

## New York City Department of Transportation

### Notice of Adoption

**NOTICE OF ADOPTION** relating to amendments of DOT's Traffic Rules relating to its Open Streets program.

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN** the Commissioner of the New York City Department of Transportation (DOT) by Sections 1043 and 2903 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 Sections 4-01 and 3-01 and adds Section 4-21 of 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 27, 2023, and a public hearing was held on April 26, 2023. DOT received written or verbal comments from the public and made the following revisions:

- Revised Section 4-21(a) to clarify that the definition of “community organization or open streets partner” is inclusive of houses of worship;
- Clarified Sections 4-21(a)(ii), 4-21(b)(1)(iii)(C), and 4-21(c)(9)(ii) by indicating that emergency access, in addition to an emergency lane, must be clear at all times for emergency vehicle access;
- Revised Section 4-21(b)(1)(v)(B) to indicate that the Department will provide at least 45 days of notice of an approved open street application to the community organization, the public, and any affected City Council members, Community Boards, and Borough Presidents;
- Added new Section 4-21(b)(5)(iii) to provide that the Department will notify any affected City Council members or Community Boards of a rescission of an open streets designation;
- Added new Sections 4-21(c)(9)(iii) through (v) to clarify that if any fire department connections are present on an open street they must be visible and unobstructed, that access to sidewalks must remain unobstructed, and that, for limited local access open streets, no fixed structures, furnishings, or seating is permitted;
- Revised Section 4-21(c)(10) to clarify that, for limited local access open streets, the barriers may be temporarily moved to facilitate limited local access including, but not limited to, Access-A-Ride vehicles and vehicles collecting or dropping off passengers along the street;
- Clarified in Section 4-21(d) that an open streets partner is not required to enforce the requirements in Section 4-21(d);
- Added new Section 4-21(d)(6) to clarify that if a person is subject to the permit requirements of the New York City Fire Code they must obtain the applicable permit in accordance with the Fire Code;
- Revised Section 4-21(d)(27) to provide that any person may bring or place chairs on any pedestrian area of an open street, unless otherwise restricted by the Department;
- Added new Section 4-21(d)(28) to provide that no person shall bring or place tables or carts in or on any open street;
- Revised Section 4-21(d)(32)(ii) to reduce the time frame that open streets partners must allow the Department to review and approve sponsorship agreements from 30 days to 15 days;
- Added a new Section 4-21 that provides the Commissioner may, in his or her

- discretion, modify these rules, in the interest of public safety or convenience; and
- Revised Section 3-01 to remove the penalties associated with Section 4-21(c) of these rules and to clarify that the penalty and default amounts are exact amounts, not a range.

### **Statement of Basis and Purpose of Adopted 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 accordance with Local Law 55 of 2021, DOT is adopting rules relating to its permanent Open Streets program. In 2020, DOT retooled its partner-based Weekend Walk program to create Open Streets as a temporary program in response to the COVID-19 pandemic. During the height of the pandemic, Open Streets was a critical lifeline for communities and businesses as they navigated this devastating crisis by providing safe socially distanced outdoor space for recreation, dining, and other activities. The program quickly evolved from solely being a pandemic management tool to a successful public space management tool that has prioritized pedestrians and cyclists and has received strong support to continue on a long- term basis.

This adopted rule will codify the Open Streets application process and many of the requirements that DOT utilized during the pandemic, as well as clarify criteria for eligible open streets partners and corridors and establish a regulatory framework for how the program will be managed and operated.

Specifically, the amendments to the DOT Traffic Rules are as follows:

- Amend Section 4-01 relating to the establishment of a definition of a shared street
- Add new Section 4-21 relating to open streets. Specifically, among other things, the rule:
  - Establishes application requirements, including notification to the public, community organizations, and the affected City Council member, Community Board, and Borough President; and
  - Establishes requirements for the operation and management of open streets, including accessibility and conduct regulations for the public.
- Adds new penalty to Section 3-01 relating to open streets.

New material is underlined.

