

City of Sun Prairie, Wisconsin

A RESOLUTION APPROVING AN EMERGENCY ORDER ALLOWING TEMPORARY OUTDOOR DINING FACILITIES THROUGH APRIL 2021

Presented: November 17, 2020

Adopted: November 17, 2020

Resolution No.:

RESOLUTION

WHEREAS, The City Of Sun Prairie currently regulates outdoor dining primarily through the implementation of Title 17, Zoning, and defines such activities under Section 17.16.140 as Private Outdoor Cafes and Sidewalk Cafes; and,

WHEREAS, the current COVID-19 pandemic has had a significant effect on small business operations in the Sun Prairie community, including restaurants and bars that have been allowed to reopen with capacity limits that restrict the number of patrons that can be within their facilities at any one time, and

WHEREAS, the City of Sun Prairie desires to work cooperatively with said restaurants and bars to expand seating in creative ways in an effort to bolster their ability to successfully recover from the economic impact of the COVID-19 pandemic, and

WHEREAS, pursuant to Wis. Stat. § 323.11, in response to the COVID-19 pandemic, the Common Council of the City of Sun Prairie declared a local state of emergency under Resolution No. 20/038, which was extended by Resolution Nos. 20/122 and 20/169, and

WHEREAS, pursuant to Wis. Stat. § 323.14, during a declared state of emergency, the Common Council of the City of Sun Prairie is authorized to order whatever is necessary and expedient for the health, safety, protection, and welfare of persons and property within the City of Sun Prairie.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Sun Prairie hereby orders that, notwithstanding any contrary City ordinances, temporary outdoor dining areas may be approved as described herein by the Planning Division, after consultation with other City departments as deemed appropriate, and if operated in a manner consistent with applicable health codes and Emergency Orders, requirements and guidelines promulgated by Public Health Madison Dane County (PHMDC), as follows:

1. This Order shall remain in place until April 14, 2021.
2. This Order shall apply to restaurants, bars, and taverns.
3. All operations approved under this Order shall be conducted in a manner that is consistent with Public Health Madison Dane County Orders, requirements and guidelines.

4. Temporary outdoor dining areas approved under this order shall be limited to operate between 7:00 am and 10:00 pm. No amplified sound or music shall be permitted in temporary outdoor dining areas approved under this order.
5. This Order is not an extension of Resolution Nos. 20/093, 20/170, and 20/171, and all prior approvals granted pursuant thereto expire on November 30, 2020.
6. In order to serve alcohol in a temporary outdoor dining area, the applicant must obtain a temporary alcohol beverage license premises description amendment that includes the proposed outdoor dining area. The applicant may apply directly to the Common Council for this amendment. Temporary enclosures or barriers are required to define the premises where alcohol may be served and consumed. The application for an amendment must include a site plan showing the type and description of barrier(s) to be used and their proposed locations. A premises description amendment approved pursuant to this resolution is temporary and is conditioned upon compliance with all applicable PHMDC codes, rules, and emergency orders. This expedited application process is available only to existing alcohol beverage license holders operating a restaurant that existed prior to the local state of emergency declared under Resolution No. 20/038. All other requests for alcohol beverage license amendments shall follow normal review and approval procedures as outlined in the Municipal Code of Ordinances.
7. This Order shall temporarily suspend the need for obtaining a conditional use permit or special use permit for temporary sidewalk cafés, private outdoor cafés, or beer gardens, including all fees associated with such applications, throughout the duration of this Order. Effective December 1, 2020, all restaurants, bars and taverns desiring outdoor dining areas shall submit site plans to the City Planning Division that describe the location, dimensions, and layout of the proposed outdoor dining area, including elements as needed for cold weather operations. Placement of lighting and heating equipment must be shown on site plans submitted with the permit application. All such applications for temporary outdoor dining areas shall be reviewed and considered administratively by the City of Sun Prairie Planning Division upon consultation with other departments and divisions as deemed appropriate, and shall conform to the following:
 - A. **Outdoor dining areas located on PRIVATE PROPERTY** –
 1. **Snow Removal** - Private property owners remain responsible for snow maintenance on private lots. If any part of the outdoor dining area is directly adjacent to a street or right-of-way, all furniture, enclosures and other items must be removed upon the accumulation of two or more inches of snow, or at the direction of the Public Works Department, until after City plowing operations have ceased for the snow event. Temporary structures shall be vacated after a half inch of snow accumulates on the membrane.
 2. **Structures** - Temporary outdoor structures, including tents, are allowed on private property under the following regulations:
 - a. Temporary outdoor structures that hold multiple parties must have 100% of the sides open to allow air flow, or it will be considered an indoor space and subject to indoor space requirements from PHMDC.
 - b. Each structure may not exceed 400 square feet.
 - c. **Fire Safety Guidance for Tents, Canopies, Dining Domes, and other Membrane Structures.** Structures in outdoor dining areas must comply with the following provisions of the International Fire Code:

- i. **Anchored Structures** shall be anchored, secured, or weighted to withstand 45 mph wind gusts IFC 3103.9
 - ii. **Buildings** – Structures shall not block access or egress to or from nearby buildings. IFC3103.8.2
 - iii. **Emergency Plans** – Plans and procedures must be developed to safely evacuate the structure in case of fire, severe weather, or other emergencies. IFC 3106.4.1. The plans and procedures must be submitted with application materials and are subject to approval by the Fire Department.
 - iv. **Exit** – If side walls (one or more) are utilized, one marked exit shall be provided. The exit shall not be secured with zippers, Velcro, ties, or other means. IFC 3103.12.2
 - v. **Fire Extinguishers** – Shall be within 75 feet of travel distance, visible, not obstructed inspected and serviced. IFC 3107.9. The location of required fire extinguishers must be included in the site plan submitted with application materials.
 - vi. **Fire Lanes** – Structures may not be located in the fire lanes, street, or obstruct access to the building fire hose connections. IFC 3103.8
 - vii. **Flame Retardant** – The membrane structure must be flame retardant. The certificate stating the test used to certify that the tent meets flame retardancy must be affixed to the structure or on-site at all times. “Flame *resistant*” is not the same as “flame *retardant*”. Open flame cooking, smoking and candles are not permitted IFC 3107.04
 - viii. **Location** – Structures shall be located 10 feet from buildings. Structures shall be located 3 feet from other temporary structures. IFC3103.8.2
3. **Generators** – Generators must be located at least 10 feet from any structure in an outdoor dining area. .
4. **Heating & Lighting Elements** - Open flame heaters are not permitted. All other heating appliances must comply with the appliance manufacturer’s instructions and must be positioned with at least 3 feet of clearance on all sides. IFC 3107.12 Heating and lighting devices are allowed but must meet the following operational regulations:
- a. **General requirements**
 - i. Heating equipment must be shown on site plans submitted with the permit application.
 - ii. Heating equipment shall be unplugged or disconnected for secure, locked overnight storage, and employees should be trained in proper installation of fuel tanks and in detecting leaks.
 - iii. Establishments shall maintain a minimum of 5 feet clearance between heaters and all other objects, including tent sides.
 - b. **Propane Heaters** - A tank storage plan must be submitted with application materials and is subject to approval by the Fire Department and Vending Coordinator prior to use of such appliances.
 - i. *Locations of use* – Appliances shall be used outdoors only in open, uncovered areas and shall maintain a minimum clearance of 5 feet from: buildings, combustible decorations, overhangs, awnings, sunshades, etc.
 - ii. *Prohibited Locations* – Appliances and fuel tanks shall not be used nor stored inside any building while connected to the fuel source, inside tents, beneath canopies or other membrane structures.
 - iii. *Contact Guard* – The heating element or combustion chamber shall be guarded at all times to prevent accidental contact.
 - iv. *Container Capacity* – Individual containers shall not exceed 20 pounds.

