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Title: Adopting The Temporary Outdoor Dining Ordinance; Authorizing Temporary Amendments To Site Plans For Existing Restaurants To Allow For Outdoor Dining For The Duration Of The Current Occupancy And Gathering Limitations Associated With The COVID-19 Public Health Emergency; Establishing A Permitting Fee (Borrego, Gibson)
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6/3/2020	2	City Council	Sent to Mayor for Signature	
6/1/2020	1	President	Immediate Action Requested	
6/1/2020	2	City Council	Introduced (Immediate Action Requested)	
6/1/2020	1	City Council	Passed as Amended	Pass
6/1/2020	1	City Council	Amended	Pass

CITY of ALBUQUERQUE TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. O-20-16 ENACTMENT NO. _____

SPONSORED BY: Cynthia D. Borrego and Diane G. Gibson

ORDINANCE

Adopting The Temporary Outdoor Dining Ordinance; Authorizing Temporary Amendments To Site Plans For Existing Restaurants To Allow For Outdoor Dining For The Duration Of The Current Occupancy And Gathering Limitations Associated With The COVID-19 Public Health Emergency;
Establishing A Permitting Fee (Borrego, Gibson)

ADOPTING THE TEMPORARY OUTDOOR DINING ORDINANCE; AUTHORIZING TEMPORARY AMENDMENTS TO SITE PLANS FOR EXISTING RESTAURANTS TO ALLOW FOR OUTDOOR DINING FOR THE DURATION OF THE CURRENT OCCUPANCY AND GATHERING LIMITATIONS ASSOCIATED WITH THE COVID-19 PUBLIC HEALTH EMERGENCY; ESTABLISHING A PERMITTING FEE.

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

SECTION 1. The Temporary Outdoor Dining Ordinance is hereby adopted as follows:

“Section 1. SHORT TITLE.

This ordinance shall be known and cited as the “Temporary Outdoor Dining Ordinance”.

Section 2. APPLICABILITY.

This Article governs temporary permitting of outdoor dining areas for existing restaurants in locations that would otherwise be required for parking, setbacks, or landscaping 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, [and requirements for the use of personal protection equipment such as masks and gloves](#).

Section 3. INTENT AND PURPOSES.

The intent of Article §13-19 et seq. is to establish a permitting process for temporary outdoor dining areas while the COVID- 19 Public Health Orders are in effect, in order to help promote the health, safety, and general welfare of restaurant staff and their customers.

Section 4. DEFINITIONS.

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

Section 5. GENERAL PROVISIONS. A Temporary Outdoor Dining Area (TODA) Permit is required for any temporary commercial outdoor dining areas in locations otherwise required for parking, landscaping, or for outdoor dining structures within required setback areas.

Section 6. TEMPORARY OUTDOOR DINING AREA PERMITS.

A. Permit Required. No temporary outdoor dining areas located in portions of a property otherwise required for parking, landscaping, or for outdoor dining structures within the required setback shall operate without first obtaining a TODA Permit. In addition to any other necessary information, the City shall require submission of the following for each TODA Permit application:

1. A physical address of the business premise where the TODA is proposed; and
2. A site plan that shows the existing building(s) and structure(s), setbacks, parking and landscaping areas to scale, together with specific dimensions of the existing square footage for the dining area, the number of parking spaces currently provided, and the hours of operation for the restaurant; and
3. A scaled proposed site plan showing the area of the site to be temporarily dedicated to outdoor dining, and any alterations to traffic circulation, parking, landscape areas and enclosure per Section 7.
4. A statement signed by the property owner authorizing the proposed changes to the site; and
5. A statement signed by the applicant that the TODA will be operated in compliance with all applicable COVID- 19 Public Health Orders, and all other applicable city codes, including but not limited to the Food Sanitation Ordinance (Article 9-6-1), the Fire Code (Article 14-2) which includes the “Temporary change of use permit” and the “Temporary membrane structures and tents permit” and associated fees, with the exception of the sections of the Integrated Development Ordinance as they apply to parking requirements, landscape requirements and setbacks; and
6. A remediation agreement and plan binding the applicant as a condition of approval of the TODA, to remediate the site to its pre-existing condition, including but not limited to the re-installment of landscaping and parking displaced by the TODA. However, no tree shall be removed from the site unless approved by the City Forester for safety reasons and/or if the health of the tree is in a decline that cannot be reversed. Any and all removed trees shall be replaced with an appropriate species of an initial caliper of at least 2.5 inches.

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

C. Permit Fee. The Planning Department shall collect no fee for a TODA Permit.

Section 7. TEMPORARY OUTDOOR DINING AREA PERMIT.

A. Structures such as shade structures or decks associated with a TODA may be located within the required setbacks or landscaped areas. Such structures shall not impede the clear sight triangle.

B. TODA located within the parking area may use up to 25% of the required parking.

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

ii. TODA that use ADA accessible spaces shall provide new ADA spaces that meet ADA accessibility requirements.

C. TODA are not considered a Temporary Use under the Integrated Development Ordinance (IDO).

D. TODA shall meet the Use Specific Standards in the IDO Section 4-3(F)(14) Outdoor Dining.

E. The TODA shall not increase the overall seating capacity of the restaurant beyond the general capacity limitations absent COVID-19 public health order limitations.”

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

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

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

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

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