

EMERGENCY ORDINANCE NO. 1459

AN EMERGENCY ORDINANCE TEMPORARILY PERMITTING LIMITED SALES OF GOODS AND DELIVERY OF SERVICES WITHIN PUBLIC RIGHTS-OF-WAY AND OTHER CITY PROPERTY DURING THE COVID-19 LOCAL EMERGENCY

The City Council of the City of Willmar hereby ordains as follows:

Section 1. PREAMBLE - STATEMENT OF EMERGENCY. An emergency exists due to the COVID-19 pandemic, which has resulted in the declaration of a local emergency by the Mayor and City Council of the City of Willmar by adoption of Resolution No. 2020-044 on March 16, 2020, which Resolution is incorporated herein by reference. The COVID-19 pandemic has also resulted in the declaration of a Peacetime Emergency and the issuance of successive executive orders by Minnesota Governor Walz. The COVID-19 pandemic and the requirements of Governor Walz's executive orders have limited or otherwise affected the operation of many commercial and not-for-profit establishments in the City of Willmar. There is a pressing and emergent need for these establishments to expeditiously, safely and efficiently sell goods and deliver services to the public so that the businesses may continue to generate revenues and the public may maintain access to necessary products and services to the greatest extent possible while limiting close personal exchanges between customers and employees and practicing physical and social distancing between persons during the COVID-19 pandemic.

Section 2. TEMPORARY USE OF PUBLIC RIGHTS-OF-WAY AND CITY PROPERTY. Notwithstanding anything to the contrary contained in the City of Willmar City Code, or any special ordinance or policy of the City, but subject to the requirements and restrictions contained in Section 3 of this ordinance, retail businesses having a brick and mortar location within the City of Willmar may place and sell their goods or deliver services, including but not limited to by establishing drive-up or drive-thru areas, customer ordering, waiting or pick-up areas, or customer seating or service areas on the businesses' property or within the following portions of public rights-of-way or other City-owned property, which areas shall collectively be referred to in this ordinance as the "outdoor spaces":

- A. upon the sidewalk located directly in front of the main entrance to such business and equal to the width of the business adjacent to the sidewalk;
- B. upon any public parking spaces immediately adjoining the building where the business is located, to an equal extent as any other businesses adjoining the areas who wish to make use thereof pursuant to this ordinance; and
- C. upon any green spaces or other City-owned property adjoining the building where the business is located and which are approved for business' use under this ordinance by the City Administrator or the City Administrator's designee, to an equal extent as any other businesses adjoining the areas who wish to make use thereof pursuant to this ordinance.

Section 3. TEMPORARY STREET CLOSURES. The City Council or the City Administrator, in their respective judgment and discretion, may close City streets or any portions of City streets, including only one lane or one direction of travel, for events or as otherwise necessary or convenient to facilitate the purposes of this ordinance and the uses approved herein. A written plan for street closure for an event(s) shall be submitted by the business or businesses seeking closure to the City for review and approval. The written plan shall contain the information in this Section and a map showing the location of the event/street closure. The use of streets closed pursuant to this Section shall be subject to requirements and restrictions contained in Section 4. The determination whether to close any street under this Section shall be based on, in the judgment and discretion of the City Council or City Administrator, factors including but not limited to the following: the operational needs of the City; the public health, safety, and welfare; weather conditions; the number of events previously scheduled or frequency of previous closures of such street; the number of streets closed at any given time and the interrelation of such streets; and the needs of and burden upon the traveling public and

pedestrians resulting from a proposed street closure. The business making application for street closure shall make arrangements with the City for placement and removal of street closure barricades. The City Administrator shall receive input from the Police Chief, Fire Chief, City Engineer, Public Works Director, and City Clerk in making such determinations for street closures. The City Administrator may bring any request for a street closure to the City Council for consideration by the City Council.

Section 4. REQUIREMENTS AND RESTRICTIONS.

