

ORDINANCE NO. 112, 2022
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AMENDING CHAPTER 23, ARTICLE III, OF THE CODE OF THE CITY OF FORT
COLLINS REGARDING OBSTRUCTIONS AND ENCROACHMENTS TO
ALLOW FOR THE EXPANSION OF OUTDOOR DINING AREAS ONTO
CITY PROPERTY AND ADOPTING BY REFERENCE THE
CITY OF FORT COLLINS OUTDOOR DINING DESIGN MANUAL

WHEREAS, on October 6, 2020, City Council adopted Emergency Ordinance No. 124, 2020, to approve Emergency Rule and Regulation No. 2020-17A (“Regulation 2020-17A”) regarding Temporary Outdoor Expansion Permits; and

WHEREAS, Regulation 2020-17A, and its predecessor Emergency Rule and Regulation No. 2020-17 (“Regulation 2020-17”), were originally adopted in response to the declared local COVID emergency (“COVID Emergency”) to allow local businesses to temporarily expand their business footprint onto City or private property adjacent to or in the immediate vicinity of their fixed location to accommodate greater social distancing at their establishments; and

WHEREAS, Regulation 2020-17A and Regulation 2020-17 provided the City Engineer with the ability to issue Temporary Outdoor Expansion Permits (“Expansion Permits”) to allow businesses during the COVID emergency to expand into specified City or private property provided certain conditions were met; and

WHEREAS, the ability of food and beverage service establishments to expand their dining area footprint onto City property pursuant to the Expansion Permits has contributed to the financial viability of such businesses and the wellbeing of the City; and

WHEREAS, based upon the benefits of allowing such businesses to temporarily expand onto City property, the City Code amendments set forth in this Ordinance to the existing Chapter 23 obstruction and encroachment permit provisions allow food and beverage service establishments to continue to expand their dining area footprint onto City property after the end of the COVID emergency provided certain conditions are met; and

WHEREAS, to assist in the administration of obstruction and encroachment permits issued to allow expansion dining areas onto City property, the *City of Fort Collins Outdoor Dining Design Manual* (“Design Manual”) has been developed and because it is intended to be enforceable as though it were set forth in City Code, it is being adopted as a code by reference; and

WHEREAS, pursuant to City Charter, Article II, Section 7, City Council may enact any ordinance which adopts any code by reference, in this instance the Design Manual, provided that before adoption of such ordinance the Council shall hold a public hearing thereon and notice of the hearing shall be published twice in the newspaper of general circulation, published in the city, one (1) of such publications to be at least eight (8) days preceding the hearing and the other at least fifteen (15) days preceding the hearing; and

WHEREAS, in compliance with City Charter, Article II, Section 7, the City Clerk published in the *Fort Collins Coloradoan* such notice of hearing on October 2, 2022, and October 9, 2022, and

WHEREAS, the attached Exhibit "A" is a copy of the text of the Notice of Public Hearing that was so published and which the Council hereby finds meets the requirements of City Charter, Article II, Section 7; and

WHEREAS, pursuant to City Code Section 1-14, at least one copy of the Design Manual shall be kept on file in the office of the City Clerk available for public inspection, and one copy shall be kept in the office of the chief enforcement officer thereof; and

WHEREAS, as required pursuant to City Charter, Article II, Section 7, the penalty clause for the violation of any Design Manual requirement is set forth in full in below Section 2, the text of which is part of City Code Section 23-47 and adopted by this Ordinance; and

WHEREAS, the amendments to the obstruction and encroachment permit provisions set forth in this Ordinance and the adoption of the Design Manual by reference are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 23, Article III, Division 1 is hereby amended by the addition of a new section 23-47 which reads in its entirety as follows:

Sec. 23-47. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Director shall mean the Planning, Development and Transportation Director or their designee.

Section 3. That Chapter 23, Article III, Division 1 is hereby amended by the addition of a new section 23-48 which reads in its entirety as follows:

Sec. 23-48. Adoption of the City of Fort Collins Outdoor Dining Design Manual.

(a) There is hereby adopted the City of Fort Collins Outdoor Dining Design Manual which shall have the same force and effect as though set forth herein and shall be referred

to as the Outdoor Dining Design Manual. The Outdoor Dining Design Manual is adopted for the purposes of protecting the health, safety, and general welfare of the public, ensuring the appropriate usage of City property or any street, avenue, alley, sidewalk highway or public right-of-way for which obstruction and encroachment permits have been issued, and facilitating allowed food and beverage service thereon in consideration of the aforementioned purposes.

(b) A copy of the Outdoor Dining Design Manual adopted under this Section 23-47 shall be kept on file in the office of the City Clerk and the City Engineering Department and in the office of the chief enforcement officer thereof.

