot (8') clear path and a 3-foot (3') service aisle;
- c. The clear path requirement for Global Corridor streets is reduced from 15-feet (15') outlined in the Pedestrian Mobility Plan to a 12-foot (12') clear path requirement in the Dining Out NYC regulations;
  - i. Examples of Global Corridors in CB2:
    - 1. Canal St.
    - 2. Broadway St.
    - 3. 14th St.

23. The regulations do not protect the clear path from the following obstructions: host stands, server stations with POS systems, dirty bus tubs on folding racks, storage, and A-frame signs;

24. The regulations indicate that the maintenance of good order in the sidewalk cafe includes the prevention of excessive congregation within or immediately adjacent to a sidewalk cafe;

### **Service Aisle**

25. The regulations do not require a three-foot (3') service aisle distinct and separate from the clear path requirement.
- a. A minimum three-foot (3') service aisle was required in the pre-pandemic sidewalk cafe program to "ensure that no public space [was] used by the cafe to services its clientele and to also make sure that the cafe is disabled-accessible, as required by the Americans with Disabilities Act (ADA)."
  - b. The required three-foot (3') service aisle, a stalwart of the previous sidewalk cafe program rules, protected both operators, residents, and pedestrians in CB2 and was a critical key to the successful operation of sidewalk cafes for CB2 having the most sidewalk cafes of any Community Board pre-pandemic.

### **Clearances and Covering Restrictions**

26. The regulations require a five-foot (5') clearance from primary building entrances for sidewalk cafes;
27. The regulations prohibit a sidewalk cafe from blocking or covering building projections (including, but not limited to stoops, steps, and stairs);
28. The regulations require an 8-foot clearance for bus stop poles and bus stop shelters;
- a. The average size of an MTA (Metropolitan Transportation Authority) bus is 40-feet (40') long with two doors at the front and back of the bus for loading and unloading.
29. The regulations do not require any clearances for pedestrian ramps or street corners.

### **Design Requirements // Material Requirements: Sidewalk Cafes**

### **Awnings, Coverings, and Umbrellas**

30. The regulations do not indicate whether or not the sides and front of a sidewalk cafe must remain open;
31. The regulations do not indicate that awnings over sidewalk cafes are required to be retractable.
  - a. Awnings in the pre-pandemic Sidewalk Cafe program were required to be retractable.

### **Planters**

32. The regulations do not require the removal, on a nightly basis, of planters used to establish the perimeter of the sidewalk cafes;

### **Tables**

33. The regulations do not prohibit the use of bar tables (high-top tables) in sidewalk cafes.

### **Parks**

34. The regulations do not prohibit sidewalk cafes located within New York City parks.

## **Operations and Management Requirements: Sidewalk Cafes**

### **Heaters**

35. The regulations allow heating units in sidewalk cafes.

### **Hours**

36. The regulations have a 1:00 AM closing time on Friday and Saturday nights for sidewalk cafes everywhere;
37. The regulations have a midnight closing time Sunday through Thursday for sidewalk cafes everywhere;
38. The legislation has a midnight closing time daily;

### **Advertising**

39. The regulations allow the name and logo of any sponsor of the restaurant's amenities to be painted, imprinted or otherwise displayed on a sidewalk cafe;

### **Maintenance**

40. CB2 applauds that the regulations prohibit the storage of trash or other items within a sidewalk cafe;

### **Removal of Abandoned Sidewalk Cafes**

41. The regulations indicate that sidewalk cafes that are not used and occupied for outdoor dining for thirty (30) consecutive days or more must be removed;

42. The regulations do not indicate who is responsible for paying for the removal of abandoned sidewalk cafes;

43. There are no funds allocated to pay for the removal of abandoned sidewalk cafes;

### **Staffing**

44. The regulations do not indicate that wait service staffing is required for sidewalk cafes;

### **Patron Bathrooms**

45. The regulations do not require an eating and drinking establishment to have a patron bathroom in response to the increased seating capacity in a sidewalk cafe;

### **Pest Control**

46. The regulations require that a petitioner show proof of having entered a contract with a licensed pest professional that includes pest control services for the roadway cafe;

## **Enforcement**



47. The regulations indicate that suspension or revocation of a license shall be waived if the Department determines that the person who committed the violations that are the basis for the suspension or revocation against the licensee's instructions.

**Therefore Be It Resolved, Manhattan Community Board 2 strongly recommends:**  
(note: additions to the regulations are *italicized and underlined* when inserted into the proposed regulation text)

### **General Requirements: Sidewalk Cafes**

#### **Definition of a Sidewalk Cafe**

1. Adding "*adjacent to the building line of*" and "*and does not include the furnishing zone*" to the definition of a sidewalk cafe under § 5-01 Definitions, so that it reads:  
"The term sidewalk cafe means an open-air portion *adjacent to the building line of* a ground-floor restaurant *and does not include the furnishing zone* containing only readily removable tables, chairs, and other removable decorative items, that is located on a public sidewalk or sidewalk widening in front of the restaurant and that is designed and operated pursuant to sections 5-02 through 5-12 of this chapter."

