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OUTDOOR DINING WORKING GROUP

March 2024

The Outdoor Dining Working Group of Community Board 2, Manhattan held its monthly meeting on Tuesday, March 12 at 6:30PM in the conference room of the CB2 board office. This was a hybrid meeting.

Working Group Members Present: Valerie Ann De La Rosa (Chair), Carter Booth, Stella Fitzgerald, Donna Raftery, and Shirley Secunda.

Other CB2 Members Present: Susan Kent (Zoom), Brian Pape (Zoom), Matt Metzger (Zoom and in-person)

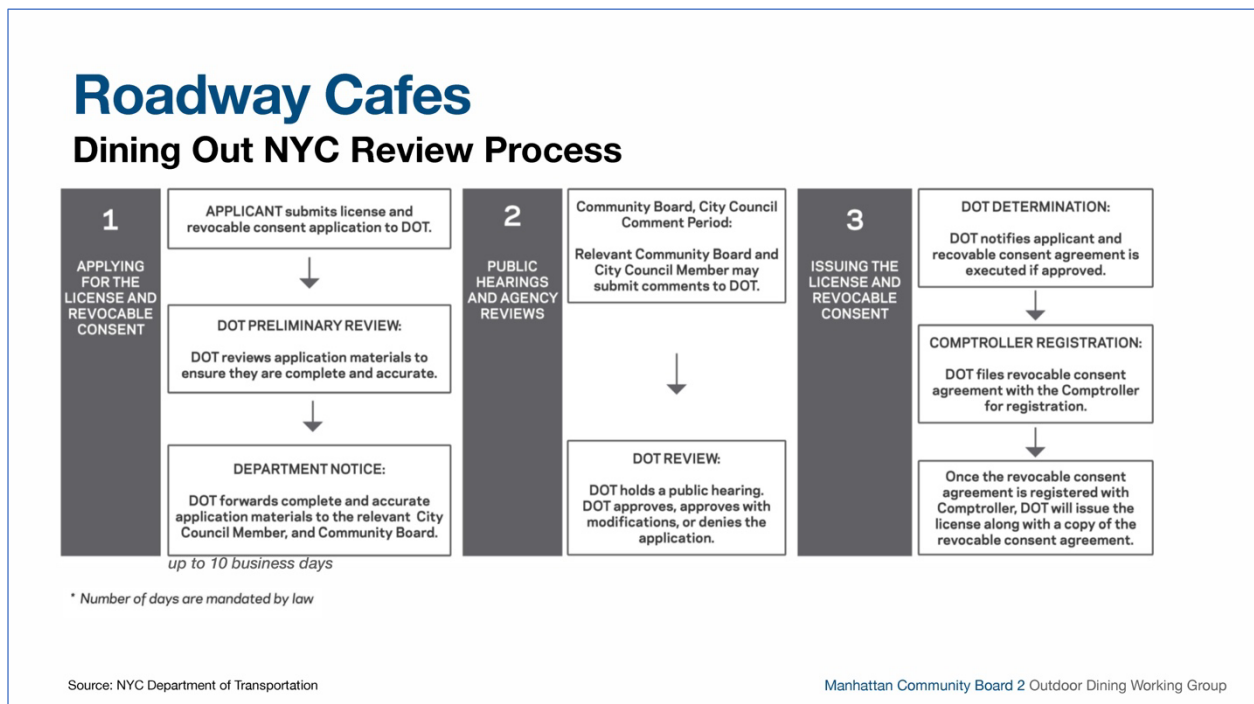
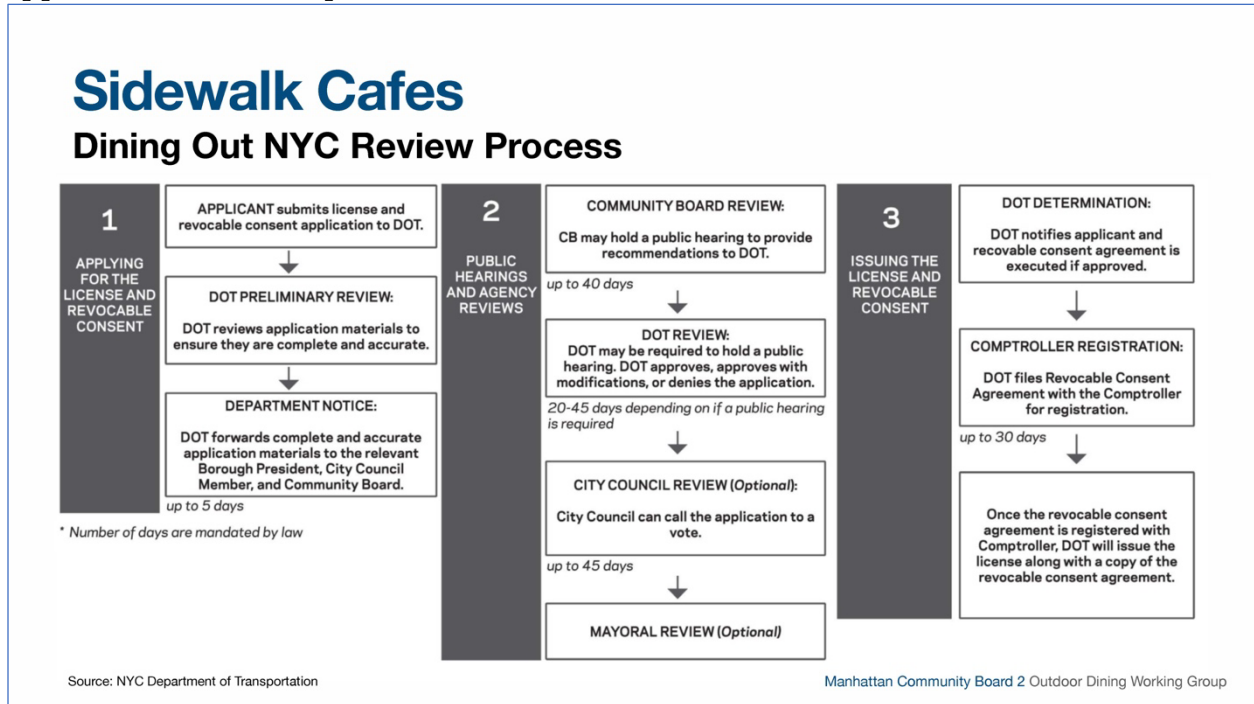
There are no resolutions from this meeting. The meeting report is as follows:

