

**ORDINANCE NO. 886**

**AN EMERGENCY ORDINANCE TEMPORARILY SUSPENDING CERTAIN PROVISIONS OF THE DAcono MUNICIPAL CODE TO FACILITATE OUTDOOR DINING FOR RESTAURANTS IN RESPONSE TO THE COVID-19 DISASTER EMERGENCY**

**WHEREAS**, on March 17, 2020, the Mayor of the City of Dacono, pursuant to C.R.S. § 24-33.5-709, executed a Declaration of Local Disaster Emergency in and for the City of Dacono (the “Mayor’s Declaration”) in response to the presence of the Novel Coronavirus 2019 (“COVID-19”) in the State of Colorado and City of Dacono; and

**WHEREAS**, by Resolution No. 20-25 adopted on March 18, 2020, the City Council continued in effect the Mayor’s Declaration until terminated by resolution of the City Council; and

**WHEREAS**, on March 16, 2020, Colorado Governor Jared Polis ordered restaurants in the state to close to in-person dining in order to slow the spread of COVID-19; and

**WHEREAS**, on May 15, 2020, the Colorado Department of Revenue Liquor and Tobacco Enforcement Division (“LED”) issued Emergency Regulation 47-302(F) to authorize on-premises liquor licensees to temporarily modify their licensed premises and to pre-plan for temporary outdoor seating areas that support social distancing requirements, which Emergency Regulation currently expires on September 12, 2020; and

**WHEREAS**, on May 25, 2020, Governor Polis issued Executive Order D2020-079, which authorized limited indoor dining to resume in a manner to be set forth in public health orders and in accordance with mandatory social distancing requirements; and

**WHEREAS**, on May 26, 2020, the Colorado Department of Public Health and Environment (“CDPHE”) issued its Fourth Amended Public Health Order 20-28 Safer at Home, Appendix I to which sets forth the requirements for in-person dining; and

**WHEREAS**, the full economic impacts of COVID-19 cannot be determined at this time but restaurants have been among the most affected businesses, with the National Restaurant Industry estimating that COVID-19 will result in \$225 billion in lost revenue and the elimination of 5-7 million jobs in restaurants nationwide; and

**WHEREAS**, the City Council finds it reasonable and necessary to temporarily suspend certain provisions of the Dacono Municipal Code to allow restaurants within the City to provide temporary areas for outdoor dining to facilitate the economic recovery and long-term viability of the City’s restaurants, which have been greatly impacted by COVID-19; and

**WHEREAS**, the City Council finds that an emergency exists because the preservation of public property, health, safety, and welfare requires the City to take immediate action to provide the assistance set forth herein to its restaurant businesses affected by the COVID-19 Pandemic.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DACONO, COLORADO:**

**Section 1.** Temporary Outdoor Dining Areas. The purpose of this ordinance is to allow temporary outdoor dining areas pursuant to administratively-issued permits issued to businesses licensed by the City to serve food on-site to customers, such businesses being those that are colloquially referred to as “restaurants” in the CDPHE COVID-19 Guidance for Restaurants and Food Services dated May 24, 2020. For purpose of this ordinance, “outdoor dining” is defined as use of an adjacent, outside area by a restaurant for the same eating and drinking activities that occur within the restaurant.

**Section 2.** Required Approvals and Permits.

A. The following provisions of the Dacono Municipal Code (“DMC”) are hereby suspended upon issuance of a Temporary Outdoor Dining Permit in accordance with the requirements of this ordinance:

1. Sections 16-171(2)(a) and 16-181(3)(a), which require approval of a special use permit in accordance with DMC § 16-373 for service of food or beverages outside of an enclosed building; and
2. Section 16-297 regarding temporary signs.

B. Restaurants shall be responsible for obtaining all City approvals not suspended by this ordinance, as may be required by building codes set forth in Chapter 18 of the Dacono Municipal Code, and for obtaining all permits and approvals required by the Weld County Health Department and the Colorado Department of Revenue.

**Section 3.** Permit Application. Application for a Temporary Outdoor Dining Permit shall be made on a form to be provided by the City, and shall include the following.

1. Name, address, and telephone number of the applicant and property owner; written authorization of the owner of the property where the restaurant is located; and the street address and block and lot number of the property where the restaurant is located.
2. A diagram showing the temporary outdoor dining area, drawn to scale, and labeled to show
  - a. The boundaries of the proposed temporary outdoor dining area.
  - b. The location, number of, and distances between tables, widths of drive aisles, and setback from any adjacent roadways.

