

New York City Department of Transportation

Notice of Adoption

NOTICE OF ADOPTION relating to amendments of Title 34 of the Rules of the City of New York to allow for the designation of areas of Department of Transportation (“DOT”) pedestrian plazas and open streets for the exclusive use of private patrons subject to certain restrictions and the review and approval by DOT.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the New York City DOT by Sections 1043 and 2903(a) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter that DOT hereby amends Chapter 4 of Title 34 of the Rules of the City of New York.

This rule was first published in the City Record on March 24, 2025, and a public hearing was held on April 23, 2025. DOT carefully reviewed the verbal and written comments that were submitted in response to the proposed rule and made the following changes:

- In response to comments that an insufficient amount of public seating would be provided, DOT modified the rule to clarify that in all pedestrian plazas and full closure open streets where concession seating will be permitted, a sufficient amount of public seating will also be provided. DOT also modified the rule to add a definition of “concession seating” to clarify that such seating will be located in only a limited area of a pedestrian plaza or full closure open street.
- In response to comments that hours of operation should be limited, DOT modified the rule to provide that concession seating may only be operated during the hours of 7 a.m. to 11 p.m.
- In response to comments concerning potential conflicts with street cleaning operations, DOT modified the rule to clarify that no seating shall be permanently affixed in the roadway and that concession seating on a full closure open street may not operate at any time when street cleaning rules are in effect.
- Additionally, DOT modified the rule to clarify that the maximum percentage of concession seating area permitted will be determined by the total square footage of all subconcessionaires’ concession seating areas in the pedestrian plaza or full closure open street.
- DOT also received comments expressing concern over the “privatization” of public space. The rule makes clear that DOT will be following a well-established concession model resulting in a license that is revocable at will by DOT. Additionally, this concession model will contribute to a public benefit by activating the public space and providing an outdoor dining amenity that will encourage use of the overall public space. Additionally, the pedestrian plaza or open streets partner is required to invest any revenue generated from a subconcession into the operation, management, and maintenance of the pedestrian plaza or open street, therefore revenue generated from outdoor dining subconcessions will contribute to a successful and well-maintained public space.

- DOT also received comments suggesting that DOT add requirements related to public conduct. In response, DOT notes that the existing pedestrian plaza and open streets rules found in sections 4-16 and 4-21 of the Traffic Rules (Chapter 4 of Title 34 of the Rules of the City of New York), respectively, already include requirements related to public conduct in pedestrian plazas and open streets, including but not limited to a prohibition on disorderly behavior and a requirement that any person operating any sound device or apparatus comply with the permit requirements of the New York City Police Department, as applicable. For that reason, no changes were made to this rule as it relates to public conduct.

Statement of Basis and Purpose of Adopted Rule

The Commissioner of the New York City Department of Transportation (“DOT”) is authorized to promulgate 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 operation, management, and maintenance 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), respectively, DOT is amending 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 adopted rule. The rule would limit the square footage of area designated for concession 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 adopted rule would limit the square footage of area designated for concession seating to a maximum of 50% of the total square footage of such pedestrian plaza or open street. In all instances, the concession seating area would be subject to DOT's review and approval. The adopted rule also clarifies that any concession 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 adopted 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 concession 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 concession 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) Concession Seating.

(i) 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 concession seating, provided that the total square footage of all such subconcessionaires' concession seating 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 all such subconcessionaires' concession seating shall not exceed 50% of the total square footage of the pedestrian plaza.

(ii) If the Department approves concession seating at a pedestrian plaza pursuant to this paragraph, the Department or its pedestrian plaza partner must maintain seating for public use at such pedestrian plaza. The amount of seating for public use shall be determined by the Department, in consultation with the pedestrian plaza partner, upon consideration of factors such as pedestrian demand for seating for public use, adjacent land uses, public programming areas, permanent seating for public use including but not limited to fixed benches, and the approved pedestrian plaza site plan that is posted on the Department's website.

(iii) A pedestrian plaza partner may only permit a subconcessionaire to operate concession seating, inclusive of setting up and breaking down, packing up, or otherwise clearing such concession seating, during the hours of 7 a.m. to 11 p.m.

(iv) In the absence of a pedestrian plaza partner, this paragraph does not preclude the Department from designating concession seating at a pedestrian plaza.

(v) Such concession seating 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.

(vi) Definitions. For purposes of this paragraph, the following terms have the following meanings:

Concession seating. The term "concession seating" means an area in a pedestrian plaza designated for exclusive use by a concessionaires' or subconcessionaires' customers or patrons.

Subconcessionaire. 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) Concession Seating.

(i) 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 concession seating, provided that the total sum of the square footage of all such subconcessionaires' concession seating 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 all such subconcessionaires' concession seating shall not exceed 50% of the total square footage of the full closure open street.

(ii) If the Department approves concession seating at a full closure open street pursuant to this paragraph, the Department or its open streets partner must maintain seating for public use at such full closure open street. The amount of seating for public use shall be determined by the Department, in consultation with the open streets partner, upon consideration of factors such as pedestrian demand for seating for public use, adjacent land uses, public programming areas, and existing seating for public use including but not limited to fixed benches. Nothing in this paragraph shall permit any seating to be permanently affixed in the roadway.

(iii) An open streets partner may only permit a subconcessionaire to operate concession seating, inclusive of setting up and breaking down, packing up, or otherwise clearing such concession seating, during the hours of 7 a.m. to 11 p.m. Notwithstanding the previous sentence, an open streets partner shall not permit a subconcessionaire to operate concession seating at any time when street cleaning rules are in effect.

(iv) In the absence of an open streets partner, this paragraph does not preclude the Department from designating such concession seating at a full closure open street.

(v) Such concession seating 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.

(vi) Definitions. For purposes of this paragraph, the following terms have the following meanings:

Concession seating. The term “concession seating” means an area in a full closure open street designated for exclusive use by a concessionaires’ or subconcessionaires’ customers or patrons.

Subconcessionaire. 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.



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Hon. Ydanis Rodriguez

Re: Amendment of Rules Relating to Outdoor Seating in Pedestrian Plazas

No. 2025 RG 018

Dear Commissioner Rodriguez:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

/s/ Steven L. Goulden

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Ryan Wanttaja (DOT)
N. Patricia Browne (DOT)
Alyssa Baldassini (DOT)