The meeting was called to order at 6:39PM by the Working Group Chair, Valerie Ann De La Rosa. There was a motion to adopt the agenda by Donna Raftery. The motion was seconded by Shirley Secunda.

There was one agenda item for this meeting: Process for reviewing Dining Out NYC (permanent outdoor dining program) applications for roadway and sidewalk cafes. This was not a public hearing.

The Dining Out NYC application portal opened on Tuesday, March 5 to receive roadway and sidewalk cafe applications. As of the date of this meeting and subsequently the writing of this report, no Dining Out NYC applications have been referred to CB2 for review yet. Applications are vetted for completeness by DOT before they are referred to community boards for review.

In order to understand how the CB2 Outdoor Dining Working Group will process applications, the DOT process was reviewed first:



Discussion about CB2 Review Process for Dining Out NYC sidewalk and roadway cafe applications

The Working Group discussed how we anticipate the applications will be received by the CB2 board office and how they will be distributed to the public. The rules and

legislation state that roadway cafe applications have a 30-day comment period by community boards and sidewalk cafe applications have a 40-day review period by community boards. Upon reviewing the application requirements, CB2 will issue one of the three following recommendations: Approve, Approve with Modifications, or Disapprove. It was noted that the rules state that DOT will hold a public hearing for all roadway cafe applications after the 30-day comment period for community boards.

