Feroleto - Ordinance Amendment - Chapter 415 Small Business Social Distancing Strategy

The Common Council of The City of Buffalo does hereby ordain as follows:
That Chapter 415, Small Business Social Distancing Strategy, of the Code of The City of Buffalo
Be amended to read as follows:
Chapter 415. Small Businesses Social Distancing Strategy

Chapter 415. Small Business Social Distancing Strategy

§ 415-1. Legislative intent.

The City of Buffalo declares COVID-19 as a global health emergency that has created issues requiring city resources to curb the spread of the virus. Specifically, social distancing has emerged as one of the greatest natural inhibitors of the spread. However, the act of social distancing will fundamentally change the way in which local businesses within Buffalo operate. The new protocols, as directed in rules laid out to be compliant with Governor Cuomo's New York Forward initiative require more physical space to protect their customers and promote public health, while also fulfilling our vision of more walkable communities and neighborhoods filled with our rich culture.

Most of our neighborhood businesses rely on their indoor spaces to conduct business. Throughout the COVID-19 pandemic, many of these businesses [are likely to be] have been and continue to be limited in capacity in order to [allow for needed social distancing.] comply with social distancing requirements. The use of outdoor space [is likely going] continues to be vital to allow business to serve customers and remains as part of the City's economic resurgence. Given the success and positive feedback of the SBSDI, the Small Business Social Distancing Advisory Committee (SBSDAC) is proposing a further extension of the legislation through fall of 2021.

§ 415-2. Definitions.

The following words, when used in this chapter, shall have the meanings herein stated, unless a different meaning clearly appears from the context:

Exterior premises: land, whether owned by the City of Buffalo or privately owned, adjacent and contiguous to a building in which a small business operates, that will be used by the small business to replace the capacity lost within its building as result of meeting social distancing requirements.

Outdoor dining: as defined in Section 496

Outdoor display: as defined in Section 496

Retail and Service business: as defined in Section 496

Restaurant: as defined in Section 496

Tavern: as defined in Section 496

§ 415-3. Small Business Social Distancing Advisory Committee.

A. Purpose and need.
(1)
Any restaurant or tavern whose interior or previously established exterior capacity is reduced in order to meet social distancing requirements can apply to extend outdoor dining onto an exterior premises. Any retail or service business whose interior or previously established exterior capacity is reduced in order to meet social distancing requirements can apply for outdoor displays on an exterior premises.
(2)
The purpose of the Small Business Social Distancing Advisory Committee (SBSDAC) is to provide a mechanism which will allow the City to plan for and coordinate the use of exterior premises by businesses whose ability to conduct business has been limited by meeting social distancing requirements; which will allow for the establishment of terms and conditions under which the exterior premises may be used; and will allow a business to operate within the exterior premises within the context of the established terms and conditions.

(3) There is need for the City to be able to coordinate personnel and financial resources and the public spaces under its control. There is need for the City to be reimbursed for all or part of the services provided when it is deemed appropriate and/or possible. There is need for business to receive a timely and understandable response to their requests or proposals and to have a clear understanding of their obligations.

(4) There is an overriding need to ensure that the mechanism will allow for, and in fact encourage, the reasonable proliferation of the businesses which contribute to the economic viability of the City and the quality of life of its citizens.

(5) These needs can best be met by a thorough evaluation of each request for the use of exterior space for social distancing purposes on an individual basis by a committee designed to recognize these interests.

B.
Composition of the SBSDAC. The SBSDAC shall be comprised of the following officials or their designated representatives:

(1)
The Special Events Coordinator.
(2)
The Executive Director of the Office of Strategic Planning.
(3)

The Commissioner of Police.
(4)
The Commissioner of Public Works, Parks and Streets.
(5)
The Commissioner of Permit and Inspection Services.
(6)
The Commissioner of Administration, Finance, & Urban Affairs.
(7)
The Commissioner of Parking.
(8)
The Corporation Counsel.
(9)
The designee of the President of the Common Council.

