



## Legislation Text

File #: 60695, Version: 2

### Fiscal Note

The proposed resolution temporarily suspending various sections of the Madison General Ordinances to allow staff to approve new or expanded restaurant sidewalk cafes and outdoor eating areas on a temporary basis. The fiscal impact will depend on the number of restaurants that seek to add or expand outdoor seating. There will be minor negative fiscal implications from the waiver of application fees associated with zoning, temporary liquor license expansions, and street occupancy permit applications (\$50, \$25 and approximately \$200 per application, respectively). The street vending license fees have already been waived for 2020. Any remaining fiscal impact would come from the monthly fee associated with taking over a parking area through a street occupancy permit, if a café expands into the roadway.

### Title

SUBSTITUTE. Temporarily suspending various sections of Madison General Ordinance sections 9.13, 10.055, Chapter 12, Chapter 28, and Chapter 38 to allow staff to approve new or expanded sidewalk cafes and outdoor eating areas on a temporary basis, to facilitate compliance with applicable health orders including those regarding capacity and physical distancing.

### Body

WHEREAS, on March 17, 2020, Public Health Madison & Dane County announced that community spread of COVID-19 was occurring in Dane County, with the first confirmed community death being reported on March 25; and,

WHEREAS, on March 23, 2020, Mayor Rhodes-Conway issued a Proclamation of Emergency due to COVID-19, which Proclamation was ratified by the Common Council on March 31, 2020 by RES-20-00286 and ~~will continue to be~~ was in effect until June 2, 2020; and,

WHEREAS, under the City's emergency proclamation, the Mayor may, after consultation with the City Attorney, issue orders to suspend the operation of, amend, create, or adopt city policies or ordinances, and suspend enforcement actions, that are not in conflict with existing state or federal laws, in order to mitigate the effects of the coronavirus pandemic on city workers, residents of, and businesses within the City of Madison, including the power to take such actions as are appropriate to protect the health, safety and welfare of the City and its residents; and,

~~WHEREAS, on March 26, the Mayor issued the first Emergency Order pursuant to the Emergency Proclamation, providing for the modification of a number of ordinances or policies, which were subsequently approved or modified by the Common Council;~~

WHEREAS, COVID-19 has come with unprecedented challenges to our local economy, including to restaurants and taverns, which ~~have been~~ were unable to serve indoor or outdoor ~~dining~~ customers since from March 23, 2020 to May 26, 2020; and,

WHEREAS, on May 26, 2020, Public Health Madison Dane County issued Emergency Order #3, allowing restaurants and taverns to resume indoor dining service at 25% capacity and outdoor seating, provided that stools inside taverns are spaced six (6) feet apart and tables inside and outside of restaurants and taverns are

spaced six (6) feet apart with a limit of six (6) people per table who are members of the same household; and WHEREAS, on June 15, 2020, Public Health Madison Dane County issues Emergency Order #5 increasing the indoor seating capacity limit to 50% capacity and maintaining the other requirements regarding the placement of bar stools, tables, and seating at tables: and

WHEREAS, some restaurants and taverns have previously approved sidewalk cafes or outdoor eating areas in which they will be able to resume serving customers as provided in Public Health Madison Dane County Orders # 3 and #5; and

WHEREAS, these restaurants and taverns may wish to expand their existing sidewalk cafes or outdoor eating areas in order to serve more customers outside while adhering to Public Health Madison Dane County Orders, requirements, and guidelines; and,

WHEREAS, other restaurants and taverns without existing sidewalk cafes or outdoor eating areas may wish to establish or expand such spaces in private parking lots accessory to the establishment, on the sidewalk, or in the roadway; and,

WHEREAS, certain city ordinances related to sidewalk café licenses and outdoor eating areas, including street vending, zoning, alcohol licensing, and street occupancy either prohibit these activities or subject them to lengthy approval processes; and,

WHEREAS, temporarily allowing restaurants and taverns to expand their outdoor seating as described in the Mayor's Emergency Order and this Substitute Resolution thru a lengthy approval process will aid in the immediate recovery of the local economy while ensuring adherence to Public Health Madison Dane County's Orders, requirements, and guidelines; and

WHEREAS, on May 27, 2020, the Mayor issued an Emergency Order allowing restaurants, but not taverns, to temporarily expand their outdoor seating on the sidewalk, private parking areas accessory to the restaurant, and roadway ("Mayor's Emergency Order"); and

WHEREAS, since the issuance of that Order, the City has received significant positive feedback from restaurants wishing to participate in the program; and

WHEREAS, the State Street and downtown areas continue to face significant economic challenges because of COVID-19; and

WHEREAS, taverns in the State Street and downtown areas have expressed interest in also being included in this temporary program in order to help them more quickly recover from the economic challenges presented by COVID-19; and

WHEREAS, all roadways or portions of roadways in the City, including State Street and other roadways in the downtown area, could be utilized for new or expanded sidewalk café licenses as allowed by the Mayor's Emergency Order and this Substitute Resolution.

