City of St. Charles
Office of the Mayor
St. Charles, Illinois

Updated May 28, 2020

May 28, 2020

Executive Order 2020-3

EXECUTIVE ORDER ALLOWING TEMPORARY OUTDOOR DINING IN KEEPING WITH PHASE 3 OF THE GOVERNOR'S RESTORE ILLINOIS PLAN DATED MAY 5, 2020, AS AMENDED (COVID-19 EXECUTIVE ORDER NO. 3)

WHEREAS, COVID-19 (a/k/a Novel Coronavirus) is a severe respiratory illness caused by the SARS-CoV-2 virus, a new strain of coronavirus that is spread from person to person, posing a threat to the health and safety of the residents of the City of St. Charles; and

WHEREAS, no drug or vaccine is currently available to treat or prevent COVID-19; and

WHEREAS, on January 27, 2020, United States Department of Health and Human Services Secretary Alex Azar declared a national public health emergency due to COVID-19; and

WHEREAS, on March 9, 2020, Illinois Governor J.B. Pritzker issued a Gubernatorial Disaster Proclamation declaring that all counties in the State of Illinois, including Kane and DuPage Counties, are disaster areas due to the Novel Coronavirus; and

WHEREAS, on March 11, 2020, the World Health Organization ("WHO") declared COVID-19 to be a global pandemic; and

WHEREAS, on March 13, 2020, President of the United States Donald Trump issued a declaration of a national emergency due to the growing COVID-19 crisis in the United States, and on March 26, 2020, President Trump issued a major disaster declaration for the State of Illinois due to the COVID-19 crisis; and

WHEREAS, on March 18, 2020, Raymond P. Rogina, as Mayor of the City of St. Charles ("City") issued a Declaration of a Local State of Emergency for the City to address the impact of COVID-19 on the City and its residents and businesses and property owners ("Emergency Declaration"); and

WHEREAS, the Illinois Governor has established a five-phase plan, Restore Illinois, dated May 5, 2020, for the reopening of the State; and

WHEREAS, though the threat from COVID-19 to the public health, safety and welfare continues, the Restore Illinois Plan acknowledges the need to allow local and State economies to begin to recover economically to minimize and reverse the adverse economic, social and psychological effects of Phases 1 (Rapid Spread) and 2 (Flattening the Curve) of the Plan; and

WHEREAS, all regions of the Restore Illinois Plan, including the Northeast Region in which the City is located, are on schedule to move from Phase 2 to Phase 3 (Recovery) as early as the end of May; and

WHEREAS, the Restore Illinois Plan has been amended to allow bars and restaurants to reopen in Phase 3 "for outdoor dining only, with social distancing and safety measures" in place; and

WHEREAS, suspension and relaxation of the local zoning and other ordinances and rules to encourage and expand the ability of restaurants and bars to offer the outdoor consumption of food and drinks during the period of recovery would be in the best interests of the City; and

WHEREAS, Ordinance No. 2020-M-11, as extended, granted the Mayor the extraordinary power and authority granted pursuant to the Illinois Municipal Code (including but not limited to 65 ILCS 5/11-1-6) and the City Municipal Code (including Sections 2.34 and 2.36) during the state of emergency declared by this Ordinance as may be reasonably necessary to respond to the emergency.

THEREFORE, pursuant to the authority vested in the Office of Mayor by the Illinois Municipal Code (65 ILCS 5/11-1-6), the Illinois Emergency Management Agency Act (20 ILCS 3305/1), the City Code of the City (Secs. 2.34 and 2.36), the Emergency Declaration issued on March 18, 2020, as extended, and the findings set forth above, I, Raymond P. Rogina, Mayor of the City, do hereby order the following, effective when the Governor and/or State of Illinois declares the beginning of Phase 3 for the Northeast Region of the Restore Illinois Plan, as follows:

A. The recitals set forth above are adopted and incorporated herein as the material and significant findings of the Mayor.

