

## New York City Department of Transportation

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** 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.

**When and where is the hearing?** DOT will hold a public hearing on the proposed rule online. The public hearing will take place on April 23, 2025, at 10 a.m.

#### **Join through Internet:**

- To join the hearing via your browser either click on the following URL link or copy and paste it into your browser’s address bar.

Join Zoom Meeting:

<https://zoom.us/j/91905359342?pwd=KDMXdrtlXaZ7NMQHFrpGthbdUgtZFM.1>

Meeting ID: 919 0535 9342

Password: 109359

- Then follow the prompts.
- If you have low bandwidth or inconsistent Internet connection, we suggest you use the phone option below for the hearing.

#### **Join via phone only:**

- To join the meeting only by phone, use the following information to connect:
- Phone: 646-518-9805
- Meeting ID: 919 0535 9342
- Password: 109359

**How do I comment on the proposed rules?** Anyone can comment on the proposed rules by any of the following methods:

- **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](mailto:rules@dot.nyc.gov).
- **Mail.** You can mail comments to Emily Weidenhof, Assistant Commissioner of Public Realm, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041.
- **Fax.** You can fax comments to 212-839-9685.
- **Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing [rules@dot.nyc.gov](mailto:rules@dot.nyc.gov) or calling 212-839-6500 by April 22, 2025 and providing your name and affiliation. While you will be given an opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in

advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

**Is there a deadline to submit written comments?** Yes, the deadline for written comments is at 5pm on April 23, 2025.

**What if I need assistance to participate in the Hearing?** You must tell the DOT Office of the General Counsel 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 e-mailing at [rules@dot.nyc.gov](mailto:rules@dot.nyc.gov) or by calling 212-839-6500 by April 16, 2025.

**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/>. Copies of all comments submitted online, copies of all written comments, and a recording of the hearing may be requested by emailing [rules@dot.nyc.gov](mailto:rules@dot.nyc.gov).

**What authorizes DOT to make this rule?** Sections 1043 and 2903(a) of the New York City Charter (“City Charter”) authorize DOT to make this proposed rule. This rule was included in DOT’s 2025 regulatory agenda.

**Where can I find the Department of Transportation rules?** DOT’s rules are in title 34 of the Rules of the City of New York.

**What laws 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 Rule**

The Commissioner of the New York City Department of Transportation (DOT) is authorized to issue rules regarding parking and traffic operations in the City pursuant to Section 2903(a) of the New York City Charter.

In 2020, DOT promulgated rules to establish a pilot program at five pedestrian plazas to allow up to 20% of all seating in such pedestrian plazas to be reserved for the exclusive use of food establishments and plaza kiosks, subject to DOT review and approval. However, shortly after the adoption of these rules, the COVID-19 pandemic commenced, and this pilot program was not implemented. Rather, during the height of the pandemic, DOT’s pedestrian plazas and DOT’s newly established open streets provided expanded space for outdoor dining pursuant to the Mayor’s Emergency Executive Order 126, as amended and extended by subsequent Emergency Executive Orders. In pedestrian plazas, outdoor dining was permitted to occupy up to 80% of all seating in such plaza.

Expanded outdoor dining quickly evolved from a pandemic response to a reimagination of the City’s streetscape. Outdoor dining in the roadway and sidewalk directly in front of a restaurant was made permanent and subject to citywide design and operational requirements under DOT’s Dining Out NYC program. However, outdoor dining in DOT pedestrian plazas and in open streets beyond the area authorized by Dining Out NYC will be managed separately due to the design and management considerations that are specific to these spaces.

Under DOT’s pedestrian plaza and open streets programs, DOT may enter into a concession agreement with a pedestrian plaza or open streets partner, which authorizes, among other things,

revenue-generating activity to occur through the operation of subconcessions. The pedestrian plaza or open streets partner is required to invest any revenue generated from a subconcession into the maintenance and repair of the pedestrian plaza or open street. As such, outdoor dining in the form of a subconcession in pedestrian plazas and open streets will provide a mechanism to aid in the delivery of public space amenities to the community.

Pursuant to the New York City Administrative Code sections 19-157(c) and 19-107.1(g), DOT proposes to amend DOT's pedestrian plaza and open streets rules to authorize partners through their concession agreements with DOT to permit their subconcessionaires to designate an area for exclusive use by its patrons at (i) all DOT designated pedestrian plazas; and (ii) all DOT designated full closure open streets. A full closure open street is a type of open street that is closed to motor vehicle traffic to allow for a range of car-free activities that support local businesses, community organizations, and schools, to create a space for the public to gather.

