

Testimony on 11/20 DOT Rules Hearing

Open Plans writes today in regard to new proposed rules on the Outdoor Dining program. We believe that it is essential that the DOT work hard to craft rules that lead to the success of this program. To that point, we remain concerned on a number of fronts including the lack of a year-round option for restaurants, excessive Community Board involvement, and potential design issues in the event of poor weather. More details comments on these points and others are below:

- **Fight for a year-round option.** We firmly believe that the program should allow for a year-round option for restaurants both on the sidewalk and in the roadway. As structured, we remain concerned not having a year-round option will limit participation and result in less investment in structures for restaurants that do participate. We recognize that this likely cannot be done during the rule-making process, but DOT should make it a priority for this to be remedied through legislation in the City Council.
- **Extend the hours of operations.** We believe there is no logical reason why dining outside on Sundays should be limited to beginning at 10 AM. Coffee shops, among other businesses, thrive on weekends and this section should be updated to match the 8:00 AM start time of every other day of the week.
- **Craft design rules that allow the program to flourish.** Design is an essential part of ensuring that the new outdoor dining program can succeed. Aspects of design like quality and secure roofing that allows dining to happen in the rain and barriers that ensure safety for diners within the structure and those using the roadway are particularly important. We recommend DOT consider carefully recommendations made by organizations like AIA New York to create world-class dining structures that are both beautiful and functional.
- **Ensure Community Boards cannot kill Open Restaurants.** We are concerned about the overall level of Community Board involvement in individual applications. There should be no role for Community Boards to review individual applications a la liquor licenses. Community Boards should receive notice rather than be able to submit a recommendation against an individual restaurant. We predict that, in certain neighborhoods, this will limit outdoor dining participation and be detrimental to the overall program. We especially predict bottlenecks leading up to the beginning of the outdoor dining season that would negatively impact restaurants' bottom line by delaying their ability

to set up in time to maximize their use as well as over the summer when many Community Boards do not meet. We recommend scaling back Community Board involvement.

- **Monitor the role of the Landmarks Preservation Commission.** We are skeptical about the overarching role of the Landmarks Preservation Commission given past history of how opponents of public space projects and community boards have weaponized historic districts and preservation generally. DOT should remain vigilant (as will Open Plans) to ensure the Commission stays within its mandate and is not used as a tool to limit outdoor dining.
- **Continue to focus on accessibility on our streets and sidewalks.** We appreciate the DOT and administration's attention to ensuring the proposed rules will mandate that each structure is ADA-compliant and designed to be inclusive. Further, we likewise appreciate DOT's clear articulation of the requirement to have a clear path of sidewalk access. We are concerned about how many structures will be fully ADA-compliant and urge DOT to adequately monitor and remedy potential ADA or accessibility violations.
- **Provide adequate enforcement.** We appreciate the proposed rule's attention and outlining of the CAR model that will be used. We hope this addresses neighbor concerns while providing restaurants ample opportunity to be in compliance with the rules.
- **Maintain an equitable and fair fee structure for restaurants.** We applaud the DOT and the administration for coming up with an equitable fee model to ensure that all restaurants that would like to participate can afford the program.
- **Daylight intersections with hardened infrastructure.** Daylighting is critical for street safety and we agree that outdoor dining structures should not be allowed within 20 feet of a crosswalk. However, as with daylighting generally, if there is no impediment in place these spaces are almost certain to become de facto parking spaces. We urge DOT to implement hardening at all daylight spots next to outdoor dining structures.
- **Equitably integrate vendors into the program's materials.** Vendors are noticeably absent from the Dining Out NYC website's graphic about adjacent use of public space. We strongly recommend including them in future graphics and materials.



Respectfully,
Open Plans

Sara Lind
Co-Executive Director
sara@openplans.org

Jackson Chabot
Director of Advocacy and Organizing
jacksonchabot@openplans.org

Michael Sutherland
Policy Analyst
michael@openplans.org