

0-2020-024

**CITY OF ALBUQUERQUE
CITY COUNCIL**

INTEROFFICE MEMORANDUM

TO: Timothy M. Keller, Mayor

FROM: Stephanie M. Yara, Director of Council Services *SMY 6/19/20*

SUBJECT: Transmittal of Legislation

Transmitted herewith is Bill No. O-20-23 Adopting The Temporary Outdoor Retail Ordinance; Authorizing Temporary Amendments To Site Plans For Existing Retail Establishments To Allow For Outdoor Retail For The Duration Of The Current Occupancy And Gathering Limitations Associated With The COVID-19 Public Health Emergency; Establishing A Permitting Fee (Borrego, Gibson), which was passed at the Council meeting of June 15, 2020 by a vote of 8 FOR AND 0 AGAINST.

Excused: Harris

In accordance with the provisions of the City Charter, your action is respectfully requested.

SMY:mm
Attachment

CITY of ALBUQUERQUE
TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. O-20-23 ENACTMENT NO. O-2020-024

SPONSORED BY: Cynthia Borrego, Diane Gibson

1 ORDINANCE

2 ADOPTING THE TEMPORARY OUTDOOR RETAIL ORDINANCE; AUTHORIZING
3 TEMPORARY AMENDMENTS TO SITE PLANS FOR EXISTING RETAIL
4 ESTABLISHMENTS TO ALLOW FOR OUTDOOR RETAIL FOR THE DURATION
5 OF THE CURRENT OCCUPANCY AND GATHERING LIMITATIONS
6 ASSOCIATED WITH THE COVID-19 PUBLIC HEALTH EMERGENCY;
7 ESTABLISHING A PERMITTING FEE.

8 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
9 ALBUQUERQUE:

10 **SECTION 1. The Temporary Outdoor Retail Ordinance is hereby adopted as**
11 **follows:**

12 "Section 1. SHORT TITLE.

13 **This ordinance shall be known and cited as the “Temporary Outdoor Retail**
14 **Ordinance”.**

15 Section 2. APPLICABILITY.

This Article governs temporary permitting of outdoor retail areas for existing retail establishments in locations that would otherwise be required for parking on a property. The permit and process in this article are for the duration of the COVID 19 Public Health Order limitations on building occupancies, gathering sizes, and physical distancing requirements.

21 Section 3. INTENT AND PURPOSES.

22 The intent of Article §13-19 et seq. is to establish a permitting process for
23 temporary outdoor retail areas, for such uses as retailing or curbside pick-up
24 areas, while the COVID-19 Public Health Orders are in effect, in order to help
25 promote the health, safety, and general welfare of retail staff and their
26 customers.

1 **Section 4. DEFINITIONS.**

2 **COVID-19 PUBLIC HEALTH ORDERS:** Public Health Orders associated with
3 COVID-19 that require social distancing measures, including limitations on
4 the occupancy of indoor spaces, and limitations on gathering sizes as issued
5 by the State of New Mexico or City of Albuquerque.

6 **Section 5. GENERAL PROVISIONS.**

7 A Temporary Outdoor Retail Area (TORA) Permit is required for any temporary
8 commercial outdoor retail areas in locations otherwise required for parking.

9 **Section 6. TEMPORARY OUTDOOR RETAIL AREA PERMITS.**

10 **A. Permit Required.** No temporary outdoor retail areas located in
11 portions of a property otherwise required for parking shall operate without
12 first obtaining a TORA Permit. In addition to any other necessary information,
13 the City shall require submission of the following for each TORA Permit
14 application:

15 1. A physical address of the business premise where the TORA is
16 proposed; and

17 2. A site plan that shows the existing building(s) and structure(s), and
18 parking to scale, together with specific dimensions of the existing square
19 footage for the retail area, and the number of parking spaces currently
20 provided; and

