

ORDINANCE NO. {{item.custom\_tracking\_number}}

AN ORDINANCE OF THE CITY OF TEMPLE, TEXAS, ~~CREATING~~AMENDING AND EXTENDING A PILOT PROGRAM THAT WILL TEMPORARILY ALLOW EXTENDED OUTDOOR DINING IN CITY ON-STREET PARKING SPACES AND SIDEWALKS AND PRIVATE PARKING LOTS AND MOBILE FOOD UNIT OPERATION IN CITY ON-STREET PARKING SPACES AND PRIVATE PARKING LOTS IN THE CENTRAL AREA ZONING DISTRICT; AND PROVIDING A SEVERABILITY CLAUSE, REPEALING CLAUSE, SAVING CLAUSE, AN EFFECTIVE DATE, AND OPEN MEETINGS CLAUSE.

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**Whereas**, the COVID-19 pandemic is causing unparalleled economic damage to Temple's local small business community beginning with the necessary cancellation of special events that occur ~~during~~regularly throughout the ~~spring, summer, and fall seasons~~year;

**Whereas**, in response to the pandemic, Mayor Tim Davis declared a local state of disaster on March 19, 2020 and Governor Abbott and Bell County issued a series of orders (collectively "Orders") that combined to temporarily close non-essential businesses, including dine-in restaurants and bars and which established social distancing guidelines and limited public gatherings to fewer than ten people;

**Whereas**, Governor Abbott has issued Executive Order GA 34, which removes COVID19-related operating limits on Texas businesses and other Texas establishments in all counties that are not in an area with high hospitalizations but allows counties to use COVID19-related mitigation strategies, including occupancy limits for the majority of businesses, if the counties are located in an area of high hospitalizations;

**Whereas**, these necessary Orders were designed to protect the public's health and were intended to keep infection rates in the City of Temple and Bell County from spiking and overwhelming local area hospitals and health care systems; however, the original Orders resulted in high rates of unemployment and imperiled the survival of Temple's local small businesses;

**Whereas**, while the City, the state, and the federal government have provided funding to and programs to help businesses withstand the shock of sudden and prolonged closure, a combination of innovative measures may be needed to help Temple's small businesses; moreover, the Council did not anticipate the need for this pilot program until the economic crisis resulting from the pandemic occurred;

**Whereas**, Temple's restaurants and bars have taken an enormous economic hit from the pandemic crisis, these types of businesses often are community gathering spots to gather to dine, and many employees of bars and restaurants have been laid off, and some bars and restaurants may be on the brink of permanent closure;

**Whereas,** the pilot program will improve access to available outdoor spaces for Temple's local, small business community. This improved access will allow these businesses to open at greater capacity and operate safely with adequate social distancing measures to protect customers - additionally, increased use of available outdoor space for dining will serve to attract more business activity, boost the local economy, and match best practices by urban planners for placemaking strategies to create pedestrian-friendly activity;

**Whereas,** the pilot program will provide an opportunity for businesses that were required to close or significantly modify operations as a result of the Orders and the public health emergency to address the secondary-effects of COVID-19;

**Whereas,** the Council determines that the use of City sidewalks and on-street parking spaces and private parking lots provides a public benefit to the City, because it will allow businesses to operate safely with adequate social distancing measures that protect the customers, employees, and general public;

**Whereas,** the purpose of a pilot program is to learn the positives and negatives of the program, to figure out what works and does not work, and to better understand the level of community interest in the program—; because special events that include food and beverages in the City's Central Area zoning district are already common, starting the pilot program with restaurants and bars within this district will serve the purpose of a pilot program;

**Whereas,** thriving local businesses are vital to Temple's economic and community well-being, and the Council is committed to employing innovative measures that increase resiliency for small business owners and their employees - as the pilot program moves forward, the City Manager may consider expanding the zoning districts and the types of businesses that may participate in the pilot program and provide any recommendation of expansion of this program or to make this program permanent to City Council;

**Whereas,** the Council adopted this pilot program ordinance on November 19, 2020, and this program will expire on May 19, 2021;

**Whereas,** since the pilot program was adopted by the Council, the City has received feedback from the City's downtown business community that the businesses are interested in participating in this program but suggest amendments to make the ordinance simpler to understand and to make it easier for businesses to obtain a pilot program permit;

**Whereas,** City Manager determines that a six (6) month extension of this pilot program with amendments to the program's terms is in the best interest of the City;

**Whereas,** the City Council has considered these matters and deems it in the public interest to authorize these actions.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPLE, TEXAS THAT:**

**Part 1: Findings.** All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the City of Temple, Texas, and they are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**Part 2: Pilot Program.**

(a) ~~Establishment of Pilot Program.~~

~~This ordinance creates a pilot program that allows within the Central Area (CA) zoning district:~~

~~(1) Brick and mortar restaurants and bars that are legally allowed to operate under emergency orders to use private parking lots and City on-street parking spaces and sidewalks adjacent to the restaurant or bar for outdoor seating and dining; and~~

~~(2) Mobile food units with a written agreement with a brick and mortar restaurant or bar to sell food and beverages in private parking lots and City on-street parking spaces adjacent to the restaurant or bar.~~

(c) ~~A map of the CA zoning district is on file with the City's Planning & Development Department.~~

(c) Definitions.

