

RESOLUTION NO. 83-2020 (AS)

By Consent Agenda

A Resolution authorizing the City Manager and her designees to establish a temporary permit program for the establishment or expansion of outdoor dining facilities and use of public and private property or right-of-way in response to the COVID-19 emergency and declaring an emergency.

WHEREAS, on March 9, 2020, Governor Mike DeWine declared a state of emergency in the State of Ohio due to confirmed cases of COVID-19 in the State of Ohio; and

WHEREAS, on March 15, 2020, in further response to the outbreak of COVID-19 within the State and to prevent and help control the spread of the virus, Governor Mike DeWine, through an Order issued by the Director of the Ohio Department of Health, mandated the indefinite closure of all Ohio bars and restaurants to in-house patrons, and subsequently extended that closure mandate to additional businesses within the State of Ohio; and

WHEREAS, on March 16, 2020, by way of Resolution No. 22-2020, this Council declared the existence of a local emergency due to the outbreak of COVID-19 within the State of Ohio and County of Cuyahoga; and

WHEREAS, in order to reopen, restaurants and other businesses are required to follow social distancing and other guidelines to mitigate the spread of the virus, including ensuring that patrons remain six feet apart, unless there is a physical barrier between parties; and

WHEREAS, this Council recognizes the burden that the on-going COVID-19 restrictions and safety guidelines place on bars, restaurants, and all other businesses located within the City and wishes to alleviate some of that burden by allowing for expanded use of outdoor areas by commercial businesses; and

WHEREAS, at present it is still unknown when the infection mitigation guidelines related to COVID-19 will be lifted; and

WHEREAS, the City of Cleveland Heights recognizes that restaurants and other businesses are critical to the vibrancy of Cleveland Heights and its commercial districts and that to ensure that our local businesses remain successful, and that the public feels safe patronizing them, the City of Cleveland Heights should provide more opportunities for businesses to expand their use of outdoor areas to promote compliance with the Governor's orders.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The City Manager and her designees (collectively, "City Manager"), to include the Planning Director and the Director of Economic Development, are hereby authorized to establish a temporary program for the creation or expansion of outdoor dining, entertainment and retail areas by permitting use of private property such as private parking lots, as well as City-owned property, streets and other public rights-of-way, including on-street parking areas, sidewalks, and parklets (Temporary Expansion Areas). The duration of the Temporary Expansion

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Area program shall be from the effective date of this resolution until no later than November 1, 2020.

SECTION 2. The City of Cleveland Heights hereby authorizes the City Manager to temporarily waive or modify the requirements of the Cleveland Heights Codified Ordinances, including Sections 110.05, 1131.02, 1131.11 and 1153.05, as necessary in order to expand outdoor/seasonal dining, entertainment, and retail opportunities during the COVID-19 Pandemic through the Temporary Expansion Area Program.

SECTION 3. The Planning Director or his designee shall review and may administratively approve applications for Temporary Expansion Area permits for new or additional outdoor -area. The applicant must certify that they will comply with all State of Ohio Department of Health orders and that adequate parking is available for the establishment without over burdening nearby residential neighborhoods. Review of a Temporary Expansion Area application will include consideration of whether the expanded - area and activity will negatively impact abutting residential neighborhoods.

SECTION 4. The application for a Temporary Expansion Area permit shall not require detailed architectural drawings and will not be subject to review by the Architectural Board of Review. However, a site plan and photos of the site maybe be required, at the Planning Director's discretion.

SECTION 5. There shall be no fee for a Temporary Expansion Area permit; further, there shall be no fee for a fence permit for a fence required in connection with the Temporary Expansion Area.

SECTION 6. The City Manager may enter into a license agreement with an applicant seeking to use City-owned property, public right of way, or on-street parking as a Temporary Expansion Area.

SECTION 7. Any Temporary Expansion Area located within a parking lot or public right of way, or where alcohol is served, shall require barricades. In addition, all Temporary Expansion Areas must comply with such rules and regulations for safety and for the protection of publicly owned property or public right of way as may be established by the Planning Director, who is hereby authorized to develop and promulgate such rules and regulations.

SECTION 8. Outdoor entertainment or the use of speakers may be permitted within a Temporary Expansion Area; provided, however, that outdoor entertainment or speakers must not violate the City's noise ordinance, Section 509.03(b) of the Cleveland Heights Codified Ordinances, and must be installed, operated and conducted in a manner that will minimize intrusion into neighboring properties or adverse community impacts.

SECTION 9. The applicant for a Temporary Expansion Area permit may request permission to use the Expansion Area until a specific hour. The hours permitted shall be specified in the permit, but in no event shall such area be used after 10:00 p.m.

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SECTION 10. Where a Temporary Expansion Area will extend into or occupy any public property or public right-of-way, the owner of the facility must obtain and maintain throughout the duration of the permit, a General Liability insurance policy in the amount of \$1 million per occurrence, in a form approved by the Director of Law, and must provide the City with a Certificate of Insurance naming the City as the certificate holder and as an additional insured.

SECTION 11. Any applicant with an existing conditional use permit for Outdoor Dining may apply to expand its Outdoor Dining Permit area under the Temporary Expansion Area program, without additional fee. If granted, any expansion area shall be subject to all provisions of this resolution.

SECTION 12. Applicants with a permitted use or an existing conditional use permit other than Outdoor Dining may also apply for expanded outdoor use in a Temporary Expansion Area under this program, without additional fee, subject to all applicable provisions of this Resolution.

SECTION 13. A Temporary Expansion Area permit may be terminated by the City Manager if any requirements/conditions are not followed and/or if the property is the subject of multiple complaints. Within 10 days of provision of written notice of such termination, the permittee may appeal such termination decision to the Cleveland Heights Planning Commission, which shall hold a public hearing within 30 days of the appeal and either uphold or deny the appeal.

SECTION 14. Upon 48 hours written notice, the City Manager may terminate or modify a Temporary Expansion Area, in order to facilitate a public improvement project or road closure or other proper public purpose. In the event of an emergency, less advance notice, or no notice, may be provided.

SECTION 15. The City may terminate or modify the Temporary Expansion Area program as necessary to advance the public interest, with such notice as is practicable under the circumstances.

SECTION 16. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

SECTION 17. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the timely need to accept the grant funds described herein. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

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JASON S. STEIN, Mayor
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED: July 6, 2020