

New York City Department of Transportation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The proposed rules create a regulatory framework for the Department's pedestrian plazas by adding definitions to section 4-01 and a new section 4-16 to the Department's rules. The rules, among other things, formalize an application process by which the Department will designate pedestrian plazas; impose uniform rules of conduct for all pedestrian plazas; and create specific rules for the Times Square Pedestrian Plaza.

When and where is the hearing? The New York City Department of Transportation ("DOT" or "the Department") will hold a public hearing on the proposed rules. The public hearing will take place at 10:30am on Monday, May 23, 2016. The hearing will be located at One Centre Street, North Building, Mezzanine, New York, NY 10007.

- **Website.** You can submit comments to DOT through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to rules@dot.nyc.gov.
- **Mail.** You can mail comments to :

Emily Weidenhof
Director of NYC Plaza Program
New York City Department of Transportation
55 Water Street, 6th Floor
New York, NY 10041
- **Fax.** You can fax comments to Emily Weidenhof, Director of NYC Plaza Program at 212-839-9685.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 839-6500. You can also sign up in the hearing room before the hearing begins on Monday, May 23, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline to submit written comments is Monday, May 23, 2016.

Do you need assistance to participate in the hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-839-6500. You must tell us by Friday, May 20, 2016.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A

few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes DOT to make this rule? Sections 1043(a) and 2903(a) of the City Charter and section 19-157 of the Administrative Code of the City of New York authorize DOT to make these proposed rules. The proposed rules were not included in DOT's regulatory agenda for this Fiscal Year as they were not anticipated when the Department published the agenda.

Where can I find DOT's rules? DOT's rules are in Title 34 of the Rules of the City of New York.

What rules govern the rulemaking process? DOT must meet the requirements of section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rules

Pursuant to Administrative Code of the City of New York § 19-157, the New York City Department of Transportation ("DOT" or "the Department") proposes these rules in order to provide a regulatory framework for the Department's pedestrian plazas.

Since 2008, DOT's Plaza Program has created high-quality public spaces in underutilized roadways throughout the City, especially in neighborhoods that lack open space. The Department refers to such spaces as "pedestrian plazas." Currently, there are 53 pedestrian plazas open to the public and another 20 in planning or under construction. These plazas range from major spaces like Times Square and Flatiron in Manhattan, which attract millions of visitors every year, to more local spaces like Diversity Plaza in Jackson Heights, Queens and Osborn Street Plaza in Brownsville, Brooklyn that function as neighborhood gathering places.

These proposed rules codify the application process by which the Department currently designates most of its plazas and create a new proposal submission process. Specifically, the rules detail how a proposal or application must be submitted, what documentation must be submitted with each proposal or application, and how DOT evaluates and selects each proposal or application. In designating an area as a pedestrian plaza, DOT must consider, among other things: (1) the availability of and need for open space in surrounding areas; (2) the ability of DOT or the pedestrian plaza partner to properly maintain the plaza and develop programming; and (3) the relationship of the pedestrian plaza to surrounding land uses, traffic and pedestrian activity and safety.

The proposed rules also set forth uniform rules, including a list of general, prohibited, and regulated uses, which will govern all pedestrian plazas unless the Department promulgates specific rules for any given plaza or any space within a plaza.

Finally, the proposed rules create specific rules for the "Times Square Pedestrian Plaza," which is located along 12 blocks on Broadway from 41st Street to 53rd Street in Manhattan. These Times Square-specific rules also affect the sidewalks directly adjacent to the Times Square

Pedestrian Plaza. The rules permit the addition of Pedestrian Flow Zones and Designated Activity Zones in order to safely and effectively manage one of the world's most visited spaces. Pedestrian Flow Zones are clear paths for the safe and continuous movement of pedestrian traffic and will be marked with reflective white tape and indicated by signs. Designated Activity Zones are highly visible areas providing ample space for commercial activity, entertainment, performances, expressive matter vending and solicitation without impeding those passing through or those who simply wish not to participate in those activities. Designated Activity Zones will be demarcated by colored pavement and indicated by signs.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rules

Section 1. Section 4-01(b) of chapter 4 of title 34 of the Rules of the City of New York is amended by adding new definitions in alphabetical order to read as follows:

Department. The term “Department” shall mean the Department of Transportation.

Designated Activity Zone. The term “Designated Activity Zone” shall mean an area in a pedestrian plaza designated as such by the Department by signage and/or markings in which individuals conduct activities including, but not limited to, commercial activity, solicitation, entertainment and performance by individuals or groups, posing for photographs or videos where any form of compensation, donation, or tip is requested or accepted, and expressive matter vending.

Expressive Matter. The term “expressive matter” shall mean materials or objects with expressive content, such as newspapers, books, or other similar written matter and visual art such as paintings, prints, photography, or sculpture.

Pedestrian Flow Zone. The term “Pedestrian Flow Zone” shall mean an area designated as such by the Department by signage and/or markings for the safe and continuous movement of pedestrian traffic.

Pedestrian Plaza. The term “pedestrian plaza” shall mean an area designated by the Department as such for pedestrian circulation, use and enjoyment on property under the jurisdiction of the Department including, but not limited to, property mapped as a public place or property within the bed of a roadway, and which may contain amenities such as tables, seating, trees, plants, lighting, bike racks, or public art.

Pedestrian Plaza Partner. The term “pedestrian plaza partner” shall mean an organization selected by the Department to assist with functions related to pedestrian plazas pursuant to a non-

exclusive agreement with the Department, which may include, but is not limited to, a maintenance agreement or concession agreement.

§ 2. Chapter 4 of title 34 of the Rules of the City of New York is amended by adding a new section to read as follows:

§ 4-16 Pedestrian Plazas.

(a) **Proposals and Applications to Designate Pedestrian Plazas.** In addition to areas selected by the Department to be designated as pedestrian plazas pursuant to § 19-157(b)(1) of the Administrative Code, the Department shall accept proposals and applications for areas under its jurisdiction to be designated as pedestrian plazas.

(1) **Proposals.** A proposal for the designation of an area as a pedestrian plaza may be submitted by mail or electronic mail to the Department by a community board, council member, borough president, or not-for-profit organization. Electronic mail submissions are preferred and may be sent to plazas@dot.nyc.gov. Post submissions may be mailed to: Pedestrian Plaza Proposal, New York City Department of Transportation, 55 Water Street, New York, NY 10041.

(i) All proposals must include:

(A) A map or description of the area requested for designation;

(B) A suggested pedestrian plaza partner;

(C) A statement explaining the need for such plaza, including how it would promote safety and contribute to the community; and

(D) The proposer's contact information.

(E) At least five (5) letters of support from community stakeholders including, but not limited to, adjacent property owners and businesses, nearby institutions, such as churches and schools, elected officials, other not-for-profit groups, neighborhood and block associations, and neighborhood residents.

(ii) Within 90 days of receipt of such proposal, the Department shall issue a response as to whether or not the proposal as described is viable. A proposal is viable if it does not adversely impact the transportation network to a significant degree, if the surrounding land uses are appropriate to support a pedestrian plaza, and if the size and shape of the proposal will support the full range of activities that take place in pedestrian plazas. If the Department determines that the proposal is viable, the Department will recommend that the proposer submit an application with a pedestrian plaza partner during the next period during which applications are accepted.

(iii) The submission of a proposal shall not be deemed an application for purposes of this section.

(2) **Applications.**

(i) **Applicant.** Only an organization operating within the City that wants to become a pedestrian plaza partner may submit an application. An applicant must be incorporated in New York State and must have a mission that serves or relates to the geographical area of the proposed pedestrian plaza. The submission of a proposal is not required prior to the submission of an application.

(ii) **Submission.** For the year 2016, pedestrian plaza applications may be submitted by mail or electronically from the first business day in June through the last business day in

August. For the year 2017 and annually thereafter, pedestrian plaza applications may be submitted by mail or electronically from the first business day in April through the last business day in June. The application form prescribed by the Department shall provide specified dates and addresses each year. Electronic submissions are preferred.

(iii) **Required Documentation.** Applicants must submit the following documents in accordance with subparagraph (ii) of this paragraph:

(A) A completed application in a form prescribed by the Department, which will be posted each year on the Department's website, and which may require applicants to submit information including, but not limited to, the mission of the pedestrian plaza partner, the context surrounding the site of the proposed pedestrian plaza, potential uses and programming for the proposed pedestrian plaza, and a projected operating budget for the proposed pedestrian plaza;

(B) A list of names and titles of the applicant's employees who work in community development, including the duration that each has been employed with the applicant;

(C) A list of names and titles of the members of the applicant's Board of Directors, or similar governing members, including the date each member began serving with the applicant;

(D) Financial information based on the applicant's operating budget:

(a) If the applicant's operating budget is less than \$25,000, its most current financial statement signed by its treasurer must be submitted.

(b) If the applicant's operating budget is \$25,000 or more, its most current IRS 990 Form must be submitted.

(c) If the applicant's operating budget is \$100,000 or more but less than \$250,000, its most current IRS 990 Form and an independent accountant's review report must be submitted.

(d) If the applicant's operating budget is \$250,000 or more, its most current IRS 990 Form and audited financial statements must be submitted.

(E) At least eight (8) letters of support from community stakeholders including, but not limited to, adjacent property owners and businesses, nearby institutions, such as churches and schools, elected officials, other not-for-profit groups, neighborhood and block associations, and neighborhood residents;

(F) Three (3) photographs of the site of the proposed pedestrian plaza.

(iv) **Review.** Applications will be reviewed and evaluated according to the following criteria:

(A) Open Space: The Department will prioritize proposed pedestrian plazas that are in neighborhoods with an insufficient amount of open space;

(B) Community Initiative: Applicants must demonstrate the ability to develop and execute a community outreach plan, build consensus around the proposal, and solidify local stakeholder support;

(C) Site Context: The Department will evaluate the appropriateness of the adjacent land uses, population density, proximity to transit, safety, and other nearby open space;

(D) Organizational and Maintenance Capacity: Applicants must demonstrate that they are willing and able to manage, operate, maintain, and program the proposed pedestrian plaza, including having an active Board of Directors or similar governing members and established staff; and

- (E) Income Eligibility: The Department will prioritize proposed pedestrian plazas that are located in low- or moderate-income neighborhoods as designated by the United States Department of Housing and Urban Development as eligible for Community Development Block Grants.
- (v) The application and guidelines regarding the management of pedestrian plazas can be found on the Department's website.
- (vi) **Selection.** Within 120 days of the deadline to submit an application, the Department shall issue a response as to whether the proposed plaza has been accepted or rejected. Such responses shall be sent to applicants by electronic mail or mail, as applicable.
- (3) **List of Designated Plazas.** A list of all pedestrian plazas shall be posted on the Department's website.
- (4) **Rescinding Pedestrian Plaza Designations.** The Department may, at its own discretion, rescind the designation of any pedestrian plaza.
- (i) At least 90 days before the Department's proposed date of rescission of the designation of a pedestrian plaza, the Department shall notify the affected council members, community boards, borough presidents, and any pedestrian plaza partners who may request a public hearing within ten (10) days of such notification.
- (ii) If such public hearing is so requested, the Department shall hold a public hearing no more than 45 days after sending such notice of proposed designation rescission.
- (iii) The Department shall consider any comments from such public hearing or any comments submitted to the Department before rescinding such designation.
- (b) **General Uses.**
- (1) Pedestrian plazas are closed to vehicular traffic, unless authorized by a police officer or designated Department employee.
- (2) Any person may enter and use a pedestrian plaza at any time, unless other open hours are posted for maintenance, events, or construction, or exigent circumstances exist.
- (3) Any person in or on a pedestrian plaza must comply with the lawful direction or command of any police officer or designated Department employee, regardless of whether such direction or command is indicated verbally, by gesture, or otherwise. Any person in or on a pedestrian plaza must comply with or obey any instruction, direction, regulation, warning or prohibition, written or printed, displayed or appearing on any Department sign, except such sign may be disregarded upon order by a police officer or designated Department employee.
- (4) Any person holding an event, where such activity is subject to the permit requirements of the Mayor's Office of Citywide Event Coordination and Management, may engage in such activity only upon obtaining such permit from that office.
- (5) Any person engaged in filming or photography, where such activity is subject to the permit requirements of the Mayor's Office of Film Theatre & Broadcasting, may engage in such activity only upon obtaining such permit from that office.
- (6) Any person using or operating any sound device or apparatus, where such use or operation is subject to the permit requirements of the New York City Police Department, may engage in such activity only upon obtaining such permit from that department.
- (7) Any person holding a parade, procession, or demonstration, where such activity is subject to the permit requirements of the New York City Police Department, may engage in such activity only upon obtaining such permit from that department.

