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**The City of New York**  
**Community Board 8 Manhattan**  
**Transportation Committee**  
Thursday, November 2, 2023 6:30 PM  
*Conducted Remotely on Zoom*

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

**Minutes**

*Present:* Elizabeth Ashby, Michele Birnbaum, Alida Camp, Juno Chowla-Song, Rebecca Dangoor, Paul Krikler, Craig Lader, John McClement, Rita Popper, Judy Schneider, Valerie Mason, Charles Warren,

*Absent (Excused):* Lori Bores, Billy Freeland, Rebecca Lamorte, Sharon Pope-Marshall, Peter Borock (public member), Stephanie Reckler (public member)

**Resolutions for Approval:**

**Item 1 – Open Restaurants (1 unanimous resolution, 1 non-unanimous resolution)**

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

**Item 1: Discussion: Proposed Rules for the NYC DOT's Dining Out NYC Program (Formerly known as Open Restaurants)**

NYCDOT issued proposed rules for Dining Out NYC, the permanent outdoor dining program that is the successor to the Open Restaurants program that was introduced in response to the Covid-19 Pandemic. A public hearing will be held on November 20<sup>th</sup>, which is also the deadline for comments from the public to be submitted.

CB8M and the Transportation Committee has held numerous meetings and passed multiple resolutions regarding a permanent open restaurants program, including in May 2022 when it passed a package of seven (7) resolutions outlining a recommended framework, and then again in June 2023 when it passed resolutions regarding City Council bill Intro 0031-2022 that eventually became the law containing the legislative framework for Dining Out NYC. The proposed rules contain the elements that were not directly included in the City Council Bill that was signed into law.

Committee Co-Chair Craig Lader provided an overview of the proposed rules, which are summarized below:

**Times/Hours of Operation**

- Roadway Cafes prohibited from November 30<sup>th</sup> to March 31<sup>st</sup>
- Restaurants with revocable consents for roadway cafes may occupy the area from March 24<sup>th</sup> to December 7<sup>th</sup>
- If not used and occupied for outdoor dining for thirty (30) consecutive days or more, they must be removed from the sidewalk and roadway by the licensee.
- Sidewalk cafes and roadway cafes may operate only during the following hours and days:
  - Sunday, 10 a.m. to midnight (Enclosed sidewalk cafes permitted to operate before 10AM)

- Monday, 8 a.m. to midnight
  - Tuesday, 8 a.m. to midnight
  - Wednesday, 8 a.m. to midnight
  - Thursday, 8 a.m. to midnight
  - Friday, 8 a.m. to 1 a.m. Saturday
  - Saturday, 8 a.m. to 1 a.m. Sunday
- Temporary outdoor dining setups under the emergency Open Restaurants Program that do not comply with Dining Out NYC design requirements for sidewalk cafes and roadway cafes shall be removed by the earlier of November 1, 2024 or 30 days after a determination of NYCDOT to grant or deny a revocable consent for such sidewalk cafe or roadway cafe

