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**The City of New York
Community Board 8 Manhattan
Small Business Committee
Joint Meeting with Sanitation, Street Life, Transportation,
and Zoning and Development Committees
Monday, April 4, 2022 – 6:30pm
This meeting was conducted via Zoom**

Please note: The resolutions contained in the committee minutes are recommendations submitted by the committee chair to the Community Board. At the monthly full board meeting, the resolutions are discussed and voted upon by all members of Community Board 8 Manhattan.

MINUTES

Present: Ashby, Baron, Birnbaum, Bores, Camp, Cohn, Dangoor, Freeland, Lader, Mason, Patch, Phillips, Rudder, Schneider, Spagnoletti, Tamayo, Walsh, Weiner

Resolutions for Approval:

Item 2 – Open Restaurants Seat at the Table Resolution

1. Discussion of sanitation rules and fines that apply to small businesses with Joan Byrnes a representative of Department of Sanitation (DSNY)

DSNY discussed rules and fines that apply to small businesses. It included noting the rules around snow removal, including timing.

Various scenarios with garbage buildup around outdoor dining sheds was discussed & what can & should be done about it. DSNY reminded businesses that garbage may not be put out more than a specific amount of time prior to pick-up and may not interfere with ingress or egress to or from a residential building or other business.

Businesses have private carters do their collection & DSNY is not involved, but does the policing.

Joan noted that the City will be divided into regions, with three private caring companies competing for business in each of the areas.

Discussion then turned into interagency involvement in future rule making for the Open restaurants Program (ORP).

2. Discussion of rules CB8 would submit to the City Council and the lead agency for consideration in the rule-making process of the Open Restaurant Program.

Each committee made a presentation about the rules relating to that committee's subject. Sanitation rules were laid out by Joan Byrnes.

Prior to the discussion, there was a brief update of the Article 78 motion which the New York State Supreme Court granted, nullifying the Zoning Text Amendment for failure to write a proper

Environmental Impact Statement (EIS). As the Court stated, the City needs rules to determine if those rules will have an environmental impact.

Anthony Cohn, co-chair of the Zoning and Development Committee discussed the zoning rules as they apply to sidewalk cafés. Sidewalk café regulations were originally adopted in 1980. There are three types of sidewalk cafés —fully enclosed (permanent), unenclosed (large which must obtain clearances), small (1 table deep). Zoning designations were established which allowed for sidewalk cafés, but also prohibited on certain streets, including the major cross streets (East 72nd, 79th, and 86th). In June 2020, the temporary program was established by the Mayor through an Emergency Executive Order. The City Council voted in October to make the OPR permanent through amending the Zoning Resolution to eliminate the chapter relating to Sidewalk Cafés. This will have the effect of permitting sidewalk and roadway cafés throughout the city. The zoning text amendment was passed on February 22, 2022, but was nullified by the State Court, although the amendment was not to take effect until rules for sidewalk cafés and roadway dining were written and adopted. While a number of City Agencies might naturally lead the rulemaking and enforcement of OPR, no lead agency has yet been designated. Elizabeth Ashby, the other co-chair of Zoning and Development, reminded the attendees of a previous joint small business/zoning and development meeting in April 2021. She suggested making it clear that the Committee does not support the open restaurant program. She noted that the EIS is reflective of what the Applicant wants, and asked for a strong EIS.

Craig Lader, on behalf of Transportation, began with statement that changes were that the Department of Transportation (DOT) would allow restaurants to take over parking and sidewalk space as long as other uses were maintained, such as bus lanes, pedestrian clearance, fire hydrants. The proposed bill does not mention the Department of Consumer Affairs (DCA). It looks like DOT will monitor and implement the program.

There is an argument, by the Small Business Committee, that the Department of Consumer and Worker Protection (DCWP) should implement the rules since they were responsible for sidewalk café rules and enforcement.