#### **Definition of and Context within a Historic District**

2. Defining historic districts by adding "Historic District," under § 5-01 Definitions, and using the definition of a historic district outlined in the New York City Administrative Code Chapter 3, Section 25-302 so that it reads as:  
*"Historic District: The term "historic district" means any area which: (1) contains improvements which: (a) have a special character or special historical or aesthetic interest of value; and (b) represent one or more periods of styles of architecture typical of one or more eras of history in the city; and (c) cause such area, by reason of such factors, to constitute a distinct section of the city, and (2) has been designated as a historic district pursuant to the provisions of Chapter 3 of the New York City Administrative Code;"*
3. Eliminating the phrase "...that is physically attached to a building" from § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3).
4. Replacing "Approval" with "Review" in the first line of § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (1).

5. Adding in the phrase “*or disapprove*” to § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3) so it reads:  
“LPC shall review and approve *or disapprove*...”
6. Replacing the phrase “*physically attached to a building located within a historic district or located on a landmark site*” and “*element*” under § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3), with the following phrase: “*that are not in harmony with the special architectural and historic character of the building, streetscape or scenic landmark...*” and “*proposed work to,*” respectively, which is standard language used in the LPC Rules in respect to alterations.

The amended sentence should read as: “Where approval is required pursuant to paragraph (1) of this subdivision, LPC shall review and approve *or disapprove* any “*proposed work to*” a sidewalk cafe or roadway cafe, including but not limited to heaters, lighting, electrical connections, and awnings, that *that are not in harmony with the special architectural and historic character of the building, streetscape or scenic landmark* located within a historic district or located on a landmark site.”

7. Replacing the phrase “*Such elements that are physically attached to a building,*” under § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3), with the following phrase: “*The proposed work will not detract from the special architectural and historic character of the building, streetscape or scenic landmark...*” which is standard language used in the LPC Rules in respect to alterations.

The amended sentence should read as: “*The proposed work will not detract from the special architectural and historic character of the building, streetscape or scenic landmark* located within a historic district or located on a landmark site shall comply with all applicable rules and regulations of LPC.”

### **Landmark Preservation Commission Review**

8. Increasing the LPC review period for the first year of the Dining Out NYC program from 10 business days to 30 days in community districts with over five (5) historic districts within their boundaries.

9. Replacing “*exterior architectural features of a landmark or a building or buildings within a*” with “*special architectural and historic character of the building, streetscape or scenic landmark within a historic district or an individual landmark*” under § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (2) so it reads:

“...unless LPC determines that such a sidewalk cafe or roadway cafe may have an effect on the *special architectural and historic character of the building, streetscape or scenic landmark within a historic district or an individual landmark* and a public hearing is required.”

### **Revocable Consent Requirements for Sidewalk Cafes**

#### **Community Board Review**

10. Extending the Community Board Review period to 60 days, in concert with the recommendations of Manhattan CB1, Manhattan CB3, Manhattan CB4, and Manhattan CB7 (pre-pandemic MCB1, MCB2, MCB3, MCB4, and MCB7 contained 44% of all citywide sidewalk cafes);
11. Allowing operators with active sidewalk café revocable consent licenses from the previous sidewalk cafe program at the onset of the pandemic (dating before March 2020) to be exempt from community review for their first four-year license application in Dining Out NYC, provided there are no changes to the permitted number of tables and chairs, service aisles or other enclosures, approved diagrams remain unchanged, and the applicant has no Cease and Desist orders issued during the duration of the Temporary Open Restaurants Program, to be confirmed by the Department of this eligibility;

#### **Site Plan and Drawings: Trash Containers**

12. Adding “*trash receptacles with form-fitting lids*” to § 5-04 Requirements for Revocable Consent of Sidewalk Cafes, (c) Petition Requirements, (2) Site Plan and Drawings so it reads:

“A site plan comprised of an accurate drawing depicting required clearances, the spaces to be occupied, and the locations of tables, chairs, barriers, *“trash receptacles with form-fitting lids when not in use for active pick-up by a commercial carter,” “trash receptables with form-fitting lids when in use for active pick-up by a*

*commercial carter,”* and vertical elements in the form provided on the Department’s website.”

13. Adding in *“The number of seats on the site plan of drawing for sidewalk cafe and roadway cafe combined should not exceed 50% of the establishment’s interior seating capacity known as the eating and drinking establishment’s occupancy load”* to § 5-04 Requirements for Revocable Consent of Sidewalk Cafes, (c) Petition Requirements, (2) Site Plan and Drawings.

### **Blanket Waiver of the Regulations**

14. Deleting (e) under § 5-02 General Requirements:

~~(e) Except where expressly prohibited by law, the Commissioner may, in accordance with sections 19-160 through 19-160.6 of the Administrative Code, waive these rules, in the interest of public safety and convenience.~~

### **Design Requirements // Siting Requirements: Sidewalk Cafes**

#### **Clear Path**

15. Requiring a three-foot (3’) service aisle as separate and distinct from the required eight-foot (8’) clear path, which was a stalwart of the pre-pandemic Sidewalk Cafe program which protected operators, residents, and pedestrians in CB2 and which was a critical component to the density of sidewalk cafes in our district which was home to the most sidewalk cafes in the city;
16. Maintaining the required 10-foot clear path for Regional Corridor streets and removing this sentence under § 5-11 Design Requirements (a) Sidewalk Cafes, (1) Siting Requirements, (i) Clear Path, (B): “1. Maintenance of a 10-foot clear path after installation of such sidewalk cafe is not feasible; and” which is in regards to reducing the clear path on Regional Corridor streets from the required 10-foot (10’) clear path to an 8-foot (8’) clear path. There should be no reduction of clear path on any of the corridor categories other than streets where small sidewalk cafes were previously allowed as stated under § 5-11 Design Requirements (a)

Sidewalk Cafes, (1) Siting Requirements, (i) Clear Path, (B), (2), and a a three-foot (3') service aisle should also be required.

