

Russell Squire  
Chair

Will Brightbill  
District Manager



505 Park Avenue, Suite 620  
New York, N.Y. 10022-1106  
(212) 758-4340  
(212) 758-4616 (Fax)  
www.cb8m.com – Website  
info@cb8m.com – E-Mail

**The City of New York**  
**Community Board 8 Manhattan**  
**Transportation Committee**  
Wednesday May 4, 2022, 6:30 PM  
*Conducted Remotely on 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.*

*Present:* Elizabeth Ashby, Michele Birnbaum, Lori Bores, Peter Borock (public member), Lorraine Brown, Saundra Coleman, Rebecca Dangoor, Paul Krikler, Craig Lader, John Phillips, Sharon Pope-Marshall, Rita Popper, Elizabeth Rose, Barry Schneider, Cos Spagnoletti, Lynne Strong-Shinozaki, Russell Squire, and Charles Warren.

*Absent (Excused):* Lori Bores, Billy Freeland, and Valerie Mason.

**Resolutions for Approval:**

**Item 2: Recommended Policies for the Proposed Permanent Open Restaurant Program:**

***Resolution 1 - General Permanent Open Restaurant Recommended Policies***

***Resolution 2 – Permanent Open Restaurant Frontage Policies***

***Resolution 3 –Additional General Permanent Open Restaurant Policies (Unanimous)***

***Resolution 4 –Sidewalk Café Permanent Open Restaurant Policies (Unanimous)***

***Resolution 5 –Roadway Dining Permanent Open Restaurant Policies (Unanimous)***

***Resolution 6 – Additional Recommended Noise Mitigation Policies (Unanimous)***

***Resolution 7 – Other Additional Siting Policies (Unanimous)***

The meeting was called to order at 6:32 PM.

**Item 1: Discussion with Council Member Julie Menin regarding pedestrian safety and potential measures to Improve Intersections and Implement Traffic Calming**

District 5 Council Member Julie Menin provided an update on initiatives she is working on regrading traffic calming, intersection improvements and pedestrian safety. She noted that the 19<sup>th</sup> Precinct, which covers Community District 8, has the highest number of fatalities and injuries in all of Manhattan, and that she conducted a walk-through of the community with NYCDOT Commissioner Ydonis Rodriguez to show him certain dangerous conditions at intersections along 1<sup>st</sup> Avenue. She stated that she gave Commissioner Rodriguez a list of 45 intersections in the district that should be prioritized for safety improvements and urged measures such as signals with leading pedestrian intervals, Barnes dance, split phases, along with raised crosswalks and offset crossings. She noted that a Barnes dance has been installed at 76<sup>th</sup> St./3<sup>rd</sup> Ave., and hopes that additional improvements will be made as part of an initiative announced by Mayor Eric Adams to improve 1,000 intersections across NYC.

Councilwoman Menin also stated that she is working with Councilwoman Julie Won to address concerns regarding the Queensboro Bridge Upper Roadway Deck Replacement project, and the impacts on traffic and the north outer roadway that is used by bicyclists and pedestrians; she noted that a meeting to discuss the issue was scheduled for the week of May 9<sup>th</sup>. She also highlighted her support for home rule for traffic safety, which would allow NYC to have control of traffic enforcement cameras that will remain under New York State jurisdiction until legislative action occurs.

Following her prepared remarks, Councilwoman Menin took questions from meeting attendees and board members. Comments and issues brought up included:

- Various speakers spoke of pedestrian safety concerns and expressed support for Councilwoman Menin's proposals for traffic calming and intersection improvements; one member spoke of the need to improve 3<sup>rd</sup> Avenue to make it safer for pedestrians; Councilwoman Menin said that anyone with a suggestion of intersections to focus on should forward those suggestions to her; she also said in response to a question regarding the timing of the implementation of the raised crosswalks that constituents and Community Board 8 should take actions to emphasize the importance of expedient action.
- Various speakers brought up concerns about unsafe conditions for pedestrians due to behavior of persons on bicycles, scooters, skateboards, etc., and their interest in State elected officials supporting potential bike licensing/registration efforts. Councilwoman Menin said she would speak to the 19<sup>th</sup> precinct on local safety measures;
- The need for protected crosstown bike lanes, especially in the 70s; Councilwoman Menin said she believes any bike lane needs to be truly protected and that she is happy to work with CB8 on this issue;
- A member described streets that are dark, and roadbeds are uneven, creating unsafe conditions; this is especially the case on 2<sup>nd</sup> Avenue between 86<sup>th</sup> and 96<sup>th</sup> Streets;
- A member wished to see bike safety taught in schools. Councilwoman Menin advised that State law actually requires bike safety be taught in schools, but she is calling for a resolution asking for that law to be enforced.
- There was concern expressed about safety in the New York City Subway system; Councilwoman Menin said this is a top priority and emphasized how important it is that passengers feel safe on public transportation.

