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UPDATED EMERGENCY RULES AND REGULATIONS No. 2020-17A
Regarding Temporary Outdoor Expansion Permits

To all persons take notice:

That for the protection of life, health, safety and property as affected by reason of the Novel Coronavirus 2019 (COVID-19), which resulted in my declaration of a "local emergency" under the authority of Chapter 2, Article IX of the Code of the City of Fort Collins, (the "City") and which declaration of local emergency was filed with the City Clerk and with the Colorado Division of Emergency Management on March 13, 2020, and extended by City Council adoption of Resolution 2020-030 on March 20, 2020, I have hereby established, under the authority of City Code Section 2-671(a)(6)a, the following rules and regulations:

1. The purpose of this Updated Emergency Regulation is to replace Emergency Rule and Regulation No. 2020-17 ("Regulation No. 2020-17"), signed on May 28, 2020. This Updated Emergency Regulation No. 2020-17A will become effective on signature and shall govern all "Outdoor Expansion Permits" whether issued under Regulation No. 2020-17 or this Updated Emergency Regulation No. 2020-17A. The City Engineer is hereby authorized to approve temporary outdoor expansion permits ("Outdoor Expansion Permit" or "Permit") to fixed restaurants, liquor licensed establishments, and retail establishments within the Fort Collins City limits that otherwise meet all applicable Colorado ("State"), Larimer County ("County"), and City requirements for operation and are authorized to be open for public service (with or without a Permit) ("Eligible Establishments"), subject to certain requirements. Neither food trucks nor outdoor vendors qualify as Eligible Establishments since they have no fixed location.

2. The purpose of the Permit is to allow Eligible Establishments to temporarily expand their existing premises into a defined area (the "Expansion Area") on City or private property adjacent to or in the immediate vicinity of their fixed location, thereby facilitating the ability of the Establishment to conduct business while maintaining required physical or social distancing and safety for the public when an Eligible Establishment resumes public service and operates as permitted by State and County public health regulations. City property available for an Expansion Area is limited to City rights-of-way, including sidewalks, streets, and parking spaces or lots.

3. Applicants for the Outdoor Expansion Permits must comply with all current and applicable State, County, and local regulations to be considered for approval. Such regulations include, but are not limited to:

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a. State Emergency Regulations 47-302 1 C.C.R. 203-2 which allows for on-premises liquor licenses to temporarily expand their licensed premises into sidewalks, streets, and parking lots to increase social distancing measures;
b. State and County Public Health Orders, State Executive Orders and other State and County emergency orders in effect from time to time; and
c. Other local rules and regulations.

4. A City Outdoor Expansion Permit **does not** authorize or license the service of alcohol in the Expansion Area. **Applicants wishing to serve alcohol in an Expansion Area are responsible for obtaining from the local and State liquor licensing authority approval for any modification to an existing liquor license necessary to permit liquor service in the Expansion Area.**

5. An Outdoor Expansion Permit is expressly subject to all Terms, Conditions and Procedural Requirements set forth on the Updated Exhibit A attached hereto.

6. An Outdoor Expansion Permit shall be effective only when the Eligible Establishment is otherwise permitted to be open to the public under applicable State, County, and City regulations.

7. Outdoor Expansion Permit applications shall be submitted and processed as follows:
   a. Applications shall be submitted to via the City's website at https://www.surveygizmo.com/s3/5608953/Fort-Collins-Outdoor-Dining-Encroachment-Application .
   b. The permit application will also require verification by the applicant satisfactory to the City Engineer that the proposed operation is in compliance with all applicable State and County regulations for operation of the Eligible Establishment and has obtained or prior to operation will obtain all State and County approvals or permits required for operation of the Eligible Establishment. Applicants will be notified of the issuance or denial of a Permit at and any issued Permit shall be delivered by email to the email address set forth on the application.
   c. Receipt of an email from the City Engineer initially approving the map and set-up reflected in the application will permit the applicant to set up the Expansion Area as shown on the application. Before operating in the Expansion Area, the applicant must email one or more photos of the completed set-up to the City Engineer to verify it complies with proposed set-up in application and plans. The City Engineer or their designee may inspect the Expansion Area in person at any time, in their discretion, to verify compliance. Upon the City Engineer's approval and issuance of Permit, the applicant may then occupy the Expansion Space.