Through DOT's experience with the pandemic emergency response program, DOT identified challenges in balancing public and private seating due to site geometry and design, and the lessons learned inform DOT's proposed rule. The proposed rule would limit the square footage of area designated for exclusive seating to a maximum of 33% of the total square footage of such pedestrian plaza or open street. In instances where a "major concession" was approved through the Uniform Land Use Review Procedure, the proposed rule would limit the square footage of area designated for exclusive seating to a maximum of 50% of the total square footage of such pedestrian plaza or open street. In all instances, the exclusive seating area would be subject to DOT's review and approval. The proposed rule also clarifies that any exclusive seating authorized by a concession agreement would not be considered a sidewalk or roadway cafe and therefore would not require a license and revocable consent pursuant to DOT's Dining Out NYC program.

Specifically, the amendments being proposed are as follows:

- Repeal paragraph (9) of subdivision (b) of section 4-16 of chapter 4 of title 34 of the Rules of the City of New York and add a new paragraph (9) in relation to permitting exclusive seating areas at pedestrian plazas subject to certain restrictions and DOT review and approval; and
- Add a new paragraph (11) of subdivision (c) of section 4-21 of chapter 4 of title 34 of the Rules of the City of New York in relation to permitting exclusive seating areas at full closure open streets subject to certain restrictions and DOT review and approval.

New material is underlined.

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

**§ 1. Paragraph (9) of subdivision (b) of section 4-16 of chapter 4 of title 34 of the Rules of the City of New York, relating to the use of certain pedestrian plazas, is REPEALED and a new paragraph (9) is added, to read as follows:**

(9) Subject to the Department's prior written approval, a pedestrian plaza partner may permit a subconcessionaire to designate a portion of the total square footage of such pedestrian plaza for exclusive use by the subconcessionaire's customers or patrons, provided that the total square footage of such exclusive seating area shall not exceed 33% of the total square footage of the pedestrian plaza. Notwithstanding the previous sentence, if a major concession is approved pursuant to sections 197-c and 197-d of the New York City Charter, the total square footage of such exclusive seating area shall not exceed 50% of the total square footage of the pedestrian plaza. In the absence of a pedestrian plaza partner, this paragraph does not preclude the Department from designating such exclusive

seating area at a pedestrian plaza. Such exclusive seating area does not require a license and revocable consent nor is it considered a “sidewalk cafe” or “roadway cafe” as defined in subchapter 1 of chapter 1 of Title 19 of the New York City Administrative Code. For purposes of this paragraph, the term “subconcessionaire” means an entity that has entered into an agreement with a pedestrian plaza partner that is authorized by the Department and subject to Title 12 of the Rules of the City of New York.

**§ 2. Subdivision (c) of section 4-21 of chapter 4 of Title 34 of the Rules of the City of New York is amended by adding a new paragraph (11), to read as follows:**

(11) Subject to the Department's prior written approval, an open streets partner may permit a subconcessionaire at a full closure open street, as defined in paragraph (ii) of subdivision (a) of this section, to designate a portion of the full closure open street for exclusive use by the subconcessionaire's customers or patrons, provided that the total sum of the square footage of such exclusive seating area shall not exceed 33% of the total square footage of the full closure open street. Notwithstanding the previous sentence, if a major concession is approved pursuant to sections 197-c and 197-d of the New York City Charter, the total square footage of such exclusive seating area shall not exceed 50% of the total square footage of the full closure open street. In the absence of an open streets partner, this paragraph does not preclude the Department from designating such exclusive seating area at a full closure open street. Such exclusive seating area does not require a license and revocable consent nor is it considered a “sidewalk cafe” or “roadway cafe” as defined in subchapter 1 of chapter 1 of Title 19 of the New York City Administrative Code. For purposes of this paragraph, the term “subconcessionaire” means an entity that has entered into an agreement with an open streets partner that is authorized by the Department and subject to Title 12 of the Rules of the City of New York.

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

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

**RULE TITLE: Amendment of Rules Relating to Outdoor Seating in Pedestrian Plazas**

**REFERENCE NUMBER: DOT-84**

**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/ Francisco X. Navarro  
Mayor's Office of Operations

March 5, 2025  
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:** Amendment of Rules Relating to Outdoor Seating in Pedestrian Plazas

**REFERENCE NUMBER:** 2025 RG 018

**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  
Senior Counsel

Date: March 5, 2025