In this ordinance the following words have the below meanings:

*Bar* means any establishment that derives more than 51% of its profits from alcohol sales.

*City* means the City of Temple, Texas, the City Council of Temple, Texas, or their representatives, employees, agents, or designees.

*City Council* means the governing body of the City.

*City Manager* means the City's city manager appointed by the City Council or the City Manager's designee.

*Emergency orders* ~~means or~~ orders mean local and state emergency orders in place at the time of adoption of this ordinance and as later amended.

*Fire Department* means the City's Fire Department or any employee or officer thereof.

*Fire Marshal* means the City's designated fire marshal or the Fire Marshal's designee.

*Food product* means any item used as food, drink, confectionary, or condiment for human consumption, whether simple or compound.

*Mobile food unit or MFU* means a vehicle-mounted mobile food establishment designed to be readily moveable and includes a food truck.

*Municipal street* is defined as provided by Sec. 316.001, of the Texas Transportation Code, as amended.

*Operator* means any person who owns, operates, or manages a restaurant, bar, or mobile food unit or is the operator's designee or agent.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other entity or their legal representatives, agents, or assigns.

*Police Department* means the City's Police Department or any employee or officer thereof.

*Sidewalk* is defined as provided by Sec. 316.001, of the Texas Transportation Code, as amended.

(d) Establishment of Pilot Program.

This ordinance extends and amends a pilot program that allows within the Central Area (CA) zoning district for brick and mortar restaurants and bars that are legally allowed to operate under emergency orders to:

(1) Use private parking lots and City on-street parking spaces and sidewalks adjacent to the restaurant or bar for outdoor seating and dining; and

(2) Coordinate with mobile food units through written agreements to sell food and beverages in private parking lots and City on-street parking spaces adjacent to the restaurant or bar.

(f) A map of the CA zoning district is on file with the City's Planning & Development Department.

(f) Duration of pilot program.

(1) The pilot program ordinance will end six months from the date this ordinance becomes effective unless:

~~A. The City Council or the City Manager determines that it is necessary to terminate the pilot program earlier; or~~

~~B. A. The and the City Council authorizes terminates the City Manager to terminate this pilot program without further City Council action through ordinance; or~~

~~C.B.~~ City Council extends the pilot program through a future ordinance.

- i. The City Council directs the City Manager to place an item on its agenda to consider extending the pilot program if the City Manager determines that an extension of the program is in the best interest of the City and the public.

ii. The City Council authorizes the City Manager to extend this pilot program thirty (30) days from this ordinance's expiration date without bringing this item to City Council for approval.

- (g) The City may establish pilot program policies, including COVID-19, fire, and vehicular and pedestrian traffic safety policies.

- (h) The City Manager may limit the number of permits that may be issued under this pilot program, if necessary, for public health or safety reasons, to help prevent vehicular or pedestrian traffic congestion, increase available City parking, improve traffic flow, or for other good cause.

~~(a) Exemption of other City codes and policies.~~

~~(1) Unless otherwise provided by a pilot program permit or policy, the following City codes and policies do not apply to the activity permitted under this pilot program:~~

~~A. If the permit is for use of the City's sidewalk or on-street parking:~~

- ~~i. The City's Park Use and Regulations Policies for special events;~~
- ~~ii. Sec. 32-5, Permits for certain uses of streets, alleys, etc., of Chapter 32 of the City's Code of Ordinances; and~~
- ~~iii. Sec. 32-21, Street Use or Encroachment License, of Chapter 32 of the City's Code of Ordinances.~~

~~B. If the permit is for use of a private parking lot:~~

- ~~i. Sec. 7.5, Off-Street Parking and Loading, of the City's Unified Development Code; and~~
- ~~ii. Sec. 6.9.12, Parking and Access, of the City's Unified Development Code.~~

~~(2) A MFU operator is not required to apply for or receive a City mobile food unit permit issued under Chapter 14, Food and Food Establishments, of the City's Code of Ordinances (Chapter 14) to receive a permit to operate under this pilot program. However, a MFU operator who is applying for or who has received a pilot program~~

~~permit issued under this ordinance: (1) must comply with Chapter 14's MFU fire and explosion safety standards, policies, and requirements and health and sanitation requirements if stricter than this ordinance or pilot program policies; and (2) may not operate at any other location in the City other than the area(s) permitted for the MFU's operation under the pilot program without receiving the applicable City permit for the other location.~~

(i) Pilot program requirements.

(1) This program only applies to the CA zoning district.

