

RESIDENTS' RESPONSE TO PROPOSED STREET DINING IN PERPETUITY

October 11, 2020

After launching the outdoor dining program in June as a pandemic emergency measure, the Mayor suddenly decided in September to make this program permanent. Legislation is currently pending in our City Council.

We understand the program's popularity. Many of us have used and enjoyed the outdoor dining. But there have already been problems with the program's legality, practicality, equitability, enforcement and public safety.

The popularity of Open Restaurants is now being used to turn a temporary crisis measure into a permanent fixture — and quickly. A change like that requires thought — and community input — not speed.

The residents of New York City should not be bystanders in this program. We contribute to the vitality of our communities with our civic engagement. We pay taxes. We vote.

Before extending this program *in perpetuity*, all New York's stakeholders — not just the restaurant industry — should be involved.

Let's slow down, gather our thoughts and use the current Open Restaurants experiment as a test bed for a fully considered urban plan that can inform subsequent legislation.

Let's not "truncate the community process" (DOT Commissioner Polly Trottenberg in City Council testimony).

Let's not make permanent policy at "the tip of the covid gun" (City Council Member Andrew Cohen at the City Council hearing).

Instead, let's address all of the critical issues in a permanent program before we rush blindly into an unknown future.

## HOW WE GOT TO THIS POINT

Mid-June: The City announced Open Restaurants program to last through Labor Day. The program was explicitly intended to address a temporary crisis with a temporary solution. The program was quickly extended to October 31.

From the beginning, the Department of Transportation (DOT) said it would be “nimble” and take a light hand in enforcing rules for this sudden and “temporary” change to our streets. Restaurants were required only to “self certify” adherence to the clearly-written new guidelines.

And on June 22, the mayor said there wasn't a specific plan for enforcing outdoor dining rules.

There was no consultation with residents or community associations by the DOT or the mayor's office. DOT Commissioner Trottenberg said in a September 30th City Council hearing that the “community process was truncated” to facilitate the new program.

Since June, there have been over 33,000 citizen complaints about "Non-Compliance with Phased Reopening," 311 noise complaints have more than doubled this summer compared with the same period last year (see Exhibit 1).

Restaurants on very narrow streets have opened up sidewalk cafes and built enclosed structures into the street — regardless of the width of those sidewalks (see Exhibit 2) and streets, regardless of access by emergency vehicles, regardless of their neighbors. Many residents found themselves walking out their front door directly into a restaurant.

Other complaints include piles of garbage, restaurants taking sidewalk and parking spaces outside of the clearly written guidelines, difficulty of passage through constricted sidewalks, poor social distancing considerations, increase in rats, outside music and televisions, operating hours that extend past the guidelines (see Exhibits 3 and 4).

August 4: Mayor DeBlasio announced that the program will return next summer.

September 25: Mayor DeBlasio announced that the program will be made “permanent.”

September 30: City Council hearings began on legislation. Only one City Council Member said that this had been a hardship for residents of his Flushing neighborhood. Only one City Council Member mentioned that significant worker protections (on paid sick leave, medical insurance and minimum wage) should be included in any legislation. Only one City Council Member questioned whether it was legal for the City of New York to convey public sidewalks and streets into private ownership of restaurants and landlords. And only one City Council Member wondered whether future policy was now being made “at the tip of the covid gun.”

## WHAT IS HAPPENING NOW

The Mayor's September 25 announcement that the Open Restaurants program would be made permanent was quickly followed by City Council committee hearings on three proposed bills on September 30.

At those hearings, Robert Bookman, counsel of the NY Hospitality Alliance, made it clear that his industry wants this now: “We don’t have to wait for some perfect future plan to get started on what we know we need to do. . . . No reason not to adopt [City Council bills] now. A good idea is a good idea now.”

We disagree. While the City Council contemplates a *permanent* solution to a *temporary* problem, we should step back and consider the conditions that led to the Open Restaurants program:

- A worldwide pandemic
- Stay-at home orders on the population
- A covid-driven exodus from the city
- A complete end to tourism and to music, arts and entertainment that often accompanied out-of-home dining.
- Severely reduced traffic and other use of the public streets
- Closed restaurants
- Reduced income and taxes from restaurants.

The city and its residents can anticipate many of these changes in the future:

- An end to the pandemic
- A return of New York residents
- A return of tourists – and the music, arts and entertainment venues that we all love
- A return of traffic and the full use of our streets by emergency vehicles, sanitation vehicles, bicycles and delivery vehicles, as well as cars.
- 100% indoor seating capacity in restaurants
- Renewed income and taxes from restaurants.
- Federal and state aid to the city

All of these future factors will dramatically change the Open Restaurants program that we know today.

It is never a bad idea to consider the totality and implications of what we are contemplating.

#### WHAT NEEDS TO BE THOUGHT THROUGH

We are about to convert our public streets into private property. Is that what we want? And under what circumstances?

Council Member Reynoso, a sponsor of one of the permanent dining bills, envisioned the program being “very lax in enforcement and free of fines.” This sentiment leaves us with many, many questions for which we need answers, including:

Our streets normally host emergency vehicles, delivery vehicles, sanitation vehicles, bicycles and cars. *How will a permanent Open Restaurant program allow for dining in parking lanes AND full access to our streets?*

NYC has codes that control the use of outdoor lighting, electrical devices, televisions, and sound systems — all of which have sprung up on our sidewalks. *Will NYC return to enforcing those codes under a permanent Open Restaurants program?*

NYC has codes that prohibit the use of dangerous and volatile propane heaters on our streets and storage of same indoors. *How will the FDNY enforce codes on the use and storage of very volatile propane heaters under the permanent program?*

Landmarks Preservation and the Department of Buildings protect historic and landmarked buildings many of which date back to the 18th and 19th centuries. *Will those agencies continue to add special protections to those historic and often fragile, flammable buildings under the new permanent program?*

NYC has codes that prohibit and/or control noise, music from restaurants, from roving bands, sound systems and televisions — all of which have proliferated under the Open Restaurants program. *Will NYC restore previous controls on outdoor noise and the other noise/visual problems mentioned above?*

Under current regulations, sidewalk cafes cannot be licensed without a three-foot wide service alley and an eight-foot wide passenger alley. *Will those regulations continue in effect under a permanent Open Restaurants program?*

In the past, our streets have regularly been cleaned and snow has been removed during winter storms. *Will the permanent Open Restaurant program have provisions for the regular cleaning and intermittent snow removal that is necessary to navigate our streets?*

Both residential and commercial garbage are usually placed on sidewalks that are now being used — or are blocked — by Open Restaurants. *How will a permanent Open Restaurants allow for the swift pick-up of garbage and separating mounds of garbage from outdoor restaurant spaces?*

During the past summer, New York undertook an experiment in outdoor dining. *Before we continue that program in perpetuity, have any other cities made a change of this proportion? And what can we learn from their experiences?*

Until now, New York City has had an inalienable control of public property. The city cannot give it away. *Under an Open Restaurants program, who will own our sidewalks and streets — the city, the restaurant owners, the landlords or the residents? Should this be a unique privilege for one industry only? And for how long?*

Before any step is taken that will drastically impact our daily lives, there has to be an open discussion.

Before a decision is made that permanently alters our public space, there must be a well thought through urban plan.

Before a large tract of the public domain is handed over to private interests, there must be controls in place.

This can be done, and can be done well, but it cannot be rushed.

SIGNED on behalf of the West Village Residents Association

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