

RESOLUTION NO. 2020-218

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COCOA, FLORIDA, AMENDING RESOLUTION 2020-146, WHICH ESTABLISHED A LIMITED PERMIT FOR NEW, TEMPORARY, OUTDOOR SEATING AREAS FOR RESTAURANTS IN THE CITY DUE TO CORONAVIRUS; 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 were necessary and, therefore, directed that a Public Health Emergency be declared in the State of Florida; and

WHEREAS, on September 25, 2020, Governor Ron DeSantis issued Executive Order 20-244, which superseded and eliminated any and all restrictions of previous Executive Orders 20-112, 20-123, 20-139, 20-192, 20-214, and 20-223, which established Phases I and II of the path to re-opening Florida, except as modified in Executive Order 20-244; and

WHEREAS, specifically, Executive Order 20-244, provides that restaurants, including any establishment with a food service license, may not be limited by a COVID-19 emergency order by any local government to less than fifty percent (50%) of their indoor capacity and, further, that if a restaurant is limited to less than one hundred percent (100%) of its indoor capacity, such COVID-19 emergency order must quantify the economic impact of each limitation or requirement on those restaurants and explain why each limitation or requirement is necessary for public health; and

WHEREAS, the City of Cocoa has not adopted any local emergency order limiting the indoor capacity of restaurants in the City and, consequently, Executive Order 20-244 has had the practical effect of eliminating all limitations on indoor capacity of restaurants in the City; and

WHEREAS, previously, the City desired to establish a quick and efficient process for restaurants to obtain a limited permit authorizing temporary outdoor seating capacity as a result of the capacity restrictions on indoor dining as provided in the superseded Executive Orders and adopted Resolution 2020-146 to accomplish this objective; and

WHEREAS, Resolution 2020-146 provided that all limited permits authorizing new, temporary outdoor seating areas would 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 maintained limited indoor seating capacity to seventy-five percent (75%) or less; and

WHEREAS, the City of Cocoa recognizes that the Centers for Disease Control and Prevention's (CDC) Guidance on "Considerations for Restaurants and Bars," updated September 6, 2020, still provides that outdoor seating at restaurants reduces the risk of spread of COVID-19 and recommends prioritizing outdoor seating as much as possible; and

WHEREAS, the City Council desires to amend Resolution 2020-146 to retroactively extend limited permits which may have been issued for temporary outdoor seating, to provide for a new expiration of Resolution 2020-146, and to include new provisions that allow for case-by-case revocations of the limited permits when increased indoor capacity and associated parking demands so necessitate; 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. Amendment of Resolution 2020-146. The City of Cocoa Resolution 2020-146, is hereby amended as follows (underlined type indicates additions and ~~strikeout~~ type indicates deletions, while asterisks (* * *) indicate a deletion from this Resolution of text existing in the Resolution 2020-146. It is intended that the text in the Resolution 2020-146 denoted by the asterisks and set forth in this Resolution shall remain unchanged from the language existing prior to adoption of this Resolution):

RESOLUTION 2020-146

(* * *)

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.

(* * *)

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% full occupancy or, if the restaurant proprietor is voluntarily operating the restaurant at reduced indoor capacity, 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 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~~ The City shall may conduct a further evaluation and site inspection at any time to determine 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 current~~ 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.

(* * *)

G. *Retroactive Extension and 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~~

~~recession 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. All limited permits authorizing new, temporary outdoor seating areas shall expire on February 28, 2021 or upon adoption of a subsequent resolution of the City Council terminating such permits and the limited temporary outdoor seating program, whichever is sooner. All limited permits authorizing new, temporary outdoor seating areas previously issued pursuant to Resolution 2020-146 shall be automatically and retroactively extended upon the adoption of this Resolution. However, nothing herein is intended to supersede the City Manager's authority to revoke individual limited permits pursuant to Section H herein.~~

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~~ any 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~~ current 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.

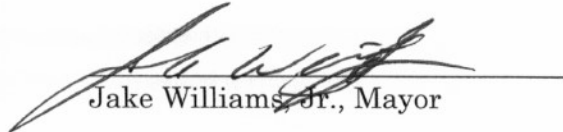
(* * *)

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.

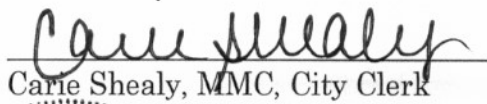
SECTION 4. Conflicts and Severability. Should any section or provision of this resolution, or any portion thereof, any paragraph, sentence or word be declared by a Court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereto as a whole or part thereof 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 regular meeting assembled on the 13th day of October, 2020.


Jake Williams, Jr., Mayor

ATTEST:


Carrie Shealy, MMC, City Clerk