(2) Brick and mortar restaurant and bar operator requirements:

A. Brick and mortar restaurant and bar operators are ~~not eligible for~~required to obtain a pilot program permit if they wish to perform either of the two activities within the CA zoning district unless otherwise authorized under this program if the restaurant or bar is not allowed to legally operate under emergency orders. — Subsection (g)(2)Bi, below:

(3) ~~Brick and mortar restaurant and bar operator requirements:~~

i. ~~Brick and mortar restaurant and bar operators may only use~~Use private parking lots and City on-street parking spaces and sidewalks adjacent to the restaurant or bar for outdoor seating and dining-; or

ii. Coordinate with mobile food units through written agreements to sell food and beverages in private parking lots and City on-street parking spaces adjacent to the restaurant or bar.

B. Effect of other City codes and policies.

i. A brick and mortar restaurant or bar operator is not required to obtain a pilot program permit issued under this ordinance or comply with any provision of this ordinance or pilot program policy for an activity that is required to be permitted under Subsection (g)(2)(A), above, if the activity is otherwise authorized by:

a. A City outdoor special event permit;

b. A permit issued under Sec. 32-5, Permits for certain uses of streets, alleys, etc., of Chapter 32 of the City's Code of Ordinances; or

c. A street use license issued under Sec. 32-21, Street Use or Encroachment License, of Chapter 32 of the City's Code of ordinances; or

d. Any other City permit or written City authorization.

ii. If the pilot program permit is for the use of a private parking lot, the following two City code sections do not apply to this use:

a. Sec. 7.5, Off-Street Parking and Loading, of the City's Unified Development Code; and

b. Sec. 6.9.12, Parking and Access, of the City's Unified Development Code.

C. A brick and mortar restaurant or bar operator wishing to participate in the City's pilot program must apply for a permit as provided by the City's pilot program policy and meet all of the pilot program's criteria, comply with this ordinance and any pilot program policy, and abide by the terms and conditions of their pilot program permit.

~~B.D.~~ Brick and mortar restaurant and bar operators permitted to use a City on-street parking space or sidewalk for outdoor seating and dining under this program must:

i. Have clearances between any object related to the permitted activity, including removable tables, umbrella, canopies, patio heaters, chairs, planters, signs, furniture, or other appurtenances, that comply with the clearances from structures to utility lines required by a nationally recognized building code;

ii. Pay the costs to relocate a City or public facility or improvement in a municipal street if required for the permittee to conduct the permitted activity; and

iii. Provide the City with proof of insurance at the time of application and maintain for the duration of the permit the following insurance coverages:

a. General Liability \$1,000,000 single event/ \$2,000,000 aggregate, and

b. Alcohol Service \$1,000,000 (if applicable) ~~), and )~~.

~~c. Worker's Compensation \$500,000.~~

iv. All insurance certificates must name the City of Temple, Texas as an additional insured and contain a waiver of subrogation in favor of the City. The insurance coverage amounts provided in Subsection iii, above, are the minimum coverages required.

E. Brick and mortar restaurant and bar operators ~~may enter into~~ must have a written ~~agreements~~ agreement with mobile food unit operators for the mobile food unit



operators to sell food or beverages in a private parking lot(s) or City on-street parking space(s) adjacent to the restaurant or bar under this program. Proof of written agreements must be provided to the City ~~with the restaurant and bar operator's and the MFU operator's original pilot program application, or, if a permit has already been issued, in the permittee's permit amendment application, prior to a MFU beginning operation under this program in the applicable private parking lot or City on-street parking space in coordination with the restaurant or bar upon request.~~

i. The restaurant or bar operator may only allow one MFU to operate in coordination with the restaurant or bar at a time.

ii. ~~The brick and mortar restaurant and bar operators that have a written relationship with a MFU operator under this program may place tables, umbrellas, canopies, patio heaters, chairs, plants, signs, furniture, or other appurtenances related to outdoor dining or seating by the MFU's customers in their permitted area if approved by the City as provided by Subsection (h)(3)(D), below.~~

F. Brick and mortar restaurant and bar operators must provide in their pilot program application or permit amendment application where any tables, umbrellas, canopies, patio heaters, chairs, plants, signs, furniture, or other appurtenances related to the outdoor dining and seating will be placed in the proposed permitted area and receive written approval for such proposed items and placement from the City. All such items must be securely anchored but may not be permanently affixed.

i. ~~Brick~~The brick and mortar restaurant and bar operators ~~must allow their customers, attendees, and employees that have a written relationship with a MFU operator under this program may place tables, umbrellas, canopies, patio heaters, chairs, plants, signs, furniture, or other appurtenances related to outdoor dining or seating for use by the restroom facilities located within MFU's customers in the operator's bar or restaurant.~~permitted area if approved by the City as provided by this Subsection (g)(2)F.

G. Brick and mortar restaurant and bar operators wishing to use a private parking lot under this program for outdoor dining or seating or for operation of a mobile food unit must obtain and provide to the City the written consent of the owner of the property or the owner's authorized agent. This written consent must be provided to the City with the operator's original pilot program application, or, if a permit has already been issued, in the permittee's permit amendment application. In no case, may a person use a private parking lot for outdoor dining or seating or for operation of a mobile food unit without providing the written consent of the owner or authorized agent to the City. If a property owner or authorized agent later withdraws their consent, the operator may no longer use this private property.



