



CITY PLANNING COMMISSION

May 6, 2009 | Calendar No. 15

N 090317 ZRY

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York relating to Article III, Chapter 7 (Special Urban Design Regulations) concerning provisions related to privately owned public plazas.

The application for an amendment of the Zoning Resolution was filed by the Department of City Planning on February 12, 2009 to amend the design and operational standards related to privately owned public plazas.

BACKGROUND

On October 17, 2007 the City Council approved an amendment (N 070497 ZRY) to the Zoning Resolution that updated plaza design standards and created a new plaza type called the privately owned public plaza. The 2007 text amendment encouraged the design and construction of high quality public spaces on privately owned sites in order to provide valuable amenities to residential neighborhoods and commercial districts.

Since the adoption of the text amendment, review of recent applications for new public plazas or existing plazas with design changes has identified certain regulations warranting improvement or clarification of the 2007 text in order to facilitate the objectives of that text. The proposed amendment would enhance certain provisions of the 2007 text in order to facilitate greater pedestrian circulation, ensure visibility into and throughout the plaza, and promote attractive and well-maintained public spaces. Also, the proposed text would make clear the

provisions related to compliance and the approval processes related to kiosks, cafes, and design changes to existing plazas. No changes are proposed to sections of the zoning text that relate to bulk, permitted floor area, or the amount of floor area generated through the provision of bonus plazas. The locations where the plaza bonus is available would also remain unchanged.

The proposed text amendments would apply to new construction of privately owned public plazas or changes to existing plazas in C1 and C2 districts mapped within R9 and R10 districts, as well as C1-8, C1-9, C2-7, C2-8, C4-6, C4-7, C5-1, C5-2, C5-3, C5-4, C5-5, C5-9, C6-1 through C6-9 and M1-6 districts. These zoning districts are currently located in the Bronx – Community District 4, Brooklyn – Community District 2, Manhattan – Community Districts 1-8, 10-12 and Queens – Community Districts 2 and 12. These areas are typically medium to high-density commercial and high density residential neighborhoods.

The public plaza bonus regulations are also incorporated in various special districts throughout Manhattan, Brooklyn, and Queens. In certain special districts, such as Midtown and Hudson Yards, the applicability of bonus plaza regulations are expanded while in others, such as Long Island City and Lower Manhattan applicability is restricted. Certain other special districts, such as West Chelsea, prohibit bonus plazas but apply existing bonus plaza standards to non-bonus open areas on zoning lots.

Special zoning districts that reference existing bonus plaza standards include:

- Special Midtown District
- Special Mixed Use District
- Special Long Island City Mixed Use District
- Special Downtown Brooklyn District
- Special West Chelsea District
- Special Transit Land Use District
- Special Hudson Yards District
- Special Lower Manhattan District
- Special Lincoln Square District

PROPOSED ZONING REGULATIONS

The Department of City Planning (DCP) proposes text amendments to the regulations for privately owned public plazas that would revise the language of the text to clarify some standards, add new provisions to improve the quality and utility of public plazas and eliminate certain provisions that are outdated.

Design standards for public plazas

Area dimensions

The existing text requires that non-bonused open areas located adjacent to a public plaza be separated by a buffer or comply with the dimensional requirements for minor portions of the plaza. For a non-bonused open area that is located both adjacent to a public plaza and a street line, the current regulations require such open area to be buffered. The required buffering impedes access to the plaza.

The proposed text would exempt from the buffering requirement non-bonused open areas located adjacent to both a public plaza and a street line from this requirement in order to permit unencumbered pedestrian circulation.

Location restrictions

The current requirements prohibit the location of public plazas within 175 feet of other existing public open areas as measured along the street, except when the existing public open area is located across the street from the new public plaza. The proposed text would clarify how the 175-feet is measured along the street line.

Sidewalk frontages

Review of existing plazas has demonstrated that plaza usability is significantly determined by the relationship between the sidewalk and plaza. In order to maximize physical and visual accessibility into the plaza from the street, the proposed text requires half of the plaza along the street frontage be free and clear of all obstructions to a depth of 15 feet measured perpendicular to the street line. The proposed amendment would further clarify that the remaining half of this entrance to the plaza may contain obstructions such as lighting stanchions, public space signage, railings for steps, trash receptacles, trees, fixed or moveable seating and tables, and walls or other obstructions that are not greater in height than two feet above the level of the sidewalk. The regulations requiring corner plazas to be free of obstructions within 15 feet of the intersection of two streets would be retained. Additionally, the proposed regulations would allow other amenities greater than two feet in height, such as planting walls or water features, provided that the amenities are within 3 feet of a plaza wall.

Seating

Currently, the public plaza regulations require a variety of well-designed, comfortable seating for both individual users and groups. The existing text contains standards for seating dimensions for different seating types that are counted toward the seating requirement, including provisions for seating with backs. In order to provide maximum usability, the proposed text would add a new provision to ensure that required seating with backs would not

be greater than 20 inches in depth. The provision of a maximum seating depth for required seating with backs is based upon the body's natural seating posture, ensuring that required seating is usable.

Planting and trees

Plazas with landscaping variety provide visual interest as well as soften the predominately "hardscape" environment of the city's high density neighborhoods. The existing text contains two requirements for landscaping—a minimum number of trees and an additional planted amenity.

Trees

The existing text requires that all public plazas provide a minimum of four trees. For plazas greater than 6,000 square feet, one additional tree for every additional 1,000 square feet of plaza is required. Half of all required trees must be planted flush-to-grade, that is, planted with a porous surface that can accommodate pedestrian circulation. The proposed text would retain the minimum number of trees, but would amend the requirement so that half of required trees may either be planted in at-grade planting beds or planted flush-to-grade. The proposed provision would allow design flexibility in the planting of required trees without encumbering pedestrian circulation.

Planting

The existing provision requires a second planted amenity in addition to the tree requirements above. The additional planting could take the form of additional trees at the rate of one tree for each 2,000 square feet of plaza area, or planters, planting beds, or lawns at the rate of 150 square feet for every 1,000 square of plaza area. To encourage greater landscaping variety and to prevent plazas from being excessively hard surfaced, the proposed text would require 20% of the plaza to be covered with ground-level planting. The new planting requirement could take the form of planting beds, groundcover or accessible lawns.

Plaza signage

Public space signage

Public plazas require readily visible signage at the street frontage in order to announce the plaza as a public space. The public space signage requirements include the provision of an “entry plaque” located within five feet of the adjacent sidewalk containing the public space symbol and the phrase “Open to Public.” An “information plaque” is also required to be within five feet of the sidewalk and must display a summary of the required amenities and contact information of the person or entity responsible for the maintenance and upkeep of the public plaza. The entry plaque and information plaque may be separate signs, or combined into a single sign. The single sign can be mounted on wall or be a freestanding element. The proposed regulations would retain the requirement that the public space symbol be at a height of five feet

from the level of the sidewalk, but would limit the maximum height of the signage element to six feet and a maximum width and depth of 16 inches. Thus, the proposed amendment would enable the freestanding public space sign to be clearly visible without encumbering views into the plaza.

Accessory signage

The public plaza regulations permit retail uses to front on the plaza, thereby activating the space at the plaza's edges. The current regulations allow a maximum of three accessory signs within a plaza, regardless of the number of retail establishments fronting on the plaza. Moreover, the existing regulations restrict sides of accessory signs to a maximum of two feet. Additionally, freestanding accessory signs currently do not have a height limit, thereby allowing the potential for such signs to obstruct visibility into the plaza.

The proposed text would clarify that each establishment fronting on the plaza shall have one accessory sign located on the building wall. In order to allow flexibility on the copy of the sign, the proposed text would permit a variety of shapes, provided the sign does not exceed four square feet. Freestanding accessory signs located within plazas would be limited to a maximum width of one-and-a-half feet facing the street and a maximum height of three feet. Additionally, the proposed text amendment would clarify that signage associated with the building, such as a sign displaying the building name and address, would be regulated by the underlying zoning's sign regulations.

Uses fronting on public plazas

Building entrances

The existing text requires “principal entrances” to buildings be located within ten feet of the major portion of a public plaza. The current provision was intended to promote a direct visual and physical connection between the building lobby and a plaza and, in so doing, encourage improved use of the plaza. The proposed text would clarify that such an entrance is one that provides access to the principal use of the building. Generally, the proposed text would prohibit certain building entrances from fronting on plazas.

Building walls and glazing

The current regulations require half of all building walls that front on a plaza to be visually transparent, regardless of whether such building walls are associated with existing or new development. The proposed text would clarify this provision by exempting existing buildings walls from the transparency requirement.

Compliance and approval processes

The text amendment would clarify certain provisions related to public plaza compliance and maintenance. The proposed text would also make clear the processes related to the approval of design changes to existing plazas, and the approval of open air cafes.

Compliance

The current regulations require that public plazas built after October 17, 2007 (post-2007 plazas) demonstrate ongoing compliance. Every three years following the date of the approval of a public plaza, the owner must provide a compliance report to the Director of City Planning and the affected Community Board. The proposed text would require periodic compliance reporting not only for such public plazas, but also when design changes are made to plazas existing prior to October 17, 2007 (pre-2007 plazas). The report, completed by a registered architect, landscape architect or professional engineer includes a statement of compliance, supported by an inventory of required and provided plaza amenities, and photographs of the plaza.

There is also an existing requirement for post-2007 plazas that building owners post a performance bond with the City Comptroller to assure maintenance of the plaza and allows the City to remedy specific non-complying conditions such as missing trees, seating and failure to remove trash from the plaza in the event an owner failed to do so. The text amendment would eliminate the performance bond provision for public plazas built after the effective date of this text amendment.

Approval process for open air cafes in pre-2007 plazas

Kiosks and open air cafes are plaza uses that can enhance new public plazas and activate existing spaces. The existing text requires that kiosks and cafes do not impede plaza circulation and visibility into and within the plaza.

Open air cafes

The proposed text change would clarify the approval process for open air cafes in plazas existing prior to October 17, 2007. The existing text requires public plazas and pre-2007 plazas to be accessible from all sides where the perimeter of the café is not adjacent to building wall. The current text also requires that open air cafes within public plazas and pre-2007 plazas be located at the same elevation as an adjoining sidewalk, except that open air cafes may be placed on platforms no higher than 6 inches in height.

Recognizing that the placement of a cafe (either entirely new or the continuation of a previously approved café) in a plaza built prior to October 17, 2007 is constrained to some extent by the design requirements existing at the time such plaza was built, the proposed text amendment seeks to afford greater design flexibility for open air cafes based on existing site conditions. The proposed text would continue to require open air cafés within pre-2007 plazas to be accessible from all sides, but would allow cafes to locate adjacent to a planter or wall that was part of a plaza approved prior to approval of an open air café. The proposed text would clarify that new cafes in pre-2007 plazas are not subject to the requirements regulating grade changes that are applicable to post-2007 plazas.

ENVIRONMENTAL REVIEW

This application (N 090317 ZRY) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New

York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 07 DCP 051Y. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on February 17, 2009.

PUBLIC REVIEW

This application (N 090317 ZRY) was duly referred on February 17, to Community District 4, Borough of the Bronx; Community District 2, Borough of Brooklyn; Community Districts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12, Borough of Manhattan; Community Districts 2 and 12, Borough of Queens; the Bronx, Brooklyn, Manhattan, and Queens Borough Presidents; and the Manhattan and Queens Borough Boards for information and review in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Review

Brooklyn Community Board 2: On April 7, 2009, Community Board 2 recommended approval of the application by a vote of 25 in favor, 0 opposing, and 0 abstaining.

Manhattan Community Board 1: On March 24, 2009, Community Board 1 recommended approval of the application by a vote of 42 in favor, 0 opposed, and 0 abstaining.

Manhattan Community Board 2: On March 19, 2009, Community Board 2 recommended approval of the application by a vote of 37 in favor, 0 opposed, and 0 abstaining.

Manhattan Community Board 3: On March 24, 2009, Community Board 3 recommended approval of the application by a vote of 37 in favor, 0 opposed, and 0 abstaining.

Manhattan Community Board 4: On April 1, 2009, Community Board 4 recommended approval of the application.

Manhattan Community Board 5: On April 16, 2009, Community Board 5 recommended approval of the application by a vote of 35 in favor, 0 opposed, and 2 abstaining.

Manhattan Community Board 6: On April 15, 2009, Community Board 6 recommended approval of the application by a vote of 37 in favor, 0 opposed, and 0 abstaining.

