

ORDINANCE NO. 2530

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST,
HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE AUTHORIZING A FIVE-YEAR PILOT PROGRAM FOR THE ISSUANCE OF OUTDOOR SERVICE PERMITS TO ALLOW OUTDOOR SERVICE AREAS FOR RESTAURANTS AND BARS

WHEREAS, pursuant to the Charter of the City of Commerce City (“Charter”), the City Council of the City of Commerce City (“City”) has all legislative powers and functions of home rule municipal government as reserved to it by the Colorado Constitution and the laws of the state of Colorado;

WHEREAS, by and through Ordinances 2282, 2298, and 2321, City Council temporarily authorized a program to allow certain dining and drinking establishments to expand seating and service area beyond their normal premises to outdoor spaced so that businesses could continue operations in a safe manner consistent with the public health orders and emergency regulations;

WHEREAS, the temporary program expired on or about September 6, 2021;

WHEREAS, the City Council wishes to create a pilot program whereby dining establishments may use outdoor seating to expand their service area and take advantage of the favorable weather while creating interactive and vibrant community space;

WHEREAS, the City Council recognizes that similar programs have been successful in other jurisdictions and will increase economic vitality of the City;

WHEREAS, during the course of the pilot program, City staff is asked to document and analyze the costs of this program, including what may be associated with processing applications and issuing appropriate permits and licenses, so appropriate fees may be determined and later enacted; and

WHEREAS, the City Council desires to leverage this program to attract and maintain dining and eating establishments in the City of Commerce City.

SECTION 1. FINDINGS. The recitals to this ordinance are incorporated as findings of the City Council. This ordinance is found to be necessary for the preservation of the public health, safety, and welfare and in the public interest.

SECTION 2. TITLE. This ordinance shall be referred to as the *Outdoor Service Permit Ordinance* or *Ordinance*.

SECTION 3. PURPOSES. The purpose of this ordinance is to define process, create standards, and establish regulations by which restaurants and bars can provide outside service to customers in physical areas that were otherwise previously unavailable to them because the property was publicly owned or otherwise required to be unoccupied due to operation of the Code.

This ordinance is designed to allow the issuance of all necessary and appropriate permits and license.

SECTION 4. DEFINITIONS.

- a. “ADA” means the Americans with Disabilities Act, as amended from time to time.
- b. “Applicable laws” means all laws and regulations of the United States, the State of Colorado, and the City of Commerce City, executive orders, emergency rules of any state agency, public health orders of a public health agency, and any order of a fire marshal or building official.
- c. “Bar” means any place of public accommodation that is not a restaurant regularly offering alcoholic beverages for on-premises consumption from a permanent location, including taverns, brew pubs, breweries, microbreweries, distillery pubs, wineries, tasting rooms, special licensees, and clubs.
- d. “C3BC” means the Commerce City Building Code, as amended from time to time.
- e. “CCRMC” or “Code” means the Commerce City Revised Municipal Code, inclusive of the Commerce City Land Development Code, as may be amended from time to time.
- f. “Encroachment” shall mean the occupation, in whole or in part, of an outdoor area not under the direct ownership or lawful control of an outdoor service permit applicant. An encroachment includes (1) a “Public encroachment” which means an encroachment in a public right-of-way or public easement, and (2) a “Private encroachment” which means an encroachment of a private parking area, or required yard or open space on private property.
- g. “Outdoor service” means providing outside seating areas, or table service, for the consumption of food and beverage to patrons of a restaurant or bar.
- h. “Outdoor service area” means the area designated or used by a restaurant or bar for outdoor service.
- i. “Outdoor service permit” (or “OSP”) means a written authorization by the City Manager permitting the use of an outdoor service in an outdoor service area including any conditions placed thereon and consistent with this ordinance.
- j. “Permit Manager” means the City Manager or the person authorized by the City Manager to review, approve, deny, and revoke permits and licenses, and to make any determinations or decisions as authorized by this section.
- k. “Restaurant” means any place of public accommodation regularly offering food or beverage for on-premises consumption from a permanent location, including restaurants, food courts, cafés, and coffeehouses.

- l. “Right-of-way license” (or “ROW license”) means a nontransferable authorization, revocable at will, to allow an outdoor service area within a public encroachment.
- m. “Tent” means a tent or membrane structure as defined in the current C3BC.

SECTION 5. PROHIBITION.

- a. No restaurant or bar shall operate an outdoor service area without a lawfully issued outdoor service permit and in compliance with the conditions set forth therein.
- b. No outdoor service area shall include an encroachment without the express written consent of the owner of the property that is being encroached. In the case of a public encroachment, express written consent must be in the form of a ROW license issued by the City.