### General Rules

- License and Revocable Consent are required for program participation
- Program open to any person owning, leasing, managing or operating a restaurant
- Restaurants may operate Sidewalk Cafes upon the sidewalk or sidewalk widening of such street in an area immediately adjacent to its premises;
- Restaurants may operate Roadway Cafes upon the roadway adjacent to the curb in front of such ground floor restaurant
- A restaurant may apply for both a roadway and sidewalk café to operate simultaneously
- Enclosed sidewalk café licenses granted pre-pandemic will be grandfathered in; all new enclosed sidewalk requests will go through the NYC Dining Out Program process
- A license to establish and operate a sidewalk cafe or a roadway cafe shall be personal to the applicant and may not be sold, leased or transferred
- The term of a revocable consent to operate a sidewalk cafe or roadway cafe shall be one license term (i.e., four years)
- Where the petitioner is not the owner of the property in front of which the sidewalk cafe or roadway cafe is located, such owner's written, signed and notarized consent of such petition.
- A certification from the petitioner that they have entered into a contract with a licensed pest professional that includes pest control services for the sidewalk cafe or roadway cafe.
- Petitioner must submit proof of insurance
- When two or more ground floor restaurants share the same sidewalk and roadway frontage, the ground floor restaurant that first submits a complete and accurate petition for a revocable consent pursuant to this chapter shall have priority for the operation of a sidewalk cafe or a roadway cafe in such frontage.
- No beer, alcoholic or spirituous liquors shall be served at a sidewalk cafe or a roadway cafe, unless permitted by the New York State Liquor Authority.
- Smoking or using electronic cigarettes is prohibited within sidewalk cafes and roadway cafes
- Must be ADA Compliant: A sidewalk cafe and roadway cafe must be directly accessible to persons with physical disabilities, including that the design of such cafe shall fully comply with applicable requirements of the Americans with Disabilities Act and rules promulgated thereunder, and applicable requirements of the New York City Building Code.
- Lighting shall not be glaring, or overly bright, to the immediately surrounding area and shall illuminate only within the sidewalk cafe or roadway cafe.
- During hours when a sidewalk cafe or roadway cafe is not operating, the licensee must secure all furnishing and decorative elements of such sidewalk cafe or roadway cafe, such as tables and chairs, using a cable or other locking system.
- No portion of a sidewalk cafe or roadway cafe shall be located in the furnishing zone and no items associated with such sidewalk or roadway cafe shall be placed or stored in the furnishing zone (the part of the street right-of-way between the sidewalk and the curb, surfaced in hard materials like concrete or unit pavers)
- Heating units will be permitted for both sidewalk and roadway cafes

- Heating units must comply with all applicable laws, rules, and regulations and must be approved for use in such sidewalk cafe or roadway cafe by NYC Department of Buildings and FDNY.
- Such heating units shall only be located within the area of the sidewalk cafe or roadway cafe for which the revocable consent and license to operate such cafe has been granted.
- Site Plans/Drawings will be required, and shall depict required clearances, the space to be occupied, and the locations of tables, chairs, barriers and vertical elements
- Landmarks:
  - Approval by the Landmarks Preservation Commission of a license application is required where the petition for a revocable consent to operate a sidewalk cafe or roadway cafe includes work or improvements on a sidewalk cafe or roadway cafe that is:
    - Located within a historic district;
    - Located on a landmark site;
    - Attached to a landmark; or
    - Attached to an improvement containing an interior landmark.
  - LPC shall make a determination on such application no later than 10 business days after the date of receipt of a complete application, unless LPC determines that such sidewalk cafe or roadway cafe may have an effect on the exterior architectural features of a landmark or a building or buildings within a historic district and a public hearing is required.
- Community Boards to Review Sidewalk Café Requests: No later than 40 days after receipt of such petition, a Community Board must either:
  - Notify the public of such petition, conduct a public hearing thereon, and submit a written recommendation to the Department, provided that where such recommendation is submitted later than 40 days after receipt of such petition, such recommendation may be accepted by the Department at the sole discretion of the Department; or
  - Waive, by a written statement, its public hearing and recommendation on such petition in accordance with the requirements set forth in subdivision (b) of section 19-160.2 of the Administrative Code.
  - NYCDOT shall hold a public hearing when:
    - A Community Board has submitted a recommendation to deny the petition;
    - A Community Board has submitted a recommendation to approve such petition with substantial modifications or conditions and the petitioner does not agree to adopt such modifications; or
    - The Department has determined that such a hearing would be beneficial to address a concern about the effect of a sidewalk cafe at the proposed location.
  - During the NYCDOT’s review period, it shall send the petition to city agencies whose operations may be affected by such petition for review and comment, including but not limited to the New York City Fire Department, the Mayor’s Office for People with Disabilities, and LPC.
- Community Boards not part of the review process for Sidewalk Cafes Located Entirely in the Sidewalk Widening:
  - Term: one license term (i.e., four years) and shall be concurrent with such license term.
  - A consent may not be assigned, transferred, or otherwise conveyed without the permission of the Commissioner.
  - The site plan shall delineate the property line that separates the sidewalk from the sidewalk widening.
  - A public hearing is not required – NYCDOT will review
- Community Boards not required to review applications for Roadway Cafes:
  - NYCDOT shall, within 10 business days of the filing of a complete and accurate petition to operate a roadway cafe, forward such petition by electronic mail to the Council Member in whose district the roadway cafe is proposed to be located, and to the Community Board for the community district in which the roadway cafe is proposed to be located.
  - The Community Board and the affected Council Member may submit comments to the Department not later than 30 days after receipt of such petition.
  - NYCDOT shall hold a public hearing prior to granting a petition for a revocable consent to operate a roadway cafe, or for renewal of such a revocable consent, or for modification to the location of a roadway cafe or to increase the area of a roadway cafe by ten (10) percent or greater

