



Date June 11, 2020

**RESOLUTION APPROVING THE CONCEPT FOR ‘DINE OUT DES MOINES’ PERMIT PROGRAM FOR TEMPORARY RESTAURANT AND BAR OCCUPANCY LIMITATION RELIEF DURING THE PENDENCY OF THE COVID- 19 PANDEMIC**

**WHEREAS**, the Governor of the State of Iowa, acting in conformance with Presidential Proclamation that the COVID-19 outbreak in the United States constitutes a national emergency, and upon recommendation from the Iowa Department of Public Health, issued multiple proclamations which closed or restricted many business operations, including food service and bar establishments, to limit the risk of transmission of this virus; and

**WHEREAS**, the Governor has since lifted many of the limitations, which include those on restaurants and food service and bar establishments, in order that such businesses might resume dine-in food and beverage serving operations on a limited and restricted basis; and

**WHEREAS**, among the remaining Gubernatorial limitations intended to reduce the risk of transmission of the COVID-19 causing virus are restrictions that significantly limit occupancy and require physical separation of patrons for dine-in food service and bar establishments; and

**WHEREAS**, these occupancy and physical separation limitations create a hardship for food service and bar establishment operators as fewer customers can be served in establishments where dining in and beverages consumption are the primary service mechanisms; and

**WHEREAS**, there is a public benefit realized when food service and bar establishments are able to operate so as to resume employment of furloughed staff, and increase commerce as they increase purchases from their vendors, whereby these businesses and the employees can generate economic activity to add to the tax base that supports public services while providing another means for families to get food, a life necessity; and

**WHEREAS**, the City of Des Moines has an established sidewalk café permit program in operation that allow sidewalks to be utilized as part of the premises of food service and bar establishments; and

**WHEREAS**, the City Council of the City of Des Moines, on June 8, 2020, by Roll Call Number 20-0941 exercised the authority granted to it by temporarily suspending aspects of the operation of the sidewalk café permit program, and creating a temporary program known as “Dine Out Des Moines” to allow use of physical space in the open private and public areas, including sidewalks, alleys, and streets, adjacent to food service establishments for outdoor service, upon temporary closure of such by areas by City Council resolution; and whereby, food service establishments desiring to serve alcoholic beverages in the expanded outdoor dining area pursuant to the “Dine Out Des Moines” program were granted relief from the City Code sections that regulate normal outdoor services areas where alcoholic beverages are sold; and



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20-0967

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**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the above referenced resolution number 20-0941 for the “Dine Out Des Moines” is hereby repealed; and

**BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that the above referenced “Dine Out Des Moines” program for bars and food service establishments is hereby approved as outlined in Exhibit “A”, which is attached hereto and incorporated herein by this reference; and

**BE IT FURTHER RESOLVED** as follows:

1. That the application and permit fees for sidewalk cafes as set out in Chapter 102 of the Municipal Code of the City of Des Moines are temporarily waived for this program; and
2. That in conjunction with this program, that temporary expansion of the area included within the footprint which is covered by a bar or food service establishment’s alcoholic beverage license is granted, to allow use of such approved expanded area as part of the bar or food service establishment, subject to the establishment of having applied for and obtained a permit for this program, and otherwise complying with all other requirements of this program, for the duration of the program; and
3. That enforcement of sections 10-3 and 10-4 of the City Code pertaining to outdoor service areas for alcoholic beverages are temporarily waived and suspended for the bars and food service establishments participating in the program, for the duration of program; and
4. That in conjunction with this program, temporary closure of parts of City public rights-of way, consisting of designated portions of sidewalk, street, or parking areas, adjacent to, or in front of, a food service establishment or a bar establishment that has applied for and obtained a permit for use of such part of the public right-of-way and which otherwise complies with all other requirements of this program, are hereby granted, for the duration of the program; and
6. That enforcement of the sections of Chapter 134 and 135 of the City Code pertaining to requirements to provide parking spaces for bars and food service establishments in prescribed amounts, and to limit those for vehicular parking, are temporarily waived and suspended for the bars and food service establishments participating in the program, for the duration of program; and



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7. That the Community Development Department, Engineering – Traffic Division, City Clerk and other departments, as deemed necessary, are authorized to review applications and site plans, and take further administrative and ministerial actions to implement the program; and

8. The program will extend until 30 days after the state and local officials lift COVID-19 occupancy restrictions for bars and food service establishments.