## **Item 2: Proposed Open Restaurants (POR) Program - CB8 to Provide Feedback on Proposed Guidelines and Policies that have been previously identified**

Following the passage of a resolution by Community Board 8 in April 2022 in which it was requested that CB8 have the ability to provide meaningful input in the rulemaking process for NYCDOT's proposed permanent Open Restaurant (POR) Program in advance of the release of draft rules, the Committee conducted a comprehensive review of previously announced proposed rules and policies. The primary source of these proposed rules and policies was the Environmental Impact Assessment (EAS) that was prepared in association with the related zoning text amendment process; additional information was also obtained from other past public presentations and the NYCDOT webpage.

The proposed rules and policies were summarized in a fact sheet developed by one of the Transportation Committee Co-Chair, which broke out the proposed policies that would be applicable to both roadway and sidewalk dining, specific to roadway dining, specific to sidewalk cafes, noise mitigation, and detailed siting rules for roadways and sidewalks. This fact sheet is attached as an appendix to this document.

### ***SUMMARY OF DISCUSSION BY TOPIC:***

***Size and Extent of Outdoor Seating Area*** – For sidewalk cafes, the proposed POR rules would require the outdoor seating space to be contained within the frontage of the business; for roadways, the guidance was less clear as to what restrictions would exist. The Committee discussed this issue at length. There were concerns expressed that restaurants with narrow storefronts would be very limited if they were only permitted to use their frontage area, with strong interest expressed in continuing the current temporary program's approach where restaurants are permitted to use frontage in front of an adjacent business, with permission, to provide outdoor seating. One member supported such expansion only on the sidewalk and was entirely opposed to any roadway dining; another member opposed use of any sidewalk or roadway space extending beyond a restaurant's frontage.

***Restaurants impacted by conflicting street/sidewalk uses or infrastructure*** – POR would adhere to strict siting guidelines to prevent encroachment on (Citi Bike) bikeshare docking stations, bike Lanes, bus lanes, bus stops, taxi stands, designated car share parking spaces, and "No Standing" and "No Stopping" zones. Following up on

prior Transportation Committee discussions regarding such situations faced during the current emergency Open Restaurants Program, a member suggested language be include in the resolution asking NYCDOT to be flexible and take the needs of restaurants into account in the siting of new and existing bike racks and other transportation infrastructure.

***Propane Heaters***– The POR program would prohibit the use of propane heaters for both sidewalk and roadway seating. Aside from one member questioning whether this proposal lacked hard evidence as to its potential danger, there was support for this prohibition.

***Seasonality & Electric/Natural Gas Heating***– POR is to be a seasonal program; the policies specify that sidewalk seating would be generally unenclosed and not designed for winterization, and the proposed roadway seating would only be permitted for months when roadway snow plowing activities are generally not required to prevent impacts to roadway traffic. While food establishments would be permitted to install outdoor comfort heating equipment to serve new sidewalk seating locations, these would be limited to radiant heaters fueled by electricity or natural gas. Comfort heating equipment would not be allowed in roadway seating areas, as they would not be used during the coldest months on the year. The Committee largely agreed with these proposed program parameters.

***Permanent Fully Enclosed Structures*** – POR would strictly prohibit permanent fully enclosed structures like those that have been built in roadways under the temporary emergency Open Restaurants Program; there was consensus among Committee members in support of this prohibition.

***Enforcement*** – The POR program proposes a full NYCDOT enforcement unit to enforce roadway structures, ADA Compliance, clear path, and amplified noise devices; NYPD would also assist in enforcing noise. There were comments raised regarding the insufficient and inconsistent enforcement of the current emergency open restaurants program, and how critical it was that POR has uniform enforcement measures that allow units to investigate specific complaints but also broader geographic areas or corridors.

***Accessibility/ADA Compliance & Clear Path Policies*** – POR contains language specifying that participating restaurants must adhere to all local, state, and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table heights, and clearance requirements, and that the NYCDOT enforcement unit will include carry out enforcement. The proposed POR policies include language establishing an 8’ clear path requirement, with certain central business district (CBD) locations requiring 12’; a 50% clear path rule requiring wider sidewalks where 50% of the sidewalk width is more than the respective minimum clear path requirement; and the ability for restaurants to apply for waivers to achieve a 6’ clear path as long as accessibility and pedestrian flow is maintained. The proposed rules also specify that ADA accessibility to roadway dining be achieved via a ramp or platform.

