



# BUILDINGS 2021-005 BULLETIN OPERATIONAL

ISSUANCE DATE  
May 28, 2021

SUPERSEDES  
BB 2020-017



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First Deputy Commissioner

PURPOSE: This bulletin describes when a DOB permit application is not required for the safe New York City reopening of restaurants and bars.

SUBJECT(S): Emergency Executive Order No. 126; Emergency Executive Order No. 128; Emergency Executive Order No. 200; Phase 3, Reopening; Open Restaurants Program; Restaurants; Bars; Food Establishments; Sidewalk; Yard; Parking Lots; Rooftop; Terrace; Place of Assembly Certificate of Operation

## RELATED EMERGENCY EXECUTIVE ORDERS: EO 126, EO 128, EO 200

### I. Background

In conjunction with DOT's Open Restaurants Program for sidewalk and roadway dining, the Department of Buildings shares the following guidance for the types of minor changes owners can make for the safe continuation of outdoor dining in restaurants and bars without having to obtain a construction permit from the Department of Buildings.

### II. Outdoor Seating in Front of a Restaurant or Bar

For restaurants and bars seeking permission to place outdoor seating in front of their establishment on the sidewalk and/or in the roadway, please apply through [NYC Open Restaurant Program](#), comply with the requirements outlined in the guidelines and the conditions listed under the **Applications for DOB Permit Not Required** section below.

### III. Minor Modifications on Private Property **NOT** Requiring a DOB Permit

Where an establishment wishes to place outdoor seating on private property and complies with the conditions listed under the **Applications for DOB Permit Not Required** section below, there is no need to file with the Department of Buildings for the specified minor modifications.

### IV. Changes Affecting Code Compliance

The Department encourages restaurants and bars to limit minor modifications within the conditions listed under the **Applications for DOB Permit Not Required** section below so that there is no need to file with the Department.

Where modifications meet the conditions listed under the **Applications for DOB Permit Required** section below, applications for permits from the Department of Buildings are required. Additional information on obtaining a permit is available at [www1.nyc.gov/site/buildings/business/how-to-obtain-a-permit.page](http://www1.nyc.gov/site/buildings/business/how-to-obtain-a-permit.page). Alternatively, the Department offers a **Professional Certification Program** which enables Professional Engineers (PE) and Registered Architects (RA) to certify that the plans they file with the Department comply with all applicable laws. This reduces the amount of time a builder

normally needs to wait for a DOB permit by eliminating the process of Department plan examination and approval.

**V. Maintaining Social Distancing, Building Safety and Accessibility**

Ensure compliance with social distancing required by the [NYS Interim Guidance For Outdoor and Take-Out/Delivery Food Services During The Covid-19 Public Health Emergency](#) guidance. In any case, do not provide less than 15 SF per person when tables and seating are provided in yards\*, roofs and parking lots.

*\*NOTE: Where the only exit from a yard passes through an interior space, the number of occupants in the yard must not exceed 74 persons. Roofs without occupancy listed on Certificate of Occupancy or Place of Assembly Certificate of Occupancy (PACO) must apply to DOB.*

All other Building Code safety requirements remain in effect and must be observed. Accessible routes and features must also be maintained in buildings and outdoor spaces as part of reopening.

**VI. Posting of Dining Capacity**

Where indoor dining is also provided in accordance with NYS [Interim Guidance For Food Services During The Covid-19 Public Health Emergency](#) guidance, restaurants must publicly post their indoor dining capacity and the phone number and text number at which diners can report violations in a conspicuous location at the front entrance. The posting must indicate numbers for both indoor and outdoor seating areas.

Permit Type	Applications for DOB Permit <b>NOT</b> Required	Applications for DOB Permit <b>Required</b>
<b>1. Signage</b>	<ul style="list-style-type: none"> <li>a. Floor markings/indicators</li> <li>b. Signs on stands or walls</li> </ul>	<ul style="list-style-type: none"> <li>i. Signage that obstructs existing exit signs</li> </ul>
<b>2. Barriers for Physical Distancing (indoors)</b>	<ul style="list-style-type: none"> <li>a. Plastic tape, rope, or retractable belt stanchions as barriers</li> <li>b. Moveable barriers or railings</li> <li>c. Removable polycarbonate/acrylic or other visually transparent shields/barriers that do not prevent free movement or create a separately enclosed space</li> <li>d. Spacing furniture further apart with walking clearance increased or maintained</li> </ul>	<ul style="list-style-type: none"> <li>i. Any barrier that prevents free movement or creates a separately enclosed space</li> <li>ii. Permanent installations, such as railings, balustrade, guards, or other barriers anchored or fastened to the floor or structure</li> <li>iii. Any shields/barriers within 2 feet of sprinkler heads or that obstruct fire alarm strobe lights or other visual alarms</li> <li>iv. Placing furniture in a manner that reduces existing walking clearance</li> </ul>

