

ORDINANCE NO. 2298

INTRODUCED BY: ALLEN-THOMAS, FRANK, GRIMES, GUARDIOLA, HURST,
HUSEMAN, MADERA, NOBLE, SMITH

AN ORDINANCE AUTHORIZING TEMPORARY OUTDOOR SERVICE AREAS FOR RESTAURANTS AND BARS IN THE CITY OF COMMERCE CITY, COLORADO AND REPEALING ORDINANCE 2281

WHEREAS, pursuant to the Charter of the City of Commerce City ("Charter"), the City Council of the City of Commerce City ("City") has all legislative powers and functions of home rule municipal government as reserved to it by the Colorado Constitution and the laws of the state of Colorado;

WHEREAS, the City has declared a local disaster emergency due to the presence of COVID-19 and the Governor of the State of Colorado has issued various executive orders declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in Colorado, suspending certain regulatory statutes and authorizing emergency rulemaking, and limiting the travel and gathering of individuals and the operation of businesses;

WHEREAS, pursuant to the Governor's executive orders, the Colorado Department of Health and Environment ("CDPHE") and the Colorado Department of Revenue, Liquor Enforcement Division ("LED") have issued emergency rules and guidance for, among other things, the operation of places of public accommodation offering food, beverage, or alcoholic beverages for on-premises consumption;

WHEREAS, the City has enacted zoning and land use ordinances and other laws of general application, but the evolving details of the current public health crisis and related laws, regulations, and orders require quick adaptation to address problems and opportunities as they arise; and

WHEREAS, the City Council, through Ordinance 2281, authorized a temporary program to enable such businesses to expand seating and service capacity beyond their normal premises so that businesses can continue operations in a safe manner consistent with the public health orders and emergency regulations and now desires to repeal Ordinance 2281 and continue the temporary program pursuant to this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO, AS FOLLOWS:

SECTION 1 - FINDINGS. The City Council finds and determines that during that:

- a. The recitals to this ordinance are adopted as findings of fact; and
- b. The passage of this ordinance is necessary for the preservation of the public health, safety, and welfare for the reasons set forth in this ordinance.

SECTION 2 – DEFINITIONS.

- a. “Applicable laws” includes all laws and regulations of the United States, the State of Colorado, and the City of Commerce City, executive orders, emergency rules of any state agency, public health orders of a public health agency, and any order of a fire marshal or building official.
- b. “Bar” means any place of public accommodation that is not a restaurant regularly offering alcoholic beverages for on-premises consumption from a permanent location, including bars, taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, and clubs.
- c. “CCRMC” or “Code” means the Commerce City Revised Municipal Code, as amended.
- d. “Outdoor service” means on-premises dining and consumption and related service of food and beverage to patrons in, and the establishment of, an outdoor service area in compliance with applicable law but does not include any food preparation or food storage.
- e. “Outdoor service area” means the area lawfully designated by a restaurant or bar for outdoor service.
- f. “Permit Manager” means the person designated by the City Manager to review, approve or deny, and revoke permits.
- g. “Restaurant” means any place of public accommodation regularly offering food or beverage for on-premises consumption from a permanent location, including restaurants, food courts, cafés, and coffeehouses.
- h. “Tent” means a tent or membrane structure as defined in the 2018 International Fire Code (as adopted and amended).

SECTION 3 – OUTDOOR SERVICE AUTHORIZED WITH PERMIT.

- a. *Temporary Use Authorized.* All code-compliant restaurants and bars, regardless of zoning classification, are permitted to do the following in compliance with the standards of this ordinance upon receipt of a Temporary Outdoor Service Permit (**see Section 4**):
 - (1) Use a portion of adjacent private property zoned for commercial or industrial use (including open or landscaped areas and off-street parking) with the permission of the property owner as outdoor service areas;
 - (2) Use adjacent public property or public right-of-way for outdoor services if a separate easement or license is granted by the Permit Manager, except restaurants and bars may allow employees to cross public sidewalks to deliver food or beverages to the outdoor service areas without interfering with public activities, utilities, or the Americans with Disabilities Act (“ADA”); and
 - (3) Serve alcohol to patrons in the outdoor service area if a temporary modification of liquor-licensed premises is approved.
- b. *Temporary Permit Approval.* The Permit Manager may approve a Temporary Outdoor Service Permit if the proposed outdoor service area will not result in a significant adverse effect on adjacent property, accessibility, parking, public improvements, public services, or public safety.
- c. *Review.* Any outdoor service or Temporary Outdoor Service Permit shall be subject to summary suspension, modification, prohibition, or revocation, without notice, by the