(4) Mobile food unit operator requirements:

- A. Mobile food unit operators are not required to obtain a permit under this program; however, mobile food unit operators are required to have a valid City mobile food unit permit issued under Chapter 14, Food and Food Establishments, of the City's Code of Ordinances, to operate under this pilot program.
- i. Mobile food unit operators operated solely by nonprofits registered with the state as 501(c) organizations are exempt from obtaining a City permit issued under Chapter 14, Food and Food Establishments, but are not exempt from compliance with all other applicable local, state, and federal laws, rules, policies, guidelines, and regulations. The City may require any information necessary to determine whether an organization is a nonprofit for purposes of this exemption.
- B. Mobile food unit operators operating under this pilot program must comply with all provisions of Chapter 14, Food and Food Establishments, unless otherwise provided by this ordinance or authorized by other local or state law, rule, regulation, policy, guideline or written City authorization.
- ~~A.C.~~ Mobile food unit operators must have a written agreement with a brick and mortar restaurant or bar as provided by Subsection ~~(h)(3)(C);g)(2)E~~, above, to participate in this pilot program. Proof of this written agreement must be provided to the City with the restaurant and bar operator's and MFU operator's original pilot program application, or, if a permit has already been issued, in the permittee's permit amendment application prior to a MFU beginning operation under this program in the applicable private parking lot or City on-street parking space in coordination with the restaurant or bar upon request.
- D. Only one MFU may operate in coordination with a brick and mortar restaurant or bar at a time.
- ~~B. No MFU operator may operate a MFU under this pilot program without possessing all valid permits and certificates required by the Bell County Public Health District (BCPHD). Mobile food unit operators wishing to operate under this program, must provide a copy of all applicable BCPHD permits and certificates to the City with the operator's original pilot program application. If any required BCPHD permit or certificate changes after a pilot program permit is issued, the permittee must file a permit amendment application with the City with the applicable updated document(s) attached.~~
- ~~C. Mobile food units may only be parked or operated in the specified City on-street parking space(s) and private parking lot(s) authorized in the permit's terms and conditions. MFU operator applicants must provide a copy of their itinerary to the~~

~~City with the operator's original pilot program application, or, if a permit has already been issued, in the permittee's permit amendment application.~~

- E. ~~Mobile food units may be approved to park or operate under this pilot program in multiple locations as specified and authorized in the~~ pilot program permit's terms and conditions.
- F. Mobile food unit operators must comply with all traffic safety rules.
- G. Mobile food units must be removed from the permitted area ~~during the hours of 10:01 PM and 6:59 AM~~when its coordinating brick and mortar restaurant or bar is closed for business.
- D. ~~Mobile food units must refill their potable water tanks and dispose of their wastewater safely and may not connect to City's water or sewer systems at the permitted location without written permission of the City.~~
- E. ~~Mobile food unit operators must comply with the state's requirements for the use of a central preparation facility or servicing area.~~
- F. Unless otherwise provided by this ordinance or authorized by the City in writing, MFU operators:
  - i. ~~Must prepare, serve, store, and display food and beverages on or in the mobile food unit itself;~~
  - ii. ~~May not attach, set up, or use any other device or equipment intended to increase the selling, serving, storing, or displaying capacity of the MFU, including, for example, selling food from a table under a free-standing canopy;~~
    - a. ~~All food vending must be done from the MFU.~~
  - iii. ~~May not allow items such as, but not limited to, brooms, mops, hoses, equipment, containers, and boxes or cartons to remain adjacent to or beneath the MFU; and~~
- H. May ~~may~~ not place any tables, umbrellas, canopies, patio heaters, chairs, plants, signs, furniture, or other appurtenances outside of the MFU.
  - a. A MFU operator with a written agreement with a restaurant or bar under this program may coordinate with the restaurant or bar to allow the MFU's customers to use the restaurant's or bar's outdoor seating or dining areas. A brick and mortar restaurant or bar operator with outdoor seating and dining areas may prohibit the use of ~~its~~these areas from use by a MFU's customers.

~~G. Regardless of Subsection (h)(4)(I), above, MFU operators may place one sandwich board sign outside of the MFU.~~

~~Sandwich board signs:~~

~~i. May not be placed more than ten (10) feet away from the MFU;~~

~~ii. May only be displayed when the MFU is in operation;~~

~~iii. Must not interfere with vehicular or pedestrian access; and~~

~~iv. May not exceed six (6) square feet per sign face.~~

~~i. MFUs may only prepare and sell food approved by both the City and BCPHD.~~

I. Mobile food unit operators may not operate from a City on-street parking space or private parking lot under this program, if the MFU'S location is located within 100 feet of any existing brick and mortar restaurant on the same street as the parking space or private parking lot and the restaurant is primarily engaged in selling the same type of food product as that offered by the mobile food unit operator unless the mobile food unit is owned by the restaurant, the mobile food unit operator has acquired the written consent to operate at the proposed location by the restaurant owner or the owner's authorized agent, or the restaurant is closed at the time the mobile food unit is operating.

i. The 100-foot distance will be measured from the closest point of the space in the building that is occupied by the restaurant – or by the food court in which the restaurant is located (rather than at the closest point of the building in which the restaurant is located) to the closest point of the mobile food unit.