- During the Department’s review period, the Department shall send the petition to other agencies whose operations may be impacted by such petition for review and comment. The Department shall approve the petition, disapprove it, or approve it with modifications.
- NYCDOT may deny a petition for a revocable consent without a hearing if, in the sole judgement of the Commissioner, the granting of such revocable consent would interfere with the use of inalienable property of the City (including but not limited to roadways and sidewalks) for public purposes or would otherwise not be in the best interest of the City.
- Annual Fee Schedules
  - Fees for Grandfathered Enclosed Sidewalk Cafes unchanged until 1/1/28, at which times increases in fees will be permissible once every 4 years
  - New Sidewalk Cafes: \$1,050 for granting of license, \$1,050 for renewal of license, plus either \$18 or \$31 per square foot of sidewalk annually (depending on location, with the higher rate mostly west of Park Avenue)
  - New Roadway Cafes: \$1,050 for granting of license, \$1,050 for renewal of license, plus either \$14 or \$25 per square foot of street space annually (depending on location, with the higher rate mostly west of Park Avenue)
- Maintenance:
  - Sidewalk cafes and roadway cafes shall be kept clean, well-maintained, and clear of trash, debris, graffiti, vermin, food scraps, and unsanitary conditions.
  - A licensee shall also keep clean the area of the roadway extending one and one-half feet distance beyond any roadway cafe on all sides of such roadway cafe.
  - A licensee shall not store trash or other items within a sidewalk cafe or roadway cafe, except that in roadway cafes rigid receptacles with tight-fitting lids are permitted.
- Noise:
  - No loud or unnecessary noises may emanate from a sidewalk cafe or roadway cafe.
  - No musical instruments or sound reproduction or amplification devices shall be operated or used within a sidewalk cafe or roadway cafe, except where authorized pursuant to a street activity permit issued
  - Where practicable, NYCDOT may refer community noise disputes to alternative dispute resolution through the Mediating Establishment and Neighbor Disputes NYC program (MEND NYC), or a successor program.
  - A licensee must fully comply with the New York City Noise Code, as applicable.
- Sidewalk Café Siting Requirements:
  - A clear path shall remain on the sidewalk or sidewalk widening after installation of a sidewalk cafe.
  - The clear path shall be measured from the outer edge of the perimeter of the sidewalk cafe to the nearest element or object affixed to the sidewalk between such perimeter and the nearest curb line, or if there is no such element or object, to the nearest curb line.
  - The Rules include a table detailing required clearances for virtually every possible element/object.
  - A sidewalk cafe shall not be located over or block a lengthy list of objects listed in the rules.
  - No element of a sidewalk cafe shall be affixed to any fire escape stairs or other components of a fire escape.
  - Minimum clear paths are required, ranging from 8 to 12 feet depending on the roadway type
- Roadway Café Siting Requirements:
  - A roadway cafe shall be located within space dedicated for parking, including metered and non-metered spaces and alternate side parking spaces.
  - A roadway cafe shall not be located within part-time or full-time travel lanes, including bicycle lanes and bus lanes, bus stops, dedicated use parking spaces, authorized vehicle parking spaces, or commercial vehicle parking spaces.
  - A roadway cafe may be located within one or more angled parking spaces subject to approval by the Department. In such instances, NYCDOT may modify requirements to promote vehicular and pedestrian traffic safety, including but not limited to providing appropriate clearances from the travel lane and adjacent parking spaces, and preserving sight distance.
  - The maximum length of a roadway cafe shall be 40 feet.

