

CITY OF NOVI
COUNTY OF OAKLAND, MICHIGAN

**RESOLUTION REGARDING OUTDOOR GATHERING AUTHORIZATION AND REQUIREMENTS
FOR REOPENING CERTAIN RETAIL AND RESTAURANT/BAR BUSINESSES IN LIGHT OF COVID-
19 PANDEMIC**

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on _____, _____, at ____ o'clock P.M. Prevaling Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____ and supported by Councilmember _____.

WHEREAS; on March 10, 2020, the Governor issued Executive Order 2020-4, declaring a State of Emergency across the State of Michigan relating to the novel Coronavirus 19, or COVID-19; and

WHEREAS; on March 16, 2020, the Governor issued Executive Order 2020-9, imposing "Temporary Restrictions on the Use of Places of Public Accommodation," which resulted in the closure of restaurants and bars across the state, including in the City, effective March 16, 2020, at 3:00 p.m.; and

WHEREAS; on March 23, 2020, the Governor issued the first "Stay at Home" Order, Executive Order 2020-21, which ordered non-essential businesses, including retail businesses in the City, to close to the public; and

WHEREAS; since their initial issuance, those Orders have been extended on various dates for various lengths of time, and as of the date of this Resolution remain generally in full force and effect; and

WHEREAS; as a result of these orders, many retail and restaurant bar businesses in the City have been either closed or open only for restricted hours or purposes for well over two months.

WHEREAS; the City Council anticipates that the Governor will issue orders shortly that contemplate the slow/partial reopening of retail businesses and restaurants/bars

within the City, likely consistent with the Governor's recent Order authorizing same in certain other areas of the State, as indicated in the Governor's Executive Order 2020-96; and

WHEREAS; the City Council understands and expects that, like the reopening has occurred elsewhere in the State, the reopened businesses will be subject to limitations on occupancy and requirements for social distancing. In other words, those reopening businesses likely will not be permitted to reopen at full capacity and might therefore not be able to use all their existing space as it was before the Orders described above. Consequently, as those businesses seek to reopen, the City Council expects that they will contemplate alternative means to provide goods and services to the public, but will find that there are limits imposed by the City's Zoning Ordinance and other City Code or land use regulations that might affect or limit their ability to take advantage of those alternatives. By way of example only, these could include limitations on the use of adjacent sidewalks and parking areas for outdoor sales and services and/or outdoor seating for food and beverage service; and

WHEREAS; while there are options available to reopening businesses to seek relief from those regulations, those procedures typically take a significant amount of time to complete, or might not fit the technical requirements for relief, and also require the use of substantial City resources. For example, requests to the Zoning Board of Appeals for relief from Zoning Ordinance regulations require publishing and mailing public hearing notices, and the scheduling and conducting of public hearings before the Board. Absent some sort of broad relief, the City believes that a significant number of reopening businesses in the City can be expected to seek relief from the ZBA (or otherwise); and

WHEREAS; the City Council seeks to avoid overwhelming the ZBA – as well as the City's administrative staff and possibly City Council – with individual applications for relief, and with individual notice and review requirements. The Council has therefore investigated options for addressing these issues on a City-wide and expedited basis; and

WHEREAS; the City Council acknowledges that it has in place a Local Declaration of a State of Emergency, effective March 23, 2020, that could be utilized, under the Emergency Management Act, MCL 30.401 *et seq*, to waive certain ordinance requirements; however, the duration of that Local Declaration has not yet been determined by the City Council; and

WHEREAS; the City Council also acknowledges that the City Code includes a general appeal and variance authority on behalf of the City Council with respect to matters that are not appealable to any other board or commission, as set forth in Section 1.12 of the City Code, where it can be shown that “a literal application of the substantive requirement would result in exceptional, practical difficulty,” and “where the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question”; and

WHEREAS; the City Council also acknowledges the concept of the “moratorium” under which the City can potentially suspend enforcement of provisions of an ordinance, and

WHEREAS; the City Council finds, however, that the most appropriate way to avoid overwhelming the ZBA, City Council, and City staff and to address the health, safety, and welfare issues caused by the COVID-19 pandemic in a manner that is not detrimental to the public nor contrary to the overall purpose and goals of the City's existing ordinances is to utilize the provisions of the City's Outdoor Gathering Ordinance to authorize the extension of certain permitted uses into outdoor spaces not otherwise allowed to be used, because of—and only because of—the occupancy limitations and social distancing requirements necessary to respond to the COVID-19 pandemic, and for no other purpose or duration.

NOW THEREFORE, IT IS THEREFORE RESOLVED:

1. City Council affirms its existing zoning and land use regulations as reasonable and appropriate in furtherance of the public health, safety, and welfare of the City, its residents, and businesses, which remain in full force and effect except as specifically affected by this Resolution.

2. City Council finds, however, that the 2020 COVID-19 pandemic represents an unusual and unprecedented event that has caused an interruption in the typical operation of businesses within the City, but particularly the operation of retail businesses and restaurants/bars in the City that rely upon visitors and in-person customers.

3. City Council finds that a temporary relaxation of certain regulations with respect to the operation of those businesses is an appropriate response to these current unprecedented conditions within the City, state, and country, and further finds that such temporary relaxation, if properly administered, will not adversely affect the public health, safety, and welfare and will in fact benefit both the businesses and the members of the public affected given COVID-19's wide-ranging effects.

