



**RESCINDED BY
BUILDINGS BULLETIN 2021-009**



**BUILDINGS
2021-008
BULLETIN
OPERATIONAL**

**ISSUANCE DATE
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**SUPERSEDES
BB 2020-020**

ISSUER: Gus Sirakis, P.E. 
First Deputy Commissioner

PURPOSE: This bulletin describes when a DOB permit application is not required and how to determine the number of occupants for the reopening of indoor food services and dining in restaurants and establishments in New York City

SUBJECT(S): Indoor Dining Reopening; Indoor food services; Open Restaurants Program; Restaurants; Place of Assembly Certificate of Operation; Occupant Load

RELATED BUILDINGS BULLETIN: BB 2021-005

I. Background

On September 30, 2020, indoor dining resumed in New York City¹ and will follow updated guidelines and rules for dining operations developed by New York State pursuant to NYS Executive Order 202.61. On May 7, 2021, the NYS Department of Health published the updated [Interim Guidance for New York City Indoor Food Services During the COVID-19 Public Health Emergency](#). The Department of Buildings (DOB) is providing the following guidance to describe how restaurant owners and operators can 1) independently determine the number of diners allowed for the safe reopening of indoor dining, and 2) make minor changes to your indoor dining space without having to obtain a construction permit from the DOB.

Also, where outdoor dining is provided through the Open Restaurants Program, tents or other shelters that are enclosed by more than 50% on the side wall surfaces must be limited to 75% seating capacity and the space must follow all other indoor dining guidelines in accordance New York State Department of Health guidelines for indoor dining.

II. To Determine the Number of Diners Allowed in Indoor Dining Spaces

The first step is to find out whether you or the property management have a Certificate of Occupancy (CO) or a posted capacity on the Place of Assembly Certificate of Operation (PACO) on file. If you cannot locate one, information may be available at <https://www1.nyc.gov/site/buildings/homeowner/certificate-of-occupancy.page>.

A. Certificate of Occupancy or Posted Capacity Available

1. Find the number of occupants indicated on the most recent Certificate of Occupancy (CO) or a posted capacity on the Place of Assembly Certificate of Operation (PACO).
2. Multiply the number of occupants indicated on the CO or posted capacity by the maximum occupancy allowed in accordance with NYS Guidance, available at <https://forward.ny.gov/new-york-city-phase-four-industries#indoor-food-service>. At the time of this bulletin's publication, the indoor dining capacity allowed is 75% of maximum occupancy. Employees of the restaurant need not be included in the total capacity. *As this is subject to change, please consult the NYS Guidance for the most current capacity restrictions.*

¹ In accordance with Executive Order 202.68, indoor dining is not allowed for restaurants within the Red and Orange zones, therefore, this guidance is inapplicable to businesses in those zones. In Yellow Zones, indoor dining is permitted; however, restaurants and taverns must limit any one seated group or party size to four (4) people. For more information, see <https://esd.ny.gov/ny-cluster-action-initiative-guidance>.

- There must be six (6) feet between tables in all directions for distancing and no more than 10 persons may be seated at one table. Where distancing is not feasible, physical barriers at least five (5) feet in height must separate tables in accordance with the NYS Guidance² or a reduction in the number of diners must occur in order to comply with the distancing requirements. Six (6) feet shall be maintained between different groups of customers at the bar seating.
- For restaurants with only one exit door, the total number of occupants cannot exceed 74 persons. Therefore, where diners from any yards or other outdoor dining spaces that are within private property must enter the restaurant/establishment in order to reach the one exit door, the calculation of the total number of occupants must include these outdoor diners.

Example where CO is available

- Find the number of occupants on the CO. In this example, the maximum number of persons permitted for the eating and drinking establishment (restaurant) is 76.



