

MEMORANDUM

May 22, 2020

TO: Mayor John P. Kahl and Members of the City Council

FROM: Dennis R. Triggs & Scott A. Brunton, City Attorney's Office

SUBJECT: Resolution Establishing Parameters for Outdoor Service by Restaurants and Bars during Phased Re-Opening Periods (COVID-19 Pandemic)

DISCUSSION: During these unusual times and under these unusual circumstances related to the COVID-19 pandemic and the related stay-at-home Executive Orders issued by Governor Pritzker, the City seeks to encourage and facilitate local businesses with maintaining and opening back up their business operations in the City to the greatest extent possible. Moreover, as recently announced by Governor Pritzker, the State will be moving to Phase 3 of the his re-opening plan ("Restore Illinois") when the current Executive Orders expire on May 29th. While Phase 3 does not allow any dine-in services by restaurants and bars; Governor Pritzker has also announced that under Phase 3 of the Restore Illinois, restaurants and bars will be able to serve patrons in outdoor areas provided that certain guidelines continued to be followed, including social distancing of tables and wearing of masks by servers and employees.

The Governor has urged municipalities to be creative in allowing and facilitating outdoor seating options for patrons of restaurants and bars when moving to Phase 3 after May 29th. In that light, this Resolution allows for the opening of restaurants and bars for outdoor service, as well as for serving alcoholic beverages in these outdoor service areas, when the State moves to Phase 3 after May 29th.

With regard to the sales of alcoholic beverages by restaurants and bars in an outdoor service area, liquor license holders will be required to obtain a special outdoor service permit as provided by this Resolution. This Resolution streamlines the application and approval process for issuing these special outdoor service permits under the City's Liquor Code, while also relaxing certain related provisions of the City's Liquor Code to ensure that the City's restaurants and bars will be able to operate an outdoor service area after May 29th when Phase 3 of Restore Illinois is implemented. Further, with regard to general business operations, restaurants and bars will be allowed to establish outdoor seating areas for serving patrons without obtaining other prior approvals from the City provided that the business complies with the provisions of this Resolution, which includes social distancing of tables and patrons and the wearing of masks by servers and all employees.

The provisions of this Resolution will remain in place until dine-in options are increased under the Restore Illinois re-opening plan in a manner that allows dine-in capacities in excess of 50% of regular business operations.

RECOMMENDATION: Approval of this Resolution.

RESOLUTION NO. 2021-011

East Peoria, Illinois

_____, **2020**

RESOLUTION BY COMMISSIONER _____

**RESOLUTION ESTABLISHING PARAMETERS FOR OUTDOOR
SERVICE BY RESTAURANTS AND LIQUOR LICENSE HOLDERS DURING
THE PHASED RE-OPENING PERIODS UNDER THE STATE'S
DIRECTIVES AND EXECUTIVE ORDERS DURING THE COVID-19 PANDEMIC**

WHEREAS, since mid-March 2020, the national COVID-19 pandemic has resulted in several Executive Orders being issued by the Governor and directives being issued by State agencies that have closed restaurants and bars for on-site sales of all food and beverages, thereby limiting those business establishments to carry out or drive up services only; and

WHEREAS, the Executive Orders and directives issued to address the COVID-19 also limit public gatherings to no more than ten persons; and

WHEREAS, a phased re-opening plan has been created by the Governor and certain State agencies that allows for businesses to operate in a limited manner with increasing capacities until the State is completely re-opened during the last phase of the re-opening plan (the "Re-Opening Plan"); and

WHEREAS, the Governor has announced the State will be moving to Phase 3 of the Re-Opening Plan when the current Executive Orders expire on May 29, 2020, and Phase 3 does not allow any dine-in services by restaurants and bars; and

WHEREAS, the Governor has recently announced that under Phase 3 of the Re-Opening Plan, restaurants and bars will be able to serve patrons in outdoor areas provided that certain guidelines continued to be followed, including social distancing of tables and wearing of masks by servers and all employees; and