Multiple members expressed the importance of compliance of clear path requirements, which have not been sufficiently enforced in the current emergency open restaurant program. A representative of the Madison Avenue BID explained the boundaries of the “central business district” are not defined, and expressed concern that certain areas in the lower 60s and upper 50s would no longer be able to operate sidewalk cafes; the Committee agreed that clear paths for sidewalk cafes should be determined in the same manner as the pre-pandemic sidewalk café program, that any restaurant with a sidewalk café that is in a CBD with a 12’ clearance requirement should be they should be no more restrictive than before the pandemic, and that the 6’ clearance in areas with “low pedestrian volumes” should not be any more restrictive than pre-pandemic but must be fully ADA accessible.

In regards to accessibility for roadway dining, given the Committee’s opposition to platforms being used due to concerns about permanency and rodent control, there was agreement that ADA accessibility to roadway dining would be exclusively via ramp.

***Noise*** – In addition to a NYCDOT unit that will enforce POR policies and NYPD conducting noise enforcement, POR is proposed to have numerous additional policies to promote noise control and mitigation. The POR program would require controls that include specific measures that in combination would restrict noise-producing behavior associated with outdoor restaurant seating and avoid the potential for noise impacts. NYCDOT proposes

to institute these above controls through the promulgation of rules in accordance with the City Administrative Procedure Act that incorporate the existing DCWP sidewalk café controls and promulgate new rules that go beyond the controls in the existing DCWP sidewalk café program. NYCDOT will coordinate with other City agencies to resolve compliance issues, and commit resources, including new inspectors, to ensure compliance with these requirements.

While the proposed POR rules were viewed favorably and supported, there was significant discussion regarding how to further ensure that quality of life would not be impacted as a result of POR. There was strong agreement among meeting participants that clear limits were necessary to prevent unwanted noise that impacts quality of life, especially at night. It was determined that as a general policy noise mitigation measures to be put into effect must include times after which open restaurant seating would be closed, that community board input on such measures must be incorporated into the process for approving open restaurant applications, with a general policy that POR should be no less restrictive than the rules that applied to sidewalk cafes prior to the pandemic, that amplified noise would not be permitted; to prevent sound from inside the restaurant being disruptive, it was also agreed upon that policies regarding the time at which windows must be closed would be consistent with existing regulations, and no later than currently permitted.

***Hours of Operation*** – There was support for limitations of time in which open restaurants can operate, subject to Community Board input for each establishment; the Committee also accepts the proposed rule mandating that seating areas be used to serve restaurant patrons only during restaurant hours of operations and not be publicly accessible outside of restaurant hours.

***Trash/Sanitation Issues*** – POR includes provisions that would require participating restaurants to keep the interior of their roadway dining areas clean, be responsible for cleaning up to 18 inches along the outside of their roadway dining setouts to prevent the accumulation of litter around the exterior of these areas, and to clean along the curb line for 8 feet in either direction from the edges of their roadway dining set out to prevent litter accumulation in areas made inaccessible by DSNY mechanical brooms due to minimum turning radius.

Members of the Committee were in agreement with the proposed policies. One member further noted that standardized garbage cans would be conducive to garbage collection, and also suggested that the Department of Sanitation should provide their feedback on the proposed POR program and identify barriers that may present challenges in regards to keeping areas clean and free of rodents. One member who owns a restaurant emphasized that the onus should be on restaurant owners to keep outdoor dining areas clean. A member suggested that some area be dedicated to storing trash so that it doesn't end up in front of a neighboring business or residence.

***Community Board Input*** – The POR proposed guidelines did not specify the manner in which Community Boards may be involved in reviewing open restaurant applications or establishing stipulations that participating restaurants must adhere such as the hours in which a particular restaurant may operate sidewalk cafes or roadway seating. Committee members agreed that POR should maintain Community Board input and review processes for sidewalk café applicants that were in place pre-pandemic and establish similar Community Board input and review processes for roadway dining applicants if roadway dining is enacted and implemented. The Chair of CB8 indicated that the Street Life Committee would continue to be responsible for reviewing Sidewalk Café applications.

***Roadway Safety Issues*** – There were some comments by meeting attendees and members in regards to safety concerns that should be addressed in the rulemaking process for POR. One member identified as a concern instances in which buses make turns in proximity to roadway dining, especially when located near bus stops or lanes that buses turn onto. The Committee agreed that rules ensuring that the turning radius of buses and the visibility is sufficient to not be a safety threat to diners be established. Another member highlighted concerns on narrow east/west cross streets in which roadway dining is in place at establishments directly across the street from one another and ensuring there is enough road space to not impede vehicular flow, especially when a vehicle is stopped to pick up or discharge passengers or to make a delivery.