Manhattan Community Board 7: In a letter dated May 4, 2009, Community Board 7 stated “We enthusiastically support these amendments to the design requirements for new public plazas and for existing plazas that undergo design changes.”

Manhattan Community Board 8: On March 11, 2009, Community Board 8 recommended

approval of the application by a vote of 35 in favor, 0 opposed, 0 abstaining.

Manhattan Community Board 10: On April 9, 2009, Community Board 10 recommended approval of the application by a vote of 23 in favor, 1 opposed, 4 abstaining and 1 not voting.

Manhattan Community Board 12: On April 29, 2009, Community Board 12 recommended approval of the application by a vote of 30 in favor, 0 opposed, 0 abstaining.

Borough President Review

No recommendations were submitted by the Manhattan Borough President or Queens Borough President.

Borough Board Review

No recommendations were submitted by the Manhattan or Queens Borough Boards.

City Planning Commission Public Hearing

On April 1, 2009, (Calendar No. 5), the City Planning Commission scheduled April 22, 2009, for a public hearing on this application (N 090317 ZRY). The hearing was duly held on April 22, 2009, (Calendar No. 32). There were no speakers and the hearing was closed.

Waterfront Revitalization Program Consistency Review

This application was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 09-037. This action was determined to be consistent with the policies of the New York City Waterfront Revitalization Program.

CONSIDERATION

The Commission believes that the application for the zoning text amendment (N 090317 ZRY), as modified, is appropriate.

The Commission believes that the proposed text would enhance the design and operation of privately owned public plazas throughout New York City. The proposed text would improve the quality and utility of public plazas by facilitating greater pedestrian circulation, ensuring visibility into and throughout plazas and promoting attractive and well-maintained spaces.

The Commission recognizes that the proposed text would not alter the amount of floor area bonus generated through the provision of a public plaza, the zoning districts where the plaza bonus would be available, or the approval process for creation of a public plaza.

The Commission acknowledges that public plazas are located in the densest locations of the city and that plazas contain landscaped green areas for aesthetic and environmental reasons. The proposed requirement that 20% of public plaza area be planted with ground-level planting, such as planters, planting beds and lawns, would help to balance and soften the predominately hard-surface nature of plazas. Additionally, the required planted area would reduce storm water runoff and contribute toward the improvement of air quality.

The Commission believes that the proposed changes to the signage regulations are appropriate. The proposed text for freestanding accessory signs ensures that such signs are scaled and sized to preserve the maximum amount of visibility into and within the plaza, while allowing for adequate identification of the building and uses fronting on the plaza.

The Commission also believes that requiring compliance reports for existing plazas that are applying for design changes would facilitate improvement of pre-2007 plazas. The proposed text would require redesigned pre-2007 plazas to send a plaza compliance report to the Director of the Department of City Planning and the affected community board every three years following the design change approval. The Commission notes the performance bond requirement for public plazas is outdated and believes that eliminating this requirement would not diminish the city's ability to enforce compliance in public plazas. The Commission believes requiring periodic compliance reports emphasizes the responsibility of building owners in ensuring plaza compliance.

The Commission is making the following modifications to the text amendment in order to correct and clarify language in the text that was referred on February 17, 2009.

- Section 37-742 has been modified to clarify that the maximum height of bounding walls of planters and planting beds may be 18 inches measured from the highest adjacent walking surface
- The Commission has modified Section 37-753(e) to clarify the provisions regarding accessory signage within the public plaza. The Commission believes that no more than three accessory signs should be located within the public plaza, only one of which may be freestanding. The Commission clarifies that a freestanding accessory sign may not be any greater than 24 inches in dimension when not facing a street.
- Section 37-76 has been modified to clarify that existing and new building walls may be used to determine the required retail frontage
- The Commission has modified the proposed Section 37-78(a) to correctly reference “public plaza” instead of “urban plaza”

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is old, to be deleted;

Matter within # # is defined in Section 12-10;

* * * indicates where unchanged text appears in the Zoning Resolution

ARTICLE III COMMERCIAL DISTRICT REGULATIONS

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Chapter 7 Special Urban Design Regulations

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37-60 PUBLICLY ACCESSIBLE OPEN AREAS EXISTING PRIOR TO OCTOBER 17, 2007

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37-62 Changes to Existing Publicly Accessible Open Areas

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37-625 Design changes

Design changes to existing #plazas#, #residential plazas# or #urban plazas# may be made only upon certification by the Chairperson of the City Planning Commission that such changes would result in a #plaza#, #residential plaza# or #urban plaza# that is in greater accordance with the standards set forth in Section 37-70 (PUBLIC PLAZAS), inclusive. The provisions of Section 37-78 (Compliance), other than paragraph (e) (Special regulations for an urban plaza in the Special Lower Manhattan District), shall be made applicable to such #plaza#, #residential plaza# or #urban plaza#.

37-70 PUBLIC PLAZAS

* * *

37-71 Basic Design Criteria

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37-712

Area dimensions

A #public plaza# shall contain an area of not less than 2,000 square feet. In no case shall spaces between existing #buildings# remaining on the #zoning lot# qualify as #public plazas#. In addition, in order to preserve the provisions relating to the boundaries, proportions and obstructions of #public plazas#, on any one #zoning lot#, an open area which does not qualify for bonus #floor area# may not be located between two #public plazas#, or between a #public plaza# and a #building# wall or #arcade#. ~~of the #development#.~~

Any non-bonused open area located adjacent to a #public plaza#, other than an open area bounding a #street line# used for pedestrian access, must either:

- (a) be separated from the #public plaza# by a buffer, such as a wall, decorative fence, or opaque plantings at least six feet in height; or
- (b) meet all requirements for minor portions of #public plazas# related to size, configuration, orientation, as specified in Section 37-716.

37-713

Locational restrictions

~~No #public plaza#, or portion thereof, shall be located within 175 feet of an existing #publicly accessible open area# or #public park#. The distance of 175 feet shall be measured along the #street# on which the existing amenity fronts~~ No #public plaza#, or portion thereof, shall be located within 175 feet of an existing #publicly accessible open area# or #public park# as measured along the #street line# on which the existing amenity fronts if the #public plaza# is to be located on the same side of the #street#, or as measured along the directly opposite #street line# if the #public plaza# is to be located on the other side of the #street#. Such distance shall include the width of any #street# that intersects the #street# on which the amenity fronts.

