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COMMENTARY

Paving the Path Forward for Philadelphia 'Streeteries'

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Real Estate

By Megan E. Moyer and Krystal R. Bordoni-Cowley | April 22, 2024 at 11:14 AM



With the spring weather turning warmer, many Philadelphians are again focused on the city's outdoor dining options. Outdoor dining areas located on Philadelphia's streets, termed "streeteries," have become a known and beloved aspect of the city since their inception during the COVID-19 pandemic. At their pinnacle, more than 800 Philadelphia restaurants operated streeteries. However, in the post-pandemic era, as Philadelphia regulations surrounding the operation of streeteries have increased, the presence of streeteries has significantly decreased. In an attempt to revitalize streeteries, the city has recently undertaken various efforts to expand Philadelphia's streeteries operations. This article provides an overview of the streeteries legal landscape, explore recent developments in the city's regulations surrounding streeteries, and discuss what may be on the horizon for outdoor dining in Philadelphia.

As an early response to the influx of impromptu streeteries in 2020, Philadelphia created emergency outdoor dining regulations to enable restaurants to operate outdoor dining spaces, subject to certain relaxed permitting and inspection regulations. The city's initial response allowed many Philadelphia restaurants to continue operating during a time filled with uncertainty and constant change, particularly in the dining industry. However, as more restaurants joined the streeteries atmosphere, and more individuals began venturing outdoors, the impact of streeteries on their neighborhoods became noticeable. Public concerns around streeteries arose regarding noise, vehicular and pedestrian safety, traffic, loss of parking, accessibility, and uniformity.

In December 2021, after it was clear that streeteries were here to stay, the city began updating and significantly expanding its original streeteries regulations in an effort to standardize operations and address concerns. In March 2022, a set of complex streeteries laws went into effect, which delineated locations where streeteries were permissible and appointed the Department of Licenses and Inspection (L&I) and the Department of Streets (Streets) to regulate streeteries standards and procedures. In January 2023, Philadelphia established a permanent outdoor dining program (ODP) that created occupancy standards, required compliance with the Americans with Disabilities Act and PennDOT and USDOT regulations, and implemented other safety regulations. In anticipation of the new regulations, the city created an owner's streeteries license guide to clarify the ODP rules for streeteries operations.

The 2023 ODP continues to govern regulation of streeteries today. Under the ODP, restaurants are required to obtain a streeteries license issued by the city in order to establish and operate a streeteries. Only restaurants located in a "by-right" area designated by Streets are eligible for a streeteries license. Restaurants outside by-right areas are not eligible for streeteries licenses unless city council passes an ordinance granting eligibility for the streeteries's specific location. At its core, a streeteries license allows eligible (licensed and approved) restaurants to occupy the parking lane in front of their storefront for outdoor dining, so long as the streeteries is protected by crash barriers. All streeteries license applicants need

Streets' approval for use of public right-of-ways and, ultimately, L&I approval. Streeteries without structural elements, called pavement streeteries and platform streeteries, do not require further approval. However, streetry designs that have structural elements must undergo a more rigorous approval process and further require a L&I building permit and Art Commission approval. While the ODP was necessary to address the less regulated streeteries in existence, it is not without its problems.

While the city's regulations intended to address uniformity, accessibility, and safety in streetry operations, the result was a set of complex rules that many restaurant owners found themselves unable to navigate. Streeteries that were once permitted to operate during the pandemic suddenly did not comply with the new regulations and could not easily or quickly shift into compliance. Many pandemic-era streeteries had to permanently close due to noncompliance with the new rules. In fact, since November 2022, the city has granted only 13 new streetry licenses out of 118 applicants and only two restaurants renewed their existing streetry licenses. Today, streeteries still face several hardships as a result of the regulations, including high costs, complicated approval processes and lengthy time to obtain a license.

Costs to develop, construct, maintain and ensure compliance of streeteries can be significant. Philadelphia streetry licenses cost a staggering fee of \$1,750, which must be renewed at the same cost on an annual basis. This annual license fee is one of the highest compared to other major cities. Streeteries that do not comply with the laws and regulations are subject to Streets and L&I violations, daily fines, mandatory ceased operations and denial of license renewal. Compliance with the laws and regulations often requires sophisticated counsel from engineers and attorneys, along with customized architectural plans. The fiscal burdens are felt most by small businesses, whose streeteries were first to close. Significantly, streetry licenses are not assignable or otherwise transferrable. This causes a number of issues for new restaurant purchasers and existing restaurant operators who move or open new locations. The purchaser of a new restaurant does not automatically gain a streetry license that was in effect prior to the purchase, and the new purchaser would be on the hook for costs of removal and fines associated with an existing but nonlicensed streetry. The streetry license does not travel with the restaurant or the owner, so if the restaurant moves locations or if a new location is opened, the owner must apply for a new license and once again undergo the rigorous application process.

Timing regarding licensing is also a big concern for streeteries and restaurants, especially when time unable to operate means a lack of or less cashflow. Streetry applications do not require professional drawings, but informal hand-drawn plans typically result in longer review and site visit timeframes. Hiring professional architects and engineers can reduce these timeframes, but come at an increased cost to the streetry. If the streetry applicant's designs are denied, it must re-submit its application and start the review anew. Turnaround time for actual issuance of a license, if even approved, can be a long and arduous process due to approval of plans by various city agencies.

To address some of the ongoing issues and inequities regarding existing streetry laws and regulations, in February 2024, the city enacted new changes affecting the ODP. First, the city updated its streetry guide in an attempt to provide greater assistance and clarification to streetry applicants. Among other changes, the guide was updated to include "streetry dos and don'ts" related to design compliance and removal requirements. Next, city council adopted a resolution to allow for public hearings to be held to investigate the implementation of the ODP and improve opportunities for restaurants seeking to operate streeteries. The first hearing was held on April 5, where restaurant owners, industry advocates, and city officials had an open dialogue regarding streetry issues. The hearing involved discussions around potential reduced costs for streetry applicants, streamlined communication during the application process, and implementation of one liaison serving as point-of-contact for the applicant, rather the applicant having to deal with several city departments throughout the application process. These continued hearings will serve as a much needed opportunity for city council to collect feedback from the Philadelphia community, review the city's outdoor dining regulations, assess the impact of the regulations on the community, and identify challenges that current regulations pose to business owners. Ultimately, the hearings and potential updates to existing streetry laws and regulations may lessen the burden for restaurant businesses of all sizes—commercial restaurants and mom and pop shops alike.

One thing is obvious: Philadelphians, restaurant owners, and city officials alike want to see the continued success of streeteries. The upcoming hearings have the potential to bring about substantial changes to the streeteries laws and in turn, allow new streeteries to join the Philadelphia outdoor dining community in a safe, streamlined and fair manner. Open dialogue has always been key to the city's success—continued discourse and action regarding Philadelphia's streeteries will hopefully open more minds, mouths, and streeteries.

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