***Other Issues Specific to Sidewalk Cafes*** – In addition to other aforementioned issues, the Committee supported proposed POR rules mandating that sidewalk café seating would be kept clear of the amenity zone (the portion of

the public right-of-way between the curb and the sidewalk that is outside of the pedestrian walking area), and must be situated up against the wall (or as close as possible) of the business.

***Other Issues Specific to Roadway Dining*** – In addition to other aforementioned issues, the Committee supported proposed POR rules mandating that roadway seating not extend more than 8’ from the curb line, be fully contained within the parking lane, that all seating and any protection would be fully contained within the parking lane and would be prohibited from encroaching on any bike lane, vehicle travel lane, or painted buffer, that a minimum 18-inch wide and 30 to 36-inch high protective barrier, such as planters or objects of similar size and weight, be required on all three sides of the seating perimeter that are in the roadway in order to separate the seating from the travel lane, and that any established offset distances from obstructions and infrastructure be adhered to.

In deference to members that are not supportive of the roadway program, the Committee agreed to add language in the resolution indicating that any policies regarding roadway dining are recommended if roadway dining is ultimately enacted.

***Lead Agency*** - A question that had previously arisen regarded which agency would be responsible for oversight of the Permanent Open Restaurants program. There was some uncertainty resulting from the City Council’s action to approve the zoning text amendment related to POR, as the action included legislative language that other “authorized agencies” other than NYCDOT may be involved in the rulemaking process. In response, one of the Co-Chairs indicated that he spoke with the NYCDOT Deputy Manhattan Borough Commissioner, who confirmed that it would be NYCDOT with oversight of both the roadway and sidewalk café components.

***Other Siting Details*** – The EAS included detailed proposed siting requirements for both sidewalk cafes and roadway dining. The Committee did not take any action at this time, but did agree that rules should be determined by the appropriate agencies with jurisdiction over specific siting matters, i.e. the New York Fire Department making recommendations in regards to proximity to fire hydrants.

NYCDOT has promised that they will come back to the Committee before rules are finalized.

The following resolutions were put forward by CB8:

#### **RESOLUTION 1 – GENERAL PERMANENT OPEN RESTAURANT RECOMMENDED POLICIES**

**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 flexible and take the needs of restaurants into account in the siting of new and existing bike racks and other transportation infrastructure.

*Yes (16+1):* Ashby, Birnbaum, Bores, Brown, Coleman, Dangoor, Krikler, Lader, Phillips, Pope-Marshall, Popper, Rose, Schneider, Strong-Shinozaki, Squire, Warren, Borock (public member)

*No (1):* Spagnoletti

*Abstain (0):* None

## **RESOLUTION 2 – PERMANENT OPEN RESTAURANT FRONTAGE POLICIES**

**WHEREAS;** the Permanent Open Restaurants Environmental Assessment Statement included proposed policies limiting the extent to which sidewalk cafes can operate to the frontage of their business; and

**WHEREAS;** the emergency Open Restaurants Program permitted restaurants to use sidewalk and roadway space of adjacent businesses with permission; and

**WHEREAS;** limiting restaurants to their frontage would put some businesses at a competitive disadvantage if they had a narrow storefront; and

**WHEREAS;** the Permanent Open Restaurant program would be more restrictive than the emergency program in regards to proximity to conflicting street/sidewalk uses or infrastructure; and

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges NYCDOT to establish Permanent Open Restaurant Rules that allow program participants to use their frontage and the frontage of one adjacent business (with the permission of the adjacent business) for both the sidewalk cafes program and roadway dining program if enacted;

*Yes (16+1):* Ashby, Bores, Brown, Coleman, Dangoor, Krikler, Lader, Phillips, Pope-Marshall, Popper, Rose, Schneider, Spagnoletti, Strong-Shinozaki, Squire, Warren, Borock (public member)

*No (1):* Birnbaum

*Abstain (0):* None

---

## **RESOLUTION 3 – ADDITIONAL GENERAL PERMANENT OPEN RESTAURANT POLICIES**

**WHEREAS;** the Permanent Open Restaurants Environmental Assessment Statement included proposed administrative policies regarding health, safety and landmarks; and

**WHEREAS;** Community Board 8 supports such rules, as long as Community Board input is incorporated into the review process for open restaurants;

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges NYCDOT to establish the following proposed Permanent Open Restaurant Rules:

- Eligibility would be limited to restaurants with an active Department of Health and Mental Hygiene (DOHMH) food service establishment license and ground floor frontage;
- Participating restaurants shall adhere to all applicable guidance issued by NYCDOT, DOHMH, the New York State Department of Health, and the State Liquor Authority; and
- Seating within a Historical District would continue to be subject to LPC review and Community Board Input through LPC's FasTrack Service or a similar program, and LPC would issue guidance on what kinds of sidewalk or roadway restaurant seating perimeters would be approved for installation;
- The installation of sidewalk and roadway restaurant seating adjacent to an individual architectural resource or within a S/NR-listed or S/NR-eligible historic district would not be subject to LPC review (except in the unusual case where the Landmark site of an individual NYCL includes the sidewalk) but should require Community Board input.