However, such location restriction may be waived if the #public plaza# is located directly across the #street# from the existing #publicly accessible open area# or #public park# and if the Chairperson of the City Planning Commission finds that the location of the #public plaza# at such location would create or contribute to a pedestrian circulation network connecting the two or more open areas.

* * *

37-72

Access and Circulation

37-721

Sidewalk frontage

To facilitate access to a #public plaza#, the area within 15 feet of a #street line# or sidewalk widening, along at least 50 percent of each aggregate #street# frontage of the major and minor portions, shall be free of obstructions to public access to the #public plaza# from the adjacent sidewalk or sidewalk widening, except for those obstructions listed in this Section. For #corner public plazas#, the area within 15 feet of the intersection of any two or more #streets# on which the #public plaza# fronts shall be at the same elevation as the adjoining public sidewalk and shall be free of obstructions, except for those listed in this Section. Only areas with at least five feet of clear, unobstructed area when measured parallel to the street line shall be considered to be free of obstructions. For the remaining 50 percent of the frontage and within 15 feet of the #street line#, no walls or other obstructions, except for permitted obstructions listed in this Section and fixed and moveable seating and tables, shall be higher than two feet above the #curb level# of the #street line# in front of the #public plaza#.

The following shall be considered permitted obstructions within the sidewalk frontage:

Light stanchions;

Public space signage;

Railings for steps;

Trash receptacles;

Trees planted flush to grade.

To facilitate pedestrian access to a #public plaza#, the following rules shall apply to the area of the #public plaza# located within 15 feet of a #street line# or sidewalk widening line:

- (a) At least 50 percent of such area shall be free of obstructions and comply with the following provisions:
 - (1) At least 50 percent of the #public plaza# frontage along each #street line# or sidewalk widening line shall be free of obstructions; and
 - (2) Such unobstructed access area shall extend to a depth of 15 feet measured perpendicular to the #street line#. The width of such access area need not be contiguous provided that no portion of such area shall have a width of less than

five feet measured parallel to the #street line#, and at least one portion of such area shall have a width of at least eight feet measured parallel to the #street line#.

- (b) In the remaining 50 percent of such area, only those obstructions listed in Section 37-726 (Permitted Obstructions) shall be allowed, provided such obstructions are not higher than two feet above the level of the public sidewalk fronting the #public plaza#, except for light stanchions, public space signage, railings for steps, trash receptacles, trees and fixed or moveable seating and tables. Furthermore, planting walls or trellises, water features and artwork may exceed a height of two feet when located within three feet of a wall bounding the #public plaza#.

For #corner public plazas#, the requirements of this Section shall apply separately to each #street# frontage, and the area within 15 feet of the intersection of any two or more #streets# on which the #public plaza# fronts shall be at the same elevation as the adjoining public sidewalk and shall be free of obstructions.

* * *

37-724 Subway entrances

Where an entry to a subway station exists in the sidewalk area of a #street# on which a #public plaza# fronts and such entry is not replaced within the #public plaza# itself, the #public plaza# shall be ~~#developed#~~ at the same elevation as the adjacent sidewalk for a distance of at least 15 feet in all directions from the entry superstructure. Such #public plaza# area around a subway entry shall be free of all obstructions and may count towards the required clear area requirements as specified in Section 37-721 (Sidewalk frontage).

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37-726 Permitted obstructions

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- (d) Prohibition of garage entrances, driveways, parking spaces, loading berths, exhaust vents, mechanical equipment and building trash storage facilities

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No exhaust vents or mechanical equipment are permitted on any #public plaza# or on ~~the any building wall of the #development#~~ fronting upon the #public plaza#, ~~except that unless such~~ exhaust vents ~~on the building wall that~~ are more than 15 feet above the level

of the adjacent #public plaza# ~~shall be permitted~~. All exhaust vents and mechanical equipment located adjacent to a #public plaza# shall be separated from it by a barrier sufficient to substantially, visually and audibly, conceal their presence and operation. Air intake vents or shafts shall be permitted within a #public plaza# provided that such vents are concealed from public view by planting or other design features and that such vents do not impair visibility within the #public plaza# area.

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37-728

Standards of accessibility for persons with disabilities

All #public plazas# shall conform with applicable laws pertaining to access for persons with disabilities regardless of whether the #building# associated with the #public plaza# is existing or is a new. #development#.

37-73

Kiosks and Open Air Cafes

Kiosks and open air cafes may be placed within a #publicly accessible open area# upon certification, pursuant to this Section. Such features shall be treated as permitted obstructions. Only #uses# permitted by the applicable district regulations may occupy #publicly accessible open areas# or front on #publicly accessible open areas#.

(a) Kiosks

Where a kiosk is provided, it shall be a one-story temporary or permanent structure that is substantially open and transparent as approved by the Department of Buildings in conformance with the Building Code. Kiosks, including roofed areas, shall not occupy an area in excess of 100 square feet per kiosk. One kiosk is permitted for every 5,000 square feet of #publicly accessible open area#, exclusive of areas occupied by other approved kiosks or open air cafes. Kiosk placement shall not impede or be located within any pedestrian circulation path. Any area occupied by a kiosk shall be excluded from the calculation of #floor area#. Kiosks may be occupied only by #uses# permitted by the applicable district regulations such as news, book or magazine stands, food or drink service, flower stands, information booths, or other activities that promote the public use and enjoyment of the #publicly accessible open area#. Any kitchen equipment shall be stored entirely within the kiosk.

Kiosks must be in operation and provide service a minimum of 225 days per year. However, kiosks may operate for fewer days in accordance with conditions set forth in paragraph (c) of this Section. ~~if they are completely removed from the #publicly~~

~~accessible open area# when not in operation and if the area previously occupied by the kiosk is returned to public use and such area is in compliance with the #public plaza# design standards.~~

Notwithstanding the provisions of Section 32-41 (Enclosure Within Buildings), outdoor eating services or #uses# occupying kiosks may serve customers in a #publicly accessible open area# through open windows.

