



**DENVER**  
THE MILE HIGH CITY

**Community Planning and Development**  
**Development Services**  
Zoning Administration

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## MEMORANDUM

**TO:** Members of the Denver City Council LUTI Committee  
**FROM:** Tina Axelrad, CPD Zoning Administrator  
**DATE:** September 10, 2020  
**SUBJECT:** **Proposed Interim Zoning Ordinance to Allow COVID-Related Temporary Uses on Former Chapter 59 Zoned Lands**

Denver City Council, through its LUTI Committee, is considering an interim zoning ordinance. The ordinance, a copy of which is attached to this memo, assists the City's response to the ongoing COVID-19 pandemic and related public health emergencies. The ordinance will only apply during the pandemic and during the declared states of emergency (from both the state and city) and will sunset automatically after the emergency orders are lifted.

The ordinance will allow the City to permit necessary, emergency-related temporary uses and activities to occur everywhere in the City, and not just on lands zoned under the Denver Zoning Code ("DZC"). These uses and activities include temporary emergency shelters and managed campsites for homeless persons, and temporary expansion of outdoor patios/spaces for the city's hart-hit restaurants and bars. Currently, while CPD can permit these uses and activities on lands zoned under the DZC, they are either outright prohibited or substantially more limited on lands zoned under the Former Chapter 59 ("old code").

The DZC gives the zoning administrator the authority to recognize and permit temporary uses and activities not otherwise clearly allowed, the old code does not. See DZC, Section 12.4.6. Under this authority, the zoning administrator has allowed temporary tiny home villages (before the Council expressly allowed them with a code amendment), temporary outdoor patio expansions onto restaurant/bar parking lots, and a variety of other non-COVID related temporary uses.<sup>1</sup> None of these "unlisted temporary use determinations" have applied to old code zoned lands. While temporary outdoor patio expansions are allowed on old-code zoned lands, the zoning administrator had to permit them under a more constrained line of code interpretation, which meant the expanded patios could not occupy otherwise required off-street parking spaces and could not extend onto someone else's private property – the opposite of what is allowed for DZC-zoned lands.

The ordinance will allow the zoning administrator to permit any unlisted temporary use she determines is permissible under the DZC to also occur on old-code zoned lands. As safeguards, the ordinance requires the zoning administrator to find that the temporary use is consistent with the intent of the city's zoning codes and the zone districts at issue, is similar in character and impacts to other permitted uses, and is necessary to preserve and advance the public health, safety, and welfare. The zoning administrator may attach reasonable conditions to ensure substantial mitigation of any potential adverse impacts. Allowance of a temporary emergency-related use does not affect the legal status of any permanent use permitted on the same land.

<sup>1</sup> The Zoning administrator has been issuing written code interpretations and unlisted use determinations on a steady pace since the DZC was adopted in 2010. For a complete listing, please see the Denver Zoning Code webpage at: [www.denvergov.org/zoning](http://www.denvergov.org/zoning) (scroll to bottom of page to see the written interpretations/determinations).

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_  
3 SERIES OF 2020

COUNCIL BILL NO. 20-xxxx  
4 COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

5 **A BILL**

6 **For an ordinance enacting an interim zoning regulation to allow certain temporary**  
7 **unlisted uses in Former Chapter 59 zone districts due to the COVID-19 disaster**  
8 **emergency.**  
9

10 **WHEREAS**, on March 11, 2020, the Governor of the State of Colorado issued an Executive  
11 Order declaring a state of disaster emergency due to the risk of spread of the novel coronavirus,  
12 now designated COVID-19; and

13 **WHEREAS**, on March 12, 2020, the Mayor of the City and County of Denver declared a state  
14 of local disaster emergency pursuant to C.R.S. § 24-33.5-701, *et seq.*, due to the risk of spread of  
15 COVID-19, which has been extended by the City Council for the City and County of Denver through  
16 September 28, 2020, due to the risk of spread of COVID-19; and

17 **WHEREAS**, the Executive Director of the Denver Department of Public Health &  
18 Environment, pursuant to section 24-16 of the Denver Revised Municipal Code, has issued  
19 numerous public health orders to implement measures to mitigate the spread of COVID-19 and to  
20 protect the City and its residents, including the City's most vulnerable populations.; and

21 **WHEREAS**, the Colorado Department of Public Health and Environment issued Public  
22 Health Order 20-28, Safer at Home and in the Vast, Great Outdoors (as amended), which, among  
23 other provisions, strongly urges governmental entities to make shelter available to people  
24 experiencing homelessness as soon as possible and to the maximum extent practicable; and

25 **WHEREAS**, additionally, Public Health Order 20-28, Safer at Home and in the Vast, Great  
26 Outdoors (as amended) allows for the expansion of restaurants to existing, licensed outdoor space  
27 for limited in-person dining, with the approval of the local government's permitting, building, and fire  
28 code oversight for any new outdoor dining space prior to use; and

