

CITY OF FOLEY
COUNTY OF BENTON
STATE OF MINNESOTA

ORDINANCE NUMBER 451

**AN INTERIM ORDINANCE TEMPORARILY
ALLOWING EXPANDED OUTDOOR SEATING**

WHEREAS, Minnesota Governor Walz issued Executive Order 20-01 declaring an emergency due to the COVID-19 pandemic, which has been extended by Executive Orders 20-35 and 20-53; and

WHEREAS, the Foley City Council declared an emergency on March 24, 2020; and

WHEREAS, the Governor's Executive Orders have prohibited sit-down, dine-in service at restaurants, which has threatened the existence of many businesses and the vitality of downtown Foley; and

WHEREAS, the City of Foley (the "City"), prior to the pandemic, has invested significant time and resources in fostering a business environment that is friendly to and supportive of small businesses, including food establishments, particularly in downtown Foley; and

WHEREAS, small businesses, especially food establishments are an essential component of the economy within the City and have suffered greatly as a result of the closure order; and

WHEREAS, the City is greatly concerned about the long-term damage that the closure is causing on food establishments and the likelihood that it will undo decades of progress that Foley has worked hard to achieve; and

WHEREAS, the Foley City Council administers zoning within the City and may regulate land use as part of the City's zoning authority; and

WHEREAS, Minnesota Statute § 462.355, Subd. 4, provides the City with authority to adopt an interim ordinance to temporarily regulate activity; and

WHEREAS, under the current Foley zoning ordinance, parking standards are imposed based upon occupancy of the building; and

WHEREAS, in light of the COVID-19 pandemic, the CDC recommends enhanced spacing and reduced capacity in food establishments; and

WHEREAS, when food establishments are allowed to resume sit-down, dine-in service in Minnesota, only outdoor seating will be initially permitted; and

WHEREAS, reduced occupancy will result in excess parking under the Foley zoning ordinance; and

WHEREAS, the City is concerned about economic suffering of reduced occupancy and wishes to provide food establishments with added flexibility to establish temporary outside seating in unnecessary parking areas; and

WHEREAS, the City also wishes to permits sidewalk cafés by permit; and

WHEREAS, the temporary nature of these measures and the urgency of the needs of affected businesses necessitates use of an interim ordinance and foregoing typical planning commission review and public hearing procedures; and

WHEREAS, the City will study evolving public health concerns related to COVID-19, business needs, and public input during the interim ordinance and adjust the City’s permanent ordinances accordingly and refine the interim ordinance as necessary.

NOW, THEREFORE, the Foley City Council adopts the following findings:

1. The recitals above are incorporated into the findings.
2. The City desires to provide flexibility and accommodations for food establishments in a manner that protects public health and safety.
3. Outdoor seating is currently permitted by the Foley City Code, and making it easier for food establishments to implement outdoor seating is critical for supporting the local economy and protecting public health.
4. Temporary use of public right of way for sidewalk cafés is appropriate due to the state-imposed limitations on businesses that is a direct result of COVID-19 pandemic.
5. Due to social distancing requirements the ability for the City to quickly study, prepare, and implement ordinary ordinance revisions is hindered.
6. The issue is time sensitive due to the potential re-opening of businesses.
7. An interim ordinance, pursuant to Minnesota Statutes § 462.355, is necessary to allow the City to quickly implement temporary revisions to accommodate the re-opening of food establishments.

NOW, THEREFORE, pursuant to Minnesota Statutes § 462.355, the Foley City Council hereby ordains:

Section 1. Interim Ordinance.

1. **Temporary Ordinance.** A temporary ordinance providing flexibility for outdoor seating for food service establishments within the City of Foley is hereby established.
2. **Restricted Business.** For purposes of the interim ordinance, “Restricted Business” means any restaurant, bar, club, coffee shop, delicatessen, candy shop, or bakery with sit-down, dine-in service that have occupancy limitations imposed by the State of Minnesota due to the COVID-19 pandemic. “Restricted Business” also includes retail

and personal service business that require temporary waiting or curbside delivery outside of the business.

3. **Temporary Changes to Zoning Ordinance.** The parking standards required by Section 7 of the Foley City Code for Restricted Businesses shall temporarily and proportionately be reduced by any temporary reduction in occupancy ordered by the State of Minnesota. Restricted Businesses wishing to add onsite temporary outdoor seating may utilize temporarily unnecessary parking spaces by obtaining a Temporary Outdoor Seating Permit.
4. **Temporary Outdoor Seating Permit.** In order to utilize onsite temporary outdoor seating, a Restricted Businesses shall obtain a Temporary Outdoor Seating Permit as follows:
 - a. **Site Plan.** The Restricted Business submits a drawing or site plan and other pertinent information demonstrating the location and type of all tables, refuse receptacles, and wait stations. The site plan is not required to be prepared by a civil engineer.
 - b. **Access.** Access to the outdoor dining area, to the extent possible, is limited to access from the principal building.
 - c. **Screening from Residential.** The dining area should be located in a manner that maximizes screening from view from adjacent residential uses.
 - d. **Pedestrian Safety.** The Restricted Business shall minimize pedestrian circulation disruption as a result of the outdoor dining area by providing physical or signed separation and a clear passage zone for pedestrians; umbrellas or other structures extending in to the pedestrian clear passage zone shall have a minimum clearance of seven (7) feet above sidewalk.
 - e. **Surface.** The dining area is surfaced with a hard surface or other approved surface that provides a clean and non-slip surface. Applicants are responsible for determining compliance with the ADA and state health codes.
 - f. **Garbage.** Refuse containers, designed to prevent spillage and blowing litter, are provided for self-service outdoor dining areas.

