

# LANDMARKS PRESERVATION COMMISSION

## Notice of Adoption of Final Rules

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE LANDMARKS PRESERVATION COMMISSION** by Section 3020 of the New York City Charter and Sections 25-303, 25-305, 25-306, 25-307, 25-308, 25-310, 25-313 and 25-319 of the Administrative Code of the City of New York, and in accordance with the requirements of section 1043 of the New York City Charter, that the Landmarks Preservation Commission hereby adopts amendments to Chapter 2 of Title 63 of the Rules of the City of New York.

These amendments and new rule were first published in the City Record on March 15, 2024, and a public hearing was held on April 16, 2024. The adopted rules reflect certain of these comments. The Commission voted to approve the adopted rules at the Public Meeting of May \_\_, 2024.

### Statement of Basis and Purpose of Proposed Rules

#### **Introduction**

The Landmarks Preservation Commission (“LPC” or “Commission”) is proposing amendments to Chapter 2, Section 2-23 to:

- (1) make the work of the Commission more transparent and efficient;
- (2) address new and amended governmental codes and criteria for the installation of sidewalk and roadway cafes as required by the rules adopted by the Department of Transportation establishing the new permanent Outdoor Dining program; and
- (3) delegate to the LPC Staff the authority to approve work that has no effect on significant exterior architectural features of the buildings and streetscapes of districts regulated by the Commission, thereby ensuring that at future public hearings and meetings the Commission can review the increasing number of applications that do have significant impact.

#### **Description of Proposed Changes**

The proposed amendments to section 2-23 would codify the existing regulatory review procedure long utilized by the Commission for regulating the installation of sidewalk cafes and would expand this review to roadway cafes. This approach has ensured that sidewalk cafés approved by the Commission include only temporary or appropriate components and therefore have no impact on landmarked structures.

Section 2-23 of the rules covers repetitive work that occurs on city property such as sidewalks. It currently includes provisions for regulating the installation of public pay telephones and other public communication structures.

Sidewalk cafes associated with ground floor restaurants have been part of the city’s streetscape since the mid-19th century, and legally so since 1929. These installations support ground floor restaurants and enliven the commercial streetscape. Due to their low-scale and lightweight components (e.g. dining furniture, umbrellas, and perimeter elements like ropes, stanchions and planters), sidewalk cafes have traditionally had a simple presence on the streetscape and did not detract from the buildings they are associated with and the streetscape in general. Because their components are generally moveable, the LPC has historically not regulated their presence except where components are not moveable.

During the COVID 19 pandemic, the city authorized ground floor restaurants to utilize the roadway in front of their establishments for roadway cafes, a practice that has been made permanent by local legislation in 2023. In the fall of 2023, the Department of Transportation proposed rules governing both sidewalk and roadway cafes to ensure such cafes had a modest and ephemeral presence and held a public hearing on such proposed rules.

LPC has reviewed the DOT rules for sidewalk and roadway cafes and finds that the requirements ensure that these installations will have a modest and ephemeral presence and will not detract from significant historic features of the buildings and streetscapes under LPC’s jurisdiction. As a result, the proposed LPC rules would not require owners to submit applications for sidewalk or roadway cafes provided the installations comply with all relevant DOT rules and regulations.

The exception to this rule would be for components that are to be physically attached to a building or historic paving, such as an awning, overhead covering or electrical conduit. In such a case, the owner would have to submit an application to the LPC for that particular component only.

New material is underlined.

[Deleted material is in brackets.]

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

§ 1. Section 2-23 of Chapter 2 of Title 63 of the Rules of the City of New York is amended to read as follows:

§ 2-23 Rules Relating to Installation of [Public Pay Telephones and Public Communications Structures]Certain Types of Street Furniture, Sidewalk and Roadway Cafes and Other Installations in the Public Right-of-Way.

- (a) *Introduction.* [Public pay telephones have been part of the city's streetscape for half a century. First introduced in the 1950s pursuant to a franchise agreement with the city, legally permitted public pay telephones contribute to the urban experience as well as provide an important communication link for business, pleasure and public health and safety. Public pay telephones have traditionally had a quiet presence on the streetscape that allowed for their identification without calling undue attention to themselves.] The provisions set forth below are intended to

ensure that [public pay telephones and public communications structures] street furniture, sidewalk and roadway seating areas and other installations in the public right-of-way installed in areas under the jurisdiction of the Landmarks Preservation Commission are installed in a manner that does not damage or destroy historic fabric and that the design and placement of such [phones and structures shall] furniture, seating areas and other installations does not call undue attention to themselves or detract from the significant architectural features of an improvement or a historic district or adversely affect a historic district's distinct sense of place.

