A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF 
LAFAYETTE, COLORADO, AMENDING THE CITY’S LOCAL 
DISASTER DECLARATION REGARDING COVID-19 AND 
RESOLUTION NO. 2020-23 TO PROVIDE FOR 
ADMINISTRATIVE REVIEW AND APPROVAL OF REQUESTS 
BY CITY BUSINESSES TO TEMPORARILY PERMIT 
OUTDOOR DINING AND RETAIL SPACES AND TO 
AUTHORIZE OTHER CERTAIN RELATED ACTIONS AS 
NEEDED

WHEREAS, on March 10, 2020, the Governor Jared Polis in accordance with the Colorado Disaster Emergency Act (“Act”) C.R.S. § 24-33.5-704 declared a statewide emergency in response to the COVID-19 virus and disease; and

WHEREAS, on March 17, 2020, the Mayor of the City of Lafayette issued a “Declaration of Local Disaster Emergency in and for the City of Lafayette, Colorado, Regarding COVID-19” (“Declaration”) finding that the COVID-19 pandemic “is causing widespread human and economic impacts to the City of Lafayette,” and on that same date, the City Council of the City of Lafayette adopted Resolution No. 2020-23 extending the Declaration until terminated; and

WHEREAS, since March 25, 2020, Governor Polis has issued a series of Executive Orders resulting in the issuance of numerous Public Health Orders by the Colorado Department of Public Health and Environment (“CDPHE”) implementing Stay at Home and Safer at Home restrictions imposing requirements to slow the spread of COVID-19; and

WHEREAS, the subsequent Executive Orders and CDPHE Public Health Orders have progressively lessened the original orders’ restrictions by providing for the opening of more businesses, including personal services and retail operations, with requirements concerning social distancing, limitations on the size of public gatherings, and health and safety recommendations such as facial coverings remaining in place; and

WHEREAS, on May 13, 2020, the Lafayette City Council adopted Resolution No. 2020-33 issuing an order requiring persons operating places of public accommodation within the City to require the wearing of face coverings, with certain enumerated exceptions; and

WHEREAS, the Governor’s Safer at Home order, Executive Order D 2020 079, which expired June 1, 2020, began the process of lessening restrictions on business, allowing for the opening of restaurants for limited in-person dining and outside dining effective May 27, 2020, subject to restrictions concerning occupancy, social distancing, facial coverings, means of payment, and employee protection measures; and
WHEREAS, on June 1, 2020, the Governor issued Executive Order D 2020 091, titled “Safer at Home and in the Vast, Great Outdoors,” which implements the next phase of Safer at Home measures in Colorado and, among other things, directs the CDPHE to issue new or amended public health orders regarding the reopening and operations of additional non-critical businesses while maintaining “a sustainable level of Social Distancing;” and

WHEREAS, on May 15, 2020, due to public health concerns raised by the presence of COVID-19 in the state, the Liquor Enforcement Division for the State of Colorado issued Emergency Regulation 47-302 in Bulletin 20.07 (“Emergency Regulation 47-302”) establishing procedures for a liquor licensee seeking to temporarily modify the licensed premises, including into outdoor areas contiguous or adjacent to the existing licensed premises; and

WHEREAS, pursuant to Emergency Regulation 47-302, a licensee must seek permission of the relevant Local Licensing Authority in addition to the State Licensing Authority to temporarily modify its licensed premises to facilitate social distancing by employees and customers; and

WHEREAS, pursuant to Article 1 of Chapter 10 of the Lafayette Code of Ordinances (the “Code”), the Local Licensing Authority for the City is the City Council, and pursuant to Section 10-15 of the Code, the City Clerk may act as the Local Licensing Authority for certain matters, and the City Clerk also receives applications and exercises discretion in forwarding matters to the Local Licensing Authority; and

WHEREAS, the economic impacts of COVID-19 are significant and threaten to undermine the economic stability of many Coloradans, the City of Lafayette, and local Lafayette businesses;

WHEREAS, to mitigate the economic effects of the pandemic, enable Lafayette’s local businesses to operate under the latest State orders, and to provide needed flexibility to businesses to address the collateral consequences of the pandemic, the City Council wishes to support Lafayette’s businesses by authorizing administrative review and approval of temporary modifications of businesses’ premises; and

WHEREAS, the Lafayette City Council finds and declares that it is in the best interests of the health, welfare, and safety of the residents of the City of Lafayette to permit administrative review and approval of temporary modifications of liquor licensed premises and temporary site plans to modify business premises to accommodate the City’s businesses during the local disaster emergency and mandatory social distancing.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lafayette, Colorado as follows:

Section 1. The above recitals are hereby incorporated as findings by the Lafayette City Council.
Section 2. As an amendment to the City’s March 17, 2020, Declaration of Local Disaster Emergency ("Declaration") and Resolution No. 2020-23 extending the Declaration, the City staff referenced below are authorized to take the following actions in furtherance of the protection of the public health, safety, and welfare:

A. The City Clerk, or his or her designee, is hereby authorized to administratively approve applications for temporary modifications of liquor licensed premises. If an application is denied by the City Clerk, the licensee may request a hearing before the Local Licensing Authority pursuant to 1 CCR 203-2, Regulation 47-302. Applications for permanent modifications of liquor licensed premises shall continue to be referred to and acted upon by the Local Licensing Authority.

i. Any temporary modification of premises approved by the City Clerk pursuant to this resolution shall expire concurrent with the end date established by the Liquor Enforcement Division’s approval of the temporary modification or upon the State’s termination of Emergency Regulation 47-302(F), whichever is earlier.

ii. In determining the appropriateness and any conditions regarding a request for a temporary modification of premises, the City Clerk shall consider the factors set forth in 1 CCR 203-2, Regulation 47-302, of the Colorado Liquor Rules.

iii. The City Clerk may waive the City’s fee for applications for temporary modifications of premises submitted pursuant to Emergency Regulation 47-302(F).