(8) Where exigent circumstances exist and a police officer or a designated Department employee gives notice to a person to move temporarily from any location in or on a pedestrian plaza, such person shall immediately move from such location until further notice. For the purposes of this section, exigent circumstances shall include, but not be limited to, unusually heavy pedestrian traffic, the existence of any obstruction in or on the pedestrian plaza, an accident, fire, or other emergency situation.

(c) **Prohibited Uses.**

(1) No person shall engage in disorderly behavior in or on any pedestrian plaza, such as the following:

(i) Endangering the safety of oneself and/or others;

(ii) Obstructing pedestrian traffic;

(iii) Engaging in conduct or committing acts that disturb the peace, comfort or repose of a reasonable person of normal sensitivities; or

(iv) Climbing upon any wall, artwork, fence, shelter or any structure not specifically intended for climbing purposes.

(2) No person shall use a Pedestrian Flow Zone for any purpose other than the safe and continuous movement of pedestrian traffic.

(3) No person shall litter in or on any pedestrian plaza. All persons shall use receptacles provided for the disposal of refuse. No person shall deposit household or commercial refuse in any receptacle in a pedestrian plaza.

(4) No person shall spit, urinate, or defecate in or on any pedestrian plaza, except in a facility which is specifically designed for such purpose.

(5) No person shall bathe, shower or shave.

(6) No person shall occupy more than one seat with oneself or one's belongings when to do so would interfere or tend to interfere with the use of such seats by others.

(7) Smoking and using electronic cigarettes are prohibited.

(8) No person shall leave any property unattended or place property in or on any pedestrian plaza in a manner that interferes with pedestrian traffic.

(9) No person shall injure, deface, alter, write upon, destroy, remove or tamper with in any way, any real or personal property or equipment owned by or under the jurisdiction or control of the Department or a pedestrian plaza partner.

(10) No person shall gamble or conduct or engage in any game of chance, unless such game of chance is permitted by local, state or federal law.

(11) No person shall appear in such a manner that the person's genitalia are unclothed or exposed.

(12) No person shall engage in camping, or erect or maintain a tent, structure, shelter or camp.

(13) No person shall allow any dog in the person's custody or control to be unrestrained or to discharge any fecal matter in or on any pedestrian plaza, unless such person promptly removes or disposes of same. This provision shall not apply to a guide or service animal accompanying a person with disability.

(14) No person shall operate an aircraft, kite or other aerial device in, on, or above the surface of any pedestrian plaza for any purpose whatsoever.

(15) No person shall feed any undomesticated animal, including unconfined squirrels and birds, in or on any pedestrian plaza.

(d) **Regulated Uses.**

(1) **Posting of notices and signs.**

(i) No person shall post, display, affix, construct or carry any placard, flag, banner, sign or model in or on any pedestrian plaza or display any such item by means of aircraft, kite, or other aerial device, in, on, or above the surface of any pedestrian plaza for any purpose whatsoever, without permission from the Department. Each separate item placed in violation of this paragraph shall constitute a separate violation.

(ii) Notwithstanding subparagraph (i) above, any person may carry any item described in subparagraph (i) above, without the aid of any aircraft, kite, or other aerial device, where the space on which the message of such item is contained has a height no greater than two feet and a length no longer than three feet, and that such item takes up a total area of no more than six square feet.

(iii) Any person who posts or displays a sign in, on, or above the surface of any pedestrian plaza, shall be responsible for removal of such sign. Failure to remove any sign that is posted or displayed in, on or above the surface of any pedestrian plaza or that remains on such property shall constitute a violation of these rules.

(iv) In the event that a notice or sign, in violation of paragraph (i) above, is posted or displayed in, on, or above the surface of any pedestrian plaza, there shall be a rebuttable presumption that any person whose name, telephone number, or other identifying information appears on such notice or sign has violated paragraph (i) by either:

(A) Pasting, posting, painting, printing or nailing such notice or sign, or

(B) Directing or permitting a servant, agent, employee or other individual under such person's control to engage in such activity; provided, however, that such rebuttable presumption shall not apply with respect to criminal prosecutions brought pursuant to this subparagraph (iv).

(2) Except as otherwise permitted, no person shall skateboard, inline skate, roller skate, or ride a bicycle, scooter, or any other vehicle or device on or through any part of a pedestrian plaza, except a wheelchair or scooter used for transit by disabled persons.

(3) Except as otherwise permitted, no person shall make, continue, cause, or permit to be made or continued unreasonable noise in violation of the Noise Code pursuant to subchapter 2 of title 24 of the Administrative Code.

(4) Except as otherwise permitted, no person shall consume alcoholic beverages.

(5) Except as otherwise permitted, no person shall kindle, build, maintain, or use a fire.

(6) Except as otherwise permitted, no person shall bring or place tables, carts, chairs or furniture in or on any pedestrian plaza.

(7) Except as otherwise permitted, no person shall use or interfere with any authorized use of utilities, including, but not limited to, electricity and water, that supply pedestrian plazas.

(8) Except as otherwise permitted, no person shall interfere with the use of a plaza by a person or group using the plaza pursuant to the terms of a permit issued by any City agency.

(9) Except as otherwise permitted, no person shall use or block any person from using any amenity while selling or offering to sell any goods, services, tickets, or entertainment or while providing any goods, services, tickets, or entertainment in exchange for a donation. For purposes of this paragraph, the term "amenity" shall include, but not be limited to, chairs, tables, planters, benches, kiosks, utilities or canopies, installed in or on any pedestrian plaza.

(e) **Times Square Pedestrian Plaza.**

(1) For purposes of this subdivision, the term “Times Square Pedestrian Plaza” shall mean the areas along Broadway from 41st Street to 53rd Street in Manhattan that are designated by the Department for pedestrian circulation, use and enjoyment.

(2) **Pedestrian Flow Zones.** Where the Department has designated by markings and/or signage Pedestrian Flow Zones in or on the Times Square Pedestrian Plaza or the sidewalks directly adjacent to such plaza, no person shall use such zones for any purpose other than the safe and continuous movement of pedestrian traffic.

(3) **Designated Activity Zones.**

(i) Where and when the Department has indicated by markings and/or signage Designated Activity Zones in or on the Times Square Pedestrian Plaza, any person engaged in commercial activity, solicitation, entertainment or performance by individuals or groups, posing for photographs or videos where any form of compensation, donation, or tip is requested or accepted, or expressive matter vending shall only conduct such activities in such zones, except where otherwise authorized pursuant to the terms of an event permit issued by the Mayor’s Office of Citywide Event Coordination and Management.

(ii) Except for vendors licensed pursuant to section 17-307 and 20-453 of the Administrative Code, any commercial activity, solicitation, entertainment or performance by individuals or groups, posing for photographs or videos where any form of compensation, donation, or tip is requested or accepted, or expressive matter vending shall not take place on the sidewalks directly adjacent to the Times Square Pedestrian Plaza, if Designated Activity Zones have been marked and/or signed.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Uniform Rules for Pedestrian Plazas and Specific Rules for the Times Square Pedestrian Plaza

REFERENCE NUMBER: DOT - 34

RULEMAKING AGENCY: Department of Transportation

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Norma Ponce
Mayor's Office of Operations

April 21, 2016
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Uniform Rules for Pedestrian Plazas and Specific Rules for the Times Square Pedestrian Plaza

REFERENCE NUMBER: 2016 RG 034

RULEMAKING AGENCY: Department of Transportation

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 21, 2016