C.
Responsibilities of the SBSDAC. The SBSDAC is charged with the responsibility of reviewing, evaluating, approving or disapproving all applications for use of exterior premises for social distancing purposes. The decision-making process may include, but not be limited to, the following:
(1)
Application of the general policy, criteria and evaluation factors which are a part of these policies and procedures.
(2)
Consideration of the City's ability to provide support in terms of personnel resources.
(3)
Consideration of the City's ability to support the use financially.
(4)
Consideration of the business's ability to provide financial assistance.
D.
Authority of the SBSDAC. The SBSDAC:
(1)
May approve or disapprove of an application as submitted. If the SBSDAC disapproves, the SBSDAC must state, in writing, the reason(s) for the, disapproval.
(2)
May establish the terms and conditions for use of the exterior premises. Terms and conditions may include, but are not limited to, areas such as location, timing, scope and/or financial arrangements.
(3)
May negotiate with a business for the purpose of establishing terms and conditions, including but not limited to those identified in § 415-10D, and state in writing the final terms and conditions the City will agree to.
(4)
May not grant the use of an exterior premises if social distancing requirements did not meaningfully reduce the ability to conduct business within its building or its previously

established exterior spaces. The SBSDAC will direct the applicant to other procedures for the use of exterior spaces when the request, in whole or in part, is simply to expand business operations as opposed to replacing lost capacity due to social distancing requirements.
E. Meetings and timing of meetings. Meetings shall be convened by the Special Events Coordinator periodically for informational purposes and/or for the purposes of evaluating applications.
F.
Approval.
(1)
Approval shall be required from each member of the SBSDAC.
(2)
Approvals shall be submitted electronically to the Special Events Coordinator.
(3)
All approvals granted under this ordinance shall expire no later than [May 1, 2021.] November 15, 2021.

§ 415-4. City responsibility.
The City is responsible for determining whether to allow the use of exterior premises for social distancing purposes and establishing guidelines for the safe and proper use of the exterior premises. To fulfill these responsibilities, the City must determine if the exterior use should be conducted and the terms and conditions under which the exterior premises may be used.

§ 415-5. Business responsibility.
It is the responsibility of the business to make application to use the exterior premises as provided in this article and to furnish any additional information that may be requested. The business is responsible for notifying and, where necessary or appropriate, consulting with property owners and occupants in and adjoining the exterior premises. It is the business's responsibility to abide by all of the terms and conditions established as part of the approval process. It shall be the business's responsibility to provide for the protection of the safety, health, property, and general welfare of those using the exterior premises. It shall be the business's responsibility to follow the relevant industry-specific guidelines provided by Governor Cuomo's New York Forward Initiative for their applicable operations and activities.

§ 415-6. Application and cost estimation.
A.
Application. The business must submit an application to the SBSDAC. The business shall submit information regarding its notice to and consultation with the neighboring property owners or occupants. The business must supplement the application as new information is learned or obtained. The SBSDAC shall render its decision on a completed application within 10 days of receipt of a completed application. All applicable expenses must be submitted prior to the use of the exterior premises. The Special Events Coordinator may waive compliance with the time limits stated in this provision, including the timing for payment of expenses, upon good cause shown. If the business was previously approved, the business shall submit a renewal to the SBSDAC.

B.
City costing process. City departments and agencies will estimate the costs that would be incurred as a result of the use of the exterior premises, if any. This information may be used in establishing terms and conditions under which the exterior premises may be used when the use of police or other City personnel is appropriate, possible, and not in conflict with any other administrative policies and procedures and/or labor agreements.

§ 415-7. Approval process.
A.
General review. The SBSDAC will review, approve or disapprove each proposed application for the use of exterior premises on its own merits. In reviewing a proposed use of exterior premises, the SBSDAC will also review, evaluate and determine the costs of City support services required for the that will be charged to all businesses unless the SBSDAC waives all or any portion of these costs if such a waiver is in the best interest of the City.
B.
Decision. The SBSDAC may either approve a proposed use of an exterior premises as submitted, make unilateral modifications or make modifications in cooperation with the business. In deciding on approving or disapproving, the SBSDAC will set forth any terms and conditions applicable to an approved use of an exterior premises. The SBSDAC shall render any decision to waive costs or fees provided herein in writing with reasons for its decision to waive.
C.
Appeals. An applicant may appeal the decision of the SBSDAC and the decisions of the Special Events Coordinator regarding petitions under § 415-6A to the Finance Committee of the Common Council, which may recommend to the Common Council that it overturn the decision of the SBSDAC.