*Yes (17+1):* Ashby, Birnbaum, Bores, Brown, Coleman, Dangoor, Krikler, Lader, Phillips, Pope-Marshall, Popper, Rose, Schneider, Spagnoletti, Strong-Shinozaki, Squire, Warren, Borock (public member)

No (0): None

Abstain (0): None

---

**RESOLUTION 4 –SIDEWALK CAFÉ PERMANENT OPEN RESTAURANT POLICIES**

**WHEREAS;** New York City Department of Transportation has proposed changes to the sidewalk café program under the Permanent Open Restaurants Program; and

**WHEREAS;** Community Board 8 has long established policies regarding sidewalk cafes that have worked well for Community District 8; and

**WHEREAS;** Community Board 8 seeks to ensure that restaurants that had legal sidewalk cafes prior to the Covid-19 pandemic are able to continue their sidewalk operations to the same degree as at they did pre-pandemic; and

**WHEREAS;** There have been concerns raised regarding the sidewalk café element of the emergency Open Restaurants program regarding overbuilt structures and encroachment of structures on pedestrian flow resulting from narrow sidewalks; 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 regarding sidewalk cafes that are reasonable and appropriate;

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges NYCDOT to establish the following additional proposed Permanent Open Restaurant Rules specific to sidewalk cafes:

- Sidewalk cafes should be subject to Community Board input in the same way they were pre-pandemic;
- Establishment of clear path guidelines should be determined in the same manner as they were pre-pandemic;
- Clear path measurements should be based off of occupied sidewalk café seating;
- Sidewalk cafes should be situated up against the wall (or as close as possible) of the business;
- Seating must be kept clear of the amenity zone (the portion of the public right-of-way between the curb and the sidewalk that is outside of the pedestrian walking area);
- A minimum established clear path of at least 8 feet for pedestrians shall be maintained, except that restaurants in certain locations with low pedestrian volumes shall be able to apply for a waiver to achieve a minimum clear path width of 6 feet, so long as the applicant can demonstrate that pedestrian flow and accessibility needs can be met and are considered fully ADA accessible, and with eligibility for a 6-foot clear path no less restrictive than the rules that applied pre-pandemic;
- A 50 percent clear path rule would apply that would require wider than 8-foot or 12-foot clear paths on sidewalks where 50 percent of the sidewalk width is greater than these respective minimum clear path widths; so as long as the policies are no more restrictive than pre-pandemic;
- Any restaurant located in a central business district (CBD) location should be subject to clear path requirements that are no more restrictive than pre-pandemic;
- While food establishments may install outdoor comfort heating equipment to serve new sidewalk seating locations, these would be limited to radiant heaters fueled by electricity or natural gas;
- Seating would be generally unenclosed and not designed for winterization.

Yes (15+1): Ashby, Birnbaum, Bores, Brown, Coleman, Krikler, Lader, Phillips, Pope-Marshall, Popper, Schneider, Spagnoletti, Strong-Shinozaki, Squire, Warren, Borock (public member)

No (0): None

Abstain (0): None



---

## **RESOLUTION 5 –ROADWAY DINING PERMANENT OPEN RESTAURANT POLICIES**

**WHEREAS;** New York City Department of Transportation has proposed roadway dining be permitted under the Permanent Open Restaurants Program; and

**WHEREAS;** There have been concerns raised regarding the roadway dining program in the emergency Open Restaurants program regarding overbuilt structures, insufficient upkeep, patron safety, safety of heating elements, siting of roadway dining areas and impacts on quality of life;

**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 regarding roadway dining that are reasonable and appropriate;

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges NYCDOT to establish the following additional proposed Permanent Open Restaurant Rules specific to roadway dining if a roadway dining program is enacted:

- Roadway dining should be limited to no farther than 8 feet from the curb line;
- All roadway seating and any protection must be fully contained within the parking lane and be prohibited from encroaching on any bike lane, vehicle travel lane, or painted buffer;
- A minimum 18-inch wide and 30 to 36-inch high protective barrier, such as planters or objects of similar size and weight, should be required on all three sides of the seating perimeter that are in the roadway in order to separate the seating from the travel lane;
- Any established offset distances from obstructions and infrastructure should be maintained;
- Roadway dining shall be prohibited from No Standing Anytime and No Stopping Anytime zones, as well as bus lanes or stops, taxi stands, or designated car share parking spaces;
- Roadway seating shall only be permitted for months when roadway snow plowing activities are generally not required, and comfort heating equipment shall not be allowed in roadway seating areas, to conform with policies limiting the Permanent Open Restaurants program to operate seasonally and not during the coldest months on the year;
- Roadway seating areas shall only be used to serve restaurant patrons during restaurant hours of operations and not be publicly accessible outside of restaurant hours;
- Restaurants that are permitted to set up roadway seating shall be required to keep the interior of their roadway dining areas clean, and also be responsible for cleaning up to 18 inches along the outside of their roadway dining setouts to prevent the accumulation of litter around the exterior of these areas;
- Restaurants that are permitted to set up roadway seating would also be required to clean along the curbline for 8 feet in either direction from the edges of their roadway dining set out to prevent litter accumulation in areas made inaccessible by DSNY mechanical brooms due to minimum turning radius;
- Roadway seating shall be set up on the roadbed, with platforms not permitted and ADA compliant accessibility to be provided via ramps;
- Roadway seating siting shall be account for the turning radius of buses and associated visibility to protect the safety of diners;
- Roadway seating applications shall be subject to Community Board review just as Sidewalk Cafes are vetted;

*Yes (15+1):* Ashby, Birnbaum, Bores, Brown, Coleman, Dangoor, Krikler, Lader, Pope-Marshall, Popper, Schneider, Spagnoletti, Strong-Shinozaki, Squire, Warren, Borock (public member)

*No (0):* None

*Abstain (0):* None

## **RESOLUTION 6 – ADDITIONAL RECOMMENDED NOISE MITIGATION POLICIES**

**WHEREAS;** amplified sound is not permitted for use under the emergency Open Restaurants program, and was not permitted for use at sidewalk cafes pre-pandemic; and

**WHEREAS;** Community Board 8 Manhattan is concerned about quality of life impacts of the proposed Permanent Open Restaurants Program caused by excessive noise, especially at night; and

**WHEREAS;** Community Board 8 Manhattan has established policies in place for sidewalk cafes regarding noise control; and

**WHEREAS;** the Permanent Open Restaurant Zoning Text Amendment Environmental Assessment Statement identified a series of reasonable proposed noise control measures;

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges NYCDOT to prohibit any amplified sound from being permitted for use under the Permanent Open Restaurant Program;

**BE IT FURTHER RESOLVED,** that Community Board 8 Manhattan requests the Permanent Open Restaurants Program rules require windows to be closed no later than currently permitted, and that determination of closure times be consistent with existing procedures and with input from Community Boards;

**BE IT FURTHER RESOLVED,** that Community Board 8 Manhattan supports noise control and mitigation measures identified in the Permanent Open Restaurant Zoning Text Amendment Environmental Assessment Statement to be implemented through the promulgation of rules in accordance with the City Administrative Procedure Act that incorporate the existing DCWP sidewalk café controls, including:

- Prohibition on amplified sound within roadway, sidewalk, and interior Open Restaurant spaces per 6 RCNY 2-53(f) and 57(b);
- Prohibition on excessive congregation within or immediately adjacent to Open Restaurant setups per 6 RCNY 2-51(a) and (b);
- Prohibition of exceedance of maximum occupancy within Open Restaurants areas pursuant to license requirements for seating and table limits per 6 RCNY 2-51(a) and (b); and
- Prohibition on party noise and disorderly conduct per 6 RCNY 2-57 (b), (e) and (f).

*Yes (15+1):* Ashby, Birnbaum, Bores, Brown, Coleman, Dangoor, Krikler, Lader, Pope-Marshall, Popper, Schneider, Spagnoletti, Strong-Shinozaki, Squire, Warren, Borock (public member)

*No (0):* None

*Abstain (0):* None

---

## **RESOLUTION 7 – OTHER ADDITIONAL SITING POLICIES**

**WHEREAS;** the Permanent Open Restaurant Zoning Text Amendment Environmental Assessment Statement identified a series of proposed specific siting rules for sidewalk cafes and roadway dining; and

**WHEREAS;** the expertise of stakeholder city agencies with jurisdiction over assets and infrastructure should guide any specific siting rules regarding outdoor dining;

**THEREFORE, BE IT RESOLVED,** that Community Board 8 urges NYCDOT request the appropriate agencies with jurisdiction over specific siting matters develop siting rules.

*Yes (15+1):* Ashby, Birnbaum, Brown, Coleman, Dangoor, Krikler, Lader, Phillips, Pope-Marshall, Popper, Schneider, Spagnoletti, Strong-Shinozaki, Squire, Warren, Borock (public member)

No (0): None

Abstain (0): None

---

### **Item 3: NYCDOT Updates**

NYCDOT staff in attendance had to depart the meeting prior to this item, and thus no updates were provided.

