

RESOLUTION NO. 4399
(Temporary Business Accommodations)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO TEMPORARILY STAY OR AMEND PROVISIONS OF THE HENDERSON MUNICIPAL CODE RELATED TO BUSINESS LICENSE REQUIREMENTS TO ASSIST BUSINESSES THAT HAVE BEEN AFFECTED BY THE COVID-19 PANDEMIC AND REQUIRED TO TEMPORARILY CLOSE OR SIGNIFICANTLY ALTER OPERATIONS DUE TO REGULATIONS OR DIRECTIVES PROMULGATED BY THE GOVERNOR, STATE PROFESSIONAL LICENSING BOARDS AND OTHER STATE AGENCIES.

- WHEREAS, on March 12, 2020, the Governor of the State of Nevada issued a Declaration of Emergency for COVID-19 for the State of Nevada (“State Emergency Declaration”); and
- WHEREAS, Governor Sisolak’s subsequent Directives stated that the propensity of the COVID-19 disease to spread via interpersonal contact precipitated the widespread closure of certain businesses and the imposition of limitations on other businesses; and
- WHEREAS, on March 15, 2020, in response to the COVID-19 outbreak being designated as a pandemic, the Mayor of the City of Henderson (“City”) issued a Declaration of State of Emergency and Order of Emergency Measures (“City Emergency Declaration”) pursuant to Henderson Municipal Code (“HMC” or “Code”) 2.24.060; and
- WHEREAS, on March 17, 2020, the Governor issued Directive 002 to the State Emergency Declaration ordering the Nevada general public to cease gathering at gaming establishments, and that all gaming devices, and any equipment related to gaming activity cease operations effective March 17, 2020, at 11:59 p.m.; and
- WHEREAS, on March 20, 2020, the Governor issued Directive 003 State Emergency Declaration ordering, without limitation, that Non-Essential Businesses must close to the public and Essential Businesses would be required to operate under specific conditions, effective March 20, 2020, at 11:59 p.m.; and
- WHEREAS, Section 2.130 of the Henderson City Charter gives the City Council broad authority to license, tax and regulate businesses, trades and professions operating in the City’s jurisdiction; and
- WHEREAS, HMC Title 4 and Title 19 contain both general and license-class specific requirements and obligations that businesses operating in the City are required to comply with to maintain and renew City-issued business licenses, and to avoid penalties including civil fines or license revocation; and
- WHEREAS, certain HMC requirements, if enforced while businesses remain subject to State-issued Directives that required businesses to shut down or substantially modify business practices to reopen, would jeopardize the license status and ability to reopen of many businesses licensed and operating in Henderson; and

WHEREAS, on April 30, 2020, the Mayor issued a Second Amendment to Declaration of State of Emergency ("Second Amendment"), ratified by Council on May 19, 2020, whereby, without limitation, confirming the City Manager/CEO's authority to promulgate new regulations for businesses, consistent with any state or local government agency directives or guidance, in conjunction with the response to the COVID-19 pandemic, during the City's Declaration of Emergency, as amended; and

WHEREAS, in an effort to support businesses adversely affected by the Directives related to the COVID-19 pandemic, the City Manager/CEO has issued or authorized certain regulations which have temporarily suspended, waived, or amended certain HMC license requirements, to assist City-licensed businesses' ability to operate and serve customers under modified conditions, and to facilitate the safe reopening of businesses affected by the COVID-19 and in a manner consistent with State Directives; and

WHEREAS, the Council desires to continue to support the local business community, remain flexible with the City's business-related requirements, assist the reopening and continued operation of businesses in the City and avoid jeopardizing the license status of businesses due to issues attributable to the COVID-19 shutdowns and to ratify the temporary regulations issued by the City during the pendency of the City's Emergency Declaration; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Henderson, Nevada that:

SECTION 1. Late Payment Penalty Suspension: For the period from March 18, 2020, through July 31, 2020, HMC Sections 4.04.110 and 4.04.115 shall be suspended such that semiannual City business licenses will not expire or be revoked, and no interest or late fees will be assessed for the delinquent payment of semiannual license fees due during this period.

