



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

EMERGENCY EXECUTIVE ORDER NO. 435

June 20, 2023

NEW YORK CITY'S RECOVERY FROM THE COVID-19 PANDEMIC

WHEREAS, a state of emergency to address the economic and health threats and impacts of COVID-19 in the City of New York was first declared in Emergency Executive Order No. 98, dated March 12, 2020, and extended most recently by Emergency Executive Order No. 411, dated May 20, 2023, and expired on June 19, 2023; and

WHEREAS, the federal COVID-19 public health emergency declaration ended on May 11, 2023, and the New York state disaster emergency for COVID-19 ended on September 12, 2022; and

WHEREAS, the City has ended public health-related measures that had been ordered to address the COVID-19 emergency, including the requirement for prospective City employees to be vaccinated against COVID-19, which was rescinded by Executive Order No. 25, dated February 6, 2023; and the "Key to NYC" program, which was ended in accordance with Emergency Executive Order No. 50, dated March 4, 2022; and

WHEREAS, although the City, state, and federal governments have rescinded various public health-related measures responding to COVID-19, the City has yet to fully recover from the effects of the COVID-19 pandemic; and

WHEREAS, as of June 2023, the City's unemployment rate is 5.4%, higher than the national rate of 3.7%, and higher than City's unemployment rate of 4.3% in February 2020; and

WHEREAS, the City's office occupancy rate is approximately 48% of the pre-pandemic rate, and the City's subway ridership is at 70% of pre-pandemic levels; and

WHEREAS, 53% of New York residents are rent burdened, meaning they pay more than 30% of their monthly income on rent and utilities, and 32% are severely rent burdened, meaning they pay more than 50% of their monthly income on rent and utilities; and

WHEREAS, according to the Comptroller's June 2023 Economic and Fiscal Outlook, more jobs in the accommodation and food services, construction, arts and entertainment, and retail industries were eliminated by the COVID-19 pandemic than in other industries, and employment

in those industries has been slower to recover than in other industries and has not returned to pre-pandemic levels; and

WHEREAS, the Open Restaurants program saved 100,000 jobs and kept many food establishments viable during the pandemic, and continues to aid restaurants as they recover from the deleterious economic effects of the COVID-19 restrictions on social gatherings; and

WHEREAS, during the pandemic, the Department of Transportation was authorized by Emergency Executive Order No. 126, dated June 18, 2020, as subsequently amended, to establish and administer the Open Restaurants program to expand seating options for restaurants, bars and other establishments on the sidewalk or roadway in front of their establishment, in order to promote social distancing and assist restaurants and bars during difficult economic times, and the Department of Transportation, in consultation with the Department of Small Business Services, the Department of Sanitation, the Department of Buildings, and the not-for-profit corporation that contracts with the City to provide economic development services on behalf of the City, was also authorized by sections 1 through 7 of Emergency Executive Order No. 157, dated October 28, 2020, as subsequently amended, to establish and administer the Open Storefronts program to allow businesses to conduct certain business operations in the space directly in front of their establishments to increase their customer base while maintaining social distancing; and

WHEREAS, the City Council is currently considering legislation to establish a permanent Open Restaurants program, and this order will provide continuity to food establishments that are currently participating in the Open Restaurants program; and

WHEREAS, this Order is given because certain emergency measures continue to be necessary for the City's recovery from the economic, housing, transportation, and other effects of the COVID-19 pandemic;

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. I hereby declare a State of Emergency related to the effects of the COVID-19 pandemic and the recovery therefrom within New York City.

§ 2. In order to provide continued assistance to restaurants and bars recovering from the employment, financial and economic effects of COVID-19, I hereby direct the Department of Transportation to continue the Open Restaurants program.

§ 3. I hereby suspend the following provisions of the New York City Administrative Code ("Ad. Code") to the extent necessary to provide for the continued 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. Ad. Code. section 10-125, relating to the prohibition of the consumption of alcohol on streets;
- b. Ad. 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. Ad. 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. Ad. Code, title 20, chapter 2, subchapter 6, relating to licenses for sidewalk cafes;
- e. Ad. Code section 20-465(q)(1), relating to prohibiting any general vendor from vending within 20 feet of a sidewalk cafe; and
- f. Ad. Code, Title 28, Chapter 7, section BC 3101.1, relating to special building construction, section BC 3111, relating to the construction of sidewalk cafes, and section BC 3202.4.1, relating to the construction of enclosures for sidewalk cafes, provided, however that section BC 3111.4, relating to prohibited obstructions, and section BC 3111.6, relating to accessibility, are not suspended.

§ 4. I hereby suspend the following provisions of the Rules of the City of New York (“RCNY”) to the extent necessary to provide for the continued 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, sections 404-03(b)(2), relating to Building Code and permit requirements, and 404-03(b)(3), relating to submission of floor and elevation plans;
- 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.