- c. The location of any doors leading from the restaurant to the temporary outdoor dining area, which door may not be obstructed in any manner.
- d. The dimension and location of the unobstructed space permitting passage of pedestrian traffic around or through the temporary outdoor dining area
- e. The location and type of barriers used to define the boundaries of the Temporary Outdoor Dining area.
- f. Location and materials of barricades defining the outdoor dining area.
- g. The location of all fire hydrants, utility poles, or other fixtures permanently located in the temporary outdoor dining area or on the sidewalk or other area within fifty feet (50') of the temporary outdoor dining area.
- h. Location and type of temporary lighting.
- i. Location and dimensions of any tents.
- j. A statement of the seating capacity of the existing restaurant and the proposed seating capacity of the temporary outdoor dining area.

3. Evidence in a form acceptable to the City demonstrating permission of the owner to utilize any private areas, such as parking lots, sidewalks or paths, for the temporary outdoor dining area.

4. Any other information reasonably requested by the City in order to demonstrate compliance with this ordinance, any state or county public health order, or any provision of the Dacono Municipal Code.

5. There shall be no fee charged for the application or issuance of a temporary outdoor dining permit pursuant to this ordinance.

**Section 4. Requirements and Limitations.** All Temporary Outdoor Dining Permits issued pursuant to this ordinance shall be subject to the following requirements and limitations:

A. Private Parking Lots. A maximum of 33 percent (33%) or one-third (1/3) of existing adjacent private parking lots may be utilized for a temporary outdoor dining area,

subject to written approval of the owner of the parking lot. The activities and uses of such outdoor dining area shall be safely separated from vehicular aisles, parking and travel ways. Adequate access, circulation, driveway clearance and fire access requirements through parking lots shall be maintained. Any equipment or furniture placed in the parking lot cannot be closer than two feet (2') from the edge of the adjacent travel lane.

B. Private Yards. A maximum of 25 percent (25%) or one-quarter (1/4) of existing front and side yards of the lot on which the restaurant is located may be utilized for a temporary outdoor dining area.

C. Private Sidewalks and Paths. Private sidewalks and paths may be utilized for a temporary outdoor dining area if a clear travel path of three feet (3') in width is provided and ADA accessible path requirements are maintained, subject to written approval of the owner of the sidewalk or path.

D. Public Sidewalks. Public sidewalks may be utilized for a temporary outdoor dining area if a clear travel path of five feet (5') in width is provided and ADA accessible path requirements are met, subject to a license agreement approved by the City Manager.

E. Access and Spacing. All access routes to and from restaurant building entrances shall be kept clear and accessible for ingress and egress. Outdoor dining areas shall be arranged and have a layout that provides the required social distancing of six feet (6') or greater in compliance with CDPHE Public Health Orders. No element of the temporary outdoor dining area may interfere with access to any building, including all means of ingress and egress.

F. No Outdoor Music, Entertainment, or Standing Areas. Temporary outdoor dining areas authorized by permits issued pursuant to this ordinance shall only be used for sit-down food and beverage service or curbside service (pick-up or delivery), and shall not be used for standing areas, yard games, or other entertainment, as such activities would encourage people to congregate and not maintain social distancing. Temporary outdoor dining areas also may not use or provide live entertainment, amplified sound or entertainment such as music over speakers, movies, sports broadcasts, or loudspeaker call systems.

G. Tents, Canopies, and Umbrellas.

1. Tents and canopies may be approved for use within an outdoor dining area provided they are adequately anchored, provide sufficient ventilation, and sight distances are maintained. Tents and canopies must be open on at least three sides during business hours. Tents and canopies exceeding 400 square feet in size require a building permit issued by the City and must receive approval by the Mountain View Fire Rescue.

2. All umbrellas located within temporary outdoor dining areas shall be vented and properly secured with pins or bolts through the table framework, with weighted umbrella stands of at least twenty (20) pounds directly beneath the table to prevent toppling in high winds.

H. Temporary Power and Lighting. Temporary power and lighting may be permitted in connection with a temporary outdoor dining area, subject to compliance with the electrical code and provided such lighting will not cause glare on adjacent rights-of-way or residences.

