

RESOLUTION 2020-38

A RESOLUTION TO IMPLEMENT THE PROVISIONS OF STATE OF COLORADO EXECUTIVE ORDER D 2020 093 PERTAINING TO LOCAL AUTHORIZATION OF THE SUSPENSION OF LAWS PROHIBITING PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES BUT ONLY WITHIN LIMITED AREAS OF THE CITY OF FRUITA AND ONLY AS TO TAKEOUT ALCOHOLIC BEVERAGES.

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,

WHEREAS, on September 15, 2020 the Fruita City Council approved Resolution No. 20-37, which, among other things, closed sections of N. Mulberry Street between the intersections of E. Aspen Avenue and E. Pabor Avenue as well on N. Peach Street between the intersections of E. Aspen Avenue and E. Pabor Avenue to vehicular traffic and opened the same up to 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; and,

WHEREAS, on June 5, 2020 Colorado Governor Jared Polis issued Executive Order D 2020-093 authorizing a suspension of the provisions of C.R.S. Section 44-3-901(1)(i)(D)(VII), thereby suspending the enforcement of existing Colorado laws prohibiting public consumption of alcohol beverages on any public right-of-way if a local jurisdiction also permits the same suspension by ordinance, resolution or rule adopted by a municipality, city and county, or county; and,

WHEREAS, it is the intent of this Resolution to exercise the authority granted to local governments under Executive Order D 2020-093 on the local level in the City of Fruita to suspend both Colorado law and local provisions under the Fruita Municipal Code (“FMC”) that otherwise would normally prohibit the public consumption of alcohol to assist restaurant patrons with lawfully consuming Takeout Alcoholic Beverages while using limited areas of City property for outdoor dining as those areas are detailed in the provisions of this Resolution; and,

WHEREAS, the City Council is also adopting this Resolution pursuant to its Home Rule Authority provided under the Colorado Constitution, Article XX, Sections 1-6, the Fruita 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. Specific, Limited Areas of the City of Fruita Exempted from Provisions of C.R.S. Section 44-3-901(1)(i)(D)(VII), FMC Section 9.08.010 and Hereby Permitted for Open Public Consumption of Alcohol.

Pursuant to the authority granted by Colorado Governor Jared Polis under Executive Order D 2020-093, issued June 5, 2020, the City of Fruita hereby authorizes a suspension of the provisions of C.R.S. Section 44-3-901(1)(i)(D)(VII) and any other sections of law or ordinance enacted by the City of Fruita, which existing laws otherwise would prohibit open public consumption of alcoholic beverages in any public place or on any public right of way.

The suspension of the open container law authorized herein is only as to the following limited areas of the City of Fruita, as the same areas are also referenced and delineated in this Resolution under Exhibit A, attached hereto and incorporated herein by reference:

- A. Within the specific areas designated and delineated as the City owned non-exclusive Communal Dining Areas ("Communal Dining Areas") as the same were established by City of Fruita Resolution 20-37 on N. Mulberry Street between the intersections of E. Aspen Avenue and E. Pabor Avenue as well on N. Peach Street between the intersections of E. Aspen Avenue and E. Pabor Avenue as the same are also referenced and delineated in this Resolution under Exhibit A, attached hereto and incorporated herein by reference.

Collectively, the areas permitted for open public consumption of alcoholic beverages pursuant to Sections 1(A) of this Resolution shall be referred to as the "City Open Public Consumption Areas." The City will erect either appropriate barriers or boundaries or sufficient signage to alert members of the public that they are either entering or exiting the City's Open Public Consumption Areas.

Section 2. Limited Alcoholic Beverages in Open Public Consumption Areas.

- A. In the City Open Public Consumption Areas, the City hereby permits possession and consumption, by those who are at least twenty-one (21) years of age and not otherwise prohibited from possession or consumption of alcoholic beverages, of the following types of alcoholic beverages: malt liquors, vinous liquors or spirituous liquors as the same are defined under the Colorado Liquor Code, 44-3-101 *et. seq.*
- B. Within the City Open Public Consumption Areas, the only permitted alcoholic beverages to possess or consume are those beverages known as Takeout Alcoholic Beverages (the "Takeout Alcoholic Beverages") purchased only in sealed containers as authorized pursuant to Colorado Executive Order D 2020 011 as the same has been amended by Colorado Executive Order D 2020 029, Colorado Executive Order D 2020 052, and Colorado Executive Order D 2020 084, which provide for Takeout Alcoholic Beverages from licensed on-premise retail liquor establishments that sell food and operate under and in compliance with one of the following license types:
 - i. Beer and Wine
 - ii. Brew Pubs
 - iii. Club Licenses
 - iv. Distillery Pubs
 - v. Hotel & Restaurant
 - vi. Lodging and Entertainment
 - vii. Tavern
 - viii. Vintners Restaurant
- B. Pursuant to the State of Colorado Liquor Rules, 1 CCR 203-2, specifically Regulation 47-1101, and as defined under C.R.S. Section 44-3-103(51), the following restrictions apply to the permitted Takeout Alcoholic Beverages authorized for consumption or possession in the City Open Public Consumption Areas:
 - i. Any alcoholic beverage sold to a consumer through takeout shall be in sealed containers, which are defined under C.R.S. Section 44-3-103(51)

as “any container or receptacle used for holding an alcohol beverage, which container or receptacle is corked or sealed with any stub, stopper, or cap.”

