



Understanding Delays in New York City’s Permanent Outdoor Dining Program

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Recent History of Outdoor Dining in NYC

New York City has always had outdoor dining in the form of sidewalk cafes. In March 2020, there were 1,224 active sidewalk cafe licenses, the majority of which were in Manhattan. To receive a license, businesses were required to apply for and receive revocable consent, which is the legal framework that allows private entities to use public property for commercial purposes. Sidewalk cafes were the only form of outdoor dining permitted.

During the pandemic, through a **COVID-era emergency order** that suspended certain local laws, a **temporary outdoor dining program** permitted restaurants to operate on the sidewalks and in the street without a license or a revocable consent, or the fees associated with it. This was a lifeline for restaurants to survive and continued socialization at a time when indoor dining capacity was limited. This is a major difference between the pandemic era and non-pandemic-era – the state of emergency allowed the City to operate outside of the legal requirement to provide public land to private businesses absent fees. The suspension of licensing requirements also allowed roadway dining for the first time in New York City, which was not permitted prior to the pandemic.



After the pandemic had waned, a **2023 lawsuit** argued there was no longer a legal emergency justification for the suspension of law permitting a temporary outdoor dining program. The New York State Supreme Court ruled that the mayor’s ongoing issuance of orders to suspend 26 different local laws to allow outdoor dining violated state law limiting “the permissible triggers and length of any such mayoral decrees.” Along with the ruling, an injunction was ordered, blocking Mayor Adams from further issuing the emergency order to allow the program, thus requiring the return to a legal framework if New York City wanted to continue having outdoor dining in any capacity.

The establishment of the Dining Out NYC program was an effort to continue a legally permissible, permanent outdoor dining program beyond a state of emergency. First, the City’s zoning restrictions had to change to legally permit outdoor dining across the five boroughs, because it had only allowed sidewalk cafes in certain districts, most of which were in Manhattan. The Council **approved** these citywide zoning text changes in February 2022 in anticipation of a new law to create the permanent citywide outdoor dining program.

In 2023, **Local Law 121** was passed by the Council. The law established a new permanent outdoor dining program that allows for year-round sidewalk cafés, as well as roadway dining between April and November. This was the first time roadway dining was permitted under law. As part of negotiations on the program, the Council agreed to the Administration’s preference for the Department of Transportation (DOT) to administer the program, thereby transferring responsibility from the Department of Consumer and Worker Protection (DCWP), the Council’s preferred agency to run the program, based on DCWP’s historic licensing of sidewalk cafes and expertise in licensing and working with small businesses of various kinds throughout the city.



Differences between Pre-Pandemic and Post-Pandemic Legally Permitted Outdoor Dining

Prior to COVID, obtaining a license for such cafes typically involved a lengthy approval process that, if successful, resulted in the granting of a revocable consent to a restaurant owner. From 2017 to 2019, enclosed sidewalk cafe applications took an average of 467 days from the filing of the application to approval of the license, and unenclosed sidewalk cafe applications took an average of 177 days.

The new program, Dining Out NYC, streamlined the process for receiving revocable consent from the City. It reinstated the same community input and public review processes that previously existed under law, but significantly reduced prior barriers for restaurants. For example, the law removed prior requirements that applicants hire an architect or engineer to prep their dining design and reduced the cost of revocable consent fees. The law also shaved time off of each step in the old sidewalk cafe process. Once an application is deemed complete by DOT, a sidewalk café application should only be in the review process for a maximum of 130 days, by law – and that is only if DOT decides to hold a public hearing on it and the Council decides to call it up for approval.

Roadway dining applications are only legally permitted to take a maximum of 85 days. And while the Council and Community Boards can submit comments to DOT within 30 days of receiving an application from the agency, neither has any role in approving them.

During bill negotiations, the Council prioritized affordability in the new program so that more restaurants can participate. Some businesses may decide to forgo participation due to the reinstatement of license and revocable consent fees and requirements that did not exist in the fee-free pandemic program. However, these fees are now cheaper for restaurants than they were during the permanent program prior to the pandemic, even when accounting for inflation.

