

Outdoor Dining Saved Thousands Of NYC Restaurants. Its Future Is Still An Open Question

August 20, 2021 | Kelsey Neubauer, Bisnow New York City (<https://www.bisnow.com/author/kelsey-neubauer-224160>) (<mailto:kelsey.neubauer@bisnow.com>)

For over a year, diners packed into outdoor eateries lining streets like St. Mark's Place in the East Village and Fifth Avenue in Brooklyn, many into structures outfitted with windows, television screens and heat lamps where parking spaces and bus lanes once were — many times bisected by heavily traveled bike lanes.

This new form of outdoor dining has been a lifeline for some 11,500 New York City restaurants (<https://www1.nyc.gov/assets/planning/download/pdf/plans-studies/open-restaurant/cpc-presentation-062121.pdf>) that have taken advantage of the Open Restaurants program. What started as an emergency policy to help struggling businesses has become a fixture of life in the Big Apple and changed the business playbook for restaurants and their landlords.

“It saved us from going out of business,” Philippe Massoud, the CEO and executive chef at Lebanese restaurant *ilili*, told *Bisnow*.



As owners see an expansion of their business, landlords have begun to use prime outdoor space as a bargaining chip in lease negotiations. But there is still much to sort out about the future of the program, including what the next mayor's priorities are.

“One thousand percent, we want the program to stay forever,” Massoud said. “It has brought life to our desolate concrete sidewalks and has beautified our streets.”

The temporary Open Restaurants program will remain in effect for at least another year (<https://www1.nyc.gov/assets/mome/newsletter/covid-mome-blast-072321.html>), and the Department of Transportation is overseeing

the implementation of a permanent program, which would streamline the process and eliminate zoning restrictions that previously prohibited outdoor dining in some areas.

While the details of the plan have yet to be etched, there will likely be a fee associated with securing a permanent permit, lawyers and industry experts say, and if the cost is too high, it could prevent some mom-and-pop restaurants from keeping their patio lifelines.

Before sketching out the rules, the city has to contend with backlash. At recent community board meetings in the East Village (<https://www.ny1.com/nyc/all-boroughs/news/2021/07/15/residents-speak-out-against-plan-to-make-outdoor-dining-permanent>) and Upper East Side (<https://thevillagesun.com/east-siders-are-mad-as-hell-at-meeting-on-open-restaurants>), residents have decried the program, claiming street dining has changed their neighborhoods for the worse. But city officials have made clear they intend to follow through on a permanent program, meaning the outdoor dining takeover is, in some form, here for good.

“Everybody now sees how valuable this is and what a nice amenity it is for the city to have,” said Luise Barrack (<https://www.bisnow.com/tags/luise-barrack>), a Rosenberg & Estis member attorney who heads the firm's litigation practice. “It gives you a little feeling like you're in Paris or you're in Italy. ... It's such a nice thing, and I think the city sees it and I certainly think there's going to be a substantial [push] to make this final.”

Since the emergency outdoor dining order was enacted, restaurants have been utilizing city land, including sidewalks and streets, to expand the footprint of their restaurants for free. But it wasn't without upfront costs, a bill restaurant owners say they were solely responsible for footing.

Ilili, located at 236 Fifth Ave., invested between \$70K and \$80K into its outdoor dining setup, which seats 32 people, Massoud said. Craft + Carry (<https://www.bisnow.com/tags/craft-+-carry>), a craft beer retail store and taproom with seven locations throughout the city, invested \$40K into its outdoor structures — about \$8K to \$10K per location — which add capacity for an extra 20 to 25 people each, owner Dieter Seelig said.

And owners will have to continue to dole out money to keep up with their outdoor arrangements.



“It's one of those things, you're constantly doing maintenance, you're constantly fixing it, you've literally created a new part of your business that you now have to take care of,” Seelig said.

Meanwhile, retail property owners have been able to use prime outdoor seating in lease negotiations as an added amenity, despite not having direct ownership of the space outside.

“Landlords are now beginning to view the outdoor areas as part of their property, in terms of what they're asking for,” Seelig said. “Landlords know that if they have a large sidewalk or a large roadside space, they can add that in the offer.”

This is likely to become a more established part of lease negotiations as the program becomes more permanent, Barrack said.

“It'll certainly be something that will be part of the regular dialogue between owners and tenants with respect to their use of space outside,” she said. “You're able to very easily, obviously, increase your traffic and the amount of money you pay.”

Because landlords are already baking in space they don't own into leases, any new fees from the city should be designed to avoid preventing smaller restaurants from having outdoor dining, New York City Hospitality Alliance (<https://www.bisnow.com/tags/new-york-city-hospitality-alliance>) Executive Director Andrew Rigie (<https://www.bisnow.com/tags/andrew-rigie>) said.

Before the coronavirus pandemic, only 1,200 city restaurants had a sidewalk café, Rigie said, or roughly 10% of the number that the NYC DOT says have outdoor seating today. This was largely due to the high cost of securing a permit and the geographical limits of the areas zoned for outdoor dining, he said.

Below 96th Street in Manhattan — the most expensive outdoor dining rents pre-pandemic — it cost restaurants between about \$2,580 and \$5,160 to use 70 SF of sidewalk space and an additional \$40 per SF beyond that, according to the city's 2018 consent fee grid (<https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Sidewalk-Cafe-Consent-Fees.pdf>) for outdoor dining.



“The problem with these prohibitive prices is they are ... making themselves available to these large spaces that are owned by large hospitality groups and very wealthy individuals rather than these mom-and-pops who just simply can't afford spending \$2K or \$3K a year on four seats outside of their bakery,” Seelig said. “It's got to be low enough that there's no competition for spaces, it's got to be low enough that it doesn't create the secondary market for spaces.”

The past year has been an experiment not only for what no-cost outdoor dining setups can do for businesses but also what it can do for the city's economy and tax revenue as well, he said.

“If anything, this pandemic has shown us the ridiculousness of that whole previous licensing scheme,” Seelig said. “I think it's time for the city to see they can make a little bit of money on some permitting fees, but they can make a ton of money on sales tax revenue from these businesses being able to serve more customers.”

Between fall 2021 and fall 2022, the city will be focused on changing zoning text and rolling out rules, according to the Department of Transportation (<https://www.bisnow.com/tags/departments-of-transportation>)'s timeline.

This is a feasible pace to make the zoning changes needed — and change is almost definitely coming, said zoning and land use attorney Nora Martins, a partner at law firm Akerman.

“I think there's been a lot of leeway given during the pandemic for the design and the size and just the scale of some of the outdoor seating — and outdoor structures, particularly — which I think may be scaled back a little bit or just standardized,” Martins said.

But while the guidelines may change through the process, the pandemic-induced outdoor dining revolution isn't going anywhere.

“I think it's something that was a little lacking in New York, especially when you look at other major cities,” Martins said. “I think it's here to stay.”

*Contact Kelsey Neubauer at kelsey.neubauer@bisnow.com
(<mailto:kelsey.neubauer@bisnow.com>)*

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