

ORDINANCE NO. 21 - _____

**AN ORDINANCE
TEMPORARILY ALLOWING OUTDOOR DINING IN THE THREE
PARKING STALLS ON THE PUBLIC STREET IN FRONT OF 10 WEST
CHICAGO AVENUE BY FEATURES BAR & GRILL INC.**

Recitals

1. **WHEREAS**, on January 30, 2020, the World Health Organization declared the COVID-19 outbreak to be a public health emergency of international concern; and
2. **WHEREAS**, on March 13, 2020, the President of the United States issued a proclamation on declaring a national emergency concerning the COVID-19 outbreak, and
3. **WHEREAS**, on March 9, 2020 Governor Pritzker issued a disaster proclamation for the State of Illinois due to the highly contagious and dangerous nature of COVID-19, which disaster proclamation has been extended from time to time, is currently pending, and may or may not be extended again in the future (hereinafter “Gubernatorial Disaster Proclamation” or “Disaster”); and
4. **WHEREAS**, on March 17, 2020, at an emergency Naperville City Council meeting a local state of emergency and disaster related to the COVID-19 outbreak was declared (see, *Mayor of Naperville’s Declaration of a Local State of Emergency and Disaster, City of Naperville Ordinance 20-028 pertaining to a local state of emergency and disaster, and City of Naperville Ordinance 20-040 pertaining to a local state of emergency and disaster*); and
5. **WHEREAS**, it is unknown now whether the Gubernatorial Disaster Proclamation will remain in effect beyond November 13, 2021. The Governor may allow the existing proclamation (Gubernatorial Executive Order 2021-27, issued on October 25, 2021) to expire on November 13, 2021; or he may extend the proclamation; and
6. **WHEREAS**, the Delta variant of the coronavirus is more aggressive and transmissible than previously circulating strains, and poses new risks in the ongoing effort to stop and slow spread of the virus; and
7. **WHEREAS**, social distancing, face covering, and other public health precautions have proven to be critical in slowing and stopping the spread of COVID-19; and
8. **WHEREAS**, since the onset of the local state of emergency and disaster related to the COVID-19 outbreak was declared, the Mayor of the City of Naperville has

issued multiple executive orders and amendments to prior executive orders pursuant to emergency authority granted to the Mayor of the City of Naperville; and

9. **WHEREAS**, the previously issued mayoral executive order and ordinance approved by City Council for the extension of outdoor dining on the public streets and sidewalks expired on October 1, 2021; and
10. **WHEREAS**, the Naperville Municipal Code allows for outdoor dining on the public way until November 1st of each year; and
11. **WHEREAS**, creativity and innovation were deployed to locate a winter outdoor dining solution that would withstand both the low temperatures and snowplows; and
12. **WHEREAS**, in the fall of 2020, the owner of Features Bar & Grill, Inc. (“Features”) worked with City staff, the Downtown Naperville Alliance, and the Naperville Development Partnership to turn three storage containers into “train cars” that could be utilized for dining throughout the winter months; and
13. **WHEREAS**, Features invested approximately \$28,000 to construct the train cars, which include electric, heating, windows, an advanced HVAC system, and components to facilitate efficient service operations; and
14. **WHEREAS**, Features seeks to recoup some of the expenses occurred in constructing the train cars while providing a space for patrons to socially distance; and
15. **WHEREAS**, the City of Naperville is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare, including taking measures to protect the public welfare and the City’s economic stability in response to the COVID-19 outbreak; and
16. **WHEREAS**, the City of Naperville, DuPage and Will Counties, Illinois (“City”), is a home rule unit of government and, pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution, may exercise any power and perform any function pertaining to its government and affairs.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority that:

SECTION 1: The foregoing Recitals are hereby incorporated in this Section 1 as though fully set forth herein.

SECTION 2: Outdoor Seating at 10 West Chicago Avenue.

1. Section 3-3-11:3 of the Naperville Municipal Code, as it specifically pertains to the Outdoor Seating Permit is temporarily amended to allow Features to place three “train cars” in the three parking spaces located in front of their facade at 10 West Chicago Avenue for outdoor dining without an outdoor seating permit. Features shall comply with all applicable federal, state, and local laws and regulations. Outdoor seating established under this Section is considered temporary and shall not constitute a property right in the form of permanent outdoor seating. The City maintains the right to require modification or removal of an outdoor seating area if issues arise. City staff may also publish detailed guidelines that Features must comply with to participate in the outdoor dining operations permitted by this Section. Said outdoor dining guidelines are subject to amendment or change without notice.
2. **Liquor Service.** Features must have a State of Illinois liquor license, Naperville liquor license, complete an application, waiver and release of liability and submit a certificate of liability insurance coverage for the outdoor seating area with the City as an additional insured.
3. **Service Hours.** Features is allowed serve alcoholic liquor in the “train cars” until twelve o'clock (12:00) a.m. on each day of the week, except on Friday through Saturday when such sales shall be permitted to continue until one o'clock (1:00) a.m.

4. **American with Disabilities Act.** The outdoor seating area shall be accessible to persons with disabilities, and Features shall at all times comply with all applicable federal, state and city laws, ordinances and regulations concerning accessibility and non-discrimination in the providing of services.
5. **Insurance Requirements.** Features is advised that their insurance policies, including their premises liability and dramshop/liquor liability insurance policies, may need to be updated and/or revised to undertake the actions described in this Section. By undertaking the sale and service of food or beverages outdoors, pursuant to this Section, Features attests to the sufficiency of its insurance policies and agrees to indemnify the City of Naperville and its officials, employees, agents and volunteers from any and all liability related to any and all claims that arise directly or indirectly from this Section and any activities undertaken by the Establishment pursuant to this Section.
6. **Sole Discretion.** The Naperville Liquor Commissioner, in his or her sole discretion, shall have the authority to approve, suspend, revoke, or make conditional any activities permitted under this Section, at any time, if deemed necessary in the interest of public health, safety or welfare.
7. **Duration.** This Section shall be effective until April 30, 2022 unless sooner terminated or modified by Naperville's City Council. All amendments, activities, and authorizations permitted pursuant to this Section shall cease and become void upon termination or expiration of this Section. Any action or prosecution of a violation of this Section and any Code section impacted by this Section shall continue in full force and effect.

SECTION 3: Savings Clause. If any provisions of this Ordinance or its application to any person or circumstance is held invalid or unenforceable by any court of competent jurisdiction, this invalidity or unenforceability does not affect any other provisions or application of this Ordinance, which can be given effect without the invalid or unenforceable provision or application. To achieve this purpose, the provisions of this Ordinance are declared to be severable.

SECTION 4: This Ordinance shall be in full force and effect upon its passage and approval as required by law.

ADOPTED this _____ day of _____, 2021.

AYES:

NAYS:

ABSENT:

APPROVAL this _____ day of _____, 2021.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk