

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE

Jointly with

COMMITTEE ON CONSUMER AND
WORKER PROTECTION

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April 23, 2025
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HELD AT: Council Chambers - City Hall

B E F O R E: Selvena N. Brooks-Powers
Chairperson

Julie Menin
Chairperson

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A P P E A R A N C E S (CONTINUED)

Andrew Rigie
Executive Director at NYC Hospitality Alliance

Robert Bookman
Counsel to NYC Hospitality Alliance

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NYC Hospitality Alliance

Crizette Woods
Sylvia's Restaurant

Megan Rickerson
Someday Bar, Boerum Hill, Brooklyn

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Mary

Kathleen Collins

Christopher Leon Johnson

A P P E A R A N C E S (CONTINUED)

Ned Shalanski

1 COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE JOINTLY WITH
2 COMMITTEE ON CONSUMERS & WORKER PROTECTION 6

3 SERGEANT AT ARMS: Good morning and
4 welcome to today's New York City Council hearing from
5 the Committee on Transportation and Infrastructure
6 joint with the Committee on Consumer and Worker
7 Protections. At this point going forward, I'd like
8 to remind everyone to please silence their electronic
9 devices, and at no point going forward is anyone to
10 approach the dais unless invited to testify. If you'd
11 like to sign up to testify and you have not, please
12 fill out a witness testimony slip at the table in the
13 back of the room with the Sergeant at Arms. Chairs,
14 we are ready to begin.

15 [gavel]

16 CHAIRPERSON MENIN: Good morning and
17 thank you for joining our joint legislative hearing
18 today before the Council's Committee on Consumer and
19 Worker Protection and the Committee on Transportation
20 and Infrastructure. My name is Julie Menin and I'm
21 the Chair of the Committee on Consumer and Worker
22 Protection. I want to thank everyone for coming to
23 today's oversight hearing on the Dining Out NYC
24 program as well as Intro 857. I also want to
25 recognize my colleague, Chair Brooks-Powers and
Council Member Louis who are here. I will recognize

3 additional colleagues as they come in. So, in August
4 2023, the Council passed Local Law 121 which
5 established a permanent outdoor dining program by
6 granting licenses and revocable consents to
7 restaurants to operate sidewalk and roadway cafes
8 across all five boroughs of New York City. This
9 legislation learned the lessons of the City's
10 temporary Open Restaurants program, improved upon the
11 City's old sidewalk café law and expanded the use of
12 sidewalks and roadways to restaurants. By the end of
13 the City's temporary Open Restaurants programs, there
14 were 13,144 businesses participating in outdoor
15 dining. The Council considered the investments made
16 by participants of the temporary Open Restaurants
17 program by streamlining the process for restaurants
18 to transition from the temporary program to the
19 permanent outdoor dining program. I want to be very
20 clear, during that time I voiced major concerns to my
21 colleagues as well as to the Administration about the
22 ability of DOT to manage an outdoor dining program.
23 As the former Commissioner of the Department of
24 Consumer and Worker Protection which as we all know
25 manage the sidewalk café license program, I felt very
strongly that DCWP should have managed this program,

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not DOT, an agency that does not have background in
this area. I also want to point out DOT is not a
licensing agency as DCWP is. Unfortunately, these
concerns were not addressed and DOT was given
management of this program. Despite these concerns,
Local Law 121 allowed restaurants submitted a dining
out application to DOT by the August 3rd, 2024
deadline to continue operating during the application
review process. however, eight months after the
application deadline, DOT struggles to review and
move revocable consent applications through the
process in a timely manner, basically leaving
restaurants in a state of absolute uncertainty about
the nature of their outdoor dining set-ups in peak
season. I cannot tell you the number of restaurants
across the city that have contacted my office so
incredibly frustrated about these serious delays. So
here we are on April 22nd, 2025 which is the
beginning of the peak season of outdoor dining, and
we should be having a robust outdoor dining program,
which is what the Council has intended, that provides
a lifeline to our small businesses and also activates
the streets. However, just 67 restaurants-- I
repeat, just 67 restaurants-- and this is coming from

DOT's own data, have completed their entire outdoor dining application process and received a revocable consent to operate its sidewalk café or roadway café. This represents less than two percent of the approximately 3,800 Dining Out NYC applications from more than 3,000 restaurants that DOT received. DOT started to address this problem only weeks before the roadway dining season was set to begin on April 1st, 2025 by issuing conditional approvals to a number of roadway dining setups. As of yesterday, DOT provided 726 conditional approvals to restaurants to operate a roadway café which would only apply to those restaurants that have made it through DOT's review process and the Community Board review process. And I'll get to later during the testimony the concerns that we are now giving Community Boards major backlogs because of this large delay, and that also is not equitable or fair or sensible. DOT also authorized the continued operation of 1,808 sidewalk cafés while their applications are pending with the Department. So now we have a situation where hundreds upon hundreds of restaurants are awaiting approval, and frankly do not know whether they should make the necessary investments in

3 their outdoor setups for the current season. This
4 roll-out in short has been nothing short of
5 disastrous. The permanent and long-awaited outdoor
6 dining season is upon us, and DOT is woefully
7 unprepared to meet this moment for thousands of small
8 businesses and their eager patrons. We look forward
9 today to hearing from DOT about the issues that are
10 stalling this process. We would like to learn how we
11 can improve application processing times and the
12 user-friendliness of the application process. We
13 also look forward to hearing first-hand accounts from
14 restaurant owners, and I want to thank all the
15 restaurant owners and advocacy groups and Community
16 Board leaders who have come out today to testify. We
17 absolutely have to address this and improve this
18 process. So I'm now going to turn it over to my
19 colleague Chair Brooks-Powers for her opening
20 remarks. Thank you.

21 CHAIRPERSON BROOKS-POWERS: Thank you,
22 Chair. And good morning and thank you all for
23 joining today's joint hearing of the Committee on
24 Transportation and Infrastructure and the Committee
25 on Consumer and Worker Protection. My name is
Selvena Brooks-Powers and I am the Chair of the

Committee on Transportation and Infrastructure. I am
pleased to be joined today by my colleague Chair
Menin. Today's hearing will focus on the Dining Out
NYC program. In addition, we will be hearing
proposed Intro 857A sponsored by Council Member
Salamanca in relation to towing vehicles that are an
encumbrance on the street. The Department of
Transportation is tasked with regulating and
maintaining the City's sidewalks and streets. As my
Co-Chair discussed, prior to the COVID-19 pandemic,
sidewalk cafes were regulated by the Department of
Consumer and Worker Protection and could only be
located in certain districts. In response to the
pandemic, the Council enacted Local Law 54 of 2020
which required the City to waive and refund all
revocable consent fees for unenclosed sidewalk cafes
due between March 1st, 2020 and February 28th, 2021.
In June of 2020 the City established a temporary Open
Restaurants program to expand outdoor seating options
for food service establishments citywide. In two
separate programs managed by DOT enabled temporary
outdoor dining, Open Restaurants and Open Streets
full closure. By the end of the Open Restaurants
program, there were 13,144 participating businesses.

In addition, 361 existed on Open Streets. In August of 2023, the Council enacted Local Law 121 of 2023, Local Law 121 which repealed the pre-pandemic sidewalk café program and established a new permanent outdoor dining program. With this legislation, the Council applied lessons learned from the temporary Open Restaurants program to improve upon the old sidewalk café law while maintaining aspects of the program meant to ensure outdoor dining is done in a safe and clean manner with deference to neighborhood and needs throughout the City. While the old pre-pandemic outdoor dining program was managed by DCWP, the permanent outdoor dining program established by Local Law 121 is managed by DOT. Under this program, there are no longer zoning restrictions on the locations of sidewalk or roadway cafes. In addition, the law increased the license term from two to four years and lowered license fees and revocable consent fees. However, in the months leading up to the launch of open dining in April 2025, concerns were raised by businesses, advocates, and local officials about the program's implementation. DOT has struggled to process applications in a timely manner. as of April 10th, 2025 just 60 restaurants, less than

two percent of applications received by DOT completed the entire outdoor dining application process and received revocable consent to operate a sidewalk or roadway café which equates to less than two percent of the 3,400 applications received by DOT. According to the New York Times, hundreds of applications were deemed incomplete by DOT. The most common issue being restaurants' failure to provide adequate information on their site plans. Although conditional approvals have been granted, this process is still not where it should be. Businesses have also reported issues with the application process, including having to fill out onerous online forms and a lack of language accessibility. We have also received complaints about additional costs associated with the program's setup regulations and the required seasonality of the program. This has impacted the participation of some restaurants because the approved setups are costly, and the associated construction and storage costs make it too expensive and cumbersome to be viable for some businesses. Finally, many of the rules promulgated by DOT for the locations of sidewalk cafes differ from the pre-pandemic standards. This has left out some

3 restaurants that previously participated in the
4 outdoor dining program. At today's hearing, I want
5 to find out what DOT is doing to ensure that the
6 dining out program is effective, safe, and equitable.
7 In addition, I want to look at how we can make the
8 application process easier for business owners to
9 navigate and to improve upon implementation. Before
10 we begin, I would like to thank my staff and
11 committee staff for their hard work, John Basille
12 [sp?], Senior Policy Analyst, Kevin Katowsky [sp?],
13 Senior Policy Analyst, Mark Chen, Senior Counsel to
14 the Committee, Adrienne Dripal [sp?], Senior
15 Financial Analyst, Julien Martin [sp?], my Policy and
16 Budget Director, and Renne Taylor, my Chief of Staff.
17 I will now ask the Committee Counsel to swear in the
18 Administration.

19 CHAIRPERSON MENIN: Okay, thank you.
20 We're actually going to go with advocates first.
21 We're going to hear from advocates groups, and the
22 reason why is we want to make sure that we are
23 getting the concerns addressed first before we hear
24 from the administration. So before I call the panel,
25 I want to recognize my colleagues that have joined,
Council Member Banks, Council Member Ossé, Council

Member Brewer, and we'll call additional colleagues
as they come in. So, our first panel today is Andrew
Rigie from the New York Hospitality Alliance, Robert
Bookman from the New York Hospitality Alliance, Max
Bookman from the New York Hospitality Alliance,
Crizette Woods from Sylvia's Restaurant, Megan
Rickerson from Someday Bar, Robert Guarino from
Nizza. If you could all please come forward. Thank
you. And please begin.

ANDREW RIGIE: Good morning. My name is
Andrew Rigie and I am the Executive Director of the
New York City Hospitality Alliance. We are a not-
for-profit association that represents restaurants
and bars across the five boroughs, and I'd like to
thank you for having this hearing today and having us
testify. So, Dining Out NYC promised to make New
York City's al fresco dining the envy of the world,
turning streetscapes into vibrant public spaces,
supporting small businesses, protecting jobs, and
building the nation's premier outdoor dining program,
but that promise is slipping. Just 3,000 restaurants
have applied according to the Department of
Transportation's press release from February, far
fewer than the 13,000 that participated during the

pandemic, or even the 6-8,000 estimated to still be operating in the summer of 2024. Many of these small businesses face steep regulatory and financial hurdles. This summer we may see little more outdoor dining than we did before the pandemic when there were approximately 1,200 licensed sidewalk cafes, and they will still mostly be located south of 96th Street in Manhattan. That's failing the new program's goal of citywide equity which was a hallmark of the pandemic era program and which law makers sought to replicate. So, before the pandemic, for example, the Bronx had just 26 sidewalk cafes. During the pandemic, that number surged to about 1,010 outdoor dining setups, including both sidewalk and roadway cafes. Now, under the new Dining Out NYC program, that figure has dropped dramatically to around 78. According to DOT data, there are currently only 2,491 restaurants with outdoor dining citywide. Compared to the previous pandemic numbers, that's 7,300 fewer roadway cafes, 9,600 fewer sidewalk cafes and about 10,300 fewer restaurants offering outdoor dining overall. Even with 100 or 1,000 applications still in the pipeline, no matter how you slice and dice the data, it's clear the

outdoor dining revolution we are hoping for is not here. But now's not the time to point blame and figures. Today's the time for the Mayor and the City Council to join us at let's call it the outdoor dining table and fulfill the bold vision of Dining Out NYC. I'm going to briefly outline seven reforms we're proposing to help achieve this goal, and then our counsel, Rob Bookman, who has decades of experience with outdoor dining, will get into some more of the specifics, and you'll hear from local restaurateurs about the different challenges that they've faced and their experience with outdoor dining. Number one, year-round outdoor dining in the roadway. Making the program seasonal was a big problem. We said that from the beginning. We knew it would happen. It's too expensive to set up outdoor dining then take it down, store it during the winter months only to set it up again. It's cost prohibitive for small businesses. We need to reduce fees across the board. I know there's a lot of concerns with specific neighborhoods. I see Council Member Brewer who I recall in these chambers voiced her concern about why in her neighborhood it costs more than in every other neighborhood for the most

part, but I think, Chair Menin, you have some of the highest fees as well in your district as well for restaurants to participate. Sidewalk café enclosures where restaurants are paying for a year-round license but unable to use it because they can't winterize it with an enclosure has been a major problem.

Clearances, you'll hear from restaurateurs about reduced clearances compared to what they used to have has reduced their outdoor dining and pose big problems. The application process, as the Chair expressed, has had many challenges. Scaffolding which we're always talking about getting it down. I think it was from Manhattan to Montreal, if you lined up all the scaffolding-- I know Commissioner Oddo's [sp?] working hard to get it down. The Council passed some bills. The Mayor signed, but there's still issues related to scaffolding and outdoor dining. And the processing time, as was expressed, is taking way too long. Now, notwithstanding that I do want to give a shout out to some of the people, particularly Penny Wringle [sp?] over at DOT who has been working really hard and is very responsive. So while there certainly are challenges, we also want to recognize people that are trying to make the best out

of a challenging situation, and that's why we need reform. And in closing, what I will just say is that New York City still has the potential to build a world-class outdoor dining program, but only if the City leaders collectively come together and fix the reforms proposed and enact reforms. Without this, we're going to risk squandering a once-in-a-generation opportunity to build the best outdoor dining program that benefits restaurants, workers, communities they serve, and create a lot of economic activity for the City and reach the promise of not only having the greatest restaurant anywhere in the world, but the greatest outdoor dining anywhere in the world. I've submitted my testimony. It includes data and some other charts. And with that, I will turn it over to my colleague, Rob bookman, to get into some more of those specifics of the reforms and challenges that are being faced. Thank you.

ROBERT BOOKMAN: Good morning. My name is Rob Bookman. I'm the Counsel to the New York City Hospitality Alliance, one of its founding members. I've also been partnered in a boutique law firm called Pesetsky and Bookman. We specialize in licensing and regulatory matters. I've personally

1 been involved with sidewalk cafés since I was a young
2 lawyer at the Department of Consumer Repairs 40 years
3 ago. It's shocking to me that I am now the old man
4 and the expert on this, but I've been involved with
5 every aspect of the changing rules and regulations
6 and the laws on sidewalk cafes 40 years from both
7 inside government and on the other side of
8 government. We were deeply involved with two mayoral
9 administrations and the City Council in negotiating
10 both this new statute and the rules with the
11 Department of Transportation. As with any once-in-a-
12 generational piece of legislation, there were many,
13 many compromises that were made, some we supported,
14 some we did not. For the most part we hoped for the
15 best and we believed that the Council and the
16 Administration did as well. We understood that we
17 would give these series of compromises, all of us,
18 our best chance at success. We would see what
19 resulted, and we could come back, and here we are.
20 Unfortunately, we now know that no one who supports
21 outdoor dining can say that this program has been a
22 success. I say that without any malice, without
23 pointing any fingers at anyone. There are no bad
24 guys here. There are no enemies. The program simply
25

3 has not worked out as well as we all had hoped for.

4 There were mistakes in the legislation that were part
5 of compromises that DOT had to live with. There were
6 mistakes in their rule-making that were part of
7 compromises that the industries had to live with.

8 There were rookie errors as a part from DOT being new
9 in licensing, you know, which can be corrected. So
10 there are a series of issues which have brought us
11 where we are today. I also want to point out

12 Specifically Penny Ringle who is not here
13 unfortunately, nor the Commissioner. I'm surprised
14 neither one are here. Both of them have been
15 extremely cooperative working with us. Ringle is one
16 of the best public servants I'd ever seen quite
17 frankly. He responds to emails on weekends, in the
18 middle of the night. They're very responsive, but
19 nevertheless we have a structure that is not
20 successful. We need to recognize that it's not a
21 success, despite everyone's best efforts, and look at
22 the reasons why and come up with solutions together.

23 Shockingly no number of restaurants that even
24 bothered to apply for outdoor dining, let alone
25 hundreds of those who applied but are not following
through on their applications-- Max will talk a

1 little bit about that-- makes it clear that the
2 program needs to be fixed. Obviously, we all knew
3 with the emergency over and the program no longer
4 free that there would be a drop off in the number of
5 restaurants participating. That's clear. I'm a
6 straight-shooter. I have a reputation testifying here
7 for 40 years. You know, I'm not going to blow smoke.
8 I'll tell you the truth and I'll answer your
9 questions truthfully, but frankly, we thought there
10 would be a lot more than the 3,000 establishments
11 that applied. We thought about double that number.
12 So the Alliance asked our membership why so many did
13 not apply, and the answers were clear in our survey.
14 The new stricter clearance requirements as compared
15 to the old law that nobody anticipated which came out
16 in the rules made it more difficult for people to get
17 sidewalk cafes. The overall expense in relationship
18 to those lower number of tables made some people
19 decide it wasn't worth it. the seasonal nature of
20 roadway has really made many people decide that it's
21 not worth it, and that program has been decimated
22 based on the number of applications that are filed,
23 and again, you'll hear that there are potentially
24 hundreds of people who did file who are not following
25

through now that they see how expensive it is to set it up. The difficulty of many small businesses applying online only added to the confusion and the expense that restaurants simply could not afford.

The consent-- one of the compromises that was in the legislation was that sidewalk cafés would continue with the consent process in addition to a license.

Let me explain that for a minute. There were two major structural problems that were brought into sidewalk cafés in the 1980s that caused so few licenses, 70 percent, centered in Manhattan, and that was the zoning laws which restricted it in outer boroughs and the consent. The consent makes it a long process, a complicated process, and expensive process. It adds rent above licensing. We wanted to get rid of both. Only zoning was eliminated. Same thing like when we got rid of cabaret licensing law. We said that's not going to make dancing legal because of the zoning law is what restricts dancing. Finally, years later zoning was addressed. So we had both of those problems here. Many commercial uses of the public sidewalks don't have both of those. They just have a license. Thousands of street vendors just have a license. Fruit and vegetable stands

which are very much like sidewalk cafes, movable structures, they just have a license. Sidewalk newsstands which are permanent structures on the streets, they just have a license. Neon of them have this consent on top of it. By keeping the consent on top of it, we created an expensive complicated problem for the thousands of people that only experience outdoor dining during the emergency which was a simple go online, say yes to a few questions, and you got a permit. Requiring the-- so let me give a few examples, though, in some of the-- what Andrew talked about. Processing time, everybody's complaining about that. To me, that was one of the rookie mistakes, if you will. Well-intentioned by DOT which can be corrected just as a matter of policy. The statute says that DOT must within five days of receiving an application determine if it is complete, and if it is complete, they're supposed to start the time clock by sending it to the Community Board and the other agencies that review sidewalk café. Same language that existed when it was with Consumer Affairs for 40 years. DOT, unfortunately, interpreted that to mean not just that the application is complete, meaning all the documents

are there, the photographs, the filing fee, but that is an approvable application, meaning their entire review has to be done before they started the clock. Well, that's a multi-month process as it should be. They have experts, examiners who review the plans, look at the pictures, get back to the applicant which Max will talk about. They're very responsive. We respond to those, make some changes, listen to the Community Board. Once the application was deemed complete and approved by them, then they first started the clock, and that's why we're in a situation where this late in the process from August 3rd when the applications were filed, we just don't have many approved. Another couple of quick ones. The online only, which has been discussed, has hurt a lot of small restaurants, immigrant restaurants. English is not their first language. They don't know how to upload and download and they couldn't save their work. And now what we're seeing is a third rookie mistake is they're requiring-, unlike the Consumer Affairs, the entire annual rent up front. Nobody pays an annual rent up front. If you had to do that at home or in your business, you wouldn't have a business. Consumer Affairs always allowed

3 quarterly payments. There's nothing in the statute
4 which prohibits that. So there are a variety of
5 issues that, you know, need to be addressed. We can
6 address it, but we all have to first come to the
7 conclusion that what we have is not working, that we
8 can correct these problems. They're all correctable.
9 Some changes will-- can be accomplished with a simply
10 policy shift, some with rule changes, some with
11 statutory changes. We all have a role here, but this
12 is a program that can be corrected. Finally, the
13 whole process here was to create a balance between
14 the old law which was way too restrictive and the
15 emergency law which was way too permissive because it
16 was an emergency. We were trying to come to a
17 balance. We now see unfortunately we did not reach
18 the correct balance and we need to readdress these
19 issues so we come to a middle ground. Many changes
20 were positive. No outdoor music. No outdoor TVs.
21 The flooring on roadways had to be moveable and
22 cleaning. Hours of operation are restricted. We
23 addressed many of the problems, but we did not
24 address-- what we see here is why businesses aren't
25 applying, and we thank you for the opportunity to set
the table here. And you'll briefly hear from Max and

3 some of the restaurants that are having these issues.

4 Thank you.

5 MAX BOOKMAN: Thank you, members. My
6 name is Max Bookman. I'm a seventh generation New
7 York City resident, Chairman, and for the last 10
8 years I've lived in your district. My wife and I are
9 raising our two kids there. My daughter goes to PS
10 158 and we are avid, enthusiastic outdoor dining
11 participants. I'm one of the several million people
12 in New York City who enthusiastically support the
13 notion of outdoor dining and want to see it succeed.
14 When I'm not at home, I'm a partner at a law firm,
15 and for the last 10 years of my legal career I've
16 represented bars, restaurants and other businesses in
17 various licensing matters, including before the
18 Department of Consumer Affairs before they changed
19 the name, as well as now the Department of
20 Transportation. Before you hear from the voices of
21 some of the restaurant owners who've come to testify
22 before you today, I just wanted to share with you a
23 common theme that-- we couldn't bring all hundreds of
24 bars and restaurant owners who participated in this
25 program and are frustrated. In my firm alone I'm
responsible for managing over 400 DOT outdoor dining

1 applications. So, I'm there in the trenches. If any
2 of the members have any questions that are detail-
3 oriented about what it's like in the trenches of the
4 DOT application process, I'm happy to answer them.
5 One common theme that we hear- you'll hear today, but
6 we hear from bar and restaurant owners throughout
7 this process is that it's just too confusing. It's
8 just too frustrating and too confusing. The various
9 steps are too confusing. The information that they
10 get from the agency is too confusing, how it
11 interacts with the state liquor authority is too
12 confusing. I have a law degree, it's my job to know
13 this stuff. It's confusing for me to be able to
14 explain this process to my clients in ways that they
15 understand. Bar and restaurant owners, it's not
16 their job to have to understand how this process
17 works. It's their job to run a bar or a restaurant
18 and be successful business people, employ staff and
19 make a living for them and contribute to their
20 community. Everyone has had to become experts in
21 this process in a way that they really shouldn't have
22 to. So, to echo some of the prior comments that
23 you've heard, let's all roll up our sleeves, work
24 together, not point fingers, acknowledge that there's
25

a problem, and see what we could do to fix the
problem. Thank you.

CRIZETTE WOODS: Good morning everyone.

My name is Crizette Woods and I am the second
generation owner of Sylvia's Restaurant which has
been serving the Harlem community since 1962, and I
do remember when we got our first sidewalk license
over close to 30 years-- over 20 years. But I want
to say that-- I want to thank the Hospitality
Alliance for helping us as much as they can to
navigate through the changes through this application
process which has been, as they say, repeated [sic].
It has been extremely confusing. Communication has
been good I would say, but it has been a challenge of
not being able to plan, you know, waiting for the
approval, not being able to plan as we are in the
season. The other thing I would like to express is
having something enclosed during the winter months
will help us to continue to provide additional
seating. Our outdoor space can employ up to two to
three people per shift five to seven days a week.
So, having that throughout the winter months would be
very helpful to an already challenging operation and
business. So, I would like to thank again the

Hospitality Alliance group for advocating for
restaurants and bars like us.

