

## DEPARTMENT OF TRANSPORTATION

### **Notice of Adoption of Rules Pursuant to the Emergency Procedures of Section 1043(i)(1) of the New York City Charter**

Pursuant to the emergency procedures set forth in section 1043(i) of the New York City Charter (“Charter”) and pursuant to the rulemaking authority granted to the New York City Department of Transportation (“NYCDOT”) by Charter sections 1043 and 2903, NYCDOT adopts the following emergency rule relating the enforcement of the temporary Open Restaurant program. This rule will take effect immediately.

#### **Statement of Basis and Purpose of Emergency Rule**

This emergency rule is necessary to ensure that restaurants that are allowed to continue to operate outdoor dining on sidewalks and in roadways pursuant to section 10 of Local Law number 121 for the year 2023 (“Local Law 121”) will continue to adhere to standards necessary for the health and safety of the public. Section 10 of Local Law 121 allows outdoor dining setups that had been operating legally under the since-expired temporary Open Restaurants program pursuant to Mayoral Emergency Executive Order No. 126, dated June 18, 2020, as extended by subsequent emergency executive orders, to continue operating while they apply for the required license and revocable consent under the permanent program authorized by such Local Law. During the COVID-19 emergency, operational safety of the outdoor dining setups in roadways and on sidewalks was enforced under guidance developed by NYCDOT pursuant to the Mayor’s Emergency Executive Order. With the expiration of the Emergency Executive Order that had authorized the temporary Open Restaurants program, these measures are no longer in effect. This emergency rule is necessary to apply the safety standards that had been developed during the temporary Open Restaurants program to restaurants until the permanent rules for the outdoor dining program are in effect.

This rule is authorized by Charter sections 1043 and 2903, and by the provisions of Local Law 121. Pursuant to Charter section 1043(d)(4)(i), this rule does not require certification or analysis by the Mayor’s Office of Operations. This rule was not included in the NYCDOT’s regulatory agenda because its need was not contemplated at the time the agenda was published.

New material is underlined.

[Deleted material is in brackets.]

**Section one. Section 2-14 of Title 34 of the Rules of the City of New York is amended by adding a new subdivision (j), to read as follows:**

*(j) Temporary Outdoor Dining Setups.*

(1) Definition. For the purposes of this subdivision, the term “temporary outdoor dining setup” means outdoor dining facilities authorized to continue operating on the sidewalk and in the roadway pursuant to section 10 of local law number 121 for the year 2023.

(2) Maintenance. Temporary outdoor dining setups shall be kept clean, well-maintained, and clear of trash, debris, vermin, food scraps, and unsanitary conditions.

(3) Placement.

(i) Temporary outdoor dining setups shall not block or obstruct any of the following sidewalk and roadway features:

(A) a bus lane or bus stop;

(B) a bicycle lane;

(C) a carshare or bikeshare station;

(D) a taxi stand;

(E) a catch basin, utility cover, sewer, rainwater drainage or flow.

(ii) Temporary outdoor dining setups shall not be located in any of the following designated zones on a roadway:

(A) No Stopping Anytime;

(B) No Standing Anytime;

(C) No Stopping during specific hours;

(D) No Standing during specific hours.

(iii) Temporary outdoor dining setups shall be located at least fifteen (15) feet from a fire hydrant and at least eight (8) feet from a crosswalk.

(4) Temporary outdoor dining setups shall be directly accessible to persons with physical disabilities, including the provision of an accessible ramp, if applicable.

(5) Temporary outdoor dining setups shall provide a clear path for pedestrians on the sidewalk that is no less than eight (8) feet wide.

(6) Roadway Barriers.

(i) Barriers shall be maintained on all sides of a temporary outdoor dining setup located on the roadway, except the side abutting the sidewalk.

(ii) All barriers must be completely filled with material (e.g., water, sand, etc.). Water-filled barriers are strongly recommended.

(iii) Barriers shall be between thirty (30) inches and thirty-six (36) inches in height, not including the height of any plantings above such barrier. Barriers shall be at least eighteen (18) inches in width.

(iv) A reflective strip shall be located on each barrier, along the entire length of the outward-facing side of such barrier.

(7) Outdoor dining setups must be used and occupied by the restaurant that erected them for outdoor dining. If not used and occupied for outdoor dining for thirty (30) consecutive days or more, they must be removed from the sidewalk and roadway by the restaurant. The department may send a written notice to the owner to remove an unused setup from the street or sidewalk. If the owner does not remove the setup or utilize the setup for outdoor dining purposes within fourteen (14) days after such notice the department may remove the setup to a place of safety and send notice of such removal to the owner of such restaurant if an address for such person is available. If the property is unclaimed it may be disposed of in accordance with the provisions of the personal property law relating to lost property. If the property has slight or no value the department may provide for its immediate disposal after removal.

(8) The department may order the removal of or remove any outdoor dining setup or other obstruction that the Commissioner determines is a danger to public welfare, safety, or energy system reliability, including for planned or emergency work.

**§ 2. The penalty schedule in section 3-01 of Chapter 3 of Title 34 of the Rules of the City of New York is amended by adding a new row in alphanumerical order to read as follows:**

<b>Section</b>	<b>Description</b>	<b>Penalty (\$)</b>	<b>Default (\$)</b>
<u>34 RCNY 2-14(j)</u>	<u>Failure to adequately maintain a temporary outdoor dining setup</u>	<u>500</u>	<u>500</u>

**Required Finding Pursuant to New York City Charter Section 1043(i)(1)**

IT IS HEREBY CERTIFIED that the immediate effectiveness of this emergency rule, which allows NYCDOT to enforce certain safety violations relating to authorized outdoor dining setups, is necessary to aid the City of New York in responding to safety complaints from New Yorkers.

This emergency rule is now necessary to immediately continue the safety standards that had been developed during the temporary Open Restaurants program until the permanent Dining Out NYC program as described in Local Law number 121 for the year 2023 is fully operational. During this transition period, NYCDOT needs the enforcement tools to ensure these outdoor dining setups are maintained in a safe manner. For example, a roadway temporary outdoor dining setup that does not include filled barriers is a safety concern because an empty barrier would not provide sufficient protection in the event of a vehicular crash or some other impact. Additionally, streets contain critical infrastructure that need to be accessed for the provision of emergency services and, as such, temporary outdoor dining setups need to maintain a certain distance from and not block such infrastructure and other items, such as fire hydrants or utility covers. Outdoor dining setups that block bicycle lanes or bus lanes create unsafe conditions, outdoor dining setups that do not provide an adequate clear path on the sidewalk may impair travel for people with disabilities and create a tripping hazard, and abandoned structures create unsanitary conditions and attract rodents.

Delaying implementation of this rule pending non-emergency rulemaking would foreseeably impair the quality of life for New Yorkers during this transition period from the temporary outdoor dining program to the permanent one.

Pursuant to section 1043(i)(2) of the New York City Charter, the emergency rule will remain in effect for not more than 120 days while NYCDOT prepares a permanent rule.

September 8, 2023

*/s/ Ydanis Rodriguez*

Ydanis Rodriguez  
Commissioner  
New York City Department of Transportation

APPROVED:

*/s/ Eric Adams*

Eric Adams  
Mayor