### **Item 4: Old and New Business**

A public attendee asked whether there were any updates or plans for community outreach regarding the East River Esplanade rehabilitation project between 81<sup>st</sup> and 90<sup>th</sup> Streets, which will be performed by NYCDOT and will result in impacts during construction to the FDR Drive, Esplanade users, and residents of buildings fronting the Esplanade. One of the Co-Chairs of CB8's Parks & Waterfront Committee, which hosted the original presentation on the project, said that an update would be provided at its May 10<sup>th</sup> meeting.

A public attendee noted there is a homeless encampment at the 96<sup>th</sup> Street "Q" Subway Station and was urged to send info to the District Office.

A member requested an update on the speed bump study that was requested on 92<sup>nd</sup> Street between 3<sup>rd</sup> Avenue and 2<sup>nd</sup> Avenues.

One of the Co-Chairs announced that representatives from Extell have accepted an invitation to discuss transportation issues related to their HSS Medical Office Building project at 79<sup>th</sup> Street/1<sup>st</sup> Avenue at the June meeting of the Transportation Committee.

There being no further business, the meeting was adjourned at 10:02.

Respectfully submitted,

*Charles Warren & Craig Lader, Co-Chairs*

## **Appendix:**

### **Fact Sheet: Key Proposed Permanent Open Restaurant Program Policies and Rules Noted in the Environmental Assessment Statement**

#### **Proposed Permanent Open Restaurant Policies Applicable to BOTH Sidewalk and Roadway Seating:**

- Must adhere to all local, state, and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table heights, and clearance requirements;
- Propane heaters would not be allowed
- Permanent fully enclosed structures would be prohibited
- Eligibility would be limited to restaurants with an active Department of Health and Mental Hygiene (DOHMH) food service establishment license and ground floor frontage;
- Must adhere to all applicable guidance issued by NYCDOT, DOHMH, the New York State Department of Health, and the State Liquor Authority; and
- Seating within a Historical District would be continued to be subject to LPC review (as currently required) through LPC's FasTrack Service or a similar program. LPC would issue guidance on what kinds of sidewalk or roadway restaurant seating perimeters would be approved for installation
- The installation of sidewalk and roadway restaurant seating adjacent to an individual architectural resource or within a S/NR-listed or S/NR-eligible historic district would not be subject to LPC review (except in the unusual case where the Landmark site of an individual NYCL includes the sidewalk)
- Full NYCDOT enforcement unit to enforce roadway structures, ADA Compliance, clear path, and amplified noise devices (As noted on NYCDOT Website); NYPD to Enforce Noise (As stated in Borough Board Powerpoint)

#### **Proposed Sidewalk Seating Requirements/Policies:**

- Must remain within the frontage of the establishment
- Permanent fully enclosed structures would be prohibited
- Must be situated up against the wall (or as close as possible) of the business
- Seating would be kept clear of the amenity zone (the portion of the public right-of-way between the curb and the sidewalk that is outside of the pedestrian walking area)
- A minimum established clear path (at least 8 feet) for pedestrians to be maintained
  - In certain central business district (CBD) locations, a minimum clear path width of 12 feet may be required where achievable; and
  - In certain locations with low pedestrian volumes, restaurants may apply for a waiver to achieve a minimum clear path width of 6 feet, so long as the applicant can demonstrate that pedestrian flow and accessibility needs can be met.
  - A 50 percent clear path rule would also apply, requiring wider than 8-foot or 12-foot clear paths on sidewalks where 50 percent of the sidewalk width is greater than these respective minimum clear path widths
- While food establishments may install outdoor comfort heating equipment to serve new sidewalk seating locations, these would be limited to radiant heaters fueled by electricity or natural gas.
- Propane heaters would not be allowed
- Seating would be generally unenclosed and not designed for winterization
- Siting Requirements (See Below)

#### **Proposed Roadway Seating Requirements/Policies:**

- Permanent fully enclosed structures would be prohibited
- Limited to no farther than 8 feet from the curb line.

