

RESOLUTION 2020-37

A RESOLUTION REGULATING THE USE OF PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF FRUITA TO ENCOURAGE AND PERMIT OUTDOOR DINING AND TO ASSIST LOCAL BUSINESSES IN RESPONSE TO THE CITY'S LOCAL DISASTER EMERGENCY REGARDING COVID-19

WHEREAS, COVID-19 is a highly contagious virus that has spread throughout the United States, including the City of Fruita, Colorado (the "City"); and

WHEREAS, COVID-19 may cause serious illness and death, especially with respect to elderly persons or those with underlying health conditions; and

WHEREAS, on January 30, 2020, the World Health Organization declared the worldwide outbreak of COVID-19 a "public health emergency of international concern"; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services declared COVID-19 a public health emergency; and

WHEREAS, on March 10, 2020, in response to the spread of COVID-19, Governor Polis declared a state of emergency; and

WHEREAS, on March 26, 2020 the Fruita City Manager issued a Declaration of Local Disaster Emergency (the "Declaration"), on file with the City Clerk and with the County Clerk and Recorder; and

WHEREAS, part of the governmental response to COVID-19 from the State of Colorado and the Mesa County Board of County Commissioners pursuant to several versions of Public Health Orders ("PHOs") has included the closure of all restaurant dine-in options, while still permitting take-out and delivery options for restaurants along with the initial closure of many retail establishments, which retail closures have at least been partially lifted or lifted with restrictions; and,

WHEREAS, the City of Fruita values both the retail industry along with the restaurant and dining experience enjoyed by visitors and local citizens alike; and,

WHEREAS, the City is committed to encouraging and assisting restaurants and other dining establishments with the possible use of City public rights-of-way to offer areas that could assist with some of the social distancing and occupancy restrictions that are expected during the duration of the COVID-19 pandemic; and,

WHEREAS, on May 18, 2020 Colorado Governor Jared Polis encouraged Colorado cities and towns to look at a variety of options to encourage outdoor dining, including the use of public sidewalks and streets to host outdoor dining; and,

WHEREAS, Governor Polis also specifically mentioned the expected spacing and occupancy restrictions for dine-in restaurants as a continued challenge to the restaurant industry during the COVID-19 pandemic and that local jurisdictions should strongly consider working with local restaurants to attempt to boost restaurant capacity with the use of outdoor dining including in public rights-of-way and park areas; and,

WHEREAS, the City can assist restaurants and other dining establishments, who are expected to experience spacing and occupancy restrictions inside such establishments, by offering the non-exclusive use of City public rights-of-way for outdoor dining on City property; and,

WHEREAS, the City Council is adopting this Resolution pursuant to its Home Rule Authority provided under the Colorado Constitution, Article XX, the Fruita Home Rule Charter and the City's Police Power authority under Colorado Revised Statute Section 31-15-401(1)(b) with the explicit authority to "[t]o do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease" within the limits of the City of Fruita; and,

WHEREAS, the City also has explicit authority under Colorado law found at Colorado Revised Statute Section 31-15-702, by an enactment of the governing body of the municipality, to regulate, open and alter streets, alleys, sidewalks, parks and public places and to regulate traffic and sales upon streets, alleys, sidewalks, parks and public places.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

Section 1. Mulberry Avenue and Peach Street

- A. The City hereby shuts down traffic flow on N. Mulberry Street between the intersections of E. Aspen Avenue and E. Pabor Avenue as well as shuts down all traffic flow on N. Peach Street between the intersections of E. Aspen Avenue and E. Pabor Avenue. The streets are hereby closed pursuant to this Resolution and the area of the same shall be incorporated into the other non-vehicular uses permitted by this Resolution under Section 1(C). The City shall erect all appropriate and required signage to clearly illustrate and prohibit traffic flow on N. Mulberry Street between the intersections of E. Aspen Avenue and E. Pabor Avenue as well as on N. Peach Street between the intersections of E. Aspen Avenue and E. Pabor Avenue.
- B. Along both the east and west side of N. Mulberry Street and N. Peach Street within the area subject to this Resolution, the City shall maintain the existing and current sidewalk configurations to permit continued public pedestrian use of the sidewalks.
- C. Permitted uses for those portions of N. Mulberry Street and N. Peach Street not designated for vehicular traffic or existing sidewalks are denoted in the attached general and approximate usage map labeled as Exhibit A and attached hereto and incorporated herein by this reference. The City Manager is permitted to make minor changes and adjustments to Exhibit A as to the location of Permitted Uses provided such changes do not fundamentally change the generally designating uses for each block. Such Permitted Uses for those portions of N. Mulberry and N. Peach Streets not designated for vehicular traffic or existing sidewalks include:
 - Sanitation stations.
 - Non-exclusive communal dining space available for any lawful public use or to assist with either take out, delivery or possible wait service from licensed restaurant establishments. Any option of wait service within the N. Mulberry Street and N. Peach Street communal dining spaces must include the execution of a subsequent

release of liability and indemnification agreement between the City and the dining establishment.

- On a case-by-case basis, the City may approve individual agreements with restaurants for a temporary modification of premise for liquor licensing.
- Bicycle parking.

D. To promote public hygiene during the COVID-19 pandemic, restaurants that participate in the use of the communal dining space provided for under Section 1(C) of this Resolution must permit patrons of the establishment to use the indoor restroom facilities of such establishment.

Section 2. Obstruction of Public Right of Way.

It shall be a defense to a charge of violating Fruita Municipal Code Section 12.12, Obstruction of Streets and Sidewalks, if the person is complying with and operating within the Permitted Uses of this Resolution.

Section 3. Rulemaking and Enforcement by City Manager.

The City Manager is permitted, if needed, to implement any rules or regulations in furtherance of the equitable and fair implementation of this Resolution provided such rules or regulations do not fundamentally change the Permitted Uses of this Resolution.

Any violation of the Fruita Municipal Code by a restaurant establishment may result in the suspension by the City Manager of the ability to participate in the communal dining provided in this Resolution.

Section 4. Effective Date; Duration. This Resolution shall be effective upon the date given below and shall remain in effect for so long as the Declaration is no longer in effect or the Council rescinds this Resolution.

PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL

THIS 15th DAY OF SEPTEMBER 2020

THE CITY OF FRUITA

Joel Kincaid, Mayor

ATTEST

Margaret Sell, City Clerk