

RESOLUTION NO. 2020-146

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, ESTABLISHING A LIMITED PERMIT TO AUTHORIZE NEW, TEMPORARY, OUTDOOR SEATING AREAS FOR RESTAURANTS IN THE CITY DUE TO CORONAVIRUS RESTRICTIONS ON INDOOR SEATING; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a severe, acute respiratory illness that appears to occur through respiratory transmission and presents symptoms similar to those of influenza; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued Executive Order 20-52, declaring that appropriate measures to control the spread of COVID-19 in the State of Florida are necessary and, therefore, directed that a Public Health Emergency be declared in the State of Florida; and

WHEREAS, on March 15, 2020, Brevard County declared a county emergency regarding COVID-19; and

WHEREAS, on April 29, 2020, Governor Ron DeSantis issued Executive Order 20-112, which establishes Phase I of the path to re-opening Florida; and

WHEREAS, specifically, Executive Order 20-112 provides that restaurants and food establishments licensed under Chapter 500 or 509, Florida Statutes, may allow on-premises consumption of food and beverage, so long as they adopt appropriate social distancing measures and limit their indoor occupancy to no more than 25 percent of their building occupancy; and

WHEREAS, Executive Order 20-112 also provides that restaurant outdoor seating is permissible with appropriate social distancing, which requires maintaining a minimum of 6 feet between parties, only seating parties of 10 or fewer people and keeping bar counters closed to seating; and

WHEREAS, under the circumstances, the City desires to establish a quick and efficient process for restaurants to obtain a limited permit authorizing temporary outdoor seating capacity in compliance with Executive Order 20-112; and

WHEREAS, the City Council has determined this Resolution is in the best interests of the City of Cocoa.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COCOA, as follows:

SECTION 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference and are deemed a material part of this Resolution.

SECTION 2. Limited Permit to Authorize New, Temporary Outdoor Seating Areas.

A. *Limited Permit Established.* The City Council hereby establishes a process for restaurants to obtain a limited permit authorizing new, temporary outdoor seating areas that did not exist prior to the Governor's issuance of Executive Order 20-112 on April 29, 2020. No new outdoor seating may be established unless a limited permit as described herein is first obtained from the City Manager or his designee. No fees for the limited permit shall be charged. No cooking, food storage, food preparation, or open flames shall be permitted in the outdoor seating area. Existing, permanent outdoor seating areas previously permitted by the City are exempt from the requirements of this Resolution. All restaurants seeking to establish new, temporary outdoor seating must comply with the requirements of Executive Order 20-112, including appropriate social distancing measures as defined therein, the Florida Fire Prevention Code, the Florida Health Department regulations, and the Americans with Disabilities Act. Issuance of a limited permit for outdoor seating shall in no way excuse or waive compliance with Executive Order 20-112, or any subsequent extension thereof, the Florida Fire Prevention Code, the Florida Health Department regulations, or the Americans with Disabilities Act. Restaurants applying for a limited permit shall not be required to obtain site plan approval or a site plan amendment for the addition of the temporary outdoor seating.

B. *Limited Permit Application – Private Property.* Restaurants seeking to establish new, temporary outdoor seating on private property must submit an application to the Community Services Department, which shall include the following:

1. Consent of the property owner, if the restaurant is not owned by the property owner;
2. A sketch or depiction of the area where outdoor seating is to be located, including dimensions of the seating area, number of tables and chairs proposed, and location of any outdoor heating devices, which may not be located within 2 feet from the edge of any tent, canopy, covering, or other flammable object or material;
3. If applicable, a description of or specifications for any tent, canopy, or covering to be erected above the seating area, which must remain open on all sides at all times during dining service, even during inclement weather;
4. If the outdoor seating area is to be located within a parking lot, a sketch or depiction of the location of temporary physical barriers that will be placed to separate the outdoor seating area from the remaining parking and description of the type of temporary physical barriers to be used. No parking for disabled persons may be repurposed for outdoor seating use;
5. If beer and/or wine will be served, written proof from the state division of alcoholic beverages that the outdoor seating area has

been included into the alcohol licensed premises pursuant to the state beverage laws.

C. *Limited Permit Application – Public Property.* Restaurants seeking to establish new, temporary outdoor seating on public property, such as the public sidewalk, shall include all application submittal requirements described in Section 2.B above, in addition to the following:

1. The sketch or depiction of the area where outdoor seating is to be located shall also include the location of adjacent private property boundaries, street trees, parking meters, bus shelters, sidewalk benches, trash receptacles, and any other obstruction or object either existing or proposed within a pedestrian pathway;
2. In the event the applicant desires to use an area in front of an adjacent business, the applicant shall submit a written statement from the owner of the adjacent property and any tenant, if different than the owner, that shows the owner of the adjacent property and the tenant approve of the applicant's application to establish and operate the outdoor seating area in front of the adjacent property.
3. A signed instrument, in a form acceptable to the city attorney and city manager, agreeing to indemnify and hold harmless the city and its council members, officers, employees, and attorneys. The signed instrument shall, at a minimum, state the applicant will indemnify and hold the city harmless against liability, including court costs and reasonable attorneys fees, through all appellate proceedings, for any and all claims for damage to property, or injury to, or death of, persons arising out of or resulting from the issuance of the permit to establish and operate the outdoor seating area in the public right-of-way; and
4. A certificate of commercial general liability insurance covering the restaurant with a minimum per occurrence limit of not less than three hundred thousand dollars (\$300,000.00), with the city shall be named as an additional insured on the commercial general liability insurance policy, as the city's interests may occur.

