

Emergency Order 2020-16

CITY OF BOULDER ORDER RELATED TO DECLARATION OF LOCAL DISASTER EMERGENCY

A disaster emergency was declared by the city manager on March 14, 2020. The city council confirmed and extended the emergency declaration until further notice at the March 16, 2020 special council meeting. Pursuant to Section 2-2.5-7, "Powers," B.R.C. 1981, the city manager finds a need to issue this order in order to protect the health, safety and welfare of persons or property within the city or to otherwise preserve the public peace or abate, clean up or mitigate the effects of any disaster emergency.

On May 27, 2020, the Colorado Department of Public Health and Environment issued COVID-19 Guidance for Restaurants and Food Services to allow restaurants to open subject to health and safety requirements. Among the rules are requirements related to creating safe distances between patrons and staff members. The order requires that restaurants take steps to make sure that people do not congregate in higher densities.

Restaurants and food trucks provide an important service to the community and are essential to the well-being of residents and visitors. They are also important employers and contributors to the local economy.

In order to make restaurants viable and meet the distancing requirements, the city will allow the use of public rights-of-way to be used for restaurant uses, subject to the provisions of Chapter 8-6, B.R.C. 1981, for revocable permits. Also, this order will allow restaurants to use private property, including yards within setback areas and parking lots, subject to terms and conditions that are necessary to protect the public health, safety and welfare.

Subsection 2-2.5-7(r), "Powers," B.R.C. 1981, authorizes the city manager to "suspend or modify provisions of any ordinance if strict compliance with such ordinance would prevent, hinder, or delay action that is necessary to cope with any disaster emergency." To assist restaurants in reopening, certain land use regulations, right-of-way regulations, or fee provisions may need

to be suspended or modified to facilitate the reopening of restaurants.

I find that the operation of restaurants and food trucks is important to the local community and economy and the inability to operate safely presents an imminent threat to life, health, safety and welfare of persons in our community.

Accordingly, effective immediately the city manager may suspend or modify any provision within the Boulder Revised Code, 1981, or condition of a land use approval that will allow the issuance of a revocable right-of-way permit for use of the public areas within the public right-of-way for restaurants. For the purposes of this order, restaurants include without limitations restaurants, taverns, brew pubs, wineries, distilleries, and breweries or permission to use private property that would otherwise not be eligible for use as outdoor seating.

The city manager will issue revocable permits to use the right-of-way or permission to use private property subject to the following:

- 1. The outdoor seating area is approved as part of a revocable right-of-way permit or land use permit.**
- 2. Use of the seating area will not create an imminent threat to the public health, safety and welfare.**
- 3. Request for the approval will be done on forms approved by the city manager and will include any terms and conditions for the permit. Permits will be issued for dining or entertainment use. The consent of any person that could be directly adversely impacted will be required for the application. Examples of persons that could be directly adversely affected include, without limitation, a landlord that owns a parking lot that is used by businesses in common or tenants of a ground floor business if a dining or entertainment use expands in front of its business in the right-of-way.**
- 4. In issuing permits, the city manager will balance the needs of the restaurant to have an economically viable use during this emergency with needs of surrounding property owners, and the general public health, safety and welfare.**

5. **Factors that are included in the public health, safety and welfare include without limitation:**
 - a. **Access to utility infrastructure, including manholes, storm water inlets, drain pans, water, wastewater, stormwater mains, water meters fire hydrants and building fire connections, communications, gas, and electric equipment;**
 - b. **Adequate access through the area by the public, including consideration of access to the area by emergency service providers;**
 - c. **The health and convenience of the business, employees, customers, and the residents and visitors to the surrounding areas;**
 - d. **The term of the permit and hours of operation; and**
 - e. **Offsite impacts to other residents and businesses in the area.**
6. **The city manager will designate areas within the public right-of-way for outdoor seating areas, including without limitation areas within closed streets, parklets, and sidewalks.**
7. **All outdoor seating areas shall be operated in a manner that complies with all state and local health orders related to the response and recovery from the COVID-19 emergency.**

The city manager may authorize the use of food trucks, subject to the terms and conditions that are necessary to protect the public health, safety and welfare.

This order is effective until September 30, 2020, unless further amended or modified. This order is necessary to allow for the safe reopening of dining and entertainment uses and prevent the assembly of large groups of people which will present a risk of infection during the disaster emergency. Once issued, this order may be changed from time to time during the period of a declared disaster emergency based upon the discretion of the city manager.

Enforcement: Pursuant to Section 2-2.5-8, "Adherence to Emergency Orders," B.R.C. 1981, Police, code enforcement and such other law enforcement and peace officers as may be authorized by the city manager shall be authorized to enforce the orders, rules and regulations made or issued pursuant a declared disaster emergency. Further, no person shall violate this order, or any permit is issued pursuant to this order. Any such violation may result in the revocation of any such permit.

Notice: All members of the public shall be deemed to have been given notice of the restrictions contained within a declaration upon its dissemination to the news media or publication on city websites or by use of other means of publicity.

Violation of Order: During the period of a declared disaster emergency, a person shall not:

- (1) Violate any of the orders duly issued by the city manager or designee pursuant to such declaration; or
- (2) Willfully obstruct, hinder or delay any duly authorized city officer, employee or volunteer in the enforcement or exercise of the provisions of this chapter, or of the undertaking of any activity pursuant to this chapter.

DATE: May 26 2020, 4:00 pm a.m./p.m.

Jane S. Brautigam

City Manager or other Authorized City Official
as designated by
Chapter 2-2.5, "Civil Emergencies and Disasters,"
B.R.C. 1981.