SECTION 6. OUTDOOR SERVICE PERMIT. The recipient of a lawfully issued Outdoor Service Permit is excused from compliance with the prohibition set forth herein.

A. Application Requirements. An applicant for an Outdoor Service Permit shall include the following:

- (1) an application as provided by the city manager that includes the following: the date, the name of the applicant, the address of the restaurant or bar, the exact location of the outdoor service area, any proposed encroachment, the type of encroachment and such other information as the city manager may deem necessary;
- (2) evidence of and maintain liability insurance meeting the requirements of insurance for any use of the public right-of-way or public easement area;
- (3) detailed drawings and depictions of the proposed outdoor service area, clearly identifying the location and extent of any encroachment, tent, the proposed arrangement of tables and chairs, the location and type of ADA accessible accommodations, and in compliance with the C3BC, inclusive of dimensions and of sufficient detail.
- (4) If a tent is being erected, the submission shall include tent details including size, fabric materials, and the tent will be erected without sides.
- (5) Drawings of the existing interior space to include restrooms, means of egress and the proximity of the outdoor space to the interior space.
- (6) In the case of private encroachment, proof of permission from property owner to enter and utilize such property for the purposes specified;
- (7) In the case of a public encroachment, any approval shall be conditioned upon the issuance of a ROW license.

- (8) Comply with all requirements in the City Code, except as modified by this section, and any applicable City Manager rule.

B. Outdoor service area approval and criteria and process. The Permit Manager may issue a revocable and temporary outdoor service permit upon finding that:

- (1) The outdoor service area is designed in a manner to be temporary in nature or easily removed and without any permanent structures or appurtenances;
- (2) The outdoor service area does not constitute a hazard to pedestrians, traffic, accessible parking or the general public;
- (3) The outdoor service area, if in a commercial area, maintains a minimum vertical clearance of eight feet from any overhead sign, structure, appurtenance, or similar, and does not allow less than six feet of unobstructed pedestrian walkway.
- (4) The outdoor seating area complies with all standards of the C3BC, including accessibility standards;
- (5) If ADA access is rerouted, then proper signage is posted that allows people of all abilities to minimize out of direction travel via accessible routes;
- (6) The outdoor service area complies with any rules or the requirements of any city manager rule, including without limitation, size limitations, location, and design guidelines;
- (7) The outdoor service area does not block egress paths of existing buildings; and
- (8) There are sufficient restroom facilities for both indoor and outdoor seating per the C3BC.

SECTION 7. RIGHT-OF-WAY LICENSE. Where the premises to be occupied by an outdoor service area includes any public right of way or public easement, the bar or restaurant is required to obtain a right-of way license from the City Manager. A ROW license may be issued consistent with the following criteria:

A. Approval Criteria.

- (1) An OSP has been approved and conditioned upon the issuance of an ROW license;
- (2) The City Manager has found:
 - a. the outdoor service area does not destroy or impair access by the City, public utilities, or other entities having access rights or interests within the right-of-way on an as needed;

- b. the encroachment is located in portions of the public right-of-way or public easement that are designated by the city manager, or in a city manager rule, that balance the desire for outdoor dining while not adversely impacting the delivery, maintenance, or use of municipal services; public safety; accessibility to transportation amenities; general public health, safety and welfare.
- (3) The applicant has entered into an agreement acceptable to the City Manager to indemnify, defend, and hold harmless, the City with regard to the outdoor service area and all activities therein including an indemnification from any premises liability for the outdoor service area.

B. ROW License Standards. The right-of-way license:

- (1) shall be for an indefinite term;
- (2) shall be revocable at will;
- (3) shall not be transferred or assigned; and
- (4) does not create any property interest or vested right in favor of the recipient, any associated land owner, business owner, or third party.

SECTION 8. OUTDOOR SERVICE AUTHORIZED WITH PERMIT.

A. Use Authorized. The holder of an outdoor service permit may:

- (1) Use the authorized outdoor service area to provide outdoor service;
- (2) Allow employees to cross public sidewalks to deliver food or beverage to the outdoor service areas without interfering with public activities, utilities, or the Americans with Disabilities Act (“ADA”), accessibility standards of the C3BC; and
- (3) Serve alcohol to patrons in the outdoor service area if a temporary modification of liquor-licensed premises is approved.