(c) The City Engineer may adopt such minor revisions and corrections to the Outdoor Dining Design Manual as may, in their judgment, be necessary to better protect the health, safety, and general welfare of the public, ensure the appropriate usage of City property or any street, avenue, alley, sidewalk highway or public right-of-way for which obstruction and encroachment permits have been issued, and facilitate allowed food and beverage service thereon in consideration of the aforementioned purposes. The City Engineer shall approve only those revisions or corrections that:

(1) Do not result in significant additional cost to the persons affected by the revisions; and

(2) Do not materially alter the standards with which persons must comply. Upon adoption of any such revisions pursuant to the authority of this subsection, the City Engineer shall maintain written documentation of any revisions or corrections specifying the date upon which they shall become effective and such documentation shall be provided to the office of the City Clerk with an updated copy of the Outdoor Dining Design Manual reflecting the changes and available for public inspection.

(d) The failure of any permittee to whom an encroachment or obstruction permit has been issued for food or beverage service to comply with the applicable terms of the Outdoor Dining Design Manual shall constitute a violation of the Code and shall be grounds for revocation of a permit and is punishable as a civil infraction in accordance with § 1-15.

Section 4. That Section 23-61 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-61. Permit required; application.

(a) Any person desiring to occupy any designated public parking space on a public street, public parking lot, and/or public right-of-way in the City in connection with the maintenance, erection, construction, remodeling or demolition of any building or improvement on property abutting thereto shall make written application to the Director for an obstruction permit on a form(s) prepared and provided by the City.

(1) No private vehicle that is not directly related to the maintenance, erection, construction, remodeling or demolition activities shall be granted an obstruction permit for the intent to park longer than standard time restrictions for the parking space.

(b) Any person desiring to occupy any designated public parking space on a public street in the City for any purpose not specified in Subsection (a) above, or (c) below, shall make written application to the Director for such obstruction permit on form(s) prepared and provided by the City, subject to the following restrictions:

(1) ADA/Accessible parking spaces and adjacent loading areas shall not be obstructed.

(2) The permit shall not be valid for more than four (4) consecutive days and shall not be granted for consecutive time periods.

(3) No private vehicle that is not directly related to the permit for the obstruction shall be granted an obstruction permit for the intent to park longer than standard time restrictions for the parking space.

(4) The permit shall apply only to designated public parking spaces that abut property owned by the applicant unless the owner(s) of the abutting property has consented in writing to the issuance of the permit as provided in paragraph (10) of § 23-62 of this Code or unless the Director determines that it is in the best interests of the health, safety or welfare of the City and its residents that the permit be issued for parking spaces adjacent to property not owned by the applicant.

(5) The provisions of this Subsection (b) shall not apply to special events for which a permit is required under § 23.5-3 of this Code.

(c) Parklets: use of parking spaces adjacent to a licensed premises for the purpose of serving food and/or beverages for consumption within the Parklet obstruction area as an extension, accessory or complement to the licensed business ("Parklet") may be issued an obstruction permit for more than four (4) consecutive days, if in alignment with and permitted by other affected City Departments.

(1) ADA/Accessible parking spaces and adjacent loading areas shall not be obstructed.

(2) Business use of a permitted Parklet shall apply only to parking spaces and/or curb front that abut property owned by the applicant unless the owner(s) of the abutting property has consented to the issuance of the permit as provided in paragraph (11) of § 23-62 of this Code.

- (3) No private vehicle that is not directly related to the reasons for the parking space closure shall be granted an obstruction permit for the intent to park longer than the standard time restrictions for the parking space.
- (d) Obstruction permits may be revoked at any time as determined by the Director, depending on the needs of the City.
- (e) Application for, and approval of, the modification of a permit shall be required before any change is made in the size or configuration of the area that is the subject of a permit issued under this Section and/or any change is made in the nature, purpose or duration of the obstruction that was authorized by the permit.

Section 5. That Section 23-62 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-62. Contents of application.

The application shall contain the following information:

- (1) the applicant's name, address, email address and telephone number;
- (2) statement identifying the parking spaces that are the subject of the permit;
- (3) the location of the proposed obstruction, including the address of the property(ies) abutting the area or space which is the subject of the permit;
- (4) the type of obstruction and the purpose of the obstruction;
- (5) the period of time requested that the obstruction will be in place, including date and time;
- (6) a statement that the applicant agrees to abide by the provisions of this Division;
- (7) a description of the proposed obstruction sufficient to fully inform the Director of the character and physical attributes of the obstruction and for the Director to perform a complete and competent examination of the application under the criteria contained in Subsection 23-63(a);
- (8) evidence of the applicant's ability and willingness to provide liability insurance insuring the City in a sum not less than one million dollars (\$1,000,000.), proof of which shall be provided to the City prior to issuance of the permit, unless the requirement to provide such insurance is waived by the Director;
- (9) a statement that the applicant agrees to be responsible for barricading the parking spaces in a manner acceptable to the Director;

