

City of Houston, Texas, Ordinance No. 2020- 688

AN ORDINANCE ESTABLISHING THE “MORE SPACE” PILOT PROGRAM SUSPENDING OFF-STREET PARKING REQUIREMENTS CONTAINED IN SECTIONS 26-490 AND 26-492 OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON TO FACILITATE THE SALE OR PROVISION OF FOOD AND BEVERAGES OUTDOORS ON PRIVATE PARKING LOTS BY RESTAURANTS; PROVIDING FOR OTHER MATTERS RELATED TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

WHEREAS, the COVID-19 pandemic is causing unparalleled economic damage to Houston’s restaurant community; and

WHEREAS, in response to the pandemic, Governor Greg Abbott, the City of Houston and Harris County issued a series of orders (collectively “Orders”) some of which temporarily closed non-essential businesses, established social distancing guidelines, limited certain public gatherings to fewer than ten people, and restricted occupancy in certain businesses, including restaurants; and

WHEREAS, these Orders are necessary and were designed to protect the public health, safety and welfare, and are intended to keep infection rates in Houston and Harris County from spiking and overwhelming area hospitals and the health care system; and

WHEREAS, due to the COVID-19 public health emergency, alarming rates of unemployment exist in Houston and imperil the survival of Houston’s restaurant industry; and

WHEREAS, restaurants may have received support from various sources and programs to help them withstand the shock of sudden and prolonged closures, innovative measures at the local level will provide more support and options for Houston’s restaurants; and

WHEREAS, many of Houston's restaurants have taken an enormous economic hit from the pandemic crisis; many employees have been laid off, and several restaurants are on the brink of permanent closure; and

WHEREAS, State directives have allowed restaurants to open at partial capacity, and many people are driving less, and many restaurants are located within walking distance of residential areas, all of which mitigates the need for the amount of parking spaces required under normal operating times; and

WHEREAS, the "More Space Program" is a pilot program designed to improve access to available outdoor space by utilizing off-street private parking areas in which restaurants may place tables and serving areas. This will allow restaurants to operate at greater capacity, while they continue to comply with safety directives and social distancing measures to protect employees and customers; and

WHEREAS, the use of off-street private parking areas for dining will serve to attract more business, boost the local economy, and match best practices for placemaking strategies to create pedestrian-friendly activity; and

WHEREAS, City Council recognizes that a variety of industries in addition to restaurants are also suffering the impact of economic downturn resulting from the pandemic, for whom operating outdoors may be challenging or may not provide the benefit that would make such operations financially rewarding, but will continue to study these and others if this pilot program is expanded; and

WHEREAS, City Council finds that the purpose of a pilot program is to assess the program, figure out what works and does not work, and better understand the level of community interest in the program. Restaurants with clearly established seating and personal protective

equipment guidelines, and excess parking, provide an excellent opportunity to test this program; and

WHEREAS, thriving local businesses of all types are vital to Houston's economic and community well-being, and City Council is committed to seeking out and employing innovative measures that increase resiliency for small business owners and their employees. As the pilot program moves forward, City Council can consider expanding the types of businesses that may participate in the pilot program; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That, for the purpose of implementing the More Space Program established by this Ordinance, Sections 26-490 and 26-492 of the Code of Ordinances, Houston, Texas, ("City Code") respectively setting requirements for the use of parking lots for automobile parking and establishing off-street parking minimum requirements for restaurant uses are suspended. This suspension shall expire on the earlier of: (i) the date the Mayor of the City of Houston ("Mayor") states, in writing, the suspension of Sections 26-490 and 26-492 are rescinded or terminated or (ii) the date the City's proclamation declaring of a local state of disaster for a public health emergency related to COVID-19 is terminated..

Section 3. That this Ordinance hereby creates the More Space Program as set forth below, which will allow restaurants to convert their underutilized vehicle parking spaces to areas for serving food (serving only, not food preparation or storage), provided that in the additional space of the converted parking area, people and restaurant owners and employees must comply

with all other applicable laws, regulations, permits, and orders of government officials, including the then-current COVID-19 related orders issued by the Mayor, County Judge with authority , or Governor of the State of Texas, including the Governor’s Executive Order Nos. GA-28 and GA-29 issued by the Governor of the State of Texas and any amendments or successor orders or proclamations thereto. All persons utilizing the additional space of the converted parking area as part of the More Space Program shall operate in compliance with the Governor’s Order GA-28 including its provisions on the minimum standard health protocols recommended by Texas Department of State Health Services (DSHS), available at <https://www.dshs.texas.gov/coronavirus/opentexas.aspx>.

MORE SPACE PROGRAM

1. DEFINITIONS

When used in this ordinance, the following words, terms and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates a different meaning:

Beverage has the meaning ascribed in Section 20-18 of the City Code.

Converted parking area means the portion of an off-street parking area that is converted to food and beverage service under this program.

Food has the meaning ascribed in Section 20-18 of the City Code.

Furniture means any tables, chairs, umbrellas, and temporary shade structure placed in an off-street parking area.

Planning Official means the Director of the Planning and Development Department, or her designee.

Restaurant: means a food establishment as defined in Section 20-18 of the City Code that contains facilities for the preparation of food or drinks to serve to customers including, but not limited to, coffee shops, cafeterias, concession stands, clubs that provide food service, including veterans' clubs that give or offer food for sale to the general public. Restaurant shall not mean or include any restaurant, bar, or similar food establishment that an order of the Mayor or Governor (e.g. GA-28) has ordered to close for all purposes or to close for all dine-in services for as long as said order imposing these restrictions on such restaurants, bars, or similar establishments is in effect.