**Section 1. Subdivision (b) of section 4-01 of Chapter 4 of Title 34 of the Rules of the City of New York is amended by adding a new definition, in alphabetical order, to read as follows:**

**Shared street.** The term “shared street” means a street that is designed for slow travel speeds where pedestrians, cyclists, and motorists all share the right of way. Shared streets are typically implemented on low vehicle volume and/or high pedestrian volume streets where drivers of vehicles are encouraged to drive five miles per hour and the roadway portion of the street may be flush from building line to building line (i.e., no curb), separated by bollards or pedestrian amenities rather than the typical curb line grade separation. Slow speeds are encouraged through traffic control devices and/or calming measures (e.g., signage, markings, use of distinctive materials, furnishings, plantings, and other visual cues) in the roadway that caution drivers.

**Section 2. Chapter 4 of Title 34 of the Rules of the City of New York is amended by adding a new section 4-21, to read as follows:**

## Section 4-21

### OPEN STREETS

**(a) Definitions.** For purposes of this section, the terms below are defined as follows:

**Community organization or open streets partner.** The term “community organization” or “open streets partner” means any formal or informal group of people or businesses with ties to the community who collaborate to manage or participate in the operations of an open street, including but not limited to schools, business improvement districts, civic associations, houses of worship, block associations, and merchant groups.

**Open street.** The term “open street” means a street or segment of a street within the jurisdiction of the Commissioner, designated by the Department as such, on which motor vehicle access is controlled by barriers and signage or other traffic calming measures, and on which priority is given to pedestrians, individuals using bicycles, and other non-vehicular street users. Open streets may be designated on a variety of street types, including shared streets. Open streets may be described as one of the following:

#### **(i) Limited Local Access**

The term “limited local access” means signage and traffic calming measures are used to discourage the use of vehicles except the following: (1) vehicles parking on the open street (all parking regulations apply); (2) vehicles collecting or dropping passengers on the open street; (3) vehicles making deliveries to residents, businesses, and institutions on the open street; (4) emergency vehicles; (5) Access-A-Ride vehicles; (6) public utility vehicles; and (7) City government service vehicles. Drivers are encouraged to drive five (5) miles per hour or slower while traversing the open street.

#### **(ii) Full Closure**

The term “full closure” means temporary closure of an open street to motor vehicle traffic, including motor vehicles intending to park, subject to Administrative Code section 19-107, 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. Emergency access and an emergency lane must be clear at all times for emergency vehicle access.

**(b) Applications to Designate Open Streets.** In addition to streets or segments of streets selected by the Department to be designated as open streets pursuant to § 19-107.1 of the Administrative Code, the Department will accept applications to become an open streets partner for the purpose of managing and participating in the operation of open streets designated in areas under the Department’s jurisdiction.

#### **(1) Applications.**

**(i) Applicant.** Only an entity operating within the City may apply to become an open streets partner. An applicant must have strong ties to the community where the open street is being proposed. Groups of three or more eligible organizations may submit a joint application, but any such group must identify one organization to apply for and represent the group. Applications submitted on behalf of a school, including but not limited to daycares, Pre-K, primary and secondary schools, colleges, and universities, must be submitted by the administration of such school.

**(ii) Submission.** Open streets applications may be submitted by mail or electronically. Electronic submissions are preferred.

**(iii) Required Documentation.** Applicants must submit the following documents in accordance with subparagraph (ii) of this paragraph:

**(A)** A completed application in a form prescribed by the Department, which will be posted each year on the Department's website, and which may require applicants to submit information including, but not limited to, the mission of the applicant; the geographic bounds of the proposed open street; proposed duration and daily hours of operation; potential uses and programming for the proposed open street; and a description of measures to facilitate use of the proposed open street by people with disabilities;

**(B)** The applicant's contact information, including a contact for emergencies;

**(C)** A site plan as provided in the application that clearly indicates all expanded business footprints; all areas of the proposed open streets corridor designated for programming; operational elements; any spaces on the roadway designated for use in the management of such proposed open street; unobstructed emergency access and an unobstructed emergency access lane throughout the proposed open streets corridor; and barrier placement;