4. City Council hereby determines that it is appropriate to establish, and it hereby does establish, a city-wide Outdoor Gathering Permit Authorization for (i) certain outdoor sales by retail businesses and (ii) certain outdoor seating and food and beverage service by restaurants/bars under and pursuant to Chapter 24 of the City Code, relating to Outdoor Gatherings, as well as Section 1.12 of the City Code relating to general variance relief, and also in further reliance upon other authorities referred to above, as applicable, and subject to the following requirements:

- a. The provisions of this Resolution and the Permit Authorization are limited to restaurants/bars and retail businesses that can meet the requirements of Chapter 24 and this Resolution;
- b. The City Administration shall establish, by no later than June 4, 2020, written standards and procedures for receiving and reviewing applications for Permit for outdoor sales by retail businesses and

outdoor seating and food and beverage service by restaurants/bars. Such procedures shall, at a minimum, include:

- i. Operation as part of an existing business with a valid certificate of occupancy adjacent to the outdoor area.
 - ii. Compliance with any and all applicable state and local orders related to COVID-19, including social distancing, party size limitations, masking, etc.
 - iii. Area and location limitations.
 - iv. Spacing limitations for tables, chairs, registers, and the like.
 - v. Hours of operation.
 - vi. Separation from parking/vehicular traffic.
 - vii. ADA compliance.
 - viii. Compliance with building and fire codes.
 - ix. Provision for litter and waste.
- c. The requirements for issuance of such Permit shall be as follows:
- i. The application shall be filed with the Community Development Department with a copy to the City Clerk;
 - ii. The application shall be on a form provided by the Community Development Department, and shall include such information as the Community Development Department determines, including, at a minimum, the information listed in Section 24-18(1)-(5);
 - iii. The Permit application shall include an accompanying plan, with the information on the plan to include:
 1. a scaled layout of premises, including any existing outdoor seating areas and expansion area, and cash registers or points of payment (if any);
 2. location and clearances to maintain access to any fire hydrants and Fire Department connections;
 3. dimensioned access to means of egress and barrier free entrance routes, locations and sizes of any temporary canopies (max. 10ft. x10 ft. with minimum 10 ft clearance to buildings and other canopies);

4. locations and description of any fencing or seating area enclosures and egress; location of any relocated barrier free parking; and
 5. facilities for waste and trash.
 6. All proposed electrical connections and service.
- iv. Review and approval of the Permit application and accompanying plan shall be by the Director of Community Development (or designee), with a copy to the City Clerk, the Public Safety Department, and the City Manager's Office.
 - v. Staff review should, to the extent practicable, be completed within 3 business days. Installations should occur, if possible, within 2 business days. Re-inspections of initial and ongoing adjustments would be pointed out and require correction within 24 hours, unless critical.
 - vi. An approved Permit may be revoked by the Director of the Community Development Department if the applicant fails, neglects, or refuses to fully comply with any and all provisions and requirements set forth in this Resolution or with any and all provisions, regulations, ordinances, statutes, or other law incorporated by reference, including Chapter 24.
 - vii. Restaurant/bar uses must comply with requirements of the Oakland County Environmental Health Department, including any guidance or rules issued in connection with COVID-19 business area expansions.
5. Additional regulations regarding use of City property, including City rights-of-way (ROW):
 - a. Any proposed use of City-owned property, including City-owned sidewalks or right-of-way, in connection with the Permit Authorization shall require the City to be named as an additional insured on the applicant's insurance policy.
 - b. Any proposed use of sidewalk or right-of-way owned by the City shall require a right-of-way permit, following review and approval by the City's traffic engineer or designee and any other reviews as determined by the Director of Community Development and the Director of Public Services.
 6. Additional regulations that involve the sale or consumption of alcoholic beverages:

- a. shall comply with all requirements of the State Liquor Control law, including administrative regulations and guidance issued by the Liquor Control Commission relating to COVID-19 licensed area expansions.
- b. shall comply with all requirements of Chapter 3 of the City Code.
- c. may require additional review by City staff and consultants, and may require approval by City Council

7. Additional operational standards:

- a. Trash and waste shall be removed to a permanent dumpster/disposal location at the close of business each day, and all litter removed from the area under use.
- b. Signage shall comply with the City of Novi sign ordinance and any resolutions or approvals by City Council granted under that ordinance.

8. The Permit Authorization described in this Resolution allowing outdoor sales and outdoor seating shall become effective if and when the Executive Orders referred to above, or other orders issued by the Governor or other relevant governmental agencies allow operation of retail businesses and restaurants and bars to open to the public (currently anticipated to be June 12 under the Stay at Home Order) and shall expire on October 31, 2020, unless extended by the City Council, subject to the following:

- a. If there are no occupancy and social distancing limitations in force and effect, this authorization shall be null and void, and any activities authorized shall cease within 14 days of notice by the City to any person or entity that received a Permit under this Resolution.
- b. The City Council reserves the right to revoke or amend this Resolution at any time, or to modify, shorten, or lengthen the term of this Resolution as the Council determines is appropriate under the circumstances.

9. There shall be no fees charged for the submission of the application or the City's review of the application.

10. The City Administration is directed to review and evaluate the City's zoning ordinance and City Code provisions in light of the recent events related to COVID-19 and the various orders and limitations imposed in response and report to the City Council any recommended changes thereto as a result of its evaluation.

11. Violation of the requirements of this Resolution and/or any permit authorized hereunder shall be considered and processed as a violation of the City Code and may result in revocation of the Permit granted hereunder.

AYES:

NAYS:

RESOLUTION DECLARED ADOPTED.

Cortney Hanson, City Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this ____ day of _____, 2020, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

Cortney Hanson, City Clerk
City of Novi