B. Review. An outdoor service permit shall be subject to summary suspension, modification, prohibition, or revocation, without notice, by the Permit Manager at any time based on a determination that outdoor service is not being conducted in accordance with this ordinance, any permit conditions, any applicable law or regulation. Such a determination may be appealed within five (5) days to the City Manager or his designee who shall render a decision after a hearing. The decision resulting from the hearing may be appealed in accordance with Rule 106 of the Colorado Rules of Civil Procedure.

- C. Conditions of Approval.** The Permit Manager may place conditions of approval on any permit granted pursuant to this section to ensure that the use is compatible with uses in the surrounding area, has minimal impacts on uses in the surrounding area, and is consistent with preserving the public health, safety and welfare of the employees and patrons of the restaurant or bar, visitors to the area, and users of surrounding properties.
- D. Rulemaking.** The City Manager is authorized, pursuant to CCRMC § 2-4203 “Administrative rulemaking,” to adopt rules necessary to implement the purpose of this section, including but not limited to (1) design standards for any appurtenances to be placed in the outdoor service area, and (2) the operation of this pilot program.
- E. Pilot Program Duration.** The pilot program shall be for a five-year period beginning on July 15, 2023 and ending on July 15, 2028, unless extended by subsequent city council action.

SECTION 9. STANDARDS. All outdoor service areas and outdoor service permits shall be subject to the following standards in addition to any conditions imposed by the Permit Manager.

- A. Compliance.** Any recipient of an Outdoor Service Permit shall abide by all standards of this ordinance and any additional conditions established by the Permit Manager.
- B. Outdoor Service Area.** An outdoor service area must be adjacent to the existing licensed premises of the restaurant or bar. An encroachment authorized by the OSP shall not be allowed to continue if the owner of the property on which the outdoor service area is located withdraws their consent. With the exception of outdoor service areas authorized in parking lots, an outdoor service area shall not extend beyond the area bounded by straight lines extending from the applicant’s property lines. In no instance shall an outdoor service area be permitted that will obstruct the view of or access to an adjacent business or structure or to be in front of or block and adjacent business or building.
- C. Term.** All Outdoor Service Permits shall be valid for a period of two years and may be renewed for an additional three-year period unless revoked or unless this pilot program is suspended or otherwise terminated. An OSP shall not lapse and may be discontinued and resumed without reapplication within the approved term.
- D. Safety/Insurance.** Restaurants and bars are solely responsible for the safe operation of outdoor service and the outdoor service area and the security of all items in the outdoor service area. For any use on public property, recipient of an OSP is required to maintain adequate insurance naming the city as an additional insured.
- E. Occupancy.** An outdoor service permit does not increase the occupancy limit or capacity for the restaurant or bar. Receipt of an OSP shall not be a defense in any action, civil or criminal, alleging a bar or restaurant has exceeded its occupant capacity.

- F.** *Compliance with Applicable Laws.* Outdoor service shall comply with all Applicable Laws, including all liquor licensing laws, provisions of the C3BC, and the more restrictive of any public health order issued by the State of Colorado or the Adams County Health Department.
- G.** *Accessibility/Americans with Disabilities Act Compliance.* All outdoor service areas must comply with the Americans with Disabilities Act (“ADA”) and shall not impede accessibility of parking or sidewalk access.
- H.** *Life Safety Requirements.* At least one 2A10BC rated fire extinguisher shall be provided for the outdoor service using any number of tents. Points of ingress and egress, access to life safety equipment (e.g. fire extinguisher, fire alarms, AED’s), and access to fire hydrants shall not be blocked or impaired.
- I.** *Space Heaters.* Space heaters, other than those requiring use of city electricity or city outlets, may be utilized in an outdoor service area so long as the use and operation of any such heater is in compliance with all applicable building and fire codes and does not present a threat to the health, safety or welfare of the public. Each heater must be identified and included in the OSP application.
- J.** *Tables, Chairs, and Equipment.* All tables, chairs, and equipment located in an Outdoor Service Area shall be maintained in good and clean condition.
- K.** *Tents.* The use of tents without sides and tents with sides under 400 square feet are permitted if safely erected and secured from movement in compliance with the current C3BC, including requirements to place any tent an adequate distance from any structure, egress path, handicap parking space, vehicle, or other tent. A building permit from the City and the applicable fire district will be required unless otherwise exempted by operation of law.
- L.** *Traffic & Parking.* Outdoor service areas may use only those parking spaces that exceed the minimum requirement for the relevant use and location as specified in the Land Development Code. Outdoor service cannot interfere with normal vehicle traffic movement, including emergency vehicle access to the building and access to fire hydrants and other firefighting equipment. Drive aisles may not be used without written permission of the fire official and the Permit Manager. Parking adjacent to outdoor service areas shall not reduce the minimum path of egress travel width from the indoor/outdoor dining spaces to the public way (i.e. front or back end of the vehicle shall not extend over a sidewalk if it reduces the minimum width of egress travel path to the public way).
- M.** *Amplified Sound.* Amplified sound shall not be permitted in connection with an outdoor service area.
- N.** *Hours.* Outdoor service may only be conducted between the hours of 6 a.m. and 11 p.m. An outdoor service area may not be operated during hours that the restaurant or bar with which it is associated is closed.