- A. All businesses shall at all times preserve a minimum of five (5) feet in width for pedestrian traffic on sidewalks in addition to the area presently occupied by trees, transformer boxes or other permanent installations, shall not block disabled person parking spaces or ramps, and shall otherwise meet the requirements of the Americans with Disabilities Act as the same pertains to the portion of the sidewalk being used by such business pursuant to this ordinance.
- B. Personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs placed within a public parking area shall be demarcated by bright, highly visible partitions placed within the parking space(s), including but not limited to cones, removable fencing or ropes. The means of demarcation shall not extend beyond the parking spaces and a 12-foot driving lane shall be maintained at all times, unless the street is temporarily closed for an event pursuant to Section 3. The means of demarcation shall be temporary and removable and shall not be lower than 30 inches nor higher than 48 inches.
- C. All other uses of the outdoor spaces not specifically provided for in this ordinance shall remain subject to any other applicable laws, regulations, and license and permit requirements.
- D. No food or beverage shall be sold within any outdoor spaces under this ordinance for immediate consumption except by a licensed bar or restaurant and only in compliance with all state and local regulations for such establishments.
- E. No alcoholic beverages shall be sold or served for on-premises consumption within any outdoor spaces under this ordinance except by an establishment pursuant to a license agreement with the City, which agreement may be administratively approved by the City Administrator or the City Administrator's designee, or otherwise by an establishment holding a valid license encompassing such outdoor spaces pursuant to, and only in compliance with, all state and local regulations for the sale of alcoholic beverages. In such cases, barriers must be established so as to designate a compact and contiguous additional patio space within the outdoor spaces for inclusion in the licensed premises.
- F. Alcohol shall only be consumed upon the licensed premises from which the alcohol was sold.
- G. No personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs, may be placed within any outdoor spaces so as to cause damage to or the physical alteration of such outdoor spaces or any permanent facilities located thereon.
- H. No personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs, may be placed within any outdoor spaces so as to obstruct or interfere with building exits, fire hydrants, standpipes, or other public safety equipment.
- I. If the business is not the fee owner of any public right-of-way made available for business use under this ordinance, such business may only make use thereof pursuant to this ordinance with the written approval from the fee owner of the premises.

- J. All businesses using any outdoor spaces for the purposes herein stated shall make immediate adjustments to said use area in the event City staff notifies them either verbally or in writing that some use by the business is not in compliance with the requirements of this ordinance.
- K. Any business using any outdoor spaces pursuant to this ordinance shall fully indemnify, defend, hold harmless, and release the City, its officers, agents, and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with said business' use or operations within the outdoor spaces.
- L. No business may make use of any outdoor spaces pursuant to this ordinance without first submitting a certificate of insurance to the City Clerk evidencing general liability insurance that includes premises and operations insurance and products and completed operations insurance with minimum coverage amounts of \$50,000 per occurrence, \$10,000 per occurrence for property damage, and \$300,000 aggregate for personal injury or death, and which names the City of Willmar as an additional insured.
- M. All business seeking to use any outdoor spaces pursuant to this ordinance, prior to the use thereof, shall notify the City Clerk verbally or in writing and submit the certificate of insurance required in Paragraph L, and the City Clerk shall keep a list of said businesses. A copy of this ordinance shall be published on the City's website and readily made available to any business requesting a copy thereof. Further, a copy of this ordinance shall be provided to all businesses at the time the business registers with the City Clerk pursuant to this paragraph. Registration shall include the name of the business, the contact person, the contact information, and the address of the business. This information shall be required in addition to the license agreement required for businesses desiring to sell alcohol and have customers consume alcohol within their licensed premises.
- N. Any business using any outdoor spaces pursuant to this ordinance is responsible for ensuring the area is litter free at all times during such use.
- O. On-site signage and storage are authorized, as well as limited on-site directional signage. Temporary tables, tents and sun shelters may be erected, but any structure requiring state building and fire code permits must submit plans and permit applications for accelerated review by city staff.

Section 5. PENALTY; ENFORCEMENT. Any person using any outdoor spaces in violation of the requirements and restrictions contained in Section 4 of this ordinance shall be subject to a civil penalty in an amount not to exceed \$300. Each day on which a violation occurs shall be a separate offense.

Section 6. REPEALER. Emergency Ordinance No. 1451, adopted by the Willmar City Council on May 29, 2020, is hereby repealed in its entirety.

Section 7. EFFECTIVE DATE. This emergency ordinance shall be effective from and after its adoption and publication.

Section 8. EXPIRATION DATE. Pursuant to Section 2.12, subdivision 3 of the City Charter, this emergency ordinance shall expire upon the earlier of (1) the date on which City Council Resolution No. 2020-044, dated March 16, 2020, declaring the local emergency due to the COVID-19 pandemic, is repealed; or (2) the sixty-first day following the date this emergency ordinance was adopted.

Passed by the City Council of the City of Willmar this 15th day of March, 2021.

