

## 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,<sup>1</sup> 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.

<sup>&</sup>lt;sup>1</sup> 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 <u>found here</u>. 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.

2	ORDINANCE NO COUNCIL BILL NO. 21-xx	XX
3	SERIES OF 2021 COMMITTEE OF REFERENCE	;E:
4	Land Use, Transportation & Infrastructu	re
5	<u>A BILL</u>	
6 7 8 9	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.	
10	WHEREAS, the zoning administrator has permitted temporary unlisted uses in prope	rtv
	zoned under the Denver Zoning Code in response to the COVID-19 disaster emergency; and	,
12	WHEREAS, the city council enacted Ordinance 20200961, Series of 2020, which establish	ed
	an interim zoning regulation to allow the zoning administrator to permit temporary unlisted uses	
	and retaining its zoning designation under Chapter 59 of the DRMC as filed with the Denver C	
15	Clerk on May 20, 2010 at City Clerk File No. 10-512 ("Former Chapter 59"), that have also be	en
16	permitted in land zoned under the Denver Zoning Code; and	
17	WHEREAS, Ordinance 20200961, Series of 2020, provided that the interim zoning regulati	on
18	would be automatically repealed twenty-one days after expiration or rescission of all comprehensi	ve
19	city and state public health orders issued as a result of the COVID-19 disaster emergency (t	he
20	'Repeal Date"); and	
21	WHEREAS, it is anticipated that the city and state may begin rescinding public health order	ers
22	ssued as a result of the COVID-19 disaster emergency in the summer of 2021; and	
23	WHEREAS, the effects of the COVID-19 disaster emergency will last past the rescission	of
24	state and city public health orders; and	
25	WHEREAS, the city desires to extend the Repeal Date to December 31, 2023, to provi	de
26	additional time for any permitted temporary unlisted use issued due to the enactment of Ordinan	ce
27	20200961, Series of 2020 in order that the effects of the COVID-19 disaster emergency can	be
28	mitigated even after the rescission of all comprehensive city and state public health orders issu	ed
29	as a result of the emergency.	
30	NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY (	)F
31	DENVER:	
32		

1	Section 1.	That Ordinance 20200961, Series	s of 2020, is amende	d by changing Sec	tion 4 to
2	read as follows:				
3	This interim	zoning regulation is effective on O	ctober 15, 2020, and	I expires on Decer	mber
4	31, 2023.				
5	COMMITTEE APF	PROVAL DATE: May 25, 2021.			
6	MAYOR-COUNCI	L DATE: N/A			
7	INTRODUCED BY	Councilwoman Amanda Sandova	al		
8	PASSED BY THE	COUNCIL:			, 2021
9			- PRESIDENT		
10	APPROVED:		- MAYOR		_, 2021
11 12 13	ATTEST:		- CLERK AND REC EX-OFFICIO CLE CITY AND COUN	RK OF THE	
14	NOTICE PUBLISH	IED IN THE DAILY JOURNAL:	, 2021	;	_, 2021
15 16	PREPARED BY: /	Adam C. Hernandez, Assistant City	Attorney	DATE: May 27, 20	)21
17 18 19 20	the City Attorney.	on 13-12, D.R.M.C., this proposed We find no irregularity as to form, roposed ordinance is not submitted rter.	and have no legal	objection to the pr	roposed
21	Denver City Attorn	ney			
22	BY:	, Assistant City Attorne	ey DATE:	, ·	2021

1	BY AUTHORITY	
2	ORDINANCE NO.2 <u>020096</u> 1	COUNCIL BILL NO. 20-0961
3	SERIES OF 2020	COMMITTEE OF REFERENCE:
4		Land Use, Transportation & Infrastructure
5	<u>A BI</u>	<u>LL</u>
6 7 8 9	For an ordinance enacting an interim zonir unlisted uses in Former Chapter 59 zone emergency.	
10	WHEREAS, on March 11, 2020, the Govern	or of the State of Colorado issued an Executive
11	Order declaring a state of disaster emergency due	e to the risk of spread of the novel coronavirus,
12	now designated COVID-19; and	
13	WHEREAS, on March 12, 2020, the Mayor o	f the City and County of Denver declared a state
14	of local disaster emergency pursuant to C.R.S. § 2	4-33.5-701, et seq., due to the risk of spread of
15	COVID-19, which has been extended by the City C	ouncil for the City and County of Denver through
16	September 28, 2020, due to the risk of spread of C	OVID-19; and
17	WHEREAS, the Executive Director of the De	nver Department of Public Health & Environment,
18	pursuant to section 24-16 of the Denver Revised Mu	nicipal Code, has issued numerous public health
19	orders to implement measures to mitigate the spre	ead of COVID-19 and to protect the City and its
20	residents, including the City's most vulnerable popu	Ilations.; and
21	WHEREAS, the Colorado Department of Put	lic Health and Environment issued Public Health
22	Order 20-28, Safer at Home and in the Vast, Grea	at Outdoors (as amended), which, among other
23	provisions, strongly urges governmental entities to	make shelter available to people experiencing
24	homelessness as soon as possible and to the maxi	mum extent practicable; and
25	WHEREAS, additionally, Public Health Orde	er 20-28, Safer at Home and in the Vast, Great
26	Outdoors (as amended) allows for the expansion o	f 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 p	ior to use; and
29	WHEREAS, the Denver Zoning Code (def	ned below) allows the zoning administrator to
30	permit uses otherwise not listed in the Denver Z	oning Code, and the zoning administrator has
31	permitted temporary unlisted uses regarding outdo	oor expansion spaces for restaurants and bars,
32	and intends to permit certain temporary uses in resp	oonse to the COVID-19 disaster emergency; and
33	WHEREAS, City Council adopted Ordinanc	e 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 2020174104 Page: 1 of 3

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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

WHEREAS, Former Chapter 59 (defined below) remains in full force and effect for any land
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:

**Section 1.** Any temporary unlisted use permitted by the zoning administrator under Section 12.4.6 of the official zoning code for the City and County of Denver as filed with the Denver City Clerk on April 16, 2018, at City Clerk Filing No. 2010-0512-T and all amendments thereto (the "Denver Zoning Code") in response to the COVID-19 disaster emergency, may also be permitted by the zoning administrator on 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 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:

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

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

(c) the unlisted temporary use meets the requirements of Denver Zoning Code Section12.4.6.4.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:

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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 the		
11	Vast, Great Outdoors Order or Protect Yo	ur Neighbor Order, or Denver Department of Public Health	
12	& Environment public health orders such	as the face covering order.	
13			
14	COMMITTEE APPROVAL DATE: Septe	mber 15, 2020.	
15	MAYOR-COUNCIL DATE: N/A		
16	PASSED BY THE COUNCIL:	October 12, 2020	
17	- Stain Jilmane	- PRESIDENT	
18	APPROVED:	- MAYOROct 13, 2020	
19	ATTEST: Day former		
20 21		EX-OFFICIO CLERK OF THE CITY AND COUNTY OF DENVER	
22	NOTICE PUBLISHED IN THE DAILY JO	URNAL:September 24, 2020 October 15, 2020	
23	PREPARED BY: Adam C. Hernandez, A		
24 25	Pursuant to Section 13-12, D.R.M.C., th	s proposed ordinance has been reviewed by the office of	
26 27		as to form, and have no legal objection to the proposed of submitted to the City Council for approval pursuant to	
28	§ 3.2.6 of the Charter.	a submitted to the City Council for approval pursuant to	
29	Denver City Attorney		
30	BY:, Assistant	City Attorney DATE: Sep 17, 2020	
	COUNTRA		
		3	