~~M. Mobile food unit operators must obtain and provide to the City written proof of a restroom facility agreement that provides the availability of a fixed establishment restroom located in a business establishment within 150 feet, along the path of travel, of the location where the mobile food unit will be located for use by the MFU operator's customers, attendees, and employees.~~

~~N. Mobile food unit operators must have current insurance for their MFUs at all times and provide proof of this insurance to the City at the time of original application.~~

~~O. Mobile food unit operators must provide proof a sales tax and use permit to the City at the time of original application.~~

- ~~P. Unless otherwise required by the Fire Marshal, mobile food units must be separated from existing buildings and other mobile food units by a minimum of ten (10) feet and separated from any building entrances or exits by twenty (20) feet.~~
- ~~S. The Fire Marshal may establish fire and explosion safety standards and policies for MFUs, including, but not limited to, establishing fire safety requirements, providing when MFU fire safety inspections will be conducted, such as designating times, days, and locations for fire safety inspections, and regulating how proof of inspections must be displayed on MFUs (e.g. decals, stickers, posting, etc.). Failure to comply with a fire and explosion safety standard or policy established by the Fire Marshal or the City's current fire code is an offense under this ordinance.~~
- ~~T. A person may not operate a MFU under this pilot program without a current fire safety inspection of the MFU conducted by the Fire Marshal showing compliance with the City's fire and explosion safety standards and policies and the City's current fire code. MFU fire inspections will be valid for one year.~~
- ~~i. Fire safety inspection fees will be set as provided under Subsection (k), below.~~
  - ~~ii. Proof of a passed fire safety inspection conducted under this Subsection must be:~~
    - ~~a. Provided to the City with the MFU operator's original pilot program application; and~~
    - ~~b. Kept in the MFU while the MFU is operating under this ordinance and provided upon request to any City employee charged with enforcing this ordinance by the City Manager, including, but not limited to, the Fire Marshal.~~
  - ~~iii. Fire safety inspections during MFU operation.~~
    - ~~a. The Fire Marshal may conduct fire safety inspections on a MFU during the MFU's hours of operation and at other reasonable times.~~
    - ~~b. If after the Fire Marshal presents official credentials and requests to conduct a fire safety inspection the permit holder or the operator refuses access, the Fire Marshal may apply for a warrant to gain access to the MFU as provided by law. The Fire Marshal is not required to obtain a warrant if a legal exception to the warrant requirement applies.~~
    - ~~c. If during a fire safety inspection, the Fire Marshal determines that an MFU is not in compliance with the City's fire and explosion safety standards or fire safety policies or the City's current fire code, the MFU~~

~~operator must cease operations immediately and may not operate until the Fire Marshal authorizes food operations to resume.~~

~~d. — A permittee's or MFU's operator's failure to comply with a fire and explosion safety standard or policy or a provision of the City's current fire code may result in the MFU's City permit being denied, suspended, or revoked.~~

(5) All applicant, permittee, and operator requirements.

- A. All applicants, permittees, and operators, including MFU operators, must comply with the latest version of the Texas Accessibility Standards and the Americans with Disabilities Act of 1990 (ADA), as amended.
- B. The proposed or permitted activity or any item related to the proposed or permitted activity under this program may not be located on, extend onto, or intrude on:
  - i. The roadway; or
  - ii. A part of the sidewalk needed for pedestrian use.
    - a. Sidewalk clearance for pedestrian traffic must meet the City's sidewalk policy and state and federal requirements but in no case may be less thirty-six inches (36").
- C. The proposed or permitted activity or any item related to the proposed or permitted activity may not create a hazardous condition or obstruction of vehicular or pedestrian travel on the municipal street.
- D. The design and location of the proposed or permitted activity or any item related to the proposed or permitted activity must include all reasonable planning to minimize potential injury or interference to the public in the use of the municipal street.
- E. The permitted area may only be used ~~between the hours of 7:00 AM and 10:00 PM~~ when the permitted brick and mortar restaurant or bar is open for business.
- F. No amplified sound equipment may be used in the permitted area unless otherwise approved by the City.
- G. All items related to the permitted activity, including tables, umbrellas, canopies, patio heaters, chairs, mobile food units, plants, signs, furniture, or other appurtenances, must be kept clean and in good condition.
- H. Fire lanes and ADA spaces may not be blocked by or used for any permitted activity.

