



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

EMERGENCY EXECUTIVE ORDER NO. 153

October 14, 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, Emergency Executive Order No. 126, issued June 18, 2020, established the Open Restaurants program, allowing restaurants, bars and other establishments to use outdoor space on sidewalks and the roadway to set up additional dining space, successfully supporting small businesses and allowing New Yorkers to safely enjoy dining out during the 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. In order to provide continued support to restaurants, bars and other establishments participating in the Open Restaurants program established by Emergency Executive Order No. 126, as amended by subsequent orders, and to allow such establishments to continue outdoor dining operations during the colder weather months, I hereby authorize such establishments to utilize temporary outdoor heaters in their outdoor dining areas.

a. For purposes of this Order, a “temporary outdoor heater” means a freestanding or ceiling- or wall-mounted electric radiant heater, portable radiant heater fueled by piped natural

gas, or portable heater fueled by propane liquefied petroleum gas ("LPG"), provided any such heaters comply with this Order and the guidance described in subdivision c of this section.

b. The use of temporary outdoor heaters in outdoor dining areas operated pursuant to the Open Restaurants program is subject to the following limitations:

1. For the purposes of the Open Restaurants program, temporary outdoor heaters fueled by piped natural gas shall be deemed to be "limited plumbing alterations, category 2", as defined in section 28-101.5 of the Administrative Code, and applications for such work may be filed with the Department of Buildings ("DOB") by licensed master plumbers.

2. For outdoor dining areas operated pursuant to the Open Restaurants program, electric heaters may be placed within such areas on sidewalks and on roadways, and LPG and natural gas-fueled portable heaters may be placed only on sidewalks.

3. Propane containers may not be stored on sidewalks, roadways, or indoors. They may only be stored in facilities approved by the Fire Department ("FDNY"), except that one-pound containers of propane may be stored in accordance with the guidance issued by FDNY pursuant to subdivision c of this section.

4. Freestanding portable temporary outdoor heaters must be removed from outdoor dining areas prior to the start time indicated upon a Snow Alert issued by the Department of Sanitation ("DSNY"). DSNY makes this information available on its website at <https://www1.nyc.gov/assets/dsnv/site/home>. Non-fixed features of outdoor dining areas, such as tables and chairs, must be removed from such areas or secured in place pursuant to the Department of Transportation's siting criteria.

5. In the event of a DSNY Snow Alert, LPG containers must be removed from heaters prior to storing the heaters indoors.

c. In addition to the requirements set forth above, any use of a temporary outdoor heater pursuant to this section shall adhere to applicable guidance issued by DOB, available on DOB's website at <https://www1.nyc.gov/site/buildings/codes/building-bulletins-current.page>, and by FDNY, available on FDNY's website at <https://www1.nyc.gov/site/fdnv/business/support/restaurant-help.page>.

§ 2. Any restaurant, bar or other establishment participating in the Open Restaurants program is prohibited from providing service in an outdoor dining seating area while a DSNY Snow Alert is in effect. Notwithstanding sections 16-123 and 16-124 of the Administrative Code, the owner of any such restaurant, bar or establishment shall be responsible for removing snow and ice from their outdoor dining area, as if such area is an area of paved sidewalk abutting a building under the establishment's control, and in accordance with applicable law and rules.

§ 3. In order to provide support to food service establishments that offer outdoor dining on private property, and to allow such establishments to continue outdoor dining operations during the colder weather months, I hereby authorize the use of portable heaters fueled by LPG

in courtyards or other outdoor spaces on private property used by food service establishments for outdoor dining, subject to the provisions of this Order and guidance issued pursuant to subdivision c of section 1 of this Order. Any such use is prohibited in an outdoor dining area located above grade except as provided in the guidance issued by FDNY pursuant to subdivision c of section 1 of this Order.

§ 4. I hereby authorize the use of electric and natural-gas fueled temporary outdoor heaters in courtyards or other outdoor spaces on private property used by food service establishments for outdoor dining, subject to the provisions of this Order and guidance issued pursuant to subdivision c of section 1 of this Order.

§ 5. For portable heaters fueled by LPG, this Order allows only the use of such heaters using propane. The use of portable heaters fueled by non-propane LPG, such as butane, is prohibited.

§ 6. I hereby suspend section 3805.3(12) of the New York City Fire Code to the extent such provision prohibits the use of LPG for space heating in outdoor dining areas operated pursuant to the Open Restaurants program or in courtyards or other outdoor spaces on private property used by food service establishments for outdoor dining, and operated subject to the provisions of this Order and guidance issued by FDNY pursuant to subdivision c of section 1 of this Order.

§ 7. I hereby suspend section 404-03(b)(5)(C) of Chapter 4 of Title 3 of the Rules of the City of New York, to the extent such provision conflicts with the DOB guidance described in subdivision c of section 1 of this Order.

§ 8. I hereby suspend the following provisions of Appendix A of the New York City Fire Code, to the extent such provisions require the payment of a fee for the storage, handling and use of propane or the handling and use of temporary outdoor heaters as authorized by this Order:

a. Section FC A01.1(3), relating to certificates of fitness, provided such suspension is limited to fees for a T-93 Certificate of Fitness for Temporary Suspension of Storage, Handling, and Use of Propane Containers and the Portable Space Heaters in Outdoor Dining;

b. Section FC A03.1(41), relating to the storage, handling or use of LPG;

c. Section FC A03.1(46), relating to an open flame permit and the fire safety inspection for the use of an open flame;

d. Section FC A03.1(51), relating to review of design and installation documents for an LPG storage facility; and

e. Section FC A03.1(52), relating to the storage, handling or use of a portable fueled space heater.

§ 9. Any temporary outdoor heater authorized by this Order must be removed upon a determination by DOB or FDNY that such temporary outdoor heater is a safety hazard. Any temporary outdoor heater in an outdoor dining area operated pursuant to the Open Restaurants program as authorized by this Order must also be removed upon termination of such program or revocation of the establishment's certification to participate in such program.

§ 10. 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 sections 104.5.1, 107.6, and 313.4 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