WHEREAS, this Substitute Resolution is meant to confirm the Mayor's Emergency Order allowing restaurants to establish or expand outdoor eating areas or sidewalk cafes and to extend that opportunity to taverns; and

WHEREAS, for the purposes of this Substitute Resolutions a tavern is an establishment known as a Tavern, Distillery, Tasting Room or Nightclubs under the City of Madison Zoning Code; and

WHEREAS, this Substitute Resolution and the Mayor's Emergency Order are not meant to create gathering or social spaces for larger crowds and/or events, and only allows restaurant and tavern patrons to be seated in accordance with physical distancing requirements issued by Public Health Madison Dane County in order to increase capacity and aid in the recovery of restaurants and taverns; and

WHEREAS, this Resolution and the Mayor's Emergency Order are not meant to allow establishments that primarily serve alcohol, such as "Taverns" under M.G.O. § 28.211 of the Zoning Code, to undertake

~~expansions allowed by the Order and this Resolution, but rather focuses on establishments that provide dining services to their customers; and~~

NOW THEREFORE BE IT RESOLVED that the Mayor's Emergency Order is confirmed as provided in this Substitute Resolution; and,

BE IT FURTHER RESOLVED that the following City of Madison Ordinances are hereby suspended as provided in, and for the purposes stated in Mayor's Emergency Order and this Substitute Resolution until October 25, 2020:

M.G.O. § 9.13(4)

M.G.O. § 9.13(5)

M.G.O. § 9.13(6)(j)2. and 4.

M.G.O. § 9.13(6)(l) 1.d

M.G.O. § 9.13(12)(d)7., (12)(e), (12)(f)3., (12)(h)3.

M.G.O. § 9.13(6)(c)

M.G.O. § 9.13(9)

M.G.O. Subchapters 28C-28I (Zoning Code)

M.G.O. § 28.151

M.G.O. § 28.206 (fees)

M.G.O. § 10.055 (provisions applicable to duration) and (8) (fees)

M.G.O. § 12.122(1)(a)

M.G.O. § 33.56(5)(b)1.-2.

M.G.O. § 38.05(3)(a)1.

M.G.O. § 38.07(7)

M.G.O. § 38.05(3)(a)1(a) (fees)

M.G.O. § 38.07(5)-(6)

BE IT FURTHER RESOLVED, that administrative approval of City staff is required for any outdoor seating area authorized by the Mayor's Emergency Order and this Substitute Resolution, including the Street Vending Coordinator (sidewalk cafes); the Zoning Administrator (outdoor eating areas); Traffic Engineering (Street Occupancy Permit); and the City Clerk and Alcohol Licensing Review Committee (ALRC) (temporary expansion of existing alcohol licensed premises); and

BE IT FURTHER RESOLVED, that in addition to any requirement set administratively by staff during the

approval process, all restaurants and taverns allowed to establish sidewalk cafes, outdoor eating areas, or an expanded licensed premises under this Substitute Resolution shall also be subject to the following minimum requirements:

- a. Restaurants and Taverns in the Right-of-Way. Any restaurants or taverns with a new or expanded sidewalk café license under this program shall be approved by the Street Vending Coordinator as provided in the Mayor's Emergency Order. In addition, when approving a new or existing sidewalk café license under this program, the Street Vending Coordinator shall provide notice to the District Alder of the application and any subsequent approval.
- b. Restaurants and Taverns on Private Property. Any restaurants or taverns with a new or expanded outdoor eating area approval under this program shall be approved by the Zoning Administrator as provided in the Mayor's Emergency Order and shall abide by the following minimum requirements:
  - i. Hours of Operation
    1. New outdoor eating areas must close by 10:00 p.m. (Sunday - Thursday) 11:00 p.m. (Friday - Saturday).
    2. Expanded existing outdoor eating areas must close by the time set in existing conditional use approval.
  - ii. No amplified sound in new or expanded existing outdoor eating areas.
  - iii. The Zoning Administrator shall ensure that any new or expanded outdoor eating area is also approved by Traffic Engineering and the Madison Fire Department. The Zoning Administrator shall also provide notice of the application and any subsequent approval to the District Alder.
  - iv. To the extent that any of the minimum regulations contained above conflict with the minimum regulations contained in the Mayor's Emergency Order, the above regulations apply.
- c. Street Occupancy Permits for Sidewalk Café Licenses. Prior to approving a street occupancy permit for a new or expanded sidewalk café in the city roadway as provided in the Mayor's Emergency Order, the Traffic Engineer shall ensure that the District Alder is notified of the application and any subsequent approval.
- d. Signage Required for Restaurants and Taverns in the Right-of-Way and on Private Property. All new or expanded outdoor eating areas and sidewalk café licenses shall post a sign with language provided by the City directed outward from the seating area to inform the public that the new or expanded sidewalk café or outdoor eating area is intended to help offset the impact of COVID-19 and expires on October 25, 2020, and that maintaining the outdoor area beyond that date will require regular city approvals. The sign shall also contain information related to how residents can submit complaints to the city regarding the operation of the outdoor eating area or sidewalk café license.
- e. No Beer Gardens. This program is intended to create outdoor seating for restaurants and taverns. Under no circumstances do approvals for new or expanded sidewalk cafes or outdoor eating areas allow for the creation of a "beer garden" or other social gathering space for patrons to stand and congregate to drink for any purpose. All outdoor seating areas approved pursuant to this program must follow all Public Health Madison Dane County regulations, including those

- related table spacing and bar-stool placement for on-premises spaces. It is the responsibility of the establishment to know and abide by those regulations.
- f. Modification of Approvals. Any temporary approval may be modified by the Zoning Administrator (outdoor eating areas), Street Vending Coordinator (sidewalk cafes), or Traffic Engineer (street occupancy permit) as deemed necessary to fulfill the purpose of the program and ensure continued compliance with Public Health Madison Dane County orders, requirements, and guidelines.

BE IT FINALLY RESOLVED, that approval of any expanded sidewalk café license, outdoor eating area, alcohol license expansion, or street occupancy permit is temporary and, as provided in Mayor's Emergency Order and this Substitute Resolution, subject to continued compliance with all applicable federal, state and local laws and Public Health Madison Dane County Orders, requirements, and guidelines.

This Emergency Substitute Resolution will remain in effect until October 25, 2020.