- I. All COVID-19 safety measures required by the City and any emergency orders must be taken.
- J. The anticipated number of customers or attendees may not exceed the maximum occupancy limit of the relevant business as provided by any applicable emergency orders, or if there are no emergency orders in place limiting occupancy, the regular maximum occupancy limit of the business.
- K. The City or a utility company or other person authorized by the City may remove, without liability, any object authorized under this pilot program if there is a lawful need for the permitted area or for access to the permitted area.
- L. If selling alcoholic beverages, the permittee or operator must obtain the proper authorization (e.g. license, permit, etc.) from the Texas Alcoholic Beverage Commission and provide the City with a written copy of this authorization. This authorization may be submitted with the pilot program permit application or after a permit issued, but in all cases must be received by the City prior to the permittee or operator selling alcoholic beverages in an area permitted under this program. A permit amendment application is not required if a permit has already been issued to the applicable permittee or operator.
- M. The permittee and the operator must comply with the terms and conditions of a permit issued under this ordinance and any City pilot program policies as well as all other applicable local, state, and federal laws, rules, and regulations.
- N. All ~~operators~~permittees under this program must post their pilot program permit in a location conspicuous to their customers.

~~(b) Application.~~

~~A person wishing to participate in the City's pilot program must apply for a permit as provided by the City's pilot program policy and meet all of the pilot program's criteria.~~

(j) Permit Term.

- (1) A pilot program permit expires at the end of the pilot program unless the permit is earlier terminated or expired.
- (2) The City may issue a pilot program permit that expires earlier than the time period specified in Subsection (j)(1), above, if another activity was approved by the City to occur in the same area proposed for the outdoor dining or mobile food unit parking or operation prior to the issuance of the permit or for other good cause.
- (3) If a permittee has a valid pilot program permit to use an area for outdoor dining or mobile food unit parking or operation, but the City schedules or has scheduled a special event,

approves or has approved an activity to occur in the permitted area for a limited period, or if the City or a public utility has a temporary lawful need for the permitted area, the permittee must vacate the permitted area and, if required by the City or public utility, must remove any tables, umbrellas, canopies, patio heaters, chairs, plants, signs, furniture, or other appurtenances, and may not resume using the permitted area until the special event or approved activity is completed or the City or public utility no longer needs access to the area.

(k) Fees.

- (1) An applicant must pay an applicable pilot program fees, including application and fire safety inspection fees.
- (2) The City Manager is authorized to set pilot program fees.

(l) Permit Approval and Denial.

- (1) The City will deny a pilot program permit if:

A. The applicant fails to:

- i. Meet any of the requirements of a pilot program policy or this ordinance,
- ~~ii. Provide to the City a complete application, including proof of required insurance, if applicable;~~
- ~~iii. If the application is for the operation of a mobile food unit, provide to the City a water and wastewater plan and information about the mobile food unit's central preparation facility or servicing area, including the name and address of the facility or servicing area, for review and approval by the City's utilities and environmental programs staff;~~
- ~~iv-ii.~~ Pay a required fee under the pilot program, including the application fee,
- ~~v-iii.~~ Provide any needed documentation to the City related to the pilot program,
- ~~vi-iv.~~ Provide sufficient safety, health, or portable sanitation equipment, services, or facilities that are reasonably necessary to ensure that the proposed activity will be conducted with due regard to safety,
- ~~vii-v.~~ Provide sufficient waste management services,
- ~~viii-vi.~~ Provide proof that the applicant possesses or is able to obtain a license, permit, or approval required by another City ordinance or other applicable law for the conduct of all activities included as part of the proposed activity, or



~~ix.vii.~~ Make City-required revisions to a pending application; or

B. The City determines that:

- i. The City cannot make a finding required under § 316.003 of the Texas Transportation Code, as amended,
- ii. The applicant's proposed activity will violate any local, state, or federal law, rule, or regulation,
- iii. The resources required to ensure public safety within the proposed activity's venue or its immediate surroundings will prevent the police, fire, or emergency medical services from providing reasonable protections to the remainder of the City,
- iv. The concentrations of persons, animals, furniture, vegetation, structures, fences, fixtures or other items, equipment, or vehicles within the area proposed for the permitted activity will unduly interfere with the movement of police, fire, or other emergency vehicles,
- v. The proposed activity will substantially interfere with any other permitted activity for which a permit or application has been approved or with the provision of City services required to support scheduled or unscheduled government functions,
- vi. The applicant or operator demonstrates an inability or unwillingness to perform the proposed activity in compliance with this ordinance, any pilot program policy, or the terms or conditions of the permit issued under this ordinance,
- vii. The applicant or the operator has conducted a prior special event or similar activity in a manner that failed to substantially comply with City Code or other local, state, or federal laws, rules, or regulations,
- viii. The applicant or operator has had a special event permit or street use license revoked within the preceding twelve (12) months,
- ix. The applicant or operator has received, within the preceding twelve (12) months, two (2) or more notices of violation or citations related to a provision of a special event permit or street use license,
- x. The Police Department, the Fire Department, or any other City employee or department or any public health official determines that the proposed activity would pose a threat to public health, safety, or welfare,

- xi. The applicant or operator is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or operator,
- xii. The applicant or operator has a history of conducting or sponsoring special events or the proposed activity in a disorderly, unsafe, or unsanitary manner,
- xiii. There is a code violation on the property where the proposed activity will take place,
- xiv. The proposed activity will interfere with the rights of nearby residents to the quiet, peaceable, and undisturbed enjoyment of their property, or
- xv. For other good cause.