- O.** *Sanitation.* All outdoor services areas must be kept free of waste and litter.
- P.** *Damage.* Any restaurant or bar operating an outdoor service area is responsible for damage to landscaping, fencing, trees, screening, public property, and public infrastructure caused either directly or indirectly by its operations.
- Q.** *Equipment.* Equipment in an outdoor service area shall be limited to those items necessary to serve patrons for on-premises dining (e.g., tents, chairs, tables, umbrellas, signage, waste receptacles) and may not include self-service stations. Any item posing a threat to public safety or unlawfully encroaching on public property or private property without permission may be immediately removed by any person identified in CCRMC § 3-1102 or the Permit Manager without prior notice. Installations of facilities (e.g., temporary electricity, heat, water) must comply with applicable code requirements and may require a building permit or approval of the applicable fire district unless specifically exempted.
- R.** *Food and beverage preparation.* Noting herein shall be deemed to authorize the preparation or storage of food or beverage in an outdoor service area.
- S.** *Outdoor Service Area.* An outdoor service area shall be operated only within the area specifically authorized by permit. The outdoor service area shall be clearly delineated through the use of any one (1) or more of the following markers: trees, fences, planters, and moveable barriers. All items used for delineation of outdoor service area shall be compliant with ADA guidelines and approved as part of the OSP.

SECTION 10. AUTHORIZATIONS.

- A.** The City Manager shall: (i) create standard application and processes for Outdoor Service Permits; (ii) designate a Permit Manager; and (iii) establish any regulations they deem reasonable and necessary to implement this ordinance.
- B.** The City Manager is authorized to grant a revocable right of way license to any restaurant or bar for the purpose of using public property or public right-of-way adjacent to a restaurant or bar in connection with authorized outdoor service. The City Manager may impose such conditions as he deems reasonable or necessary in connection with such license.
- C.** The City Manager may delegate any responsibilities assigned to them by this ordinance to one or more persons.

SECTION 11. LIMITATIONS; ENFORCEMENT.

- A.** No licensing requirements or any conditions imposed by the Liquor Licensing Authority shall be modified by reason of the passage of this ordinance or issuance of any permit resulting therefrom. Restaurants and bars may apply for a temporary modification of their licensed premises pursuant to Colorado Liquor Regulation 47-302.

- B.** The uses authorized by this ordinance are permissive uses and neither this ordinance, an Outdoor Service Permit, nor a ROW license shall create or vest any property rights in any person. This ordinance may be repealed or modified by the City Council at any time.
- C.** An Outdoor Service Permit shall not allow the use of public property or public right-of-way for outdoor services without a ROW license granted by the City Manager, provided permit holders may cross public sidewalks for the purpose of delivering food or beverages to the outdoor service area.
- D.** Enforcement and inspections may be conducted by such persons as provided in CCRMC Section 1-3006 and by the Permit Manager. Any person who shall refuse to allow such inspection or who shall obstruct any such person in making any inspection shall be subject to penalties as provided in the code. Compliance and enforcement shall generally be conducted pursuant to Article X of the Land Development Code, the C3BC and any other lawful means, provided, a permit or allowed use under this ordinance may be suspended prior to notice and hearing.
- E.** This ordinance, any OSP, and any ROW license issued pursuant to this ordinance shall expire automatically at 11:00 p.m. on July 15, 2028.

SECTION 12. REPEAL; EFFECT ON EXISTING LAWS. All ordinances, resolutions, and policies of the City regulating any outdoor services that directly conflict with this ordinance are temporarily superseded and replaced by this ordinance to the extent of such conflict. This ordinance shall be interpreted as much as possible in harmony with the code, including the Land Development Code, except to the extent of an inconsistency, to ensure the public health, safety, and welfare.

SECTION 13. EFFECTIVE DATE. This ordinance shall be effective as provided in the City Charter.

INTRODUCED AND PASSED ON FIRST READING AND PUBLIC NOTICE
ORDERED THIS June ____, 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS JULY ____, 2023.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST:

Dylan A. Gibson, City Clerk