MEGAN RICKERSON: Hello. My name's Megan
Rickerson. I own Someday Bar in Boerum Hill,
Brooklyn. I also serve on the Hospitality Alliance.
I'm on the Mayor's Small Business Council. I serve on
my BID, and I do a lot, and I opened my bar right
before COVID, my very first business. I am an expert
at the emergency program, because I rebuilt my
structure so many times. I have photos, signed
plywood. I am not a carpenter, but I learned very
quickly that I had to, you know, as we say, pivot.
We had to say pivot a lot, but we made it, and I'm
here. And I am now entrenched in advocacy because I
realized how important it is to have connections with
all of you in order to survive in a city like this
with so many regulations and so many people walking
in through our doors, you know, checking in on us. I
decided to go head-first into the program, and I'm
not going to lie, I feel a little duped, because it
was presented to me in a way that this was supposed
to be supportive and it was supposed to be easier
than what existed before, and I can tell you that
it's not-- I didn't ever do the first program, but

what is presented is not easy, and it's not affordable. I have a neighborhood bar. We are not \$20 cocktails. We are not \$45 steaks. We are \$19 burgers. We are \$6 happy hour drinks. We are \$3 hotdogs. And based on the money that I have put in so far, which I have numbers just to really like break it down because it's easy to say something is expensive and not know the numbers behind it. For my sidewalk, my checks to DOT and the Comptroller's Office was \$1,775 for six seats. For my street, \$4,573 for 16 seats, alright? The application was so confusing that I did pay a lawyer. I had to pay per application. I also had to pay to have my hatch certified, and I had to pay an architect. And as it was stated by Ms. Menin that a lot of people haven't completed their DOT applications, because they find that part very difficult. I hired an architect, and I understand that we're not required to do those things, but if people need to be successful, they're going to spend the money to be successful if they have it. Currently, I have spent \$36,948.36 which includes my build every year, because I am not going to pay for removable shipping container while I'm having a contractor build and breakdown. We tried to

make as many pieces as reusable as possible, but every year I will be throwing away lumber and paying for new, because that was simply the cheapest option. But every year it will cost me anywhere from \$8-10,000 to rebuild, plus another \$500 to \$1,000 to pull away what I built the previous year. So, in the end, it's going to cost me \$68,948.26 for four years, which is over \$17,500 a year. I have to sell outside in those six months 1,149 \$15 cocktails, 5,745 \$3 hot dogs, 907 burger or 2,872 \$6 happy hour drinks, and that is between the hours of four that I open and midnight, and that is if it doesn't rain or, you know, some kind of weather incident, because umbrellas simply just do not protect people, and that is within that very short warm period. I just want to, you know, understand like we aren't rolling in money here. I'm not rolling in money. I had to forgo paying myself a few times to make sure that I could afford outdoor dining, and I am very entrenched in this community and I'm very entrenched in advocacy, and if it's hard for me, then I can tell you it is hard for so many people, because I know the rules. I was the first bar that my Community Board saw, and I can tell you that they weren't educated in a way that

I hoped they had been. They were understanding. They were gracious. They listened, and in the end it worked out great, but I was expecting them to know more when I walked in that room. I shouldn't be the most educated person on the program in that room. I should be coming in and expecting them to know what's going on and then I can add to what I'm planning on providing. So, you know, we're not all millionaires. We're not all rolling in money. We're a neighborhood spot and we want support, and we want support from you. We want support from DOT. So, I just hope that we can figure out a program that makes sense for people that are small and not just the people that have, you know, 40-50 seats outside. Again, I have 21. So, thank you so much for listening, and I appreciate it.

ROBERT GUARINO: Good morning. My name's Robert Guarino. I'm a partner in New York City Chef Driven Group. I'm here today to talk about one of our restaurants, a restaurant called Nizza in Hell's Kitchen. As a group we've operated-- we do operate 16 restaurants, all in Manhattan. Many of those have been in business over 20 years, some as long as 30 years. Sidewalk café has always been an integral

part of our business model. Almost each of these restaurants has an outdoor component. We try to build restaurants that serve our neighborhoods, and we see outdoor dining as an integral part of that. Many of our restaurants are open breakfast, lunch and dinner, and we believe strongly in bringing business out to the street and the positive benefits that that has for the community and walkability and livability and safety. So it's been a big part of what we do. over the years as we've analyzed commercial spaces before signing a lease, the first things we look at are is liquor license possible and is sidewalk café possible, and if the answer to either one of those is no, we continue looking, because it really is a vital part of our business model. And I think with the new program right now and the new regulations, I think a lot of what's been lost is some of the very detrimental changes, specifically to the sidewalk law. So, in Hell's Kitchen we have three restaurants in the ground floor of the Film Center building between 44th Street and 45th Street. That's that stretch of 9th Avenue's only commercial building. We have the corner of 44th, the corner of 45th, and then a little restaurant called Nizza in the middle of the

block. That restaurant has only 50 seats inside and always had 24 seats outside. So by far our busiest months of the year were April, May, June, you know, July and August as the restaurant, you know, grew in size by 50 percent. So we were very surprised when as we started applying-- and we're not eligible for roadway in any of these three restaurants because we're on the busy stretch of the avenue. So we were-- you know, we assumed, okay, we'll go back to our existing, you know, permitted, approved sidewalk setup that we've operated for 20-- you know, for 20 years and 15 years, and things will be fine. We were shocked when we applied for Nizza to see that clearances had changed, and now we went from 24 seats to 14 seats. That might not sound like much, but you know, it's a 40 percent, you know, decrease in seats. That's the difference between having one server outside or two servers outside. It's, you know, over the course of a busy day, lunch and dinner, that's, you know, could be 50 people-- you know, less people that we serve. So we're really surprised that the sidewalk program specifically did not take into consideration the original approved plans and basically changed clearances in many cases,

especially in Midtown. It has been very detrimental.

And so we've-- you know, we take a lot of pride in having done business in Hell's Kitchen in 9th Avenue for 20+ years, and we're happy that it's busy and thriving and people out there. We think our doing business outside does a lot for the safety of the neighborhood, and does a lot to bring tourist that far west and to also serve the neighbors and people who live there and people who work in the theater community. And now making changes to the program I think is the exact opposite of what we were hoping would happen, and you know, I encourage everybody to spend the time thinking about roadway which is a new program, but not to forget sidewalk which has been operating, you know, for 40 years across the City.

CHAIRPERSON MENIN: Great. Thank you very much. I mean, I have a number of questions for this panel, and I know some of my colleagues do as well. Before I begin I want to acknowledge we've been joined by colleagues Council Member Ariola, Council Member Narcisse. So, I want to-- I guess a question first for the Hospitality Alliance. Could you perhaps quantify what the economic loss is? I know I heard your testimony which was very

compelling, but could you sort of writ large quantify what is the economic loss for restaurants due to the core roll out of this program? How many restaurants are going to go out of business? How many are going to have to downsize? How many are going to have to fire staff? Could you try to give us a picture of that?

ANDREW RIGIE: So, it's hard to give an overview just because of the different sizes of the restaurant, but you can hear like from Megan, a small bar, right there alone she's spending \$60,000 over, you know, four years. In a case of Robert where he's losing those seats, he's losing at least one server job there. So, there was some data. I unfortunately don't have it in front of me now, but-- from the Comptroller's office about the millions of dollars in lost tax revenue to this city, and that was just actually based on I believe sales tax revenue. There's obviously the additional jobs, the payroll taxes that those jobs create, and the additional just general economic activity. So the loss in revenue to the City, you know, is millions. The report I believe showed that the loss of jobs is in the thousands, and for individual businesses, it's going

3 to depend on the size, but you could certainly hear
4 just the cost alone many restaurateurs I know that
5 have moved forward with the program are not even sure
6 if they're going to make money. They'll be happy if
7 they're able to break even at this point, but could
8 potentially lose thousands of dollars a year.

9 ROBERT BOOKMAN: Let's not-- to answer
10 your question, also. Let's not forget that during
11 the emergency program, it was well-documented that
12 10,000 jobs were created or saved as a result of this
13 vibrant outdoor dining program. If that becomes 20
14 percent of what it was, which is about where we're at
15 now, that's 80 percent, you know, of these additional
16 jobs will be gone. Tens of millions of dollars in
17 tax revenues, you know, were secured for the City
18 because of this vibrant outdoor dining as well as
19 public survey after public survey especially in the
20 boroughs said this is great. We never had this
21 before. We love it. Let's add it to our
22 neighborhood. But the numbers we're seeing, you
23 know, are dramatic and concerning. So, in Bronx, for
24 example as he said, there are 78 applications or
25 places approved, 700 in the Bronx during COVID.
Brooklyn there's 600 places now. There was 3,200

during COVID. In Queens there was 2,500 establishments during COVID, only 250 now. Even Staten Island had 186 during COVID; three now. During-- when we-- when you were Commissioner of Consumer Affairs and there were only 1,200 or so sidewalk café, an NYU study that came out during COVID to show how wonderful the study-- you know, this has added to the City both economically and socially, pointed out that there were 17 Community Board that had no outdoor dining at all under the old law, that neighborhoods-- that low-income neighborhoods doubled the number of cafes that they had under the emergency program compared to the old law. Neighborhoods where majority or minority restaurants also doubled the number of cafes that they had in the emergency compared to pre-COVID. So we're losing-- so if we lose those applications, it's millions of dollars that the restaurants are losing and the city is losing.

CHAIRPERSON MENIN: okay, a couple follow-ups on that. I mean, you're getting to the issue of equity. One of the major policy issues that the original council bill was meant to address is equity, making sure that every single neighborhood

3 had outdoor dining options. So, the fact that so
4 many neighborhoods now do not have them because of
5 the roll out of-- and all the different onerous rules
6 and regulations, some of which you've identified, but
7 I guess-- I'm also very upset about the fact that DOT
8 only has its application in English and in Spanish.
9 That's totally unacceptable. Are you hearing
10 complaints from restaurant owners about that, and can
11 you talk a little bit about that?

12 ANDREW RIGIE: Yeah. We've heard about
13 that. We've heard about many problems with the
14 application process, not only just language
15 challenges and only having an online option, not
16 having an actual window to go to and sitting down
17 with a representative, but also another challenge
18 about being able to save your application mid-way.
19 I'm not sure if DOT has changed the system yet, but a
20 big problem was you couldn't save your application,
21 you know. So you basically go on. You get to one
22 part-- has this been-- Max, you know if this is
23 changed yet? Yeah, so one of the challenges, you go--
24 - you get a quarter way, a halfway through the
25 process and all of a sudden you're told you need some
other document that you don't have. So all of a

3 sudden you stop the progress. You have to go find
4 that document. You come back and you have to start
5 the process all over again. So you can imagine those
6 frustrations for anyone. But then if there's a
7 language barrier, it just compounds those challenges.

8 MAX BOOKMAN: Can I just add to that,
9 Chair? You know, a number of the businesses that I
10 interface with are first-generation, zero-generation
11 immigrants, and I just can't underscore enough the
12 expectation that they have that there is-- there
13 ought to be a place, a physical place where they can
14 go to get answers to questions, to hand in
15 application materials. It's not-- it's not passé or
16 out of style to say that, you know, that there should
17 be a place where people could actually bring paper
18 and submit something, and that's really been lost
19 here.

20 CHAIRPERSON MENIN: Absolutely, and that
21 is why-- and I know you're aware of this, I objected
22 to the original, this original bill to this aspect of
23 it, that DOT should never have been given the
24 jurisdiction over this program. It should have always
25 gone to DCWP which has a licensing center right down
the street that you can walk into, that when people

have issues they can actually talk to someone to help them fill the paperwork out. I mean, why would we give this program to a transit agency? Why wouldn't we give the program to a licensing agency? And we simply did not have those concerns, quite frankly-- and Rob, I know you can attest to this. You know, we worked together a long time on DCWP issues around the sidewalk cafe issues. So, I'm very concerned about that aspect of this.

ROBERT BOOKMAN: I filed a thousand applications over the years under the old-- I still call it Consumer Affairs, I'm sorry. That's where I met my wife and it was-- we both worked Consumer Affairs, so for me it's Department of Consumer Affairs. I filed over a thousand applications. You physically went there. It was a special application unit, not even a window. It was special application unit, because it was complicated. There's plans, there's photographs, there's a lot of documents. Somebody would sit down with you. You could make an appointment or wait. They would review it, and they would either say no, you need this, you need that and then come on back and we'll accept the application, or you got everything here, stamped approved. Within

3 five days they sent that on to the next step in the
4 process while they did their substantive review.

5 That was-- listen, that was a compromise. The
6 Administration insisted on it being DOT. I think,
7 you know, they've done the best job that they can.

8 CHAIRPERSON MENIN: I just want to
9 interrupt for a minute. I just want to say it again.
10 The Administration insisted that it be DOT.

11 ROBERT BOOKMAN: Yes.

12 CHAIRPERSON MENIN: I couldn't have been
13 clearer personally with my objections. I know other
14 colleagues had objections around DOT, and now I think
15 we are all paying the price, and quite frankly it
16 needs to be remedied, and that's one of the goals of
17 this hearing. I do have one more question and then I
18 want to turn it over to the Chair and the colleagues
19 who I know have a number of questions. Can you
20 specifically say why you believe that only 67
21 restaurants have completed the entire application
22 process and revocable consent at this juncture?

23 ROBERT BOOKMAN: That's because of the
24 issue that I raised, and let me try to be more clear
25 about. DOT's misinterpretation of what their-- how
the clock starts. Statute and in your packet that

your committee prepared, there is a chart that DOT produced showing the various steps and how long they're supposed to take. First part of that chart is within five days of receiving a complete application, DOT sends it on to the next review agencies, Community Board, and that starts the clock moving. If everybody lives with that clock and the Comptroller's office waives their review of the contract which they have and the Mayor's Office waves their review of the contract, you know, which they have, that's all new stuff in the statute that was not there before that you put in there, the process could be quick, somewhat quick, three to four months. But DOT mistakenly-- and I call it a rookie mistake-- didn't send these applications on within five days. They did their entire substantive review first. When they were done with the back and forth with the applicant, the objections, the corrections, revised plans, give me better pictures, all the normal things a license agency has to do with an application like this, then they started the clock. Well, that put the whole process behind the eight ball. So there's no way when people are allowed to apply up to August 3rd that by April they would be done with thousands

3 of applications if the rest of the process would be
4 done with thousands of applications, because they
5 didn't start the clock in August, in July, like they
6 should have. That's the main thing. If they change
7 that going forward, it shouldn't take as many months
8 for new applications. But they haven't changed that
9 yet, and they need to. And in all fairness, I do want
10 to say, because again I don't want to point fingers
11 here, on the other hand the Administration was the
12 one who was pushing for all year-round outdoor
13 dining, and DOT was as well, and it was the Council
14 who said it should be, you know, it should be
15 seasonal, and that's turned out to be a big mistake.
16 So there's mistakes to go around.

17 CHAIRPERSON MENIN: I totally agree as
18 someone who personally advocated for year-round
19 outdoor dining, I totally agree. I think it's
20 completely unfair to restaurants that they have to
21 basically bear the cost, have to put the equipment
22 away. It's absurd. I was one who raised that issue.
23 I know others did as well. So let me turn it over to
24 Chair Brooks-Powers for her questioning.

25 CHAIRPERSON BROOKS-POWERS: Thank you,
and thank you for your testimony today. I just had a

couple of follow-up questions. It was really helpful particularly to hear from the businesses and what that direct impact was, and Megan, hearing the dollar and cents was extremely helpful, too. I just wanted a little bit more clarity in terms of understanding that cost and how you perceive it going forward. And so for example, the architect fee which while optional I think is necessary based on some of the questions on the application, is that something that each time that you in future go to reapply that you would then have to pay for, or is it just this one time?

MEGAN RICKERSON: [inaudible] So, it's one time. Okay, so, thank you Counsel. So, one time. That fee was on its own that was \$1,200. I just put all the lawyers' fees and archit [sic] fees all in one. So, that's one time. But when I was talking about those numbers, that was what it would cost me to break even just on the build. That doesn't like talk about my staffing, how much I have to pay people. It doesn't consider furniture. It doesn't consider any of those things. It was strictly just in order to make it make sense for my business for those few months in those hours with perfect weather.

3 CHAIRPERSON BROOKS-POWERS: Right. In
4 terms-- so I hear often like folks love the program
5 to give an option to businesses, and you know, as it
6 was said before, to expand even the service you're
7 able to give to your customers. How much-- just
8 wanting to get an idea, dollar and cents again, and
9 anyone can answer this. How much added revenue have
10 you seen now or project with this new model? Do you
11 see yourself breaking even? Is it still an added
12 benefit?

13 MEGAN RICKERSON: I think that's very
14 much like remains to be seen. Like, when I said I
15 felt duped it's because I don't know if the juice is
16 worth the squeeze, right? I don't know because I
17 also didn't expect it to cost as much as it did. So
18 it's really going to be-- I have to get through this
19 season and see where we're at. And you know, if next
20 year I realize that I'm at a loss from operating,
21 then I've just paid for four years up front and I'm
22 going to use one of those, because what's the point
23 of operating at a loss and losing money on it? So, I
24 think this year is going to be very telling on how
25 that goes.

3 CHAIRPERSON BROOKS-POWERS: And what are
4 some of the recommendations from, you know,-- anyone
5 again can answer this-- for DOT to improve on the
6 application process? We've heard, myself, Chair
7 Menin, and I know a number of my colleagues have
8 heard that the application process has been very
9 cumbersome and challenging, and the fact that you're
10 connected to the Hospitality Alliance makes you a
11 more informed business owner than some that maybe out
12 there trying to do it themselves. And so me,
13 representing a community out in southeast Queens I'm
14 not sure how many members are necessarily a part of
15 the Alliance themselves, but I'm trying to understand
16 what some of the recommendations could be that can
17 ensure that this is a truly accessible program for
18 other business owners as well.

19 ROBERT BOOKMAN: Yeah, I want to say
20 that-- I want to reiterate that-- and I'm sure you'll
21 hear it from DOT. To a large extent they were given
22 a statute to deal with and the statute required
23 certain rules and regulations. We've got nothing but
24 a positive working relationship with DOT from day one
25 through yesterday. Again, it's not a finger-pointing
issue. Part of the problem is, you know, we stated

there needs to be an in-person-- you know, that is something that could be corrected right away. There needs to be an in-person place where people could have their papers reviewed and either accepted in multiple-- with people there with multiple language like there used to be in consumer affairs. That's something that could be done right away. They could start taking the annual fees quarterly that used to be done for 40 years. That's something they could start doing right away. Those are policies. They could start complying, you know, with the clear intent of the statute. At five days they review the application. If all the papers are there, it's complete. Send it on to the next part of the process, then do their review while the other-- while the Community Board is doing their review, you know, as well. That always went on simultaneously. Those are quick things that could be done. Some things they have no control over. The fact that there's revocable consent which makes the process complicated, because it's not just a license going to a licensing agency and getting a license. Theirs is consent. This consent has multiple steps. It has a contract and it has fees associated with it, you know, annual rent.

3 They're just administering that. That's something
4 you've got to change, and that would also make the
5 process a lot faster if there was no consent. So
6 that's something that needs to be considered. I would
7 say in the negotiation of all this, that was
8 something that Council staff was very much open to,
9 getting rid of the consent for outdoor dining just
10 like these other commercial uses of the public
11 sidewalk. It didn't happen. That's something that
12 needs to be revisited. Some things you can do.
13 Something they can do, you know, some things they
14 can't do.

15 ANDREW RIGIE: The enclosure is obviously
16 very important as well, because it gives them more
17 time to monetize, you know, that space and pay for
18 the fees they're paying again year-round license.
19 They should be able to really use that space year-
20 round in addition to some of the other issues we
21 mentioned as well.

22 ROBERT BOOKMAN: That's a rule, you know,
23 that could be changed by rule or a statute could
24 overrule that rule. The other important thing is the
25 clearances. People have touched on. For 40 years,
clearances and sidewalk cafes was very simple. You

1 didn't need to be a lawyer to understand it: 50
2 percent of the sidewalk width or eight feet,
3 whichever was greater. Everybody could figure out
4 right away how much space they can occupy for their
5 café, and they all know what size tables and chairs
6 are. They could pretty much figure it out before
7 they even applied. DOT came up with a very
8 complicated map where every street in the City was
9 color coded and now it wasn't eight feet or 50
10 percent of the sidewalk. It was eight feet or 10 feet
11 or 12 feet depending on which street you are on this
12 color-coded map, and then the way they measured the
13 clearances changed dramatically. Consumer Affairs,
14 from the edge of the café to the curb, you know, here
15 and there, you know, some other-- you know, if
16 there's a fire hydrant, you may use the fire hydrant.
17 They had all kinds of measurements to the complicated
18 zone. Anything in the zone, you're measuring to
19 that. the bottom line is it not only made it more
20 complicated, but you're hearing from Mr. Guarino and
21 from Sylvia's is restaurants that had approved
22 sidewalk cafés under these old rules for decades with
23 no community problems, no passage problems on the
24 sidewalk, renewed every two, four years, all of a
25

sudden had to shrink their sidewalk cafes and change the-- not only shrink the number of tables and chairs, but rather than having a nice clean line had to go in and out, now in and out, you know, because of these crazy ways they decided to do clearances. That's something that's in their rules that has to change, because that made it so confusing and made it so unaffordable to some people to lose those tables and chairs that they didn't just apply. So you're really seeing a decimation in the boroughs.

ANDREW RIGIE: And roadways, I would just add on the roadways-- that's sidewalk, but on the roadway cafés obviously, you know, the seasonality is the problem, but there's also clearance requirements there as well that don't always make sense. In certain cases based on where a restaurant is located, on a corner they have to sometimes have to provide, I believe in certain cases, 50 feet. Meaning that if you're located on one of these areas where you have to have 50 feet from a sign or a light before you can start your roadway café, you're basically cutting it in half or not having it at all. I think daylighting-- and I know there's some folks there's more of a 10 or a 15-foot. So I think if you're

3 looking for safety measures which we would support,
4 you could still give restaurants back more of the
5 space and keep it safe with daylighting or other
6 street safety features as well. But that's one of
7 the things we're hearing about. Also, certain no-
8 standing zones or other types of signs and
9 obstructions are also limiting restaurant's
10 abilities. Obviously, if you need to have space for a
11 specific reason, you need to have it, but we found
12 throughout the pandemic and now today, there are
13 certain street signs or other obstructions that don't
14 make much sense, but are limiting the ability of a
15 restaurant to have outdoor dining.

16 ROBERT BOOKMAN: And again, not their
17 fault, but the Administration, and they work for the
18 Administration so they had to listen, got other
19 agencies involved that were not in the statute. Fire
20 Department, Parks Department, everybody threw in
21 their two cents when they were doing their rules
22 which created a hodge-podge of rules and regulations.
23 You know, those agencies weren't part of the statute
24 you've passed. They've insinuated themselves-- I
25 hope I'm not talking out of turn, you know, not with
their cooperation over there, but they were told they

3 had to cooperate, and now, you know, there's all
4 kinds of additional problems and denials and changes
5 that have to be made. That's not in writing
6 anywhere.

7 CHAIRPERSON BROOKS-POWERS: Thank you for
8 that. Next, we have a couple of members that have
9 questions for this panel. We'll start with Council
10 Member Brewer followed by Council Member Narcisse.

11 COUNCIL MEMBER BREWER: Thank you for
12 such an informed panel. You could run the city, all
13 of you. My first question is just in terms-- you've
14 talked about the problems in terms of paperwork.
15 Obviously, as Chair Menin suggested, it'd be good to
16 go to a real person. That is incredibly important for
17 everybody, I think, but in addition what other
18 language or other paperwork issues could be modified
19 so that there are less problems for the applicant?
20 That's question number one. The second is, I'm a
21 huge Community Board fan, and I do like items to go
22 before the Community Board. There is some wish that
23 if every single requirement has been made for that
24 applicant that maybe they wouldn't have to, but I
25 think-- I would just like to hear your opinion of
that topic. I know that still the Community Board may

want to have some input. And then also my question is-- and this is something that I should know more about. Right now, I believe it's a revocable consent which is a very layered process, and so would that be improved or the permit process? Whatever that means. I don't know exactly what that means. So, those are my three questions.

