



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

EMERGENCY EXECUTIVE ORDER NO. 157

October 28, 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. 151, issued October 5, 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, covered businesses in the City have seen a significant decrease in business traffic and revenue during the pandemic, due to indoor capacity limits and other measures implemented to combat the spread of COVID-19; and

WHEREAS, allowing covered businesses to conduct certain business operations in space directly in front of their establishments on the sidewalk and on streets that have been opened pursuant to the Open Streets: Restaurants initiative will enable such businesses to increase their customer base while maintaining social distancing, and will protect public health by allowing customers to shop outside during the upcoming holiday season; 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 enabling businesses to utilize outdoor space and customers to shop outdoors during the holiday season, 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 establish and administer a program to allow a covered business to conduct certain business in certain outdoor areas, including the sidewalk space and street space opened pursuant to the Open Streets: Restaurants initiative that is directly in front of such businesses, and outdoor off-street parking space and private yards that are adjacent to such businesses, to promote open space and physical distancing, and to help businesses in these difficult economic times that have resulted from restrictions to restrain the spread of COVID-19 (the "Open Storefronts Program"). The Open Storefronts Program shall apply exclusively to covered businesses.

a. For purposes of this Order, the following terms have the following definitions:

1. The term "covered business" means a business located in or operating out of a ground floor commercial premises, but does not include a food service establishment.

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: Restaurants initiative, 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 Administrative Code of the City of New York.

g. The Open Storefronts Program will take effect on October 30, 2020, and shall remain in effect through December 31, 2020, unless extended by subsequent Emergency Executive Order.

§ 2. In order to facilitate the administration and operation of the Open Storefronts Program, I hereby suspend the following provisions of the Administrative Code of the City of New York (“Administrative Code”), the Rules of the City of New York (“RCNY”) and the New York City Zoning Resolution (“ZR”), to the extent necessary for the administration and operation of the Open Storefronts Program as described in the DOT Guidelines:

a. Section 16-118 of the Administrative 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 Administrative 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 Administrative 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 1 of this Order;

d. Section 19-124(a) of the Administrative 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 Administrative 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 Administrative 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 3 of this Order;

g. Section 20-452(b) of the Administrative 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 Administrative 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 1 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 Administrative 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 in 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.

§ 3. The holder of a license to operate a stoop line stand pursuant to section 20-233 of the Administrative 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 1 of this Order.

§ 4. 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.

§ 5. Nothing in this Order 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 2 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.

§ 6. 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 Administrative 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.

§ 7. In order to further encourage the use of outdoor space by retail businesses and customers during the holiday season, I hereby authorize the Department of Transportation to grant concessions for the use of pedestrian plazas for outdoor retail markets, provided any such concession shall not be subject to renewal and shall have a term of less than 120 days.

a. The Department of Transportation shall issue guidelines governing the procedures for applying for concessions described in this section. Any recipient of such a concession shall comply with the provisions of such guidelines.

b. Notwithstanding New York City Charter sections 373, 374 and 375 and 12 RCNY sections 1-16(d) and 1-17, any concession granted pursuant to this section shall not be subject to review by the Franchise and Concession Review Committee or to registration with the City Comptroller. Such provisions of the Charter and the RCNY are hereby modified or suspended to the extent necessary to effectuate this section.

§ 8. The provisions of this Order shall not apply in any location identified by the New York State Cluster Action Initiative as a "Red Zone" where outdoor dining is prohibited pursuant to Governor Executive Order No. 202.68. Cluster Action Initiative locations are available at <https://forward.ny.gov/>.

§ 9. This Order incorporates any and all relevant provisions of Governor Executive Order No. 202 and subsequent orders issued by the Governor of New York State to address the State of Emergency declared in that Order pursuant to his powers under section 29-a of the Executive Law.

§ 10. I hereby direct the Fire Department, the Police Department, the Department of Buildings, the Sheriff, the Department of Sanitation 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), 16-118, 28-105.10.1, and 28-201.1, and section 107.6 of the New York City Fire Code. Violations of the directives set forth in this Order may be issued as if they 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.

§ 11. 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