17. Requiring sidewalk widths of at least twelve feet (12') on Community Connector Corridor Streets, which aligns with the sidewalk width requirement in the pre-pandemic Sidewalk Cafe program, which allowed for both the required eight-foot (8') clear path and the required three-foot (3') service aisle.
18. Prohibiting sidewalk cafes on Global Corridor streets in Manhattan CB2.
19. Prohibiting host stands, server stations with POS systems, bus tubs on folding racks, storage, and A-frame signs from blocking the clear path on the sidewalk.
20. Prohibiting host stands, server stations with POS systems, bus tubs on folding racks, or storage of those items within the footprint of the sidewalk cafe.
21. Adding "*which includes patrons lining up on the sidewalk and blocking the clear path and/or furnishing zone*" to the first sentence in § 5-10 Operation and Management Requirements, (g) Good Order so it reads:

"Every licensee shall be held strictly accountable for the maintenance of good order in the sidewalk cafe and the proper conduct of their patrons, including the prevention of excessive congestion, *which includes patrons lining up on the sidewalk and blocking the clear path and/or furnishing zone*, within or immediately adjacent to a sidewalk cafe."

**Service Aisle**

22. Requiring a three-foot (3') service aisle that is distinct and separate from the minimum eight-foot (8') clear path requirement so as not to impede clear path requirements and to provide ADA access throughout the sidewalk cafe.

**Clearances and Covering Restrictions**

23. Adding the following Element or Object and Required Distance to (ii) Clearances under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements:

Element or Object	Required
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	Distance
<u>Ground-Floor or Basement Residential Windows</u>	<u>25 feet</u>
<u>Entryway for Ground-Floor Residences</u>	<u>25 feet</u>
<u>Pedestrian Ramps</u>	<u>8 feet</u>
<u>Street Corners (Daylighting)</u>	<u>20 feet</u>

24. Adding “except for ground-floor residences” to Primary Building Entrances located in (ii) Clearances under under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements:

Element or Object	Required Distance
Primary Building Entrances <i>except for Entryways for Ground-Floor Residences</i>	5 feet

25. Increasing the clearance for bus stop poles and bus stop shelters to forty feet (40') in (ii) Clearances under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements:

Element or Object	Required Distance
Bus Stop Poles: <u>Non-approaching Side</u>	5 feet
Bus Stop Poles: <u>Approaching Side</u>	<u>40 feet</u>
Bus Stop Shelters	<u>40 feet</u>

**Design Requirements // Material Requirements: Sidewalk Cafes Awnings, Coverings, and Umbrellas**

26. Requiring that the sides and front of a sidewalk cafe must remain open at all times;

27. Requiring that awnings over sidewalk cafes must be retractable with no supporting poles installed;

### **Planters**

28. Adding this phrase, “*No planters should be stored overnight on the sidewalk adjacent to the building or in the furnishing zone;*” under § 5-11 Design Requirements, (a) Sidewalk Cafes so that it reads:

“The furnishing of the interior of a sidewalk cafe shall consist solely of lightweight and easily moveable tables, chairs, and decorative accessories. No furnishing element shall be permanently affixed to the sidewalk. *No planters should be stored overnight on the sidewalk adjacent to the building or in the furnishing zone;*”

### **Tables**

29. Prohibiting the use of bar (high-top) tables in sidewalk cafes and standing-only tables;

### **Parks**

30. Adding in the following phrase: “*No sidewalk cafes should be located within a New York City Public Park,*” under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements.

## **Operations and Management Requirements: Sidewalk Cafes**

### **Hours**

31. Requiring that hours in the regulations not extend beyond the hours of midnight listed in the legislation (Local Law 121 of 2023);
32. Requiring hours in residential-only zones to be no later than 9pm Sunday-Thursday and 10pm Friday-Saturday;
33. Allowing hours to extend to no later than 10pm Sunday-Thursday and 11pm Friday-Saturday in mixed use residential/commercial zones;
34. Allowing any permitted hours after 11pm to be reserved for areas zoned commercial with out any residential;

## Advertising

35. Deleting this phrase under § 5-10 Operation and Management Requirements, (e) Advertising: *“the name and logo of any sponsors of the restaurant’s amenities,”* so it reads:

“No advertising sign, picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign, shall be placed or painted on or affixed to any awning, screen or other appurtenance used in connection with a sidewalk cafe or roadway cafe, except that the name of the restaurant, the logo of the restaurant, *and* the menu and information on the services provided by the restaurant, ~~*and the name and logo of any sponsors of the restaurant’s amenities*~~ may be painted, imprinted or otherwise displayed, in accordance with the following requirements,”

## Removal of Abandoned Roadway Cafes

36. Requiring a deposit from the applicant at the time of application that is commensurate with the cost of the removal of an abandoned roadway cafes;
37. Requiring the licensee to pay for the removal of the abandoned roadway cafe if the licensee is still operating the ground floor restaurant associated with the abandoned roadway cafe.