**(D)** A management, staffing and operations plan that details how barricades and any other traffic control devices, as applicable, will be managed and monitored, including the moving of barricades in the event of an emergency; how the applicant will ensure that the proposed open street is clear and roadway reopened at the conclusion of open street hours, as applicable; how the applicant will ensure programming providers and businesses will comply with the site plan; and, for full closure open streets, the proposed cleaning and trash disposal procedures;

**(E)** A community outreach plan detailing how the applicant will regularly notify businesses, residents, and other relevant stakeholders about the proposed open street and its operation and programming;

**(F)** At least three (3) letters of support from community stakeholders including, but not limited to, property owners and businesses on the proposed open street; nearby institutions, such as churches and schools; elected officials; other not-for-profit groups, neighborhood and block associations; and neighborhood residents; and

**(G)** Proposed operational resources needed to manage the proposed open street, including but not limited to a projected operating budget for the management of the proposed open street (if any), financial materials, maintenance and operation services and programming.

**(iv)** The application form and guidelines regarding the management and operation of open streets are available on the Department's website.

**(v) Selection.**

**(A)** The Department will consider the following factors when reviewing an application to designate an open street:

- 1. Safety of all street users;**
- 2. Equitable distribution of open streets throughout the city;**

3. Site context, including but not limited to:
  - a. Existing parks, open streets or other open spaces and their current utilization;
  - b. Existing access to public transportation and bicycle and pedestrian infrastructure; and
  - c. Integration with existing pedestrian and bicycle infrastructure.
4. Presence of bus routes, truck routes or medical facilities; and
5. Access for commercial deliveries and emergency vehicles.

(B) If the Department approves an application, it will notify the selected community organization and any affected City Council members, Community Boards, and Borough Presidents, and will notify the public by posting on its website, at least 45 days before designating the proposed open street.

(C) Limited local access open streets cannot be designated along a bus route or truck route.

(2) Management Agreement. A management agreement between the Department and the selected community organization may be required where the Department does not provide for the management of the open street. A community organization that does not enter into such a management agreement may nonetheless partner with the Department for purposes of providing programming or volunteers at an open street.

(3) List of Designated Open Streets. A list of all open streets shall be posted on the Department's website.

(4) Renewal. An open streets partner may renew its application for the management of its previously approved open street on a short-form application prescribed by the Department annually and posted on the Department's website. Such short-form renewal application will include an opportunity for the open streets partner to request any of the following:

- (i) Additional resources;
- (ii) Traffic control devices and/or calming measures;
- (iii) Street furniture;
- (iv) Accessibility improvements;
- (v) Consideration of conversion of such open street to a shared street;
- (vi) Adjusted operating hours; and
- (vii) Adjusted boundaries.

(5) Rescinding Open Streets Designations. The Department may, at its discretion, rescind the designation of any open street if such rescission is necessary to facilitate construction or emergency services, or if the Department determines that public safety requires it or that such rescission would benefit the community.

- (i) At least 30 days before the Department's proposed date of rescission of the designation of an open street, the Department will notify the affected open streets partner, which may submit a written statement to the Department within ten (10) days of such notification.

(ii) The Department will consider any comments set forth in a timely delivered written statement before rescinding such designation.

(iii) Upon such rescission, the Department will notify any affected City Council members or Community Boards.

**(c) Operation and Management of Open Streets.** An open streets partner must operate and manage all aspects of an open street, including but not limited to the following:

(1) Open streets must be maintained in a manner that allows for emergency vehicle access at all times, including:

(i) the management of barricades and any other traffic control devices and/or calming measures as required by the Department;

(ii) monitoring the open street throughout the hours of operation and reporting issues and/or incidents to the Department;

(iii) reporting any emergency to the local police precinct;

(iv) adhering to the Department's siting criteria; and

(v) setting up and breaking down any movable tables and chairs for public seating.

(2) An open street may be maintained for up to 24 hours per day and up to 366 days per year, subject to the Department's discretion.