Page 2 of 2

Certificate of Occupancy

CO Number:

Permissible Use and Occupancy						
All Building Code occupancy group designations are 1968 designations, except RES, COM, or PUB which are 1938 Building Code occupancy group designations.						
Floor From To	Maximum persons permitted	Live load lbs per sq. ft.	Building Code occupancy group	Dwelling or Rooming Units	Zoning use group	Description of use
CEL		OG	B-2		6	ACCESSORY STORAGE
001	76	120	F-4		6	EATING AND DRINKING ESTABLISHMENT.
001	50	120	C		6	STORE
002	55	120	C		6	STORE

- Multiply the maximum number of persons permitted by the CO (76 in this case) by the maximum capacity allowed by the NYS Guidance in effect.
 76×0.75 (the permitted capacity at the time of publication) = 57 persons.
57 persons is the maximum number of diners allowed indoors and this number must be posted in a visible location per NYS Guidance. See Part III below.
- If the indoor dining layout cannot provide 6 feet of distancing between each table, then physical barriers must be provided, or the number of diners must be further reduced to meet distancing requirements.
- If only one exit serves both the indoor dining space and the outdoor dining spaces within the private property, such as in rear or side yards, the maximum number of total diners cannot exceed 74 persons. In this example, if there is only one exit door, and the indoor dining accommodates 57 persons, the outdoor dining spaces within private property may only accommodate 17 diners (74 persons - 57 persons = 17 persons) if the maximum of 57 persons are to be accommodated for indoor dining.

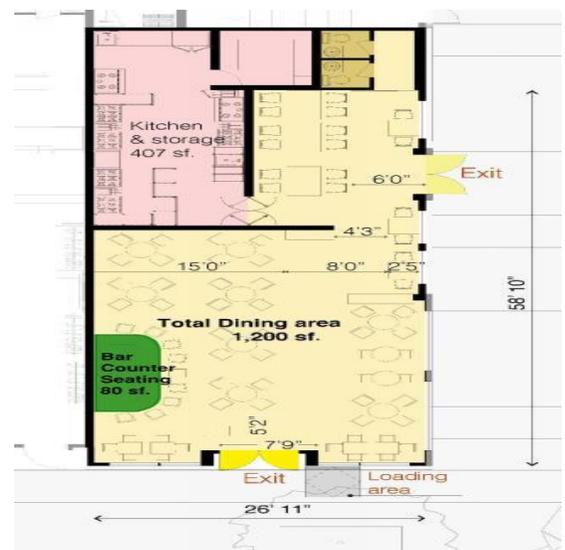
² NYS Summary Guidelines

B. Certificate of Occupancy or Posted Capacity Unavailable

1. Measure the total floor area of the indoor dining space. Floor area for built-in features such as counters and columns must be excluded. Fixed seating, such as booth seating, must also be excluded, and the number of occupants will be calculated in accordance with Item 3 below.
2. Divide the total floor area without built-in features or fixed seating in square feet by 15 square feet per person and round down to the nearest whole number to determine the number of occupants. If there is no fixed seating such as booths, proceed to Step 4 below.
3. For indoor spaces with fixed seating such as booths, determine the number of seats available for diners at the booths and add to the number of occupants in Item 2. This is the combined total of occupants allowed in the indoor dining space. Proceed to Step 4 below.
4. Multiply the number of occupants allowed by the maximum occupancy allowed in accordance with the NYS Guidance, available at <https://forward.ny.gov/food-services-industry-guidance>. At the time of this bulletin's publication, the indoor dining capacity allowed is 75% of maximum occupancy. Employees of the restaurant need not be included as this is subject to change, *please consult with NYS Guidance for the most current restrictions*.
5. Follow the most current NYS Guidance for other limitations. At the time of this bulletin's publication, the following restrictions apply, including but not limited to:
 - a. Responsible Parties may allow customers to be seated and served at bar areas, provided a distance of at least six feet can be maintained between parties (i.e., groups of patrons). Responsible Parties must ensure that bar area staff keep a distance of at least six feet between each other and/or customers, when possible.
 - b. There must be six (6) feet between tables in all directions for distancing and no more than 10 persons may be seated at one table. Where distancing is not feasible, physical barriers must separate tables in accordance with the NYS Guidance or a reduction in the number of diners to accommodate the distancing requirements.
6. If you have a unique situation that makes it difficult to determine the appropriate numbers, talk to a licensed NYS professional engineer or registered architect to help you determine the occupancy.
7. For restaurants with only one exit door, the total number of occupants cannot exceed 74 occupants. Where diners from any yards or other outdoor dining spaces must enter the restaurant/establishment in order to reach the one exit door, the calculation of the total number of occupants must include these outdoor diners.