8. Outdoor Expansion Permit applications will be reviewed by relevant City Departments and ultimately approved or denied by the City Engineer in consultation with Poudre Fire Authority.

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In order to approve an application, the City Engineer must determine that granting an application would not be detrimental to the public good and that:

a. The Eligible Establishment meets all applicable City requirements for operating.

b. Any requested closure of a public right-of-way or publicly accessible portions of private property such as sidewalks, parking spaces and drive aisles to accommodate the expansion of an establishment can be done in a manner that:

i. Ensures the closure is safe;

ii. Sufficiently mitigates impacts to the public's ability to safely and conveniently bypass the proposed closure; and

iii. Complies with all applicable laws including, but not limited to, the American with Disabilities Act (ADA).

c. Any requested expansion into the public right-of-way or onto private property:

i. Maintains adequate emergency access to the Eligible Establishment and other properties in the vicinity; and

ii. Is compatible with the activities, whether commercial, industrial, or residential, being conducted on properties in the vicinity of the establishment.

9. The City Engineer's decision to issue or deny a requested Permit is final and not subject to any administrative or other appeal to the City. If a Permit is denied the applicant may reapply based on the comments provided by the City Engineer. There will likely be some instances where the City will not be able to approve a proposed Expansion Area based on safety and/or compatibility issues.

10. Outdoor Expansion Permits will be issued to an Eligible Establishment on an individual basis and are non-transferable and site specific. The City Engineer has the discretion to impose site specific conditions on any Outdoor Expansion Permit in order to assure compliance with the requirements set forth above and to protect public safety.

11. Outdoor Expansion Permits are revocable and subject to the following provisions:
    a. All Outdoor Expansion Permits will terminate at the termination of the declared local emergency.
    b. Eligible establishments wishing to erect weather protection barriers, heating equipment or any additions to their currently permitted Outdoor Expansion Area must submit an updated plan to the City Engineer which must be approved prior to the addition of such items. All furniture, fixtures and equipment ("FF&E") shall be removed and damaged repaired by the Eligible Establishment within two-weeks of the termination of this Emergency Regulation.
    c. Permits are revocable at any time by the City Engineer prior to the date above in the discretion of the City Engineer with or without cause after ten (10) days' notice, except that the City Engineer may summarily suspend or terminate any Permit without ten (10) days' advance notice in the interest of public health or safety.

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i. Any notice of revocation of the Permit will be sent by email to the Establishment's email address on the Permit application.
ii. The Eligible Establishment shall terminate operation in the Expansion Area immediately after receipt of notice revoking the Permit and remove all FF&E from and repair all damage to the Expansion Area within 48 hours of receipt of such notice.

12. An approved Outdoor Expansion Permit is intended to be stand-alone permit for the Expansion Area and will temporarily supersede conflicting provisions of the Municipal Code and Land Use Code requiring other permits or approvals for the use of the Expansion Area on public or private property expressly authorized by a Permit, including but not limited to:
    a. City Code Chapter 5 - Buildings and Building Regulation.
    b. City Code Chapter 15 - Licenses and Business Regulations: Article XIII: Section 15 Right of Way Contractors and Article XIV: Section 15 Outdoor Vendors.
    c. City Code Chapter 23 - Public Property: Article III: Section 23 Obstructions and Encroachments, Divisions 1 (General), 2 (Obstructions) and 3(Encroachments).
    d. City Code Chapter 23 - Public Property: Article IV: Section 23 Disposition of Property, Division 2 – Real Property.
    e. City Code Chapter 24 Streets and Sidewalks: Article II: Section 24 – Sidewalk, Division 2 – Sidewalks, Curbs, Gutters; Article II: Section 24 Streets, Article IV: Section 24 Portable Signs.
    f. City of Fort Collins Land Use Code Articles 3 and 4.