(3) The Department may, subject to Administrative Code section 19-107, close an open street to all motor vehicle traffic except as required for emergency access where the Department determines that such closure would benefit the community.

(4) An open streets partner may operate a full closure open street, in addition to the hours of operation approved by the Department, on the following holidays upon written consent from the Department: New Year's Day (observed), Martin Luther King Jr.'s Day, President's Day, Memorial Day, Juneteenth (observed), Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day (observed).

(5) The Department may temporarily suspend an open street as necessary, including for safety, special events, severe weather events, construction, or any other purpose for which the Department determines a suspension will benefit the community. The Department will provide the open streets partner with reasonable notice to the extent practicable and post on its social media accounts that such open street is temporarily suspended. The open streets partner may be required to secure all barricades, signage, and other furniture and materials associated with the open street.

(6) Open streets are subject to inspections by the Department and/or its contractor(s).

(7) The management and operations plan for the open street, including cleaning and removing trash and other debris, how to maintain emergency vehicle access and any other staffing plans, must be filed with the Department and updated as necessary by the open streets partner.

(8) The Department will post on its website guidelines for the following:

- (i) staffing of open streets, including whether the Department will require staffing on certain open streets that are provided with sufficient traffic control devices and/or calming measures;
- (ii) how open streets partners may create their own barriers, signage and street furniture that encourage sustainability and welcoming design; and
- (iii) how open streets partners may expeditiously obtain permits from the Mayor's Office of Citywide Event Coordination and Management related to programming on open streets.

**(9) The following siting criteria must be complied with:**

- (i) Barriers must be designed and placed only with the approval of the Department;
- (ii) Emergency access and lanes must be maintained at all times throughout the open streets corridor;
- (iii) New York City Fire Department Connections, if any, must be visible from the street and otherwise unobscured, free of obstructions, and readily accessible as required by the Fire Code;
- (iv) Sidewalks, including pedestrian ramps and curb cuts, must be free of obstruction and readily accessible at all times;
- (v) For limited local access open streets, no permanent or fixed (A) structures; (B) furnishings; or (C) seating are permitted; and
- (vi) For full closure open streets:
  - (A) Fixed structures, furnishings, seating must be sited at least 15 feet from a hydrant;
  - (B) No permanent structures may be built or placed in the roadway;
  - (C) Collapsible tents and umbrellas must have a weighted base and be installed per manufacturer's instructions; a single area, or area of combined or tied together tents or umbrellas, must not exceed 400 square feet in size; and
  - (D) Tents and umbrellas must not be used during severe weather.

**(10) Accessibility for limited local access streets.**

- (i) For limited local access open streets, any person, may temporarily move the barriers to facilitate local vehicle access, including, but not limited to, Access-A-Ride vehicles and vehicles collecting or dropping passengers on the open street.
- (ii) The Department may, on certain limited local access open streets, provide services to assist individuals who (i) are eligible for Access-A-Ride services; (ii) hold a New York City parking permit for people with disabilities; or (iii) hold a New York State permanent parking permit for people with severe disabilities, or another state's equivalent, to temporarily move the barriers to facilitate local vehicle access.

- (iii) When the Department offers such services, the Department will inform the public by posting on its website and placing signage along such open street(s) that indicates the process by which a person may request assistance.

**(d) Conduct of the Public on Open Streets.** Any person may enter and use an open street at any time, unless restricted hours are posted for maintenance or construction, or exigent circumstances exist. Authorized officers and employees of city agencies are responsible for the enforcement of this subdivision.

(1) Any person in or on an open street must comply with the lawful direction or command of any police officer or designated Department employee, regardless of whether such direction or command is indicated verbally, by gesture, or otherwise. Any person in or on an open street must comply with or obey any instruction, direction, rule, warning or prohibition, written or printed, displayed or appearing on any Department sign, except such sign may be disregarded upon order by a police officer or designated Department employee.

(2) Any person holding an event in an open street, where such event is subject to the permit requirements of the Mayor's Office of Citywide Event Coordination and Management, must have an applicable permit from that office.

