Legislation Details (With Text)

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On agenda:	6/10/2009				
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Title: Resolution approving the decision of the City Planning Commission on Application No. N 090317 ZRY, for an amendment to 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, Citywide (L.U. No. 1108).

Sponsors:

Indexes:

Attachments: 1. Press Release, 2. Committee Report, 3. Hearing Transcript - Stated Meeting 6/10/09

Date	Ver.	Action By	Action	Result
6/4/2009	*	Committee on Land Use	Approved by Committee	
6/10/2009	*	City Council	Approved, by Council	Pass

THE COUNCIL OF THE CITY OF NEW YORK
RESOLUTION NO. 2027

Resolution approving the decision of the City Planning Commission on Application No. N 090317 ZRY, for an amendment to 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, Citywide (L.U. No. 1108).

By Council Members Katz and Avella

WHEREAS, the City Planning Commission filed with the Council on May 14 2009 its decision dated May 6, 2009 (the "Decision"), pursuant to Section 201 of the New York City Charter, regarding an application submitted by the Department of City Planning for an amendment to 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, Application No. N 090317 ZRY, Citywide (the "Application");

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(1) of the City Charter;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on June 2, 2009;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues and the Negative Declaration

issued on February 17, 2009 (CEQR No. 07 DCP 051Y):

RESOLVED:

The Council finds that the action described herein will have no significant effect on the environment.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, the Council approves the Decision.

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

* * *

Chapter 7
Special Urban Design Regulations

* * *

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

* * *

37-62
Changes to Existing Publicly Accessible Open Areas

* * *

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

* * *

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).

* * *

37-726
Permitted obstructions

* * *

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

* * *

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.

* * *

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.

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(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

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~~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

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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 a~~n~~ #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~~.

~~(c) 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, (c), 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#~~

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#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.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on June 10, 2009, on file in this office.

...…….....
City Clerk, Clerk of The Council

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