MAX BOOKMAN: Sure, I can address some of those, Council Member. So, in terms of the first question on paperwork requirements, one of the places where we're seeing a lot of applications get stuck is in a back and forth with the DOT license examiners over their floor plans. So the key thing that you've got to submit in one of these applications is a diagram showing not only what the tables and chairs layout is going to be, but you have to have a number of clearances which comply with their regulations. You heard about the clear path requirement already which has been made complicated, but there's other clearance criteria as well. You have to be X number of feet from a fire hydrant, X number of feet from this or from a pole, from a curb cut, etcetera, etcetera, and a lot of applications are getting stuck there because it's just really complicated and

3 confusing to get those clearance requirements
4 correct. one of the things you did in the
5 legislation was eliminate the requirement that there
6 be an architect that submit the plans, and the
7 purpose of that was because it was supposed to be
8 that bar and restaurant owners shouldn't have to hire
9 a professional if they could just-- even hand-drawn
10 in a clean, nice professional way or on a simply
11 computer program submit plans. It should have been
12 easy, but what we're seeing is even though the
13 requirement of hiring an architect has been
14 eliminated, in reality in the back and forth with the
15 agency on the plans it's almost like you got to be an
16 architect in order to understand what they're saying
17 and make the corrections. So we're seeing over and
18 over--

19 COUNCIL MEMBER BREWER: [interposing] So,
20 what would you suggest that it be instead? How could
21 we make it simpler?

22 MAX BOOKMAN: The clearance requirements
23 need to be made simpler. I think some of the
24 clearance requirements that you heard about already
25 are just too complicated.

3 COUNCIL MEMBER BREWER: That's what
4 Andrew said, yeah.

5 MAX BOOKMAN: Specifically, the clear
6 path. We need to go back-- just to reiterate it
7 because it's super important. We need to go back to
8 the old DCA rule where your clear path, the amount of
9 path on the sidewalk that's devoted to pedestrian
10 flow is either eight feet or 50 percent of the
11 sidewalk, whichever is greater. That's what you need
12 to be at-- that's what you need. On the Community
13 Board process, we love Community Boards, too, but one
14 other aspect that's been really, really frustrating
15 for applicants is they think they're just applying to
16 DOT but then when the Community Board does get
17 notified of the application, the Community Board hits
18 the applicant with their own very lengthy in some
19 Community Boards questionnaires, series of questions,
20 requirements, suggestions, and it confuses
21 applicants.

22 COUNCIL MEMBER BREWER: Okay.

23 ANDREW RIGIE: And just on the Community
24 Board point as well, I've just seen in my experience-

25 -

2 COUNCIL MEMBER BREWER: [interposing] This
3 is a member of a Community Board talking.

4 ANDREW RIGIE: Yeah, yes, it's doing it.
5 As we have it at CB7 on the upper west side where
6 people are going back and forth and trying to get
7 into the technical aspects, and you hear the
8 expertise, a lawyer that does this day-in and day-
9 out, can still be confused by it. You have people
10 that are volunteer members of a Community Board
11 sitting there talking about all these technical
12 things and some things are correct, others things
13 could be incorrect, and you're spending so much time
14 going back and forth, not necessarily on the overall
15 aspect of whether the community wants that sidewalk
16 café, wants the roadway café or not, but on these
17 technical measurement issues which just takes up too
18 much time, and in my opinion does not help the
19 process and kind of frustrates everyone, both
20 Community Board members, myself, and what I've
21 witnessed from colleagues, but also from the
22 restaurant applicants that appear before the board.

23 COUNCIL MEMBER BREWER: Okay. I hope we
24 can hear from Mark Diller [sp?], because he can
25 simplify that for us. And then the revocable issue?

3 MAX BOOKMAN: Yeah, get rid of it.

4 COUNCIL MEMBER BREWER: Wait, wait [sic].

5 ROBERT BOOKMAN: That's been an issue for
6 me for decades, literally. I don't understand why a
7 sidewalk newsstand that occupies 70 square feet has a
8 permanent structure doesn't need revocable consent,
9 but movable tables and chairs do. And basically, when
10 the sidewalk café law was passed in the 1970s did
11 not. If you were a restaurant, you were able to
12 apply. There were basic clearances and you got
13 approved. 1980, two things happened. The zoning
14 overlay was added and the revocable consent overlay
15 was added. We've now gotten rid of the zoning overlay
16 which is good for the boroughs, but we have not
17 gotten rid of the revocable consent-- it's a hard
18 word for me-- overlay, and that overlay is no-- you
19 know, the Council put it in the law. In my opinion,
20 the Council could take it out of the law. You know,
21 you made it and you can take it away. So again,
22 there are multiple uses of the public sidewalk that
23 don't have that revocable consent overlay. So you go
24 to an agency, it's generally Consumer Affairs. You
25 file an application. If the application ultimately
goes to review process and it gets approved, you get

3 your license. You know, sure, you're done. You do
4 your renewals, if they do the enforcement, whatever.
5 The consent overlay makes it a multi-month, multi-
6 layered, multiple expensive process, and there's no
7 legal reason in my mind for it. There's certainly no
8 ethical or moral reason, and there's no policy reason
9 for it. Whatever you need to do to get rid of it, you
10 should get rid of it, whatever agency, whether it's
11 DOT who's the licensing agency or Consumer Affairs.
12 There's still going to be enforcement. There's still
13 going to be clearances.

14 COUNCIL MEMBER BREWER: Oh, with a permit
15 there would be, yes.

16 ROBERT BOOKMAN: They'll have a permit.
17 They'll have a license which could still be taken
18 away if, you know, three strikes and you're out. All
19 that stays the same. You just don't have this extra
20 stuff. So there's no comptroller's office reviewing
21 the same 20-page contract literally 3,000 times. You
22 don't have the Mayor's Office reviewing the same boil
23 plate [sic] 20-page contract 30 times, you know,
24 3,000 times. There's no reason for it. It's all
25 bureaucracy that-- I don't know why it was created in

3 1980. It's even before my time, but it's time has
4 passed.

5 COUNCIL MEMBER BREWER: Thank you very
6 much. Thank you.

7 CHAIRPERSON BROOKS-POWERS: Thank you.
8 Next we'll hear from Council Member Narcisse followed
9 by Council Member Ossé. Also, we've been joined by
10 Majority Leader Amanda Fariás and Council Member
11 Rafael Salamanca.

12 COUNCIL MEMBER NARCISSE: Good morning.
13 Thank you, Chair, and good morning for being here.
14 And as a former small business owner, I know how
15 difficult it can be in New York City to run business,
16 right? So, now, I heard from you-- I was going to
17 ask the question around the paperwork and all the
18 things that we can do to make it easier, but now I
19 want to hear from the business owners how we can help
20 you. What is the step that you're expecting from us
21 besides the paperwork, because the paperwork is
22 tremendous? And one other question that I have. I
23 know the liquor license have been difficult. How
24 viable is our door without dining without liquor
25 license?

3 ROBERT GUARINO: Yeah, without liquor
4 license it would not be viable at all. How do you--
5 how can we can explain to our guest that they can
6 have a glass of wine inside, but not outside. It's--
7 you know, it wouldn't be viable for street or
8 sidewalk at that point for sure.

9 MEGAN RICKERSON: But also, the burden on
10 the staff of policing that. I mean, we all saw
11 during COVID the burden that was put on checking
12 people's vax cards. Like, I had a human throw a
13 glass bottle at a bartender over a vax card. It's not
14 the staff that are serving drinks or food, it's not
15 their responsibility to police things like that, you
16 know? And then-- so if we can't serve alcohol, then
17 we have to hire security, because then you have
18 running the risk of someone taking alcohol outside,
19 and then the FLA [sic] coming by and then pulling
20 your liquor license, and once your lose your liquor
21 license, you can never get one ever again. so I
22 spent my entire life being a bar owner and that's
23 gone and that's based on just like someone taking
24 something outside-- there are just so many levels,
25 and it's like as much as COVID is over for
hospitality, people are still really tired, and then

to ask your staff to do more on what they're already doing it's a big ask. And we're just trying to love on people and be hospitable and take care of the people we employ, so it's just too much of an ask for people to do that. And as I said, 907 burgers I think I said to break even. Take away alcohol and you think about the margins that you make on food which is not a lot compared to the margins that you make on selling alcohol, because food goes bad. Alcohol does not.

CRIZETTE WOODS: And to add just the burden of the paperwork, reducing the paperwork, because it is very time consuming for my team trying to complete the applications and the back and forth.

COUNCIL MEMBER NARCISSE: Been there. I know how difficult that can be. Another thing that I want to ask you-- do you think-- because we all want you to stay in business. That's what make New York City New York City. We're not perfect in legislation, because legislation-- we have to address certain things. Keep in mind, right, it's not just to take your business out. In all the defense of my colleagues, we know that shed was a problem. Sidewalk café was a problem. We want to work with

3 you, just keep that in mind. So whatever that you
4 feel like we can do, we hear the paperwork, and I'm
5 sure Gale Brewer going to be on top of it. We're
6 going to have that conversation, because we need you
7 to stay in business, and we're not here to push you
8 out of the door, because without restaurant in New
9 York City, we're not New York City. So I want to say
10 that whatever you think that we can do for you, we're
11 going to continue working on it. We know that
12 alcohol is a problem like you just mentioned, and I'm
13 here to support. And I know Chair Julie Menin is
14 going to continue working with you and we're going to
15 make it happen, okay, the best way we can. So thank
16 you for your business in New York City.

17 ROBERT GUARINO: Thank you.

18 CRIZETTE WOODS: Thank you.

19 COUNCIL MEMBER OSSÉ: Oh, I can just
20 start? Good morning. It is in my personal opinion
21 that this bill that was passed and what the
22 Administration was trying to do, I believe that the
23 intention was to kill the program, and I think we're
24 experiencing some of the real effects of that through
25 the testimony that you're sharing, right? By
creating this perception that they were trying to

create a process for it, but it actually harming the entirety of the whole thing. I think a question that I want to pose to you, because I think most of my questions are for the administration when they do testify-- it's unfortunate that the Commissioner won't be here today-- is the main talking point that we hear in terms of why outdoor dining was bad was because of rats and sanitation, and I just want to yield some time to some of the business owners here that I believe are-- I believe that you guys being here alone shows that you're upstanding business owners and are doing a good job and care about your communities and care about your business. What do you respond to that in terms of, you know, the sanitation issues that people try to pose to belittle this program?

CRIZETTE WOODS: I mean, I don't think the program has that effect. I mean, it's New York City. That's another topic, but I feel like the City can do a whole lot more to assist us in those issues. But you know, you have-- we're restaurant owners so we have to comply and keep a sanitary space whether it's inside or outside.

3 ROBERT GUARINO: Yeah, I'd just add I
4 think it's another area where the challenges of
5 roadway are being conflated with sidewalk. Sidewalk
6 is, you know, without a structure with just tables
7 and chairs. There's-- I don't see an issue there.
8 Where we've built structures in the side, now we've
9 all learned that you need to be careful. The new
10 regulations require you to raise the floor and clean
11 underneath because you're providing a place for
12 harborage. So that was never an issue with the old
13 sidewalk program. It is a concern that needs to be
14 addressed in the roadway program but I think there
15 are certainly steps that the program has covered to
16 make that less of an issue.

17 MEGAN RICKERSON: I had-- I had both
18 iterations. So, obviously, I had the sandbags and
19 took my two-door stick-shift to pick up a lot of sand
20 bags. It was a fun day for me. I believe that the
21 rules put forth now pretty much negate that. I mean,
22 all of my sidewalk-- or my panels in my street
23 seating come up, sweep under. So I think it's kind
24 of a-- like a moot point. Like, that's just like a
25 low-hanging fruit to say that this program won't
work. We fix the problems that we learned from the

3 emergency program, and that's not really an issue.

4 We work in food. So, we have the Department of
5 Health coming in. We are tasked with not making
6 people sick, with keeping them safe, with not over-
7 serving. So I think rats and outdoor dining is just
8 the easiest target when we're literally tasked with
9 keeping people safe every day.

10 COUNCIL MEMBER OSSÉ: And how responsive
11 has DCWP or DOT been when maybe some of the
12 complications you've had during this newest rendition
13 of the program been? Have they been responsive in
14 answering your questions? Has it been clear
15 responses that you've been receiving? What has the
16 engagement been there?

17 MEGAN RICKERSON: So, I can tell you that
18 I used a lawyer, so my lawyer has done the bulk of
19 that which I'm very grateful for because there has
20 been a lot of back and forth and I feel like a lot of
21 the questions that were posed, I would have had to
22 reach out to someone else to figure out how to answer
23 them. my very best friend owns a bar in Queens and
24 she tackled this program on her own, and I can tell
25 you that she has called me a few times a week to ask
me to ask question, to reach out to Andrew, to talk

3 to Jeff Garcia to try to figure out the responses,
4 because she has talked to DOT, and the answers
5 weren't as clear, but this is also specifically
6 relating to the conditional approval as it relates to
7 altering your liquor license. There's been a lot of
8 confusion around that, and I know that you're dealing
9 with the state agency and the city agency, but I can
10 tell you that a lot of people I have talked to are
11 very confused about the alteration and that in
12 general, and I don't know if it's because DOT is
13 waiting for a response from the SLA [sic] to respond
14 to the questions, but there hasn't been a lot of
15 answers in regard to that.

16 MAX BOOKMAN: I'll just add to that on
17 DOT's responsiveness. We've found that DOT staff is
18 responsive to individual applicant questions. We
19 don't always like the answers we get. Sometimes we
20 do, sometimes we don't. Sometimes it's confusing,
21 but the emails go answered which is something we do
22 appreciate.

23 ROBERT BOOKMAN: To reiterate on that,
24 the rats and the cleanliness issue, as Robert said,
25 the overwhelming majority of applications of sidewalk
cafes always has been and still are, that's never

1 been an issue for sidewalk cafes. It's tables and
2 chairs on the sidewalk. I think the new rules
3 address the few neighborhood complaints that there
4 were concerning roadway. Understand that nobody
5 including us expected some of those structures to be
6 up for as many years as they were. So they weren't
7 built, you know, necessarily to last. So that's
8 resolved now. They're all gone. The new flooring
9 requirement will take care of that. The new closing
10 hours take care of that. Noise, no TVs or music or
11 speakers allowed outdoors. So, I think the
12 legitimate concerns during the emergency for roadway
13 have been resolved, and now we just need to make the
14 process more appealing so that more businesses will
15 apply for it.
16

17 COUNCIL MEMBER OSSÉ: Thank you.

18 CHAIRPERSON BROOKS-POWERS: Thank you to
19 the panel for your testimony. It was definitely
20 informative. Next-- and the panel, you can--

21 ROBERT BOOKMAN: Thank you.

22 CHAIRPERSON MENIN: Thank you so much.

23 ANDREW RIGIE: Thank you so much.

24 CHAIRPERSON MENIN: We really appreciate
25 it. Thank you.

3 CHAIRPERSON BROOKS-POWERS: Next we'll
4 have a statement from Council Member Salamanca
5 regarding his bill being heard today.

6 COUNCIL MEMBER SALAMANCA: Thank you,
7 Madam Chairs. Thank you, Chair Menin and Chair
8 Powers, for the opportunity to speak on my bill,
9 Intro 857A. The intent of Intro 875A is simple. It
10 requires the Department of Transportation to tow
11 vehicles that are encumbrance on our city streets
12 within 72 hours of notification by NYPD. This
13 legislation is not about tiding up our curbs. It's
14 about reclaiming public space and sharing safety and
15 restoring fairness to how our streets are used.
16 Every day, abandoned, inoperable and improperly
17 parked vehicles clog our neighborhoods. They block
18 bike lanes, bus stops, fire hydrants, and curb space
19 desperately needed for everything from commercial
20 deliveries to parking for residents. These abandoned
21 vehicles turn our streets into graveyards for zombie
22 cars and are a source of constant frustration for all
23 of our constituents. This legislation sets a clear,
24 reasonable timeframe for action. It empowers the
25 Department of Sanitation to act swiftly or fairly.
It brings much needed accountability to a system

3 that's often lets inaction persist. Clean, safe and
4 accessible streets are not a luxury. They're a basic
5 necessity in a city of over eight million people.
6 Let's not allow the bad actors who abandon vehicles
7 to hold entire blocks hostages. I urge my colleagues
8 to support this common-sense legislation and put our
9 public space back to public use. Thank you.

10 CHAIRPERSON MENIN: Great. Thank you so
11 much. I also want to mention we've been joined by
12 Council Member Krishnan, Majority Leader Farias,
13 Council Member Rivera. So, we're now going to go to
14 the Administration and we will be calling
15 representatives of the Administration to testify.
16 We'll be hearing testimony from Margaret Forgione,
17 First Deputy Commissioner, Michelle Craven, Associate
18 Deputy Commissioner for Cityscape and Franchises, and
19 Rick Rodrigues, Assistant Commissioner for
20 Intergovernmental and Community Affairs. Before I
21 turn it over to the Committee Counsel to administer
22 the affirmation, I do want to say that it is
23 unbelievably disappointing that the Commissioner is
24 personally not here. The Commissioner lobbied to
25 have outdoor dining under the purview of DOT despite
some concerns that the City Council had, and for him

3 not to be here today I think is really disrespectful
4 to the City Council. So, I'll now turn it over to
5 Committee Counsel to administer the affirmation.

6 COMMITTEE COUNSEL: Do you affirm to tell
7 the truth, the whole truth and nothing but the truth
8 before this committee and to respond honestly to
9 Council Member questions?

10 FIRST DEPUTY COMMISSIONER FORGIONE:
11 Okay. Good morning Chair Menin, Chair Brooks-Powers
12 and members of the Committees on Consumer and Worker
13 Protection and Transportation and Infrastructure. I
14 am Margaret Forgione, First Deputy Commissioner of
15 the New York City Department of Transportation. With
16 me today are Michelle Craven, Associate Deputy
17 Commissioner for Cityscape and Franchises, and Rick
18 Rodriguez, Assistant Commissioner for
19 Intergovernment--

20 CHAIRPERSON MENIN: [interposing] Sorry,
21 we have to pause the hearing for a minute. There's a
22 technical issue with the Zoom. Give us one minute,
23 please. Okay, it's just going to be a few minutes to
24 fix the technical issue. So if people want to take a
25 quick walk around the room, but please don't go far.
We're hopefully going to start in just a few minutes.

3 Thank you. Wonderful, okay, we are back in action.

4 Before we resume, I also want to mention we've been
5 joined by our colleague Council Member Bottcher. And
6 First Deputy Commissioner, we need you to begin the
7 testimony from the top. Thank you so much.

8 FIRST DEPUTY COMMISSIONER FORGIONE: No
9 problem. Good morning, Chair Menin, Chair Brooks-
10 Powers, and members of the Committees on Consumer and
11 Worker Protection and Transportation and
12 Infrastructure. I am Margaret Forgione, First Deputy
13 Commissioner of the New York City Department of
14 Transportation. With me today are Michelle Craven,
15 Associate Deputy Commissioner for Cityscape and
16 Franchises, and Rick Rodriguez, Assistant
17 Commissioner for Intergovernmental and Community
18 Affairs. Thank you for the opportunity to testify on
19 behalf of Mayor Adams and Commissioner Rodriguez on
20 the City's outdoor dining program. During the
21 pandemic, New Yorkers came to enjoy and appreciate
22 outdoor dining in new ways. It was not only a
23 critical lifeline for many restaurants and small
24 businesses when indoor dining was prohibited, but it
25 contributed to the vibrancy of our neighborhoods and
improved the dining experience for so many people,

especially on warm, sunny days. As the pandemic ended, New York City DOT worked closely with the City Council to make outdoor dining a permanent part of our city's streetscape, and we are pleased that the Council did so when it passed Local Law 121 of 2023. The law created seasonal roadway dining, preserved year-round sidewalk dining, and provided the framework for the future of outdoor dining. Just as we did during the emergency program, DOT has worked hard to help as many restaurants participate in the program as possible. Three weeks ago, DOT launched the first season of Dining Out NYC. There were over 2,500 restaurants authorized to operate, including every restaurant that applied by the August 3rd, 2024 deadline and completed any required steps. While a new program and new rules bring new realities for restaurants, we are encouraged that the program is already well over double the size of the City's pre-pandemic program, is the largest outdoor dining program in the country, and has a similar participation rate to Paris, which also recently made elements of its outdoor dining program seasonal. Our team has been working tirelessly to get us to this point, and we are proud of all we have achieved so

far. Now to give some background on how we got here.

The City's outdoor dining program has gone through several iterations. First, the pre-pandemic sidewalk cafe program managed by DCWP, then the pandemic-era temporary outdoor dining program authorized by mayoral emergency executive orders, and now the permanent Dining Out NYC program created in response to Local Law 121 of 2023. With each iteration, we have built on lessons learned and took bold steps to reimagine the use of public space. In the pre-pandemic era, around 1,200 restaurants participated in the sidewalk cafe program managed by DCWP.

Restaurants were allowed to extend their dining onto the sidewalk as an unenclosed, or in certain cases, an enclosed cafe. Cafes complied with the Zoning Resolution, which prohibited sidewalk cafes entirely in many neighborhoods and on certain corridors. They also had to comply with the building code, obtain a revocable consent through DCWP, obtain approval from City Planning, and approval from the Landmarks Preservation Commission depending on the location of the restaurant. These regulations were confusing and restrictive, creating barriers to small businesses trying to participate in the program, especially in

the outer boroughs. Then in 2020, the COVID-19 pandemic brought us challenges unlike any we'd seen before. The necessity of closing indoor dining for most of 2020 meant that restaurants were particularly impacted by the pandemic, losing thousands of staff and in many cases closing permanently. Balancing public health guidelines and the need to save the city's beloved restaurant industry, the City rapidly created a temporary Open Restaurants program so New Yorkers could safely dine outside. The program reimagined the use of public space to bring restaurant dining to streets and sidewalks across the city. During the peak of the pandemic, the program had between 6,000 and 8,000 restaurants participating and saved 100,000 jobs. The temporary program was free for restaurants, suspended most pre-existing sidewalk cafe requirements, and allowed restaurants to self-certify that they met the temporary program's requirements, all with the goal of encouraging as many restaurants to participate as quickly as possible. While the program was overwhelmingly popular, it also brought about numerous quality of life concerns around noise and sanitation, among other issues. Thus, when planning the permanent

outdoor dining program, DOT worked to implement a program built around lessons learned from both the DCWP sidewalk cafe program, as well as the temporary Open Restaurants program. The goal that we shared with the Council was to strike a balance between the programs of the past: loosening requirements from the pre pandemic program as much as possible to encourage wider participation while updating regulations to address quality of life concerns. The program has significantly lower fees than the pre-pandemic sidewalk cafe program, with rates varying by location and setup size. Simultaneously, a Zoning Text Amendment also removed the pre-pandemic program's numerous geographic restrictions, allowing the restaurants to participate in areas of the city where outdoor dining was not allowed previously. With the transition to the first year of Dining Out NYC, we are proud of the work the agency has done so far. DOT conducted extensive outreach, including 44 webinar presentations with question and answer sessions for restaurants, repeated email communications to every business with a food service establishment permit, and over 15,000 palm cards distributed in person. We also did extensive engagement with the news media and

via social media to raise awareness about the
program. DOT has received nearly 3,900 applications
from over 3,200 restaurants, and our goal is to help
all of these restaurants participate in the program.
When an application is incomplete or includes errors,
our staff doesn't just reject the application, we
work with applicants to help them achieve approval.
Our applications are also available in 12 languages,
a concern that we heard raised today. To expedite the
lengthy application process required by Local Law 121
and the other requirements of the City Charter, and
to allow as many restaurants to be up and running by
April 1st as possible, DOT issued conditional
approvals to restaurants applying to operate a
roadway cafe that had already gone through the DOT
review, community board review, and had a public
hearing. Thanks to this effort, the vast majority of
restaurants that applied for a roadway cafe by the
August 3rd deadline were approved to operate. In
addition, all restaurants that applied for a sidewalk
cafe prior to the August 3rd deadline have been
allowed to operate. We are thrilled that outdoor
dining is now a permanent part of the city's
streetscape and we want to work with the Council to

make this program as successful as possible. This includes listening to the concerns of restaurants about how to expand participation and to make the application process faster and easier. We are just over three weeks into the first Dining Out NYC season, so I am sure there will be more lessons learned and additional feedback to consider. We look forward to discussing lessons from this first season with the Council and other stakeholders so that we can work together to make outdoor dining a success for many years to come. Thank you for the opportunity to testify before you today. We now welcome any questions.

CHAIRPERSON MENIN: Great. Thank you very much. So, a number of questions. I mean, first of all, I really want to drill down on this number of the 67 businesses with full approval. Because the goal of the hearing is obviously to try to fix this backlog and figure out what can we do to improve this. Why is it that only 67 businesses have received this full approval?