- Permit Manager at any time with or without notice based on a determination that outdoor service is not being conducted in accordance with this ordinance, any permit condition, or any applicable law. Such a determination may be appealed within five (5) days to the City Manager or his designee who shall render a decision after a hearing. The decision on such appeal may be appealed in accordance with Rule 106 of the Colorado Rules of Civil Procedure.
- d. *Fees Waived.* Except as required by state law, no City-imposed fee shall be charged by the City for the issuance of a Temporary Outdoor Service Permit, any related development permit, or a related application to the Liquor Licensing Authority seeking approval for the temporary modification of a licensed premises.
 - e. *Pre-Existing Permits.* All Temporary Outdoor Service Permits issued pursuant to Ordinance 2281 shall be deemed approved or continued pursuant to this ordinance, subject to the approval of any permit required for any tent or equipment by applicable laws.

SECTION 4 – STANDARDS. All outdoor service and Temporary Outdoor Service Permits shall be subject to the following standards in addition to any conditions imposed by the Permit Manager.

- a. *Agreement.* Each restaurant or bar conducting outdoor service or accepting a Temporary Outdoor Service Permit agrees to abide by all standards of this ordinance and any additional conditions established by the Permit Manager.
- b. *Outdoor Service Area.* An outdoor service area must be adjacent to the existing licensed premises of the restaurant or bar. Outdoor service shall not be allowed to continue if not allowed by the owner of the property on which the outdoor service area is located. Restaurants or bars are solely responsible for determining whether the owner consents to such use of its property and represent to the city that their operations are permitted by the property owner.
- c. *Term.* All Temporary Outdoor Service Permits shall be valid through and including April 30, 2021, unless revoked or unless this program is canceled. Such permits shall not lapse and may be discontinued and resumed without reapplication within the term provided.
- d. *Safety/Insurance.* Restaurants and bars are solely responsible for the safe operation of outdoor service and the outdoor service area and the security of all items in the outdoor service area. For any use of public property, the city may require an indemnity agreement and the provision of adequate insurance naming the city as an additional insured if any public property is used.
- e. *Occupancy.* Outdoor service cannot result in a total occupancy greater than the originally approved occupancy limit for the restaurant.
- f. *Compliance with Applicable Laws.* Outdoor service shall comply with all Applicable Laws, including all liquor licensing laws, fire codes, and the more restrictive of any public health order issued by the State of Colorado or the Tri-County Health Department.
- g. *Accessibility/Americans with Disabilities Act Compliance.* All outdoor service areas must comply with the Americans with Disabilities Act (“ADA”) and shall not impede accessibility of parking or sidewalk access. If compliant with the ADA, existing accessible parking may be relocated temporarily with appropriate signage.

- h. *Life Safety Requirements.* At least one 2A10BC rated fire extinguisher shall be provided for the outdoor operations using any number of tents. Points of ingress and egress and access to fire hydrants shall not be blocked for any reason.
- i. *Tents.* The use of tents without sides and tents with sides under 400 square feet are permitted if tents can be safely erected and secured from movement in compliance with the International Fire Code (2018) (as adopted and amended by the City), including requirements to place any tent with adequate distance from any structure, vehicle, or other tent. A building permit from the City will be required unless exempted. A permit from the applicable fire district shall be required unless exempted.¹
- j. *Traffic & Parking.* Outdoor service areas may use up to 100% of available on-site parking. Outdoor services cannot interfere with normal vehicle traffic movement to include emergency vehicle access to the building and access to fire hydrants and other firefighting equipment. Drive aisles may not be used without written permission of the fire official and the Permit Manager. Parking adjacent to outdoor service areas shall not reduce the minimum path of egress travel width from the indoor/outdoor dining spaces to the public way (i.e. front or back end of the vehicle shall not extend over a sidewalk if it reduces the minimum width of egress travel path to the public way).
- k. *Amplified Sound.* Amplified sound shall not be permitted in connection with an outdoor service area.
- l. *Hours.* Outdoor service may be conducted between the hours of 6 a.m. and 11 p.m.
- m. *Sanitation.* All outdoor services areas must be kept free of waste and litter.
- n. *Damage.* Any restaurant or bar operating an outdoor service area is responsible for damage to landscaping, fencing, trees, and other screening caused by its operations.
- o. *Equipment.* Equipment should be limited to those items necessary to serve patrons for on-premises dining (e.g., tents, chairs, tables, signage, waste receptacles) and may not include self-service stations or other items prohibited by public health orders. Any item posing a threat to public safety or unlawfully encroaching on public property or private property without permission may be immediately removed by any peace officer or the Permit Manager without prior notice. Installations of facilities (e.g., temporary electricity, heat, water) must comply with applicable code requirements and may require a building permit or approval of the applicable fire district unless specifically exempted.² The time limit for the use of temporary wiring for electrical power and lighting installations used in connection with an outdoor service area will be contemporaneous with the Temporary Outdoor Service Permit.³