§ 5. I hereby suspend the following provisions of the New York City Zoning Resolution (“ZR”) to the extent necessary to provide for the continued 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 and 42-41, to the extent such sections require eating and drinking establishment uses in certain Commercial Districts or Manufacturing 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.

§ 6. Nothing in this Order concerning the Open Restaurants program 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 3, 4, and 5 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.

§ 7. In order to enable businesses to continue utilizing outdoor space as they recover from the economic effects from COVID-19, I hereby direct the Department of Transportation, in consultation with the Department of Small Business Services, the Department of Sanitation, the Department of Buildings, and the not-for-profit corporation that contracts with the City to provide economic development services on behalf of the City, to continue the administration and operation of the Open Storefronts program.

a. For purposes of sections 7 through 13 of this Order, the following terms have the following definitions:

1. (a) The term “covered business” means a business located in or operating out of a ground floor commercial premises, including a food service establishment, to the extent such food service establishment limits the business that it conducts in its outdoor commercial premises to pick-up of pre-ordered food and the offer and sale of prepared prepackaged food or whole, uncut fruit or vegetables when operating as an Open Storefront. Any such pre-ordered food for pick-up or prepackaged food offered for sale outdoors must comply with Articles 71 and 81 of the New York City Health Code, Chapter 23 of Title 24 of the Rules of the City of New York, the New York State Sanitary Code, and any other relevant state or federal food safety regulation or law.

(b) A food service establishment may participate in the Open Storefronts program and the Open Restaurants program, provided that any such food service establishment may not provide both outdoor dining seating and goods for sale on the sidewalk at the same time.

2. The term “ground floor commercial premises” means any premises that is visible from the street and directly accessible to the public from the street which is occupied or used, or could be occupied or used, for the purpose of offering or selling goods at retail.

3. The term “outdoor commercial premises” means the space directly in front of a ground floor commercial premises on the sidewalk or on any street opened pursuant to the Open Streets program established by Ad. Code section 19-107.1, or any outdoor off-street parking space or private yard adjacent to a ground floor commercial premises, where such premises is authorized to conduct certain business pursuant to this Order.

b. To participate in the Open Storefronts program, a covered business must submit an attestation, available on the Department of Transportation’s website.

c. Any covered business participating in the Open Storefronts program shall adhere to all applicable program guidelines issued by the Department of Transportation (the “DOT Guidelines”), as well as any additional applicable guidance of the Department of Small Business Services, the Department of Sanitation, the Department of Health and Mental Hygiene, the New York State Department of Health or any other relevant agency.

d. A covered business or vendor on a street where a covered business is using an outdoor commercial premises must allow for a minimum eight (8) foot clearance for pedestrian traffic on the sidewalk at all times. Obstructions such as parking meters, traffic signs, tree pits that are flush with sidewalk grade, and street lamp posts shall not detract from the measurement of the eight foot clearance; however the calculation of the minimum eight (8) foot clearance shall be unencumbered of any street furniture including permanent benches, bicycle parking, tree pits with guard rails, and kiosks.

e. A covered business participating in the Open Storefronts Program shall be given priority over a vendor on a street where a covered business is using an outdoor commercial premises to use the outdoor commercial premises.

f. Notwithstanding the foregoing, a covered business may not operate an outdoor commercial premises in the World Trade Center Zone, as such area is described in section 20-465(g)(2) of the Ad. Code.

g. The Open Storefronts Program shall remain in effect for the duration of the emergency.

§ 8. I hereby suspend the following provisions of the Ad. Code, the RCNY, and the ZR, to the extent necessary for the continued administration and operation of the Open Storefronts Program as described in the DOT Guidelines:

a. Section 16-118 of the Ad. Code, relating to the prohibition on littering, to the extent necessary to allow a covered business to operate an outdoor commercial premises in accordance with the DOT Guidelines;

b. Sections 17-306(c), (d) and (h) of the Ad. Code, relating to the definition of “food vendor,” “food vending business,” and “vend” to the extent necessary to provide that a covered business participating in the Open Storefronts program is not a food vendor or a food vending business, and is not vending, as defined in such section;

c. Sections 17-315(a) of the Ad. Code, relating to restrictions on food vending, to the extent necessary to require that a pushcart placed on a street where a covered business is operating an

outdoor commercial premises must allow for a minimum eight (8) foot clearance for pedestrian traffic, as required by subdivision d of section 7 of this Order;

d. Section 19-124(a) of the Ad. Code, to the extent such subdivision prohibits the use by a covered business participating in the Open Storefronts program of a collapsible tent or umbrella in an outdoor commercial premises, in accordance with applicable provisions of the DOT Guidelines;

e. Section 19-136 of the Ad. Code, relating to obstructions, to the extent such section would restrict the locations in the City where the Open Storefronts Program may operate and to the extent any provision of such section conflicts with this Order or the DOT Guidelines;

