

ORDINANCE NO. 21 - _____

**AN ORDINANCE
ADOPTING AND TEMPORARILY EXTENDING CERTAIN EXECUTIVE
ORDERS REGULATIONS RE: OFF-PREMISES CONSUMPTION
LIQUOR SALES BY NON-PACKAGE LICENSED ESTABLISHMENTS;
THIRTY-MINUTE DOWNTOWN ON-STREET PARKING; AND OUTDOOR
DINING ON PUBLIC AND PRIVATE PROPERTY**

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 and on April 21, 2020 at a Naperville City Council meeting the local state of emergency and disaster was extended for as long as the Gubernatorial Disaster Proclamation remains in effect (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**, on May 5, 2020, the Governor of the State of Illinois established a five-phase plan, Restore Illinois, for the reopening of the State and the Governor of the State of Illinois has determined that Naperville’s regions are currently in the “Bridge Phase” between “Phase 4” and “Phase 5” of the Restore Illinois plan; and
6. **WHEREAS**, it is expected that as early as June 11, 2021, Governor Pritzker will issue a determination that Illinois has reached “Phase 5” of the Restore Illinois plan and be able to fully reopen; and
7. **WHEREAS**, it is unknown at this time whether the Gubernatorial Disaster Proclamation will remain in effect beyond June 11, 2021. The Governor could terminate his disaster proclamation concurrent with the transition to Phase 5; or he

may allow the existing proclamation (Gubernatorial Executive Order 2021-11, issued on May 28, 2021) to expire on June 26, 2021; or he may extend the proclamation for a while into Phase 5; 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**, many of the previously issued mayoral executive orders have expired or been terminated, but there remain some executive orders in effect that will be helpful and important to the community during the reopening phase; and
10. **WHEREAS**, once the Gubernatorial Disaster Proclamation expires, the City's Declaration of Emergency and the Mayor's outstanding executive orders will expire concurrently; and
11. **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
12. **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; and
13. **WHEREAS**, the City has determined that temporarily extending certain regulations allowing: (1) package liquor sales by non-package liquor licensed establishments; (2) 30-minute parking downtown; and (3) outdoor dining on public and private property is in the best interest of the City.

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: Sale of Mixed Drinks for Off-Premises Consumption.

1. Section 3-3-11:1 of the Naperville Municipal Code is temporarily amended to allow Class A – Restaurant, Class B – Restaurant and Tavern, Class J – Hotel/Motel and Tavern, Class M – Recreational or Lifestyle Amenities Facility, and Class P - Manufacturer liquor license holders to sell cocktails or mixed drinks, as defined in 235 ILCS 5/6-28.8(a) for off-premises consumption by means of in-house delivery, drive-through, carryout and curbside delivery by an employee of the licensee. Licensee shall comply with all other requirements of all other requirements of the Naperville Municipal Code and Illinois state law Illinois, including 235 ILCS 5/6-28.8. This includes ensuring that the cocktails or mixed drinks are sold or delivered to an individual at least twenty-one years of age or older by verifying the ages and identities of the person(s) purchasing the alcoholic liquor and/or receiving the alcoholic liquor upon delivery.
2. **Insurance Requirements.** Licensees are advised that 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 of cocktails or mixed drinks for off-premises consumption, the Licensee certifies the sufficiency of their dramshop/liquor liability insurance policy and indemnifies the City of Naperville and its employees and agents 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 Licensee pursuant to this Section.
3. **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.

4. **Duration.** This Section shall be effective until January 1, 2022 unless sooner terminated or modified by Naperville's City Council or by the Liquor Commissioner pursuant to the subsection above. 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: Central Business District On-Street Parking.

1. Section 11-2A-3:1 and 11-2A-3:2 of the Naperville Municipal Code are temporarily amended, such that no person shall park a vehicle on the following streets in the Central Business District for more than thirty minutes, unless otherwise limited by signs posted:
 - a. Chicago Avenue from Main Street to Washington Street;
 - b. Jackson Avenue from Webster Street to Washington Street;
 - c. Jefferson Avenue from Webster Street to Ellsworth Street;
 - d. Main Street from Benton Avenue to Jackson Avenue;
 - e. Van Buren Avenue from Webster Street to Washington Street;
 - f. Water Street from Webster Street to Main Street; and
 - g. Webster Street from Benton Avenue to Jackson Avenue.

The regulation shall be in full force and effect between the hours of six o'clock (6:00) a.m. and nine o'clock (9:00) p.m., seven days per week.

2. **Duration.** This Section shall be effective until January 1, 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 4: Outdoor Seating.

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 for outdoor seating without a permit. Establishments with existing outdoor areas for the consumption of food or drink may provide for outdoor seating. Establishments seeking to expand their current outdoor seating area or to temporarily add outdoor seating areas for the consumption of food or drink shall abide by the Restore Illinois Plan and 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 shall also publish detailed guidelines that all Establishments must comply with in order 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.** Establishments seeking to serve liquor in their outdoor seating area 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.** Section 3-3-11:3 of the Naperville Municipal Code, as it specifically pertains to the Outdoor Seating Permit is amended to allow service until one o'clock (1:00) a.m. on each day of the week, except on Friday through Saturday when such sales shall be permitted to continue until two o'clock (2:00) a.m.
4. **Use of Public Sidewalks.** Section 3-3-11:3 of the Naperville Municipal Code, as it specifically pertains to the Outdoor Seating Permit is temporarily amended to require that all items placed on the public way for operation of an outdoor seating area shall be located so that a clear path of at least five (5) contiguous feet shall be provided for passage of pedestrians and so as not to obstruct ingress and egress from the licensed establishment or any other establishment. Establishments seeking to use the public sidewalks must 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.
5. **Use of the Public Way.** The City may close certain parking stalls in the public way or public streets, on a temporary or semi-permanent basis in order to allow private use for the sale of food or beverages by adjacent Establishments. Establishments may not use parking stalls in the public way or public streets without prior approval by the City. Outdoor seating areas in parking stalls or

public streets may not extend beyond the boundary of an Establishment's façade unless the Establishment obtains written permission from the neighboring property owner, property manager, or tenant. Establishments seeking to use the public way must 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.

6. **American with Disabilities Act.** The outdoor seating area shall be accessible to persons with disabilities, and the Establishment 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.
7. **Insurance Requirements.** Establishments are 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, the Establishment 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.
8. **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.

9. **Duration.** This Section shall be effective until October 1, 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 5: Termination of Certain Previously Issued Executive Orders. As of 12:00 A.M. on June 27, 2021, the following previously issued executive orders are deemed terminated and no longer in effect:

1. **Executive Order 2020-03, et al.,** issued March 20, 2020, and amended on April 28, 2020, June 3, 2020, and October 21, 2020, that authorized certain liquor sales for off-premise consumption by certain non-package liquor licensed establishments
2. **Executive Order 2020-09,** issued on May 4, 2020, that 30-minute parking downtown that temporarily changed downtown on-street parking limitations from two hours to 30 minutes on certain streets in the Central Business District between 6a and 9:00p, seven days a week (unless otherwise limited by signs posted).
3. **Executive Order 2020-10,** issued on May 28, 2020, that relaxed the City's outdoor seating regulations to allow for the temporary expansion of outdoor

seating on public and private property and provided for the temporary, limited use of on-street parking stalls.

SECTION 6: 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 7: 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