Review of DOT Petition Requirements for Sidewalk Cafes and Roadway Cafes

The Working Group reviewed DOT's Petition Requirements for Sidewalk Cafes and Roadway Cafes: Petition Form, Owners Consent Form, Proof of Insurance Form, Pest Control Plan, Site Plan (Clearances, location of tables, and chairs, adjacent property line), and Photographs showing the entire area and adjacent areas.

Review of DOT Sidewalk Cafe Requirements: Siting, Clearances, Design, and Operations

The Working Group then reviewed DOT's Sidewalk Cafe Requirements, which fall into four categories: Siting, Clearances, Design, and Operations. A summary of that discussion follows below. *Note: the discussion below is not meant to be inclusive of every single requirement for a sidewalk cafe. For a full list of the requirements, please visit the Dining Out NYC website and review the Dining Out NYC amended rules document.*

Sidewalk Cafe Siting Requirements

For the siting of sidewalk cafes, applicants must be familiar with the DOT Pedestrian Mobility Plan and select which corridor category their street is classified as in the plan. The corridor category determines the size of the required clear path, not only for the Dining Out NYC program but for any other sidewalk use. In addition, the phrase "amenity zone" from the temporary outdoor dining program is now referred to as the "furnishing zone" both in the Pedestrian Mobility Plan as well as the Dining Out NYC rules. Other items of note from the DOT's sidewalk cafe siting requirements include that sidewalk cafes can only be adjacent to / directly in front of the ground floor restaurant's premises and located on a sidewalk or a sidewalk widening. A sidewalk cafe cannot be sited in the furnishing zone.

Sidewalk Cafe Clearance Requirements

Continuing the discussion on, DOT's clearance requirements for sidewalk cafes indicate that the clear path is greater than 50% of the sidewalk and for sidewalk cafes on Global Corridor streets, that requires a 12-foot clear path and for sidewalk cafes on Regional Corridor streets, that requires a 10-foot clear path. The Dining Out NYC rules also provide for some exceptions to Regional Corridor clear path requirements. Also falling under the Sidewalk Cafe clearance

requirements are clearances for obstructions such as tree pits, fire hydrants, fire escapes, residential entrances, etc. The full list is available in the amended rules for the Dining Out NYC program. One of the key differences from the pre-pandemic sidewalk cafe and the Dining Out NYC program is how clearances from tree pits are measured as it is more restrictive now than it was in the past.

Sidewalk Cafe Design Requirements

In regard to DOT design requirements for sidewalk cafes, a perimeter demarcation is required with a height of 2 feet and a width of 6 feet. Flooring for sidewalk cafes is required to be level with the sidewalk with no platform or flooring allowed and no ground cover. Furnishings are required to be lightweight and not permanently affixed. Lighting in a sidewalk café is only allowed within the perimeter and must be at least 14 feet above. Heaters can be used within sidewalk cafes. Overhead, sidewalk cafes can have an awning, an overhead covering, or an umbrella. And for advertisements, the name can be displayed on a limited surface area with no illumination.

Sidewalk Cafe Operations Requirements

DOT Operations requirements for sidewalk cafes outline the hours stated in both the rules and regulations, generally a midnight closing. Service for sidewalk cafes must take place within the mandatory perimeter demarcation. Applicants are required to have their sidewalk cafe in good order, which also means developing a plan to prevent excessive congregation of patrons. No smoking or electronic cigarettes are allowed to be used within sidewalk cafes. No musical instruments or sound reproduction or amplification devices are allowed to be used within sidewalk cafes; the NYC Noise Code should be cross-referenced. And lastly, as far as maintenance, no trash is allowed to be stored within or between sidewalk cafes.