(b) Open air cafes

Where an open air cafe is provided, it shall be a permanently unenclosed restaurant or eating or drinking place, permitted by applicable district regulations, which may have waiter or table service, and shall be open to the sky except that it may have umbrellas, temporary fabric roofs with no vertical supports in conformance with the Building Code, and removable heating lamps. Open air cafes shall occupy an aggregate area not more than 20 percent of the total area of the #publicly accessible open area#. #Publicly accessible open areas# less than 10 feet in width that are located between separate sections of the same open air cafe or between sections of an open air cafe and a kiosk that provides service for such cafe must be included in the calculation of the maximum aggregate area of the open air cafe. Open air cafes shall be located along the edge of the #publicly accessible open area#, except for open air cafes located within #publicly accessible open areas# greater than 30,000 square feet in area. Open air cafes may not occupy more than one third of any #street# frontage ~~in a major portion~~ of the #publicly accessible open area# and may not contain any required circulation paths. An open air cafe must be accessible from all sides where there is a boundary with the remainder of the #publicly accessible open area#, except where there are planters or walls approved pursuant to a prior certification for an open air café. Subject to the foregoing exception, ~~F~~fences, planters, walls, fabric dividers or other barriers that separate open air cafe areas from the #public plaza# #publicly accessible open area# or sidewalk are prohibited. ~~Open air cafes shall be located at the same elevation as the adjoining #public plaza# and sidewalk areas, except for platforms that shall not exceed six inches in height.~~ All furnishings of an open air cafe, including tables, chairs, bussing stations, and heating lamps, shall be completely removed from the #publicly accessible open area# when the open air cafe is not in active use, except that tables and chairs may remain in the #publicly accessible open area# if they are unsecured and may be used by the public without restriction. No kitchen equipment shall be installed within an open air cafe; kitchen equipment, however, may be contained in a kiosk adjoining an open air cafe. An open air cafe qualifying as a permitted obstruction shall be excluded from the definition of #floor area#.

The exterior corners of the border of the space to be occupied by an open air cafe shall be marked on the ground by a line painted with white latex traffic or zone marking paint. The line shall be one inch wide and three inches in length on each side of the cafe border from the point where the borders intersect at an angled corner. In addition, a line one inch

wide and three inches long shall be marked on the ground at intervals of no more than five feet starting from the end point of the line marking the cafe corners.

Open air cafes must be in operation and provide service a minimum of 225 days per year.

Open air cafes shall be located at the same elevation as an adjoining #public plaza# and sidewalk area, except for platforms that shall not exceed six inches in height.

(c) Certification

Kiosks and open air cafes ~~that comply with the provisions of this Section~~ may be placed within the area of a #publicly accessible open area# upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings, that:

- (1) such #use# promotes public use and enjoyment of the #publicly accessible open area#;
- (2) such #use# complements desirable #uses# in the surrounding area;
- ~~(4)~~(3) the owners of such #use# or the building owner ~~will maintain such #use# in accordance with the provisions of Section 37-77 (Maintenance)~~ shall be responsible for the maintenance of such kiosk or open air café, which shall be located within areas designated on building plans as available for occupancy by such #uses# and no encroachment by a kiosk or open air café outside an area so designated shall be permitted;
- ~~(5)~~(4) such #use# does not adversely impact visual and physical access to and throughout the #publicly accessible open area#;
- ~~(3)~~(5) such #use#, when located within a #public plaza#, is provided in accordance with all the requirements set forth in this Section;
- (6) for kiosks and open air cafes located within an existing #publicly accessible open area# such #use#, is proposed as part of a general improvement of the #publicly accessible open area# where necessary, including as much landscaping and public seating as is feasible, in accordance with the standards for #public plazas#;
- (7) a #sign# shall be provided in public view within the cafe area indicating the days and hours of operation of such café; and
- (8) for kiosks that are in operation less than 225 days per year, an off-season plan has been submitted to the Chairperson showing that such kiosks will be completely removed from the #publicly accessible open area# when not in operation, that the

area previously occupied by the kiosk is returned to public use and such area is in compliance with the applicable #publicly accessible open area# design standards.

(d) Process

An application for certification shall be filed with the Chairperson of the City Planning Commission, and the Chairperson shall furnish a copy of the application for such certification to the affected Community Board at the earliest possible stage. The Chairperson will give due consideration to the Community Board's opinion as to the appropriateness of such a facility in the area and shall respond to such application for certification within 60 days of the application's receipt.

The Chairperson shall file any such certification with the City Council. The Council, within 20 days of such filing, may resolve by majority vote to review such certification. If the Council so resolves, within 50 days of the filing of the Chairperson's certification, the Council shall hold a public hearing and may approve or disapprove such certification. If, within the time periods provided for in this Section, the Council fails to act on the Chairperson's certification, the Council shall be deemed to have approved such certification.

Such certification shall be effective for a period of three years.

All applications for the placement of kiosks or open air cafes ~~within a #publicly accessible open area# filed with the Chairperson of the City Planning Commission~~ shall include a detailed site plan or plans indicating compliance with the provisions of this Section, including the layout and number of tables, chairs, restaurant equipment and heating lamps, as well as the storage location for periods when the kiosk or open air cafe is closed. Where a kiosk or open air cafe is to be located within an existing #publicly accessible open area# each kiosk or open air cafe application must be accompanied by a compliance report in accordance with the requirements of Section 37-78, paragraph ~~(b)(c). except that date of inspection shall be within 15 days of the date that the application is filed.~~

Where design changes to #publicly accessible open areas# are necessary in order to accommodate such kiosk or open air café, or to comply with paragraph (c)(6) of this Section, a certification pursuant to Section 37-625 (Design Changes) shall be required.

All such plans for kiosks or open air cafes, once certified, shall be filed and duly recorded in the Borough Office of the City Register of the City of New York, indexed against the property in the form of a legal instrument providing notice of the certification for the kiosk or open air cafe, pursuant to this Section. The form and contents of the legal instrument shall be satisfactory to the Chairperson, and the filing and recording of such instrument shall be a precondition for the placement of the kiosk or open air cafe within the #publicly accessible open area#.

* * *

37-741 Seating

* * *

The following standards shall be met for all required seating:

* * *

- (3) At least 50 percent of the linear feet of fixed seating shall have backs at least 14 inches high and a maximum seat depth of 20 inches. Walls located adjacent to a seating surface shall not count as seat backs. All seat backs must either be contoured in form for comfort or shall be reclined from vertical between 10 to 15 degrees.
- (4) Moveable seating or chairs, excluding seating for open air cafes, may be credited as 24 inches of linear seating per chair. Moveable seating provided as a required amenity shall be provided in the amount of one chair per 200 square feet of #public plaza# area. One table shall be provided for every four such moveable chairs.