FIRST DEPUTY COMMISSIONER FORGIONE:
Okay, I'll start out by going through some of the numbers, and then Michelle will add if I've missed

3 anything. First and foremost, we want to emphasize
4 that 80 percent of the program's applicants are now
5 able to be up and running as of April 1st. So the
6 bottom line is that 80 percent of restaurants can
7 operate as we speak. So, that for us is the most key
8 factor here. We want to get every restaurant
9 operational as soon as possible--

10 CHAIRPERSON MENIN: [interposing] But it's
11 just the conditional approval. So does that give
12 restaurants a certainty that they need? They're out
13 laying a lot of expenses on this.

14 FIRST DEPUTY COMMISSIONER FORGIONE:
15 Good. So, let me explain that a little bit, and
16 maybe I'll run through some of the numbers, Chair, if
17 that's good, and then I'll get your question. So,
18 we've had 3,922 total applications, and that is from
19 about 3,200 different food service establishments.
20 Of those applications, 774 roadway, 1,754 are
21 sidewalk, and 697 are both. Of that group of
22 applications, we have 511 that were either withdrawn
23 by the applicant or were denied because they were in
24 a bus stop or they were at a hydrant or something of
25 that nature. So that leaves us with about 3,411. Of
that 3,411, 2,603 are able to operate either because

3 they've gone through the process, or if they're
4 sidewalk they applied before August 3rd, or if
5 they're roadway they've gone through so much of the
6 process that we know their application is correct and
7 they've already had a public hearing. So, to answer
8 your question, the people that have been able to set
9 up now, roadway in particular, we have completely
10 reviewed every aspect of their application and
11 they're all correct. So they won't be in the
12 situation where they've set something up and then
13 upon the final license, we're going to say oh, what
14 you've put out there is incorrect. That will not
15 happen. They know exactly what they need to put out.
16 In the meantime, we have the 1,800 sidewalk setups
17 also operating, and we've been very clear with all of
18 them that they should do so and that we'll keep
19 working through the process in the meantime.

20 CHAIRPERSON MENIN: What happens to the 20
21 percent that--

22 FIRST DEPUTY COMMISSIONER FORGIONE:
23 [interposing] So, the 20 percent, let me tell you
24 about that.

25 CHAIRPERSON MENIN: don't have any
approval?

3 FIRST DEPUTY COMMISSIONER FORGIONE:

4 Exactly. So we have a number that we're in active
5 discussion with or are non-responsive. So what we've
6 found, and Michelle can explain this a little bit
7 further, is that-- as we talked about earlier, some
8 of the restaurants and the Hospitality Alliance
9 mentioned, a lot of the restaurants because we did
10 not require an architect or an engineer to prepare
11 their drawings, we got some-- quite substandard
12 drawings. So what we've had to do in those cases is
13 go back and forth with the restaurant, and what we
14 quickly learned is that the restaurants they're very
15 busy. They're running a business or they don't have
16 the expertise. What we have done rather than tell
17 them your measurements are wrong, their sidewalk
18 distances are totally incorrect, what we have done is
19 we have corrected those errors for them, sent it back
20 to them, ask them to review, and then we're keeping
21 their application moving. Of the ones that we're
22 waiting to approve now, what we're seeing is some of
23 them are not responding to us or some of them may
24 choose to withdraw but they're not telling us they
25 don't want to participate in the program. So we're--
and we're doing everything we can to get to them.

We've offered to come out to their restaurant. We've offered a Zoom call to go through the plans. They can come to us. We're open to any of those things that the restaurants mentioned earlier, but we can't necessarily force every restaurant to engage with us if they're not interested.

CHAIRPERSON MENIN: Why wouldn't you set up a walk-in licensing center in every single borough to make it easy for restaurants to walk in, get their paperwork processed and get their questions answered?

FIRST DEPUTY COMMISSIONER FORGIONE:
Chair, I'd rather even make it easier. We'll go to the restaurant. We have gone to restaurants and we've offered restaurants to go to them. What we've heard from most of them is they're super busy, so they actually prefer the Zoom option, the remote option where we call up the plan on the screen. They're in their restaurant. We're in the office, and we do that together. We change the plan, fix it, and move it along.

CHAIRPERSON MENIN: That sounds great, it's just not what we're hearing in the field. It totally contradicts complaints that I'm getting to my office that I know that my colleagues are getting,

3 that the Hospitality Alliance is getting where people
4 feel that it's stuck in bureaucratic red tape and
5 that they're not hearing back from DOT. So there
6 seems to be a total disconnect between what you're
7 saying and what we're hearing from restaurants and
8 the Hospitality Alliance.

9 FIRST DEPUTY COMMISSIONER FORGIONE: Well,
10 actually, the folks who were here before us, a lot of
11 them indicated an excellent response out of DOT, and
12 we're returning all the calls within a day or so.
13 We've responded to every email. We don't have a
14 backlog. So we're actually being very responsive.
15 And if you know of any businesses or your colleagues
16 that are having trouble, let us know and we will have
17 someone hold their hand immediately and go to them if
18 they want us to go to them.

19 CHAIRPERSON MENIN: We will definitely do
20 that. Now, why do you think so few restaurants are
21 applying? You mentioned that little over 3,000
22 statistic, but there were 13,144 businesses
23 participating in outdoor dining at the end of the
24 City's temporary restaurants program. So we sort of
25 have an abysmal application rate. Why is that?

3 FIRST DEPUTY COMMISSIONER FORGIONE: So,
4 we actually think we've had a good application rate.
5 At the height of the program during COVID we had
6 about 6-8,000 restaurants operating. The 13,000
7 number is people that may have signed up. They may
8 or may not have ever even used the option. They may
9 have stayed in business. They may have gone out of
10 business. We didn't require a restaurant to tell us
11 if they were setting up or not. So we think the
12 number we're talking about is about 6-8,000 and we
13 have at this point about 4,000 applications. And just
14 as a-- just to mention that a comparable program to
15 New York is probably Paris, and they have not seen
16 that percentage of people signing up between their
17 temporary and the permanent program. So we actually
18 think we're doing pretty well. However, we're not
19 resting on our laurels. We love the Dining Out
20 program. We want more people to participate. As we
21 get through this first year, and we're going to have
22 time to really focus on even more outreach, we will
23 go out to communities. We'll work with any of the
24 Council Members, boards, whoever, and we will try to
25 solicit more people and get them in the program.
Michelle, do you want to add anything?

2 ASSOCIATE DEPUTY COMMISSIONER CRAVEN: I
3 just want to add that we are seeing new applications
4 every day. So the numbers keep going up regularly.

5 CHAIRPERSON MENIN: Why is the
6 application only in English and in Spanish?

7 FIRST DEPUTY COMMISSIONER FORGIONE:
8 That's not correct. It's in 12 languages.

9 CHAIRPERSON MENIN: Okay, because we're
10 hearing from restaurants, we heard that directly. So
11 it's on the-- you're saying it's absolutely in 12
12 languages. Because we heard complaints about
13 language access. So those complaints are incorrect?

14 FIRST DEPUTY COMMISSIONER FORGIONE: Yes,
15 it launched in English and Spanish, that's what our
16 IT Department was able to get ready at the time, but
17 we have increased it to 12 languages since launch.

18 CHAIRPERSON MENIN: When did you increase
19 it?

20 FIRST DEPUTY COMMISSIONER FORGIONE: I do
21 not know specifically, but we can find out for you.

22 CHAIRPERSON MENIN: Because we--
23 literally, we're hearing as of like the last couple
24 of weeks that it wasn't. So, if this is something
25

new that was done, that's great, but that is not what
we've been hearing.

FIRST DEPUTY COMMISSIONER FORGIONE: I'm
going to say that it was before the last few weeks,
but we'll find out and get more clarity.

CHAIRPERSON MENIN: Okay. Okay. What can
be done in terms of the complaints that you heard
from the previous panel. There were a myriad
complaints. How do you recommend that the agency fix
those complaints? Everything from the revocable
consent portion to the excessive fees to the backlog,
to the delay, to the issue around architectural
drawings, I mean we heard-- how are you proposing
that you can fix all these different issues?

FIRST DEPUTY COMMISSIONER FORGIONE:
Okay. So some of that come back to a complicated
process that comes back to both the Local Law and the
City Charter. So, I think there are discussions for
us to have with the Council on some of this, but I
think, you know, what we want to do is get through
this first year or so and see how restaurants are
doing once the program settles in a little bit, and
then take stock of where we are and keep making
improvements. But maybe Michelle will talk to you a

3 little bit about some of the measures we have taken
4 so far to make sure that the process is as smooth as
5 possible.

6 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:

7 So,-- okay. So, one thing I guess from the very
8 beginning, we assign every application to a dedicated
9 plan reviewer. They work with the restaurants
10 directly to make sure the applications are complete,
11 to make sure that the site plans include what they
12 need to include. I will point out just because there
13 was a lot of discussion about site plans and the kind
14 of review that needed to happen to the site plans up
15 front, some of the site plans we receive are-- like,
16 they don't have any dimensions. It might not have a
17 street name on it. Like are very, very, very basic.
18 And I think we found that if we sent those to the
19 Community Boards, the Community Boards would be very
20 unhappy with us for sending that little detail about
21 a particular site plan to them, and so that is why we
22 work with the restaurants very closely up front to
23 try to get those site plans into compliance and to
24 make sure that the restaurant itself, yeah, the
25 outdoor dining setup would be in compliance. We try
to-- we work to make every application viable to make

sure it gets approved. Anything that we think we can get it approved, we're going to try to get it approved. We offered-- as the First Deputy Commissioner said, we have a lot of Zoom and team sessions with people. We take remote calls that we can be online updating the site plans for the restaurants instead of asking them to do it themselves. We can do it in one fell swoop. They can take any measurements if they need to. They'll be at the restaurant. We take care of that right away. We can make site visits if we need to. We have done that. if there are minor issues within the application that maybe don't affect the site plan or really affect the application that severely, we'll send it to the Community Board right away rather than hold it up. If-- for roadway applications, I'll say because the Community Boards get 30 days to look at it, and the lead time for public hearing notice is approximately a month, we will basically start the advertising process for a public hearing as soon as we send it to the Community Boards. So we can hold them public hearing right away after the Community Board's time has run out. That's a lot of it, yeah.

3 CHAIRPERSON MENIN: And what type of
4 specific outreach are you doing to restaurants about
5 the program, and if you could be specific by borough?
6 Because we're seeing a real equity issue. We're
7 seeing a lot in Manhattan, but not in some of the
8 other boroughs. So I want to understand what's
9 happening.

10 FIRST DEPUTY COMMISSIONER FORGIONE:
11 Okay. We have done over the last year, year and a
12 half, a lot of outreach. We've worked with the
13 Department of Small Business Services in particular
14 to help us reach a lot of the restaurants. We have
15 contacted every single restaurant that has a food
16 permit-- what is the--

17 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
18 [interposing] Food Service Establishment Permit.

19 FIRST DEPUTY COMMISSIONER FORGIONE: Yes,
20 thank you. We've done 15 webinars with Community
21 Boards, 29 webinars for Q&A sessions with
22 restaurants, the BIDs, the hospitality groups, other
23 city agencies. We've done a tremendous amount of
24 email blasts with Dining Out program information with
25 links to the website. We've done a number of in-
person presentations, tabling at business events.

3 We've presented at New York City interagency
4 taskforce meetings, 13 press releases since 2024, and
5 distributed over 15,000 palm cards with information.
6 And our inspectors have gone to every restaurant that
7 participated in the temporary program twice in order
8 to give them information on the permanent program to
9 make sure they understood it. That's just a sampling
10 of it. I don't have it broken down by borough.

11 CHAIRPERSON MENIN: We've heard from a
12 lot of restaurants that they're recommending that the
13 City allow for greater flexibility for safe sidewalk
14 café clearances, and we heard that issue brought up
15 before as well as DOT scaffolding requirements and
16 getting clarification on that. Have you taken any of
17 those two issues, and would you take them moving
18 forward and clarify them so that we're not putting
19 this onerous burden on the applicant?

20 FIRST DEPUTY COMMISSIONER FORGIONE: So,
21 Chair, are you speaking about our clearance
22 requirements and are we willing to revisit those?

23 CHAIRPERSON MENIN: Yes.

24 FIRST DEPUTY COMMISSIONER FORGIONE:
25 Okay. So what we have done, and you know, things
have changed a lot. You know, I heard the folks

testifying before us talking about how they have had certain clearance requirements dating back to DCWP's program for decades. The needs of the city are constantly changing, and as we develop a permanent outdoor dining program, we felt it was very critical to look at what we need now in the City. everyone here is aware we have a ton of competing demands for both sidewalk and roadway in the City, but focusing on sidewalks in particular, sidewalks first and foremost are be able to get people safely to move from one place to the other. So, we've developed, and Michelle can talk a little bit more about it, but we have developed some clear path requirements very analytically. Looking at land use such as density of the area, height of the buildings, land-- you know, land use with hospitals, subway stations, etcetera to gauge how much sidewalk space is necessary to safety and comfortably move people. so that is the basis for our sidewalk clearances, and we've even accommodated those a little bit further and given a few more feet for each of those categories to Dining Out, but we feel it's very important to be very measured as we approach the permanent program and give a fair amount of space to pedestrians moving on

the sidewalks. And that's not to say that's not something we wouldn't want to revisit in the future. Any other details you want to add?

ASSOCIATE DEPUTY COMMISSIONER CRAVEN:

I'll just add for-- aside from the pedestrian clear path which is obviously very important, there are clearance requirements for other elements in the sidewalk, whether they're fire hydrants, subway stairs, bus shelters, whatever else. A lot of those objects already have certain clearances that have to be maintained for them so that they can be used appropriately, but we had a series of interagency meetings I think starting in 2021 to talk through everybody's infrastructure, the needs that are out there, sister agencies, MTA, utility companies to figure out what's sort of the right size for the different clearances. And we tried to be as flexible as possible for the restaurants to get as many restaurants operating as we could.

CHAIRPERSON MENIN: Okay. And the Fiscal Year 2025 November Plan added \$176,000 for an additional eight headcount positions to process outdoor dining applications. Have all of those positions been filled?

3 FIRST DEPUTY COMMISSIONER FORGIONE: Yes.

4 CHAIRPERSON MENIN: Do you think that you
5 need more staff to address the backlog?

6 FIRST DEPUTY COMMISSIONER FORGIONE: I
7 don't think we need more staff. So, maybe I'll just
8 talk about that for a moment. We have-- obviously,
9 this is our biggest year. In order to address the
10 applications that are coming in this year, we have
11 our 24 staff that are funded as part of the program.
12 We also trained some other staff within the
13 Department and put them on loan into this program,
14 and we also hired some consultants for a number-- for
15 several months in order to help review applications.
16 So we think that the staff in the program is probably
17 the right number going forward, but we're also
18 prepared to take measures to bring in more staff if
19 we ever need to.

20 CHAIRPERSON MENIN: I just think, when
21 you have the number of complaints you have-- and we
22 know that there have been a tremendous number of
23 complaints despite what your testimony is saying--
24 there are enormous amounts of complaints. There is a
25 huge backlog. It also-- I do want to point out that
records show that from 2017 to 2019 it took DCWP an

3 average of 177 days from the filing of an application
4 to the approval of a sidewalk café license, and one
5 of the whole intents of this law was to try to speed
6 up this process, but now we're seeing many
7 applications are still in this backlog. So why do
8 you think that eight staff members is enough to
9 address this program?

10 FIRST DEPUTY COMMISSIONER FORGIONE:

11 Okay. The reason the program is taking so long is
12 really because of the steps in the process coming
13 back to some things required in the City Charter,
14 other things required in the Local Law. You know,
15 we're giving counsel. We're giving Community Board
16 review time. We have a public hearing. We have to
17 notice the public hearing. There's a certain number
18 of days that the Comptroller-- so there-- each of
19 those things that I just rattled off, and Michelle
20 can get to them in detail if we want to talk about
21 them, but those things are just months. Those add
22 together and form months. So, it is less I would
23 say-- if we have an active restaurant that's engaging
24 with us in the back and forth, we can get the
25 application final very quickly in a matter of a few

weeks. But it's really all these other steps in the process that add on so much time.

CHAIRPERSON MENIN: Can you give us examples? If you don't have them now, could you send to both of the Chair examples of restaurants where it's taken a couple weeks from start to finish? Because I would like to talk to those restaurants, because that is absolutely not what we're hearing.

FIRST DEPUTY COMMISSIONER FORGIONE:
Absolutely.

CHAIRPERSON MENIN: So, if you could get that to us by the end of the week, I'd like to have a list of all restaurants where it took a couple weeks start to finish for the process.

FIRST DEPUTY COMMISSIONER FORGIONE: We can give you some examples of that, sure.

CHAIRPERSON MENIN: Yes. That would be great. The seasonal nature of the program which we know the Council had that requirement. I personally objected to that. I think this should be a year-round program. is DOT open to an amendment where it would be a year-round program so that we're not putting again the burden on restaurants to buy all this

3 equipment, store the equipment then reassemble the
4 equipment.

5 FIRST DEPUTY COMMISSIONER FORGIONE: We'd
6 be happy to engage in discussions about that.

7 CHAIRPERSON MENIN: Okay. I have a
8 number of more questions, but I want to be respectful
9 of my colleagues, so let me turn it over to Chair
10 Brooks-Powers.

11 CHAIRPERSON BROOKS-POWERS: Hi,
12 Commissioner, good to see you.

13 FIRST DEPUTY COMMISSIONER FORGIONE:
14 Great to see you.

15 CHAIRPERSON BROOKS-POWERS: I'm going to
16 start with the application process issues, just
17 picking up on some of what Chair Menin had mentioned
18 and what we heard from some of the businesses
19 earlier. Can you walk through DOT's approval process
20 for applicants that submitted a license and revocable
21 consent application? Specifically, what does the
22 preliminary review from DOT include, and how long
23 does it take?

24 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
25 So, I'll walk you through for both the sidewalks and
the roadways because they're separate processes set

up in the legislation. The preliminary review process, we receive the application including the site plan photographs, supporting documents. We review to make sure we have everything that we need. We review the site plan to make sure that it is complete and accurate and includes the information that we need to submit it to the Community Board for proper review. So, we look at the site plan itself. We look at the photographs that are submitted. We go to cyclomedia [sic] or street view to get a sense of the lay of the land, and if there are issues with the site plan, then we work with the applicant to improve the site plan and get it into good shape. I think one thing we found early on is that we would send comments back and ask the restaurants to update their site plan themselves and come back to us, and we realized that that was not efficient at all, and so that's when we started up the Zoom meetings so we could just do everything online to the extent we could and basically redraw it ourselves. So, that's the preliminary review process. Then we submit the applications to the Community Board-- this is for sidewalk-- to the Community Board, the Borough President, and the affected City Council Member. The

Community Boards have 40 days to decide whether or not they're going to hold a public hearing or send comments back to us. Depending on how things go with the Community Board, we may be required to hold a public hearing at DOT, and so then we either approve the application, approve it with a modification or deny. If we approve or approve with modification, then we send it here to the City Council. The Council has 45 days to decide whether or not to call the application to a vote. If it makes it through the City Council successfully, then we notify the applicant that it's been approved, and we reach out to them to execute the revocable consent agreement, send us insurance, and then the annual fee. Then it comes back to us. We execute. It goes to MOCS, and then it goes-- entered into FMS and goes to the Comptroller. For the roadway cafes, it starts off the same way with the application submission, the preliminary review. We forward the application to the affected Community Board and City Council Member who have 30 days to comment and submit the comments to us. We then hold the public hearing, which as I mentioned before the public hearing is a Charter requirement. It requires three weeks of advertising

notices in the city record as well as two newspaper ads that have to be paid for by the applicant according to the City Charter, but we try to overlap the public hearing notice advertising period with the Community Board review time to try to make it as efficient as possible. We hold our public hearing. If everything goes well, then we approve the application, send it out for execution. It comes back. It goes to MOCS, then Comptroller, and then we issue the license.

CHAIRPERSON BROOKS-POWERS: Thank you for that. And how are you prioritizing the pending applications?

FIRST DEPUTY COMMISSIONER FORGIONE: so, what we did first was we looked at the roadway applications in order to get them moving, because we knew that any sidewalk applicant that had applied by the August 3rd deadline was going to be able to operate. So we took care of the roadway ones first and started them on the process, and then we had moved on to the sidewalk applications next.

CHAIRPERSON BROOKS-POWERS: Aside from inadequate site plans, what are some common issues applicants face in the preliminary review stage?

3 FIRST DEPUTY COMMISSIONER FORGIONE:

4 Okay, so several things. Again, as you mentioned,
5 the response times from restaurants at the beginning.
6 Then we often wait for payment for the public
7 hearing. We're having a hard time getting that
8 payment secured in some cases from restaurants.

9 CHAIRPERSON BROOKS-POWERS: And how much
10 is it?

11 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:

12 It's about \$800 or so.

13 FIRST DEPUTY COMMISSIONER FORGIONE: And
14 then the last thing is like the remaining paperwork
15 at the end to finalize the process.

16 CHAIRPERSON BROOKS-POWERS: Did DCWP
17 provide any advice or guidance to DOT on management
18 of the sidewalk café program before Local Law 121
19 transferred it to DOT?

20 FIRST DEPUTY COMMISSIONER FORGIONE: I
21 know we had several meetings with them to talk over
22 their program, their experiences and the process.

23 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:

24 We've also-- the legislation required us to hold a
25 quarterly taskforce meeting with DCWP and the

3 Department of City Planning, and we've been doing
4 that since the legislation passed.

5 CHAIRPERSON BROOKS-POWERS: Because I
6 believe I've been told that I guess the rules in the
7 current program are not, you know, a mirror image of
8 what it was prior to Local Law 121. And so having
9 the learned lessons from the previous program, I'm
10 wondering how DOT used that information to determine
11 what the rules would be for this current program?

12 FIRST DEPUTY COMMISSIONER FORGIONE:

13 Right. So, I think again the sticking point are some
14 of the requirements that are just in the Charter and
15 the Local Law. So, even understanding some of those
16 issues didn't necessarily mean we could avoid them.

17 CHAIRPERSON BROOKS-POWERS: Just going
18 over to-- again, in line with what I was sked in
19 terms of rules. In the pre-pandemic program,
20 restaurants operating sidewalk cafés were required to
21 maintain a sidewalk clearance of half of the sidewalk
22 or eight feet, whichever was greater. Can you
23 describe the changes the agency made to the clearance
24 requirements for sidewalk cafes?

25 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:

So, in terms of the pedestrian clear path, I think

the First Deputy Commissioner alluded to this a little bit, but we did-- the agency conducted or released the Pedestrian Mobility Plan that did a modeling analysis throughout the city to identify streets that have higher pedestrian traffic versus streets with lower pedestrian traffic and recommended pedestrian clear paths for different types of corridors based on those uses. We use the guidance in the Pedestrian Mobility Plan to set the clear path in this program. We did make some adjustments because we were trying to balance getting more restaurants to operate-- as many restaurants to operate as we can, versus providing adequate clearances for pedestrians. So, for the larger corridors, we reduced the recommended requirements by several feet, but that's where we got these numbers for the pedestrian clear path.

CHAIRPERSON BROOKS-POWERS: How did DOT determine the proper distance between sidewalk cafés and other street elements such as subway infrastructure, tree beds, mailboxes?

ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
So, we held a series of interagency meeting for a long period of time and we reviewed the existing

clearances that were out there, both that were listed in the old DCWP program, as well as clearance requirements that other programs have for their infrastructure to try to come up with the most appropriate clearances here. And that was sister agencies, the MTA, Con-Ed, National Grid, anybody who might be touching the street.

CHAIRPERSON BROOKS-POWERS: Okay. And my last set of questions is going to focus on the resources for restaurants to be compliant. Can you provide a status update on the federal funding that was secured by Congresswoman Grace Meng for setups in New York Six?

FIRST DEPUTY COMMISSIONER FORGIONE: Yes, one moment, please. Thank you. Okay, so SBS is managing this project, but we're working very closely with them and also the Queens Chamber of Commerce, and her funding will secure about 60 setups that will be distributed to interested establishments within her district. So, to date, three of those setups have been installed; 14 are going to be installed in the next two weeks, and then there's engagement happening with 32 other restaurants who are interested in participating.

3 CHAIRPERSON BROOKS-POWERS: Thank you for
4 that. Can you please provide the committees with an
5 update on DOT's Marketplace Directory?