Permit Type	Applications for DOB Permit <b>NOT</b> Required	Applications for DOB Permit <b>Required</b>
<p><b>3. Use of Outdoor Spaces</b></p>	<p><b>a.</b> As permitted by Emergency Executive Order No. 126, the following outdoor spaces may be used for outdoor dining:</p> <ul style="list-style-type: none"> <li>• Sidewalk and/or roadway (apply through <a href="#">NYC Open Restaurant Program</a>)</li> <li>• Yards</li> <li>• Parking lots (owned or leased)</li> <li>• Rooftops or terraces previously approved for use as outdoor dining areas for restaurants and/or bars</li> </ul>	<p><b>i.</b> The use of outdoor spaces for outdoor dining <i>not</i> permitted by Emergency Executive Order No. 126</p> <p><b>ii.</b> Seating provided in a yard, where the only exit provided from the yard passes through the interior of the restaurant and the number of occupants in the yard and any indoor occupancy exiting through the same exit exceeds 74 persons</p> <p><b>iii.</b> Rooftops or terraces not previously approved for use as a restaurant and/or bar</p>
<p><b>4. Placement of Outdoor Seating</b></p>	<p><b>a.</b> Restaurants with outdoor seating as permitted by Emergency Executive Order No. 126 and which meet the following conditions:</p> <ul style="list-style-type: none"> <li>• All exits from the building to sidewalk must be clear and unobstructed. Except for movable tables and chairs, fire escapes and cellar hatches should be kept clear</li> <li>• All mechanical ventilation openings facing outdoor seating must be clear and unobstructed</li> <li>• Clear access to standpipe connections, hydrants or other associated fire department connections must be maintained</li> <li>• No seating shall be located on accessible parking spaces</li> <li>• No modifications to existing electrical wiring unless done by a licensed electrician. Temporary lighting such as festoon lighting is allowed. Use only outdoor-use extension cords, with accessible, protective covers when placed across the sidewalks, and install properly to prevent tripping hazards. Follow manufacturers safety instructions.</li> </ul>	<p><b>i.</b> Restaurants not permitted to have outdoor seating through Emergency Executive Order No. 126</p> <p><b>ii.</b> Any awning, enclosure, fixture, equipment or removable platform that blocks, interfere or obstructs:</p> <ul style="list-style-type: none"> <li>• Exits from the building, including fire escapes and cellar hatches</li> <li>• Mechanical ventilation openings facing outdoor seating</li> <li>• Access to standpipe connections, hydrants or other associated Fire Department connections</li> </ul>

Permit Type	Applications for DOB Permit <i>NOT</i> Required	Applications for DOB Permit Required
<p><b>5. Temporary Structures</b></p>	<p><b>a.</b> Tents or other shelters that are on the sidewalk and/or roadway where the restaurants or bars have obtained approval through <a href="#">NYC Open Restaurant Program</a> and are less than 400 SF each in area. Areas of multiple tents that are combined or are tied to each other cannot exceed 400 SF in total.</p> <p><b>b.</b> A tent or other shelter within private properties that is removed regularly and is less than 400 SF in area. Areas of multiple tents that are combined or are tied to each other cannot exceed 400 SF in total.</p> <p><b>c.</b> Where tents or other shelters are enclosed by more than 50% on the side wall surfaces, seating is limited to 75% capacity and the space must follow all other indoor dining guidelines in accordance NYS Guidance for indoor dining. A portable carbon monoxide (CO) monitor is also required in enclosed tents where the use of natural gas heaters are allowed as part of outdoor dining.</p> <p><b>d.</b> Follow manufacturers installation instructions to secure the tents properly and safely. Tents should not be used during inclement weather such as high wind condition. Sign-up for <a href="#">DOB's Weather Advisory Subscription</a>.</p>	<p><b>i.</b> Tents or other shelters that are greater than 400 SF each in area, including multiple tents combined or tied together with a total area greater than 400 SF</p>
<p><b>6. General Exits from Building</b></p>	<p><b>a.</b> All paths to exits maintained</p> <p><b>b.</b> No reduction in widths of aisles, corridors, or entries</p> <p><b>c.</b> All exit doors, stairs, and ramps remain clear and unobstructed</p> <p><b>d.</b> Movable furniture, including temporary booths or tables used for health screenings, that do not block any exits or access to exits</p> <p><b>e.</b> All exit signs remain visible</p>	<p><b>i.</b> Existing path clearance reduced</p> <p><b>ii.</b> Increased distance to exits</p> <p><b>iii.</b> Changing access to existing exits or use of door or stairway not previously identified as an exit</p> <p><b>iv.</b> Aisles, corridors or lobbies blocked by furniture or permanently installed barriers</p>

