

NYC Is Moving Towards Creating a Permanent Open Restaurants Program

At the height of the pandemic, in response to local restaurants suffering from shuttering their indoor dining services, New York City implemented an emergency “Open Restaurants Program” that suspended certain zoning location rules and existing outdoor dining regulations. With this program, thousands of restaurants were able to retain employees and remain in business. One year post-adoption, most observers agree that this program has provided a winning solution to protect the restaurant industry and should be extended.

Following the success of the temporary Open Restaurants Program that is set to phase out towards the end of 2022, New York City is beginning the lengthy process of making the program permanent. While making the announcement during an appearance on The Brian Lehrer Show, Mayor de Blasio stated “I want us to go for the gold here, and take this model and make it a part of the life of New York City for years and generations to come.” If the city’s estimated timeframe goes as planned, applications for the program will open in winter 2022, and the program will officially launch in 2023. In the first year of this estimated two-year timeline, several legal actions must occur, including an amendment to zoning text, changes to local law, rulemaking, and creation of a new application. As part of this process, the city will move administration of the sidewalk café program from the Department of Consumer Affairs and Worker Protection to the Department of Transportation (DOT).

As among the first series of changes to create the permanent program, last month, the Department of City Planning (DCP) and DOT released a proposed citywide zoning text amendment to remove geographic restrictions on where sidewalk cafes can be located within NYC. If approved, this zoning text amendment would allow restaurants anywhere in the city to apply to DOT for a sidewalk café, based on adjacent sidewalk conditions. The proposed zoning changes entered the city’s public review process on June 21, 2021, and are currently being reviewed by the local community boards (CB), borough presidents, and borough boards.

The proposal to make the Open Restaurants Program permanent is not without its critics. Business advocates have expressed fears that the permanent program will be inundated with bureaucratic red tape that will ultimately make the program inaccessible to many restaurants. Earlier this month, more than 100 people attended an East Village CB3 meeting where concerns started to flow in. One restaurant owner noted that DOT had conducted a “sweep” just prior to the meeting, handing out citations for offenses including being too close to a tree and blocking a “no parking” sign. On the other side of the spectrum, residents have expressed opposition to the outdoor restaurants program, stating that there are issues of late-night noise, an increase of trash, and diminished space for pedestrians and cars. “The noise that many of us have been enduring for the last year has been really difficult. We have serious concerns about enforcement. We have small streets.” said a CB3 member at the same meeting. In any event, the city will face the challenge of adapting a program that was implemented during a peculiar time where the streets were remotely empty to a busier city that is returning to normalcy.

We will be keeping a close watch on the development of the permanent Open Restaurants Program and welcome any requests for further information.



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