(b) *[Definitions. As used in this section, the following terms have the following meanings:*

(1) **Curbfront.** The term "curbfront" means the sidewalk curb that divides the sidewalk from the roadway.

(2) **PCS Franchise Agreement.** The terms "PCS Franchise Agreement" means a valid franchise granted by the City Department of Information Technology and Telecommunications ("DoITT") to provide public pay telephone and wireless internet service on the inalienable property of the City of New York.

(3) **PPT Enclosure.** The term "PPT Enclosure" means any associated housing or enclosure that partially or fully surrounds a PPT, and including an associated pedestal, which has been approved by the Art Commission.

(4) **PPT Franchise Agreement.** The term "PPT Franchise Agreement" means a franchise granted by the City pursuant to the revised solicitation issued by the Department of Information Technology and Telecommunications ("DoITT") on June 9, 1997 pursuant to Resolution No. 2248 or any subsequent solicitation with a similar purpose whether or not such subsequent solicitation includes all or part of the components of the June 9, 1997 solicitation.

(5) **Public communications structure or PCS.** The term "public communications structure" or "PCS" means a structure installed on public property pursuant to a valid PCS Franchise Agreement.

(6) **Public pay telephone or PPT.** The term "public pay telephone" or "PPT" is defined by § 23-401(f) of the Administrative Code of the City of New York.]

*Approval of Installation and Design of PPT Enclosure and of PCS Installation. Public pay telephones have been part of the city's streetscape for half a century. First introduced in the 1950s pursuant to a franchise agreement with the city, legally permitted public pay telephones contribute to the urban experience as well as provide an important communication link for business, pleasure and public health and safety. Public pay telephones have traditionally had a quiet presence on the streetscape that allowed for their identification without calling undue attention to themselves.*

(1) Definitions. As used in this section, the following terms have the following meanings:

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**Public communications structure or PCS.** The term "public communications structure" or "PCS" means a structure installed on public property pursuant to a valid PCS Franchise Agreement.

**Public pay telephone or PPT.** The term "public pay telephone" or "PPT" is defined by § 23-401(f) of the Administrative Code of the City of New York.

([1]2) PPT Enclosure and Installation. No application to the Commission, and no certificate, approval, permit or report shall be required for a proposal to install a PPT Enclosure if such proposal meets the following criteria:

(i) The PPT Enclosure is proposed to be installed no farther than 24 inches from and no closer than 18 inches to the curbfront in an area zoned for commercial or manufacturing uses pursuant to the New York City Zoning Resolution;

(ii) Each PPT Enclosure shall be designed to be inconspicuous and to not call undue attention to itself, and shall have an exterior dimension no greater than 35" wide x 44" long x 90" high. A maximum of two PPTs may be installed in-line together, but in such instance the enclosure shall be no greater than 35" wide x 88" long x 90" high. The height limitation shall include the height of a mast if one is installed. The PPT Enclosure may have clear glazing panels and shall be rectilinear if the PPT Enclosure is designed to have advertising panels;

(iii) The PPT Enclosure shall not be installed in or on, or in the mortar joints between, bluestone, granite, slate or brick paving material, nor shall such paving material be disturbed in any manner in connection with the installation of the PPT;

(iv) The PPT Enclosure shall not be installed in front of an improvement designated as a landmark;

(v) The telephone and power lines to and from such PPT Enclosure, or any conduit containing such lines, shall not be visible;

(vi) The nonglazed portion of the PPT Enclosure shall be a dark brown, dark green, black or dark grey color, or is uncolored stainless steel or clear-finished aluminum. If the PPT Enclosure is less than 15 inches by 36 inches, all portions of the PPT Enclosure shall be stainless steel or clear-finished aluminum;

(vii) If the PPT Enclosure has advertising panels, the advertising panels shall be limited to two side panels, each of which is not larger than 27" wide x 57" high. There shall be no advertising panel on the rear of the PPT Enclosure facing the street. The advertising panels shall not be illuminated in any fashion. Advertising shall be limited solely to the PPT Enclosure. No advertising shall be permitted on a PPT Enclosure that is smaller than 27" wide x 57 inches high. No PPT Enclosure shall have any light

emitting diode (L.E.D.) lettering, design or advertising. In addition to the above, a PPT Enclosure may identify the name or logo of the owner of the PPT and the fact that it is a public telephone. Where such identification is illuminated, it shall be illuminated internally from behind the lens, be limited to the top two inches of the PPT Enclosure, and may occur on all sides of the PPT Enclosure; and

(viii) The proposed PPT installation meets all applicable terms, conditions and requirements of the PPT Franchise Agreement, and all applicable distance, clearance and other siting requirements set forth in Title 67 of the Rules of the City of New York.