B. The City Planning Director or his/her designee is authorized to temporarily suspend the City’s temporary use and other associated land use regulations for the purpose of facilitating temporary outdoor business operations by granting temporary site plans, in his/her discretion, subject to the following parameters:

i. Submittal of a site plan by an applicant and approval by the Planning Director, which approval shall contain conditions of operation that the Planning Director determines are necessary to minimize impacts to the flow of pedestrian or vehicular traffic on any rights-of-way, mitigate the effects of the public health emergency, or protect the health, safety, welfare of all persons, particularly those upon the establishment’s premises.

ii. Approval of a site plan by the Planning Director shall not relieve the applicant from compliance with other provisions of the Lafayette Code of Ordinances or other applicable laws or regulations, including, but not limited to, building codes, fire codes, business license requirements, zoning, storm water and nuisance regulations, public access requirements, emergency access requirements, accessibility...
requirements, liquor code requirements, and other provisions of state or local law as may be applicable;

iii. The Planning Director may waive any applicable fees for applications for temporary site plans approved in accordance with this resolution; and

iv. The City reserves unto itself all police power it has with respect to regulation and control of businesses and the public rights-of-way.

C. The City Planning Director or his/her designee is authorized to temporarily suspend the City’s enforcement of the City’s parking requirements, zoning restrictions, or other applicable land use regulation, for the purpose of approving temporary outdoor business operations, in his/her discretion, if appropriate and otherwise in accordance with the applicable state or county orders, subject to the following parameters:

i. A business shall not be relieved from compliance with other provisions of the Lafayette Code of Ordinances as may be applicable, including but not limited to building codes, fire codes, business license requirements, zoning, storm water and nuisance regulations, liquor code requirements, proper access, accessibility requirements, and compliance with other provisions of state or local law as may be applicable;

ii. The suspension of enforcement for the proposed temporary outdoor business operation on the property must be in the public interest;

iii. In making a determination that the suspension of enforcement for the proposed temporary outdoor business operation would be in the public interest, the Planning Director shall consider the following factors:

a. the type of business and use of the property;

b. duration of the suspension;

c. the seasonal and special event demand for parking in the surrounding neighborhood and area adjacent to the property where off-street parking requirements will be suspended;

d. the need for the outdoor expansion of operations;

e. the impact on nearby uses;

f. the availability of other parking that could accommodate the need that gives rise to the proposed application;
g. the suspension will not result in parking being unavailable for the primary use of the site on which the parking is provided; and

h. the suspension shall not impede parking for those with disabilities or impair or block fire lanes or other emergency access; and

iv. The City reserves unto itself any and all police power it has with respect to the regulation and control of the public rights-of-way and reserves all of its land use powers over real property within its territorial boundaries.

Section 3. To the extent a Lafayette business’s request for temporary modification of premises or temporary site plan contemplates the temporary use of the City’s rights-of-way, sidewalks, or other public spaces for temporary business operations, if appropriate and in accordance with applicable state or county orders, the City Administrator or his/her designee, or the Public Works Director or his/her designee, is authorized to grant the necessary approvals for such temporary uses and to enter into a short-term license agreement or other similar agreement with a Lafayette business, subject to approval as to form by the City Attorney, and only if the business obtains additional insurance to cover the temporary expansion, names the City as an insured, and otherwise agrees to take all steps necessary to protect the City from all potential liability resulting from the business’s use of the City’s rights-of-way, sidewalks, or other public spaces. Such approvals or agreements shall be granted by the City Administrator or Public Works Director subject to their discretion and determination that such approval or agreement is in the best interest of the public health, safety, and welfare, and of the safety of persons and property.

Section 4. Businesses shall be and remain responsible for obtaining all approval, permits, or licenses not specifically addressed in this resolution and otherwise required by the City of Lafayette, County of Boulder, or the State of Colorado, and any of their respective departments or agencies, as applicable to the business.

Section 5. The City’s police officers and code enforcement officials are hereby authorized and directed to enforce the temporary modifications, site plans, permits, or other approvals or agreements made or issued pursuant to this resolution.

Section 6. Notwithstanding the foregoing, nothing herein shall excuse a business from complying with applicable provisions of the Lafayette Code of Ordinances or state law, including the Colorado Liquor Code (Sections 44-3-101 et seq. and 44-4-101 et seq., C.R.S), Colorado Liquor Rules (1 CCR 203-2), or, if applicable, conditions of a businesses’ a liquor license.

Section 7. Except as otherwise stated herein, all temporary modifications, site plans, permits, and other approvals or agreements granted pursuant to this resolution shall expire upon termination of this resolution or upon revocation by the City Clerk or City Planning Director, as applicable, whichever occurs first.

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Section 8. This Resolution shall stay in effect until termination of the City’s March 17, 2020, Declaration of Local Disaster Emergency or until terminated by City Council, whichever occurs first.

RESOLVED AND PASSED THIS 2ND DAY OF JUNE, 2020

CITY OF LAFAYETTE, COLORADO

_________________________________
Jamie Harkins, Mayor

ATTEST:

_________________________________
Lynnette Beck, CMC, City Clerk

APPROVED AS TO FORM:

_________________________________
Mary Lynn Macsalka, City Attorney