

**ORDER OF THE COMMISSIONER OF HEALTH
AND MENTAL HYGIENE FOR BUSINESS
CLOSURES FOR NON-COMPLIANCE WITH
COVID-19 HEALTH AND SAFETY
REQUIREMENTS**

WHEREAS, on March 7, 2020, New York State Governor Andrew Cuomo issued Executive Order No. 202, declaring 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 such order remains in effect; and

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents; and such Emergency Executive Order directed all agencies, including the Board of Health (“Board”) and the Department of Health and Mental Hygiene (“Department”), to take all appropriate and necessary steps to preserve public safety and to render all required and available assistance to protect the security, well-being and health of the residents of the City, and such order remains in effect; and

WHEREAS, on March 25, 2020, pursuant to Section 3.01 of the New York City Health Code (“Health Code”), the existence of a public health emergency within the City as a result of COVID-19, for which certain orders and actions are necessary to protect the health and safety of the City of New York and its residents, was declared; and

WHEREAS, on April 15, 2020, Governor Cuomo issued Executive Order No. 202.17 requiring all persons over 2 years of age who are medically capable, to wear a face covering when in a public place and not maintaining social distance, and subsequent Executive Orders required businesses opening and operating pursuant to the New York Forward plan to comply with the relevant guidance for their business as issued by the New York State Department of Health (“NYSDOH”), and such guidance documents require employees to wear a face covering when in direct contact with customers or members of the public and unable to maintain 6 feet of distance from another person; and

WHEREAS, on September 9, 2020, Governor Cuomo issued Executive Order No. 202.61, allowing indoor food services and dining to resume in New York City beginning September 30, 2020, and on or about September 11, 2020, NYSDOH issued guidance requiring food service establishments resuming indoor service to limit indoor capacity to no more than 25% of maximum occupancy; to restrict seating or service at the bar; to ensure that employees wear a face covering at all times; and to implement mandatory daily health screening practices of their employees, and such restrictions may be further adjusted in subsequent NYSDOH guidance or orders of the Governor; and

WHEREAS, as part of the State’s phased reopening, non-essential gatherings in public places in Phase 4 regions are limited to 50 or fewer people, and pursuant to the Governor’s Executive Order 202.68 issued on October 6, 2020¹, non-essential gatherings are further restricted

¹ See “Guidance for Determining Whether A Business Enterprise Is Subject to A Workforce Reduction Under

in locations designated by the State as cluster-based zones, and such restrictions may be further adjusted in subsequent orders of the Governor; and

WHEREAS, pursuant to Governor’s Executive Order No. 202.74, issued November 12, 2020, food service establishments are required to cease all on-premises service and consumption of food and beverage no later than 10:00 pm each day and non-essential gatherings in private residences are limited to 10 or fewer people, and such restrictions may be further adjusted in subsequent orders of the Governor; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board may embrace in the Health Code all matters and subjects to which the power and authority of the Department extends, and pursuant to Section 556 of the Charter and Section 3.01 of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, pursuant to Section 556(a)(5) of the Charter, the Department may arrange, with the approval of the Mayor, for the rendition of services by other City agencies; and

WHEREAS, on October 1, 2020, I arranged for various other City agencies and offices to enforce violations of State and local COVID-19 health and safety requirements as violations of Section 3.07 the Health Code, including ordering the closure of businesses when there was repeated noncompliance with such requirements (“October 1, 2020 Order”); and

WHEREAS, incidence of COVID-19 is increasing in the City, despite efforts to combat the spread of COVID-19, such as diagnostic testing, case investigation, contact tracing, isolation, and quarantine; and

WHEREAS, because of the rapid, marked, and sustained increase in COVID-19 positivity rates throughout the City, it is now necessary to allow for the immediate closure of businesses that fail to comply with State and local COVID-19 health and safety requirements; and

WHEREAS, failure to adhere to the necessary precautions to prevent the spread of COVID-19 in restaurants and other businesses, as described in the Governor’s Orders and NYSDOH guidance documents, including ensuring that employees wear a face covering when in direct contact with customers or members of the public, having a process in place for employee health screening, limiting indoor dining capacity to no more than 25% maximum occupancy, and restricting food service establishments from providing seating at the bar, creates an unnecessary and avoidable risk of illness and endangers the health of City residents, and is therefore a nuisance, as defined in New York City Administrative Code §17-142; and

WHEREAS, pursuant to Health Code Section 3.07, no person “shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual [or] shall fail to do any reasonable act or take any necessary precaution to protect human life and health;” and

Executive Order 202.68, Related to New York’s Cluster Action Initiative to Address Covid-19 Hotspots” updated October 7, 2020 and accessible at <https://esd.ny.gov/ny-cluster-action-initiative-guidance>.

WHEREAS, pursuant to Health Code Section 3.09, no person shall allow a nuisance to exist or to be created in respect to any matter, thing, chattel or premises which he or she owns or controls; and

WHEREAS, pursuant to Section 2.6 of the New York State Sanitary Code and Section 11.03(e) of the Health Code, the Department is required to conduct an investigation to determine the sources of outbreaks of infectious diseases such as COVID-19, and to take steps necessary to prevent further infection and spread; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, pursuant to Section 3.01(c) of the Health Code, the Department is authorized to take such action as may be necessary to assure the maintenance of public health, the prevention of disease, or the safety of the City and its residents;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and, hereby order that, in accordance with Section 556(a)(5) of the Charter, the Department, the Police Department, the New York City Sheriff, the Fire Department, the Department of Buildings, the Department of Consumer and Worker Protection, the Office of the Mayor, acting through the Office of Special Enforcement, which shall be deemed for this purpose to include employees of any other agency detailed thereto, and any other City agency having jurisdiction over businesses affected by this Order, may enforce violations of State and City COVID-19 health and safety requirements as violations of Section 3.07 of the Health Code, including ordering the immediate closure of businesses where there is noncompliance with any such requirement.

FURTHER, I hereby order that any business or entity ordered to close pursuant to an Order issued by any such office or agency must remain closed pending submission to the Department of a corrective action plan specifying how the business or entity will maintain ongoing compliance with all applicable State and City directives and guidance, and receipt of written approval from the Department authorizing the business or entity to reopen. Within 3 business days after submission of the corrective action plan, the Department will either provide such written approval or indicate to the business or entity that such submitted plan does not allow for the continued compliance with the applicable State and City directive and guidance.

FURTHER, I hereby RESCIND the October 1, 2020 Order relating to enforcement of violations of State and City COVID-19 health and safety requirements, which is hereby REPLACED by this Order, so that any action, order or requirement of such October 1, 2020 Order is continued and may be enforced as if it were issued under this Order.

This Order is effective immediately and shall remain in effect until the end of the public health emergency, or such earlier time as I may indicate.

Dated: 11/13/2020



Dave A. Chokshi, M.D., MSc
Commissioner