## VI. Heating for Outdoor Dining

Refer to Buildings Bulletins for more information on electric ([BB 2021-006](#)) and natural gas-fired heaters ([BB 2021-007](#)). Electric heaters are allowed on both sidewalks and roadways. Natural gas heaters are allowed on sidewalks only and are prohibited in roadways. Open flame natural gas-fired heaters are not permitted. Under Emergency [Executive Order 200](#), **use of propane heaters is not permitted after May 31, 2021**. Any outdoor propane heaters temporarily permitted by Emergency Executive Order 153 must be removed from the outdoor dining area and disconnected from any propane container. Disconnected propane heaters may be stored on the premise in accordance with FDNY guidelines. However, propane containers shall be removed from the premise at the close of business on May 31, 2021, except as permitted by the Fire Code or title 3 of the Rules of the City of New York.

## RESOURCES

### New York State

- [New York State Liquor Authority Guidance on Outdoor Expansion of Licensed Premises in Response to COVID-19 Outbreak](#)
- [Interim Guidance for Outdoor and Take-Out/Delivery Food Services During the COVID-19 Public Health Emergency](#)
- [Interim Guidance For Food Services During The Covid-19 Public Health Emergency](#)
- [New York State Indoor Dining Guidance](#)

### New York City

- [NYC Restaurant Reopening Guide](#)
- **NYC Small Business Services Hotline: (888) SBS-4NYC**  
The City has launched a small business hotline to answer the most pressing questions of small business owners as they prepare to re-open. Small Business Advocates and Compliance Advisors will monitor the hotline and have been equipped with the latest guidelines and regulations to share with business owners.
- [Information about Reopening NYC Businesses](#)
- [NYC Department of Health COVID-19: Guidance for Businesses](#)
- [Reopening NYC: FAQ - What Outdoor and Take-Out and Delivery Food Services Need to Know](#)
- [Con Edison Requirements to Ensure Access and Ventilation of Utilities during Outdoor Seating \(6/18/20\)](#)
- [Emergency Executive Order 126: Open Restaurants Program and the Expansion of Outdoor Seating in Phase 2](#)
- [Emergency Executive Order 200: Emergency Executive Order](#)
- COVID-19 diagnostic test is safe, free, and easy. Find out more by calling **311** or visiting [nyc.gov/covidtest](https://nyc.gov/covidtest).



**OPEN RESTAURANTS PROGRAM:  
REOPENING OF OUTDOOR & INDOOR DINING**

**CAPACITY POSTING**

Premise Address: \_\_\_\_\_

Name of Establishment: \_\_\_\_\_

**CUSTOMERS EXCEEDING THE NUMBER LISTED BELOW IS DANGEROUS AND UNLAWFUL**  
INDOOR SEATING AREA

Maximum Number of Customers \_\_\_\_\_

INDOOR SEATING AREA

Location	Maximum Number of Customers	Location	Maximum Number of Customers
<input type="checkbox"/> Roadway	_____	<input type="checkbox"/> Side Yard	_____
<input type="checkbox"/> Sidewalk	_____	<input type="checkbox"/> Rear Yard	_____
<input type="checkbox"/> Patio	_____	<input type="checkbox"/> Rooftop	_____
<input type="checkbox"/> Front Yard	_____	<input type="checkbox"/> Parking Lot	_____
<input type="checkbox"/> Other Open Space (outdoor)	_____ (please specify)		_____

I, \_\_\_\_\_, the owner of the subject eating and drinking establishment, certify that by participating the Open Restaurants Program, I shall adhere to all applicable guidance issued by the Department of Buildings, the Department of Transportation, the Department of Health and Mental Hygiene, the New York State Department of Health and the State Liquor Authority.

**MUST BE POSTED CONSPICUOUSLY  
AT ALL TIMES**

In accordance with New York State Interim Guidance, responsible parties must conspicuously post for employees and patrons both inside the restaurant, as well as on exterior of the restaurant (i.e. posting on door):

- The number of patrons that constitutes 75% capacity in their establishment; and
- The phone number and text number to report violations.

Individuals who observe violations can report issues by  
Calling (833) 208-4160 or by texting violation to (855) 904-5036.