## Patron Bathrooms

38. Requiring a patron bathroom (indoors) for all outdoor seating;

## Pest Control

39. Requiring that the contract for pest control services held by the petitioner indicates a monthly service plan, and upon renewal of the license, shows proof as part of license renewal process; Adding this language *“that are administered on a monthly basis for the duration of the four-year license period and upon renewal of the license, continue to show proof of the pest control services contract as part of the license renewal application”* to 5-04 Requirements for Revocable Consent of Sidewalk Cafes and Roadway Cafes, (c) Petition Requirements, (5) Pest Control Plan so that it reads:



“A certification from the petitioner that they have entered into a contract with a licensed pest professional that includes pest control services for the sidewalk cafe *that are administered on a monthly basis for the duration of the four-year license period and upon renewal of the license, continue to show proof of the pest control services contract as part of the license renewal application;*”

### **Staffing**

40. Requiring table service by server/waitstaff for all tables located in a sidewalk cafe, and adding *“including staffing assigned to administer table service and”* to § 5-10 Operation and Management Requirements, (g) Good Order so it reads:

*“A licensee must provide adequate service, including staffing assigned to administer table service and to maintain the tables in the sidewalk cafe and the adjacent street in a matter that ensures...”;*

### **Enforcement**

41. Deleting this paragraph under in § 5-12 Enforcement, (2) Opportunity to Be Heard, (ii) Process, (3):

~~*“Notwithstanding any inconsistent provision of this section, the suspension or revocation of a license shall be waived if, upon the submission of satisfactory proof, the Department determines that the person or persons who committed the violations which are the basis for the suspension or revocation acted against the licensee’s instructions in committing such violations.”*~~

42. Adding this paragraph under in § 5-12 Enforcement, (2) Opportunity to Be Heard, (ii) Process, (3):

*“The licensee is responsible for all violations of the regulations committed by any person who committed the violation as part of their duties as an employee. There are no waivers for suspension or revocation based on violations in these regulations.”*

**Vote Count for MCB2 Resolution 1 of 2: Dining Out NYC Regulations for Sidewalk Cafes**

Vote Passed with 29 Board Members in favor: S. Aaron, K. Berger, C. Booth, K. Bordonaro, A. Brandt, R. Caccappolo, R. Chattree, V. De La Rosa, M. Fitzgerald, S. Fitzgerald, C. Flynn, S. Gammie, J. Horkey, S. Kent, I. Kwan Arce, P. Laraia, M. Levine, E. Olson, J. Osorio, B. Pape, D. Raftery, L. Rakoff, B. Riccobono, S. Secunda, F. Sigel, S. Smith, E. Smith, S. Wittenberg, A. Wong, 4 in opposition, and 5 abstentions.

See next page for  
MCB2 Resolution 2 of 2:  
Dining Out NYC Regulations for Roadway Cafes.



## COMMUNITY BOARD NO. 2, MANHATTAN

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### Resolution Number 2 of 2

#### Resolution regarding Dining Out NYC Regulations for **Roadway Cafes**

#### Whereas:

1. Local Law 121 of 2023 (the “legislation”) establishes a permanent outdoor dining program, Dining Out NYC, to be administered by the New York City Department of Transportation (NYCDOT);
2. Dining Out NYC will replace the Temporary Open Restaurants Program, including a transition period for eating and drinking establishment operators to apply for the permanent program;
3. NYCDOT has proposed rules (the “regulations”) to administer, govern, and oversee Dining Out NYC and the transition from the Temporary Open Restaurants Program (the “temporary program”) to Dining Out NYC;
4. The regulations would set requirements for sidewalk cafes, including rules about licenses, design, operations, and enforcement;
5. Outdoor seating should be a complement to the interior seating, of an eating and drinking establishment, not be the main focal point visually or economically;

### General Requirements: Roadway Cafes

#### Definition of a Roadway Cafe

6. The regulations do not clearly define that a roadway cafe is located immediately and directly fronting a ground-floor restaurant.

### **Definition of and Context of a Roadway Cafe within a Historic District**

7. The regulations reference “historic districts” but do not define what a historic district is;
8. The regulations reference what is physically attached to a building within a historic district;
9. The regulations make no reference to the authority of LPC to review roadway cafes as they relate to the streetscape of a historic district;
10. Designation reports for historic districts specifically include the streetscape as contributing criteria;

### **Landmark Preservation Commission Review**

11. The regulations indicate that LPC has to make a determination on a roadway cafe application within 10 business days from receipt of a complete application;
12. The regulations indicate that a public hearing is required if LPC determines that such a roadway cafe may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district;

### **Blanket Waiver of the Regulations**

13. The regulations allow the Commissioner to waive any part of the Dining Out NYC regulations in the interest of public safety and convenience;
14. The regulations define “Commissioner” as the Commissioner of Transportation, or their authorized designee;