([2]3) PCS Installation. No application to the Commission, and no certificate, approval, permit or report shall be required for installation of a PCS if:

(i) The PCS is to be installed in accordance with the siting criteria described in the applicable PCS Franchise Agreement and in an area zoned for commercial or manufacturing uses pursuant to the New York City Zoning Resolution, or, if the PCS does not include advertising, in an area zoned for residential use, except that:

(A) in addition to the siting criteria in the applicable PCS Franchise Agreement, if the PCS is to be installed in an area zoned for commercial or manufacturing use and the installation would replace an existing PPT Enclosure, the proposed installation shall not be within 100 linear feet on the same blockfront of another PCS structure or PPT Enclosure; and

(B) if the PCS is to be installed in an area zoned exclusively for residential use the installation is to replace an existing PPT Enclosure. No new installation of a PCS in an area zoned exclusively for residential use shall be covered by this rule;

(ii) No more than one PCS shall be installed at the same location;

(iii) If the PCS has advertising panels, the advertising panels are limited to two side panels, each of which is not larger than 27" by 47.5". There shall be no advertising panel on the rear of the PCS facing the street. Static digital advertising shall be permitted in commercial or manufacturing districts. For purposes of this rule, "static digital" shall mean advertising in which a series of fixed digital images are displayed electronically, and each fixed image must be displayed for a minimum of 15 seconds and fade in and fade out no faster than 1 second;

(iv) The PCS conforms to the design and materials that have been approved by the New York City Art Commission, also known as the Public Design Commission, and has an exterior dimension no greater than 11" wide x 35" deep x 122.9" high;

(v) The PCS shall not be installed in or on, or in the mortar joints between, bluestone, granite, slate or brick paving material, nor shall such paving material be disturbed in any manner in connection with the installation of the PCS;

(vi) The PCS is not installed in front of an improvement designated as an individual landmark, unless the PCS is replacing an existing public pay telephone that was previously operated pursuant to a valid franchise agreement with DoITT; and

(vii) The telephone and power lines to and from such PCS, or any conduit containing such lines, are not visible.

([3]4) Other Proposals.

(i) All proposals to install a PPT Enclosure or a PCS that do not satisfy the requirements of [subsections (1) or] paragraphs (2) or (3) of this [section] subdivision shall be reviewed and approved by the Landmarks Preservation Commission by a certificate of appropriateness [public hearing], report, permit for minor work or certificate of no effect, as appropriate, as set forth below.

(ii) Application Procedures for Proposals to Install a PPT Enclosure or PCS Requiring a Certificate, Permit or Report. An application form shall be filed for each proposed PPT Enclosure or PCS. Notwithstanding the requirements of 63 RCNY § 2-01, the application form for the installation of a PPT Enclosure or PCS shall be signed by the person who owns the PPT or PCS or the agent or principal of such person, or any other person authorized to apply for a permit to install a PPT or PCS pursuant to the relevant franchise agreement or Title 67 of the Rules of the City of New York. No advertising shall be permitted on a PPT, PPT Enclosure, or PCS that is not located at the curb.

(4) Nothing in this rule shall be interpreted to obviate the need to obtain all necessary approvals from the Department of Information Technology and Telecommunications, or any other governmental agency, for all installations of a PPT Enclosure or a PCS.

(c) Review of Roadway and Sidewalk Cafés and Components.