- (2) The City must approve an application if none of the conditions of denial provided in Subsection (4)(1), above, apply. If the City denies an application, the City will provide a written reason for the denial to the applicant.
- (3) The City must take final action to approve or deny an application no later than ten (10) business days after the application is deemed complete by the City.
- (4) The City is not required to take action on an incomplete application.
- (5) The City may require application modifications. In exercising this authority, the City will consider:
  - A. The scope of the proposed activity;
  - B. Traffic;
  - C. Vehicular and pedestrian safety and other public safety concerns; and
  - D. Parking.

(j)(k) Revocation of pilot program permit.

- (1) The City may revoke a pilot program permit if the City determines that:
  - A. The City issued the permit in error;
  - B. The permittee or operator is not complying or has not complied with the terms or conditions of a pilot program permit or policy or this ordinance;
  - C. The permittee or operator fails or failed to pay a pilot program permit fee;

- D. The permittee or operator failed to obtain any other license, permit, or approval required by the City or other local, state, or federal law;
- E. The permittee or operator is failing or has failed to comply with any local, state, or federal law, rule, or regulation;
- F. The permittee or operator is failing or failed to provide sufficient safety, health, or portable sanitation equipment, services, or facilities that are reasonably necessary to ensure that the permitted activity is/was conducted with due regard to safety;
- G. The permittee or operator is failing or failed to provide sufficient waste management services;
- H. The resources required to ensure public safety within the permitted activity's venue or its immediate surroundings will prevent the police or have prevented the police, fire, or emergency medical services from providing reasonable protections to the remainder of the City;
- I. The concentrations of persons, animals, furniture, vegetation, structures, fences, fixtures or other items, equipment, or vehicles within the permitted area will or have unduly interfered with the movement of police, fire, or other emergency vehicles;
- J. The permitted activity is, is likely, or has substantially interfered with any other permitted activity for which a permit or application had been previously approved or the provision of City services required to support scheduled or unscheduled government functions;
- K. The permittee or operator is demonstrating or has demonstrated an inability or unwillingness to perform the permitted activity in compliance with this ordinance, pilot program policy, or the terms or conditions of the pilot program permit;
- L. The permittee or the operator is currently conducting or has conducted a special event or similar activity in a manner that fails to substantially comply with City Code or other local, state, or federal laws, rules, or regulations;
- M. The permittee or the operator has had a special event permit or street use license revoked within the preceding twelve (12) months;
- N. The permittee or operator has received, within the preceding twelve (12) months, two (2) or more notices of violation or citations related to a provision of a special event permit or street use license;

- O. The permittee made a false statement or omission of a material fact on the permittee's pilot program application;
  - P. The permittee made a false statement or omission of a material fact on an application for a special event permit or street use license;
  - Q. The Police Department, the Fire Department, or any other City Staff or department or any public health official determines or determined that the permittee's or operator's activity poses a threat to public health, safety, or welfare;
  - R. The permittee or operator fails or has failed to maintain public order in or around the permitted location or conducts or has conducted the permitted activity in a disorderly, unsafe, or unsanitary manner;
  - S. There is or was a code violation on the property at the location of the permitted activity;
  - T. The permittee or operator is or was overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the operator;
  - U. The permittee's or operator's activity interferes or interfered with the rights of nearby residents to the quiet, peaceable, and undisturbed enjoyment of their property;
  - V. The City or a utility company determines that there is a lawful need for the permitted area or for access to the permitted area; or
  - W. For other good cause.
- (2) The City may revoke a pilot program permit after it issues a notice of intent to revoke.
- A. The notice of intent must:
    - i. Be in writing;
    - ii. Specifically set forth the reasons for the revocation;
    - iii. Specify the corrective measures required for compliance and to prevent revocation, if applicable; and
    - iv. Provide the time period for compliance, if applicable.
  - B. If a permittee or operator fails to take the corrective measures required for compliance provided in a notice of intent within the notice's provided time period for compliance, the City may issue a written permit revocation.

- (3) Regardless of Subsection (~~mk~~)(2), above, the City may issue an immediate verbal revocation in person or by phone to the permittee or operator if an emergency exists that poses a threat to public health, safety, or welfare that requires immediate revocation.

~~(k)~~(1) Appeal of a pilot program permit denial or revocation.

- (1) If the City denies a pilot program permit application or revokes a pilot program permit, the permittee may appeal the denial or revocation to the City Manager.
- (2) The permittee must file a written appeal that states the reason(s) the person is appealing to the City no later than ten (10) calendar days after the date the permittee or operator is notified that the application was denied or the permit was revoked. If the appeal is not timely and properly filed within this ten (10) day period, the denial or revocation will become final.