Review of DOT Roadway Cafe Requirements: Siting, Clearances, Design, and Operations

The Working Group then reviewed DOT's Roadway Cafe Requirements, which fall into four categories: Siting, Clearances, Design, and Operations. A summary of that discussion follows below. *Note: the discussion below is not meant to be inclusive of every single requirement for a roadway cafe. For a full list of the requirements, please visit the Dining Out NYC website and review the Dining Out NYC amended rules document.*

Roadway Cafe Siting Requirements

DOT's siting requirements for roadway cafes focus on two things: what type of parking space is in front of the ground-floor restaurant and the dimensions of the roadway café in relation to its frontage. Roadway cafes can only be sited adjacent

to / directly in front of the premises, which means a roadway cafe cannot extend beyond the premises and per the Dining Out NYC rules, exceptions for an extension cannot be contracted out with a neighboring business. Parking spaces where roadway cafes are allowed: Metered and non-metered, commercial parking, alternate side parking, angled parking, floating parking lanes, and spaces with seasonal restrictions. The Dining Out NYC rules also outline types of parking spaces where roadway cafes are not allowed. The full list should be consulted in the amended rules. For the purposes of this meeting, the following prohibited parking spaces for roadway cafes outlined in the DOT rules were brought up as part of the discussion: Taxi stand, No Standing Anytime, No Standing Anytime during Specific Hours, No Stopping Anytime during Specific Hours, and Bus stops.

Regarding the dimensions, the maximum length for a roadway cafe is 40 feet. Adjacent roadway cafes that are 40 feet long require a minimum distance of 6 feet between one another. In addition, if the roadway cafe is 40 feet in length *and* adjacent to another cafe, the applicant is required to subtract 4 feet, 6 inches from the perimeter. Adjacent roadway cafes that are less than 40 feet long require a minimum distance of 3 feet from one another. If the roadway cafe is less than 40 feet *and* adjacent to another cafe, the applicant also subtracts 1 foot, 6 inches from the perimeter. The required 15-foot emergency travel lane was also discussed.

Roadway Cafe Clearance Requirements

As far as clearance requirements by DOT for roadway cafes, the same obstruction clearances that apply for sidewalk cafes also apply here. The furnishing zone must be clear. And no element of the roadway cafe may encroach on street trees or be attached to a street tree bed or street bed canopy.

Roadway Cafe Design Requirements

DOT's design requirements for roadway cafes cover several distinct areas. One of the biggest changes is that sand or gravel is not allowed in the barriers anymore. All barriers for roadway cafes must be filled with water and must be 30-42 inches high and 4 inches wide with three (3) outer side perimeters. A 4-inch reflective tape must be adhered to all three sides of the perimeter on the barriers. Flooring has to be lightweight and easily removable with no rugs or turf allowed and level with the curb with a 6-inch covered channel at the curb. Whether or not a roadway cafe has flooring or no flooring, the roadway café must be ADA accessible.

Furnishings in roadway cafes have to be lightweight and cannot permanently affixed with plantings a max of 46 inches in height. One key distinction is that

any element of a roadway cafe cannot be located within 50 feet of any regulatory or warning sign which includes but is not limited to a signage indicating Stop, Yield, One-Way, Wrong Way, Do Not Enter, Pedestrian Crossing, School Crossing, and Speed Limit.

Roadway Cafe Operations Requirements

When discussing the DOT operations requirements for roadway cafes, the discussion was similar to the sidewalk cafe operations requirements with the exception of the following maintenance and seasonality. Operators are required to keep clean the area of roadway 1.5 feet on all sides beyond the roadway café. For seasonality, the roadway cafes must be removed between November 30 – March 1. Operators must stop operating their roadway cafe on November 30 and have until December 7 (one week) to completely dismantle their roadway cafe. It is also understood that operators will have a week before March 1 to setup their roadway cafe for the upcoming season, but cannot operate until March 1. It is best to consult the Dining Out NYC amended rules for the exact dates.