- The maximum width of a roadway cafe shall be 8 feet; NYCDOT may require a maximum width of a roadway cafe to be less than 8 feet where necessary to address a safety concern based on roadway width, roadway geometry (e.g., number of traffic lanes, the presence and composition of bicycle lanes and parking lanes, etc.), or proximity to an intersection, or to facilitate the traversing of emergency vehicles on such roadway.
- A 15-foot emergency travel lane shall be maintained on every roadway, provided that the Department may permit an emergency travel lane width of less than 15 feet upon consultation with the New York City Fire Department.
- There shall be a minimum distance of three (3) feet between the perimeters of adjacent roadway cafes. A roadway cafe adjacent to another roadway cafe shall maintain a minimum of a one foot, 6-inch (1'6") distance from the boundary of the extension of the perimeter of the ground floor restaurant. Such minimum distance shall remain unobstructed for emergency access and shall not be used for storage, including containers to store trash.
- The furnishing of the interior of a roadway cafe shall consist solely of lightweight easily moveable tables, chairs, and decorative accessories.
- If utilized, vertical screenings, coverings, and umbrellas shall be easily removable, shall not extend over the perimeter of the roadway cafe, and shall comply with various visual guidelines
- Lighting shall be outdoor rated, properly secured, protected and lightweight. Wires for electrification shall be connected above-head, and may not be connected on or near the ground or within street tree beds. No such connections shall be made or attached to any electrical equipment or other property owned or controlled by the City, including street trees.
- Enforcement:
  - First time violators: NYCDOT Commissioner shall notify such licensee of such violation and request that action be taken to correct such violation within 30 days and shall afford such licensee an opportunity to protest the Commissioner's finding in a manner set forth in these rules.
  - A Correction Action Request (CAR) may be served by mail or by e-mail on the licensee responsible for the condition which requires correction at the address or e-mail address for such person contained in the records of the Department.
  - Any corrective action required by the CAR shall be performed within 30 days of the issuance of the CAR unless such issuance is protested. If the corrective action required by the CAR is not performed within 30 days of the issuance of the CAR and such issuance is not protested, NYCDOT may issue a summons for an uncorrected condition upon reinspection.
  - NYCDOT Commissioner may, after providing notice of intent to suspend or revoke a license and an opportunity to be heard, suspend or revoke a license to operate a sidewalk cafe or roadway cafe and order the removal of such sidewalk cafe or roadway cafe for 3 or more violations of the same provision within a 2-year period, or for any 6 or more violations of any provision of such subchapter or these rules within a 2-year period.
  - NYCDOT Commissioner may order the removal of any furniture, equipment, structure or other obstruction used in connection with the operation of an outdoor dining area on the sidewalk or in the roadway by a person that is not licensed to operate a sidewalk cafe or roadway cafe and has no other lawful right to operate an outdoor dining area on such sidewalk or in such roadway.
  - NYCDOT Commissioner may order the removal of any furniture, equipment, structure or other obstruction placed on the sidewalk or roadway by a licensee where such furniture, equipment, structure or other obstruction is inconsistent with any of the requirements set forth in these rules.
  - Fines for operating a sidewalk or roadway café without a revocable consent are \$500 for the 1<sup>st</sup> offense, \$1,000 for the 2<sup>nd</sup> offense; fines for failing to comply with operation/management or design requirements are \$200 for the 1<sup>st</sup> offense, \$500 for the 2<sup>nd</sup> offense. Failure to adequately maintain a sidewalk or roadway café is \$500.

Given the extent of the detail presented, there were many comments provided and clarifying questions asked regarding the proposed rules. The discussion was conducted with the program's implementation given as fact,

including among those who may not support the program but wanted to provide feedback knowing that it would soon be operational and that this was CB8's one chance to provide input.