6 FIRST DEPUTY COMMISSIONER FORGIONE: Yes.
7 So, we're very proud of the Marketplace Directory.
8 We have lots of different businesses who are sharing
9 their ability to provide the items that are compliant
10 items in our program. The companies can construct.
11 They can assemble or disassemble. They can design
12 the setups. They can move them. They can store
13 them, all of that. So, we have heard back from
14 businesses that they have found this to be a very
15 useful tool to do some one-stop shopping for their
16 Dining Out setup.

17 CHAIRPERSON BROOKS-POWERS: How many
18 licensees have taken advantage of the services
19 provided through the marketplace?

20 FIRST DEPUTY COMMISSIONER FORGIONE:
21 Yeah, we haven't required them to report back to us
22 on that, so I don't have a number for you.

23 CHAIRPERSON BROOKS-POWERS: Thank you.

24 CHAIRPERSON MENIN: Okay, we've got a
25 number of colleagues with questions. Council Member
Brewer?

3 COUNCIL MEMBER BREWER: Thank you very
4 much. And I for one always glad to see Margaret
5 Forgione. I like the Commissioner. He's okay.

6 FIRST DEPUTY COMMISSIONER FORGIONE:
7 Thank you, Council Member.

8 COUNCIL MEMBER BREWER: I can deal with
9 him, but I'll take Margaret any day of the week.
10 That's me. First of all, I think we all want to
11 know-- I know this is the general question. But what-
12 - the process is long. Do you have some suggestions
13 that could make it shorter? I know that in some cases
14 when it's a perfect storm, it sounds like you can do
15 it in weeks. But are there some suggestions you
16 would have to make it shorter? And I guess, picking
17 up on Chair Menin is-- does revocable consent have to
18 exist, or could we do a permit?

19 FIRST DEPUTY COMMISSIONER FORGIONE:
20 Okay. So, Michelle will comment a little more about
21 revocable consent. It's part of the Charter, and
22 there's a question on--

23 COUNCIL MEMBER BREWER: [interposing] So,
24 when I testify tonight at the Charter, the Mayor's
25 Charter--

2 FIRST DEPUTY COMMISSIONER FORGIONE:

3 [interposing] Ah, okay.

4 COUNCIL MEMBER BREWER: I will say get
5 rid of the goddamn thing.

6 FIRST DEPUTY COMMISSIONER FORGIONE:

7 Okay, and that might entail a referendum, but I'm
8 going to have Michelle explain that because she
9 understands it best, but in terms of all the other
10 requirements, we would want to talk that over with
11 the Council and decide do we want to have some of the
12 review periods be less, for example. Those are
13 things that we would want to talk about further. And
14 we're open. We want to make it as smooth as
15 possible. But Michelle, do you want to explain
16 about--

17 COUNCIL MEMBER BREWER: [interposing] I
18 hate that thing.

19 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:

20 So, I would very much like to explain. I think a lot
21 of this was-- comes out of discussion from the City
22 Law Department, so I don't think we get into too much
23 detail right here. But my understanding, because we
24 were trying to streamline the process as much as
25 possible, sort of going into the legislation. My

understanding is that the consent was the only option at the time. I think we would be happy if there was another way to do this, to talk about a different option. I think if you're going to go to the CRC, feel free to--

COUNCIL MEMBER BREWER: [interposing] I'm going to add it to my list already.

ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
But that's where we-- I think we'd be happy to talk more, but probably offline.

COUNCIL MEMBER BREWER: Okay. What other agencies do you work with, Fire, Sanitation, etcetera? And is there coordination. I know you mentioned some of the other agencies, too-- SBS. How does that coordination work? Is it through that taskforce that you mentioned or are there other ways that they coordinate?

ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
So, we coordinate as needed. I think throughout the process we work with SBS quite frequently actually for outreach to the restaurants. And in terms of the main funding and other issues that the First Deputy Commissioner mentioned. We work with the Health Department, obviously, in terms of making sure we

3 have the appropriate eligible restaurants, make sure
4 everything is clear there. We work with the Fire
5 Department as needed, Sanitation as need. Obviously,
6 we talk to DCWP and City Planning, you know, as
7 things come up.

8 COUNCIL MEMBER BREWER: So some ad hoc as
9 opposed to something that everybody has to
10 participate in?

11 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
12 Aside from the quarterly taskforce meeting, I would
13 say it's more ad hoc.

14 COUNCIL MEMBER BREWER: Okay. The other
15 question I have is the website. So the website now,
16 I look at it, and it has correctly who applied,
17 etcetera, but it doesn't-- we get complaints of we
18 don't know if they're legal or not. Obviously, I'm
19 like the, you know, the person who spent a great deal
20 of time on the illegal smoke shops as you know. So we
21 don't know if they're legal or illegal. It doesn't
22 say that on the website. Is there some way that that
23 could be added? Because people are bringing us-- I
24 don't know if it's legal or not. We can call, but
25 that would be something that I think people would

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2 appreciate. If you give them a summons, can that be
3 listed, etcetera?

4 FIRST DEPUTY COMMISSIONER FORGIONE:

5 Okay, so the website will be continually updated, but
6 in the meantime if there's a question about any
7 setup, if you call us, we aren't--

8 COUNCIL MEMBER BREWER: [interposing] I

9 know I can call you, but I'm just saying--

10 FIRST DEPUTY COMMISSIONER FORGIONE:

11 [interposing] Not you, but anybody can call 311 or
12 nyc.gov and we will tell them what the dimensions are
13 supposed to be and whatnot, but as we continue along
14 with the program and the final approvals, the website
15 will be more and more updated and more useful to your
16 constituents.

17 COUNCIL MEMBER BREWER: About those that

18 are not legal also?

19 FIRST DEPUTY COMMISSIONER FORGIONE: If

20 they're not in the website, they're probably illegal.

21 COUNCIL MEMBER BREWER: Alright, but then

22 it needs to say that, because people don't know that.

23 FIRST DEPUTY COMMISSIONER FORGIONE: Okay.

24 COUNCIL MEMBER BREWER: It needs that.

25 That's what happened during the smoke shops. People

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2 didn't know if they were legal or illegal. They had
3 no idea. I mean, you and I might know because of the
4 insignia in the window, but believe me, they didn't
5 know.

6 FIRST DEPUTY COMMISSIONER FORGIONE: Fair
7 enough.

8 COUNCIL MEMBER BREWER: Alright. Can we
9 do a second round? I have more questions. I don't
10 want to take other time.

11 CHAIRPERSON MENIN: No, go ahead, go
12 ahead.

13 COUNCIL MEMBER BREWER: The other
14 question I have is just in terms of the-- you heard
15 earlier about the street cleaning. Obviously, that
16 was a concern before. So, how would, you know, road
17 paving or other issues-- how are we going to make
18 sure that there is cleanliness? Obviously, the ones
19 who were here earlier in terms of the restaurants,
20 they keep it clean. But how are you working with
21 Sanitation on that issue? We understand there won't
22 be the underneath for the rats, I got that. But you
23 know, other things-- how are we going to work on
24 that?

25

2 FIRST DEPUTY COMMISSIONER FORGIONE: The
3 restaurant is required to clean all the way around
4 their setup.

5 COUNCIL MEMBER BREWER: Okay, who's going
6 to monitor that, though, Margaret?

7 FIRST DEPUTY COMMISSIONER FORGIONE: So,
8 Sanitation is still monitoring that, and if they see
9 an issue, they can violate-- issue a violation to the
10 restaurant and they can tell us and we can get
11 involved as well. And then, as you mentioned, the
12 floors are removable for easy cleaning. You
13 mentioned paving. That's why the setups needed also
14 to be removable with water-filled barriers. They're
15 much easier to empty and move if we're coming through
16 to pave. We don't want a situation where we're
17 paving around to setup. We want to pave the street
18 from curb to curb.

19 COUNCIL MEMBER BREWER: Okay. and the
20 other thing, was the restaurant that talked about the
21 fees-- I know you said that you need to have that
22 discussion about the architectural drawings that
23 needs to be more complicated then-- what do you think
24 the fees should be, or is there some way that you
25 could limit the fees that people have to put in as a

restaurant owner in order to put that structure up?

Because that was a pretty high number?

FIRST DEPUTY COMMISSIONER FORGIONE:

Okay. so what I'd like to do is give some examples of the fees, and first and foremost, I want to say that the fee outside is about 25 percent of what an indoor lease or rent would cost a restaurant, and obviously it should be much less because of weather and other factors, but it is very reasonable wherein some cases restaurants are able to make quite a bit of money using their outdoor dining. We have two examples. If we have a minute we'll--

COUNCIL MEMBER BREWER: [interposing]

Suppose it doesn't rain.

FIRST DEPUTY COMMISSIONER FORGIONE:

Correct. so that's why it should be, of course, much lower, but at the same time it's very, very valuable space for a restaurant and restaurants double their space by having outdoor dining which is really quite tremendous. So, we have an example for you. A Crown Heights restaurant on Franklin Avenue, they have 104 square foot roadway setup. They have 12 seats and basically they're paying-- the revocable consent is about \$832 per year. It comes out to about 29 cents

per seat, per day, okay? And then for reference to give you a sense of what type of restaurant this is, an average entrée is about \$18, the average drink is \$12. Then we have a SoHo restaurant example. So this is a large setup. It's both sidewalk and roadway. It has 105 seats. They pay \$23,454 per year, which is a dollar and 53 cents per seat per day, but then again for reference, every entrée is over \$40 and the average drink is over \$20. So, I want to try and put it in perspective. We think the prices are quite reasonable. This is public space that is no longer able to be used by the public. It's by a private entity. There needs to be a fair charge for that space, and we think these are more than reasonable costs.

COUNCIL MEMBER BREWER: Okay. My last question is-- of course, on the Upper West Side I think you're charging too much compared to other locations. So I'm going to try to lower that to make it more comparable to other areas, because not every restaurant is huge. Not every restaurant is as big as some of the ones you just mentioned in SoHo. So that I think needs to be addressed. I will-- I don't

3 know that you can comment on it. Thank you, Madam
4 Chair.

5 CHAIRPERSON MENIN: Thank you so much.
6 And now Council Member Narcisse.

7 COUNCIL MEMBER NARCISSE: Thank you,
8 Chair. And one of my concern was the fees, but you
9 answered that. I think Council Member Brewer started
10 talking about the cleaning. How's the pavement?
11 What's the coordination you do when the roadways
12 outside and then you have to pave the road?

13 FIRST DEPUTY COMMISSIONER FORGIONE:
14 Okay, so when we're coming along to pave the road, we
15 inform the restaurant of when we're going to be there
16 to mill the road, usually, and then come back and
17 pave it. So we know it is a disruption for the
18 restaurant, and that is difficult, but that is also
19 why we designed the setups to be movable. So we have
20 the restaurant move them. If they choose to in
21 between milling and paving, they can set up again.
22 We recommend that they probably don't, but they can
23 choose to if they like to, and we'll try to keep that
24 disturbance to a minimum for them.

25 COUNCIL MEMBER NARCISSE: Okay. Now, I'm
going to go back for the fees. Because some

2 restaurant, when the way you're calculating it, do
3 you leave room-- wiggle room for the restaurant
4 owners? Because sometimes you can calculate
5 something, that's what it's supposed to be, and
6 something happen where it's not meeting them. Do you
7 do a review with the restaurant owners to see where
8 they're at?

9 FIRST DEPUTY COMMISSIONER FORGIONE: So,
10 to see-- we don't do reviews, but Council Member,
11 you're saying if something happens with the
12 restaurant in particular?

13 COUNCIL MEMBER NARCISSE: They're not
14 making it, because you can make that calculation,
15 that's all great, but if it's not happening for that
16 restaurant, do you give them a chance to come back so
17 you can recalculate it with, you know--

18 FIRST DEPUTY COMMISSIONER FORGIONE:
19 [interposing] We don't.

20 COUNCIL MEMBER NARCISSE: [inaudible]

21 FIRST DEPUTY COMMISSIONER FORGIONE: We
22 don't modify those rates. They're--

23 COUNCIL MEMBER NARCISSE: [interposing]
24 They're standard and that's it.

25 FIRST DEPUTY COMMISSIONER FORGIONE: Yes.

2 COUNCIL MEMBER NARCISSE: Okay. That can
3 be a problem. The liquor license--

4 ASSOCIATE DEPUTY COMMISSIONER CRAVEN:
5 [interposing] Can I jump in for one second?

6 COUNCIL MEMBER NARCISSE: Okay, go ahead.

7 ASSOCIATE DEPUTY COMMISSIONER CRAVEN: I
8 would just say if we've approved a certain size setup
9 and the restaurant finds that that's not feasible for
10 some reason long-term, they could come back to us.
11 We could amend their agreement and then change the
12 rates. But I think it would-- it would require some-
13 - they would have to come to us certainly so we would
14 know about it. Otherwise we would never know.

15 COUNCIL MEMBER NARCISSE: Yeah. I just
16 want the open conversation, because while we're
17 trying to do the right thing-- I'm very optimistic. I
18 know that you try your very best to do the right way.
19 So when you have-- when you listening to the owners,
20 because as a business person myself, sometimes you
21 hit some difficult time and challenging time. You
22 can say that we'll be 104 and then that 104 can drop
23 down to 54, hold three, six months or so. So I want
24 that open conversation where can people can maintain
25 their businesses. So, I thank you for that. The

restaurants are required to obtain additional liquor liability insurance, right, for their liquor dining? Even they already have it for the indoor, right? For many small restaurant this is a hard hit-- can hit hard for them, right? Is the requirement for this insurance yet by DOT or the State Liquor Authority, or someone else? Why is the requirement in place? Because I have some restaurants in my district right now going through a tough time. I'm not going to put their name out there.

FIRST DEPUTY COMMISSIONER FORGIONE:

Okay.

COUNCIL MEMBER NARCISSE: But can you answer that question for me?

FIRST DEPUTY COMMISSIONER FORGIONE: I'm sorry to hear that. So the million dollars is standard for the City and it is set by us, and we know that, you know, establishments serving liquor, it seems like a wise thing to have that coverage outside as well.

COUNCIL MEMBER NARCISSE: Okay. If there is room again, because that's what they ask me-- can they have-- because they feel like they're bind by

3 this rule and they cannot sustain. Are you open for
4 conversation if they have difficulty?

5 FIRST DEPUTY COMMISSIONER FORGIONE: So,
6 I don't think we're open to like a one-off
7 conversation but I think in general every--

8 COUNCIL MEMBER NARCISSE: [interposing] In
9 general.

10 FIRST DEPUTY COMMISSIONER FORGIONE:
11 aspect of the program we're more than willing to
12 discuss it, yes.

13 COUNCIL MEMBER NARCISSE: Okay. Daylight-
14 - daylighting, how does DOT expect roadway café
15 design to be impacted specifically for restaurant in
16 a corner? Will that further reduce the space of a
17 restaurant? We're talking about the 20-feet. Can
18 you highlight that for me?

19 FIRST DEPUTY COMMISSIONER FORGIONE: So,
20 we don't allow restaurants to set up in no-standing
21 anytime areas, and daylighting is a no-standing
22 anytime area, so yes, that could impact restaurants
23 who are at corners.

24 COUNCIL MEMBER NARCISSE: So, thank you
25 for your time and thank you, Chair. Got to run.

1 COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE JOINTLY WITH
COMMITTEE ON CONSUMERS & WORKER PROTECTION 120

2 CHAIRPERSON MENIN: Thank you so much.

3 Council Member Restler followed by Council Member
4 Louis.

5 COUNCIL MEMBER RESTLER: Thank you so
6 much to Chairs Menin and Brooks-Powers for convening
7 this important hearing. I just-- how would DOT
8 qualify the permanent outdoor dining program to-date,
9 an abject failure, a moderate failure, a severe work
10 in progress? Like, what's the--

11 FIRST DEPUTY COMMISSIONER FORGIONE:

12 [interposing] None of the above, Council Member. We
13 feel the program is going very well.

14 COUNCIL MEMBER RESTLER: Alright.

15 FIRST DEPUTY COMMISSIONER FORGIONE: And
16 we look forward to having more improvements in the
17 future.

18 COUNCIL MEMBER RESTLER: I mean, I--

19 FIRST DEPUTY COMMISSIONER FORGIONE:

20 [interposing] And again, if I can just mention, we
21 have about almost 4,000 applications. It's a very
22 good number.

23 COUNCIL MEMBER RESTLER: 4,000
24 applications. At the time that the Open Dining
25 program season began in what is an unfortunate

seasonal program, and I really did appreciate
Chairman's remarks earlier about her support for a
year-round program. I certainly agree with her on
that. 547-- 21 roadway dining restaurants had been
approved, 547 have received conditional approval. So
that's, what, seven percent of the height of the peak
of the outdoor program? Is that bureaucratic
challenges from DOT? If I recall correctly in the
negotiations over this bill, one of the Mayor's
Office's top priorities and the Commissioners top
priorities was for DOT to own this program. This was
really important to you all, that you wanted to be
the lead on outdoor dining. Am I right? So, why?
Is it bureaucratic challenges and limitations that
have only seven percent of restaurants receiving
conditional approval at the beginning of the outdoor
dining season?

FIRST DEPUTY COMMISSIONER FORGIONE: So,
let me clarify that as we speak, 80 percent of the
restaurants that have applied are able and are
setting up as--

COUNCIL MEMBER RESTLER: [interposing] So,
still--

2 FIRST DEPUTY COMMISSIONER FORGIONE:

3 [interposing] SO, we have--

4 COUNCIL MEMBER RESTLER: months into the-

5 -

6 FIRST DEPUTY COMMISSIONER FORGIONE: the
7 vast majority of the restaurants, and what we've
8 discussed here today is that we have a number of
9 requirements set between the City Charter and the
10 Local Law that do add to the length of the process.

11 COUNCIL MEMBER RESTLER: Let's just drill
12 down on the numbers. So, 4,000 is the number you said
13 applied, 80 percent of that 4,000 have received
14 conditional approval. Is that-- am I using the
15 right--

16 FIRST DEPUTY COMMISSIONER FORGIONE:
17 [interposing] Have received some form of approval.

18 COUNCIL MEMBER RESTLER: Do I have the
19 right denominators and numbers?

20 FIRST DEPUTY COMMISSIONER FORGIONE:
21 Yeah, and I can--

22 COUNCIL MEMBER RESTLER: [interposing] So-

23 -

24

25

1 COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE JOINTLY WITH
COMMITTEE ON CONSUMERS & WORKER PROTECTION 123

2 FIRST DEPUTY COMMISSIONER FORGIONE:

3 [interposing] So, we have basically 2,603 restaurants
4 are able to operate right now.

5 COUNCIL MEMBER RESTLER: Okay, so that's
6 not 80 percent of 4,000. So,--

7 FIRST DEPUTY COMMISSIONER FORGIONE:

8 [interposing] Well, and I can explain. I ran through
9 these numbers earlier--

10 COUNCIL MEMBER RESTLER: [interposing] So,
11 2,603 out of 13,000 was our peak at the height of
12 COVID, is that right?

13 FIRST DEPUTY COMMISSIONER FORGIONE: No,
14 Council Member. Let me explain this. Between the--
15 at the height, it was between 6-8,000 restaurants
16 were operating.

17 COUNCIL MEMBER RESTLER: That was the end
18 of COVID. That was the peak?

19 FIRST DEPUTY COMMISSIONER FORGIONE: No,
20 that was the peak, and what I'll tell you about the
21 13,000 number, those are restaurants who may have
22 signed up. They may or may not have setup. We don't
23 know. They may have gone out of business. That was
24 not the largest number any--
25

2 COUNCIL MEMBER RESTLER: [interposing] But
3 even if they went out of business, they would count.

4 FIRST DEPUTY COMMISSIONER FORGIONE: one
5 time.

6 COUNCIL MEMBER RESTLER: I don't under--
7 you're saying that--

8 FIRST DEPUTY COMMISSIONER FORGIONE:
9 [interposing] So, what I'm telling you is that
10 between 6-8,000 businesses had dining setups.

11 COUNCIL MEMBER RESTLER: So this--

12 FIRST DEPUTY COMMISSIONER FORGIONE:
13 [interposing] And we have about 4,000 applications
14 to-date. So we actually have quite a good
15 percentage--

16 COUNCIL MEMBER RESTLER: [interposing] The
17 data that has been widely reported in just about
18 every outlet in the City of New York, that up to
19 13,000 establishments participate in outdoor dining,
20 that's inaccurate.

21 FIRST DEPUTY COMMISSIONER FORGIONE: What
22 we explained is at the height, it was 6-8,000 and
23 13,000--
24
25

COUNCIL MEMBER RESTLER: [interposing] So,
why is there such an extraordinary discrepancy. This
has all been under DOT's purview. Why would--

FIRST DEPUTY COMMISSIONER FORGIONE:
[interposing] Let me explain it to you.

COUNCIL MEMBER RESTLER: only half as
many--

FIRST DEPUTY COMMISSIONER FORGIONE:
Because 13,000 at some point may have signed up to
participate in the program, but we don't think there
was ever a time that 13,000 were set up at that
moment.

COUNCIL MEMBER RESTLER: Okay, so--

ASSISTANT COMMISSIONER RODRIGUEZ:
[interposing] I believe Hospitality Alliance also
referenced the 6-8,000 number in their testimony.

COUNCIL MEMBER RESTLER: As the peak at
the end-- I believe they referenced that number at
the conclusion of the COVID period. That was the
number that was in effect, not--

ASSISTANT COMMISSIONER RODRIGUEZ:
[interposing] And it-- [inaudible] it was not the end
of, it was during the peak.

2 FIRST DEPUTY COMMISSIONER FORGIONE:

3 Right.

4 COUNCIL MEMBER RESTLER: That's not what
5 their testimony says, but beside the point, their
6 testimony references the 13,000 figure that we're all
7 familiar with that has been widely reported in the
8 press that's been known about. So you're saying the
9 13,000 figure is inaccurate? We didn't have-- or we
10 have 13,000 restaurants over the course?

11 ASSISTANT COMMISSIONER RODRIGUEZ: 13,000
12 is an accurate number for the-- in terms of like the
13 numbers of applications that were received, but that
14 might be--

15 COUNCIL MEMBER RESTLER: [interposing] So,
16 the--

17 ASSISTANT COMMISSIONER RODRIGUEZ: the
18 useful number for the purposes of calculating the
19 success at this point in time.

20 COUNCIL MEMBER RESTLER: So, even still
21 let's use your numbers which I would argue with and I
22 don't-- I'm not really sure at all are accurate, but
23 we're accept your numbers, that a peak of let's say
24 8,000 was the total number that operate at any given
25 time. We're now at 2,600, right? So, just accepting

2 your numbers that means we're at less than 30 percent
3 of the peak number today. Less-- 70 percent fewer
4 restaurants are operating today. Is that right?
5 Could I just get a yes/no on that?

6 FIRST DEPUTY COMMISSIONER FORGIONE: So,
7 2,600 are operating today as we speak, correct.

8 COUNCIL MEMBER RESTLER: And you said a
9 peak was 8,000. So we're talking about 2,600 out of--
10 -

11 FIRST DEPUTY COMMISSIONER FORGIONE:
12 [interposing] 6-8,000 and then we have a number of
13 others that are in the process, and we have some who
14 have dropped out of the process or are not eligible.
15 So there's more to these numbers. You need to dig
16 into them a little bit.

17 COUNCIL MEMBER RESTLER: Happy to dig in
18 with you, but--

19 ASSISTANT COMMISSIONER RODRIGUEZ:
20 [interposing] The rate of temporary to permanent, the
21 rate is similar to what Paris has which had a pre-
22 existing program as well.

23 COUNCIL MEMBER RESTLER: Beside the point
24 of whatever happened in Paris, we know what we've
25 done in New York City. We know that restaurants and

bars want this in New York City. We've seen how great a success it is in New York City, and we've seen that this Administration and this legislation killed the program, and we see only a small fraction of the number of restaurants and establishments are actually operating outdoor dining today. We prioritize parking spots over having space for our bars and restaurants to be able to expand into our communities and make our streets more vibrant and dynamic, expand employment at our small businesses. This is not working. So I am working on legislation to totally revamp outdoor dining because I think it's a failure. I disagree with your assessment. My assessment is failure, and I think we really need to get to work on how to make this a success. Thank you.

CHAIRPERSON MENIN: Thank you, Council Member Restler. And I just want to say, I agree. I don't think you were here for part of my opening remark where I called it an unmitigated disaster, and I'm urging, and I hope-- yes. And I do hope that in-- because I've got a number of LS requests to revamp it, too. I hope that you will consider this idea of transferring the program to DCWP, a licensing agency,

as opposed to a transit agency. I think a lot of the problems come from the fact that we need a licensing agency with a walk-in licensing center. DCWP has historic expertise in sidewalk café licenses. We certainly did not have these problems when that agency was doing that.

