



THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 3

59 East 4th Street - New York, NY 10003

Phone (212) 533-5300

www.cb3manhattan.org – mn03@cb.nyc.gov

Tareake Dorill, Board Chair

Susan Stetzer, District Manager

October 26, 2023

Ed Pincar,
Manhattan Borough Commissioner
Department of Transportation
55 Water Street, 9th fl.
New York, NY 10041

Dear Commissioner Pincar,

At the October 2023 Full Board Meeting, Community Board 3 passed the following resolution:

TITLE: Community Board 3 Comments of Open Dining Proposed Rules

WHEREAS, the NYC Open Streets: Restaurants and Open Restaurant temporary programs were created in Spring 2020 to allow for expanded seating for restaurants in selected streets and additional seating on sidewalks to both help restaurants survive and continue to provide jobs and to allow for safer, socially distanced seating; and

WHEREAS, in February 2021 when Community Board 3 counted restaurants using the temporary program, Community District 3 (CD 3) had 869 open restaurants total and 580 with roadway seating, which was the 2nd highest total of open restaurants in Manhattan; and

WHEREAS, DOT is working with partner agencies to develop proposed rules for "Dining Out NYC" — New York's permanent outdoor dining program — in order to establish design requirements as well as siting, material, and operational guidance for restaurants that apply to provide roadway dining and sidewalk dining for their customers; and

WHEREAS, the temporary programs in effect since Spring 2020 have proven to be a benefit to many eating and drinking establishments and for residents who seek to dine out in a safe manner. The programs have also exposed many problems that need to be remedied, as the Community Board 3 (CB 3) office has been inundated with complaints from both residents and businesses; and

WHEREAS, CB 3, along with Community Board 6 and our councilmembers, co-sponsored a town hall in January 2021 attended by over 100 people to hear the impacts of Open Restaurants on the community and the difficulties in operating businesses under these programs; and

WHEREAS, DOT hasn't published their proposed rules as of the October 2023 meeting of CB 3's Transportation, Public Safety, Sanitation & Environment Committee. However, DOT won't commit to providing more than a 30-day notification period, which is insufficient for a community board to review and comment and vote on a position during a monthly cycle of meetings. As a direct result, the community boards have limited options for input - CB 3- Manhattan is submitting comments about issues that must be addressed by any proposed rules, rather than comments on the particular rules that DOT and partner agencies are going to propose; and

WHEREAS, DOT has published the rules on October 19, CB 3 has modified the resolution from the October 10 committee meeting to incorporate additional comments as necessary to the published proposed rules; and

WHEREAS, the following have been identified to be addressed and incorporated in the rules:

1. Curb lane structure should not be more than waist height and should not block air, light, and view of businesses across the street; Current proposed rules allow vertical screening 6 feet above the base of the roadway café, which will prevent sightline of businesses across the street. This is bad for local businesses and for residents and tourists;
2. Umbrellas and barriers for sidewalk dining should not extend into pedestrian area of the sidewalk;
3. Due to situations where there are no standing zones or other restricted uses during certain times of the day or week, there should be flexible rules that allow for portable curb lane dining areas;
4. There needs to be sufficient designated agency staff to inspect compliance of all outdoor dining, with any noncompliance clearly explained in writing to the business with date of deadline for compliance. The burden of compliance reporting should not fall on the Community Boards;
5. There should not be roadside dining on the outside of a protected bike lane that require customers and wait staff to cross bike lanes, which creates a dangerous situation between cyclists and pedestrians;
6. For sidewalk cafes in historic areas, businesses will not be required to submit architect's drawings for the entire building if only the front is impacted;
7. There must be one lead agency for community boards to work with, including follow-up, given that currently, DOT, DSNY, NYPD, DOHMH and DHS will all lead interagency enforcement. With five agencies involved with enforcement, there will be issues with coordination and potential chaotic enforcement. Areas of jurisdiction must be clearly defined;
8. There will not be any outdoor music or outdoor amplified music and indoor music should be heard in the establishment only. There should be education and awareness campaigns regarding rules for outdoor sound and precedence of state liquor stipulations over city regulations for serving of alcohol. This should be clearly stated on the website. The rules

propose referral to MEND to mediate noise complaints. This is not a viable alternative as most all outdoor dining includes liquor licenses with stipulations for outdoor serving of alcohol. MEND resolutions are secret and are often not compliant with method of operation as listed in the establishments on state liquor license. Dedicated enforcement of the liquor license is necessary.

Also, rules appear to be contradictory in allowing noise that is in compliance with noise code (which allows a specific decibel level) and saying no amplified sound and no sound emanating from outdoor dining. This should all be clarified and also noted whether this includes noise other than music. The rules also allow amplified sound and noise when authorized pursuant to a street activity event. This would include all weekly open streets that are 100 percent for open dining and currently a significant problem causing many complaints;

9. If a shed is removed due to noncompliance, DOT should charge back the cost to the business;
10. Garbage bags should not be placed on the street next to the sheds, as businesses are required to clean 18" into the street and 18" around the sheds. This needs to be made clear to businesses and this needs to be continually inspected and enforced;
11. Sheds must be built in a manner that will allow cleaning underneath flooring, as the current structures with fixed floors and siding/walls create unsanitary rodent habitats and infestations;
12. Regulations for no smoking need to be enforced;
13. Businesses must maintain the approved seating/occupancy plan and require that all patrons be seated at the tables and not allowed to stand and turning it into a large gathering or party on the street;
14. The City's 311 app needs to have a clear choice on the main menu for reporting restaurants that are out of compliance and for lodging complaints of the issues related to the outdoor dining rules;
15. Sidewalk Cafes—Community Boards are given 40 days to schedule and comment in the rules. Community Boards need 60 days to schedule for the following month, hold a hearing, and have a vote by the full board;
16. Roadway Cafes—Community Boards and Council Members together are given 30 days to schedule for the following month, hold a hearing, and have a vote by the full board. Additionally, council members should not have their comment period start until they hear from the community board. Community Boards should be given 60 days to comment and then send their comments to the council members to consider and have comment period start at that time;
17. The proposed rules allow for sidewalk cafes and roadside dining to remain open until midnight during the week and 1:00 a.m. on weekends. All of Community Board 3 hospitality businesses are in mixed residential and commercial use districts. All outdoor dining in residential areas such as CB 3 must end by 10 PM to allow residents, and especially those with children, to sleep;
18. Rules seem to allow storage of tables and chairs on sidewalk and in roadbed structures. Sidewalk café rules always required storage inside the business to allow for cleaning. Cleaning is still an issue and there should not be outdoor storage that prevents cleaning.

Please contact the community board office with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tareake Dorill', with a stylized flourish at the end.

Tareake Dorill, Chair
Community Board 3

A handwritten signature in black ink, appearing to read 'David Crane', with a stylized flourish at the end.

David Crane, Chair
Transportation, Public Safety & Environment
Committee

cc: Carlina Rivera, Council Member
Christopher Marte, Council Member
Kate Scherer, NYC Department of Transportation