Review of Enforcement

A general discussion about enforcement in Dining Out NYC was discussed. Per DOT's amended rules, once an applicant is approved for a roadway cafe or sidewalk cafe, they have up to 30 calendar days to bring their setups from the temporary program into compliance if they have an existing setup from the temporary program. DOT will be making a compliance check at the end of that 30-day period from approval. (Deadlines for taking down temporary outdoor dining setups are at the end of this document.) Violations in the Dining Out NYC program are called Corrective Action Requests (CAR). If a CAR is made by DOT (either at this time or any time throughout the 4-year license period), the licensee has a 30-day cure period before DOT issues a summons.

Issues that came up in the discussion of the Dining Out NYC requirements

After the discussion of the petition requirements, siting requirements, clearance requirements, design requirements, and operations requirements for roadway cafes and sidewalk cafes, the following issues were identified:

- It is not clear how applicants with roadway cafes in floating parking lanes in the middle of the street and across a bike lane are required to make their roadway café in the floating parking lane ADA accessible from both the sidewalk curb to the roadway and from the roadway into the actual roadway cafe itself.
- It is not clear exactly what DOT will be sending directly to community boards to review.

- It is not clear how operators applying for both a roadway cafe and a sidewalk cafe will be handled by DOT and community boards. Since the review period (40 days for sidewalk cafes) and comment period (30 days for roadway cafes) differ in duration, it is not clear if boards will have to review each application separately (twice for one operator) or if reviewed together, how many days boards have to review and comment on both the sidewalk and roadway café for one operator together.
- It is not clear in the DOT Dining Out NYC amended rules about required clearances for roadway cafes as it relates to bike lanes. There are two pieces of conflicting guidance in the amended rules. In one place, it says that roadway cafes can abut the white buffer line of the bike lane; however, another place in the rules says that roadway cafes must leave 6 inches in between. We are hopeful that the agency will clear up this confusion for applicants.
- It is not clear what is going to happen with the state law that prohibits the service of alcohol across a bike lane. This relates to roadway cafes that are sited in floating parking lanes. This law was not enforced by the city or the state during the temporary outdoor dining program.

What's next for the Outdoor Dining Working Group

The Working Group looks forward to continuing to develop and streamline a quick and efficient process for reviewing Dining Out NYC sidewalk and roadway cafe applications as we learn from DOT how this will roll out.

At the time of this meeting, the Working Group had a second meeting planned for Monday, March 18 to hear Dining Out NYC applications for roadway and sidewalk cafes. However, as of close of business on Friday, March 14, the board office had not received any applications for the Dining Out NYC program. The meeting for Monday, March 18 has been canceled.

Future meeting dates for the Outdoor Dining Working Group

Monday, April 8 Presentation of DOT Pedestrian Mobility Plan (information session)

Monday, May 13

Monday, June 10

Monday, July 8

Monday, August 12

September TBD

Other milestone dates regarding Dining Out NYC:

Tuesday, March 5, 2024	Dining Out NYC application portal opens for operators to apply for roadway cafe and sidewalk cafe applications
Tuesday, April 16, 2024	The Landmarks Preservation Commission (LPC) is holding a public hearing for the LPC proposed rules proposed amendments to Chapter 2 of Title 63 of the Rules of the City of New York, consisting of existing rules, including amendments relating to roadway and sidewalk cafes. It is understood that this is going to be handled the same way as the pre-pandemic sidewalk cafe program where anything related to a sidewalk cafe that touches a building in a historic district or on a landmarked building will be referred by NYC DOT to LPC.
Saturday, August 3, 2024	Deadline for restaurants operators with temporary outdoor dining setups to apply to continue operating until NYC DOT approves their Dining Out NYC application.
Friday, November 1, 2024	A temporary program outdoor dining setup that applied before August 3, 2024 must comply with the new Dining Out NYC design requirements by the earlier of: (i) 30 days after NYC DOT approves the Dining Out NYC application or (ii) November 1, 2024.

To view any of the documents or items referenced throughout this report, visit the CB2 Outdoor Dining page.

There was no new business.

A motion to adjourn by Carter Booth. The motion was seconded by Donna Raftery.

Respectfully,



Valerie Ann De La Rosa
Chair, Outdoor Dining Working Group