

New York City Department of Transportation

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The purpose of the proposed rule is to establish a pilot program at five pedestrian plazas that will allow for up to 20% of all seating in those pedestrian plazas, where there is a concession, to be for the exclusive use of patrons, subject to the review and approval of the New York City Department of Transportation (DOT).

When and where is the Hearing? DOT will hold a public hearing on the proposed rule. The public hearing will take place at 2pm on February 13, 2020. The hearing will be in the DOT Bid Room at 55 Water Street, Concourse Level, New York, NY 10041. The entrance to the Bid Room is located on the southeast corner of 55 Water Street facing the NYC Vietnam Veterans Memorial Plaza.

This location has the following accessibility option(s) available: Wheelchair accessibility

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DOT through the NYC rules Web site 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 Public Space, New York City Department of Transportation, Transportation Planning and Management, 55 Water Street, 6th Floor, New York, NY 10041.
- **Fax.** You can fax comments to Emily Weidenhof at 212-839-9685.
- **By 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 calling 212-839-6500. You can also sign up in the hearing room before the hearing begins on February 13, 2020. You can speak for up to three minutes.

Is there a deadline to submit written comments? The deadline for written comments is at 5pm on February 13, 2020.

What if I need assistance to participate in the Hearing? You must tell the 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 mail at the address given above. You may also tell us by telephone at 212-839-6500 or TTY 212-504-4115. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by February 6, 2020.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online and copies of all written comments concerning the

proposed rule will be available through the DOT Freedom of Information Law (FOIL) Office, 55 Water Street, 4th Floor, New York, NY 10041.

What authorizes DOT to make this rule? Sections 1043 and 2903(a) of the New York City Charter (City Charter) authorizes DOT to make this proposed rule. This rule was included in DOT's regulatory agenda for 2020 Fiscal Year.

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.

DOT is proposing a pilot program permitting the establishment of exclusive seating for patrons in five specifically-identified pedestrian plazas, in order to bolster the viability of pedestrian plaza concessions where there are limited concession opportunities, limited partner capacity, and where activation is greatly needed for the overall management of the space.

This proposed rule would establish a pilot program at (1) Fordham Pedestrian Plaza, (2) Myrtle-Cooper Pedestrian Plaza, (3) Myrtle-Wyckoff Pedestrian Plaza, (4) Diversity Pedestrian Plaza, and (5) Corona Pedestrian Plaza. The program will allow for no more than 20% of all seating in the pedestrian plaza where there is a concession to be reserved for patrons, subject to DOT review and approval. Additionally, the rule makes clear that this exclusive seating concept would not be considered a sidewalk café and would not require a sidewalk café license and revocable consent.

Specifically, the amendments to the DOT Rules being proposed are as follows:

- Section 4-16(b) would be amended by adding a new paragraph establishing a pilot program allowing for exclusive seating at up to 20% of all seating at five specifically-identified pedestrian plazas.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (b) of Section 4-16 of Chapter 4 of Title 34 of the Rules of the City of New York is amended by adding a new paragraph (9) to read as follows:

(9) Subject to the Department's prior written approval, the Pedestrian Plaza Partner at Fordham Pedestrian Plaza, Myrtle-Cooper Pedestrian Plaza, Myrtle-Wyckoff Pedestrian Plaza, Diversity

Pedestrian Plaza, and Corona Pedestrian Plaza may permit its subconcessionaire(s) to designate a portion of the available seating within such Pedestrian Plaza for exclusive use by the subconcessionaire(s)' customers or patrons, provided that the total sum of such exclusive seating does not exceed 20% of the total available seating within such Pedestrian Plaza. In the absence of a Pedestrian Plaza Partner, this paragraph does not preclude the Department from designating such exclusive seating at any of these five Pedestrian Plazas. Such exclusive seating does not require a sidewalk café license and revocable consent pursuant to subchapter 6 of Title 20 of the New York City Administrative Code nor is it considered a "sidewalk café" as defined in subchapter 6 of Title 20 of the New York City Administrative Code.

(i) For purposes of this paragraph, the term "Fordham Pedestrian Plaza", means the area located at Fordham Road, Third Avenue and East 189th Street in the Bronx that is designated by the Department for pedestrian circulation, use and enjoyment.

(ii) For purposes of this paragraph, the term "Myrtle-Cooper Pedestrian Plaza" means the area located at 70th Street between Myrtle and Cooper Avenues in Queens that is designated by the Department for pedestrian circulation, use and enjoyment.

(iii) For purposes of this paragraph, the term "Myrtle-Wyckoff Pedestrian Plaza" means the area located at Wyckoff Ave between Myrtle and Gates Avenues in Queens that is designated by the Department for pedestrian circulation, use and enjoyment.

(iv) For purposes of this paragraph, the term "Diversity Pedestrian Plaza" means the area located at 37th Road and 73rd Street between 74th Street and Roosevelt Avenue in Queens that is designated by the Department for pedestrian circulation, use and enjoyment.

(v) For purposes of this paragraph, the term "Corona Pedestrian Plaza" means the area located at Roosevelt Ave between National and 104th Streets in Queens that is designated by the Department for pedestrian circulation, use and enjoyment.

(vi) For purposes of this paragraph, the term "subconcessionaire(s)" means an entity who 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.

**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: Exclusive Seating in Pedestrian Plazas

REFERENCE NUMBER: 2019 RG 081

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: December 20, 2019

**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: Exclusive Seating in Pedestrian Plazas

REFERENCE NUMBER: DOT-53

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/ Jenady Garshofsky
Mayor's Office of Operations

December 20, 2019
Date