Example where CO or Posted Capacity is Unavailable

1. Determine the total floor area of the indoor dining space. In this example, the total floor area used for indoor dining is 1,200 square feet. There is no booth seating in this example, but the bar counter area is 80 square feet and is considered a built-in feature that must be deducted from the total square footage. The total floor area allowed for indoor dining is 1,120 square feet ($1,200 - 80 = 1,120$).
2. Divide the 1,120 square feet by 15 square feet per person and round down to the nearest whole number to determine number of occupants allowed at the dining area.
 - a. $1,120 / 15 = 74.66$. 74 occupants is the number of occupants allowed at the dining area



3. *Divide bar counter length by 1.5 ft per person and round down to the nearest whole number to determine the number of occupants allowed at the bar. The length of the bar counter is 14 feet.*
 - a. *14 / 1.5 = 9.33. 9 occupants is the number of occupants allowed at the bar*
4. *Multiply occupants by maximum capacity allowed by NYS Guidance at the time of indoor dining.*
 - a. *Dining area: 74 x 0.75 (capacity at the time of publication) = 55.5, round down to 55*
 - b. *Bar area: 9 x 0.75 (capacity at the time of publication) = 6.75, round down to 6, also maintain 6 feet social distance between groups.*
 - c. *55 + 6 = 61*
61 persons is the maximum number of diners allowed and this number must be posted in a visible location.
5. *If the indoor dining layout cannot provide 6 feet of distancing between each table, then physical barriers must be provided, or the number of diners must be further reduced to meet distancing requirements.*

III. Posting of Dining Capacity

In accordance with NYS 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. If outdoor seating is provided, the posting must indicate numbers for both indoor and outdoor seating areas.

IV. Additional Considerations

In accordance with NYS Guidance, Responsible Parties must limit the number of patrons to any event at the food services establishment to the lesser of 75% of the maximum occupancy or the current social gathering restrictions that are in effect for the region as a part of the State’s phased reopening.

Where a restaurant owner or operator wishes to modify indoor dining spaces, the following table describes the types of minor changes that can be made indoors for the safe reopening of restaurants and bars without having to obtain a construction permit from the DOB:

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

Permit Type	Applications for DOB Permit NOT Required	Applications for DOB Permit Required
General Exits from Building	<ul style="list-style-type: none"> a. All paths to exits maintained b. No reduction in widths of aisles, corridors, or entries c. All exit doors, stairs, and ramps remain clear and unobstructed d. Movable furniture, including temporary booths or tables used for health screenings, that do not block any exits or access to exits e. All exit signs remain visible 	<ul style="list-style-type: none"> i. Existing path clearance reduced ii. Increased distance to exits iii. Changing access to existing exits or use of door or stairway not previously identified as an exit iv. Aisles, corridors or lobbies blocked by furniture or permanently installed barriers

V. 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 roadway, please apply through [NYC Open Restaurant Program](#), and comply with the requirements outlined in [Buildings Bulletin 2021-005](#).

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 New York City Indoor Food Services During the COVID-19 Public Health Emergency](#)
- [New York State Indoor Dining Guidance](#)
- [Empire State Development Guidance for Determining Whether a Business Enterprise Is Subject to a Workforce Reduction Under Executive Order 202.68, Related to New York’s Cluster Action Initiative to Address COVID-19 Hotspots](#)

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 \(6/18/20\)](#)
- [Executive Order 126: Open Restaurants Program and the Expansion of Outdoor Seating in Phase 2](#)
- COVID-19 diagnostic test is safe, free, and easy. Find out more by calling **311** or visiting 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.