¹ Section 3103.2 of the International Fire Code (2018) provides an exemption for tents without sides and requires: (a) individual tents have a maximum size of 700 square feet; (b) the aggregate of multiple tents placed side by side without a fire break clearance of 12 feet, not exceed 700 square feet total; and (c) there be minimum clearance of 12 feet to all structures and other tents. (https://codes.iccsafe.org/content/IFC2018/chapter-31-tents,-temporary-special-event-structures-and-other-membrane-structures#IFC2018_Pt04_Ch31_Sec3103).

² Refer to Section 105.2 of the 2018 International Building Code (as adopted and amended); Section 401.3 of the 2017 National Electrical Code (as adopted and amended).

³ Sections 604.9 and 604.9.1 of the International Fire Code (2018) addresses temporary wiring and is modified by this ordinance ("Temporary wiring for electrical power and lighting installations is allowed for a period not to exceed 90 days. Temporary wiring methods shall meet the applicable provisions of NFPA 70. Exception: Temporary wiring for electrical power and lighting installations is allowed during periods of construction, remodeling, repair or demolition of buildings, structures, equipment or similar activities;," "Temporary wiring attached to a structure shall be attached in an approved manner.").

- p. *Signs.* No permit shall be required for signage in the outdoor service area or on the restaurant or bars regular premises in connection with the outdoor service area.

SECTION 5 – AUTHORIZATIONS.

- a. The City Manager shall: i) create simplified, standard application forms and processes for Temporary Outdoor Service Permits; ii) designate a Permit Manager; and iii) establish any regulations he deems reasonable and necessary to implement this ordinance.
- b. The City Manager is authorized to grant a free, temporary, revocable easement or license to any restaurant or bar for the purpose of using public property or public right-of-way adjacent to a restaurant or bar in connection with authorized outdoor service. The City Manager may impose such conditions as he deems reasonable or necessary in connection with such easement or license.
- c. The City Manager is authorized to temporarily suspend or modify any provisions of the code and any code adopted by reference relating to the use of sidewalks and public rights-of-way, parking, and building standards to effectuate the intent of this ordinance.
- d. The City Manager may delegate any responsibilities assigned to him by this ordinance to one or more persons.

SECTION 7 – LIMITATIONS; ENFORCEMENT.

- a. No licensing requirements or any conditions imposed by the Licensing Authority shall be modified by reason of the passage of this ordinance or issuance of any permit. Restaurants and bars may apply for a temporary modification of their licensed premises pursuant to Colorado Liquor Regulation 47-302 and other regulations issued in response to the COVID-19 public health emergency.
- b. The uses authorized by this ordinance are a permissive use and neither this ordinance nor a Temporary Outdoor Service Permit shall create or vest any property rights in any person. This ordinance may be repealed or modified by the City Council at any time.
- c. A Temporary Outdoor Service Permit shall not allow the use of public property or public right-of-way for outdoor services without a separate easement or license granted by the City Manager, provided permit holders may cross public sidewalks for the purpose of delivering food or beverages to the outdoor service area.
- d. Enforcement and inspections may be conducted by such persons as provided in CCRMC Section 3-1102 and by the Permit Manager. Any person who shall refuse to allow such inspection or who shall obstruct any such person in making any inspection shall be subject to penalties as provided in the code. Compliance and enforcement shall generally be conducted pursuant to Article X of the Land Development Code and any other lawful means, provided, a permit or allowed use under this ordinance may be suspended prior to notice and hearing.
- e. This ordinance and any permit issued pursuant to it shall expire automatically at 11:00 p.m. on April 1, 2021.

SECTION 8 – REPEAL; EFFECT ON EXISTING LAWS. Ordinance 2281 is hereby repealed. All ordinances, resolutions, and policies of the City regulating any outdoor services that directly conflict with this ordinance are temporarily superseded and replaced by this ordinance to the extent of such conflict. This ordinance shall be interpreted as much as possible in harmony

with the code, including the Land Development Code, except to the extent of an inconsistency, to ensure the public health, safety, and welfare.

INTRODUCED, PASSED ON FIRST READING, AND PUBLIC NOTICE ORDERED
THIS 5TH DAY OF OCTOBER 2020.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 19TH DAY OF OCTOBER 2020.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, City Clerk