D. *Processing Limited Permit Applications.* The City Manager or his designee shall review and approve the limited, non-transferable permit, provided that:

1. The new, temporary outdoor seating, including associated noise and lighting, will not negatively impact neighboring property owners; will not impede safe ingress and egress to the property; and will not unreasonably impede or interfere with pedestrian traffic or public facilities in the right-of-way, such as bus stops;
2. Safe pedestrian access is provided to the restaurant's entrance and to the new outdoor seating area;
3. An adequate buffer is provided between the outdoor seating area and parking or drive aisles;
4. If the outdoor seating area is to be located within a parking lot, the new outdoor seating area may not result in the reduction of

available parking spaces to less than what is required to operate the restaurant based on the reduced 25% occupancy and all combined outdoor seating areas. If the restaurant desires to maintain the limited permit and outdoor seating area during the period of any subsequent executive order by Governor Ron DeSantis which maintains limited indoor seating capacity to seventy-five percent (75%) or less, the City shall conduct a further evaluation of whether the outdoor seating area results in the reduction of available parking spaces to less than what is required to operate the restaurant based on the reduced capacity;

5. The property owner has consented to the outdoor seating area; and
6. The restaurant has a valid business license to operate in the City.

E. *Building Permit Required.* All tents, canopies, or covers that exceed 120 square feet shall require a building permit and appropriate inspections as required by the Florida Building Code and shall be made of flame retardant or resistant materials as provided in the Florida Fire Prevention Code. No fees will be charged for the building permit or inspections.

F. *Flooring.* No raised platforms, temporary decks or special flooring is permitted within the outdoor seating area. All tables and chairs must be placed directly on the ground.

G. *Expiration.* All limited permits authorizing new, temporary outdoor seating areas shall expire upon the rescission or expiration (with no extension) of Governor Ron DeSantis's Executive Order 20-112 or upon the rescission or expiration (with no extension) of any subsequent executive order by Governor Ron DeSantis which maintains limited indoor seating capacity to seventy-five percent (75%) or less, whichever is later. In addition, all limited permits shall expire immediately upon the issuance of any executive order closing restaurant service or limiting it to take-out only.

H. *Revocation.* Limited permits issued by the City Manager or his designee may be revoked after adequate notice and an opportunity to be heard is given to the restaurant, based upon:

1. The limited permit was obtained upon a false statement, fraud, concealment, deceit, misrepresentation, misleading statements, evasions or suppression of material facts;
2. The restaurant failed to adhere to the requirements of this Resolution, the conditions of the permit, or the Governor's applicable executive order;
3. The City has received complaints from neighboring property owners that the outdoor seating area has become a nuisance or detriment to the enjoyment of their property;
4. If applicable, the adjacent property owner or tenant revokes their approval to operate the outdoor seating area in front of the adjacent property;
5. The City must conduct street, sidewalk, or utility repairs;

6. The restaurant failed to maintain the outdoor seating area with a clean and attractive appearance;
7. If the temporary outdoor seating area is located in a parking lot, subsequent increases in indoor seating capacity render the outdoor seating area unsafe or reduce the available parking spaces to less than what is required to operate the restaurant based on the reduced occupancy; or
8. The outdoor seating area creates an obstruction to, or causes congestion of, pedestrian or vehicular traffic and poses a danger to the health, safety and general welfare of the public.

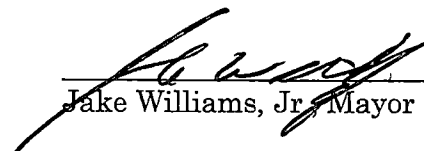
I. *Penalty.* Failure to comply with this Resolution or the conditions of any limited permit issued shall be unlawful and may result in a penalty not exceeding \$500 per violation.

SECTION 3. Repeal of Prior Inconsistent Resolution. All prior resolutions or parts of resolutions inconsistent with this resolution are hereby repealed to the extent of the conflict.

SECTION 4. Conflicts and Severability. Should any section or provision of this resolution, or any portion thereof, any paragraph, sentence or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part thereof to be declared invalid.

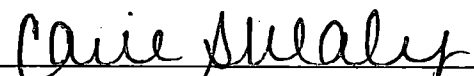
SECTION 5. Effective date. This resolution shall become effective immediately upon its adoption by the City Council of the City of Cocoa, Florida.

ADOPTED by the City Council of the City of Cocoa, Florida, in a special meeting assembled on the 6th day of May, 2020.



Jake Williams, Jr., Mayor

ATTEST:



Carrie Shealy, MMC, City Clerk