(10) for permit applications pursuant to Section 23-61 (a) and (b) only, a statement that the applicant is the fee owner of the real property abutting the parking space(s) for which the obstruction permit is sought, or, if the applicant is not the fee owner of such real property, then the abutting property owner's written consent to the obstruction;

(11) for Parklet obstruction permits sought pursuant to Section 23-61(c) only for the purpose of serving food and/or beverages for consumption within the Parklet obstruction area as an extension, accessory or complement to a business, a statement that the applicant is the fee owner of the real property that includes the business to which the Parklet obstruction area will be an extension, accessory or complement or is authorized by the fee owner to obtain a Parklet obstruction permit; and

(12) a statement that the applicant agrees to be bound by all of the provisions of this Article and the rules and regulations established by the City, including, without limitation, payments of fees, satisfying additional permit conditions, and obtaining any additional permits from other departments or agencies, as necessary.

Section 6. That Section 23-63 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-63. Investigation of application information; fees and conditions.

(a) The application shall be made to the Director who shall make or cause to be made an investigation of the information contained in the application and prior to the issuance of a permit. In investigating the application, the Director may consult with such City departments as they deem necessary to determine whether the application should be approved. The Director may issue the permit for such duration and upon such other terms and conditions as the Director determines are necessary to protect the public welfare if the following criteria are met:

- (1) All submittal requirements of the application are complete;
- (2) The proposed obstruction or other structure shall not, in the judgment of the Director, constitute a nuisance or destroy or impair the use of the property by the public or constitute a traffic hazard; and
- (3) The property proposed for the obstruction permit is not needed for use by the public.
- (4) In addition to satisfying the above three criteria, the following requirements apply to the following proposed encroachments:

a. If an application is for a Parklet obstruction for the purpose of serving food and/or beverages as referenced in Subsection 23-62(11), and the Parklet obstruction area includes City-owned property or any street, avenue, highway or public right-of-way that is partially or entirely located within the adjacent frontage of any real property other than that owned or occupied by the applicant, the Director shall mail written notice of the obstruction permit application to the owner(s) of record and any occupant of such real property informing them of the date by which any input on the proposed obstruction must be received for the Director's consideration in deciding whether the proposed Parklet obstruction meets above criteria (2) and (3).

b. As a condition of the issuance of any permit for the purpose of serving food and/or beverages in a Parklet obstruction as referenced in Subsection 23-62(11), the permittee shall:

1. Provide annually to the Director proof of uninterrupted liability insurance coverage in the amount required in Subsection 23-62(11), naming the City as an insured party;

2. Obtain and comply with any other required permits, licenses, or permission required under law and associated with conducting activities within a Parklet obstruction area including a liquor license, floodplain use permit, building permit, or Poudre Fire Authority permit; and

3. Comply with all applicable requirements of the Outdoor Dining Design Manual adopted pursuant to Section 23-47.

(b) At the time of issuance of a permit hereunder, and at the time of any renewal or modification of such permit, the applicant shall pay an application fee and an additional fee per parking space per day to help defray the costs incurred by the City in processing and administering the permit program, including, without limitation, the cost of enforcement and the cost of inspection of the spaces that are the subject of the application; provided, however, that the Director may waive part or all of the fees for governmental agencies. The amount of said fees shall be determined and established by the City Manager, pursuant to the provisions of Article I of Chapter 7.5.

(c) The Director may condition the issuance and use of an obstruction permit on such requirements as are reasonably necessary to protect the safety of persons and property and the use and control of vehicular and pedestrian traffic, including limitations on time, place and allowed activities; payment of fees; obtaining any additional permits from other departments or agencies as necessary; and providing any fencing or barriers that the Director requires in order to protect pedestrian and vehicular traffic from the obstruction and associated dangers. If required, the permit holder shall build and maintain a good and

substantial; protected walkway around the obstruction. The permit holder shall adequately light and mark the obstruction to protect pedestrian and vehicular traffic.

Section 7. That Section 23-64 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-64. Term of permit; renewal and revocation.

(a) A permit may be issued only for the period of time necessary to complete the purpose for which the permit was issued. No permit issued under Subsection 23-61(a) shall be issued for more than ninety (90) days; provided, however, that the Director may renew any such permit for one (1) or more additional ninety-day periods upon written application and payment of the applicable renewal fee. The term of a permit issued under Subsection 23-61(b) shall be limited in accordance with Paragraphs (2) and (3) thereof.

(b) Any application under this Article may be denied and any permit issued under this Article may be suspended or revoked by the Director if the holder fails to obtain any other necessary permits, fails to conduct the activity in compliance with the terms and conditions of the permit, violates any of the provisions of this Article, state law, local ordinances or the applicable rules and regulations of the City, or if the work or services allowed or offered by the permit unduly interferes with pedestrian or vehicular traffic or otherwise poses a threat to the health and safety of the public.

