



# Naperville

OFFICE OF THE MAYOR

Steve Chirico

May 28, 2020

Executive Order 2020 – 10

## EXECUTIVE ORDER OF THE MAYOR OF THE CITY OF NAPERVILLE

### 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 declaring a national emergency concerning the COVID-19 outbreak, and
3. **WHEREAS**, on March 9, 2020, the Governor of the State of Illinois issued a disaster proclamation due to the impact of the COVID-19 outbreak and activated the State Emergency Operations Center, which has been re-declared or extended through at least May 29, 2020; and
4. **WHEREAS**, on March 16, 2020, the Governor of the State of Illinois issued Executive Order 2020-07, suspending on-premise consumption of food and beverages in places of public accommodation and prohibiting gatherings of 50 people or more; and
5. **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 (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
6. **WHEREAS**, hardships have been placed on businesses and residents because of the COVID-19 virus outbreak and the Governor of the State of Illinois' Executive Order 2020-10 requiring the closure of non-essential businesses; and
7. **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



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8. **WHEREAS**, the Governor of the State of Illinois has determined that when a region enters “Phase 3” of the Restore Illinois plan, bars and restaurants will be permitted to partially reopen, with services limited to outdoor dining and drinking only, and parties of 6 persons or fewer; and
9. **WHEREAS**, Region 1, which includes the City of Naperville, is expected to enter Phase 3 on May 29, 2020, and many bars and restaurants will want to participate in this limited reopening; and
10. **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 immediate emergency measures to protect the public welfare in response to the COVID-19 outbreak.

**THEREFORE**, by the powers vested in me as the Mayor of the City of Naperville, and pursuant to 65 ILCS 5/11-1-6 of the Illinois Municipal Code, 20 ILCS 3305/11 of the Illinois Emergency Management Agency Act, Sections 10-1-1 and 1-8D of the Naperville Municipal Code, the Mayor of Naperville’s Declaration of a Local State of Emergency and Disaster and City of Naperville Ordinances No. 20-028 and 20-040, I hereby order the following:

**SECTION 1: Recitals.** The Recitals set forth above are found to be true and correct and are hereby incorporated herein and made part hereof in their entirety by reference as though fully set forth in this Section 1.

**SECTION 2: Outdoor Seating.** Section 3-3-11:3 of the Naperville Municipal Code, as it specifically pertains to the Outdoor Seating Permit is amended to allow for outdoor seating without a permit. Establishments with existing outdoor areas for the consumption of food or drink can reopen for outdoor seating with social distancing and safety measures, as allowed by the Restore Illinois Plan. 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, Naperville Phase 3 Outdoor Seating Guidelines, and all applicable federal, state, and local laws and regulations. Outdoor seating established under this Executive Order 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. This Order is issued based on the best available information at the time it was prepared. City staff shall also publish detailed guidelines that all



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Establishments must comply with in order to participate in the outdoor dining operations permitted by this Order. Said outdoor dining guidelines are subject to amendment or change without notice.

- a) **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.
- b) **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.
- c) **Use of Public Sidewalks.** Section 3-3-11:3 of the Naperville Municipal Code, as it specifically pertains to the Outdoor Seating Permit is 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.
- d) **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 closed 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.



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- e) **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

**SECTION 3: 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 Order. By undertaking the sale and service of food or beverages outdoors, pursuant to this Order, 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 Order and any activities undertaken by the Establishment pursuant to this Order.

**SECTION 4: Sole Discretion.** The Mayor of the City of Naperville, in his sole discretion, shall have the authority to approve, suspend, revoke, or make conditional any activities permitted under this Order, at any time, if deemed necessary in the interest of public health, safety or welfare.

**SECTION 5: Duration.** This Order shall be effective until terminated on such date as later provided, in writing, by the Mayor of the City of Naperville. All amendments, activities, and authorizations permitted pursuant to this Order shall cease and become void upon termination of this Order. Any action or prosecution of a violation of this Order and any Code section impacted by this Order shall continue in full force and effect.

**SECTION 6: Savings clause.** If any provisions of this Executive Order 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 Executive Order, which can be given effect without the invalid or unenforceable provision or application. To achieve this purpose, the provisions of the Executive Order are declared to be severable.

**SECTION 7: Effective date.** This Executive Order shall be in full force and effect from 12:00 A.M. on the date listed atop page one of this Order.

APPROVED this 28th day of May 2020.

Steve Chirico  
Mayor