



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 126

**OPEN RESTAURANTS PROGRAM AND THE EXPANSION OF OUTDOOR SEATING IN
PHASE 2**

June 18, 2020

EMERGENCY EXECUTIVE ORDER

WHEREAS, on March 7, 2020, New York State Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors; and

WHEREAS, Emergency Executive Order No. 98, issued March 12, 2020, and extended most recently by Emergency Executive Order No. 123, issued June 7, 2020, contains a declaration of a state of emergency in the City of New York due to the threat posed by COVID-19 to the health and welfare of City residents, and such declaration remains in effect; and

WHEREAS, this Order is given because of the propensity of the virus to spread person-to-person and also because the actions taken to prevent such spread have led to property loss and damage; and

WHEREAS, measures taken to combat the spread of COVID-19 have created a particular need to enliven the City's commercial corridors and provide businesses with an opportunity to generate revenue while allowing customers and employees to practice social distancing in order to protect public health and safety; and

WHEREAS, on June 6, 2020, New York State Governor Andrew Cuomo issued Executive Order No. 202.38, which modified Executive Order No. 202.3 to the extent necessary to allow a restaurant or bar to serve patrons food or beverage on-premises in outdoor space, subject to guidelines promulgated by the New York State Department of Health, and which permitted restaurants and bars to expand their premises licensed by the New York State Liquor Authority (the "State Liquor Authority") to certain contiguous spaces, subject to applicable limitations and procedures set by the State Liquor Authority, the local municipality, and the New York State Department of Health; and

WHEREAS, on June 3, 2020, the New York State Department of Health issued “Interim Guidance for Outdoor and Take-Out/Delivery Food Services during the COVID-19 Public Health Emergency,” authorizing restaurants in regions that have reached Phase 2 of the State’s reopening to open outdoor spaces with seating for customers, provided that social distancing is maintained, and to open outdoor bar seating areas, provided that customers can be distanced appropriately, and providing minimum requirements for the operation of any such outdoor space or outdoor bar seating area; and

WHEREAS, restaurants will be better able to maximize their customer base while maintaining social distancing requirements by being able to utilize sidewalk seating, curbside seating, and seating directly in front of establishments on streets that have been opened across the City pursuant to the Open Streets initiative, a program that allows pedestrians and cyclists to use the roadbed of the street while maintaining social distancing, for outdoor food and beverage service; and

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. In order to maintain public safety and health while facilitating restaurants’ ability to utilize outdoor seating, I hereby direct the Department of Transportation to establish and administer a program to expand seating options for restaurants, bars and other establishments in certain outdoor areas, including the sidewalk, curbside and street space directly in front of such restaurants, bars or establishments on streets that have been opened across the City pursuant to the Open Streets initiative to promote open space, enhance social distancing and help establishments rebound in these difficult economic times (the “Open Restaurants Program”).

§ 2. I hereby suspend the following provisions of the Administrative Code of the City of New York (“Admin. Code”) to the extent necessary to provide for the implementation, administration and operation of the Open Restaurants Program, subject to applicable guidance issued by the Department of Transportation, the Department of Health and Mental Hygiene, the New York State Department of Health, and the State Liquor Authority:

- a) Admin. Code Section 10-125, relating to the prohibition of the consumption of alcohol on streets;
- b) Admin. Code Section 17-306(c), to the extent necessary to clarify that the definition of “food vendor” set forth in such section shall not include any restaurant participating in the Open Restaurants Program;
- c) Admin. Code Sections 19-124(a)(2) and 19-124(c), to the extent any restaurant is required by such provisions to obtain a permit or pay a fee to erect or maintain a canopy over any outdoor seating area such restaurant operates pursuant to the Open Restaurants Program;
- d) Admin. Code, Title 20, Chapter 2, Subchapter 6, relating to licenses for sidewalk cafes;

- e) Admin. Code Section 20-465(q)(1), relating to prohibiting any general vendor from vending within 20 feet of a sidewalk cafe; and
- f) Admin. Code, Title 28, Chapter 7, Sections BC 3101.1, relating to special building construction, 3111, relating to the construction of sidewalk cafes, and 3202.4.1, relating to the construction of enclosures for sidewalk cafes, provided, however that section BC 3111.6 relating to accessibility is not suspended.