MOVED BY Gatto TO APPROVE.

FORM APPROVED: Judy K. Parks-Kruse
Assistant City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL (7).

J. M. Franklin Cowne Mayor

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik City Clerk

## **EXHIBIT “A” - DINE OUT DES MOINES – COVID-19 REOPENING**

Regulations expire 30 days after the state wide public health emergency has been lifted respecting the operation of food service establishments and bars.

In addition to all state guidelines, the City of Des Moines has created the following guidelines to temporarily allow bars and food service establishments to expand their business footprint onto private parking areas and the public rights-of-way without application of certain City code and permit requirements.

1. Parking lots on the same lot as the food service establishment.
  - a. Outside area limited to 30% of the parking spaces or 50% of the allowed interior seating whichever is less.
  - b. Adjacent to within a reasonable distance from the service access to the building.
  - c. A six-foot unobstructed ADA compliant sidewalk must be maintained from the remaining parking area to the entrance to the food service establishment and outdoor eating area.
  - d. Tables and chairs must be placed with 6’ separation and from the ADA compliant sidewalk.
  - e. No more than 6 people may be seated at a table.
  - f. Seating is allowed with food service and limited a 1.5-hour time limit per table.
  - g. Hours of operation – out door service to end at
    - i. 9:00 p.m. in or next to or within an NX district, and
    - ii. 11:30 p.m. in commercial and mixed-use districts.
  - h. Provide adequate lighting for the service area facing downward and shielded.
  - i. If there is service of alcohol the service area must be fenced off with a city-approved fence type and non-patrons must not be allowed into the area.
  - j. Violation of the ‘Dine Out Des Moines’ permit will be considered a nuisance and be grounds for a Board of Adjustment Conditional Use approval to be taken back to the Board of Adjustment for reconsideration of the use approval.
  
2. Sidewalk areas adjacent to a food service establishment.\*
  - a. Seating for the restaurant may be placed in front of the neighboring business with written permission of the lease holder,
  - b. And/or city permission.
  - c. A six-foot unobstructed ADA compliant sidewalk must be maintained in front of businesses and to parking areas.
  - d. Proof of insurance in type and amount as required by City, and indemnification of City must be provided to cover the expanded area.
  - e. Tables and chairs must be placed with 6’ separation and from the ADA compliant sidewalk.
  - f. No more than 6 people may be seated at a table.

- g. Seating is allowed with food service and limited a 1.5-hour time limit per table.
- h. Hours of operation – out door service to end at
  - i. 9:00 p.m. in or next to or within an NX district, and
  - ii. 11:30 p.m. in commercial and mixed-use districts.
- i. Provide adequate lighting for the service area facing downward and shielded
- j. If there is service of alcohol the service area must be fenced off with a city-approved fence type and non-patrons must not be allowed into the area.
- k. Violation of the ‘Dine Out Des Moines’ permit will be considered a nuisance and be grounds for a Board of Adjustment Conditional Use approval to be taken back to the Board of Adjustment for reconsideration of the use approval.