- All seating and any protection would be fully contained within the parking lane and would be prohibited from encroaching on any bike lane, vehicle travel lane, or painted buffer
- A minimum 18-inch wide and 30 to 36-inch high protective barrier, such as planters or objects of similar size and weight, would be required on all three sides of the seating perimeter that are in the roadway in order to separate the seating from the travel lane.
- ADA compliance via ramp or platform
- Must maintain established offset distances from obstructions and infrastructure
- Prohibited from No Standing Anytime and No Stopping Anytime zones, as well as bus lanes or stops, taxi stands, or designated car share parking spaces
- Comfort heating equipment would not be allowed in roadway seating areas, which would be limited seasonally and would not operate during the coldest months of the year.
- Propane heaters would not be allowed
- To prevent impacts to roadway traffic, the proposed roadway seating would only be permitted for months when roadway snow plowing activities are generally not required.
- Seating areas would be used to serve restaurant patrons during restaurant hours of operations and would not be publicly accessible outside of restaurant hours.
- Participating restaurants would be required to keep the interior of their roadway dining areas clean, and would also be responsible for cleaning up to 18 inches along the outside of their roadway dining setouts to prevent the accumulation of litter around the exterior of these areas.
- Participating restaurants would also be required to clean along the curbline for 8 feet in either direction from the edges of their roadway dining set out to prevent litter accumulation in areas made inaccessible by DSNY mechanical brooms due to minimum turning radius.
- Siting Requirements (See Below)

**Proposed Noise Mitigation Policies:**

Controls would include the following measures that in combination would restrict noise-producing behavior associated with outdoor restaurant seating and avoid the potential for noise impacts associated with the program:

- 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); and
- 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 proposes to institute these above controls through the promulgation of rules in accordance with the City Administrative Procedure Act that incorporate the existing DCWP sidewalk café controls. The existing rules include:

- Prohibition on amplified sound within roadway, sidewalk, and interior Open Restaurant spaces per 6 RCNY 2-53(f) and 57(b);
- Prohibition on excessive congregation within or immediately adjacent to Open Restaurant setups per 6 RCNY 2-51(a) and (b);
- Prohibition of exceedance of maximum occupancy within Open Restaurants areas pursuant to license requirements for seating and table limits per 6 RCNY 2-51(a) and (b); and
- Prohibition on party noise and disorderly conduct per 6 RCNY 2-57 (b), (e) and (f).

NYCDOT will promulgate new rules that go beyond the controls in the existing DCWP sidewalk café program. These may include rules relating to the application process, siting criteria, fines, and penalties. These rules will also require licenses for restaurants and provide that failure to comply with the above stated controls could result in the termination of such licenses.

Furthermore, NYCDOT will coordinate with other City agencies to resolve compliance issues. This coordination will include monitoring 311 noise complaints of program participants and working with DEP to confirm violations of the Noise Code by program participants. NYCDOT will commit resources, including new inspectors, to ensure compliance with these requirements.

Finally, NYCDOT will coordinate with other City agencies such as the Mayor's Office of Nightlife and the Office of Administrative Tribunals and Hearings to develop programs for licensed operators that will support compliance and reduce the amount of enforcement actions such as a licensee "Code of Conduct" and alternative dispute resolution through the Mediating Establishment and Neighbor Disputes NYC program (MEND NYC).

<b>Proposed Sidewalk Seating Siting Rules</b>	
Fire Hydrants	Clear path 8' requirement measured from this obstruction
Siamese connections/standpipes	1'
Perimeter fence height (maximum)	2.5'
Bus stop shelters	10'
Bus stop poles	8'
Subway Entrances (open end)	15'
Transformer vaults/subway grates	1'6"
Other Sidewalk Cafes	0' (contiguous cafes)
Newsstands	10'
Obstructions greater than 15 sf (Public Restrooms, Citibike Stations, etc.)	10'
Traffic Signal	8'
Telephone Booths/Kiosks	5'
Mail Boxes	4'
Street Light	8'
Tree Pit (with fencing/guards)	8'
Bicycle Racks	8'
Subway Entrance (closed end)	Clear path from obstruction if along curb If along the building, 1'
Other Street Furniture, less than 15 sf (LinkNYC)	5'
Cellar Door (when closed, locked and reinforced)	0'
Curb cuts, driveways, parking lots and loading docks	5'
Primary Building Entrances	5'
Freight Elevator or Service Entrances	0'
Retail (and other building) Entrances	0'
Building Projection (Stoop, Step, Stair)	0'
Exhaust ducts (above sidewalk grade)	10'
Awnings (above sidewalk grade)	7'
Enclosed Cafes	No new enclosed cafes
Service aisle	Assumes service aisle is within café designated areas
Level of Sidewalk Seating	Level of Sidewalk (no platform)

<b>Proposed Roadway Seating Siting Rules</b>	
Protective Barriers (height)	2.5'-3'
Protective Barriers (width)	12"-18"
Curbline	8'
Crosswalks	8'-15'
Hydrants	15'
No Standing Anytime, No Stopping Anytime, bike lane, bus lane/stop or Car share space	Cannot block
Taxi stands	Cannot block
Accessible Entry	3'
Accessible Path of Travel	3'
Wheelchair Turning Space	5'
Shelter	not to exceed 400 sf

**Prepared by: Craig Lader – Community Board 8 Manhattan Transportation Committee Co-Chair  
May 2022**