(3) Any person engaged in filming or photography in an open street, where such activity is subject to the permit requirements of the Mayor's Office of Film, Theatre & Broadcasting, must have an applicable permit from that office.

(4) Any person using or operating any sound device or apparatus in an open street, where such use or operation is subject to the permit requirements of the New York City Police Department, must have an applicable permit from such department.

(5) Any person holding a parade, procession, or demonstration in an open street, where such activity is subject to the permit requirements of the New York City Police Department, must have an applicable permit from such department.

(6) Any person subject to the permit requirements of the New York City Fire Code for a material or operation on an open street must have an applicable permit from the Fire Department in accordance with Fire Code Section 105.6.

(7) Where exigent circumstances exist and a police officer or a designated Department employee gives notice to a person to move temporarily from any location in or on an open street, such person must immediately move from such location until further notice. For the purposes of this section, exigent circumstances include, but are not limited to, unusually heavy pedestrian traffic, the existence of any obstruction in or on the open street, an accident, a fire, or another emergency situation.

(8) No person shall engage in disorderly behavior in or on any open street, such as the following:

(i) Endangering the safety of oneself and/or others;

(ii) Obstructing pedestrian or cyclist traffic, or, on limited local access streets, vehicular traffic;

(iii) Engaging in conduct or committing acts that disturb the peace, comfort or repose of a reasonable person of normal sensitivities; or



- (iv) Climbing upon any wall, artwork, fence, shelter or any structure not specifically intended for climbing purposes.
- (9) No person shall remove any signage, barriers or other safety elements placed for the operation of the open street except to access or exit such open street, after which such signage, barriers or other safety elements must be replaced promptly at their original location.
- (10) Unless explicitly permitted by the Department, no operator of a vehicle or combination of vehicles shall operate, stop, stand or park any such vehicle on any open street categorized for full closure.
- (11) No person shall litter in or on any open street. All persons shall use receptacles provided for the disposal of refuse. No person shall deposit household or commercial refuse in any receptacle in an open street.
- (12) No person shall spit, urinate, or defecate in or on any open street, except in a facility which is specifically designed for such purpose.
- (13) No person shall bathe, shower or shave on an open street.
- (14) No person shall occupy more than one seat with oneself or one's belongings on an open street when to do so would interfere or tend to interfere with the use of such seats by others.
- (15) No person shall leave any property unattended in an open street or place property in or on any open street in a manner that interferes with pedestrian and cyclist traffic, or, on limited local access streets, vehicular traffic.
- (16) No person shall injure, deface, alter, write upon, destroy, remove or tamper with in any way, any real or personal property or equipment owned by or under the jurisdiction or control of the Department or an open streets partner.
- (17) No person shall gamble or conduct or engage in any game of chance in an open street, unless such game of chance is permitted by law.
- (18) No person shall appear in an open street in such a manner that the person's genitalia are unclothed or exposed, except as otherwise permitted by law.
- (19) No person shall engage in camping, or erect or maintain a shelter or camp in an open street.
- (20) No person shall allow any dog in the person's custody or control to be unrestrained or to discharge any fecal matter in or on any open street, unless such person promptly removes or disposes of same. This provision shall not apply to a guide or service animal accompanying a person with a disability.
- (20) No person shall operate an aircraft, kite, or other aerial device in, on, or above the surface of any open street for any purpose whatsoever.
- (21) No person shall feed any undomesticated animal, including unconfined squirrels and birds, in or on any open street.
- (22) Posting of notices and signs.

(i) No person shall post, display, affix, construct or carry any placard, flag, banner, sign or model in or on any open street or display any such item by means of aircraft, kite, or other aerial device in, on, or above the surface of any open street for any purpose whatsoever, except as authorized by subparagraph (ii) of this paragraph. Notwithstanding this prohibition, in relation to the operation of an open street, an open streets partner may post, display, affix, construct or carry such item with permission from the Department. Each separate item placed or displayed in violation of this subparagraph shall constitute a separate violation.