f. Section 20-228(f) of the Ad. Code, relating to the definition of a “stoop line stand,” to the extent necessary to clarify that a covered business participating in the Open Storefronts program does not operate a stoop line stand, except as described in section 9 of this Order;

g. Section 20-452(b) of the Ad. Code, relating to the definition of a “general vendor,” to the extent necessary to clarify that a covered business participating in the Open Storefronts program is not a general vendor as defined in such section;

h. Section 20-465(a) of the Ad. Code, relating to restrictions on general vending, to the extent necessary to require that a general vendor on a street where a covered business is operating an outdoor commercial premises must allow for a minimum eight (8) foot clearance for pedestrian traffic, as required by subdivision d of section 7 of this Order;

i. Sections BC 3101.1, relating to special construction, BC 3103, relating to temporary structures, and BC 3202, relating to encroachments, of the New York City Building Code, in chapter 7 of title 28 of the Ad. Code, to the extent such sections prohibit the use by a covered business participating in the Open Storefronts program of a collapsible tent or umbrella in an outdoor commercial premises as allowed pursuant to applicable provisions of the DOT Guidelines;

j. 34 RCNY sections 2-03, relating to fees, and 2-04, relating to canopies, to the extent such provisions would require a covered business participating in the Open Storefronts program to obtain a permit or pay a fee to use a collapsible tent or umbrella an outdoor commercial premises, in accordance with the DOT Guidelines;

k. 34 RCNY sections 7-02, relating to obtaining a revocable consent, and 7-04, relating to eligible improvements, standards and annual rates, to the extent such provisions would apply to the installation or construction in an outdoor commercial premises of an improvement or other structure in accordance with the DOT Guidelines;

l. 50 RCNY section 1-01, relating to definitions relevant to street activity permits, to the extent necessary to clarify that the definition of “street event” set forth in such section shall not include any activity of a covered business conducted pursuant to this Order;

m. ZR section 32-41, to the extent necessary to allow a covered business participating in the Open Storefronts program to operate an outdoor commercial premises in accordance with this Order and the DOT Guidelines;

n. ZR section 36-46, to the extent such section prohibits a covered business from using adjacent off-street parking for an outdoor commercial premises in Commercial Districts; and

o. ZR section 44-35, to the extent such section prohibits a covered business from using adjacent off-street parking for an outdoor commercial premises in Manufacturing Districts.

§ 9. The holder of a license to operate a stoop line stand pursuant to section 20-233 of the Ad. Code shall, while this Order is in effect, be deemed a covered business participating in the Open Storefronts program for the purpose of operating such stoop line stand, so that such holder

of a license may continue any activity that is allowed under the terms of such license, provided, however, that the holder of such a license shall not engage in any other activity allowed by to this Order or the DOT Guidelines without first submitting an attestation to participate in the Open Storefronts program pursuant to subdivision b of section 7 of this Order.

§ 10. Notwithstanding any other provision of this Order, the Department of Transportation may suspend or revoke operation of the Open Storefronts program in any location in the City upon finding it necessary to do so to preserve safety and public health.

§ 11. Nothing in this Order concerning the Open Storefronts program shall relieve a covered business from its obligation to adhere to all local, state and federal requirements relating to health and safety, except as modified by section 8 of this Order. Any covered business participating in the Open Storefronts program must maintain its outdoor commercial premises in a manner that complies with all local, state and federal requirements relating to accessibility for people with disabilities, including path of travel, minimum table height, and clearance requirements.

§ 12. Any covered business participating in the Open Storefronts program is prohibited from conducting business in its outdoor commercial premises while a DSNY Snow Alert is in effect. Notwithstanding sections 16-123 and 16-124 of the Ad. Code, the owner of any such covered business shall be responsible for removing snow and ice from its outdoor commercial premises, as if such area is an area of paved sidewalk abutting a building under the business's control, and in accordance with applicable law and rules.

§ 13. I hereby direct the Fire Department of the City of New York, the New York City Police Department, the Department of Buildings, the Sheriff, and other agencies as needed to immediately enforce the directives set forth in this Order in accordance with their lawful enforcement authorities, including but not limited to Administrative Code sections 15-227(a), 28-105.10.1, and 28-201.1, and section 107.6 of the New York City Fire Code. Violations and directives set forth in this Order may be issued as if there were violations under the New York City Health Code, title 24 Rules of the City of New York sections 3.07 and 3.11, and may be enforced as such by the Department of Health and Mental Hygiene or any other agency named in this section.

§ 14. This Emergency Executive Order shall take effect immediately. The State of Emergency shall remain in effect for a period not to exceed thirty (30) days or until rescinded, whichever occurs first. Additional declarations to extend the State of Emergency for additional periods not to exceed thirty (30) days shall be issued if needed.



Eric Adams
Mayor