The comments were largely focused on concerns regarding safety, especially the potential use of propane heat and other fire hazards that CB8 had opposed in past resolutions. Enforcement was also a major discussion point, as was maintenance and pest control. More broadly, there was a feeling that the program hours should be shortened in the evenings to 10PM rather than Midnight or later, and that the proposed fee schedule for both sidewalk and roadway usage should be increased. There was also agreement that the rules should include an element of program oversight and a required post-implementation review. There was some dissent when the meeting participants were discussing the idea of NYCDOT taking into account the location of restaurants participating in the Dining Out NYC Program when they consider siting of curbside transportation infrastructure such as where Citi Bike docking stations may be situated. Additionally, there were strong sentiments that Community Boards should be required to provide a formal opinion on proposed roadway cafes in the same manner that they are mandated to do so for sidewalk cafes, and for bars that operate late.

The following resolutions were then put forward by Community Board 8:

**Resolution 1a:**

**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;

*Yes (10):* Birnbaum, Camp, Chowla-Song, Dangoor, Krikler, Lader, Mason, Popper, Schneider, Warren

*No (0):* None

*Abstain (0):* None

**Resolution 1B:**

**WHEREAS;** Prospective and existing restaurants will likely be considering the Dining Out NYC Rules as part of its business plan; and

**WHEREAS;** Community Board 8 Manhattan has previously requested 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; and

**WHEREAS;** the proposed rules for Dining Out NYC don’t explicitly discuss such considerations; and

**THEREFORE, BE IT RESOLVED**, that Community Board 8 Manhattan reiterates its May 2022 resolution requesting that NYCDOT be flexible and take the needs of restaurants into account in the siting of new and existing bike racks and other transportation.

*Yes (9):* Camp, Chowla-Song, Dangoor, Krikler, Lader, Mason, Popper, Schneider, Warren

*No (1):* Birnbaum

*Abstain (0):* None

**Item 2: NYCDOT Updates**

There were no updates provided by NYCDOT.

### **Item 3: Old and New Business**

A member described a new illegal building extension attached to a new restaurant located at 89<sup>th</sup> Street and 2<sup>nd</sup> Avenue; Colleen Chattergoon, NYCDOT Senior Borough Planner and Liaison to CB8M, said that a warning was issued to the restaurant owner, and that a re-inspection was scheduled.

A constituent provided a report of a homeless woman living on a Citi Bench on 2<sup>nd</sup> Avenue between 72<sup>nd</sup> and 73<sup>rd</sup> Streets on the west side of the street, and requested the removal of the bench while questioning why there is a need for multiple benches on that block. Ms. Chattergoon stated that it is not the policy of NYCDOT to remove benches, and that they would work with homeless services to assist this individual in the most humane way possible. Committee member Valerie Mason, who is also the President of the East 72<sup>nd</sup> Street Neighborhood Association, mentioned that this woman has explicitly stated she doesn't want to be removed or be placed in a safe haven shelter, but that they are continuing to try to assist her and address the situation.

A member noted that the illegal planters in front of 1045 Madison Avenue that were the subject of a Committee discussion in June 2023 are still in place, and that the building doesn't have a revocable consent allowing their placement.

A member asked that NYCDOT and NYCT present a post-implementation analysis of the Lexington Avenue Bus Lanes to the Committee. One of the Co-Chairs noted that he had submitted the request over the past month. In response to a question regarding when NYCDOT will implement the request by CB8M to change parking regulations to provide for times when street sweepers can clean Lexington Avenue, Ms. Chattergoon indicated that NYCDOT is still working with the Sanitation Department on the matter.

A member inquired as to why the recent complete streets project on 3<sup>rd</sup> Avenue didn't extend north of 96<sup>th</sup> Street; another member familiar with the project indicated that the segment within Community District 8 was the first to be implemented and that other portions of 3<sup>rd</sup> Avenue would be at some point in the future.

A member expressed frustration with congestion on 3<sup>rd</sup> Avenue and Lexington Avenue.

There being no further business, the meeting was adjourned at 9:00PM.

Respectfully submitted, Charles Warren & Craig Lader, Co-Chairs