WHEREAS, the Governor has also urged municipalities to be creative in allowing and facilitating outdoor seating options for patrons of restaurants and bars when moving to Phase 3 after May 29, 2020; and

WHEREAS, the City seeks to facilitate outdoor seating areas and operations by restaurants, bars, and other liquor licenses holders in a manner that allows these businesses to maximize outdoor operations; and

WHEREAS, the City further seeks to ensure that these businesses are able to maximize operations throughout the phases of the Re-Opening Plan; and

WHEREAS, the City Council hereby determines that during these unusual times and under these unusual circumstances related to the COVID-19 pandemic, it is in the best interests of the City, these businesses within the City, and the citizens of the City of East Peoria that certain provisions of the City Code related to business operations by liquor license holders – including restaurants and bars – and related to general business operations under other provisions of the City Code be revised as provided herein; and

WHEREAS, the City Council hereby further determines that these revised provisions of the City Code shall remain in place until dine-in options are increased under the Re-Opening Plan in a manner that allows capacities in excess of 50% of regular business operations;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. For business with liquor licenses that allow on-site consumption of alcoholic beverages under Class A, C, D, E, V, or RB liquor licenses, such businesses may serve alcoholic beverage in a manner consistent with such license to patrons in outdoor areas under a Special Outdoor Sales and Consumption Permit (“Special Permit”) issued under Section 3-3-3.2 of the City Code as provided herein:

- Each liquor license holder must obtain a Special Permit before serving any alcoholic beverage in an outdoor area, with the exception of an outdoor area that has been previously permitted by the City as a beer garden with an issued subclass 1 or subclass 2 license for such beer garden.
- The outdoor service area permitted under this Resolution must include an outside perimeter marked by a barrier that prevents passage into and out of the service area. The barriers can be temporary in nature and movable, but placement must be consistent with plans submitted with the application for the Special Permit. All means of ingress and egress for the outdoor service area must comply with the City’s Fire Department directives.
- The license holder shall take necessary steps to ensure that persons under the age of twenty-one (21) do not have access to alcoholic beverages within or from the outdoor service area.
- The tables within the outdoor service areas must comply with social distancing requirements, and all servers and employees working in the outdoor service area must wear masks in compliance with State directives.
- The application for a Special Permit shall include a site plan showing the location of the outdoor service area in relation to the main building of the business location

for which the license holder current has a valid liquor license, the location of all barriers that will create the outside perimeter of the outdoor service area, the type of barrier that will be used to create the perimeter barrier, the number and location of all tables within the outdoor service areas with seating capacity for each table, all means of ingress and egress into the outdoor service area, and any other supplemental information requested by the Liquor Commissioner or City Clerk

- The Mayor, as the City's Liquor Commissioner, shall have the authority to issue a Special Permit if all applicable provisions of this Resolution have been met, as determined by the Mayor. The Mayor may also establish other related terms and conditions that must be met by the license holder in order to hold and maintain a Special Permit under this Resolution.
- A Special Permit issued under this Resolution shall remain valid throughout Phase 3 and any subsequent phases of the Re-Opening Plan up to and until restaurants and bars are allowed to be at greater than 50% capacity for dine-in services, which shall include an additional period of time of no more than 30 days beyond the implementation of the phase when restaurants and bars are allowed to be at greater than 50% capacity for dine-in services.
- The holder of a Special Permit must follow any directives from either the City's Fire Department or the Police Department related to the permitted outdoor service area.
- The Liquor Commissioner shall have the authority to implement hours and days of operation for a Special Permit holder that are different than such provisions established under Section 3-3-3.2 of the City Code.
- The size of the outdoor service area permitted by an issued Special Permit may not be increased without the license holder obtaining a new Special Permit allowing for such increased outdoor service area.
- Upon the issuance of a Special Permit under this Resolution, the "premises" for which the underlying liquor license that has been issued by the City to a license holder shall be increased to include the outdoor service area authorized under the Special Permit.
- No fee shall be charged for the issuance of a Special Permit issued under this Resolution.
- A Special Permit may be withdrawn, suspended, or revoked by the City in compliance with the provisions of the City's Liquor Control Regulations.
- Any liquor license holder maintaining an outdoor area that has been previously permitted by the City as a beer garden with an issued subclass 1 or subclass 2 license for such beer garden must comply with the provisions of this Resolution