A. A permittee or operator is deemed to have been notified of a permit application denial or permit revocation either when:

- i. The permittee or operator is personally served with the denial or revocation;
- ii. Five (5) calendar days after the City deposits the denial or revocation in the mail; or
- iii. The City issues an immediate verbal revocation as provided in Subsection (~~mk~~)(3), above.

- (3) The City Manager must act upon the appeal within ten (10) calendar days of the date the appeal is filed with the City and may uphold or reverse the denial or revocation. The City Manager's decision is final.

~~(j)~~(m) Removal of property after permit termination.

A permittee whose pilot program permit has been terminated or revoked or whose permit has expired must remove all items related to the formerly permitted activity from the permitted area, including mobile food units, tables, umbrellas, canopies, patio heaters, chairs, plants, signs, furniture, or other appurtenances, unless the items are otherwise authorized under other local, state, or federal law, rule, or regulation, and restore the City's right-of-way to its original condition, if applicable.

~~(m)~~(n) Pilot program permit amendment application.

- (1) A permittee may apply to amend the terms and conditions of their permit, including adding new mobile food unit locations, adding new furniture, plants, signs, or the like, or expanding their outdoor dining or seating footprint, etc., by submitting a new pilot

program application and paying any required amendment application fee.

- (2) The City will take final action to approve or deny an application no later than ten (10) business days after the application is deemed complete by the City.

~~(u)~~(r) Offense and penalty.

(1) Criminal prosecution.

A. Criminal prosecution.

- i. A person who violates a provision of this ordinance, pilot program policy ~~established under this ordinance~~, or term or condition of a ~~pilot program~~ permit issued under this ordinance is guilty of Class C misdemeanor. A person commits a separate offense for each day or part of a day during which a violation is committed or continued.

~~A. For offenses If the definition of an offense under this ordinance does not prescribe a culpable mental state, then a culpable mental state is not required. Such offense will be punishable by a fine not to exceed five hundred dollars (\$500). Although not required, if a culpable mental state is not required for the commission of an offense under this ordinance. For offenses punishable of a fine up to two thousand dollars (\$2000), in fact alleged in the state must prove that charge of the defendant committed offense, and the offense intentionally, knowingly, recklessly, or with criminal negligence.~~

~~B. Each offense is punishable by a fine not to exceed:~~

- i. ~~Two thousand dollars (\$2000) for a violation of a provision of this ordinance, policy established under this ordinance, or the terms or conditions of a pilot program permit governing governs fire safety, zoning, or public health and/or sanitation, including the dumping of refuse; or~~
- ii. Five hundred dollars (\$500) for all other violations of this ordinance, policy established under this ordinance, or term or condition of a pilot program permit., such offense will be punishable by a fine not to exceed two thousand dollars (\$2000).

(2) Civil remedies.

The City may seek to enjoin violations of these rules and any other civil remedies available under law.

(3) Non-exclusive remedies; other enforcement.

- A. The City's decision to pursue civil or criminal remedies is not exclusive; the City may pursue criminal or civil remedies, or both, for any offense committed under this ordinance.
- B. Enforcement under this ordinance does not preclude enforcement or prosecution by the State or any other authority under local, state, or federal law.

(p) Updates, evaluations, and recommendations.

- (1) The City Council directs the City Manager to provide an update on the numbers of permits requested and approved, the effect of the program on parking and rights-of-way availability, and a measurement of the effectiveness of the program to facilitate stronger and safer reopening of local businesses ~~after the first sixty (60) calendar days of the pilot program~~ when determined necessary and requested by the City Council.
- (2) Using the information generated by the pilot program, the City Council directs the City Manager to include any recommended changes to the pilot program if the City Manager brings forward an ordinance to extend or expand the pilot program ~~or make this program permanent.~~

**Part 3:** If any provision of this ordinance or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

**Part 4:** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, and all other provisions of the ordinances of the City of Temple not in conflict with the provisions of this ordinance will remain in full force and effect.

**Part 5:** Nothing in this ordinance may be construed to affect any suit or proceeding in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing under any act or prior ordinance; nor may any right or remedy of any character be lost, impaired, or affected by this ordinance.

**Part 6:** This ordinance shall retroactively take effect at 12 am on May 19, 2021 immediately from and after its passage in accordance with the provisions of the Charter of the City of Temple, Texas, and it is accordingly so ordained.

**Part 7:** It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on First Reading and Public Hearing on the ~~5<sup>th</sup>~~6<sup>th</sup> day of ~~November 2020~~May 2021.



PASSED AND APPROVED on Second and Final Reading on the ~~19<sup>th</sup>~~20<sup>th</sup> day of ~~November~~  
~~2020~~May 2021.

THE CITY OF TEMPLE, TEXAS

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TIMOTHY A. DAVIS, MAYOR

APPROVED AS TO FORM:

ATTEST:

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Jana Lewellen  
City Secretary

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Kathryn H. Davis  
City Attorney