

**NYC DEPARTMENT OF TRANSPORTATION TESTIMONY BEFORE THE CITY  
COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES AND COMMITTEE  
ON CONSUMER AND WORKER PROTECTION**

**February 8, 2022**

Good morning Chairs Salamanca, Riley, and Velázquez and members of the Subcommittee on Zoning and Franchises and Committee on Consumer and Worker Protection. I am Ydanis Rodriguez, Commissioner of the New York City Department of Transportation. With me today are Julie Schipper, Director of Open Restaurants, and Michelle Craven, Assistant Commissioner for Cityscape and Franchises. We are also joined by Carolyn Grossman Meagher, Director of Regional Planning at the Department of City Planning, and Steven Ettannani, Executive Director of External Affairs at the Department of Consumer and Worker Protection. Thank you for the opportunity to testify on behalf of Mayor Eric Adams on this legislation that creates the regulatory structure for the City's permanent outdoor dining program.

It is an honor to be before the Council today for the first time as DOT's Commissioner. I am so proud to be working alongside the great teams at DOT who are committed to enhancing the safety of our streets. I look forward to working in partnership with the Council, the body that I had the opportunity to serve for 12 years, to further our vision of turning New York City into the most pedestrian and cyclist-friendly city in the nation. Our public spaces must serve our residents and so it is fitting that my first hearing in this role is about creating a permanent outdoor dining program that builds on the pandemic-era Open Restaurants program that rapidly transformed the city's streets to support our city's recovery.

The COVID-19 pandemic brought one of the most difficult and unprecedented times in the city's history. As the city began to emerge from the shutdown and look towards the recovery, the City established the Open Restaurants program under emergency Mayoral Executive Order to meet the moment.

The program enabled over 12,000 restaurants to offer outdoor dining on roadways and sidewalks outside of their establishments. This included allowing over 2,500 restaurants that would not have been eligible or would have been limited due to zoning restrictions to offer sidewalk seating—bringing the benefits of outdoor dining to new areas of the city such as under elevated railways. This rapid reimagining of streets created a safe way for New Yorkers to share a meal together while indoor dining was banned or limited—bringing us all much needed joy during this challenging time, supporting the city's beloved restaurant industry, and saving 100,000 jobs.

Now, the City is creating an outdoor dining program that can live on well beyond the recovery from the pandemic. Doing so requires changes to the Zoning Resolution, local law, rulemaking, and agency operations and policy. Together, these actions will bolster the intent of Local Law 114 of 2020, which directed the creation of a permanent program. With this program, the City will be able to better support the restaurant industry in its recovery and provide New Yorkers and visitors alike a new way to enjoy this incredible city.

Pursuant to the current text of the Zoning Resolution, as our colleague from City Planning will explain, restaurants are allowed to utilize the space in front of their restaurants for outdoor dining in only certain areas of the city. The Zoning Text Amendment removes the geographic

restrictions—allowing restaurants throughout all parts of the city to apply for outdoor seating areas on the sidewalk.

The legislation before the Council today transfers jurisdiction of the licensing and regulation of sidewalk cafés from the Department of Consumer and Worker Protection to DOT. And for roadway dining, this legislation creates a new roadway café program at DOT, establishing a revocable consent and license review process and license fees.

These changes will enable a unified outdoor dining program, administered under one agency, at DOT. The program will be available citywide but subject to siting criteria, such as minimum sidewalk clearance and design guidance. It will be a simpler process for restaurants than the old sidewalk café program, but will still require community board review for sidewalk cafés, and notification and a public revocable consent hearing for roadway cafés. By expanding the program to restaurants in all parts of the city and providing a new roadway seating option, the program will particularly help businesses in low income neighborhoods and communities of color.

Regarding fees, the legislation establishes an initial license fee for a sidewalk or roadway café of \$1,050, and a renewal fee of \$525. In addition, DOT and OMB are still determining the revocable consent fee which will be finalized during the DOT rulemaking process. This fee will be based on the location of the restaurant and the size of the space the restaurant will be using for its sidewalk or roadway café. These fees are essential for covering the administrative costs of the program and also to ensure that public space is not given away to private businesses for free. We welcome feedback on revocable consent fees during the rulemaking process.

The City set up the temporary program rapidly, focusing primarily on providing flexibility to restaurants to encourage participation for our city's recovery. But over the last year and a half, the City continued to adjust the program as needed and has learned so much. DOT and our agency partners heard from many New Yorkers with a range of responses to the program. While overwhelmingly popular, many people have raised real concerns, including noise and sanitation. We hear these concerns and take them very seriously.

Since the start of the program, the City encouraged adherence to the program's requirements. DOT has co-hosted a number of educational webinars on the program for restaurant owners and workers. And DOT and our sister agencies have conducted nearly 60,000 inspections, and fined and removed restaurants that failed multiple inspections.

But now with the change to a permanent program, we will have an even greater focus on inspections and compliance. Restaurants are an essential part of our communities and we encourage them to be good neighborhood partners. We will continue to work closely with restaurants and the communities at large as we develop the new program requirements and standards.

We will create a license for sidewalk and roadway cafés, requiring cafés to comply with rules before they are built and subjecting them to inspection shortly after. DOT will enforce against amplified sound devices—which are prohibited in outdoor dining setups—and NYPD and DEP

will enforce against noise complaints. And we are working closely with the Department of Health and Mental Hygiene on pest management standards to include in the license agreement as well as other sanitation standards.

DOT, along with our sister agencies and design and civic groups, is currently engaging in a process to create new design guidance for the program. This guidance will include detailed information about how the program will work physically, including visualizations, materials needed for setups, and standards on cleaning and trash storage. This public design process began in October, and the guidance will be codified through rulemaking.

The design guidance will ensure that outdoor dining setups:

1. Are accessible to all users;
2. Contribute to safe streets and provide access for emergency vehicles;
3. Are flexible and temporary to allow for many activities on New York City streets from emergency work, to transportation planning, to maintenance and sanitation;
4. Work well in varying street and neighborhood contexts; and
5. Are clean, attractive, and well maintained.

DOT is hiring the first full-time staff dedicated to this program, including our Director of Open Restaurants, a dedicated enforcement team, application and plan reviewers, and corridor and parking planners. This includes bilingual application reviewers and inspectors to ensure language is not a barrier to participation. The Mayor's Office of People with Disabilities is also hiring additional plan reviewers to focus on accessibility. We are eager to bring on these new team members who will ensure the program's success and increased restaurant compliance.

### Conclusion

In conclusion, I would like to thank the Council for the opportunity to testify before you today and for your partnership in creating an outdoor dining program that brings new life to New York City's streets. We would be happy to answer any questions after you hear from our City Planning colleague.