### **Revocable Consent Requirements for Roadway Cafes**

#### **Community Board Review**

15. The Community Board Review period is 30 days for roadway cafes;

### **Site Plan and Drawings: Trash Containers**

16. The regulations require a site plan comprised of an accurate drawing depicting required clearances, the spaces to be occupied, and the locations of tables, chairs, barriers, and vertical elements for the roadway cafe;
17. The Department of Sanitation (DSNY) requires food-related businesses to use rigid containers (55 gallons or less) with secure lids for putrescible waste;
18. DSNY also now requires all commercial businesses to use rigid containers (55 gallons or less) with secure lids for putrescible waste;
19. Starting November 1, 2023, all business improvement districts (BID) are required to use rigid containers (55 gallons or less) with secure lids for all waste picked up by the BID if the BID will not directly drop off garbage bags at their local sanitation district garage;
20. Starting in 2024, DSNY will require all residential buildings with nine (9) or fewer units to use rigid containers (55 gallons or less) with secure lids for putrescible waste;
21. The Dining Out NYC regulations do not require eating and drinking establishment operators to outline in their site plan or drawing where they intend to store the rigid containers or “receptacles with form-fitting lids” (as referenced in the regulations) when in use for active pick-up from a commercial carter and when not in use for storage purposes or where, if applicable, other commercial or residential tenants of the same building will place their containers for pickup or store their containers in the immediate vicinity of the eating and drinking establishment.

### **Design Requirements // Siting Requirements: Roadway Cafes**

#### **Clear Path**

22. CB2 applauds the use of the NYCDOT Pedestrian Mobility Plan, which outlines four corridor categories of street types (Baseline, Community Connector,

Regional Corridor, and Global Corridor) in the regulations. Clear path requirements for each street type are outlined in the regulations.

23. The regulations do not prohibit roadway cafes that are adjacent to sidewalks that are less than ten feet (10'), the width which is the width that meets the minimum clear path requirement for pedestrian safety;
24. A ten-foot (10') sidewalk width allows for the clear path minimum to be met (eight feet, 8') in addition to two feet (2') for the furnishing zone which is directly adjacent to the roadway cafe;
25. Baseline Corridor streets are defined in the Pedestrian Mobility Plan as eight feet (8' or less);
26. The regulations do not protect the clear path from the following obstructions: host stands, server stations with POS systems, dirty bus tubs on folding racks, storage, and A-frame signs;
27. The regulations indicate that the maintenance of good order in the roadway cafe includes the prevention of excessive congregation within or immediately adjacent to a roadway cafe;

### **Service Aisles in Roadway Cafes**

28. The proposed rules do not account for a three-foot (3') service aisle in roadway cafes. A minimum three-foot (3') service aisle was required in the pre-pandemic sidewalk cafe program to "ensure that no public space [was] used by the cafe to services its clientele and to also make sure that the cafe is disabled-accessible, as required by the Americans with Disabilities Act (ADA)."
29. The required three-foot (3') service aisle, a stalwart of the previous sidewalk cafe program rules, protected both operators, residents, and pedestrians in CB2 and was a critical key to the successful operation of sidewalk cafes for CB2 having the most sidewalk cafes of any Community Board pre-pandemic.

### **Clearances and Covering Restrictions**

30. The regulations require a five-foot (5') clearance from primary building entrances for roadway cafes;
31. The regulations prohibit a roadway cafe from blocking or covering building projections (including, but not limited to stoops, steps, and stairs);
32. The regulations require an 8-foot clearance for bus stop poles and bus stop shelters;
  - a. The average size of an MTA (Metropolitan Transportation Authority) bus is 40-feet (40') long with two doors at the front and back of the bus for loading and unloading;
33. The regulations do not require any clearances for pedestrian ramps or street corners;

### **Dimensions: Length of Roadway Cafe**

34. The regulations state that the maximum length for a roadway cafe is 40 feet;

### **Dimensions: Emergency Travel Lanes**

35. The regulations state that DOT may permit an emergency travel lane width of less than 15 feet upon consultation with the New York City Fire Department;

### **Roadway Cafes in a Floating Parking Lane**

36. The proposed rules prohibit roadway dining within a NYCDOT bike lane and allow roadway dining in a floating parking lane, requiring crossing a bike lane mid-block;

### **Roadway Cafes on Narrow Streets**

37. The proposed rules do not differentiate between narrow and wide streets for roadway cafe eligibility;

### **Roadway Cafes in Residential Zones**

38. The proposed rules allow roadway cafes in No Parking Anytime zones;

39. The proposed rules do not account for roadway cafes sited immediately adjacent to or directly outside ground-floor apartments.

### **Space Between Roadway Cafes**

40. The proposed rules require a maximum of three feet (3') between roadway cafes;

### **Design Requirements // Material Requirements: Roadway Cafes**

#### **Awnings, Coverings, and Umbrellas**

41. The regulations do not indicate whether or not the sides and the sidewalk-facing length of a roadway cafe must remain open;

42. The regulations do not clearly prohibit solid roofs covering the top of roadway cafes;

#### **Tables**

43. The regulations do not prohibit the use of bar tables (high-top tables) in roadway cafes;

### **Operations and Management Requirements: Roadway Cafes**

#### **Heaters**

44. The regulations allow heating units in roadway cafes;

#### **Hours**

45. The regulations have a 1:00 AM closing time on Friday and Saturday nights for roadway cafes everywhere;

46. The regulations have a midnight closing time Sunday through Thursday for roadway cafes everywhere;

47. The legislation has a midnight closing time daily;

#### **Advertising**

48. The regulations allow the name and logo of any sponsor of the restaurant's amenities to be painted, imprinted or otherwise displayed on a roadway cafe;