- v. *Gas Container Storage* – Gas containers shall not be stored indoors or below grade regardless of whether tanks are full or empty. Storage areas should be generally hidden from the public. Containers not in use shall be stored in a suitable enclosure or otherwise protected from excessive heat, physical damage, and tampering.
 - vi. *Gas Container Replacement* – Gas container replacement shall not be conducted while the public is present.
 - vii. *Listing* – Appliances shall be listed and used in accordance with the listing and manufacturers guidelines.
 - viii. *Orientation* – Containers shall be positioned in an upright orientation to maintain the pressure relief valve in direct communication with the vapor space of the container.
 - ix. *Tip-over Switch* – Appliances shall have a tilt/tip-over switch that automatically shuts off gas flow if tilted more than 15 degrees from vertical.
- c. **Electric Heaters** - If it is not possible to store gas containers outside, then only electric heaters may be used in an outdoor dining area. Electrical heating equipment must be marked “UL listed” or “UL classified.” Needed electrical upgrades, as determined by the Building Inspection Department at the time of application for outdoor dining area approval, shall be made by a certified electrician to assure there is enough electrical capacity to maintain safe operation.
 - d. **Lighting** - Lighting must be marked “UL listed” or “UL classified.” A lighting plan shall be subject to review and approval of City Planning and Building Inspection Departments.

B. Outdoor dining areas located on PUBLIC PROPERTY or RIGHT-OF-WAY

1. **Tents** - Only tents and other membrane structures will be allowed for outdoor dining in the sidewalk/street/parking lane/public parking lots, with the following regulations:
 - a. Tents that cover more than 1 table must have 100% of the sides open to allow air flow, or it will be considered an indoor space and subject to indoor space requirements from PHMDC.
 - b. Only tents under 400 square feet are allowed on the sidewalk.
 - c. All tents on the sidewalk must be taken down and removed every evening upon close of business. Tents in the street/parking lane may remain up overnight only if approved through a Street Occupancy Permit.
2. **Heating & Lighting Elements** - In addition to the requirements in Sec. B.4. for heating and lighting elements on private property, the following apply:
 - a. Electricity for heating and lighting devices must be pulled from the business.
 - b. Any electric cords must be positioned to provide 9 feet of clearance over the public sidewalk. No electrical cords shall be strung across the street. Electrical cords within the outdoor dining area shall be secured using cord covers approved as part of the approved plan.
 - c. The location of electrical equipment and cords is subject to approval as part of the outdoor dining area application process and is subject to change for safety reasons, at the discretion of the Building Inspection Department..
3. **Snow Removal Plans** - If tents or other membrane structures will be placed in the right-of-way or on public property, then the applicant must submit a snow plan with the application for outdoor dining area approval. The snow plan is subject to review and approval by the Director of Public Works.

8. Minimum clearance to maintain ADA access along sidewalks shall be maintained (minimum of 4.5 feet) at all times. The Police Chief shall have the authority to temporarily restrict parking as necessary to accommodate the temporary outdoor dining area for the duration of this Order.
9. Temporary outdoor dining areas should be located on premise whenever practical. Use of public right of way or other public lands may be considered when other options are not viable, but such use is not a given and shall be evaluated on a case-by-case basis based on safety, feasibility, or other factors deemed appropriate by City staff. When proposed on an adjoining property under separate ownership, evidence of authorization from the adjacent owner shall be provided in the application materials.
10. The operator of the temporary outdoor dining area shall be responsible for keeping the outdoor dining area and surrounding areas free of litter and debris. Failure to maintain the facility in a well-kept manner shall be grounds for revocation.
11. All tables, chairs and other materials and equipment associated with the temporary outdoor dining area shall be removed daily and stored within a building or other approved location overnight.
12. The operator and the property owner of an establishment that operates a temporary dining area located in the public right of way or on public property under this Order shall hold the city harmless for any personal injury or property damage resulting from the existence or operation of, and the condition and maintenance of, the right-of-way or public property upon which the temporary outdoor seating area is located, and shall furnish evidence of general liability insurance in the amount of one million dollars (\$1,000,000.00) per person and two million dollars (\$2,000,000.00) per occurrence with the city as additional named insured.
13. Any application for a temporary outdoor dining area that is denied by the Planning Division as a result of the administrative review process may be appealed to the City Council for consideration at its next available meeting.
14. Upon expiration of this Order, all approvals and waivers provided through this order shall be rescinded. Temporary seating areas, barriers and other related equipment and materials shall be removed and the premises restored to their prior conditions.

Paul T. Esser, Mayor

Date Approved: November 17, 2020

Date Signed: _____, 2020

This is to certify that the foregoing resolution was approved by the Common Council of the City of Sun Prairie at a meeting held on the 17th day of November, 2020 and was submitted for signatures on the _____ day of November 2020.

Elena Hilby, City Clerk