(c) The failure of any permit holder to comply with the terms and conditions of the permit, failure to pay the application fee and an additional fee per parking space per day, or to vacate the permitted premises upon revocation or expiration of the permit, whether for cause or without cause, shall constitute a violation of the Code and shall be punishable as a civil infraction in accordance with § 1-15. Each day that a violation continues shall be a separate offense.

Section 8. That Section 23-67 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-67. Permit holder liable in case of nonconformance.

If any permit holder fails to comply with the requirements of §§ 23-65 or 23-66 of this Article, or fails to perform any work required for issuance and use of the permit, the Director may cause the work to be done and compliance accomplished, and the cost shall be charged to the holder of the permit and the holder of the permit shall be liable for such costs. The failure of any permit holder to comply with the terms and conditions of the permit or to vacate the permitted premises upon revocation or expiration of the permit, whether for cause or without cause, shall constitute a violation of the Code and shall be punishable as a civil infraction in accordance with § 1-15. Each day that a violation continues shall be deemed a separate offense.

Section 9. That Section 23-82 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-82. Contents of application.

...

(b) If the proposed encroachment is for the purpose of serving food and/or beverages for consumption within the encroachment area as an extension, accessory or complement to a business, the encroachment area does not need to be contiguous with the real property upon which such business is located, and the application shall also contain:

...

(2) A statement that the applicant is the fee owner of the real property that includes the business to which the encroachment area will be an extension, accessory or complement or is authorized by the fee owner to obtain an encroachment permit.

Section 10. That Section 23-83 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 23-83. Investigation of application information; fee; permit modification and revocation.

(a) The application shall be made to the City Manager. The City Manager shall make or cause to be made an investigation of the information contained in the application and prior to the issuance of a permit. In investigating the application, the City Manager may consult with such City departments as they deem necessary to determine whether the application should be approved. The City Manager may issue the permit for such duration and upon such other terms and conditions as the City Manager determines are necessary to protect the public welfare if the following criteria are met:

- (1) All submittal requirements of the application are complete;
- (2) The proposed encroachment, obstruction or other structure shall not, in the judgment of the City Manager, constitute a nuisance or destroy or impair the use of the property by the public or constitute a traffic hazard; and
- (3) The property proposed for the encroachment permit is not needed for use by the public.
- (4) In addition to satisfying the above three criteria, the following requirements apply to the following proposed encroachments:

a. If an application is for an encroachment area for the purpose of serving food and/or beverages as referenced in Subsection 23-82(b), and the encroachment area includes City-owned property or any street, avenue, alley, sidewalk, highway or public right-of-way that is partially or entirely located within the adjacent frontage of any real property other than that owned or occupied by the applicant, the City Manager shall mail written notice of the encroachment permit application to the owner of record and any occupant of such real property informing them of the date by which any input on the proposed encroachment must be received for the City Manager's consideration in deciding whether the proposed encroachment meets above criteria (2) and (3).

b. As a condition of the issuance of any permit for the purpose of serving food and/or beverages as referenced in Subsection 23-82(b), the permittee shall:

1. Annually provide to the City Manager proof of uninterrupted liability insurance coverage in the amount required in Subsection 23-82(b), naming the City as an insured party;

2. Obtain and comply with any other required permits, licenses, or permission required under law and associated with conducting activities within an encroachment area including a liquor license, floodplain use permit, building permit, or Poudre Fire Authority permit; and

3. Comply with all applicable requirements of the outdoor dining design manual adopted pursuant to Section 23-47.

4. In order for an application for an encroachment for wireless telecommunication equipment or facilities (as those terms are defined in Article 5 of the Land Use Code) to be approved, the applicant must show to the satisfaction of the City Manager that the applicable criteria contained in Section 3.8.13 of the Land Use Code have been met.

...

Section 11. That Section 24-1 of the Code of the City of Fort Collins is hereby amended to read as follows:

Sec. 24-1. Signs on streets, sidewalks and public rights-of-way prohibited; removal; exceptions; permit.

Notwithstanding the provisions of § 17-42, the following signs shall be permitted on streets, sidewalks and other areas owned by the City:

...

(6) Signs allowed pursuant to an encroachment or obstruction permit issued pursuant to Chapter 23, Article III, provided any required sign permit is also issued.

Introduced, considered favorably on first reading and ordered published this 18th day of October, A.D. 2022, and to be presented for final passage on the 1st day of November, A.D. 2022.

Mayor

ATTEST:

Chief Deputy City Clerk

Passed and adopted on final reading this 1st day of November, A.D. 2022.

Mayor

ATTEST:

City Clerk