Temporary Outdoor Seating Permits shall be issued administratively by the City Administrator. *No fee is required for a Temporary Outdoor Seating Permit.* Temporary Outdoor Seating Permits shall terminate with this interim ordinance and create no vested rights for Restricted Businesses. Temporary Outdoor Seating Permits may be revoked by the City Council.

5. **Temporary Sidewalk Use Permits.** Temporary Sidewalk Use Permits may be issued to allow a Restricted Business to temporarily use sidewalks adjacent to the Restricted Business. A Restricted Businesses shall obtain a Sidewalk Use Permit as follows:
 - a. **Issuance.** The City Administrator may issue Temporary Sidewalk Use Permits to Restricted Businesses. Temporary Sidewalk Use Permits issued under authority of this interim ordinance shall terminate with this interim ordinance and create no vested rights for Restricted Businesses. As approved by the City Administrator,

and with the consent of adjacent property owners and businesses, sidewalk cafés may occupy public right of way not immediately adjacent to the Restricted Business.

- b. Standards. Temporary Sidewalk Use Permits shall be subject to the following standards:
 - i. Use of a portion of the public sidewalk as a sidewalk café, waiting area, or retail area shall not be an exclusive use. All public improvements and maintenance, including but not limited to, trees, light poles, traffic signals or manholes, or any public-initiated maintenance procedures, shall take the precedence over said use of the public sidewalk at all times.
 - ii. No sidewalk café, waiting area, or retail area shall be permitted in any portion of the public sidewalk where normal pedestrian traffic flow is obstructed. A minimum clearance width of forty-eight inches must be maintained on the public sidewalk at all times.
 - iii. Tables, chairs and any other furnishings shall be secured during any period when the Restricted Business is not open and being operated. The tables, chairs, and any other furnishings shall be removed from the area used for the sidewalk in the event such Restricted Business is not open and being operated for any period of seven (7) days or more. While such Restricted Business is in operation, all tables, chairs, and other furnishings shall be kept in a clean, sanitary condition.
 - iv. In order to prevent a public nuisance and to protect the health and welfare of pedestrians, smoking shall be prohibited in any sidewalk café area. The proprietor or other person in charge of an establishment with a permitted sidewalk café shall ensure that ashtrays, lighters and matchbooks are not provided in the sidewalk café area. The proprietor or other person in charge shall ask any person who smokes in a sidewalk café area to refrain from smoking, and if the person does not refrain from smoking after being asked to do so, ask the person to leave and use any other means which may be appropriate to obtain compliance.
- c. No Permanence. No alteration of public right of way or installation of permanent improvements is permitted by a Temporary Sidewalk Café Permit.
- d. Insurance. No Sidewalk Use Permit shall be effective unless the permittee has filed with the City an approved a Hold-Harmless Agreement against liability imposed by law arising out of the Restricted Business's use of the sidewalk.
- e. Suspension and Revocation. The City Administrator may suspend a Sidewalk Use Permit if violations occur or safety issues arise, pending a hearing before the

Foley City Council. The Foley City Council may revoke a Sidewalk Café Permit after a hearing.

- f. **No Fee.** No fee is required for a Sidewalk Use Permit.
6. **Liquor License.** All Restricted Businesses are required to comply with liquor licensing requirements when utilizing a Temporary Outdoor Seating Permit or Temporary Sidewalk Use Permit, including obtaining approval for non-enclosed premises on-sale liquor as required by Section 4.25:8.Q. of the Foley City Code. Any eligible Restricted Business that holds an On-Sale Liquor License but not approval for non-enclosed premises on-sale liquor is hereby granted a Seasonal Outdoor Sales License for the remaining term of the current On-Sale Liquor License upon providing the City Administrator a completed application.
7. **Duration.** This temporary ordinance shall be in effect until December 31, 2020, or until such time as the Foley City Council determines the interim ordinance is no longer necessary. The Foley City Council may extend this interim ordinance.
8. **Effective Date.** This Ordinance shall be effective immediately upon its adoption.
9. **Validity.** Every section, provision, or part of this Ordinance is declared severable from every other section, provision, or part thereof to the extent that if any section, provision, or part of this Interim Ordinance shall be held invalid by a court of competent jurisdiction, it shall not invalidate any other section, provision, or part thereof.

Section 2. Summary Publication.

At least four-fifths of the City Council's members direct the Administrator to publish only the title and a summary of this Ordinance as follows:

“AN INTERIM ORDINANCE TEMPORARILY ALLOWING EXPANDED OUTDOOR SEATING FOR RESTAURANTS WITHIN THE CITY OF FOLEY. It is the intent and effect of this Ordinance to temporarily allow expanded outdoor seating in order to accommodate restaurants affected by the COVID-19 pandemic.”

A printed copy of the ordinance is available for inspection by any person during regular office hours at City Hall.

Adopted this 21st day of May, 2020.

ATTEST:

Gerard L. Bettendorf, Mayor

Sarah A. Brunn, Administrator