All moveable seats must have backs and a maximum seat depth of 20 inches. Moveable chairs shall not be chained, fixed, or otherwise secured while the #public plaza# is open to the public; moveable chairs, however, may be removed during the nighttime hours of 9:00 pm to 7:00 am.

* * *

37-742 Planting and trees

The provisions of this Section are intended to facilitate a combination of landscaping elements in order to provide comfort, shade and textural variety.

At least 20 percent of the area of a #public plaza# shall be comprised of planting beds with a minimum dimension of two feet, exclusive of any bounding walls.

All #public plazas# shall provide a minimum of four trees. For a #public plaza# greater than 6,000 square feet in area, an additional four caliper inches in additional trees or multi-stemmed equivalents must be provided for each additional 1,000 square feet of #public plaza# area, rounded to the nearest 1,000 square feet.

~~All #public plazas# shall also provide one of the following additional planting types: additional trees, planters, planting beds, or accessible lawns. Trees provided to satisfy this requirement shall~~

~~be provided at the rate of one tree for every 2,000 square feet of #public plaza# area. Planters, planting beds, and accessible lawns provided to satisfy this requirement shall be provided at the rate of 150 square feet for every 1,000 square feet of #public plaza# area. Plantings contained in hanging containers shall not satisfy this planting requirement.~~

For all #public plazas#, at least 50 percent of the required #public plaza# trees shall be planted flush-to-grade or planted at grade within planting beds with no raised curbs or railings. Trees planted flush-to-grade shall be surrounded by a porous surface (such as grating or open-joint paving) that allows water to penetrate into the soil for a minimum radius of two feet, six inches. Such porous surface shall be of sufficient strength and density to accommodate pedestrian circulation, including all requirements related to accessibility for the disabled, and shall be of a design that allows for tree growth. Installed fixtures such as lighting stanchions, electrical outlets or conduits shall not be located within the required porous area of any tree planted flush-to-grade.

Where trees are planted within a #public plaza#, they shall measure at least four inches in caliper at the time of planting, unless alternative, multi-stemmed equivalents are specified in the approved planting plans. Each tree shall be planted in at least 200 cubic feet of soil with a depth of soil of at least 3 feet, 6 inches.

~~When p~~Planting beds ~~are provided, they~~ shall have a soil depth of at least eighteen inches for grass or other ground cover, three feet for shrubs and 3 feet, 6 inches for trees. No planters or planting beds shall have bounding walls that exceed 18 inches in height above ~~any an~~ adjacent walking surfaces, or the highest adjacent surface where the bounding wall adjoins two or more walking surfaces with different elevations. Any planting bed containing required trees shall have a continuous area of at least 75 square feet for each tree exclusive of bounding walls. Furthermore, each tree located within a planting bed shall be surrounded by a continuous permeable surface measuring at least five feet square. Any lawns or turf grass planting beds shall not exceed six inches above any adjacent walking surfaces.

* * *

37-747

Public space signage

Entry and information plaques shall be provided, as described in Section 37-751 (Public space signage systems).

37-75 Signs

37-751 Public space signage systems

The following public space signage systems shall be required for all #public plazas#:

(a) Entry plaque

* * *

The entry plaque shall be mounted on a wall or a permanent free-standing post within five feet of the sidewalk with its center five feet above the elevation of the nearest walkable pavement. The maximum height of such free-standing post shall be six feet, with a maximum width and depth of 16 inches. It shall be in a position that clearly identifies the entry into the #public plaza#, and placed so that the entire entry plaque is obvious and directly visible, without any obstruction, along every line of sight from all paths of pedestrian access to the #public plaza#.

(b) Information plaque

~~An information plaque, constructed from the same permanent materials as the entry plaque or combined with one or more of the required entry plaques shall be provided. Information plaques shall be located within five feet of a sidewalk and shall have all required lettering located above a height of three feet. The information plaque shall consist of:~~

An information plaque, constructed from the same permanent materials as the entry plaque or combined with one or more of the required entry plaques shall be provided. Information plaques shall be mounted on a wall or a permanent free-standing post within five feet of the sidewalk and shall have all required lettering located three feet above the elevation of the nearest walkable pavement. The maximum height of such free-standing post shall be six feet, with a maximum width and depth of 16 inches. The information plaque shall consist of:

* * *

37-753 Accessory signs

~~A #public plaza# shall be treated as a #street# for the purposes of the applicable #sign#~~

regulations. ~~#Signs#~~, except for the plaque required by Section 37-751, are permitted only as ~~#accessory#~~ to ~~#uses#~~ permitted within the ~~#public plaza#~~ and ~~#uses#~~ adjoining the ~~#public plaza#~~, and are otherwise regulated by the applicable district regulations set forth in Section 32-60 (SIGN REGULATIONS).

~~#Signs accessory#~~ to the ~~#building#~~ or tenants of retail spaces fronting on the ~~#public plaza#~~ are permitted within the ~~#public plaza#~~ area, provided that:

- (a) ~~no more than three such #signs# are provided within the #public plaza#, but in no event shall more than one of these #signs# be freestanding, as described in paragraph (e) of this Section;~~
- (b) ~~all such #signs# shall be non-illuminated;~~
- (c) ~~such #signs# shall contain only the building or establishment name and address;~~
- (d) ~~any #signs# affixed to the building walls may not exceed two feet square in size;~~
- (e) ~~any freestanding #signs# shall not exceed two feet in horizontal dimension and, if associated with a #building# used for office uses, may contain the names of principal building tenants in addition to the content permitted, as described in this Section, and shall also contain the public space symbol as described in Section 37-751 and the words “Open to Public” in lettering at least two inches in height; and~~
- (f) ~~any #sign# located on permitted canopies or awnings within the #public plaza# shall contain only the building or establishment name and must not exceed a height of one foot.~~

A ~~#public plaza#~~ shall be treated as a ~~#street#~~ for the purposes of the applicable ~~#sign#~~ regulations. ~~#Signs#~~, except for the plaque required by Section 37-751, are permitted only as ~~#accessory#~~ to ~~#uses#~~ permitted within the ~~#public plaza#~~ and ~~#uses#~~ adjoining the ~~#public plaza#~~, and are otherwise regulated by the applicable district regulations set forth in Section 32-60 (SIGN REGULATIONS), except as provided below:

- (a) each establishment fronting on the ~~#public plaza#~~ shall be permitted to have not more than one ~~#sign#~~ affixed to the building wall fronting on the ~~#public plaza#~~;
- (b) all ~~#signs#~~ shall be non-~~#illuminated#~~;
- (c) all ~~#signs#~~ shall contain only the building or establishment name and address;
- (d) all ~~#signs accessory#~~ to retail ~~#uses#~~ affixed to building walls may not exceed four square feet in size;

- (e) not more than three #accessory signs# may be located within the #public plaza#, of which one may be freestanding. All such #signs#, including structures to which they are affixed, shall not be higher than three feet above the level of the adjoining public access area. Such #signs# shall not exceed an area of two square feet. In addition, no portion of such #sign#, including structures to which they are affixed, shall exceed a width of 16 inches facing a #street#, and 24 inches when not facing a #street#. For corner #public plazas#, such limitations shall apply to only one #street# frontage. If such #sign# is associated with a #building# used for office #use#, such #sign# shall contain only the names of principal building tenants and shall also contain the public space symbol as described in Section 37-751 and the words “Open to Public” in lettering at least two inches in height; and
- (f) all #signs# located on permitted canopies or awnings within the #public plaza# shall contain only the building or establishment name and shall not exceed a height of one foot.

37-76

Mandatory Allocation of Frontages for Permitted Uses

(a) Ground floor level uses

At least 50 percent of the total frontage of ~~all new~~ building walls ~~of the #development#~~ fronting on ~~an~~ #public plaza#, or fronting on an #arcade# adjoining a #public plaza#, exclusive of such frontage occupied by building lobbies and frontage used for subway access, shall be allocated for occupancy at the ground floor level by retail or service establishments permitted by the applicable district regulations but not including uses in Use Groups 6B, 6E, 7C, 8C, 9B, 10B, 11 and 12D, or banks, automobile showrooms or plumbing, heating or ventilating equipment showrooms. In addition, libraries, museums and art galleries shall be permitted. All such #uses# shall:

- (1) be directly accessible from the major portion of the #public plaza#, an adjoining #arcade#, or a #street# frontage shared by the ~~retail~~-establishment and the #public plaza#;
- (2) ~~Such retail spaces shall~~ have a minimum depth of 15 feet, measured perpendicular to the wall adjoining the #public plaza#; and
- (3) occupy such frontage for the life of the increased #floor area# of the bonused #development#.

The remaining frontage may be occupied by other #uses#, lobby entrances or vertical circulation elements, in accordance with the district regulations.

As an alternative, where retail or service establishments located in an existing #building#

front upon a #public plaza# or an #arcade# adjoining a #public plaza#, at least 50 percent of the total frontage of all building walls fronting on the #public plaza#, or fronting on an #arcade# adjoining a #public plaza#, exclusive of such frontage occupied by building lobbies and frontage used for subway access, shall be allocated for occupancy at the ground floor level by retail or service establishments permitted by the applicable district regulations but not including uses in Use Groups 6B, 6E, 7C, 8C, 9B, 10B, 11 and 12D, or banks, automobile showrooms or plumbing, heating or ventilating equipment showrooms. In addition, libraries, museums and art galleries shall be permitted. All such #uses# shall comply with the provisions of subparagraphs (1), (2) and (3) above.

(b) Public entrances

~~Principal entrances to #buildings#~~ A public entrance to the principal use of the #building# associated with the #public plaza# shall be located within 10 feet of the major portion of the #public plaza#. Frontage on the #public plaza# that is occupied by a building entrance or lobby shall not exceed 60 feet or 40 percent of the total aggregate frontage of the #development's# new building walls on the major and minor portions of the #public plaza#, whichever is less, but in no case shall building entrances or lobbies occupy less than 20 feet of frontage on the #public plaza#.

(c) Transparency

~~The building frontage~~ All new building walls fronting on the major and minor portions of the #public plaza# shall be treated with clear, untinted transparent material for 50 percent of its surface area below 14 feet above the #public plaza# level, or the ceiling level of the ground floor of the #building#, whichever is lower. Any non-transparent area of a new or existing building wall fronting on the major or minor portion of a #public plaza# shall be treated with a decorative element or material or shall be screened with planting planted to a minimum height of 15 feet above the #public plaza#.

37-77

Maintenance

- ~~(a)~~ The building owner shall be responsible for the maintenance of the #public plaza# including, but not limited to, the location of permitted obstructions pursuant to Section 37-726, litter control, management of pigeons and rodents, maintenance of required lighting levels, and the care and replacement of furnishings and vegetation within the #zoning lot# ~~and in the #street# sidewalk area adjacent to the #zoning lot#.~~
- ~~(b)~~ ~~Kiosks and open air cafes #developed# in accordance with the provisions of Section 37-73 shall be located within areas designated on building plans as available for occupancy by such #uses# and no encroachment by a kiosk or open air cafe outside an area so designated shall be permitted.~~

(e) Performance bond

~~Prior to obtaining any certificate of occupancy from the Department of Buildings, the building owner shall post with the Comptroller of the City of New York, a performance bond, City securities or fixed income securities, at the Comptroller's discretion, to ensure the mandatory tree planting, moveable seating exclusive of any seating for open air cafes, and the litter free maintenance of the #public plaza# including the replacement of such trees and moveable furniture during the life of the #development#.~~

~~In the event of a failure in the required performance, the Chairperson of the City Planning Commission shall notify the building owner in writing of such failure and shall stipulate the period of time in which the building owner has to correct the failure. If the failure is not corrected in the stipulated time, the Chairperson may declare the building owner in default in the required performance and the City may enforce the obligation by whatever means may be appropriate to the situation, including letting contracts for doing any required planting, installation or maintenance and paying all labor, material and other costs connected with such work from the bond or City securities that the building owner is required to provide.~~

~~In the event that the City enforces the aforementioned obligation as provided for in this paragraph, (e), the building owner shall, within 90 days of such enforcement, provide the City with an additional bond or City securities in an amount not less than that which was expended to cure the default.~~

~~The value of the bond or City securities if tendered prior to January 1, 1998, shall be at a rate of \$750 per required tree, \$100 per moveable chair and \$200 per 1,000 square feet of #urban plaza# for litter removal, as set forth in this Section.~~

~~Effective January 1, 1989, and at five year intervals thereafter, the City Planning Commission shall establish new rates for the mandatory tree planting, moveable seating and litter free maintenance of the #public plaza#.~~

37-78 Compliance

(a) Building permits

No foundation permit shall be issued by the Department of Buildings for any #development# or #enlargement# that includes a #public plaza#, nor shall any permit be issued by the Department of Buildings for any change to a #plaza#, #residential plaza# or #urban plaza# without certification by the Chairperson of the City Planning Commission of compliance with the provisions of Section 37-70 or Section 37-625, as applicable.