(1) Introduction. Sidewalk cafes associated with ground floor restaurants have been part of the city's streetscape since the mid-19th century, and legally so since 1929. These installations support ground floor restaurants and enliven the commercial streetscape. Due to their low-scale and lightweight components (e.g. dining furniture, umbrellas, and perimeter elements like ropes, stanchions and planters), sidewalk cafes have traditionally had a simple presence on the streetscape and do not detract from the buildings they are associated with and the streetscape in general. Because their components are moveable, the LPC has historically not regulated their presence except where components are not moveable. In response to the COVID pandemic of 2020-2022, the City allowed, on an emergency basis, roadways adjacent to the curb to be used as additional outdoor dining spaces for ground floor restaurants. The provisions for roadway dining were made permanent through local legislation in 2023. Like sidewalk cafes, the regulations for the physical set-up of roadway cafes adopted by the Department of Transportation ("DOT") mandate easily removable components, including perimeter enclosures, tables and chairs. In addition, they can only operate between April 1 and November 29 and must be removed altogether when not permitted. The provisions set forth below are intended to ensure that roadway and sidewalk cafes installed in locations under the jurisdiction of the Landmarks Preservation Commission have a modest and ephemeral presence and are installed so as not to damage or destroy historic fabric, and that the components and overall composition of these installations do not call undue attention to themselves or detract from the significant architectural features of an improvement or a historic district.

(2) Definitions. As used in this section 2-23, the following terms have the following meanings:

**Components.** The term "Components" means the physical objects used to define the area in which the roadway or sidewalk café seating area will be located, such as solid barriers, planters, stanchions and rope, and low partitions, as well as tables, chairs and umbrellas inside such area(s).

**Enclosed Sidewalk Cafe.** The term “Enclosed Sidewalk Cafe” means a structure housing a seating area that is entirely enclosed on the sides and top, creating an interior space that connects to the ground floor restaurant and is located on the sidewalk.

**Physically Attached.** The term “physically attached” means attached mechanically, for example by bolt, screw or nail, or chemically, for example, by glue or other adhesive.

**Roadway Cafe.** The term “Roadway Cafe” means an open-air portion of a ground floor restaurant containing readily removable tables, chairs, and other removable decorative items, which is located in the curb lane or parking lane of a roadway fronting the restaurant, and where the components comply with applicable DOT rules for such installations, including siting, design, signage and seasonal duration requirements.

**Sidewalk Cafe.** The term “Sidewalk Cafe” means an open-air portion of a ground floor restaurant containing only readily removable components, such as tables, chairs, stanchions and rope, planters and other removable and/or decorative items, that is located on a public sidewalk or sidewalk widening in front of the restaurant, and where the components comply with applicable DOT rules for such installations.

(3) Installation and Design of Sidewalk Cafes. Except as indicated in subdivision (5) of this section, no application to the Commission, and no certificate, permit, report or approval is required for installation of a sidewalk cafe where the installation complies with all requirements of Chapter 5 of Title 34 of the Rules of the City of New York, governing Licenses and Revocable Consents for Sidewalk and Roadway Cafes, including but not limited to siting, design, and advertising requirements for such installations.

(i) Enclosed sidewalk cafes, including alterations to or replacement of existing installations, are not covered by this rule.

(4) Installation and Design of Roadway Cafes. Except as indicated in paragraph (5) of this subdivision, no application to the Commission, and no certificate, permit, report or approval is required for installation of a roadway cafe where the installation complies with all requirements of Chapter 5 of Title 34 of the Rules of the City of New York, governing Licenses and Revocable Consents for Sidewalk and Roadway Cafes, including but not limited to siting, design, advertising and seasonal duration requirements for such installations.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this subdivision, if a sidewalk or roadway café includes the installation of a component, including but not limited to an awning, overhead covering, heat lamp, light fixture or electrical or plumbing conduit, that is:

(i) physically attached to a building, or

(ii) penetrates through the exterior of a building (for example, through a façade or storefront),  
or

(iii) through such attachment physically impacts an interior landmark, or

(iv) attaches to or penetrates through a bluestone or granite paver or cast iron vault light panel,

the owner must submit an application for such component(s) to the LPC and must not install such component(s) until the LPC has issued a certificate, permit, report or other approval for such installation.

(6) Other Proposals.

(i) All proposals to install a sidewalk or roadway cafe that do not satisfy the requirements of paragraphs (3) or (4) of this subdivision must be reviewed and approved by the Landmarks Preservation Commission by a certificate of appropriateness, certificate of no effect, permit for minor work or report, as appropriate, as set forth below.

(ii) Application Procedures for Proposals to Install a Sidewalk or Roadway Cafe Requiring a Certificate, Permit or Report. An application form must be filed for each proposed sidewalk or roadway cafe. The application form must be signed by the owner of the real property which contains the ground floor restaurant in front of which the sidewalk or roadway café is to be installed.

(iii) Nothing in this rule shall be interpreted to obviate the need to obtain all necessary approvals from the Department of Transportation, Department of Buildings or any other governmental agency, for installations of a sidewalk or roadway café or any component within such cafe.