13. I find that this Updated Emergency Rule and Regulation No. 2020-17A is reasonable and necessary to promote public safety and support economic recovery caused by the COVID-19 Pandemic. This Emergency Rule and Regulation promotes the health, safety and welfare of the public because it will provide an expedited way for the City's economy to recover, bolster the economic health of residents, and ensure public health and safety concerns are prioritized.

Pursuant to Section 2-671(e) of the City Code, the rules and regulations set forth herein shall be disseminated to local radio and television stations and to a newspaper having a general circulation within the City. A knowing violation of these rules and regulations shall be a misdemeanor punishable under Section 1-15 of the City Code.

DATED this 24 day of September, A.D. 2020.

DocuSigned by:
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Darin A. Atteberry, City Manager

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Emergency Regulation 2020-17A
Exhibit A

Procedural Requirements

Outdoor Expansion Permit Applications **must** include:

1. A map with of the proposed Expansion Area showing specific areas, defined boundaries, dimensions and distances from the Eligible Establishment's existing premises, and the location of all furniture, fixtures, and equipment to be located within the Expansion Area. All seating shall be at least six (6) feet apart and accommodate not more than eight (8) people at a single table.
2. Where applicable, written approval signed by the owner of private property included in any proposed Expansion Area.
3. A certificate of insurance naming the City as an additional insured with respect to the Eligible Establishment's use of City property, including comprehensive general and where applicable liquor liability insurance in an amount not less than $1M per occurrence.
4. A verification satisfactory to the City Engineer by the applicant that it is in compliance with all applicable State and County for operation of the Eligible Establishment and has obtained or prior to operation will obtain all State and County approvals or permits required for operation of the Establishment.

Terms & Conditions of Operation

1. Receipt of an email from the City Engineer initially approving the map and set-up reflected in the application will permit the applicant to set up the Expansion Area as shown on the application. **Before operating in the Expansion Area, the applicant must email one or more photos of the completed set-up to the City Engineer to verify it complies with proposed set-up in application and plans.** The City Engineer or their designee may inspect the Expansion Area in person at any time, in their discretion, to verify compliance. Upon the City Engineer's approval and issuance of Permit, the applicant may then occupy the Expansion Space.
2. The City Engineer must approve any changes to the site plan before the Eligible Establishment makes the proposed modifications. This includes, but is not limited to, modifications that provide heat and shelter.
3. The City shall be responsible for placing barriers on City rights-of-way between the Expansion Area and streets open for City traffic.
4. The Eligible Establishment shall be responsible for providing all temporary, free-standing and movable furniture fixtures and equipment (FF&E) and temporary fencing or other boundary makings and/or controls necessary for use of the Expansion Area. No permanent or affixed FF&E is allowed. All FF&E and other personal property placed in the Expansion Area shall remain the sole property of the Eligible Establishment and the Eligible Establishment shall place such property on City Expansion Area at its own risk. The City shall have no liability for loss or damage to such property and the Eligible Establishment waives all claims against the City for such loss or damage.
5. The Eligible Establishment must staff, monitor, and maintain the Expansion Area, including keeping the Expansion Area free of snow, trash and food scraps, clean, sanitized and adequately maintained in compliance with all applicable State, County and City regulations.
6. Electrical, building or fire permits may be required as reflected on the issued Permit.
7. The Eligible Establishment shall not permit the Expansion Area to be used for: a) standing areas that encourage people to congregate; b) outdoor entertainment; or c) pets except service animals per ADA.
8. The City Engineer will determine when Eligible Establishments must close the Expansion Area in consideration of, and compliance with, State, County, and City regulations. The City Engineer will

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provide reasonable notice of relevant closing times. The Eligible Establishment may set other hours for permanent portions of the business (indoor and existing permanent patios) as permitted by State, County and City regulations.

9. The Establishment shall comply with all other provisions of Emergency Regulation No. 2020-17A.