B. Establishments that are allowed to reopen for outdoor dining with social distancing and safety measures, as allowed by the Restore Illinois Plan, that have existing outdoor areas for the consumption of food and drinking wanting to expand their current outdoor dining area and establishments seeking to temporarily add outdoor dining areas shall abide by the following:

1. Establishments must apply for a temporary outdoor dining permit from the City. There shall be no fee for the permit.

a. The permit application shall include an aerial drawing that shows the existing outdoor dining area (if any) in a dotted line and the proposed new dining area in a solid line. Also:

i. If the proposed new dining area encroaches upon an existing parking area, the applicant should indicate on the drawing how traffic will flow if the request is approved.

ii. Parking lots over 25 stalls: Up to 50% of the parking area may be used for outdoor dining. Parking will need to be preserved to adequately serve the outdoor dining area and carry-out activities. ADA parking spaces shall not be blocked and access to/from those spaces shall not be impeded.

iii. Parking lots under 25 stalls: Small parking lots may convert the entire lot to outdoor dining, including ADA stalls, provided that

effort is made to relocate the ADA stalls near the entrance using street parking where possible.

iv. If there is to be a covering over the new dining area, please indicate that on the drawing. The manufacturers guidelines for installation, all City code requirements, and flame spread requirements must be followed.

v. Sidewalks may be utilized for outdoor dining provided there is still means for ADA compliant pedestrian traffic on the remaining portion of the sidewalk.

b. Applicants must demonstrate that they are the owner of the property on which the new outdoor dining space is to be located, if the applicant is not the owner of the property, the application must include the signature of the owner acknowledging that they will permit the creation or expansion of the outdoor dining area as indicated on the drawing provided as part of the permit application submitted by the requestor.

c. Businesses shall not set up any expanded outdoor dining prior to being notified of approval.

d. Any indemnification or insurance shall be provided as required by the City.

2. Establishments shall comply with protocols or guidelines issued by the Illinois Department of Public Health, Centers for Disease Control or other official authority.

3. Establishments shall comply with the City's outdoor liquor license provisions.

4. A physical barrier shall delineate all outdoor dining areas and shall be of sufficient size and design as to deter the unintentional encroachment of vehicles into the dining area.

5. If ample lighting is provided, the outdoor dining area shall close no later than 11:00 p.m. Sunday through Wednesday and 12:00 a.m. Thursday through Saturday.

6. The temporary outdoor dining area shall be accessible to the disabled and shall comply with all applicable federal, state and City laws, ordinances and regulations concerning accessibility and non-discrimination in the providing of services.

7. Establishments may not expand outdoor dining in front of neighboring businesses without written permission from the neighboring business/property owner.

8. No permanent plumbing, electrical and lighting fixtures shall be installed.

9. Any temporary lighting shall be directed in a manner to not impair visibility on nearby streets and not shine onto adjacent properties.

10. Smoking in the outdoor dining area is prohibited.

11. Tables shall be placed to allow for a minimum of 6-foot separation (blocking tables is allowed). Public seating and eating areas shall be reduced and/or reconfigured to allow for minimum separation of 6 feet.

12. The outdoor dining area shall not disturb the lawful use and quiet enjoyment of nearby properties.

13. Outdoor dining areas shall be open (*e.g.*, no side walls other than the barrier) but may utilize awnings or other secured top coverings.

14. Adequate safeguards shall be in place for security, crowd control, lighting control and the protection of minors.

15. Live entertainment and electronically amplified music or sound shall not be permitted.

16. Bar areas are prohibited in an expanded outdoor dining area.

17. Outdoor trash receptacles shall be provided and maintained and the outdoor dining area shall be kept free from litter and debris.

18. No liquor shall be removed in open containers from the outdoor dining area.

19. Except for restroom visits and take-out orders, indoor premises shall be closed for public use.

20. Incorporation of landscaping is encouraged to enhance ambiance and improve the aesthetics of the outdoor dining area.

C. Applicant shall be required to abide by all other requirements of the Governor's Executive Orders and the requirements of the CDC, Illinois Department of Public Health, the Kane County Health Department and the Illinois Liquor Control Act. Failure to abide by any of these requirements may result in revocation of approval for the expanded dining area.

D. When the existing Gubernatorial Executive Orders restricting capacity at bars and restaurants are terminated or cease, allowing for one hundred percent (100%) capacity indoors, or when this Executive Order is repealed by the Mayor or superseded by action of the corporate authorities of the City, whichever is sooner, the expanded use of parking lots or other outdoor areas for temporary outdoor dining shall cease, except as allowed by the City Code, barriers placed therein shall be removed, and all areas used for temporary outdoor dining shall be returned to their original use.

E. This Executive Order is effective immediately and shall cease by its own terms as provided herein.

F. If any provision of the Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

This Executive Order will be filed with the City of St. Charles Clerk as soon as practicable.

Raymond P. Rogina, Mayor

Issued by the Mayor of St. Charles on May 28, 2020.
Filed with the City Clerk on May 28, 2020.