Propane tanks and heaters were raised and a short summary of the Fire Department presentation stating that there are no safe ways to use propane tanks and heaters in restaurants at the City Council hearing was given.

DSNY's presentation noted that a number of City agencies are involved in decision-making. There was a motion for Community Boards to have a say in rule-writing. An alternative of a letter was raised. Need for CBs to be at the table was noted. DOT is the temporary lead agency. Common understanding of proposed rule is no sidewalk sheds, and no platforms or pallets. If sidewalk cafés are the width of the restaurants, the question was posed of where do the bags of trash go, since they must go in front of the restaurants.

There was a discussion of the resolution, with a discussion that there be both a letter and resolution.

The resolution was withdrawn following a motion to table.

There were emphatic comments of a need for CBs to be involved in the rule-making. Board members stated their beliefs that once rules are created, they will be impossible to change.

As a representative of the community, the Board's voice, a Board member stated, should be heard. Our opinions are important to rule-making one Board member explained. In addition, Manhattan is not an outer borough, and one size does not fit all.

There was general concern that because rules will have an impact on the community, community boards should be included in the decision-making process.

There was discussion of whether there is currently a process pursuant to the Citywide Administrative Procedure Act (CAPA) as to rules for restaurant structures in the roadway. A Board member referred to City Charter provisions allowing comments at a public hearing. However, it was noted that there should be specificity about what a seat at the table would look like. There was also concern that without rules and more information, addressing the open restaurant program is too speculative, although there is a shared view that there should be a seat at the table.

Concern was raised about DOT enforcement, with statements reflecting an overall lack of confidence in the DOT handling an Open Restaurant Program.

A member of the public suggested expanding a seat at the table to include restaurant owners and other small business owners.

Another resolution was proposed asking for participation of community boards when the rules are being written. There was further discussion of whether to write a letter or resolution.

Resolution

WHEREAS, CB8 has been supportive of the temporary Open Restaurants Program created during the COVID 19 pandemic and applauds the City for implementing a program which saved 100,000 jobs; and

WHEREAS, although the Open Restaurants Program enhanced the quality of life in our district in many ways during the COVID 19 pandemic, issues have been raised by the community including noise, garbage, vermin, safety concerns and the encroachment of sidewalk space by restaurants which should be fully addressed in the rules and design guidelines prior to implementation of the permanent Open Restaurant Program; and

WHEREAS, on April 4, 2022, the Sanitation, Small Business, Street Life, Transportation and Zoning and Development Committees of Community Board 8 Manhattan met jointly to discuss the City's Open Restaurant Program; and

WHEREAS, in February, 2022, the NYC Council approved zoning text changes eliminating sidewalk café regulations and expanding the area where outdoor dining can be considered to all NYC neighbors, the first step in making the Open Restaurant Program permanent; and

WHEREAS, Supreme Court Judge Nervo has issued an order halting implementation of the Open Restaurant Program until a further study is done on environmental impact citing that dining sheds have at a minimum impacted traffic and noise levels, and may have significantly impacted sanitation; and

WHEREAS, the program is set to take effect next year with various city agencies currently working to write rules which will govern the Open Restaurant Program; and

WHEREAS, Community Boards, on behalf of the community members who have been and will be affected by the Open Restaurant Program, have an inherent interest in the rules concerning Sidewalk Cafés and Open Restaurants – enclosed, unenclosed and small; and

WHEREAS, Community Boards should have "a seat at the table" and should have meaningful input to help draft proposed rules which will govern the permanent Open Restaurant Program; and

WHEREAS, in the past, enforcement of the existing rules, drafted during the COVID 19 emergency, has been very lax, necessitating that the lead agency communicate with all stakeholders on rules and then enforce them; and

WHEREAS, both the public and business owners have an interest in a successful program;

THEREFORE, BE IT RESOLVED that CB8 Manhattan be permitted to have meaningful input in the rule making process by providing comments, ideas and suggestions before rules covering the Open Restaurant Program are in an advanced draft; and

BE IT FURTHER RESOLVED that CB8 Manhattan be permitted to review and comment on design guidelines in the early stages of development of such guidelines as "one size does not fit all".