Key comparisons between pre-COVID outdoor dining and the post-COVID permanent program include:



Geographic Eligibility for Outdoor Dining

OUTDOOR DINING **PRE-COVID**

Sidewalk cafes were only permitted in certain zoning districts, primarily in Manhattan.

Roadway dining was not legally permitted.

DINING OUT NYC **POST-COVID**

Sidewalk cafe permission is significantly expanded by citywide zoning changes that allow them in all five boroughs.

Roadway dining is legally permitted across the city.

Timeline for Roadway Cafe Revocable Consent Application

OUTDOOR DINING **PRE-COVID**

Not applicable, because roadway dining was not legally permitted.

Same as above.

Same as above.

DINING OUT NYC **POST-COVID**

After the application is deemed complete by DOT, it has 10 days to send to the Council Member and Community Board for review.

The affected Community Board and Council Member may submit comments to DOT within 30 days, but neither has any approval power.

DOT must hold a public hearing and send applications to agencies whose operations may be impacted for review and comment. DOT can approve, disapprove, or approve with modifications. DOT can deny revocable consent application without a hearing if, in the sole judgement of the Commissioner, its granting would interfere with the use of inalienable property of the City for public purposes or otherwise not be in the best interest of the City.



Timeline for Sidewalk Cafe Revocable Consent Applications

OUTDOOR DINING **PRE-COVID**

DCWP sends application to LPC, DCP, DEP for review of **up to 21 days**. New York City zoning, which is where sidewalk cafes were permitted by law, required the Landmarks Preservation Commission to approve all sidewalk cafes in historic districts or in designated landmarks buildings. The mechanism to approve was applying for and receiving an LPC permit, which requires multiple steps and potentially a hearing.

Community Board holds hearing and makes recommendation to DCWP within **45 days**.

DCWP holds hearing and sends recommendation to Council within **30 days**.

If Council does not call up, **approval occurs within 20 days**. If Council calls up, it has **50 days** to approve or disapprove and file with DCWP.

DCWP sends approval to comptroller for final confirmation. **Up to 50 days**.

DINING OUT NYC **POST-COVID**

After application is deemed complete, DOT has **5 days** to send to the Borough President, Council Member, and Community Board. The new law does not create new authority for LPC— it simply transferred existing authority from the zoning text to the administrative code. In practice, LPC now exerts less authority and process. Automatic approval is granted for restaurants in historic districts without applying for an LPC permits, provided designs meet DOT’s Dining Out guidelines and don’t attach to a historic building or pavement. LPC has **up to 10 business days** for any review.

Community Board has **40 days** to **conduct a public hearing** and make a recommendation to DOT.

DOT has the option to hold a public hearing or conduct a review. For the public hearing, DOT has **up to 45 days** before filing a decision with the Council. For a review, DOT has **up to 20 days** to file a decision with the Council.

If the Council does not call up, the application can progress **within 14 days**. If the Council does call up, it has **45 days** to act—**failure to act is deemed approval**.

DOT files revocable consent agreement with Comptroller for registration. **No required timeline**.



Once granted, a license was valid for up to 2 years.

Once granted, a license is valid for up to 4 years.

Fees

OUTDOOR DINING **PRE-COVID**

The license fee was \$510 every two years.

Revocable consent fees were \$1,920 for the first 70 square feet plus \$30 per additional square foot south of 96th street in Manhattan and \$1,440 for the first 70 square feet plus \$22.50 per additional square foot in the rest of the city.

DINING OUT NYC **POST-COVID**

The license fee is \$1050 every four years.

There are now four tiers for revocable consent fees. The lowest cost tier covers at least 80% of the City and has fees of \$5 per square foot for roadway cafés and \$6 per square foot for sidewalk cafés. The next tier is \$8 for roadway cafes and \$10 for sidewalk cafes. The third is \$14 for roadway cafes and \$18 for sidewalk cafes. The highest tier of revocable consent fees is \$25 per square foot for roadway cafés and \$31 per square foot for sidewalk cafés. The top 2 highest cost tiers are limited to 125th street and below in Manhattan.