An application for such certification shall be filed with the Chairperson showing the plan of the #zoning lot#; a site plan indicating the area and dimensions of the proposed #public plaza# and the location of the proposed #development# or #enlargement# and all existing #buildings# temporarily or permanently occupying the #zoning lot#; computations of proposed #floor area#, including bonus #floor area#; and a detailed plan or plans prepared by a registered landscape architect, including but not limited to a furnishing plan, a planting plan, a signage plan, a lighting/photometric plan and sections and elevations, as necessary to demonstrate compliance with the provisions of Section 37-70 or Section 37-625, as applicable.

All plans for #public plazas# or other #publicly accessible open areas# that are the subject of a certification pursuant to Section 37-625 shall be filed and duly recorded in the Borough Office of the City Register of the City of New York, indexed against the property in the form of a legal instrument, in a form satisfactory to the Chairperson, providing notice of the certification of the #public plaza#, pursuant to this Section. Such filing and recording of such instrument shall be a precondition to certification. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date. No temporary or final certificate of occupancy shall be issued for any bonus #floor area# generated by a #public plaza# unless and until the #public plaza# has been substantially completed in accordance with the approved plans, as verified by the Department of City Planning and certified to the Department of Buildings.

Notwithstanding any of the provisions of Section 11-33 (Building Permits for Minor or Major Development or Other Construction Issued Before Effective Date of Amendment), any #residential plaza# or #urban plaza# for which a certification was granted pursuant to Article II, Chapter 3, or Article III, Chapter 7, between June 4, 2005 and June 4, 2007, and any #public plaza# for which a certification was granted prior to (effective date of amendment) may be #developed# in accordance with the regulations in effect on the date of such certification.

(b) Periodic compliance reporting

No later than June 30 of the year, beginning in the third calendar year following the calendar year in which certification was made and at three year intervals thereafter, the Director of the Department of City Planning and the affected Community Board shall be provided with a report regarding compliance of the ~~#public plaza#~~ #publicly accessible open area# with the regulations of Section 37-70 or Section 37-625, as applicable, as of a date of inspection which shall be no earlier than May 15 of the year in which the report is filed. Such report shall be provided by a registered architect, landscape architect or professional engineer, in a format acceptable to the Director and shall include, without limitation:

- (1) a copy of the original ~~#public plaza#~~ or design change certification letter, and if applicable, any approval letter pertaining to any other authorization or certification pursuant to this Chapter;
- (2) a statement that the ~~#public plaza#~~ #publicly accessible open area# has been inspected by such registered architect, landscape architect or professional engineer and that ~~the #public plaza#~~ such open area is in full compliance with the regulations under which ~~the #public plaza#~~ it was approved as well as the approved plans pertaining to such ~~#public plaza#~~ open area and, if applicable, the requirements of any other authorization or certification pursuant to this Chapter, or non-compliance with such regulations and plans;
- (3) an inventory list of amenities required under the regulations under which the ~~#public plaza#~~ #publicly accessible open area# was approved and the approved plans pertaining to such ~~#public plaza#~~ open area and, if applicable, the requirements of any other authorization or certification pursuant to Section 37-70, together with an identification of any amenity on such inventory list for which inspection did not show compliance, including whether such amenities are in working order, and a description of the non-compliance;
- (4) photographs documenting the condition of the ~~#public plaza#~~ #publicly accessible open area# at the time of inspection, sufficient to indicate the presence or absence, either full or partial, of the amenities on the inventory list of amenities.

The report submitted to the Director of the Department of City Planning shall be accompanied by documentation demonstrating that such report has also been provided to the affected Community Board.

Compliance reporting pursuant to this paragraph, (b), shall be a condition of all certifications granted pursuant to Section 37-70.

(c) Compliance reports at time of application

~~In a~~Any application for a ~~new~~ certification or authorization ~~for involving an existing #public plaza#, #publicly accessible open area# where such #public plaza# was the subject of a previously granted certification or authorization granted pursuant to Section 37-70, the applicant shall provide~~ include a compliance report in the format required under paragraph (b) of this Section, based upon an inspection of the ~~#public plaza#~~ #publicly accessible open area# by a registered architect, landscape architect or professional engineer conducted no more than 45 days prior to the filing of such application.

The following conditions may constitute grounds to disapprove the application for certification or authorization:

- (1) such report shows non-compliance with the regulations under which the ~~#public plaza#~~ #publicly accessible open area# was approved, conditions or restrictions of a previously granted certification or authorization, or with the approved plans pertaining to such ~~#public plaza#~~ #publicly accessible open area#; or
- (2) the ~~#public plaza#~~ #publicly accessible open area# has been the subject of one or more enforcement proceedings for which there have been final adjudications of a violation with respect to any of the foregoing.

In the case of a certification, the Chairperson, or in the case of an authorization, the Commission, may, in lieu of disapproval, accept a compliance plan for the ~~#public plaza#~~ #publicly accessible open area#, which plan shall set forth the means by which future compliance will be ensured.

(d) Failure to comply

Failure to comply with a condition or restriction in an authorization or certification granted pursuant to Section 37-70 or with approved plans related thereto, or failure to submit a required compliance report shall constitute a violation of this Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy, or for a revocation or such authorization or certification, and for all other applicable remedies.

The above resolution (N 090317 ZRY), duly adopted by the City Planning Commission on May 6, 2009 (Calendar No. 15), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, ESQ., Vice Chairman
IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, NATHAN LEVANTHAL, SHIRLEY A. McRAE,
JOHN MEROLO, KAREN A. PHILLIPS, Commissioners