3. Parking spaces in front of a food service establishment.\*

- a. Parking spaces directly in front a food service establishment on the same parcel with written permission of the property owner or manager,
- b. A six-foot unobstructed ADA compliant sidewalk must be maintained in front of businesses and between the outside seating area.
- c. Proof of insurance in type and amount as required by City, and indemnification of City must be provided to cover the expanded area.
- d. Tables and chairs must be placed with 6’ separation and from the ADA compliant sidewalk.
- e. No more than 6 people may be seated at a table.
- f. Seating is allowed with food service and limited a 1.5-hour time limit per table.
- g. Hours of operation – out door service to end at
  - i. 9:00 p.m. in or next to or within an NX district, and
  - ii. 11:30 p.m. in commercial and mixed-use districts.
- h. Provide adequate lighting for the service area facing downward and shielded.
- i. The service area must be fenced off with a city-approved fence type to delineate the outside service area.
- j. Violation of the ‘Dine Out Des Moines’ permit will be considered a nuisance and be grounds for a Board of Adjustment Conditional Use approval to be taken back to the Board of Adjustment for reconsideration of the use approval.

4. Parking spaces, on city streets (parklets) and sidewalks, adjacent to a food service establishment. \*

- a. Sidewalks and parking spaces directly in front a food service establishment,
- b. Or on city sidewalks, right of way or street.
- c. A six-foot unobstructed ADA compliant sidewalk must be maintained in front of businesses and between the outside seating area, or
- d. The six-foot unobstructed ADA compliant sidewalk shall be maintained in such a manner that the walkway goes around the outside seating area.
- e. Proof of insurance in type and amount as required by City, and indemnification of City must be provided to cover the expanded area.

- f. Tables and chairs must be placed with 6' separation and from the ADA compliant sidewalk.
- g. No more than 6 people may be seated at a table.
- h. Seating is allowed with food service and limited a 1.5-hour time limit per table.
- i. Hours of operation – out door service to end at
  - i. 9:00 p.m. in or next to or within an NX district, and
  - ii. 11:30 p.m. in commercial and mixed-use districts.
- j. Provide adequate lighting for the service area facing downward and shielded
- k. The service area must be fenced off with jersey barriers (that are approved as a NCHRP Report 350 TL-3 temporary traffic barrier) or other substantial barrier to delineate the outside service area and protect patrons including such signage or illumination required by the city and other such warnings, markers or reflectors as the City requires.
- l. A special parking permit would be required for the reservation and use of any metered spaces. The reservation can be made a maximum of 30 days in advance and the permit would be valid.
- m. Violation of the 'Dine Out Des Moines' permit will be considered a nuisance and be grounds for a Board of Adjustment Conditional Use approval to be taken back to the Board of Adjustment for reconsideration of the use approval.

#### 5. Bars \*

- a. Must follow all the requirements set out above.
- b. May not locate on streets, or public or private parking areas adjacent to a street.
- c. Must have a six-foot ADA compliant sidewalk between the seating area and the street.
- d. No sound at all on the expanded area.
- e. No service in glass containers.
- f. Violation of the 'Dine Out Des Moines' permit will be considered a nuisance and be grounds for a Board of Adjustment Conditional Use approval to be taken back to the Board of Adjustment for reconsideration of the use approval.

\* Staff will be authorized to issue temporary permits for these areas. The applicant must supply the required proof of insurance and other documents as required for a sidewalk permit.

Should a person or business fail to comply, they will be subject to an order to immediately vacate the outdoor seating as allowed under this program.

June 10, 2020 - SMD



**Roll Call Number**

20-0968 \_\_\_\_\_

**Agenda Item Number**

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**Date** June 11, 2020

MOVED BY VOSS TO RECESS AND RECONVENE IN THE JOINT MEETING OF THE CITY COUNCIL AND DES MOINES CIVIL AND HUMAN RIGHTS COMMISSION AT 5:04 P.M.

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|------|------|--------|
| COWNIE         |      |      |      |        |
| BOESEN         |      |      |      |        |
| GATTO          |      |      |      |        |
| GRAY           |      |      |      |        |
| MANDELBAUM     |      |      |      |        |
| VOSS           |      |      |      |        |
| WESTERGAARD    |      |      |      |        |
| TOTAL          |      |      |      |        |

**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED

APPROVED

*J. M. Franklin Cownie*  
\_\_\_\_\_  
Mayor

*P. Kay Cmelik*  
\_\_\_\_\_

City Clerk