Application Approvals

In October 2024, the agency revealed that it had received nearly **4,000 applications**, but by February, DOT admitted that **just over 1,000 applications** had been reviewed by staff. This makes the current program nearly three times as big as the pre-pandemic one. Yet, as of early April only 73 locations had received full approval and been registered with the New York City Comptroller’s office. There is no regulation on the timeframe for DOT to send an application to the Comptroller’s office for registration.

As of March 31, 2025, there were **just over 2,400** permitted outdoor dining setups, according to DOT (about 1,800 sidewalk and 600 roadway). This leaves an estimated backlog of 1,000 applications awaiting DOT’s approval to move forward in the process.



The increased number of expected applications compared to the pre-pandemic program was one reason why the Council was concerned about DOT's ability to successfully establish a new capability within the agency to administer the program. However, the mayoral administration and DOT insisted that they would increase hiring to handle the new responsibility. DOT's lengthy turnaround time and other challenges processing applications raise questions about its current capacity. These delays mirror similar challenges for the agency in fulfilling its responsibility to meet the annual targets of the Streets Plan. The delays underscore why many applications have received conditional approval, and many others remain waiting to start public review.

The Council has optional approval authority for only sidewalk cafes. To date, the Council has only called up 5 sidewalk café applications out of 615. The Council estimates that 325 applications remain pending, either with DOT or at the Community Board level. It is unclear from **the City Record** how many public hearings DOT has held for applications denied by Community Boards.

Issues Raised Since Implementation of the Permanent Program

Restaurants have raised several issues with the program's administration, in addition to the timeliness of application approvals. While some reporting has assigned these to the law, many are related to the implementation and rulemaking process that are entirely the discretion of DOT as the administering agency. These include:

1. A lack of language accessibility in the application, with it only being available in English and Spanish.
2. Inability to receive in person assistance with applications.

Under the pre-pandemic sidewalk cafe program, business owners who wished to establish a sidewalk cafe could apply online or visit a DCWP Licensing Center to receive assistance with their license and revocable consent application. If applicants did not speak or understand English well, they could receive translation services at the Licensing Center.



Under the *Dining Out NYC* program, there is no in-person application option and businesses that wish to establish a sidewalk or roadway cafe need to complete an online application for a license and revocable consent. The online application also does not allow for applicants to save partially completed applications.

3. Specific design requirements for sidewalk and roadway cafés were left for DOT rulemaking to establish. Certain design requirements established via DOT rulemaking have made it difficult for restaurants, including those that participated in the pre-pandemic sidewalk cafe program.

DOT rules reduce sidewalk cafe size requirements to even smaller than what existed prior to the pandemic.

Roadway design requirements established by DOT rulemaking that have resulted in complaints include:

- ▶ *Restaurants must stabilize roadway setups with water-filled barriers instead of sandbags*

As part of the review process, DOT must notify the Council of new applications. During this period, the Council has observed issues with the applications DOT has reviewed, which can create delays, including:

- Multiple applications are sent to the wrong Community Board and Council Member
- Applications are filed with incomplete information or mixed in together



Oversight Hearing

On Wednesday, April 23, the Council's Committee on Transportation and Infrastructure and Committee on Consumer and Worker Protection will hold a joint hearing on the Dining Out NYC program's implementation and the ways the City can address the challenges of the past several months. The Council wants the program to be accessible and successful for restaurants, but it has clearly faced challenges.

The hearing will provide the opportunity to identify specific issues, and whether their source is in the law, rulemaking or agency implementation, to determine solutions that can improve the program.

A photograph of a grand council chamber with high ceilings, ornate woodwork, and several circular light fixtures. The image is overlaid with a semi-transparent red filter. In the foreground, there are two flags: the United States flag and the New York City flag.

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