



# BUILDINGS 2025-004 BULLETIN OPERATIONAL

ISSUANCE DATE  
April 15, 2025



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Code & Zoning Interpretation

PURPOSE: This Bulletin provides guidance on certain *Dining Out NYC* program requirements relating to existing enclosed sidewalk cafes.

SUBJECT(S): DOT *Dining Out NYC* program; Existing Enclosed Sidewalk Cafes

## RELATED CODE SECTIONS & RESOURCES

Chapter 5, Title 34 of the Rules of the City of New York (*Dining Out NYC Rules*), New York City Administrative Code (Administrative Code) Section 19-160(a), Title 1 RCNY §101-14

### I. BACKGROUND

Existing enclosed sidewalk cafes must comply with the applicable Department of Transportation (DOT) Dining Out NYC Rules, which went into effect on March 3, 2024. New enclosed sidewalk cafes are no longer permitted and the New York City Zoning Resolution provisions and Department of Consumer and Worker Protection rules relating to enclosed sidewalk cafes have been repealed. As described herein, only certain eligible previously approved enclosed sidewalk cafes are permitted to continue operating.

The Department of Buildings (DOB) issues the following guidance regarding alterations and permitted work for existing enclosed sidewalk cafes as described below in Section II of this Bulletin.

### II. EXISTING ENCLOSED SIDEWALK CAFES (*located beyond the property lines*)

An existing enclosed sidewalk cafe located beyond the property lines may continue to operate provided such enclosed sidewalk cafe was constructed pursuant to a permit issued by DOB prior to March 16, 2020.

Pursuant to section 28-102.4 of the NYC Administrative Code and section 102.6 of the NYC Building Code, the lawful use of the existing enclosed sidewalk cafe is allowed to continue without change except as otherwise deemed necessary by DOB. Only ordinary repairs, maintenance, and minor alterations, as described below, will be allowed. Enclosed sidewalk cafe structures must be maintained in accordance with NYC Administrative Code Section 28-301.1.

DOB no longer reviews or issues permits for existing enclosed sidewalk cafes that are located beyond the property lines.

### III. PERMITTED WORK

Work done for **Minor alterations and ordinary repairs** as defined in Section 28-105.4.2 of the NYC Administrative Code, does not require a permit and is allowed for existing enclosed sidewalk cafes. In general, replacements or renewals of existing work in the existing enclosed sidewalk cafe with the same or equivalent materials or equipment parts, that do not in any way affect health or the fire or structural safety of the building,

is allowed. For example, it is permissible to replace the glazing of a cafe enclosure that requires repair or replacement due to age or damage.

To determine if a DOB construction permit is required, please also refer to [1 RCNY §101-14](#).

#### **IV. WORK NOT PERMITTED**

Work that is defined in section 28-105.4.2 of the Administrative Code as *work not constituting minor alterations and ordinary repairs* is not permitted. In general, that includes work that affects health or the fire or structural safety of the building or the safe use of the space. Therefore, changes or alterations to a previously permitted existing enclosed sidewalk cafe structure, including but not limited to, any change to the number of occupants in the certificate of occupancy (CO), cafe footprint, size, height, ceiling, exterior wall transparency, elevation, and the introduction of permanent fixtures, are not allowed.

#### **V. TEMPORARY OUTDOOR DINING STRUCTURES CONSTRUCTED DURING COVID PURSUANT TO EMERGENCY EXECUTIVE ORDER 126**

*(March 17, 2020 – March 2, 2024)*

The temporary Open Restaurants program was established pursuant to an emergency executive order in response to the COVID-19 pandemic and permitted temporary outdoor dining structures to be constructed. Such temporary outdoor dining structures were permitted to be constructed without construction permits from DOB, or Department of Consumer and Worker Protection licenses, and were not subject to zoning requirements. As of March 3, 2024, these structures are subject to DOT rule including subdivision (b) of Section §5-13 that states in relevant parts:

*“A restaurant operating a temporary outdoor dining setup that does not submit a petition for a revocable consent pursuant this chapter within five (5) months of the effective date of these rules shall immediately remove such temporary outdoor dining setup. Any temporary outdoor dining setup that is not removed shall be subject to penalties for the operation of a sidewalk cafe or roadway cafe without a license and revocable consent and may be removed in accordance with paragraph (1) of subdivision (d) of Section 5-12 of these rules.”*

Therefore, unless an application to DOT has been submitted, such a structure may be subject to removal. Refer to [DOT Rule](#) Section §5-13 Temporary Outdoor Dining Structures for more information.

#### **VI. SIDEWALK CAFES & ROADWAY CAFES OTHER THAN EXISTING ENCLOSED SIDEWALK CAFES**

Refer to Buildings Bulletin [BB 2024-005](#) for more information on sidewalk cafes and roadway cafes that are beyond the property lines and outdoor cafes located within the property lines.

#### **RESOURCES**

- Dining Out NYC info from DOT website: <https://www.diningoutnyc.info/>
- Official Rules website: [Dining Out NYC Rules](https://rules.cityofnewyork.us/wp-content/uploads/2024/02/DOT-Notice-of-Adoption-DOT-Dining-Out-NYC-Rules-Accessible.pdf); <https://rules.cityofnewyork.us/wp-content/uploads/2024/02/DOT-Notice-of-Adoption-DOT-Dining-Out-NYC-Rules-Accessible.pdf>
- RCNY §101-14 Categories of work that may or may not require a permit: [https://www.nyc.gov/assets/buildings/rules/1\\_RCNY\\_101-14.pdf](https://www.nyc.gov/assets/buildings/rules/1_RCNY_101-14.pdf)