29 **WHEREAS**, the Denver Zoning Code (defined below) allows the zoning administrator to  
30 permit uses otherwise not listed in the Denver Zoning Code, and the zoning administrator has  
31 permitted temporary unlisted uses regarding outdoor expansion spaces for restaurants and bars,  
32 and intends to permit certain temporary uses in response to the COVID-19 disaster emergency; and

33 **WHEREAS**, City Council adopted Ordinance No. 333 in 2010 enacting the Denver Zoning  
34 Code and zoning map; however, Ordinance 333 did not re-zone the entire city to zone districts under

1 the Denver Zoning Code, and so portions of the city retained zoning designations under the former  
2 version of the zoning code; and

3 **WHEREAS**, Former Chapter 59 (defined below) remains in full force and effect for any land  
4 not re-zoned to zone districts in the Denver Zoning Code; and

5 **WHEREAS**, Former Chapter 59 does not authorize the zoning administrator to determine  
6 unlisted temporary uses and so the uses currently and intended to be permitted by the zoning  
7 administrator do not apply to land subject to Former Chapter 59; and

8 **WHEREAS**, it is appropriate for the City Council to establish an interim zoning regulation that  
9 will allow zoning administrator determinations of unlisted temporary uses to apply to land retaining  
10 zoning under Former Chapter 59, as this allows the City to meet certain objectives of the Colorado  
11 Department of Public Health and Environment’s Public Health Order 20-28 to lands zoned under  
12 Former Chapter 59, is in accordance with Comprehensive Plan 2040, and furthers the public health,  
13 safety and general welfare of the city.

14 **NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
15 **DENVER:**

16 **Section 1.** Any temporary unlisted use permitted by the zoning administrator under Section  
17 12.4.6 of the official zoning code for the City and County of Denver as filed with the Denver City Clerk  
18 on April 16, 2018, at City Clerk Filing No. 2010-0512-T and all amendments thereto (the “Denver  
19 Zoning Code”) in response to the COVID-19 disaster emergency, may also be permitted by the zoning  
20 administrator on land retaining its zoning designation under Chapter 59 of the DRMC as filed with the  
21 Denver City Clerk on May 20, 2010 at City Clerk Filing No. 10-512 (“Former Chapter 59”).

22 **Section 2.** The zoning administrator may permit an unlisted temporary use on land retaining  
23 its zoning designation under Former Chapter 59 based on the following criteria:

24 (a) the unlisted temporary use preserves and promotes the public health, safety and welfare  
25 of the inhabitants of the city, and of the public generally, and encourages and facilitates the orderly  
26 growth and expansion of the city;

27 (b) the unlisted temporary use is consistent with the subject Former Chapter 59 zone district at  
28 issue; and

29 (c) the unlisted temporary use meets the requirements of Denver Zoning Code Section  
30 12.4.6.4.B.

31 **Section 3.** The zoning administrator shall include the following information with any unlisted  
32 temporary use determination that authorizes the unlisted temporary use in a Former Chapter 59 zone  
33 district as allowed in Section 1 above:

- 1 (a) the Former Chapter 59 zone districts where the unlisted temporary use may be permitted;
- 2 (b) the Former Chapter 59 zoning procedure required to permit the unlisted temporary use;
- 3 (c) any conditions or limitations on the unlisted temporary use; and
- 4 (d) any allowances for the temporary unlisted use that would otherwise be allowed in a Denver
- 5 Zoning Code zone district, such as permitting the operation of the temporary unlisted use on land
- 6 otherwise required by Former Chapter 59 for on-site parking.

7 **Section 4.** This interim zoning regulation shall be effective upon final publication, and shall  
8 automatically be repealed twenty-one days after expiration or rescission of all comprehensive city  
9 and state public health orders issued as a result of the COVID-19 disaster emergency, such as the  
10 Colorado Department of Public Health and Environment’s Stay at Home Order, Safer at Home in  
11 the Vast, Great Outdoors Order or Protect Your Neighbor Order, or Denver Department of Public  
12 Health & Environment public health orders such as the face covering order.

13  
14 COMMITTEE APPROVAL DATE: [fill in].  
15 MAYOR-COUNCIL DATE: [fill in].  
16 INTRODUCED BY: [fill in]  
17 PASSED BY THE COUNCIL: \_\_\_\_\_, 2020  
18 \_\_\_\_\_ - PRESIDENT  
19 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2020  
20 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
21 EX-OFFICIO CLERK OF THE  
22 CITY AND COUNTY OF DENVER

23 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2020; \_\_\_\_\_, 2020

24 PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE: [fill in], 2020

25  
26 Pursuant to Section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
27 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
28 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
29 § 3.2.6 of the Charter.

30 Denver City Attorney

31 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_, 2020