(ii) Any person may carry any item described in subparagraph (i) above, without the aid of any aircraft, kite, or other aerial device, where the space on which the message of such item is contained has a height no greater than two feet and a length no longer than three feet, and that such item takes up a total area of no more than six square feet.

(iii) Any person who posts or displays a placard, flag, sign, or model in, on, or above the surface of any open street, with permission from the Department pursuant to subparagraph (i) above, shall be responsible for removal of such placard, flag, sign, or model. Failure to remove any placard, flag, sign, or model that is posted or displayed in, on, or above the surface of any open street within 24 hours for limited local access open streets, or within 72 hours for full closure open streets, of commencing display of the item shall constitute a violation of these rules.

(iv) In the event that a notice or sign is posted or displayed in, on, or above the surface of any open street in violation of paragraph (i) above, there will be a rebuttable presumption that any person whose name, telephone number, or other identifying information appears on such notice or sign has violated paragraph (i) by either:

(A) Posting, displaying, affixing, constructing or carrying such notice or sign, or

(B) Directing or permitting a servant, agent, employee or other individual under such person's control to engage the activity identified in clause (A) of this subparagraph; provided, however, that such rebuttable presumption shall not apply with respect to criminal prosecutions brought pursuant to this subparagraph (iv).

(23) No person shall ride a motorized device on or through any part of an open street, except electric personal assistive mobility devices as defined in section 114-d of the Vehicle and Traffic Law, electric scooters as defined in section 114-e of the Vehicle and Traffic Law, and bicycles with electric assist as defined in section 102-c of the Vehicle and Traffic Law.

(24) No person in an open street shall make, continue, cause, or permit to be made or continued unreasonable noise in violation of the Noise Code pursuant to subchapter 2 of title 24 of the Administrative Code.

(25) Except as otherwise permitted by law, no person shall consume alcoholic beverages in an open street.

(26) No person shall kindle, build, maintain, or use a fire in an open street.

(27) Any person may bring or place chairs in or on any pedestrian area of an open street unless otherwise restricted by the Department.

(28) Except as otherwise permitted by the Department, no person shall bring or place tables or carts in or on any open street.

(29) No person shall use or interfere with any authorized use of utilities, including, but not limited to, electricity and water, that supply open streets.

(30) No person shall interfere with the use of an open street by a person or group using the open street pursuant to the terms of a permit issued by any City agency.

(31) No person shall use or obstruct the use of any amenity while selling or offering to sell any goods, services, tickets, or entertainment or while providing any goods, services, tickets, or entertainment in exchange for a donation. For purposes of this paragraph, the term “amenity” shall include, but not be limited to, chairs, tables, planters, benches, kiosks, utilities or canopies, installed in or on any open street.

(32) An open streets partner may solicit sponsorships for the benefit of an open street and must comply with the following:

- (i) The name/title of the open street(s) sponsorship must include the words, “open street.”
- (ii) The Department must approve any proposed sponsorship agreement between an open streets partner and one or more sponsors prior to the execution of such agreement. An open streets partner must allow at least 15 business days for the Department to review and approve any proposed agreement.
- (iii) Any sponsorship item, such as umbrellas, tables, or chairs, shall be restricted in size, quantity and location as deemed appropriate by DOT, but in any event, no sponsorship recognition, including trade names and/or logos, shall occupy more than 10% of the visible area of a sponsorship item unless the Department provides prior written approval.
- (iv) Titles and names of people, except trade names, are not permitted as part of sponsorship recognition.
- (v) An open streets partner shall not solicit or permit any tobacco sponsorship or alcohol sponsorship.
- (vi) An open streets partner may not place or cause to be placed any advertising on any portion of the open street.

(e) Except where expressly prohibited by law, the Commissioner may waive provisions of these rules in the interest of public safety and convenience.

**Section 3. Section 3-01 of Chapter 3 of Title 34 of the Rules of the City of New York is amended to read as follows:**

<u>Section</u>	<u>Description</u>	<u>Penalty (\$)</u>	<u>Default (\$)</u>
4-21 (d)	<u>Failure to comply with open streets rules.</u>	<u>500</u>	<u>500</u>