regarding the service of food or beverages in the beer garden area. Thus, to the extent that the provisions of the City's Liquor Control Regulations address the service of food or beverages in the licensed beer garden area and are in conflict with this Resolution, the provisions of this Resolution shall govern while the Re-Opening Plan is in effect.

- Any provisions of Section 3-3-3.2 of the City Code that are in conflict with this Resolution shall be suspended during the duration of a Special Permit issued under this Resolution. Except as specifically provided by this Resolution, all other provisions of the City's Liquor Control Regulations shall govern the issuance of a Special Permit to license holder and compliance by the license holder under the City's Liquor Control Regulations.

Section 2. A restaurant, bar, or other liquor license holder may construct and maintain an outdoor service area for service of food or beverage provided, such business complies with the following terms and conditions:

- The outdoor service area is constructed on the property owned or leased by the business providing the outdoor service of food or beverage, or the business must be able to provide documentary evidence that the business owner has a legal right to use the property for providing the outdoor service of food or beverage served by its business.
- When using a tent, the business must maintain the tent in a manner that is compliant with all Fire Department directives, which shall include any directives addressing fire lanes, property and outdoor service area ingress and egress points, fire extinguishers, and use of external heating sources. All other outdoor service areas shall also comply with all Fire Department directives.
- Tents will not be permitted to be used in very inclement weather, which shall specifically include thunderstorms, excessive wind, and other severe weather events and when such very inclement weather is reasonably forecasted to occur (e.g. when a severe weather warning has been issued by the National Weather Service).
- The provisions of Section 2 of this Resolution shall remain valid throughout Phase 3 and any subsequent phases of the Re-Opening Plan up to and until restaurants and bars are allowed to be at greater than 50% capacity for dine-in services, which shall include an additional period of time of no more than 30 days beyond the implementation of the phase when restaurants and bars are allowed to be at greater than 50% capacity for dine-in services.
- The business owner shall not be required to obtain any permits or pay any fees for constructing or maintaining an outdoor service area for the service of food or beverages, except when the business owner also holds a liquor license and seeks to serve alcoholic beverages in the outdoor service area, such business owner

must obtain a Special Permit as provided under the terms of this Resolution or as otherwise permitted under the City's Liquor Control Regulations.

- To the extent that parking requirements are not maintained by a restaurant, bar, or other liquor license holder constructing a tent for providing outdoor service of food and beverage or otherwise maintaining an outdoor service area for providing outdoor service of food and beverage, the City's Zoning Administrator may provide a written waiver that shall remain effective while the business owner maintains an outdoor service area in compliance with this Resolution. The Zoning Officer may also establish other related terms and conditions that must be met by the business owner for maintaining this waiver.
- No outdoor service area shall be constructed on City property, sidewalk, or right-of-way without prior written authorization from the City.
- Any provisions of the City Code related to the construction or maintenance of an outdoor service area that are in conflict with this Resolution shall be suspended during the duration of effective period of this Resolution.

Section 3. This Resolution shall be in full force and effect immediately upon its passage and shall remain in effect as provided herein except to the extent that its provisions are revised or revoked by future action by the City Council.

Section 4. All ordinances, resolutions, and other, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded; and this Resolution shall remain effective for the duration of the effective period of the State's Re-Opening Plan.

Section 5. If any section, paragraph, clause, or provision of this Resolution shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this Resolution.

Section 6. Upon the passage of this Resolution, the City Clerk is hereby directed to post this Resolution on the City's website for the duration of the Re-Opening Plan.

APPROVED:

Mayor

ATTEST:

City Clerk