### **Removal of Abandoned Roadway Cafes**

- 49. The regulations indicate that sidewalk cafes that are not used and occupied for outdoor dining for thirty (30) consecutive days or more must be removed;
- 50. The regulations do not indicate who is responsible for paying for the removal of abandoned sidewalk cafes;
- 51. There are no funds allocated to pay for the removal of abandoned sidewalk cafes;

### **Removal of Roadway Cafes for the Off-Season**

- 52. The regulations indicate the off-season for roadway cafes as November 30 to March 1;
- 53. The regulations indicate that licensees have until December 7 to take down their roadway cafe setup;
- 54. The regulations do not explicitly outline that the entire roadway cafe setup must be completely removed in its entirety from the parking lane;

### **Staffing**

- 55. The regulations do not indicate that server/wait staffing is required for roadway cafes;

### **Patron Bathrooms**

- 56. The regulations do not require an eating and drinking establishment to have a patron bathroom in response to the increased seating capacity in a sidewalk cafe;

### **Pest Control**

- 57. The regulations require that a petitioner show proof of having entered a contract with a licensed pest professional that includes pest control services for the roadway cafe;

## Enforcement

58. The regulations indicate that suspension or revocation of a license shall be waived if the Department determines that the person who committed the violations that are the basis for the suspension or revocation against the licensee's instructions.

### **Therefore Be It Resolved,**

#### **Manhattan Community Board 2 strongly recommends:**

(note: additions to the regulations are *italicized and underlined* when inserted into the proposed regulation text)

#### **General Requirements: Roadway Cafes**

##### **Definition of a Roadway Cafe**

1. Clarifying the definition of a roadway cafe by adding the following phrase:  
*"immediately and directly"* to § 5-01 Definitions so it reads as:  
"ground floor restaurant containing readily removable tables, chairs, and other removable decorative items, which is located in the curb lane or parking lane of a roadway *immediately and directly* fronting the restaurant,"

##### **Definition of and Context within a Historic District**

2. Defining historic districts by adding "Historic District," under § 5-01 Definitions, and using the definition of a historic district outlined in the New York City Administrative Code Chapter 3, Section 25-302 so that it reads as:  
*"Historic District: The term "historic district" means any area which: (1) contains improvements which: (a) have a special character or special historical or aesthetic interest of value; and (b) represent one or more periods of styles of architecture typical of one or more eras of history in the city; and (c) cause such area, by reason of such factors, to constitute a distinct section of the city, and (2) has been designated as a historic district pursuant to the provisions of Chapter 3 of the New York City Administrative Code;"*
3. Eliminating the phrase "...that is physically attached to a building" from § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3);

4. Replacing “Approval” with “Review” in the first line of § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (1).
5. Adding in the phrase “or disapprove” to § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3) so it reads:

“LPC shall review and approve or disapprove...”
6. Replacing the phrase “physically attached to a building located within a historic district or located on a landmark site” and “element” under § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3), with the following phrase: “that are not in harmony with the special architectural and historic character of the building, streetscape or scenic landmark...” and “proposed work to,” respectively, which is standard language used in the LPC Rules in respect to alterations.

The amended sentence should read as: “Where approval is required pursuant to paragraph (1) of this subdivision, LPC shall review and approve or disapprove any “proposed work to” a sidewalk cafe or roadway cafe, including but not limited to heaters, lighting, electrical connections, and awnings, that that are not in harmony with the special architectural and historic character of the building, streetscape or scenic landmark located within a historic district or located on a landmark site.”

7. Replacing the phrase “Such elements that are physically attached to a building,” under § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (3), with the following phrase: “The proposed work will not detract from the special architectural and historic character of the building, streetscape or scenic landmark...” which is standard language used in the LPC Rules in respect to alterations. The amended sentence should read as:

“The proposed work will not detract from the special architectural and historic character of the building, streetscape or scenic landmark located within a historic district or located on a landmark site shall comply with all applicable rules and regulations of LPC.”

## Landmark Preservation Commission Review

8. Increasing the LPC review period for the first year of the Dining Out NYC program from 10 business days to 30 days in community districts with over five (5) historic districts in their boundaries.
9. Replacing “*exterior architectural features of a landmark or a building or buildings within a*” with “*special architectural and historic character of the building, streetscape or scenic landmark within a historic district or an individual landmark*” under § 5-02 General Requirements, (c) Landmarks Preservation Commission Review, (2) so it reads:

“...unless LPC determines that such a sidewalk cafe or roadway cafe may have an effect on the special architectural and historic character of the building, streetscape or scenic landmark within a historic district or an individual landmark and a public hearing is required.”

## Revocable Consent Requirements for Roadway Cafes

### Community Board Review

10. Extending the Community Board Review period to 60 days, in concert with the recommendations of Manhattan CB1, Manhattan CB3, Manhattan CB4, and Manhattan CB7 (pre-pandemic MCB1, MCB2, MCB3, MCB4, and MCB7 contained 44% of all citywide sidewalk cafes);

### Site Plan and Drawings: Trash Containers

11. Adding “*trash receptacles with form-fitting lids*” to § 5-04 Requirements for Revocable Consent of Sidewalk Cafes, (c) Petition Requirements, (2) Site Plan and Drawings so it reads:

“A site plan comprised of an accurate drawing depicting required clearances, the spaces to be occupied, and the locations of tables, chairs, barriers, “trash receptacles with form-fitting lids when not in use for active pick-up by a commercial carter,” “trash receptacles with form-fitting lids when in use for active pick-up by a commercial carter,” and vertical elements in the form provided on the Department’s website.”