VOTE

For: 13 (Ashby, Baron, Birnbaum, Camp, Cohn, Freeland, Mason, Patch, Rudder, Spagnoletti, Tamayo, Walsh, Weiner)

No: 4 (Schneider, Bores, Phillips, Lader)

Abstain: 1 (Dangoor)

The issues are broad and not just transportation related, a Board member noted.

On propane heaters, the City will not allow new gas stoves in new construction in 2023, and 2027 (taller than seven stories) to reduce carbon emissions and use of fossil fuels. It doesn't make sense to allow propane given this ban, as one Board member explained. In addition, seasonal outdoor restaurants would not require heating.

Safety was noted as a concern. The sheds were not built in a safe manner, raising the issue of who bears liability if there is an accident in the outdoor restaurants. This applies to propane tanks as another Board member (Tamayo) noted. The new structures don't pay fees and don't necessarily have insurance. As the UES is the densest community, we need to ensure there is adequate sidewalk space. The quality of the streetscape is being reduced. The EIS generally do not address all issues, such as propane. We need a seat at the table, the Board member, emphasized to ensure all areas are covered.

Sanitation was also raised, with a need for accountability from restaurants.

Comments were made by other Board members about the restaurant's effective lobbying, lending an urgency to the Community Board having its voice heard.

A Board member raised the question of whether the Zoning Text Amendment is needed, asking whether all restaurants have opened outdoor dining. A co-chair of the Sanitation Committee responded that previously, restaurants had to apply for an outdoor café. Under the emergency, restaurants could extend beyond their restaurant's edges without approval. Some restaurants are hurting financially, others have been more successful. If all restaurants have not had an outdoor café, even with no zoning text amendment, the program would probably be expanded because the original zoning text would permit those restaurants that haven't expanded, to expand. The Board member raised the possibility of writing rules and making suggestions prior to the City agencies writing rules.

There was an interest in understanding why some Board members did not support a resolution for a voice in the decision-making process because the impact of the Open Restaurant Program is dramatic.

A representative of the East 86 Street Association has called for more regulation, including crash impact from vehicles, space confined to boundary of restaurants, ventilation. He supported the Board having a say in the restaurant program, as representing the community.

A co-chair of the Transportation Committee spoke in favor of that Committee being responsible for Open Restaurant Program resolutions because it has a strong history of responding to DOT initiatives and proposals. He expressed concern that there are rules on the DOT website that we could start from. One of the co-chairs responded that there are many issues, not just transportation, and that legislation is pending relating to propane heaters. The other co-chair responded that multiple agencies are involved, with multiple Board committees specializing in the various topics relating to open restaurant rules. She suggested inviting our Council Members Menin and Powers to tell us the timeline for rule-implementation. An affidavit from Julie Shipper, the head of the program, filed with the Court in the Article 78 proceeding specifies what some of the rules are. Shipper stated in the affidavit that there would be no more than three sides and no ceilings, and that the City Council passed legislation in early 2022 transferring authority to DOT for the program, that there would be revocable consents given, and that affected CBs and City Council Members would be notified for roadway cafés but would approve sidewalk cafés. The co-Chair read what was in the affidavit as statements about specific new rules.

The Transportation Committee co-chair called for a process to avoid asking for rules that have already been addressed the way that we want to.

The Sanitation Committee co-chair reminded the attendees that when the Zoning Text Amendment was proposed, the structures were to be three-sided, not ceiling, with DCAWP in charge of sidewalks, DOT for the roadways, but DOT did not enforce their own rules. If they didn't enforce them during this period, how can they be trusted to write and enforce the rules. There has been significant complaints about DOT's failure to enforce.

