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**The City of New York  
Community Board 8 Manhattan**

May 19, 2022

Edward F. Pincar  
Manhattan Borough Commissioner  
Department of Transportation  
59 Maiden Lane, 37th Floor  
New York, NY 10038

**RE: General Permanent Open Restaurant Recommended Policies**

Dear Commissioner Pincar,

At the Full Board meeting of Community Board 8 Manhattan held on May 18, 2022, the board unanimously **APPROVED** the following resolution by a vote of 41 in favor, 0 opposed, 0 abstentions and 0 not voting for cause:

**WHEREAS;** New York City Department of Transportation has proposed a Permanent Open Restaurants Program to replace the emergency program enacted in 2020 as a pandemic response; and

**WHEREAS;** it is recognized that the emergency open restaurants program played a pivotal role in the survival of New York City's restaurant industry; and

**WHEREAS;** there are quality of life concerns that have arisen as a result of the emergency open restaurants program that are intended to be addressed in the Permanent Open Restaurants Program; and

**WHEREAS;** presentations provided to Community Boards in association with a related zoning text amendment included general information regarding the vision of the Permanent Open Restaurants Program and how it addresses quality of life concerns that have arisen in the emergency program; and

**WHEREAS;** the Environmental Assessment Statement developed for the related zoning text amendment included many specific policies and rules proposed for the Permanent Open Restaurants Program; and

**WHEREAS;** It is through the Citywide Administrative Procedure Act (CAPA) that the City will finalize and adopt formal rules relating to the permanent Open Restaurants program, including rules for outdoor dining structures in the roadway; and

**WHEREAS;** Community Board 8 passed a resolution in April 2022 requesting the ability to provide meaningful input in the rulemaking process; and

**WHEREAS;** Community Board 8 is concerned about ensuring that a Permanent Open Restaurants Program is sensitive to concerns regarding ADA accessibility, noise, sanitation, design standards, safety; and

**WHEREAS;** Enforcement of the emergency open restaurants program was inconsistent and needs to be improved under a permanent program; and

**WHEREAS;** Certain New York City Department of Transportation infrastructure, such as bikeshare docking stations, are movable and can be sited with sensitivity towards potential open restaurants;

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges that New York City adopt the following overarching rules for permanent outdoor dining:

- Limitations to the times of day in which open restaurants can operate, subject to Community Board input for each individual establishment;
- Adherence to all local, state, and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table heights, and clearance requirements;
- At least 8 feet of sidewalk clearance be provided to ensure pedestrian flow is not impeded;
- Prohibiting the use of propane heaters;
- Prohibiting fully enclosed structures;
- As a baseline, noise mitigation requirements for open restaurants should be no less restrictive than those applied to sidewalk cafes prior to the pandemic;
- Implementing additional appropriate noise mitigation measures, with community board input on such measures and requirements for each establishment;
- Promulgation of rules in accordance with the City Administrative Act that incorporate and enhance the existing DCWP sidewalk café controls;
- Referral of community noise disputes to alternative dispute resolution through the Mediating Establishment and Neighbor Disputes NYC program (MEND NYC);
- Highlighting for the restaurant community the license requirements that control noise (including the potential for termination of a license for non-compliance) through education and outreach such as an explicit “Code of Conduct” for potential licensees;
- NYCDOT to provide a dedicated full enforcement unit to enforce roadway structures, ADA Compliance, clear path compliance, and illegal use of amplified noise devices, with NYPD also providing enforcement of noise violations;
- Enforcement to be conducted in a uniform and consistent manner that allow units to investigate specific complaints but also broader geographic areas or corridors.

**BE IT FURTHER RESOLVED** that Community Board 8 requests that NYCDOT be required to be flexible and take the needs of restaurants into account in the siting of new and existing bike racks and other transportation infrastructure.

Please advise us of any action taken on this matter.

Sincerely,

*Russell Squire*

Russell Squire  
Chair

*Craig Lader and Charles Warren*

Craig Lader and Charles Warren  
Co-Chairs, Transportation Committee

cc: Honorable Eric Adams, Mayor of the City of New York  
Honorable Carolyn Maloney, 12th Congressional District Representative  
Honorable Mark Levine, Manhattan Borough President  
Honorable Liz Krueger, NYS Senator, 28th Senatorial District  
Honorable José M. Serrano, NYS Senator, 29th Senatorial District  
Honorable Dan Quart, NYS Assembly Member, 73rd Assembly District  
Honorable Rebecca Seawright, NYS Assembly Member 76th Assembly District  
Honorable Julie Menin, NYC Council Member, 5th Council District  
Honorable Keith Powers, NYC Council Member, 4th Council District