

MEMORANDUM

TO: Members of the Denver City Council LUTI Committee

FROM: Tina Axelrad, CPD Zoning Administrator

DATE: May 20, 2021

SUBJECT: **Proposed Amendment to Interim Zoning Ordinance to Allow COVID-Related Temporary Uses on Former Chapter 59 Zoned Lands**

Denver City Council, through its LUTI Committee, will be considering an amendment to its November 2020 adopted interim zoning ordinance, Ordinance No. 2020-0961. The amendment ordinance is being sponsored by Councilwoman Amanda Sandoval. The proposed amended ordinance, a copy of which is attached to this memo (also attached is the original 2020-0961 ordinance), will allow the City to continue its response not only to the immediate impacts of the COVID-19 pandemic during the duration of the public health emergency orders, but also to the pandemic's ongoing and substantial economic fallout and impacts, which will be felt for some significant time to come. The amendment to the ordinance will extend the authority granted the zoning administrator to approve temporary unlisted uses on Former Chapter 59-zoned lands until December 31, 2023.

Under the amended ordinance, the City may continue permitting existing and new pandemic-related temporary uses and activities everywhere in the City, and not just on lands zoned under the Denver Zoning Code ("DZC"). Examples of such temporary uses and activities include temporary emergency homeless shelters, managed campsites for homeless persons (SOS sites), and temporary expansion of outdoor patios for the city's hart-hit restaurants and bars. While CPD can continue allowing these critical uses and activities on lands zoned under the DZC until December 31, 2023,¹ the same uses and activities on lands zoned under the Former Chapter 59 ("old code") cannot be extended without city council approval of the amended ordinance.

The amended ordinance will continue the previous authority granted the zoning administrator to permit any unlisted temporary use she determines is permissible under the DZC to also occur on old-code zoned lands. No changes to the safeguards contained in the original ordinance are proposed. Those safeguards require 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.

¹ In an updated temporary unlisted use determination published on May 7, 2021, the Denver Zoning Administrator extended the authorization for temporary managed campsites (SOS sites) until December 31, 2023. The updated use determination may be [found here](#). A similar update to extend the determination to allow temporary outdoor expansion space for restaurants and bars to October 31, 2022, is in progress as of the date of this report.

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2021

COUNCIL BILL NO. 21-xxxx
COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A BILL

For an ordinance amending Ordinance 20200961, Series of 2020, to extend the duration of an interim zoning regulation to allow certain temporary unlisted uses in Former Chapter 59 zone districts due to the COVID-19 disaster emergency.

WHEREAS, the zoning administrator has permitted temporary unlisted uses in property zoned under the Denver Zoning Code in response to the COVID-19 disaster emergency; and

WHEREAS, the city council enacted Ordinance 20200961, Series of 2020, which established an interim zoning regulation to allow the zoning administrator to permit temporary unlisted uses in land retaining its zoning designation under Chapter 59 of the DRMC as filed with the Denver City Clerk on May 20, 2010 at City Clerk File No. 10-512 ("Former Chapter 59"), that have also been permitted in land zoned under the Denver Zoning Code; and

WHEREAS, Ordinance 20200961, Series of 2020, provided that the interim zoning regulation would be automatically repealed twenty-one days after expiration or rescission of all comprehensive city and state public health orders issued as a result of the COVID-19 disaster emergency (the "Repeal Date"); and

WHEREAS, it is anticipated that the city and state may begin rescinding public health orders issued as a result of the COVID-19 disaster emergency in the summer of 2021; and

WHEREAS, the effects of the COVID-19 disaster emergency will last past the rescission of state and city public health orders; and

WHEREAS, the city desires to extend the Repeal Date to December 31, 2023, to provide additional time for any permitted temporary unlisted use issued due to the enactment of Ordinance 20200961, Series of 2020 in order that the effects of the COVID-19 disaster emergency can be mitigated even after the rescission of all comprehensive city and state public health orders issued as a result of the emergency.

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

BY AUTHORITY

ORDINANCE NO. 20200961

COUNCIL BILL NO. 20-0961

SERIES OF 2020

COMMITTEE OF REFERENCE:

Land Use, Transportation & Infrastructure

A BILL

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

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

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

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

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

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

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

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



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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 Zoning
19 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 of
25 the inhabitants of the city, and of the public generally, and encourages and facilitates the orderly growth
26 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:

