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

November 20, 2023

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

RE: Dining Out NYC Program

Dear Commissioner Pincar,

At the Full Board meeting of Community Board 8 Manhattan held on November 15, 2023, the board approved the following resolution by a vote of 43 in favor, 0 opposed, 0 abstentions and 0 not voting for cause.

WHEREAS; Intro 0031-2022 Version C, passed into law by the New York City Council and signed into law by the Mayor in August 2023, created a permanent outdoor dining program; and
WHEREAS; NYCDOT issued proposed rules and a Notice of Public Hearing and Opportunity to Comment on Proposed Rules for the program, now known as Dining Out NYC, with comments due no later than November 20, 2023; and
WHEREAS; Community Board 8 Manhattan has extensively discussed the pros and cons of the sunseting Open Restaurants program and its vision for the permanent outdoor dining program, including support for it as outlined in a series of resolutions in May 2022; and
WHEREAS; while the proposed Dining Out NYC rules incorporate much of the framework outlined by Community District 8 Manhattan, there are aspects that need further expansion or should be reconsidered by NYCDOT; and
WHEREAS; outdoor dining has generated complaints regarding the appearance, maintenance and cleanliness of dining areas; and
WHEREAS; the use of platforms for roadway cafes has been reported to be a source of vermin infestation; and
WHEREAS; Garbage bins for Dining Out NYC participating restaurants should be rodent proof while unobtrusive to the fullest extent possible; and
WHEREAS; the proposed rules include tiers of pricing for use of sidewalks and roadways based on geographic sectors, with Community District 8 located in sectors 3 and 4; and
WHEREAS; Community District 8 views its sidewalk and roadway space as a valuable commodity, and believes that NYCDOT is undervaluing it based on the price per square foot that is proposed to be assessed for roadway and sidewalk cafes; and
WHEREAS; Concerns were raised previously by Community Board 8 Manhattan about the use of potentially dangerous propane heaters and fire hazards caused by electrical elements of outdoor dining areas; and
WHEREAS; enforcement of the sunseting open restaurants program has been perceived as insufficient, with illegal elements often remaining in place even after complaints were filed; and
WHEREAS; the proposed rules don't include any specific after-action reviews or assessments that should be required of any major program that is introduced; and

WHEREAS; language contained within the proposed rules regarding the siting of sidewalk and roadway cafes and whether they are permitted in front of adjacent properties or businesses or only directly in front of their own is ambiguous as to its intent; and

WHEREAS; Community Boards have historically had a formal role in the approval of sidewalk cafes, and given the same quality of life concerns, should have the same formal role in the review process of roadway cafes; and

WHEREAS; the residential nature of Community District 8 influences its preferred hours of operations for the Dining Out NYC programs, which is not as late as what other community districts may prefer;

THEREFORE, BE IT RESOLVED, that Community Board 8 Manhattan offers the following suggestions upon its review of the proposed rules for Dining Out NYC:

1. Community Boards should have the same formal role in advising NYCDOT on roadway cafes as it does with sidewalk cafes;
2. The hours of operation for sidewalk and roadway cafes extend too late for residential communities such as Community District 8, and should not be determined by a one-size fits all approach;
3. A specific approval process for applications for late-operating businesses such as bars should be provided to Community Boards;
4. A required comprehensive post-implementation review of the Dining Out NYC should be required after 3 years, and every 3 years thereafter;
5. The fee schedule for geographic sectors 3 and 4 for both sidewalk and roadway cafes should be increased to better reflect the value of the public space that is being provided to private uses;
6. Specific staffing levels of enforcement agents should be specified, which should be significantly higher than the levels that provided enforcement of the temporary Open Restaurants program;
7. The use of propane heaters should be explicitly prohibited;
8. Any decisions regarding permissible electrical and heating elements, such as lighting, should be approved by the Fire Department of New York;
9. Garbage bins for Dining Out NYC shall be rubber, rodent-proof, have a tight lid, and be narrow enough to avoid taking too much roadway space;
10. There should be explicit prohibition of any infringement of roadway and sidewalk cafes on neighboring businesses or property unless written permission has been provided, as the use of the phrase “immediately adjacent to its premises” isn’t clear as to its intent;
11. The use of platforms in the roadbed should be discouraged to the fullest extent possible.

Please advise our office of any action taken on this matter.

Sincerely,

Russell Squire

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Craig Lader and Charles Warren

Craig Lader and Charles Warren
Co-Chairs, Transportation Committee

cc: Honorable Kathy Hochul, Governor of New York
Honorable Eric Adams, Mayor of the City of New York
Honorable Mark Levine, Manhattan Borough President
Honorable Jerry Nadler, 12th Congressional District Representative
Honorable Liz Krueger, NYS Senator, 28th Senatorial District
Honorable José M. Serrano, NYS Senator, 29th Senatorial District
Honorable Edward Gibbs, NYS Assembly Member 68th Assembly District
Honorable Alex Bores, NYS Assembly Member, 73rd Assembly District

Honorable Rebecca Seawright, NYS Assembly Member 76th Assembly District
Honorable Keith Powers, NYC Council Member, 4th Council District
Honorable Julie Menin, NYC Council Member, 5th Council District