Off-Street parking has the meaning ascribed in Section 26-2 of the City Code.

Off-Street parking area means one or more parking areas of any number of spaces serving or adjacent to a restaurant that contains the number of spaces required by Chapter 26 of the City Code for the parking of vehicles.

2. GENERAL PROVISIONS

- 2.1 The Houston More Space Program is hereby established to provide an economic boost to restaurants by decreasing required off street parking and increasing the customer seating area to a converted parking area during social distancing and limited occupancy rules. The Program is entirely voluntary; restaurants may opt in but are not required to participate. Participation is automatic upon submission of the Notification form required in Section 2.4 but may be terminated as provided below in Section 3.2.
- 2.2 A restaurant will be permitted to convert up to 50% of the total number of off-street parking spaces it is required to provide pursuant to Chapter 26 of the Code to serve food and beverages immediately after filing the Notification Form described in paragraph 2.4, and evidence of the landlord or owner's approval. Pursuant to the City of Houston Health Department rules, this authorization to serve food and beverages includes food service only; food preparation, display and storage are not allowed in these areas.
- 2.3 All participating restaurants, and their owners and management shall ensure their continued compliance with Texas Alcoholic Beverage Commission (TABC) rules and each individual permit, and their ability to serve alcoholic beverages in a converted parking area.
- 2.4 To participate, a restaurant, through its owner or management, must complete and submit the Houston More Space Program Notification Form, located at: http://houstontx.gov/planning/More_Space_Forms.html, or mailing or physically delivering same to the Planning and Development Department, 6th Floor, at 611 Walker Street, Houston, Texas 77002.
- 2.5 All participating restaurants, and their owners, management, and staff, shall conclude food and beverage service and close all food and beverage service within the converted parking area at or prior to midnight.
- 2.6 In the converted parking area, restaurant owners, management, staff, and customers shall comply with and ensure continued compliance with all applicable laws, regulations, permits, and orders or proclamations, as they may be amended from time to time including those governing food safety, trash, access to restrooms, and noise and nuisances, or related to COVID 19.
- 2.7 Furniture may be utilized in the converted parking area. Only temporary shade structures may be placed in the converted parking area; no permanent structures are allowed. The restaurant owner, management, and staff must secure or remove all

furniture at the close of business, or no later than 12:30 a.m., from the converted parking area. The City is not liable for any loss of furniture or other business items placed outside.

- 2.8 Restaurant owners and staff must place furniture within the converted parking area in a manner that does not obstruct pedestrian and driveway access, nor obstruct any required or existing accessible parking space.

3. UPDATE, EVALUATION, TERMINATION

- 3.1 The More Space Program may be activated, suspended, or terminated in whole or in part at the discretion of the Mayor of the City of Houston or the Mayor's designee. Termination or suspension of the More Space Program, whether in whole or in part, automatically terminates or suspends, as applicable, the suspension of Sections 26-490 and 26-492 of the Code, such that Sections 26-490 and 26-492 are no longer suspended pursuant to Section 2 of this Ordinance as of the date and time the More Space Program is suspended or terminated. The reactivation, if any, of the More Space Program pursuant to this paragraph automatically reactivates the suspension of Sections 26-490 and 26-492 as stated in Section 2 of this Ordinance.
- 3.2 The planning official may terminate the participation of any restaurant upon its failure to comply with the requirements of the More Space Program, or receipt of proof of the suspension or revocation of the restaurant's TABC permit or license. The planning official may also terminate participation upon receipt of proof that the restaurant owner, operator, manager or other person in charge of the restaurant has received a civil penalty in a civil adjudication proceeding, or proof of a criminal conviction of a violation of any statutes, ordinances, regulations, orders relating to the operation of the restaurant, including provisions related to the service or preparation of foods and beverages, or regulations enacted related to COVID-19.

4. CONFLICTS

In the event of a conflict between this Program and any federal or state law, statute, regulation or order (including without limitation any executive order issued by the Governor related to COVID-19), the federal or state law, statute, regulation or order supersedes this Program to the extent stated therein.

Section 4. That except as herein provided, Chapter 26 of the Code of Ordinances of Houston, Texas, and all other ordinances of the Code, and the regulations and rules of the City, and any requirements of City-issued permits issued to the restaurant, remain in full force and effect.

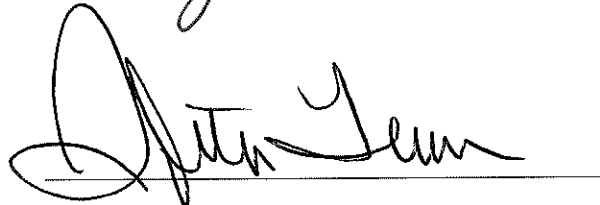
Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held

to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 5th day of August, 2020.

APPROVED this 5th day of August, 2020.



Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is _____.

City Secretary

Prepared by Legal Dept

KM/ems 8/3/2020

Requested by Margaret Wallace-Brown

Senior Assistant City Attorney

AYE	NO	
✓		MAYOR TURNER
....	COUNCIL MEMBERS
✓		PECK
✓		DAVIS
✓		KAMIN
✓		EVANS-SHABAZZ
✓		MARTIN
✓		THOMAS
✓		TRAVIS
✓		CISNEROS
✓		GALLEGOS
✓		POLLARD
✓		MARTHA CASTEX-TATUM
✓		KNOX
✓		ROBINSON
✓		KUBOSH
✓		PLUMMER
✓		ALCORN
CAPTION	ADOPTED	