Another Board member, co-chair of HSSS, reminded the Board that the issues cross additional committees and that we need a unified front. She noted the difficulty of accessing sidewalks. She had proposed a letter rather than a resolution in order to demonstrate more unified response. She affirmed a need to continue discussions.

Some Board members expressed a view that there are certain issues that should be unanimous or close to unanimous in community consensus. Others don't believe unanimity is essential. There is concern that we work on big issues, even if there is no agreement on specific issues, everyone agrees that we are working for quality of life.

A Board member made a motion for a resolution that residents are as important to the community as restaurants, and that the rules in place prior to COVID should be in place for open restaurants and that quality of life is important for residents. There was a discussion on the quality-of-life intention in the resolution, and the intention to maintain the previous rules which the Board relied on in the approval process for sidewalk cafés.

There was clarification that the Board only voted on the Zoning Text Amendment in the fall of 2021, and not on rules. A Board member suggested writing a letter which would be less specific than a resolution.

On further discussion, motions were made which are included for voting on.

A second resolution was proposed to eliminate roadbed dining as is currently in place and to have sidewalk cafés follow pre-pandemic regulations that do not include structures with roofs attached to buildings. It was noted that the Eli's structure attached to the restaurant on the NW corner of 79th and Third. There was discussion about the Sojourn restaurant on 79th Street which has both a tent in front of the Synagogue and enclosed tables which is a permanent structure in front of the restaurant.

Resolution

WHEREAS, under the Permanent Open Restaurants text amendment by the Department of City Planning and Department of Transportation, proposed a zoning text amendment to remove regulations where sidewalk cafés can be located anywhere in NYC; and

WHEREAS, regulations were set forth for sidewalk and roadway café's to be reviewed by community boards; and

WHEREAS, the amendment to NYC zoning regulations for both sidewalk and roadway café's would be consolidated; and

WHEREAS, neither community boards nor community residents and businesses were included in any of the formulation of the zoning regulations and resolution with no input on the regulations and resolution; and

WHEREAS, and cb8 was asked to vote an up or down position with consideration for the above; and

WHEREAS, the community boards and community residents, civic groups and businesses need to be involved prior to any finalization of regulations; and

WHEREAS an enforcement of regulations under the emergency rules for outdoor cafés both sidewalk and road be cafés had no enforcement and have led to many safety issues; and

WHEREAS, the original guideline for outdoor café's had regulations and the community did have input when the rules were drawn; and

WHEREAS, the Department of Transportation had set forth an 11 point regulation and enforcement for the sidewalk cage's; and

WHEREAS, the regulations followed many of the points or the original rules for outdoor cafés and the road bed structures had regulations that were not followed or enforced; and

THEREFORE, BE IT RESOLVED, that CB8 Manhattan be part of the development of rules including review of the regulations prior to any final set of regulations; and

BE IT FURTHER RESOLVED that the regulations prior to the pandemic and the emergency declarations by the then mayor be reinstated for sidewalk café's including the zoning regulations and the 11-point criteria stated by DOT representative; and

BE IT FURTHER RESOLVED that given the public safety and public health issues created by roadbed café's, they will not be permitted in CB8Manhattan.

VOTE

For: 8 (Ashby, Baron, Cohn, Patch, Spagnoletti, Tamayo, Walsh, Weiner)

No: 7 (Lader, Schneider, Phillips, Bores, Mason, Rudder, Dangoor)

Abstain: 1 (Camp)

Note: This resolution did not pass.

New Business

A member of the public raised legislation that would require SBS to create a portal for small businesses for an accessible, easy to navigate site for information about all requirements and to speed up permits, with a request for Russell to raise it at Borough Board to get additional support. Council Member Menin will be invited to the next Small Business Committee meeting to discuss the legislation and answer questions.

There was discussion of prior streamlining of the permit process by DOB and a previous portal.

The meeting was adjourned at 9:43pm.