



The State of New Hampshire  
Department of Transportation



*David Rodrigue, P.E.*  
Commissioner

*Susan M. Klasen, P.E.*  
Assistant Commissioner

*Michelle L. Winters*  
Deputy Commissioner

May 15, 2026

TO: All NH Local Public Agencies (LPAs)

RE: Use of Public Right of Way (ROW) for Outdoor Dining and Retail Uses

On May 28, 2020, in response to the COVID-19 pandemic and to provide flexibility and relief to the public and support economic recovery, the Federal Highway Administration (FHWA) authorized a short-term waiver for outdoor dining and retail uses in highway ROW, provided such uses did not impede the safe and free flow of traffic and included appropriate safety measures. Those exceptions expired on May 11, 2023, in conjunction with the expiration of the Federal Public Health Emergency Declaration.

FHWA has recently notified the New Hampshire Department of Transportation (NHDOT) that they have learned that there are outdoor dining and/or retail activities happening in the Federal Aid ROW within NH Local Public Agencies. Per 23 CFR 1.23(c) and 23 CFR 710.405 non-highway uses of Federal-aid ROW require a ROW Use Agreement and a determination that such use is in the public interest, consistent with the continued use, operations, maintenance, and safety of the facility, and does not impair the highway or interfere with the free and safe flow of traffic.

New Hampshire Department of Transportation has responsibility for the review and approval of non-highway usage of the Federal-Aid ROW. Policies and procedures that ensure the safety of all roadway users and ensure compliance with all applicable Federal requirements for the use of the Federal-Aid ROW are under development within NHDOT. It is anticipated that finalized procedures will be adopted and implemented in the coming months. With the implementation of these new procedures, it will be necessary to bring non-highway uses of the ROW into compliance with federal requirements.

Please be aware additional information will be forthcoming. If you have any questions in the meantime, please feel free to contact William Watson in the Bureau of Planning and Community Assistance at 603-271-3344.

Sincerely,

David Rodrigue P.E., Commissioner  
NH Department of Transportation

cc: Commissioner's Office  
Bureau of ROW  
Bureau of Planning and Community Assistance  
Federal Highway Administration