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Title: 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)
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6/26/2020	1	Mayor	Signed by the Mayor	
6/19/2020	1	City Council	Sent to Mayor for Signature	
6/15/2020	1	President	Immediate Action Requested	
6/15/2020	1	City Council	Introduced (Immediate Action Requested)	
6/15/2020	1	City Council	Passed	Pass

CITY of ALBUQUERQUE TWENTY-FOURTH COUNCIL

COUNCIL BILL NO. O-20-23 ENACTMENT NO. _____

SPONSORED BY: Cynthia Borrego, Diane Gibson

ORDINANCE

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)

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.

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

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

“Section 1. SHORT TITLE.

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

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.

Section 3. INTENT AND PURPOSES.

The intent of Article §13-19 et seq. is to establish a permitting process for temporary outdoor retail areas, for such uses as retailing or curbside pick-up areas, while the COVID-19 Public Health Orders are in effect, in order to help promote the health, safety, and general welfare of retail 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 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 Retail Area (TORA) Permit is required for any temporary commercial outdoor retail areas in locations otherwise required for parking.

Section 6. TEMPORARY OUTDOOR RETAIL AREA PERMITS.

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

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

2. A site plan that shows the existing building(s) and structure(s), and parking to scale, together with specific dimensions of the existing square footage for the retail area, and the number of parking spaces currently provided; and
 3. A scaled proposed site plan showing the area of the site to be temporarily dedicated to outdoor retail and/ or curbside pick-up operations, and any alterations to traffic circulation, parking, and enclosure per Section 7; and
 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 TORA 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 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 (IDO) as they apply to parking requirements; and
 6. A remediation agreement and plan binding the applicant as a condition of approval of the TORA, to remediate the site to its pre-existing condition, including but not limited to the re-installment of landscaping and parking displaced by the TORA. 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 TORA 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 TORA 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 TORA Permit.

Section 7. TEMPORARY OUTDOOR RETAIL AREA PERMIT.

- A. Properties with uses in the following Retail Sales categories of the IDO may apply for a TORA: Bakery goods or confectionery shop, Building and home improvement materials store, Farmers Market, General Retail Small, General Retail Medium, General Retail Large, Grocery Store. TORA shall meet any Use Specific Standards as applicable to the use.
- B. TORA located within the parking area may use up to 25% of the required parking. If the property includes restaurants that are also applying for a Temporary Outdoor Dining Permit per O-

20-16, the total required parking area used shall not exceed 30%.

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

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

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

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

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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