- ii. Pursuant to Regulation 47-110l(A)(8)(B), any alcoholic beverages sold to a consumer through takeout shall be in a cup or other container closed securely with a lid taped securely to the cup or other container. A plastic lid complies so long as any holes in the lid are sealed securely with tape, no straw is inserted through the lid, and the contents of the cup are not partially removed. Such a cup or other container shall be affixed with a label containing a warning statement, with a minimum fourteen (14) font size, stating as follows: **“WARNING: DO NOT OPEN OR REMOVE SEAL WHILE IN TRANSIT. Purchasers are subject to state and local laws prohibiting drinking or possessing open containers of alcoholic beverages in motor vehicles, including section 42-4-1305, C.R.S.”**
- iii. All Takeout Alcoholic Beverages, pursuant to Regulation 47-110l(B), that are sold by a retailer shall be sold with food, such as meals and/or sandwiches and light snacks. Both food and alcohol beverages sold for take-out or delivery must be reflected on the same receipt or transaction.
- iv. State of Colorado Liquor Rules currently prohibit the refill with alcohol beverage of any alcoholic beverage container and the reuse of such containers by adding any substance, including water, to the alcoholic beverage container. (Regulation 47- 904(C), 1 CCR 203-2.).
- v. Any on-premise retail liquor establishment providing takeout alcoholic beverages is encouraged by the City of Fruita to explore whether such sealed containers can be made of either stainless steel or aluminum material or that is either compostable or biodegradable and still meet the requirements of this Resolution, the Colorado Liquor Rules and the Colorado Liquor Code.

D. Consumers of Takeout Alcoholic Beverages are reminded that the sealed containers provided to them must continue to remain sealed during transit from the on-premise retail liquor establishment until the consumer enters a City Open Public Consumption Area or the consumer risks a violation of Colorado law under C.R.S. Section 44-3-901 or local Fruita law.

E. Smoking shall not be permitted at any time within a City Open Public Consumption Area.

Section 3. Limitation and Rules Within City Open Consumption Areas

- A. Hours for permitted possession and consumption of open containers of alcoholic beverages within the City Open Public Consumption Areas shall be limited from 10 a.m. until 10 p.m. daily.

- B. Unless otherwise specifically authorized, amplified music is not permitted in any of the City Open Public Consumption Areas.
- C. Use of any of the City Open Public Consumption Areas may be temporarily suspended if the City has previously or subsequently approved use of these areas, including any portion of the same, for any Special Event Liquor License.

Section 4. Rulemaking and Enforcement by City Manager.

The City shall continue to enforce provisions under Colorado law and local provisions in the Fruita Municipal Code that prohibit the open or public consumption of alcoholic beverages on all public sidewalks, public parks or any other public property not otherwise specifically exempted herein by the terms of this Resolution or other provisions of Colorado law or local Fruita law.

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 intent of this Resolution.

Any violation of this Resolution, Fruita Municipal Code, the Colorado Liquor Code or the Colorado Liquor Rules by an on-premise retail liquor establishment may subject the licensed establishment to public hearing requirements and possible sanctions or fines under the Fruita Municipal Code, the Colorado Liquor Code or the Colorado Liquor Rules.

Section 5. Effective Date; Duration. This Resolution shall be effective upon the date given below and shall remain in effect for so long as the City's Local Emergency Declaration is no longer in effect, the Council rescinds this Resolution. Notwithstanding the forgoing, this Resolution shall automatically be repealed if any of the following events occur:

- A. The repeal or expiration of State of Colorado Executive Order D 2020-093 that authorizes the suspension of open container prohibitions as to municipal rights-of-way by a local government.
- B. The repeal or expiration of any of the State of Colorado Executive Orders (D 2020 011; D 2020 029; D 2020 052; D 2020 084) which provide for Takeout Alcoholic Beverages from licensed on-premise retail liquor establishments unless the same or similar Executive Order exemption provision for Takeout Alcoholic Beverages is replaced by similar law, rule or order that continues to permit lawful Takeout Alcoholic Beverages or its equivalent.

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