SECTION 2. Two Month Extension: Businesses designated as non-essential or that were otherwise required to temporarily close due to the COVID-19 pandemic, may have their semiannual license renewal date extended up to two (2) months. Licenses subject to a flat fee arrangement will remain subject to the same license fee amount; gross revenue license fee payments and calculations shall include all gross revenue of the business during the modified reporting period for the semiannual gross revenue calculation of fee.

SECTION 3. Gaming: For the periods stated below beginning March 18, 2020, the following HMC provisions that may negatively affect the status of a gaming establishment business license, are modified as follows:

- A. Resort Hotels: The minimum operating requirements of a Resort Hotel as defined in HMC 4.32.010 and 19.5.5.JJ.2 shall not be enforced until December 31, 2020. Affected licensees may apply for an additional extension of three (3) months by submitting an application to the City, subject to approval by the Business Operations Division. Extensions of more than three (3) months are subject to Council approval.

- B. Nonoperational Status: Requirements for gaming establishments to provide the City with written notice if the establishment will be nonoperational for an extended period under HMC 4.32.360 will remain suspended until December 31, 2020. Gaming establishments that intend to remain closed after December 31, 2020, must comply with the Non-operational status requirements set forth in the aforementioned Code provisions.
- C. Established and Nonconforming Use: Requirements to maintain an Established or Nonconforming use under HMC sections 19.6.6.A.12.f.1 and 19.10.2.D, will remain suspended until December 31, 2020. Licensees that intend to remain closed beyond December 31, 2020, may seek an additional extension as part of an approved closure plan processed through the Community Development and Services Department, which requires City Council action per section sections 19.6.6.A.12.f.1 and/or 19.10.2.D.
- D. License Fees: Gaming license fee provisions set forth in Title 4 of the HMC, including sections 4.32.310, 4.32.315, 4.48.090 and 4.48.110(B) shall be amended as follows:
 - 1. For the quarter beginning April 1, 2020, quarterly gaming license fees shall be prorated for the period gaming establishments were required to be closed pursuant to Directives 002 and 021 of the State Emergency Declaration and late payment penalties during this period shall not be assessed;
 - 2. For the quarter beginning July 1, 2020, quarterly license fees must be paid in full; however, the City may waive delinquent payment penalties and payments may be deferred subject to payment arrangements made with the Business Operations Division; and
 - 3. For the quarter beginning October 1, 2020, gaming licensees shall be subject to all quarterly gaming license fee provisions set forth in HMC Title 4.

SECTION 4. For the periods set forth below, the following HMC provisions governing liquor licenses in the City are temporarily amended, suspended or promulgated as follows:

- A. Nonoperational Status: Requirements for liquor establishments to provide the City with written notice if the establishment will be nonoperational for an extended period under HMC 4.36.230 are suspended until December 31, 2020. Liquor establishments that intend to remain closed after December 31, 2020, must comply with the Non-operational status requirements set forth in the aforementioned Code provision.

- B. Time-limited Liquor Permits. HMC 4.36.240 is temporarily amended to authorize the Business Operations Division to continue to offer Time-limited Liquor Permits for either Package Liquor Delivery or Curbside Pickup as set forth below. Time-limited Liquor Permits may be conditioned, amended, suspended, revoked or rescinded as deemed appropriate by the director or the City Manager/CEO in the interest of public safety, health and welfare or for failure to comply with City requirements promulgated by the Business Operations Division, applicable state laws and regulations, and the requirements and as set forth below:
1. Curbside Pickup. The provisions of HMC Chapter 4.36 are amended such that businesses holding a valid, City-issued restaurant with bar, tavern, beer/wine on-sale, full-liquor on-sale or brewery business license may obtain a *Time-limited Liquor Permit – Curbside Pickup* from the Business Operations Division. Such permit authorizes the licensee/permittee to serve alcoholic beverages in conjunction with meals on a “to go” basis that are picked up by the customer via curbside delivery or pickup operations within the establishment, subject to the terms and conditions of the Permit issued by the Business Operations Division, including the following requirements:
 - a. All deliveries of alcohol via pickup operations or curbside delivery must be made by an employee of the licensee, 21 years of age or older, to customers 21 years of age or older;
 - b. All alcohol not in its original, sealed container, must be dispensed into an aluminum, glass, plastic or stainless steel container, sealed, packaged or capped in accordance with health department regulations to prevent access while in the vehicle and to insure compliance with state and local laws related to open alcohol containers in vehicles;
 - c. Licensee shall not deliver at curbside alcohol to an individual who is intoxicated;
 - d. Permits issued hereunder may be further conditioned, amended, suspended, revoked or rescinded as deemed appropriate by the Business Operations Manager in the interest of public safety, health and welfare;
 - e. Failure to comply with these conditions will result in the immediate suspension or revocation of the Permit and/or civil penalties against the licensee; and
 - f. Unless extended by the City Manager/CEO or Council, such Permit is valid until December 31, 2020.
 2. Package Liquor Delivery. The provisions of HMC 4.36.240 are amended such that all businesses holding a valid, City-issued full liquor off-sale, business license may obtain a *Time-limited Liquor Permit - Package Liquor Delivery* from the Business Operations Division. Such permit authorizes the holder to deliver packaged alcohol to private residences within the City subject to the terms and conditions of the Permit issued by the Business Operations Division, including the following requirements:

- a. All packaged alcohol products must remain in the manufacturer's original, sealed container;
- b. Deliveries may only be made to customers at private residences. Deliveries to commercial locations, including resort hotels, is prohibited.
- c. Deliveries shall only be made to a customer who is at least 21 years of age, verified with a government issued identification;
- d. Deliveries shall only be made by an owner or employee of licensee/permittee business who is at least 21 years of age and has a valid alcohol awareness card under NRS 369.600, et seq. No third-party delivery is allowed.
- e. The licensee/permittee shall create and retain written documentation of each delivery and sale under this permit, including, at a minimum, the following:
 - i. The date and approximate time of the delivery;
 - ii. The licensee/permittee name, location, and address;
 - iii. A detailed, itemized list of the alcoholic products and any non-alcoholic items purchased in each sales transaction;
 - iv. The name and address of the purchaser;
 - v. The type of identification used to verify the age of the purchaser;
 - vi. The signature of the purchaser/recipient; and
 - vii. Records as set forth above must be maintained in an organized manner and retained for a minimum of two years for audit purposes.
- f. Permits issued hereunder may be further conditioned, amended, suspended, revoked or rescinded as deemed appropriate by the Business Operations Manager in the interest of public safety, health and welfare.
- g. The permittee is responsible to ensure compliance with all laws pertaining to the sale, service and distribution of alcoholic beverages.
- h. Failure to comply with these conditions will result in the immediate suspension or revocation of the Permit and/or civil penalties against the licensee; and
- i. Unless extended by the City Manager/CEO or Council, such Permit is valid until December 31, 2020.

SECTION 5. Taverns or Restaurants with Bar with six to fifteen machines. Establishments that are licensed as a Tavern or Restaurant with Bar may receive approval from the Division for temporary relief from the requirements of HMC 4.36.040 establishing a minimum of number machines that must be embedded in the bar top, subject to the following:

- A. Establishments granted relief under this Section must ensure that the maximum occupancy shall not exceed fifty percent (50%) of the listed fire code capacity (or as otherwise restricted by any guidance or Directives);
- B. Establishments without a substantial restaurant component will not be permitted to open per Governor Sisolak's July 9, 2020 guidance for establishments with bar tops; and

- C. The temporary relief from the requirements contained in this Section shall only be valid until 30 days after the restrictions under Directive 027 issued on July 10, 2020, by Governor Sisolak are terminated by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency.

SECTION 6. Cannabis Delivery/Curbside Sales. Cannabis, or marijuana, delivery restrictions set forth in HMC 4.118.200 shall remain lifted until further notice by either the City Manager/CEO or Council, to allow licensed cannabis dispensaries to engage in retail sales on a curbside pickup or home delivery basis subject to the following requirements:

- A. Establishments licensed in the City under HMC Title 4 as a Medical Marijuana Dispensary or Retail Marijuana Store may deliver cannabis or cannabis products directly to customers subject to State law, including emergency Directives, guidance from the Department of Taxation, the Cannabis Compliance Board (“CCB”), and the Nevada State Occupational Safety and Health Administration (NV OSHA), as well as requirements issued by the Southern Nevada Health District, or other state or local agencies.
- B. Deliveries of cannabis or cannabis products to consumers are subject to all State delivery regulations including, without limitation, NAC 453D.572 through 453D.582, the Nevada Cannabis Compliance Regulations (e.g., NCCR 7.040 through 7.055), and any forthcoming and applicable regulations or guidance issued the State, CCB, or the City. Medical marijuana deliveries remain subject to the provisions of HMC 4.116.200.
- C. Establishments licensed in the City under HMC Title 4 as a Medical Marijuana Dispensary or Retail Marijuana Store may conduct sales via curbside pickup subject to the provisions set forth in the *Marijuana Enforcement Division/Cannabis Compliance Board Guidance for Curbside Pickup*, any forthcoming guidance or regulations by the CCB, and all required State approvals.
- D. In addition to the provisions set forth or referenced in this Section, cannabis businesses licensed by the State of Nevada and properly authorized to engage in marijuana or cannabis deliveries in jurisdictions outside of Henderson, including cannabis dispensaries licensed and third-party business used for delivering cannabis in compliance with State laws and regulations, may deliver cannabis to customers within the City subject to a license fee of \$50.00 per vehicle used in the delivery or transportation of cannabis or cannabis products within the City.
- E. Licensees failing to follow any of the parameters set forth or referenced in this Section will be subject to immediate disciplinary action including fines, suspensions, and/or revocation of licensure.

SECTION 7. The Business Operations Division is authorized and directed to take all action necessary and appropriate to effectuate the provisions and intent of this Resolution.

SECTION 8. During the pendency of the City Emergency Declaration, the City Manager/CEO remains authorized to issue, suspend or amend City business license regulations under Title 4 and Title 19 of the HMC as appropriate, for periods not to extend beyond December 31, 2020. Such temporary regulations may be further extended through a subsequent resolution, ordinance, directive, or declaration issued by Council.

SECTION 9. Pursuant to the enforcement provisions set forth in HMC Title 4, including without limitation Chapter 4.07 and Sections 4.04.050 and 4.04.200, the Business Operations Manager/director, business license compliance agents, code enforcement officers, all officials or officers with police powers, and the city attorney's office are further authorized and directed to continue to enforce the provisions set forth herein as well as any temporary regulations promulgated by the City Manager/CEO, Governor Directives, state laws, regulations, and licensure requirements set forth by state professional licensing boards and other state agencies during the pendency of the State Emergency Declaration. Licensees found to be operating in violation of said directives will be subject to disciplinary action including additional license conditions, fines, license suspension, and/or license revocation.

SECTION 10. To the extent this Resolution conflicts with any previous temporary business license regulations issued by the City during the pendency of the City Emergency Declaration, the provisions of this Resolution shall prevail.

SECTION 11. This Resolution is not in conflict, and each licensee is responsible for ensuring its compliance with all applicable gubernatorial directives, state laws, regulations, and licensure requirements set forth by state professional licensing boards and other state agencies, including but not limited to the Gaming Control Board, Cannabis Compliance Board, the Nevada State Board of Cosmetology, Nevada State Board of Massage Therapy, the Occupational Safety and Health Administration, Division of Industrial Relations, Department of Business and Industry for workplace safety, mining, and construction.

SECTION 12. If any section, subsection, provision, clause, or phrase of this Resolution is, for any reason, held or determined to be invalid or unenforceable, such decision shall not affect the validity of the remaining provisions of this Resolution.

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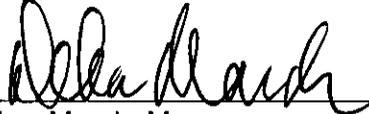
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PASSED, ADOPTED, AND APPROVED THIS 4TH DAY OF AUGUST, 2020, BY THE FOLLOWING ROLL-CALL VOTE OF COUNCIL.

Those voting aye:
Debra March, Mayor
Councilmembers:
John F. Marz
Michelle Romero
Dan K. Shaw
Dan H. Stewart

Those voting nay: None
Those abstaining: None
Those absent: None



Debra March, Mayor

ATTEST:



Sabrina Mercadante, MMC, City Clerk