COUNCIL MEMBER RESTLER: You know, I just will say during the legislative process I thought DCWP was a more logical home. Welcome to continue those conversations as we go through our drafting process and would love to work with you together. And I think if DOT wants to own this program long-term we just need to see significant improvement. Thank you.

CHAIRPERSON MENIN: Thank you. And I do want to ask one further question before I turn it over to Council Member Louis. Of the 13,104 restaurants that were just referenced, have you sent a letter to every single one of them to see if they want to apply for the new program?

FIRST DEPUTY COMMISSIONER FORGIONE: We visited each and every one of them several times. We've sent them each numerous emails, and we've also reached out to them by phone in many cases.

3 CHAIRPERSON MENIN: So, a DOT staff
4 member of the eight people that you have working on
5 this--

6 FIRST DEPUTY COMMISSIONER FORGIONE:
7 [interposing] No.

8 CHAIRPERSON MENIN: has gone to all--

9 FIRST DEPUTY COMMISSIONER FORGIONE:
10 [interposing] No.

11 CHAIRPERSON MENIN: 13,000 establishments?

12 FIRST DEPUTY COMMISSIONER FORGIONE: No.

13 We have inspectors that are outside of the 24 that we
14 talked about earlier. We have 24 staff members in
15 the Dining Out program. Then we have a group of
16 inspectors that deal with the restaurants on the
17 street to make sure they're in compliance, etcetera.
18 Those are the people that did--

19 CHAIRPERSON MENIN: [interposing] And
20 every single one has been visited?

21 FIRST DEPUTY COMMISSIONER FORGIONE: Yes,
22 yes. In some cases, the restaurants aren't there
23 anymore due to the nature of the industry.

24 CHAIRPERSON MENIN: Okay. I'll turn it
25 over to Council Member Louis for questions.

3 COUNCIL MEMBER LOUIS: Thank you, Chair.

4 And First Deputy Commissioner, thank you for being
5 here today. It's unfortunate the Commissioner
6 couldn't be here, but glad to see you and your team
7 here. And I just want to echo some of the sentiment
8 of my colleagues. We appreciate the efforts of DOT.
9 Penny has been very resourceful, but we do believe
10 that there's still flaws with this program. So,
11 we're going to continue to echo that and mention it,
12 but we do hope for change, especially change in
13 agency. I have a number of businesses in my district,
14 particularly in the Newkirk Plaza area of my
15 district, are seeking to adjust their method of
16 operation to serve liquor outdoors. However, the
17 Department of Transportation has not clearly
18 articulated what is required for these businesses to
19 lawfully operate under the State Liquor Authority.
20 So I wanted to ask, what coordination if any is
21 currently in place between DOT and SLA to inform
22 businesses of their obligations when they want to
23 modify their operations of outdoor alcohol service?
24 And I have a health and safety question. I have some
25 other businesses in my district, particularly in East
Flatbush, who are unsure how the Department of Health

and Mental Hygiene regulations apply in the context of outdoor dining. So I wanted to know what ongoing interagency communication mechanisms exist to ensure small businesses are not receiving conflicting or incomplete information from multiple city agencies. So, one is on health and safety standards. The other is interagency coordination.

FIRST DEPUTY COMMISSIONER FORGIONE:

Okay, I'll answer the second one. Michelle will answer the first one. So, as far as DOHMH, Michelle mentioned that we do have quarterly meetings with the agencies to make sure that we are coordinating carefully. We haven't heard that restaurants are confused about the DOHMH guidelines of serving outdoors, but if there's any more to that-- and will go back and we'll double-check with the staff, or if you have any more information, if you let us know, we'll make sure we clear up any confusion, because we don't want them to be confused between the agencies.

COUNCIL MEMBER LOUIS: Okay.

ASSOCIATE DEPUTY COMMISSIONER CRAVEN: In terms of the State Liquor Authority we've had a number of conversations with them. They've actually been very collaborative, and they are recognizing the

2 conditional approvals we've issued for roadway cafes
3 as sufficient approval to move forward with the
4 modification for the liquor license that restaurants
5 need to serve alcohol outside.

6 COUNCIL MEMBER LOUIS: Alright. So what
7 specific efforts is DOT undertaking to ensure
8 businesses do not fall in non-compliance due to this
9 lack of coordination, if any? So, how do you make
10 sure that they're compliant?

11 FIRST DEPUTY COMMISSIONER FORGIONE:
12 Yeah, well, we're happy to make sure-- and as
13 Michelle said, we have an excellent relationship with
14 State Liquor throughout this process. It's been some
15 uncharted territory. They worked well with us. If
16 there is anyone falling through the cracks, we are
17 happy to reach out to the State Liquor Authority.

18 COUNCIL MEMBER LOUIS: And you will make
19 sure there's some cross-coordination there to make
20 sure that the business--

21 FIRST DEPUTY COMMISSIONER FORGIONE:
22 [interposing] Yes, and we have been coordinating
23 very--

24 COUNCIL MEMBER LOUIS: doesn't get
25 impacted.

3 FIRST DEPUTY COMMISSIONER FORGIONE:

4 closely with them.

5 COUNCIL MEMBER LOUIS: Okay.

6 FIRST DEPUTY COMMISSIONER FORGIONE: We
7 speak with them all the time.

8 COUNCIL MEMBER LOUIS: Alright. Thank
9 you, Chairs.

10 CHAIRPERSON MENIN: Great. Thank you so
11 much. And then Council Member Rivera?

12 COUNCIL MEMBER RIVERA: Hi, good
13 afternoon. Thank you for being here. I want to thank
14 everyone who testified. Really appreciate your work
15 and all the small businesses that are here. So, the
16 first year of outdoor dining, I appreciate that
17 you're evaluating the timeline for review and
18 especially considering our own capacity and also the
19 capacity of the Community Board. They're very
20 worried about handling the applications and ensuring
21 there's this balance as you all know with this, with
22 our own local ecosystems. So let me ask about the
23 online marketplace. They provide elements for
24 fabrication. Some of them are very, very expensive
25 as you might have heard, requiring tens of thousands
of dollars in deposits. Does DOT have any

information they can share about usage and feedback
you've received on what's available?

FIRST DEPUTY COMMISSIONER FORGIONE: Yes,
we have heard anecdotally, Council Member, that
businesses have found the marketplace to be very
useful. We don't require them to tell us if they've
used it or not, because things are so busy we don't
want to put anything else onto them. So I can't tell
really tell you exactly how many have partaken in the
different aspects of the marketplace. But my
understanding is that we have, you know, a variety of
levels of materials, you know, from high-end to more
everyday materials. So in the marketplace there
should be enough for them to choose from in order to
fit their budget.

COUNCIL MEMBER RIVERA: Right. Well, you
can imagine they want to make an investment, they
want something to last. So when we're looking at--
I've seen price tags \$35,000, \$86,000 for pieces. I
mean, that's a lot for a business to take on. So, I
know you've received a lot of feedback on that, so we
would love to work with you on figuring out how we
can make things a little bit more sustainable. In
the winter time, sidewalk cafés have these awnings

they'll enclose which is called a vestibule. Is that in line with the program? Is that something that is included in the program?

FIRST DEPUTY COMMISSIONER FORGIONE: It is not. The vestibule is just a small enclosure that prevents like the wind and the cold air from getting it. No, that's not part of the program.

COUNCIL MEMBER RIVERA: Well, we just-- you know, there are so many things that make the experience-- that's important to the experience at these businesses. So I wanted to ask because a lot of operators are interested and that being considered. This also has to do with, I guess, clearance. You said 1,700 applications are pending, correct?

FIRST DEPUTY COMMISSIONER FORGIONE: No. Well, we have applications at different stages in the process.

COUNCIL MEMBER RIVERA: Okay, so they're--

FIRST DEPUTY COMMISSIONER FORGIONE: [interposing] so, we have about 800 that are in discussions with the restaurants to keep-- to finalize them and move them along.

3 COUNCIL MEMBER RIVERA: I know you're
4 speaking to some where their applications are
5 pending, but they are operating, and they've been
6 told that they must comply with the new clearances.
7 And so it's been a little bit difficult to ask that
8 they be in compliance if their plans have technically
9 not been reviewed and approved yet.

10 FIRST DEPUTY COMMISSIONER FORGIONE:
11 Understood.

12 COUNCIL MEMBER RIVERA: So, how are you
13 dealing with that discrepancy [sic]?

14 FIRST DEPUTY COMMISSIONER FORGIONE:
15 Right. And we are working with those restaurants.
16 So, the clearances should be very clear to them about
17 what they need to do, but being they haven't
18 completely gone through the process, we will correct
19 them. We will notify them if we see an issue until
20 such time they've gotten through the whole process.

21 COUNCIL MEMBER RIVERA: Okay. I
22 appreciate the time. I don't want to go over. I just
23 want to say that I know the number 8,000 was brought
24 up as during the pandemic how many operators there
25 were. Do you think that DOT or that the
Administration can scale up to handle a number that

is closer to 8,000 rather than the 3-4,000 that we're seeing now?

FIRST DEPUTY COMMISSIONER FORGIONE:

Yeah. We would like to see the number continue to grow, and we can handle it.

COUNCIL MEMBER RIVERA: Okay. I

appreciate that, because I'm sympathetic to the demands on your agency. We want to be fair to residents and businesses, and I know the businesses want to be celebrated by their neighbors. And I think year-round-- I second all the things the Chair said would be really, really instrumental to the program. Thank you.

FIRST DEPUTY COMMISSIONER FORGIONE:

Thank you.

CHAIRPERSON MENIN: Thank you so much.

Okay, thank you very much for your testimony today.

We appreciate it, and we're now going to move into the public testimony. So I'm now going to open the

hearing for public testimony. I want to remind

members of the public that this is a formal

government proceeding and that decorum shall be

observed at all times. As such, members of the

public shall remain silent at all times. The witness

table is reserved for people who wish to testify. No video recording or photography is allowed from the witness table. Further, members of the public may not present audio or video recordings as testimony, but they may submit transcripts of such recording to the Sergeant at Arms for inclusion in the hearing record. If you wish to speak at today's hearing, please fill out an appearance card with the Sergeant at Arms and wait to be recognized. When recognized, you will have two minutes to speak on today's hearing topic which is of course Dining Out NYC program and Introduction 857. If you have a written statement or additional written testimony that you wish to submit for the record, please provide a copy of that testimony to the Sergeant at Arms. You may also email written testimony to testimony@council.nyc.gov within 72 hours of this hearing. Audio and video recordings will not be accepted. So, I'm now going to call the first panel. Lacy Tauber, Sandra Jasquez [sp?], Valerie De La Rosa, Jean Ryan, if you could please come forward. Thank you.

CHAIRPERSON BROOKS-POWERS: And you may begin when you're ready. Just come off of mute.

3 VALERIE DE LA ROSA: Thank you so much.

4 Good morning Chairs Brooks-Powers and Menin and
5 members of the Committee on Transportation and
6 Infrastructure and the Committee on Consumer and
7 Worker Protection. I am Valerie De La Rosa, Chair of
8 Manhattan Community Board Two and I'm speaking on
9 behalf of the Board. CB2 has held public hearings
10 for 308 roadway and sidewalk café applications to
11 date, and we're hearing 36 more applications this
12 evening. So far, 40 percent of roadway café
13 applications in CB2 do not meet the required 15-foot
14 emergency travel lane with 99 roadway café
15 applications in CB2 referred to DOT-- referred by DOT
16 to FDNY for travel lane waivers. FDNY is reviewing
17 those on those roadway setups on case-by-case basis
18 with no agency overseeing overall block-by-block
19 analysis. We have as many as 10 roadway setups on
20 narrow streets for this waiver that do not meet the--
21 on one block that do not meet the waiver-- the 15-
22 food travel lane. Outdoor dining has been a
23 resounding success in CB2. Revocable consent fees
24 are 55 percent cheaper than before COVID for most of
25 CB2. CB2 has 564 roadway café and sidewalk café
applications expected. That is 23 percent of outdoor

dining cafes in Manhattan-- 23 percent in all five boroughs and 36 percent in Manhattan. We've reviewed 60 percent of those. We've had the most sidewalk cafés before COVID, during COVID, and now during Dining Out NYC. The one-size-fits-all program doesn't meet the needs of our mixed-use and residential communities. A bar with 80 seats outside has 53 more seats outside than inside, hotels with roadway dining in their loading zones, and now all of their hotel loading and unloading occurs in the street. Primary building entrances of five feet are not met. Sidewalk café applications that propose non-ADA-compliant café widths of one foot nine inches not only is unworkable, but it's illegal under federal ADA law. FDA ADA requirements are hidden on a 311 knowledge page for outdoor dining complaints related to accessibility and recently NYC DOT removed a bullet point requiring a 36-inch accessible route within outdoor dining seating areas. Again, this is not an NYC DOT guideline. It is federal ADA law. What's working? Seasonal roadway dining works in Manhattan Community Board Two. Seasonal roadway dining is what we want in our neighborhoods, not seasonal storage. And enclosed sidewalk cafes also

work in CB2. They allow the open-air dining, opens up the public realm, and the Dining Out NYC legislation ensures that sidewalk cafés remain open-air. The clear path requirements are based on the mobility plan, and they are sound and they provide the protection. Before making any additional changes to this program, we strongly urge you look into the enforcement. Thank you.

CHAIRPERSON BROOKS-POWERS: Thank you.

LACEY TAUBER: Hi, Chair Brooks-Powers and Chair Menin. Thank you for holding this hearing today. My name is Lacey Tauber. I'm representing Brooklyn Borough President Antonio Reynoso. He was here, but unfortunately he had to leave. This is a really big priority for the Borough President, because he was the author of the bill that created the emergency open restaurants program and a precursor to the bill that the Council ultimately passed in 2023 to make the program permanent. BP Reynoso is very proud of what the original open restaurants program accomplished. It was a lifeline for small restaurants, but struggled during the pandemic, saved approximately 100,000 jobs, allowed for people to interact socially in a safe setting,

generated tax revenue for the City and helped New Yorkers reimagine what our streets can be. It was widely successful by any objective means and it's a shame to see that because of the changes that the Council adopted the program now barely exists. It's only about a-third of restaurants that had approved emergency permits choosing to apply for the "permanent program," and barely a handful of those applications approved. It's up to the Council to now fix some of the mistakes, and some of the recommendations that the BP has are first to restore a year-round outdoor dining program. The seasonal program creates too many burdens on small businesses. I'm sure that has been discussed and will be discussed more today. It would also encourage more creative designs, restore consistent option for immune-compromised people to socialize safely, and create more jobs. Two, to expedite approvals. It is unacceptable that DOT had processed and approved less than one percent of applications as of mid-February, and even allowing business with completed applications to proceed doesn't solve issues with SLA. Another important way to speed the process up is to remove the oversight role for Community Boards.

To the extent allowed under the Charter, they should have little to no role in the approval process, as the agency-level requirements are sufficient to ensure safety, appropriateness, cleanliness, and accessibility. Finally, alleviate cost burdens for small businesses. This was a big goal for BP in the original legislation to make it easy as possible for small outer-borough and immigrant-run businesses to participate. That was the point of obtaining the zoning text amendment as well. And I will just list these: to remove the public hearing notice fee; ensure that the application requirements are clear; create a process for expansion in front of adjacent businesses; and remove the liquor liability requirement. Thank you again for holding this hearing. Borough President Reynoso looks forward to working with the Council to make the program successful. Thank you.

CHAIRPERSON BROOKS-POWERS: Thank you.

JEAN RYAN: Hi. I'm Jean Ryan. I'm President of Disabled in Action of Metropolitan New York, DIA for short. We are in favor of outdoor dining and we do not want to go back to the year-round sheds which were mostly inaccessible to people

with disabilities. And for the record, the first time I heard anybody today talking about accessibility were from these two people at the table. Nobody here mentioned, no Council Member and no restaurant person, and no DOT person. Some of us enjoy outdoor dining and like to eat out with our friends and families, but if an outdoor restaurant is not accessible to people with disabilities because it has a step up or down like what typically happened in the emergency ones, or has a steep ramp where the tables are too close together, restaurants do not get our business. This is 2025, 35 years after the ADA was enacted. You'd think the restaurant executives would want accessibility because it's good for business. In the 2020 version of sheds no amount of complaints by us, even by the Mayor's Office for People with Disabilities, MOPED [sic], made any difference. We definitely do not want to go back to those bad old days, and that was when the other agency was in charge, and they did nothing about accessibility. So people are saying you want to go back to that agency, and they did nothing? You know, that doesn't make any sense to us. I spent much time with architects working on what eventually became the

new prototypes for restaurants. We are in favor of the new prototypes, but we are extremely concerned about the one prototype that allows for a ramp, because if there's no ramp available, then that outdoor restaurant is totally inaccessible to us. I voiced this concern during the early discussions, but DOT wanted to help more restaurants be able to be outdoors if the landscape was not level enough. I need more time. I can't read well. Some of the sidewalk cafés had tall stools that we could not access instead of low tables and chairs that everyone can use. It might be hip to have high stools and chairs and high tables, but they are inaccessible. Then we can't even go to that place. As the years went on, many sheds were eyesores and people are not really talking about that today. And many were not the economic engine that they purported to be because of a lack of staff to wait on tables outside and inside, and the sheds smelled like rotten food that was rat fodder. They were not hygienic. Many sheds were abandoned or used for storage. I saw Christmas trees and construction materials in the sheds as well as stacked tables and chairs. Streets are for everyone, not just for restaurants to have the

structure on them year-in and year-out, and nothing--
some were nice, but most were shabby and unkempt and
were not painted or kept up. So,--

CHAIRPERSON MENIN: [interposing] And
just, we have to give everyone the same amount of
time. I'm going to ask if you could please wrap up
and then you can--

JEAN RYAN: [interposing] Yeah, no.

CHAIRPERSON MENIN: submit the testimony.
Thank you.

JEAN RYAN: Yes. So I just say that we
want accessibility and that has to be a priority.

CHAIRPERSON MENIN: Thank you very much.
Thank you. I'm going to call next panel. Kathleen
Irwin, Sara Lind, Cecil Brooks, Jr., if you could
please come down. Thank you.

KATHLEEN IRWIN: Hello, good afternoon.
My name is Kathleen Irwin with the New York State
Restaurant Association. Thank you for holding this
hearing today and giving us the opportunity to
discuss the roll out of Dining Out NYC. I want to
begin by saying I recognizes that the institution of
a permanent program is a major undertaking, and I
want to start by acknowledging some of the things

that DOT has done well. First and foremost, they've been willing to educate and engage with restaurants. They've provided extensive visual resources online, trainings both in-person and online, and have partnered with SBS to promote the SBS financial estimator tool on their website. That being said, in the roll out we've seen a number of challenges that have made it both less attractive for restaurants to apply and difficult for those who did. One of those is that the timing and incentive structure of the application program caused a major backlog which created an inability for restaurants to plan and invest while waiting to find out if they're approved. Limited and delayed coordination with other agencies including the SLA-- I know we just heard otherwise, but that's not the experience that we have heard. The application process overall being so difficult that many restaurants have been forced to rely on private expeditors to feel confident in their applications. The seasonality of roadway dining creating a major cost and logistical burden for restaurants who are expected to build, maintain, deconstruct, and store the same set of materials year-in and year-out. Finally, inflexible siting

with-- that has limited the ability for cafes to be
as they once were both during open restaurants and
even during the sidewalk café program. one example
that was mentioned earlier in terms of timeline
mismanagement is the fact that the creation of
conditional approvals wasn't even announced until
February 28th with approvals beginning to be mailed
March 3rd for a March 25th start to build date.
That's three weeks or less for restaurants to find
out if they're even allowed to make a major
operational end capital investment. It's not
acceptable, given the amount of foresight that we all
had going into this. Moving forward, we have a few
short and long-term recommendations for this program.
We expect that the backlog problem will begin to
resolve with higher application volumes, but besides
that, we would like to see year-round roadway cafes.
We believe--

CHAIRPERSON MENIN: [interposing] Okay,
I'm going to ask you to wrap up, please. Thank you.
You can-- did you want to finish a sentence? No?

KATHLEEN IRWIN: I have like five
recommendations, but--

3 CHAIRPERSON MENIN: [interposing] Yeah,
4 okay, if you could submit it and we will look at
5 that. Thank you so much. We have to under our rules
6 give everyone the same amount of time. Thank you so
7 much. Okay.

8 CECIL BROOKS: Good to see you. Thank
9 you for everyone and the opportunity to present on
10 behalf of Open Plans, and happy National Picnic Day.
11 So, in honor of all of the wonderful eating spaces
12 that we have in our city and the foodie capital of
13 the world, I would like to share just a little bit
14 anecdotally about some of the research that we've
15 done. We had the opportunity to speak with dozens of
16 businesses and visit hundreds and thousands of square
17 feet of space to hear what has been among the
18 pressing challenges of businesses, entrepreneurs, and
19 pop-up shops, everyone who has been looking to use
20 outdoor space in a creative way. And especially as
21 someone who started his career at SBS working on the
22 sidewalk café policies with many folks in this room.
23 We find that a year-round option is among the
24 simplest, most straightforward recommendations that
25 can be taken into consideration, and also yes, the
agency does matter. Government and the policy makers

are the ones who will be working to roll up their sleeves and put this in action. Also, having smaller businesses account for their size and using adjacent store frontage when they don't have the structure or the size to really make use of their eating space. Because I can't tell you how many places, especially in the outer boroughs where there isn't an immediate grid, have less than a thousand or even 500 feet of space with none of their neighbors doing anything in front of their storefronts. So having some flexibility in how businesses use their storefront space, that would be another immediate improvement. And also transparency with the fees and the expenses that come up after the application process, with what materials are required and who and what-- where businesses can get their materials from. These are all things that would make it much more accessible to have a space be activated in front of their storefront. Thank you so much.

SARA LIND: Thank you. I'm Sara Lind, also from Open Plan, Co-Executive Director. Outdoor Dining is a vibrant use of public space that New Yorkers and restaurants love, and we were excited to see the program codified, but we have serious

concerns about flaws in the present program. You've heard over and over again about the lack of the year-round option which has drastically lowered participation. As you've heard, thousands in additional costs to take down, store, and set up structures. Restaurants don't have the space to store materials over the winter months. I want to address something that Jean Ryan pointed out that, you know, so many of these structures became sort of storage over winters before. I think, you know, having this permanent program and the way that restaurants are now really opting in and intentionally participating, I think we will see the restaurants that choose to use an outdoor dining option year-round will be much more intentional about that with the new design. Regulations, we expect to see those concerns addressed. Furthermore, there's no logical reason why we would allow sidewalk cafés year-round but not roadway dining. New Yorkers want to eat outside on a nice day any time of the year, whether it be on the sidewalk or in the roadway, and many New Yorkers-- speaking of accessibility-- are still dealing health, you know, issues that they want to be able to eat outside and not inside. So we

encourage the Council to amend the legislation to provide a year-round option. Cecil just mentioned the existing frontage regulations which limit participation from restaurants with smaller store fronts. Again, during the temporary program restaurants were allowed to make agreements with neighboring businesses to extend the food print of their outdoor dining structure. For small restaurants it just doesn't make sense right now unless they can do that. Finally, we believe the current program incentivizes sidewalk cafes over roadway cafes, and while sidewalk cafés are an important part of the vibrant public realm, they do create challenges on crowded sidewalks, and many restaurants also don't even have a wide enough sidewalk to participate in the sidewalk café program. So the City needs to make these amendments to the program to ensure that the roadway café program is just as successful as the sidewalk program.

CHAIRPERSON MENIN: Thank you so much. I know you mentioned you have recommendations. Do you want to discuss what the five recommendations are?

KATHLEEN IRWIN: Yes, please. They're brief. The first is year-round roadway cafes. We

believe that that will make the program more accessible, affordable, and give businesses the ability to invest in beautiful, creative structures that are high-quality and include the higher materials and building standards that have been part of the Dining Out NYC Program. An example of that is the water-filled barriers that are not the rat burrows that the stand and dirt barriers were in the temporary program. We'd like to see more assistance from the City so that restaurants that don't feel the need to hire private expeditors to feel confident in their application. We'd like to see more flexibility in siting and the availability of waivers for those that had sidewalk or roadway cafes located during Open Restaurants or in the prior sidewalk café program with no safety issues. We would like to track the Dining Out NYC usage by neighborhood with an eye to increase participation in areas with low participation rates, and that assistance could include things like targeted technical support, waived application fees, or upfront grants to help mitigate the upfront costs of starting with Dining Out NYC. Finally, we would love to see the city identifying neighborhoods where Dining Out NYC is

2 going well that would be well-suited to increased
3 pedestrianization [sic] to create Dining Out NYC
4 Districts that combine additional open space with
5 formal encouragement and promotion of Dining Out NYC
6 to be a draw for locals and tourists alike.

7 CHAIRPERSON BROOKS-POWERS: Thank you.
8 Thank you to the panel. We'll now hear from
9 Charlotta Janssen, Kevin Mulligan, Dior St. Helair
10 [sp?].

11 CHARLOTTA JANSSEN: Okay, I'm on. Hi.
12 I'm Charlotta Janssen of Chez Oskar in Bed-Stuy. I
13 applied in July. I am compliant. I still have not
14 received a license, and it's been hell. Let's be
15 real. The current DOT rules are killing restaurants.
16 Follow them, bleed out. Break them, get killed by
17 fines. This March DOT came down hard on me with four
18 summonses in under two weeks for my canopy. All
19 winter I had begged LPC to review my design. There's
20 no precedence. I'm tossed around between LPC, DOB,
21 and DOT again and again. I had to cut back my canopy
22 which served my community. I had to cut them back to
23 the awnings. I am compliant, but what I'm left with
24 is a setup that doesn't serve my customers. It
25 doesn't serve my block and it sure as hell doesn't

1 serve the spirit of outdoor dining. I can only cover
2 half my diners. I can't enclose. Try planning
3 service and food outdoors every day. If it rains, if
4 temperature dip it's over. Imagine doing that at a
5 wedding. During the pandemic canopies didn't just
6 help, they saved us. Chez Oskar, Secret Garden, Zaca
7 Café, Diaz Kelly [sic], La Nationale [sp?], we made
8 it because we had beautiful strong, enclosable, and
9 sound mitigating canopies. They gave us real
10 capacity, real shelter and real presence. We created
11 solutions because we were allowed to. Now, we're
12 being punished for that creativity. The new rules
13 are anti-business, anti-design and anti-community
14 based on the worst actors and enforced like we are
15 criminals. This isn't regulation. It's sabotage.
16 Please allow for enclosable canopies on the sidewalk
17 and roadside that can attach, not penetrate, allow
18 for full coverage of diners, and where needed
19 pedestrians. Allow for self-certification unless
20 there's a history of serious violations. Make
21 roadside year-round. Require removal when roads are
22 repaved. No need for landlord consent for small and
23 mom and pop businesses. We're not ask-- I'm closing.
24 We're not asking for chaos. We're asking for the
25

freedom to build what saved us. Stop choking the
very engine that kept this city eating. Let outdoor
dining remain a space for creativity and community.
Let us keep building what worked instead of
forgettable feeding troughs. Thank you.

CHAIRPERSON BROOKS-POWERS: Thank you.

KEVIN MULLIGAN: Hey everyone. my name
is--

CHAIRPERSON BROOKS-POWERS: [interposing]
Turn your mic on, please.

KEVIN MULLIGAN: Hey everyone. My name
is Kevin Mulligan, and I own a bar/restaurant called
The Laurels in East Village. We are almost two years
old, and I hope to see three. The one egregious
major flaw with the new rules is it forbids the use
of enclosed sidewalk cafes. This is nonsensical and
unfair for a number of reasons. The City is granting
licenses for year-round dining. This is a very
disingenuous offer as it completely ignores the fact
that for at least six to seven months of the year,
over fall, winter and spring, no one can or wants to
sit outside due to the elements. In Ireland we have
a saying that I think you have here too, "Don't pee
on my leg and tell me it's raining." And it is

usually raining in Ireland. Businesses are being asked to pay for a 12-month license when any reasonable person can see it is not usable for a significant portion of that time. We are well into April now, and for much of the first few weeks, a lot of days barely made it into the 50s, and that's during daytime hours. By peak dinner hours, it was too cold to sit outside. So from October to April, outdoor dining under the new guidelines is essentially redundant. Secondly, storage: inherently outdoor dining means there's obviously an amount of tables and chairs placed outside. There are also barriers placed around them to demarcate the area. Where are businesses expected to store all this at night? In my own case, given the extreme breadth of the sidewalk on my corner of Second Avenue there could be 45 to 55 tables outside and 90 to 110 chairs. I cannot move the furniture inside after the 10 or 11:00 p.m. curfew on using the outdoor area. There will be customers inside. Like most places, I do not have enough basement storage, and even if I did it is not feasible nor safe to ask the one member of staff who opens every days to lug all that furniture up the steps from the basement. The only

solution left to me is to stack mountains of
furniture outside on the pavement every night. This
leads to numerous other issues. It is unsightly. It
gives a very strong impression my business is closed.
It is difficult to tie all this down to prevent from
being stolen. The area will likely be used as a
toilet by some. This furniture is going to fall into
disrepair very quickly from having to sit outside the
elements every night. Just to close, if the issue is
not the space the business is taking up on the
pavement, and it is not, as the City has conceded
[sic] this by permitting outdoor dining at all, then
what significant reason can there be to disallow the
business from keeping its customers warm and dry
during colder months or just rainy days in general.

CHAIRPERSON BROOKS-POWERS: Thank you.
Thank you to the panel. Next we'll hear from Mary
Evancho, Bonasio Crespe [sp?], Augustine Hope, and
Leslie Clarke.

MARY EVANCHO: It's on.

CHAIRPERSON BROOKS-POWERS: You can
begin.

MARY EVANCHO: Hello, my name is Mary
Evancho, resident of New York City for 46 years. Our

city is suffering, and as Andrew Rigie stated at a
Community Board meeting, New York City has an
enforcement problem. I agree with Andrew and will
add that enforcement problem pertains to outdoor
dining as well. I love this city and want to see it
thrive, but let's be clear, no other private industry
has been afforded this opportunity. Department of
Transportation is simply trying to do their job
properly and thoroughly and being pushed unfairly to
expedite. It is my opinion there are too many
unanswered questions to decide this is a year-round
program. Let us first determine how well it works,
how it can live up to expectations for both the
industry and New Yorkers. I ask the industry players
and this committee to consider these questions and
statements. When doubling the size of an
establishment, where is that garbage placed if setups
extend full-frontage? It sits in front of adjacent
businesses and residences, an issue that is still not
being addressed on applications. How does a
restaurant double its size and continue to operate
out of the same size kitchen? Is this realistic? How
does it double its customers and accommodate them
with the same number of bathrooms? I encourage the

hospitality industry to be patient, realistic, and not greedy. To communicate to applicants that they abide by guidelines and respect their neighbors. This will be your pathway to success. This is how we together will properly grow our city. Thank you.

CHAIRPERSON BROOKS-POWERS: Good afternoon. My name is Augustine Hope. I'm from the West Village Residents Association, the community that has been disproportionately impacted by this program. I have prepared a long testimony, but most of the committee have left, so let me just address a couple of salient points. The hospitality industry has driven a truck through an illusion that they have made about this program, that it-- that the outdoor dining is a monolithic program. It isn't. It is two separate. There's the sidewalk seating and the roadway seating. We have already year-round outdoor dining. It's on the sidewalk. The place that we have three months of relief each year is on the roadway which is 90 percent of the problems that we have, 90 percent of the problems with the trash, the vermin, the noise being broadcast into our homes. Let's focus on that one. Let's look at the problems that that creates and how we can deal with them. So

perhaps we could have a hearing that doesn't focus on all the problems that the hospitality industry is having, and we're happy to consult with them on how to comply with the rules. They're not that complicated. We'll do it for free. We won't charge them anything. Perhaps we could have a hearing at some point where we discuss the issues that the community is having, and some of the ways that they could actually be solved. They're not that complicated. There's no time here now to discuss them, but let's talk about them. Thank you.

LESLIE CLARKE: I'm Leslie Clarke, also with West Village Residents. I wanted to talk about some of the suggestions that have been made by the industry that I disagree with and that has been made by some Council Members that I disagree with. One is about the clearances. First, I'd like to make it very clear that instead of using the word clearances, let's talk about the space allotted to pedestrians on public sidewalks. That's what these clearances are about. Restaurants consider these onerous. This is not-- what is onerous is that under the old-- and by the way, I agree with you, Council Member Menin-- excellently run program by Consumer Affairs

Department, we had a three-foot pedestrian clearance. We had a three-foot service aisle in front of every sidewalk café in addition to an eight-foot pedestrian clearance. And by the way, we also had excellent enforcement by Consumer Affairs, because unlike the complaint-driven system that DOT has, Consumer Affairs actually sent out inspectors to look for themselves, and as a result what we had was a uniform compliance and uniform enforcement. Every restaurant knew it had to follow the rules, because the next door neighbor followed the rules. And why did they follow the rules? Because Consumer Affairs took it upon themselves to make sure they were following the rules. We haven't had that in five years. And I'd also like to talk about the word onerous that used all the time here. Because of the zoning text amendment, the number of miles of sidewalk added-- sidewalk and roadway added to outdoor dining went from 193 to 524. Because of that, we had residential zones that suddenly became open territory for restaurants. I used to have nobody dining under my window. I now have 108. That is onerous. Thank you.

CHAIRPERSON BROOKS-POWERS: Thank you.

CHAIRPERSON MENIN: Thank you very much
to this panel. Thank you. I'm now going to call the
next panel, and I believe there's been a request for
translation. Marlene Ensaldo, Ysabel Rosario, Norma
Cote, Sharon Brown. Okay, this is our last in-person
panel. So if there's anyone in the audience that
wanted to speak that has not, please see a Sergeant
at Arms and fill out a card. Thank you. We do have
some individuals [inaudible]. Okay. Please begin.
Okay, great. Thank you.

YSABEL ROSARIO: [speaking Spanish]

TRANSLATOR: My name is Ysabel and I'm
working as a street vendor in the City of New York
for a period of around 18 years. I'm also a member of
the Board of Directors of the Street Vendors Project
here in New York City.

YSABEL ROSARIO: [speaking Spanish]

TRANSLATOR: It's a different Spanish
dialect. So it's something different Spanish in
Spain [sp?]

YSABEL ROSARIO: [speaking Spanish]

TRANSLATOR: She's have some problem with
her reading. My apologies, okay? I'm here in New
York City to open the program for outdoor

1 restaurants, right? As street vendor I wanted to
2 work in public spaces, because I wanted to be able to
3 serve [inaudible] with the restaurants together. And
4 with the restaurants together and with the street
5 vendors, sometimes what is happening is generating a
6 lot of traffic, like pedestrian traffic. And we
7 wanted to benefit mutually about this. I'm sorry,
8 Council, there's some mistakes in this Spanish. So
9 at this point I [inaudible] some explanation
10 [inaudible].
11

12 CHAIRPERSON MENIN: Okay.

13 TRANSLATOR: So, basically she wanted to
14 say she wanted to be able to survive using this
15 outdoor restaurants, because sometimes there's a lot
16 of pedestrian traffic because of this. [inaudible]
17 Okay. Some Spanish grammar mistakes in her letter.
18 This is what happened, right? [inaudible] Okay.
19 She's going to read now the third part, okay?

20 YSABEL ROSARIO: [speaking Spanish]

21 TRANSLATOR: Together, we're going to
22 attract the clients who support the small businesses
23 in the entire city.

24 YSABEL ROSARIO: [speaking Spanish]
25

2 TRANSLATOR: Okay. And the question to
3 the City of New York to allow the outdoor restaurants
4 are going to fulfill with specific rules and they
5 will remain open during the entire year.

6 YSABEL ROSARIO: [speaking Spanish]

7 CHAIRPERSON MENIN: Okay, I'm going to
8 ask you to please wrap up.

9 YSABEL ROSARIO: [speaking Spanish]

10 CHAIRPERSON MENIN: And you can submit
11 that testimony.

12 TRANSLATOR: Oh, she can submit it in
13 writing?

14 CHAIRPERSON MENIN: Yes, yes, of course.

15 TRANSLATOR: Okay, I got it. She has
16 some problems with her reading. My apologies.

17 CHAIRPERSON MENIN: Oh, no problem. It's
18 just that we give everyone the same amount of time.
19 So she can submit that in writing. Not a problem.
20 Okay?

21 TRANSLATOR: Council, I'm going to--
22 they're going to switch the seats so we're able to
23 interpret better.

24 CHAIRPERSON MENIN: Sure. Okay.

25 MARLENE ENSALDO: [speaking Spanish]

TRANSLATOR: My name is Marlene. I'm working for 21 years selling [inaudible] in the City of New York. I'm member of the Board of Directors of Street Vendor Project.

MARLENE ENSALDO: [speaking Spanish]

TRANSLATOR: I'm supporting the program of restaurants that outdoors. I'm asking the City of New York, you're supposed to be made sure that this program of restaurants as outdoor restaurants will continue, and I'm also asking the City of New York that they should improve the program so this will benefit also the small businesses as well. I like to work in public spaces along with my colleagues who are working with me in the restaurants, and we want space for everybody.

MARLENE ENSALDO: [speaking Spanish]

TRANSLATOR: [inaudible] Thank you.

MARLENE ENSALDO: [speaking Spanish]

TRANSLATOR: We are also asking you to reduce the fees of the restaurant programs, the fees connected to the outdoor restaurants. The small businesses like mine, we pay high taxes to the City of New York.

MARLENE ENSALDO: [speaking Spanish]

2 TRANSLATOR: We want that you reduce the
3 fees of the outdoor restaurants here in New York City
4 because-- so they're-- this is small restaurants can
5 benefit, that can grow economically, and in last
6 [inaudible] they will be able to pay more taxes.

7 MARLENE ENSALDO: [speaking Spanish]

8 TRANSLATOR: Okay. Please make the
9 system to be easy, flexible and successful.

10 MARLENE ENSALDO: [speaking Spanish]

11 TRANSLATOR: My colleagues, right, of the
12 [inaudible] are counting with all your help.

13 CHAIRPERSON MENIN: Thank you.

14 TRANSLATOR: Thank you very much. She
15 said thank you.

16 CHAIRPERSON MENIN: Thank you so much.
17 Thank you.

18 TRANSLATOR: Council lady, I have a
19 question? [inaudible] grammar mistakes on the
20 Spanish itself. I will help them to correct it,
21 okay, so they can submit it.

22 CHAIRPERSON MENIN: Sure. The testimony
23 is not due for 72 hours.

24 TRANSLATOR: Yeah, no problem.

2 CHAIRPERSON MENIN: As long as it's
3 submitted--

4 TRANSLATOR: It's okay to send the letter
5 in Spanish, or they need an English translation?
6 It's okay to send the letters in Spanish to the
7 Council?

8 CHAIRPERSON MENIN: Sure. Yes, yes, yes.
9 That's fine.

10 TRANSLATOR: Oh, okay.

11 CHAIRPERSON MENIN: Yes, of course,
12 that's fine. Thank you so much.

13 NORMA COTE: My name-- my name is Norma
14 Cote. Excuse me. I'm a member of the public. I
15 have patronized outdoor dining establishments and I
16 am affected by them predominantly negatively. I've
17 heard the representatives of the industry complain
18 about clearances and about clearances that reduce the
19 size of their operations. I think it's a good thing
20 that we have regulations that limit the sizes of
21 operations beyond what we've had so far. We have in
22 many places a takeover of the sidewalks by
23 restaurants that largely ignore the rules anyway.
24 You may write your rules, but they don't ignore them--
25 - they don't abide by them. They're egregious,

notorious repeat scofflaws when it comes to compliance with the rules and we get no effective enforcement by the Department of Transportation. This problem has exacerbated the super-saturation of restaurants in some areas. What happens when you get small businesses, retail shops that are now taken over by restaurants is that you drive out the local businesses that serve the needs of the neighborhood and you increase the population density there, making sidewalks impassible in some areas. We desperately need-- we need enforcement of the reasonable regulations that are now in place that restrict the size and the operations of sidewalk cafes, and also we need DOT to take into account the track record of establishments that come up for renewal or for permanent licenses now. And finally, we need some protection against the indiscriminate siting of outdoor establishments that used to be protected by the zoning law limiting in residential spaces. Now with indiscriminate siting, no area is safe.

CHAIRPERSON MENIN: Okay, thank you.

SHARON BROWN: Hello. My name is Sharon Brown. Before I begin I just want to say release the hostages. Let Yahweh's people go. Defend Israel.

1 Okay, these sidewalk cafes and various names that
2 they have, roadsides and on the sidewalks, they are
3 very much needed. We can extend the year-round
4 option and make sure that it's places where it
5 doesn't disturb traffic, and it's a high-volume area
6 where it's disturbing people. So we can find other
7 places to set it up. I have an idea that there
8 should be a delivery option where maybe the
9 government or the restaurant itself can have these
10 spaces on beaches and different places like that and
11 they can deliver. Someone can call their restaurant
12 and be at the enclosure. The City can build some
13 themselves. They can get military personnel,
14 homeless veterans, whoever to build it, and they can
15 have it in distant locations. Someone can call and
16 say can you deliver it to the sidewalk café on
17 whatever place, and they can come there and deliver
18 it there so that it won't just be in front of their
19 restaurant clogging up. So this lady here won't have
20 a problem under-- you know, and other people under
21 their windows and different things like that. We
22 should have some kind of delivery option. It's very
23 much needed. And the year-round option is necessary.
24 If you can have sidewalk cafés year-round, then the
25

enclosure shouldn't be a problem. The delivery option should help cure why people don't want to have the year-round in the streets and the enclosures. Thank you.

CHAIRPERSON MENIN: Thank you very much. Thank you to this panel. We have one more person in panel before we go to Zoom, Madison Pinckney.

MADISON PINCKNEY: Hi, thank you for the opportunity to testify. My name is Madison Pinckney and I'm a legal fellow at the Disability Program at New York Lawyers for the Public Interest. The Dining Out program offers a vibrant opportunity for the community growth and engagement, but it has to do so while ensuring disability access to these restaurants and the sidewalks. Sidewalk access is paramount for the disability community, especially considering that a lot of other transportation options like the subway that millions of New Yorkers rely on is not accessible which often leads the sidewalk as the primary mode of navigation for everyday life. When sidewalks are blocked either by dining structures or by server and patron traffic, people with disabilities often have to navigate into the street which is incredibly dangerous not just for themselves

but for others. luckily, Dining Out mandates a clear path for sidewalks and other accessibility requirements, and NYLPI applauds these requirements, but also urges the Council to have robust enforcement and by doing so will require enough resources to investigate each complaint, because the enforcement of these requirements relies heavily on public reporting. Additionally, the Dining Out program should offer an annual report of these accessibility complaints and the city's responses which will help ensure accountability not just for restaurants, but also for the City's enforcement. Thanks so much for the opportunity.

CHAIRPERSON MENIN: Thank you very much for your testimony today. And we're now going to go to Zoom. We've got three members on the panel. I'm going to call them in order, John Grimes, Kierra Salkeld [sic], and Michelle Campo.

JOHN GRIMES: Hello. I'm John Grimes. Can you hear me? Sorry, I'm the first one, just want to make sure--

CHAIRPERSON MENIN: [interposing] Yes, we can.

SERGEANT AT ARMS: We can hear you.

JOHN GRIMES: Great. Thanks. Thank you.

I am a 35-year resident of the West Village and I have experienced the impact of the outdoor dining program firsthand. I actually agree with some of the comments that have been made about the program being an unmitigated disaster, but that is because in my view, the underlying premise of the program is critically flawed. While necessary during a pandemic, the pandemic is now over. What we have now remaining is an illegally giveaway of public land to the hospitality industry with very little payment, notwithstanding the comments on that, and without having done an environmental impact study that would take into account the impact on the environment including the ambiance environment, noise. No one has talked about the environment here, really, which is astounding to me. I am opposed to any change to the program that would loosen the rules or provide for year-round outdoor dining. From my personal experience my quality of life has been severely harmed by this program and the associated noise and drunken behavior from the establishment, my immediate neighbor. I live in a historic district and I'm required to keep my property looking as it did

basically in the 19th century under the landmark laws which I'm happy to do. In contrast, the sheds are mostly eyesores and in my neighborhood are used for outdoor drinking, not outdoor dining. I heard some comments about limited seating, but seating is irrelevant if patrons are standing around and drinking, spilling out into the sidewalk. These sheds are not a solution for sidewalk crowding, instead, they contribute. I have made personally over 100 complaints to 311 and New York State Liquor Authority with no relief. Party goes on outside my house and until recently year-round. I heard some interesting comments about the rules being [inaudible] on bad actors, but in my experience, bad actors are allowed to [inaudible]. I also heard a lot of complaints about the new roadway setups that are supposed to be removable, but as the sheds are now going back up, we see they're the same enclosed fronters [sic] which if allowed to operate year-round--

SERGEANT AT ARMS: [interposing] Thank you. Your time is expired.

JOHN GRIMES: Thank you. And I oppose any [inaudible] of the current rules. Thank you.

CHAIRPERSON MENIN: Okay. Next speaker,
please?

KIYANA SALKELD: Hi, my name is Kiyana.
I live on the lower east side and I'm testifying
today in favor of all outdoor dining accommodations
including sidewalk seating, roadside dining, and open
streets which are some of the only ways
immunocompromised New Yorkers and other folks at
high-risk of complications from COVID and the flu can
safely enjoy New York's restaurants. The subtext of
the opposition to outdoor dining is that it was a
COVID-era program but because COVID is over, the
program should be curtailed and our streets should
returned to cars. But COVID is still very real for
many New Yorkers, and if you're concerned about ADA
violations, please remember that disability can take
many forms, and I'm very concerned that being high-
risk or immunocompromised have been entirely
overlooked in this conversation. It's not lost on me
that the City's own rules for in-person testimony
today include COVID safety protocols like masking
that doesn't seem to be widely adopted or enforced,
but serves as a visible reminder of how vulnerable
people are further excluded from public life.

Vanishing outdoor dining options are particularly troubling when Kathy Hochul is pushing for statewide mask ban, vaccine uptake is terrible, COVID cases surged last summer, the CDC is cutting billions in funds to help state Health Departments respond to COVID, and Gothamist recently reported that 500,000 New Yorkers have Long COVID which can be so debilitating it prevents them from being able to work and support themselves. Every new COVID case is a new opportunity for one of our neighbors to get seriously ill, die or experience long-term complications. Outdoor dining also plays a role in stopping the spread of flu, and this year flu cases were at their highest level since 2020. There have been 23 pediatric deaths statewide this season, nine of which were here in the City. Proper ventilation is crucial to preventing airborne illness, but the City has not invested in the infrastructure needed to make indoor dining safer, and most outdoor dining options aren't even available year-round, meaning that if you're vulnerable, you can't safely or easily participate in a huge piece of public and social life for half the year. With all of this in mind, I'm asking the Council to please make applying for

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2 roadside and sidewalk seating less cumbersome, allow
3 year-round [inaudible] and provide more flexibility
4 for sidewalk cafes. Outdoor dining is a public good,
5 particularly when it comes to public health. Thank
6 you so much.

7 CHAIRPERSON MENIN: Thank you. Next
8 speaker please?

9 SERGEANT AT ARMS: You may begin.

10 CHAIRPERSON MENIN: Michelle Campo, are
11 you able to testify?

12 MICHELLE CAMPO: I just sent my text.

13 SERGEANT AT ARMS: You're unmuted.

14 MICHELLE CAMPO: Okay.

15 SERGEANT AT ARMS: Michelle, you can
16 testify.

17 MICHELLE CAMPO: Can you hear me?

18 CHAIRPERSON MENIN: Yes, we can.

19 SERGEANT AT ARMS: Yes, we can hear you.

20 MICHELLE CAMPO: Good. Okay. I've been
21 waiting since 10 o'clock. I'm fairly blitzed out at
22 this point, and I'm sure you guys are as well. So, I
23 just wrote down my text [inaudible] and I will send
24 it that way. This seems really not balanced in terms
25

2 of human equation committee, and I thank you for your
3 time, and I'm sure you thank me for mine. Bye.

4 CHAIRPERSON MENIN: Okay. Thank you very
5 much. We are now going to call the next panel.
6 Peter Davies, Pinchas Ringel, Sandy Rayburn.

