

EMERGENCY ORDINANCE NO. 512

AN EMERGENCY ORDINANCE TEMPORARILY PERMITTING LIMITED SALES OF GOODS AND DELIVERY OF SERVICES WITHIN PUBLIC RIGHTS-OF-WAY DURING THE COVID-19 LOCAL EMERGENCY

The City Council of the City of Breckenridge hereby ordains as follows:

Section 1. PREAMBLE - STATEMENT OF EMERGENCY. An emergency exists due to the COVID-19 pandemic, which has resulted in the declaration of a local emergency by the Mayor and City Council of the City of Breckenridge by adoption of Resolution No. 13033-26/2020 on March 18, 2020, which Resolution is incorporated herein by reference. The COVID-19 pandemic has also resulted in the declaration of a Peacetime Emergency and the issuance of successive executive orders by Minnesota Governor Walz. The COVID-19 pandemic and the requirements of Governor Walz's executive orders have limited or otherwise affected the operation of many commercial and not-for-profit establishments in the City of Breckenridge. There is a pressing and emergent need for these establishments to expeditiously, safely and efficiently sell goods and deliver services to the public so that the businesses may continue to generate revenues and the public may maintain access to necessary products and services to the greatest extent possible while limiting close personal exchanges between customers and employees and practicing physical and social distancing between persons during the COVID-19 pandemic.

Section 2. TEMPORARY USE OF PUBLIC RIGHTS-OF-WAY. Notwithstanding anything to the contrary contained in the City of Breckenridge City Code, or any special ordinance or policy of the City, but subject to the requirements and restrictions contained in Section 3 of this ordinance, retail businesses having a brick and mortar location the City of Breckenridge may place and sell their goods or deliver services, including but not limited to by establishing drive-up or drive-thru areas, customer ordering, waiting or pick-up areas, or customer seating or service areas on the businesses' property, including private parking lot areas owned by the business or for which the business otherwise has the permission of the owner, or within the following portions of public rights-of-way:

- A. upon the sidewalk located directly adjoining the business and equal to the width of the business adjacent to the sidewalk; and
- B. upon any public parking spaces immediately adjoining the building where the business is located, to an equal extent as any other businesses adjoining the same parking spaces who wish to make use thereof pursuant to this ordinance.
- C. upon the public alley adjoining the above aforementioned sidewalks and parking spaces or directly adjacent to the building.

Section 3. REQUIREMENTS AND RESTRICTIONS.

- A. All businesses shall at all times preserve a minimum of five (5) feet in width for pedestrian traffic on sidewalks in addition to the area presently occupied by trees,

transformer boxes or other permanent installations and shall not block disabled person parking spaces or ramps and shall otherwise meet the requirements of the Americans with Disabilities Act as the same pertains to the portion of the sidewalk being used by such business pursuant to this ordinance.

- B. Personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs placed within a public parking area shall be demarcated by bright, highly visible partitions placed within the parking space(s) , including but not limited to cones, removable fencing or ropes. The means of demarcation shall not extend beyond the parking spaces and a 12-foot driving lane shall be maintained at all times, unless the City Council otherwise closes the street for an event. The means of demarcation shall be temporary and removable and shall not be lower than 30 inches nor higher than 48 inches.
- C. The use of the public rights-of-way, except as specifically provided for in this ordinance, shall remain subject to any other applicable laws, regulations, and license and permit requirements.
- D. No food or beverages shall be sold within public rights-of-way under this ordinance for immediate consumption except by a licensed bar or restaurant and only in compliance with all state and local regulations for such establishments, except as otherwise provided in this ordinance.
- E. No alcoholic beverages shall be sold or otherwise served for on-premises consumption within public rights-of-way under this ordinance, for immediate consumption or otherwise, except by an establishment pursuant to a license agreement with the City, which agreement shall be on the form provided by the City and may be administratively approved by the City Administrator or the City Administrator's designee, or otherwise by an establishment holding a valid license encompassing such public rights-of-way pursuant to, and only in compliance with, all state and local regulations for the sale of alcoholic beverages. The license agreement shall include a depiction of the temporary expanded service area and the same shall be compact and contiguous to the business holding the liquor license and otherwise must be in compliance with all state and local regulations for the sale of alcoholic beverages. In such cases, barriers must be established so as to designate a compact and contiguous additional licensed service area within the public rights-of-way for inclusion in the licensed premises.
- F. Alcohol shall only be consumed upon the licensed premises from which the alcohol was sold.
- G. No personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs, may be placed within any public right-of-way so as to cause damage to or the physical alteration of such public right-of-way or any permanent facilities located therein.
- H. No personal property, including but not limited to goods, merchandise, umbrellas, signs, clothing racks, displays, tables and chairs, may be placed within any public right-of-way

so as to obstruct or interfere with building exits, fire hydrants, standpipes, or other public safety equipment.

- I. If the business is not the fee owner of the public right-of-way, such business may only make temporary outdoor use thereof pursuant to this ordinance with the written approval from the fee owner of the premises.
- J. All businesses using the public right-of-way for the purposes herein stated shall make immediate adjustments to said use area in the event City staff notifies them either verbally or in writing that some use by the business is not in compliance with the requirements of this ordinance.
- K. Any business using a public right-of-way pursuant to this ordinance shall fully indemnify, defend, hold harmless, and release the City, its officers, agents, and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with said business' use or operations within the public rights-of-way.
- L. No business may make use of a public right-of-way pursuant to this ordinance without first submitting a certificate of insurance to the City Administrator evidencing commercial general liability insurance coverage for property damage and personal injury or death that includes premises and operations insurance and products and completed operations insurance with minimum coverage amounts of \$300,000 per occurrence and \$500,000 annual aggregate, and which names the City of Breckenridge as an additional insured.
- M. Any business using a public right-of-way pursuant to this ordinance is responsible for providing waste receptacles and ensuring the area is litter free at all times during such use.
- N. On-site signage and storage are authorized, as well as limited on-site directional signage. Temporary tables, canopies, tents and sun shelters may be erected, but any structure requiring state building and fire code permits must submit plans and permit applications for accelerated review by city staff.
- O. COVID-19 Requirements. All businesses operating under the permitted authority granted herein shall have read and shall follow the protocols, practices, and guidelines as applicable to their businesses, specified by the State of Minnesota and any potential amendments to operating orders during the COVID-19 Peacetime Emergency and related executive orders and legislation.

Section 4. PENALTY; ENFORCEMENT. Any person using public rights-of-way in violation of the requirements and restrictions contained in Section 3 of this ordinance shall be subject to a civil penalty in an amount not to exceed \$100. Each day on which a violation occurs shall be a separate offense and may be otherwise enforced in the same manner as any violation of City Code.

Section 5. EFFECTIVE DATE. This emergency ordinance shall be effective starting at 2:00 a.m. on June 1, 2020.

Section 6. EXPIRATION DATE. This emergency ordinance shall expire upon the earlier of (1) the date on which the local emergency due to the COVID-19 pandemic expires or is repealed; or (2) September 30, 2020.

Passed by the City Council of the City of Breckenridge, Minnesota, this 28th day of May, 2020.

Russell Wilson
Mayor

ATTEST:

Renaë Smith
City Administrator