12. Adding in *“The number of seats on the site plan of drawing for sidewalk cafe and roadway cafe combined should not exceed 50% of the establishment’s interior seating capacity known as the eating and drinking establishment’s occupancy load”* to § 5-04 Requirements for Revocable Consent of Sidewalk Cafes, (c) Petition Requirements, (2) Site Plan and Drawings.
13. Requiring a two-to-three (2-3’) foot area designated on a site plan for trash receptacles to be placed in the roadway if they are covered;

### **Blanket Waiver of the Regulations**

14. Deleting (e) under § 5-02 General Requirements:

~~(e) Except where expressly prohibited by law, the Commissioner may, in accordance with sections 19-160 through 19-160.6 of the Administrative Code, waive these rules, in the interest of public safety and convenience;~~

### **Design Requirements // Siting Requirements: Roadway Cafes**

#### **Clear Path**

15. Requiring a three-foot (3’) service aisle in roadway cafes to ensure that the furnishing zone is not used as a service aisle;
16. Prohibiting host stands, server stations with POS systems, bus tubs on folding racks, storage, and A-frame signs from blocking the furnishing zone on the sidewalk adjacent to a roadway cafe;
17. Prohibiting host stands, server stations with POS systems, bus tubs on folding racks, or storage of those items within the footprint of the roadway cafe;
18. Adding *“which includes patrons lining up on the sidewalk and blocking the clear path and/or furnishing zone”* to the first sentence in § 5-10 Operation and Management Requirements, (g) Good Order so it reads:

Every licensee shall be held strictly accountable for the maintenance of good order in the roadway cafe and the proper conduct of their patrons, including the prevention of excessive congestion, *which includes patrons lining up on the sidewalk and blocking the clear path and/or furnishing zone*, within or immediately adjacent to a roadway cafe.

19. Prohibiting roadway cafes on Baseline Corridor streets;

20. Requiring sidewalk widths of a minimum ten feet (10') in order for a street to be eligible to have a roadway cafe to ensure that sidewalk adjacent to the roadway cafe can maintain the minimum clear path requirement for pedestrian safety;

**Service Aisle**

21. Requiring a three-foot (3') service aisle in roadway cafes that is distinct and separate from the minimum eight-foot (8') clear path requirement so as not to impede clear path requirements, the furnishing zone and to provide ADA access throughout the roadway cafe."

**Clearances and Covering Restrictions**

22. Adding the following Element or Object and Required Distance to (ii) Clearances under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements:

Element or Object	Required Distance
<u>Ground-Floor or Basement Residential Windows</u>	<u>25 feet</u>
<u>Entryway for Ground-Floor Residences</u>	<u>25 feet</u>
<u>Pedestrian Ramps</u>	<u>8 feet</u>
<u>Street Corners (Daylighting)</u>	<u>20 feet</u>

23. Adding “except for ground-floor residences” to Primary Building Entrances located in (ii) Clearances under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements:

Element or Object	Required Distance
Primary Building Entrances <i>except for Entryways for Ground-Floor Residences</i>	5 feet

24. Increasing the clearance for bus stop poles and bus stop shelters to forty feet (40') in (ii) Clearances under § 5-11 Design Requirements (a) Sidewalk Cafes (1) Siting Requirements:

Element or Object	Required Distance
Bus Stop Poles: <i>Non-approaching Side</i>	5 feet
Bus Stop Poles: <i>Approaching Side</i>	<u>40 feet</u>
Bus Stop Shelters	<u>40 feet</u>

**Dimensions: Length of Roadway Cafe**

25. Requiring the maximum length for a roadway cafe is limited to the length of the frontage for the ground floor restaurant seeking the license for the roadway or forty feet (40') if the frontage is beyond forty feet (40');
26. Deleting “provided that the Department may permit an emergency travel lane width of less than 15 feet upon consultation with the New York City Fire Department” under §5-11 Design Requirements (b) Roadway Cafes (1) Siting Requirements, (iii) Dimensions, (C).

### **Roadway Cafes in Floating Parking Lanes**

27. Prohibiting roadway cafes in floating parking lanes where service happens across NYCDOT bike lanes<sup>1</sup>;

28. Prohibiting roadway cafes in floating parking lanes.<sup>2</sup>

### **Roadway Cafes on Narrow Streets**

29. Requiring that roadways eligible for roadway cafes should be at least thirty-two feet (32') curb to curb that includes the mandatory fifteen-foot (15') emergency travel lane and eight-and-a-half feet (8'6") on each side for bus lanes, loading zones, parking or other uses;

30. Adding in that roadway cafes are not allowed in No Parking Anytime zones.

### **Space Between Roadway Cafes**

31. Requiring a minimum of six feet (6') between roadway cafes.

### **Design Requirements // Material Requirements: Roadway Cafes**

#### **Awnings, Coverings, and Umbrellas**

32. Requiring that the sides and sidewalk-facing length of a roadway cafe must remain open;

33. Prohibiting solid roofs covering the top of roadway cafes;

#### **Tables**

34. Prohibiting the use of bar (high-top) tables and standing-only tables in roadway cafes;

#### **Heaters**

35. Prohibiting heating units in roadway cafes;

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<sup>1</sup> MCB2 Letter of Priority Considerations for Permanent Open Restaurants Rulemaking, November 1, 2022 and March 31, 2022.