7 SERGEANT AT ARMS: You may begin.

8 PETER DAVIES: Yes, my name is Peter
9 Davies. I'm testifying on behalf of Broadway
10 Residents Coalition in SoHo. I testified earlier
11 this morning at the competing public hearing in
12 regard to a change of rules, but here-- first of all,
13 I would like to applaud Community Board Two and the
14 effort that they have done through their outdoor
15 dining working group to catalog and document the way
16 that various sidewalk cafés and street roadway setups
17 are being applied for to come into Community Board
18 Two. Tonight, as Valerie De La Rosa mentioned, there
19 will be another three dozen applications being heard,
20 one of which is for a current operation with four
21 seats, four, one, two, three, four applying for
22 sidewalk and roadway for an additional 60 seats
23 outdoors, 6-0. This is a operation without a
24 bathroom, because it didn't require one with only
25 four seats, but now it's 60 seats. What does that

mean in terms of sharing public space? One thing that the advocates, paid lobbyists and lawyers for the restaurant industry didn't mention were residents. There is an inherent conflict in the much broader allowance for outdoor dining. I'm not against outdoor dining, but do not acknowledge the conflicts to act as if there have been no changes.

SERGEANT AT ARMS: Thank you. Your time is expired.

PETER DAVIES: Okay, good luck. Got a lot of work to do, folks.

CHAIRPERSON BROOKS-POWERS: Pinchas Ringel, are you there?

PINCHAS RINGEL: I never asked to testify, so I'm not sure. Thank you.

CHAIRPERSON BROOKS-POWERS: Thank you. Sandy Rayburn, are you on?

SERGEANT AT ARMS: Sandy, you're unmuted.

SANDY RAYBURN: Okay, can you hear me?

SERGEANT AT ARMS: We can hear you.

SANDY RAYBURN: Okay. Good morning. I'm a resident. Peter references us as references-- as residents. We-- of New York City for 80 years. I strongly oppose Hospitality Alliance's proposal to

make outdoor dining permanent and year-round on our public streets and sidewalks. Public space is not a perk for paying customers. It's a shared right. They are a lobbying group for private and corporate interests, and their proposal is exclusion dressed as inclusion and deregulation disguised as reform. This is not about supporting small business. It is about the permanent privatization of public space. Sidewalks and roadways belong to all New Yorkers, including residents like me. Turning them into commercial real estate violates the public trust doctrine and undermines accessibility, mobility and equity. It is not our responsibility to be de facto investors in their business success and to ensure that "break even." The Alliance wants to reduce clearances and expand year-round operations, but the existing program already showed us the consequences of over five years: blocked sidewalks, rodent infestations, harmful oppressive noise entering into our homes after a long day's work, and serious violations of the Americans with Disabilities Act. These dying sheds turn the City into an obstacle course, impossible to navigate safely for wheelchair users, seniors or parents with strollers. And let's

not forget the Department of Transportation which is
tasked with the oversight has failed to steward this
program responsibly since its inception. They are
the alleged inspectors, yet enforcement was lapsed.
Complaints were unanswered and--

SERGEANT AT ARMS: [interposing] Thank
you. Your time is expired.

SANDY RAYBURN: [inaudible] continue to
[inaudible]. I urge you to reject it and to defend
our streets and sidewalks.

CHAIRPERSON BROOKS-POWERS: Thank you.
Next we'll hear from Elizabeth Adams followed by
Michael Cooper Smith followed by Samir Lavingia.

ELIZABETH ADAMS: Hi, good afternoon. I'm
Elizabeth Adams with Transportation Alternatives.
The Dining Out NYC program is at a crisis point. This
was a bright spot during the pandemic, but this year
so far only 3,400 restaurants even bothered to apply,
and just 60 permits have been approved. This is
nothing short of shocking. New Yorkers love outdoor
dining from sidewalk cafes to eating on rooftops and
parks. It is a New York City staple. It is what
makes us who we are and why the Open Restaurants
program was instantly popular. The benefits of

1 outdoor dining are clear. Using a parking space for
2 dining can raise revenue by 75 percent, and open
3 streets with outdoor dining have more businesses on
4 the street now than before the pandemic, because they
5 make our neighborhoods more vibrant. Outdoor dining
6 has created thousands of jobs, benefitted small
7 businesses, and made our streets lively, active, and
8 engaging. But because of challenges like seasonal
9 restrictions and lack of investment, businesses are
10 not applying and they're not being approved. The
11 Chairs raise the issue of equity earlier that I
12 wanted to speak to, and the truth is that during the
13 pandemic, outdoor dining was actually more equitable
14 than it is today. Open Restaurants brought outdoor
15 seating to 17 neighborhoods that did not have any
16 pre-COVID dining and it allowed communities of color
17 to double their share of establishments to 41 percent
18 from 20 percent. But that is far from what is
19 happening today. And a major reason is that the
20 program is now seasonal which creates huge costs and
21 unrealistic expectations for businesses. It is
22 prohibitive to smaller restaurants who often don't
23 have the resources to build new structures each year
24 or store materials during the off months which you
25

heard about from restaurant owners earlier, and the result is what we expected. The program is diminished and the concern is that outdoor dining will now be concentrated in wealthier neighborhoods. I have to say to DOT earlier saying that this program is working well and everything's fine, anyone walking around the City knows that that is simply not true. Almost all the outdoor dining rest-- all the outdoor restaurants in my neighborhood are gone and shut down, and that is--

SERGEANT AT ARMS: [interposing] Thank you. Your time is expired.

ELIZABETH ADAMS: the case across Brooklyn. We should be doing what we can to return public space to New Yorkers. Thank you.

CHAIRPERSON BROOKS-POWERS: Thank you, Elizabeth. I think Council Member Paladino had questions.

COUNCIL MEMBER PALADINO: Good afternoon, Elizabeth. How are you?

ELIZABETH ADAMS: Hi, I'm good. Thank you.

COUNCIL MEMBER PALADINO: Good. Have you heard that the COVID pandemic is over?

3 ELIZABETH ADAMS: I think what you heard
4 earlier is that people still face a number of health
5 issues across our city and that having outdoor dining
6 is a great way that people can protect their health
7 and their wellbeing.

8 COUNCIL MEMBER PALADINO: While I agree
9 with you that it has the ambiance that New York
10 needs; however, the intrusion upon our streets is
11 something that we do not need. Okay? We actually
12 approved outdoor dining in a very reasonable sense,
13 seasonal and on our streets in café tables on our
14 sidewalks so long as it does not impeded upon
15 pedestrians walking. The outdoor dining sheds were a
16 life preserver for many during COVID pandemic.
17 Nobody will argue that fact with you. However, the
18 fact that they are an intrusion upon parking spaces,
19 and they're actually hurting small businesses by
20 doing so. There have been alternatives, and you
21 pointed out rooftop dining and such, but to live
22 along these fallacies that we must have outdoor
23 dining impeding upon our streets and that this is a
24 lifeline, no, you're wrong. It's not. So, I think
25 the way we're managing it right now from April until
November is within reason, and I think you're off-

base with this. So, one thing we don't need is
between bike lanes and everything else, bus lanes--
we don't need restaurants on our streets any longer.
And they become rat-infested and disease. We don't
need it. And a place for the homeless to sleep. So
there's my list of why we do not need outdoor sheds
any longer.

ELIZABETH ADAMS: Responding to you point
about parking spaces, so at its peak outdoor dining
took less than one percent of our city's on-street
parking spaces. In its current iteration that has
actually dropped to less than .01 percent. So it's
really not the majority takeover of parking spaces--

COUNCIL MEMBER PALADINO: [interposing] I
disagree totally.

ELIZABETH ADAMS: Those are numbers. And
I will also just say this is a much better use of our
public space than one individual's vehicle in my
opinion.

COUNCIL MEMBER PALADINO: This is the
City of New York, Elizabeth. This isn't Denmark.
This isn't Amsterdam. We live in a city with eight
million people, and my husband drives a 52-foot
tractor trailer. Do you have any idea what it's like

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2 to navigate the streets of New York City when you're
3 driving a 52-foot tractor trailer trying to make a
4 living? Any idea? In the narrow streets of--

5 ELIZABETH ADAMS: [interposing] I grew up-

6 -

7 COUNCIL MEMBER PALADINO: [interposing] In
8 the narrow streets--

9 ELIZABETH ADAMS: [interposing] in the
10 City actually, and I grew up getting around--

11 COUNCIL MEMBER PALADINO: [interposing]
12 Excuse me.

13 ELIZABETH ADAMS: on the subway and
14 walking and using all of our public transportation,
15 and so I think it's important--

16 COUNCIL MEMBER PALADINO: [interposing]
17 You're going to tell--

18 ELIZABETH ADAMS: that we're thinking
19 about how New Yorkers move around--

20 COUNCIL MEMBER PALADINO: [interposing]
21 You're delusional.

22 ELIZABETH ADAMS: and have space to do so.

23 COUNCIL MEMBER PALADINO: Absolutely and
24 totally delusional, but it doesn't surprise me coming
25 from Trans Alt. Thank you very much.

CHAIRPERSON BROOKS-POWERS: Thank you,
Council Member. Next we will hear from-- thank you,
Elizabeth. Next we'll hear from Michael Cooper Smith
followed by Samir Lavingia.

MICHELLE COOPER SMITH: Hi, my name is
actually Michelle Cooper Smith. You're giving me PTSD
from school.

CHAIRPERSON BROOKS-POWERS: I'm sorry.

MICHELLE COOPER SMITH: That's okay.
Okay, so my name is Michelle Cooper Smith. I'm a
lower east side resident, a Community Board member of
which I was the Liquor License Chair for many years
and a bit of a downtown gad [sic] fly, so I just say
this to make it clear that I'm very well versed in
what's happening with the permit and outdoor dining
program, but I'm here to testify on my own behalf,
not on my Community Board's behalf. I'm a raving fan
of outdoor dining. I still remember the July 4th
weekend in 2020 when the emergency program started
and how freeing it was to finally have a safe space
to socialize with people after months of sadness and
darkness, and it gave me a vision of the future where
we could have fewer private vehicles using our
private curbs. But I'd have to say that the new

1 permit process is far too onerous and frankly
2 confusing. I can't tell you how many business owners
3 I've talked to in my neighborhood who like reasonably
4 can't tell the difference between open streets and
5 roadway dining and sidewalk cafes, and why are there
6 are different months that each operate in, and whose
7 approval for whom. And so I think that this should
8 really be simplified, as others have said before,
9 that roadway dining should be all year long just like
10 sidewalk cafes. Like, let's just make it much easier
11 to understand. And also, I'll echo what was said
12 earlier about how difficult the process is for-- once
13 they recognize the difference between the programs,
14 how difficult the process actually is. CB noticed.
15 CB hearings where they get unnecessarily beat to
16 death on hours and operations. DOT, SLA, it's just
17 all too much. I agree with Council Member Ossé that
18 the admins seemed to have designed the program to
19 effectively kill it. So it needs to be fixed by the
20 Council to be more straightforward for applicants and
21 provide more outdoor dining for New York City
22 residents. And I think that the Council should
23 remove the provision that allows sidewalk cafés to be
24 called up for a full Council vote, because as we all
25

3 know because of the zoning text amendment, all these
4 sidewalk cafes are now as-of-right so long as they've
5 met DOT regulations--

6 SERGEANT AT ARMS: [interposing] Thank
7 you. Your time is expired.

8 MICHELLE COOPER SMITH: And I thank Chair
9 Menin for abstaining on the vote to deny [inaudible]
10 sidewalk café. Have a great day. Thank you.

11 CHAIRPERSON BROOKS-POWERS: Thank you.
12 Next we'll hear from Samir Lavingia.

13 SAMIR LAVINGIA: Hi, my name is Samir
14 Lavingia. I'm the-- sorry. I'm on my Community
15 Board. I'm actually the [inaudible] Environment Vice
16 Chair that was on the Open Restaurants taskforce and
17 I'm currently on the committee that reviews all the
18 outdoor dining applications at Manhattan Community
19 Board Five. I love outdoor dining. It's so great to
20 replace parking spaces with a place for people to
21 dine outside, and my quality of life have really
22 improved significantly since being able to do with my
23 friends and family in my neighborhood. I live near
24 Columbus Circle. That used to be so crowded on the
25 sidewalks with the old sidewalk requirement, and the
new clear path requirements make it a lot easier to

walk around, to get around especially in such a
tourist-friendly area, and it's just such a better
use of space. In terms of what I think doesn't work
and what could be fixed, right now outdoor dining--
you can only do it on Sundays after 10:00 a.m. I
think it's a little bit silly that I can't have a
breakfast on a Sunday morning before 10:00 a.m.
outside. The process is very confusing for
businesses. We often see businesses have to hire
expeditors and come to Community Board Five, and I
think the system should be a lot easier. So we need
less of that. I think the program should be a year-
round program. good weather isn't limited to certain
times of the year anymore, and there are winter days
where it's gorgeous outside and having to have
restaurants break down their dining structures every
time means that only Tony [sic] restaurants are able
to open which means affordable options for outdoor
dining are really lacking in my neighborhood. So,
thank you for allowing me the time to speak, and I
look forward to improved version of the program in
the future. Thank you.

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2 CHAIRPERSON MENIN: Okay. Thank you.

3 I'm going to call the next panel which is four
4 members, Mary, Kathleen Collins--

5 MARY: Hi, Mary here. Thank you. I agree
6 with--

7 SERGEANT AT ARMS: [interposing] Sorry,
8 Mary, just wait 'til the Chair--

9 CHAIRPERSON MENIN: [interposing] Yeah,
10 let me just call the whole panel.

11 MARY: Oh, I'm sorry.

12 CHAIRPERSON MENIN: Mary, Kathleen
13 Collins, Christopher Leon Johnson, and Ned Shalanski
14 [sp?]. Okay, Mary, you can-- sorry about the music,
15 but you can-- it'll end in a minute and put us out of
16 our misery, the music. Okay, Mary, please begin.

17 MARY: Can I speak now?

18 CHAIRPERSON MENIN: Yes, yes, please do.
19 Thank you.

20 MARY: Hello?

21 SERGEANT AT ARMS: Chair, is that fine?

22 CHAIRPERSON MENIN: Yes, please. Thank
23 you. Yeah, Mary, we can hear you. Please begin,
24 Mary.

25 MARY: Hello?

3 CHAIRPERSON MENIN: Mary, can you hear
4 us?

5 SERGEANT AT ARMS: Just one moment, Mary.

6 MARY: Oh, I'm sorry. I'm not hearing
7 you.

8 SERGEANT AT ARMS: Chair, is that fine?

9 CHAIRPERSON MENIN: Okay, yes. Mary, can
10 Mary hear us?

11 SERGEANT AT ARMS: Yes, Mary, you can
12 testify now.

13 MARY: Thank you. Mary here. I'm
14 against the outdoor dining. It's regarding safety,
15 cleanliness, and people being able to get by on the
16 sidewalk. I'm against any waivers of roadside
17 dining. Hook and ladders cannot put their feet down
18 to-- they can move cars, but they can't move the
19 platforms or anything that is in the roadway
20 barriers. I think it is-- to do that we had two-- an
21 elderly couple who died on Sullivan Street. They were
22 burned to death. So the West Village Residents,
23 Mary, Augustine, Leslie, then there was John Grimes,
24 and Peter Davies from another group who testified. I
25 agree with them. It is dirty, rat-infested. The
garbage storage-- and I've been going to the CB2

meetings, the restaurants. DOT has been very
confusing because the program was rolled out quickly.
These meetings are hours long and over successive
days in a week, and it's a tremendous amount to ask
of us. I worked in a restaurant during COVID. I am
immune compromised and now I also have a disability.
So the sidewalk issues is even more important. The
restaurants never follow the guidelines. There is
not a one. The one that I worked for paid attention
very closely, but it's still not on mark [sic]. I
live in the village. This is not outdoor dining
hall. We shouldn't have weddings outside, because
what happens is they take over the sidewalk. I live
on Cornelia Street. It's a very small space and this
happens all the time. And then there have been
restaurants that are in the que with CB2 and haven't
gotten--

SERGEANT AT ARMS: [interposing] Thank
you. Your time is expired.

MARY: [inaudible] sidewalk dining or for
roadway dining, but they were doing it this weekend.

CHAIRPERSON MENIN: Okay, I'm sorry, Mary,
you have to wrap up.

MARY: [inaudible] sheds up. It's really
a disgrace.

CHAIRPERSON MENIN: Thank you Mary.
Thank you very much.

MARY: With the time I have remaining--

CHAIRPERSON MENIN: [interposing] Mary,
that's-- time is-- I'm sorry, Mary, your time is up.

MARY: What I would I say to the--

CHAIRPERSON MENIN: [interposing] Mary,
your time is up. Thank you.

MARY: Safety first, and that's what--

CHAIRPERSON MENIN: [interposing] Okay, I
don't think she can hear. So we need to-- okay.

MARY: Thank you.

CHAIRPERSON MENIN: Thank you, Mary.
Thank you very much. And our next speaker is
Kathleen Collins.

SERGEANT AT ARMS: You may begin.

KATHLEEN COLLINS: Good afternoon. My
name is Kathleen Collins and I'm a lifetime New
Yorker. I'm disabled and I use a wheelchair. I
support the Dining Out New York City program provided
it's done correctly and doesn't not hamper or
obstruct New Yorkers with disabilities ability to

participate in the Dining Out New York City program.

Since the Dining Out New York City program provides
another revenue source for restaurants by extending

the seating capacity, it also needs to be accessible
to people with disabilities. People with

disabilities enjoy outdoor dining with their family,
relatives, and friends. Additionally, people with

disabilities who want to hold a business meeting

[inaudible] appreciate having outdoor dining as an

option available to them. This restaurants Dining

Out New York City program needs to provide enough

space between tables for people with mobility devices

to be able to participate in the Dining Out New York

City program. Sufficient tables that are low and can

be accessed by someone sitting in a wheelchair needs

to be provided. Additionally, these tables need to

provide leg space for people with wheelchairs to be

able to come up to the table. Further, the Dining

Out New York City program needs to [inaudible] to

access it without a customer having to request a ramp

or other assistance to be seated when other customers

can independently seat themselves. Turning to the

pedestrians walking past the Dining Out spaces, the

restaurants need to keep a clear path on the sidewalk

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3 for everyone including pedestrians with disabilities
4 to travel safely. Finally, in order to make
5 restaurants with outdoor dining actually is in
6 compliance with regulations, the agency issuing these
7 permits needs to be given financial resources to
8 follow up and inspect the restaurants to make sure
9 the restaurants are following the [inaudible] safety,
10 health, and accessibility regulations. In sum, the
11 Dining Out New York City program can improve the
12 quality of life of New Yorkers provided it takes into
13 consideration all the needs of everyone, including
14 people with disabilities and it is properly
15 monitored. Thank you for this opportunity to speak.
16 And I'd just like to bring to Councilwoman Paladino's
17 attention that many times [inaudible]

18 SERGEANT AT ARMS: [interposing] Thank
19 you. Your time is expired.

20 CHAIRPERSON MENIN: Okay, thank you.
21 Christopher Leon Johnson.

22 SERGEANT AT ARMS: You may begin.

23 CHRISTOPHER LEON JOHNSON: Yeah. Hello
24 my name is Christopher Leon Johnson and I'm here to
25 testify in support of Dining Out NYC. At the same
time, I think that Ms. Paladino's correct about

Elizabeth Adams about-- I think that Elizabeth Adams should identify herself as a lobby for Transportation Alternatives and its own e-lobby on the court website that she should identify herself as a lobbyist. At the same time, I [inaudible] she's a lobbyist, by the way. She should identify herself as a lobbyist just like [inaudible] identify herself as a lobbyist yesterday at [inaudible] hearing when Robert Barrow [sic] [inaudible] Council Member Julie Won. But at the same time, look, outdoor dining in New York City, we need this. But at the same time, we have to make sure that it doesn't be opened up in certain areas. Like the last speaker said that in smaller-- in like smaller streets. At the same time, we need to put more defensive architecture to make sure that in the dining, like in the sheds to make sure that the homeless don't sleep-- the homeless don't be able to sleep and use the bathroom and do what they got to do in there, because when you let the people do that-- and we all know that the nonprofit allow this stuff, like Vocal New York and Housing Work, they allow this stuff because progressive caucus are scared of them, so they won't say they'll try to fix that. They'll try to stop that. Andrew Rigie tried to say look,

let's put defensive architecture up there, but-- to prevent homeless from screwing up the sheds. At the same time that once you have this it'd be more healthy for everybody to start using and we don't have to worry about cleaning-- clean that we need clean up. I think that need to stop-- that need to start happening more. At the same time, only put the sheds in certain streets, like Third Avenue, Second Avenue or any street that's over like 50 feet. You need to like-- like a wide street, like 115th Avenue, like a wide street you should open shed, but not put like a shed on a-- on like a small block like in Bayer [sic] Street in Chinatown. But that need to stop-- that need to start. I support it. I support the initiative 100 percent, but at the same time, the City Council need to start being-- cracking down on people like Sara K. Lind. I--

SERGEANT AT ARMS: [interposing] Thank you. Your time is expired.

CHRISTOPHER LEON JOHNSON: [inaudible] lobbyist from Trans Alt and make sure they identify themselves as lobbyist when they come on here, when they register on New York City court [inaudible].

CHAIRPERSON MENIN: Okay.

3 SERGEANT AT ARMS: Thank you. Your time
4 is expired.

5 CHAIRPERSON MENIN: Thank you. And our
6 last speaker is Ned Shalanski.

7 SERGEANT AT ARMS: You may begin. Ned,
8 you're unmuted.

9 NED SHALANSKI: Can you hear me?

10 SERGEANT AT ARMS: We can hear you.

11 NED SHALANSKI: Great, thank you. My
12 name is Ned Shalanski and I'm a licensed landscape
13 architect with 16 years designing New York City
14 public spaces. Currently, I design public parks for
15 the New York City Parks Department. Council Members,
16 it's a pleasure to design greenspaces within your
17 districts. I'm also a resident of lower east side.
18 My comments today apply to roadway dining, not
19 sidewalk dining. The vibrance [sic] wording I hear
20 so often connected with roadway dining means for
21 residence constant noise, crowds, and less livable
22 streets. It is truly vexing to me that I have to
23 defend my neighbors and I from City Council
24 greenlighting a beer garden outside my window that
25 operates until midnight. That the Hospitality
Alliance should propose this environmental

transformation be made year-round is not only out of touch with everyday New Yorker's quality of life, it demands a thorough public EIS. No city agency can oversee a program wherein thousands of independent restaurants are permitted to stage individual roadway setups. DOT's testimony today and even those from the restaurants themselves proves this, that restaurants should be allowed to design and erect substantial structures in the public realm without drawings from architects or engineers-- to quote John McEnroe, "You cannot be serious." Roadway dining is a square peg in a round hole, and deep down I think we all know this. It is absolutely infuriating to me to hear from paid lobbyist like the Hospitality Alliance to use social justice buzz words like equity to describe the handover of public space in my neighborhood for the profiteering of private entities. If DOT and City Council want a successful outdoor dining program, it should follow careful planning, not the enshrining of ad hoc pandemic-era rules by industry insiders. A one-size-fits-all model, again, is a square peg in a round hole. If at all, street dining should take place on fully closed

streets during special occasions and/or weekends and
with removable table and chairs.

SERGEANT AT ARMS: Thank you. Your time
is expired.

NED SHALANSKI: Thank you.

CHAIRPERSON MENIN: Okay, thank you. I'm
now going to read through a list of people who had
signed up to speak and we just want to make sure.
They registered on Zoom. If any-- if you're here,
please identify yourself and you can speak. Lauren
Antonelli [sp?], Sam Getz [sp?], Emma Culbert [sp?],
Glen Bolovsky [sp?], Christopher Skylar [sp?],
Stewart Zamsky [sp?], Dasha Cooper [sp?], Andrea
Meyer [sp?], Jeffery Grannum [sp?], Jeffrey Grannum
[sp?], Kat B [sp?], Leif Arnson [sp?], Katherine
O'Sullivan [sp?], Alex Stein. If anyone is here
whose name I called, please identify yourself if you
wish to speak. Okay. Seeing no names, that will
conclude our hearing. I really want to thank
everyone for coming out today. I think we heard
incredibly compelling testimony that is going to
allow the Council to improve this program. So I
think it was a very productive hearing, and I really
want to thank my colleague Chair Brooks-Power for all

3 of her collaboration and hard work and turn it over
4 to her to close.

5 CHAIRPERSON BROOKS-POWERS: Thank you,
6 Chair Menin, and I thank everyone that came out today
7 to be a part of this very important discussion.
8 There's a lot to take back so that we can work in
9 partnership with the Administration to improve this
10 program. And with that, we will adjourn this
11 hearing.

12 [gavel]
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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date May 22, 2025