I. Trash and Debris. Each person issued a permit for a temporary outdoor dining area shall be responsible for preventing trash and debris from blowing from the site. All outdoor dining areas must be kept clear of litter, food scraps, and soiled dishes at all times. Trash receptacles shall be provided in areas where food will be consumed. At the end of each business day, restaurants are required to clean (sweep and wash) the entire temporary outdoor dining area and no debris shall be swept, washed, or blown into the sidewalk, gutter, or street. Outdoor trash receptacles shall be emptied daily and trash placed in approved enclosed containers.

J. Building and Fire Codes. All installations, including electric, means of egress, occupancy, lighting, and tents must meet building codes adopted by the City as set forth in Chapter 18 of the Dacono Municipal Code. Access to the site and building must be maintained to ensure compliance with the building and fire codes adopted by the City as set forth in Chapter 18 of the Dacono Municipal Code. Access to fire hydrants, fire hose connections for sprinkler systems, and entrances and exits of all buildings shall not be obstructed at any time by barriers or seating.

K. Hours of Operation. Temporary outdoor dining areas are required to close by the earlier of the end of the restaurant's normal operating hours or 10:00 p.m.

L. Smoking and Vaping Prohibited. Smoking and vaping is prohibited in all temporary outdoor dining areas and in those areas comprising a fifteen feet (15') radius around temporary outdoor dining areas.

**Section 5.** Criteria for Approval. Upon receipt of a complete application, the City's Community Development Director shall review all information for compliance with this ordinance and any other applicable codes. The Community Development Director shall refer the application to Mountain View Fire Rescue for its review and approval and may refer the application, or any part of an application, to the building inspector or Chief of Police as deemed necessary for review. Upon completion of such review, the Community Development Director shall approve, approve with conditions, or deny the application. Appeals of the Community Development Director's decision may be made in writing to the City Manager within ten (10) days following the date of decision, and the determination of the City Manager shall be final.

**Section 6.** Suspension or Revocation of Permit. Any permit issued pursuant to this ordinance may be suspended or revoked after notice and hearing for failure to comply with any requirements of this ordinance, any state or county Public Health Order, any provision of the Dacono Municipal Code, or any term or condition of the permit. A temporary outdoor dining permit may be summarily suspended, without notice and pending a hearing, for a period not to exceed fifteen (15) days when the City has reasonable grounds to believe and determined the

permit holder has deliberately and willfully violated any such law or order, or the preservation of the public health and welfare requires immediate suspension of the activities authorized by the permit.

**Section 7.** Temporary Suspension of Parking Limitations. Those restrictions regarding parking on City streets established in Resolution No. 19-69 are hereby suspended during the period this ordinance is effective.

**Section 8.** Effective Date. This ordinance shall become effective upon adoption and shall remain in effect until October 1, 2020; provided, however, the City Manager shall be authorized to extend the effective date for a period not to exceed thirty (30) additional days; and provided further that any temporary modification of a liquor licensed premises shall remain in effect until the date of expiration of this ordinance or the date of expiration of the LED's Emergency Regulation 47-302(F), whichever shall first occur.

**Section 9.** If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

**Section 10.** The repeal or modification of any provision of the Dacono Municipal Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

**Section 11.** All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**Section 12.** The City Council herewith finds, determines and declares that this ordinance is genuinely and urgently necessary for the immediate preservation of the public health, safety, and welfare because the COVID-19 Pandemic has presented an urgent need to assist the City's restaurant businesses in resuming operations as quickly as possible.

**INTRODUCED, READ, ADOPTED BY AT LEAST FIVE AFFIRMATIVE VOTES, AND ORDERED PUBLISHED AND POSTED IN FULL THIS 3rd day of June, 2020.**

CITY OF DACONO, COLORADO

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Joe Baker, Mayor

ATTEST:

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Valerie Taylor, City Clerk

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Summary of Ordinance No. 886, **“AN EMERGENCY ORDINANCE TEMPORARILY SUSPENDING CERTAIN PROVISIONS OF THE DACONO MUNICIPAL CODE TO FACILITATE OUTDOOR DINING FOR RESTAURANTS IN RESPONSE TO THE COVID-19 DISASTER EMERGENCY”** Authorizes issuance of permits to restaurants for temporary outdoor dining in compliance with certain requirements.