<sup>2</sup> MCB2 Letter of Priority Considerations for Permanent Open Restaurants Rulemaking, November 1, 2022 and March 31, 2022.



## Operations and Management Requirements: Sidewalk Cafes

### Hours

36. Requiring that hours in the regulations not extend beyond the hours of midnight listed in the legislation (Local Law 121 of 2023);
37. Requiring hours in residential-only zones to be no later than 9pm Sunday-Thursday and 10pm Friday-Saturday;
38. Allowing hours to extend to no later than 10pm Sunday-Thursday and 11pm Friday-Saturday in mixed use residential/commercial zones;
39. Allowing any permitted hours after 11pm to be reserved for areas zoned commercial with out any residential;

### Advertising

40. Deleting this phrase under § 5-10 Operation and Management Requirements, (e) Advertising: *“the name and logo of any sponsors of the restaurant’s amenities,”* so it reads:

No advertising sign, picture, flag, banner, side curtain or other device, including an illuminated or non-illuminated sign, shall be placed or painted on or affixed to any awning, screen or other appurtenance used in connection with a sidewalk cafe or roadway cafe, except that the name of the restaurant, the logo of the restaurant, *and* the menu and information on the services provided by the restaurant, ~~*and the name and logo of any sponsors of the restaurant’s amenities*~~ may be painted, imprinted or otherwise displayed, in accordance with the following requirements,”

### Removal of Abandoned Roadway Cafes

41. Requiring a deposit from the applicant at the time of application that is commensurate with the cost of the removal of an abandoned roadway cafe;
42. Requiring the licensee to pay for the removal of the abandoned roadway cafe if the licensee is still operating the ground floor restaurant associated with the abandoned roadway cafe.

## Patron Bathrooms

43. Requiring a patron bathroom (indoors) for all outdoor seating;

## Pest Control

44. Requiring that the contract for pest control services held by the petitioner indicates a monthly service plan, and upon renewal of the license, shows proof as part of license renewal process; Adding this language to 5-04 Requirements for Revocable Consent of Sidewalk Cafes and Roadway Cafes, (c) Petition Requirements, (5) Pest Control Plan so that it reads:

A certification from the petitioner that they have entered into a contract with a licensed pest professional that includes pest control services for the sidewalk cafe that are administered on a monthly basis for the duration of the four-year license period and upon renewal of the license, continue to show proof of the pest control services contract as part of the license renewal application.

## Staffing

45. Requiring table service by wait staff/server for all tables located in a roadway cafe, and adding “including staffing assigned to administer table service and” to § 5-10 Operation and Management Requirements, (g) Good Order so it reads:

A licensee must provide adequate service, including staffing assigned to administer table service and to maintain the tables in the roadway cafe and the adjacent street in a manner that ensures...;

## Removal of Roadway Cafes for the Off-Season

46. Adding the phrase “Entire roadway cafe setups must be completely removed in its entirety from the parking lane by December 7 of the year;

## Enforcement

47. Deleting this paragraph under in § 5-12 Enforcement, (2) Opportunity to Be Heard, (ii) Process, (3):

~~“Notwithstanding any inconsistent provision of this section, the suspension or revocation of a license shall be waived if, upon the submission of satisfactory proof, the Department determines that the person or persons who~~

~~committed the violations which are the basis for the suspension or revocation acted against the licensee's instructions in committing such violations."~~

**Vote Count for MCB2 Resolution 2 of 2: Dining Out NYC Regulations for Roadway Cafes**

Vote Passed with 30 Board Members in favor: S. Aaron, W. Benesh, K. Berger, C. Booth, K. Bordonaro, A. Brandt, R. Caccappolo, R. Chattree, V. De La Rosa, M. Fitzgerald, S. Fitzgerald, C. Flynn, S. Gammie, J. Horkey, S. Kent, I. Kwan Arce, P. Laraia, M. Levine, E. Olson, J. Osorio, B. Pape, D. Raftery, L. Rakoff, B. Riccobono, S. Secunda, F. Sigel, S. Smith, E. Smith, S. Wittenberg, A. Wong, 3 in opposition, and 5 abstentions.

We respectfully request that your agency take action consistent with the positions expressed in the above two resolutions.

Sincerely,



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



Susan Kent, Chair  
Manhattan Community Board 2

- c: Hon. Dan Goldman, Congressman  
Hon. Brian Kavanagh, NY State Senator  
Hon. Brad Hoylman-Sigal, NY State Senator  
Hon. Deborah J. Glick, NY State Assemblymember  
Hon. Grace Lee, NY State Assemblymember  
Hon. Harvey Epstein, NY State Assemblymember  
Hon. Jumaane Williams, NYC Public Advocate  
Hon. Brad Lander, NYC Comptroller  
Hon. Mark Levine, Manhattan Borough President  
Hon. Christopher Marte, New York City Council Member, District 1  
Hon. Carlina Rivera, New York City Council Member, District 2  
Hon. Erik Bottcher, New York City Council Member, District 3  
Hon. Gale Brewer, New York City Council Member, District 7  
Robin Forst, Manhattan Borough Director, Mayor's Office of Community Affairs  
Edward Pincar, Jr., Manhattan Borough Commissioner, NYCDOT  
Eleazar Bueno, Public Engagement Director, Open Restaurant Unit, NYCDOT