§ 3. I hereby suspend the following provisions of the Rules of the City of New York (“RCNY”) to the extent necessary to provide for the implementation, administration and operation of the Open Restaurants Program, subject to applicable guidance issued by the Department of Transportation, the Department of Health and Mental Hygiene, the New York State Department of Health, and the State Liquor Authority:

- a) RCNY Title 3, Chapter 4, Section 404-03, relating to fire safety requirements for sidewalk cafes;
- b) RCNY Title 6, Chapter 2, Subchapter F, relating to licenses for sidewalk cafes;
- c) RCNY Title 6, Chapter 1, Section 1-03(b), relating to the display of license signs by sidewalk cafe licensees;
- d) RCNY Title 34, Chapter 2, Sections 2-03 and 2-04(b)(2), to the extent such provisions require a restaurant to obtain a permit or pay a fee to erect or maintain a canopy over any outdoor seating area such restaurant operates pursuant to the Open Restaurants Program;
- e) RCNY Title 50, Chapter 1, Section 1-01, to the extent necessary to clarify that the definition of “street event” set forth in such section shall not include any outdoor service provided by a restaurant pursuant to the Open Restaurants Program; and
- f) RCNY Title 62, Chapter 3, Subchapter B, Sections 3-07(c)(2) and 3-07(f)(4), to the extent such provisions impose fees for sidewalk cafe revocable consent applications or renewal applications.

§ 4. I hereby suspend the following provisions of the New York City Zoning Resolution (“ZR”) to the extent necessary to provide for the implementation, administration and operation of the Open Restaurants Program, or to otherwise allow a restaurant to provide outside dining service in any outdoor space that such restaurant controls pursuant to a deed or lease, including a parking lot, subject to applicable guidance issued by the Department of Transportation, the Department of Health and Mental Hygiene, the New York State Department of Health, and the State Liquor Authority:

- a) ZR, Article 1, Chapter 4, relating to sidewalk cafe regulations;
- b) ZR Section 32-41, to the extent such section requires eating and drinking establishment uses in certain Commercial Districts to be located within completely enclosed buildings;
- c) ZR Section 36-46, to the extent such section prohibits a restaurant from using adjacent off-street parking for an outdoor seating area in Commercial Districts;
- d) ZR Section 44-35, to the extent such section prohibits a restaurant from using adjacent off-street parking for an outdoor seating area in Manufacturing Districts;

- e) ZR Section 52-34, to the extent such section requires certain eating and drinking establishment uses in Residence Districts to be located within completely enclosed buildings;
- f) ZR Section 97-13, to the extent such section limits the locations of sidewalk cafes in the Special 125th Street District;
- g) ZR Section 109-02, to the extent such section imposes any condition on the use of public streets and sidewalks for the maintenance of sidewalk cafes or outdoor cafes by restaurants in the Special Little Italy District; and
- h) ZR Section 117-05, to the extent such section limits the locations of sidewalk cafes in in the Special Long Island City Mixed Use District.

§ 5. Nothing in this Order shall relieve bars, restaurants and other establishments from their obligation to adhere to all local, state and federal requirements relating to health and safety, except as modified by sections 2, 3, and 4 of this Order. Any restaurant, bar or other establishment participating in the Open Restaurants Program shall adhere to all local, state and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table heights, and clearance requirements. Any restaurant, bar or other establishment participating in the Open Restaurants Program shall adhere to all applicable guidance issued by the Department of Transportation, the Department of Health and Mental Hygiene, the New York State Department of Health and the State Liquor Authority.

§ 6. This Emergency Executive Order shall take effect immediately, and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.



Bill de Blasio,
MAYOR