21 3. A scaled proposed site plan showing the area of the site to be
22 temporarily dedicated to outdoor retail and/ or curbside pick-up operations,
23 and any alterations to traffic circulation, parking, and enclosure per Section 7;
24 and

25 4. A statement signed by the property owner authorizing the proposed
26 changes to the site; and

27 5. A statement signed by the applicant that the TORA will be operated
28 in compliance with all applicable COVID-19 Public Health Orders, and all other
29 applicable city codes, including but not limited to the Fire Code (Article 14-2)
30 which includes the "Temporary change of use permit" and the "Temporary
31 membrane structures and tents permit" and associated fees, with the
32 exception of the sections of the Integrated Development Ordinance (IDO) as
33 they apply to parking requirements; and

1 6. A remediation agreement and plan binding the applicant as a
2 condition of approval of the TORA, to remediate the site to its pre-existing
3 condition, including but not limited to the re-installment of landscaping and
4 parking displaced by the TORA. However, no tree shall be removed from the
5 site unless approved by the City Forester for safety reasons and/or if the
6 health of the tree is in a decline that cannot be reversed. Any and all removed
7 trees shall be replaced with an appropriate species of an initial caliper of at
8 least 2.5 inches.

9 B. Permit Duration; Inspection. Any TORA permit issued pursuant to
10 this Article is valid for the duration of the relevant COVID-19 Public Health
11 Orders unless sooner terminated by the applicant, or cancelled by the City.
12 The City shall inspect each TORA to determine conformance with the
13 requirements of this Article within sixty days of permit issuance.

14 C. Permit Fee. The Planning Department shall collect no fee for a TORA
15 Permit.

16 Section 7. TEMPORARY OUTDOOR RETAIL AREA PERMIT.

17 A. Properties with uses in the following Retail Sales categories of the
18 IDO may apply for a TORA: Bakery goods or confectionery shop, Building and
19 home improvement materials store, Farmers Market, General Retail Small,
20 General Retail Medium, General Retail Large, Grocery Store. TORA shall meet
21 any Use Specific Standards as applicable to the use.

22 B. TORA located within the parking area may use up to 25% of the
23 required parking. If the property includes restaurants that are also applying for
24 a Temporary Outdoor Dining Permit per O-20-16, the total required parking
25 area used shall not exceed 30%.

26 i. TORA located within the parking area shall be enclosed with a
27 temporary barricade from areas with moving vehicles.

28 ii. TORA that use ADA accessible spaces shall provide new ADA
29 spaces that meet ADA accessibility requirements.

30 C. Up to 25% of the TORA may be dedicated to outdoor retail or
31 curbside pick-up for retail establishments that are not located on the subject
32 property.

33 D. TORA are not considered a Temporary Use under the IDO.”

1 **SECTION 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
2 clause, word or phrase of this Ordinance is for any reason held to be invalid or
3 unenforceable by any court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining provisions of this Ordinance. The Council
5 hereby declares that it would have passed this Ordinance and each section,
6 paragraph, sentence, clause, word or phrase thereof irrespective of any
7 provision being declared unconstitutional or otherwise invalid.

8 **SECTION 3. CONFLICTS.** In the event of any conflicts between this
9 ordinance and any provisions of the IDO or other applicable City regulations,
10 the provisions of this Ordinance shall prevail.

11 **SECTION 4. COMPILATION.** This Ordinance establishes temporary
12 provisions only, and shall not be compiled.

13 **SECTION 5. EFFECTIVE DATE.** This ordinance is passed and approved as
14 an emergency measure and takes effect immediately upon publication by title
15 and general summary.

1 PASSED AND ADOPTED THIS 15th DAY OF June, 2020
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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5 Excused: Harris

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9 Patrick Davis, President
City Council

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14 APPROVED THIS 26 DAY OF June, 2020

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18 Bill No. O-20-23

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23 Timothy M. Keller, Mayor
24 City of Albuquerque

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27 ATTEST:

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30 Ethan Watson, City Clerk
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