

COMMUNITY BOARD 1 – MANHATTAN

RESOLUTION DATE: APRIL 17, 2025

COMMITTEE OF ORIGIN: EXECUTIVE

RE: Comments on DOT Proposed Rule Change: Exclusive Seating in DOT Pedestrian Plazas and Open Streets

WHEREAS: The New York City Department of Transportation ("DOT") is proposing to amend title 34 of the Rules of the City of New York to allow for the designation of areas of DOT pedestrian plazas and Open Streets for the exclusive use of private patrons subject to certain restrictions and the review and approval of DOT; and

WHEREAS: The DOT rule change would allow a significant portion of city Open Streets and pedestrian plazas, between 33% and 50% of the total square footage of a specific location, to be leased to a private sub-concessionaire of the location's DOT partner for exclusive use as seating for their customers; and

WHEREAS: DOT will hold a public hearing on the proposed rule online on April 23, 2025, at 10 a.m.; and

WHEREAS: CB1's Executive Committee found the language of the regulation vague and unclear and raised many concerns and questions about the proposed rule as noted in this resolution; and

WHEREAS: Both the DOT's Pedestrian Plaza Program (begun in 2008) and Open Streets Program (permanent program begun in 2021) state in their published online descriptions that the purpose of these programs is to increase the city's public space for "all to enjoy" with no mention of excluding, restricting, or limiting any person or group from full and complete access to the sites; and

WHEREAS: According to DOT's Open Street website (<https://www.nyc.gov/html/dot/html/pedestrians/openstreets.shtml>), "New York City's Open Street program transforms streets into public space open to all" with "transformations that allow for a range of activities that promote economic development, support schools, facilitate pedestrian and bike mobility, and provide new ways for New Yorkers to enjoy cultural programming and building community"; and

WHEREAS: According to DOT's Pedestrian Plaza website (<https://www.nyc.gov/html/dot/html/pedestrians/nyc-plaza-program.shtml>), the pedestrian plaza program seeks to transform underutilized streets and traffic islands into "vibrant, social public spaces for all to enjoy to enhance safety, walkability and access to public transit while supporting community, commerce and culture"; and

WHEREAS: Neither DOT's Open Street nor Pedestrian Plaza programs make any mention of the city's intention to have any person, entity, or partner exercise exclusive use of any portion of the Open Streets or pedestrian plazas; and

WHEREAS: The DOT proposed Rule Change site is open for public comments until April 23, and as of today, has 120 public comments on the site, with 13 comments in support (8 coming from city BIDs) and the overwhelming majority of comments (over 100) strongly opposed to the rule change, highlighting concerns about the privatization of public space with references to the rule as a "land grab" and calling the program "dreadful," "ludicrous," and "unfair"; and

WHEREAS: Several published comments came from non-profit groups and individuals in areas that have already experienced a great deal of open restaurant use on neighborhood Open Streets where noise and garbage have become insurmountable problems with little or no enforcement or remedy by the city; and

WHEREAS: The majority of CB1's Executive Committee fully supports the idea of closing streets for public use but is strongly opposed to the privatization of public space on Open Streets and pedestrian plazas in our district, believing this rule would allow businesses to take a disproportionate amount of land for their own use at the expense of the public; and

WHEREAS: Certain committee members drew a distinction between the full closure of an entire city street with the Open Street program and the smaller areas generally found in pedestrian plazas, believing pedestrian plazas are particularly ill-suited for any exclusive seating; and

WHEREAS: Parts of District 1 contain some of the lowest ratios of public park space per capita in Manhattan, and a deficiency of open public space is a problem that this community, like many others throughout the five boroughs, faces; and

WHEREAS: Unlike applicants who apply for the use of public space for restaurant use through the City's Sidewalk Cafe and Road Bed Cafe programs, there is no requirement with the Open Street Program for any applicant who seeks private commercial restaurant use on an Open Street to pay the city for this use, nor is there any requirement for Community Board or City Council review or approval; and

WHEREAS: While it is understood that money raised through the privatization of public spaces with exclusive seating would go to the maintenance of pedestrian plazas and Open Streets, CB1 Committee members felt strongly that DOT should identify public revenue sources to fund this program rather than relying on the privatization of the plaza and its partner to fund it; and

WHEREAS: Many members of CB1's Executive Committee expressed concern about what they believed would be a "slippery slope" leading to increased privatization of public street space in the community, contrary to the expressed purpose of the Open Street program to "transform streets into public space open to all"; and

WHEREAS: Members advocated for open seating/benches and tables for the public regardless of where food is purchased, including assurance that there is adequate public seating as is the case with NYC Privately Owned Public Spaces (POPS); and

WHEREAS: The Committee had many questions that the DOT representative at the meeting said would be provided at a later date, including but not limited to:

- How equity issues will be managed, ensuring all merchants on an Open Street can benefit from its closure
- How the program relates to the city's Street Activity permitting process
- How the public will be able to access the use of the street if there is one partnership with one restaurant signing an agreement
- How enforcement will occur to address quality of life issues that have arisen with noise and garbage concerns
- The definition of "Major Concessionaire" and when ULURP would be applied to this program;

THEREFORE BE IT RESOLVED THAT:

CB1 requests that DOT provide responses to all unanswered questions as recorded at the CB1 Executive meeting on April 8 as soon as possible; and

THEREFORE BE IT FURTHER RESOLVED THAT:

CB1 urges that all comments in this resolution be considered and addressed by DOT concerning the proposed rule change for Exclusive Seating in DOT Open Streets and pedestrian plazas, including the following recommendations:

1. In the spirit of the programs' commitment to equity, no single business owner should be able to profit exclusively from any Open Street or pedestrian plaza, and there should be a balanced allocation of space among all people who live and work on the street.
2. All merchants along any Open Street should be able to use the street, and an agreement should be made with the Open Street Partner to ensure equitable access.
3. Restaurant owners should be required to apply to the city's sidewalk cafe and road bed seating programs for restaurant use and be required to pay the city for this privilege.
4. The DOT should not have singular authority for approval on use of Open Streets and pedestrian plazas. There should be no approval for any programming or use on a public street without community board review and approval.
5. Open Streets and pedestrian plazas provided with any exclusive restaurant use should be required to provide access to public bathrooms (off-site use acceptable) during open hours.
6. Prior posting of any modification to Open Streets and Pedestrian Plazas should be required, with Community Board notice and review as is the case with SAPO and all restaurant, sidewalk cafe, and road bed licensing.
7. Scaled site plans with furnishings for all proposed uses of Open Streets should be required.
8. There should be clarity on how open space partners work with SAPO to ensure safety and access for all proposed Street Events.

9. A clear process should be established for how food vendors will work with DCA, DOH, NYPD, and DOB.
10. Explicit language should be included in any DOT proposed rule change to reinvest all funds raised back into the pedestrian plazas and Open Streets, with clear language on what is included in proper maintenance.
11. Clear rules for enforcement should be established for any use of public space to address quality of life issues.
12. Open seating/benches and tables should be allowed for the public regardless of where food is purchased.
13. The proposal should be amended so that seating is not reserved for the exclusive use of patrons of private businesses and would be open to non-customers as well, as is the case with Privately Owned Public Spaces (POPS).