§ 415-8. Notification.
The business will be notified of the approval or disapproval of the proposed exterior premises use and will be advised of any terms and conditions applicable to an approved exterior premises use via the email address provided on the application within 10 days of receipt of the completed application.

§ 415 -9. Requirements.
A.
Permits and licenses. Approval to use exterior premises by this process does not relieve the business from the responsibility of applying for any other permits or licenses or meeting any other requirements which may be applicable.
B.
Snow Removal. All rules and regulations defined in Chapter 413-50 Duty for Removal and Chapter 413-52 Methods for Removal of the City Code apply to business owners utilizing exterior premises under Small Business Social Distancing Strategy. The permittee is responsible for maintaining ADA compliant pedestrian walkways and ensuring the site plan setup is in place each day as approved, especially after larger snow removal efforts in the roadway.

C.

Insurance. All businesses must obtain a liability insurance policy in the amount of $1,000,000 with the City named as an additional insured, or a larger amount in the discretion of the City. This insurance shall satisfy all insurance requirements for the City allowing the exterior premises use. Additional insurance requirements of City departments shall be considered by the SBSDAC in formulating the amount of coverage required. The insurance policy shall be subject to the review and approval of the Corporation Counsel of the City.

D.

Due date. All required permits, licenses, security deposits and insurance policies must be obtained prior to the use of the exterior premises, with a copy of each forwarded to Room 201 City Hall.

§ 415-10. Guidelines.

A.

Daily time restriction. The hours of operation within a park shall be between the hours of 9:00 a.m. and 10:00 p.m. on weekdays and Saturdays and between 1:00 p.m. and 10:00 p.m. on Sundays. The hours of operation taking place on the streets of the City shall be between 9:00 a.m. and 11:00 p.m. on any day of the week.

B.

Inspections. Inspections will be performed by representatives of the business and the SBSDAC.

C.

Site maintenance. All areas used must be left in a clean condition.

D.

No outdoor speakers shall be used to amplify any noise in any outdoor area permitted by the Committee.

E.

All outdoor dining areas shall be properly staffed to make sure to it does not become an attraction for birds or other pests.

F.

At no time will uses be promoted contrary to New York State or Erie County Department of Health Regulations.

G.

Outdoor dining/outdoor displays shall not [be allowed to impede pedestrian access to nearby businesses or residences.] <u>interfere with ingress and egress points, including building entrances, and drive aisles, and must maintain a minimum of five feet of sidewalk clearance at all times.</u>

H.

Heaters. Businesses are responsible for obtaining necessary permits and meeting any other applicable requirements from the Bureau of Fire Prevention for heaters and heating systems.

I.

Curbside Pickup Spaces. Business owners are able to establish curbside pick-up locations in place of parking spaces. Plans for curbside pick-up locations must be approved by the City of Buffalo Department of Parking.]

<u>J.</u>

Business Capacity Requirements. Combined indoor and outdoor capacity cannot exceed the business's allowed maximum capacity requirement determined by the Bureau of Fire Prevention.

Services available from the City. The City may provide certain equipment and materials to facilitate the use of the exterior premises, subject to availability and the City's prior need for such equipment and materials.

(1)

Temporary parking signs. All temporary paper signs for restricting parking must be posted 24 hours in advance and maintained by the business. Requests for the necessary materials should be directed to the Department of Parking. Any usage of temporary signs without the authorization of the Commissioner of Parking will be neither recognized nor enforced. The business must purchase parking control signs or other parking restriction devices (such as parking meter bags) from the Department of Parking, paying in advance for the number of signs or other devices ordered.

(2)

Fees. The business may be charged the costs for the City to furnish certain services, including printing, overtime and other labor costs associated with the use of the exterior premises, as provided in Chapter **175**, Fees. The business would pay this fee, as well as other costs not finally determined prior to the SBSDAC's authorization for the use of the exterior premises.

[I.] K.

Additional services. The business may be responsible for providing some additional services, including but not limited to the following:

(1)

Security. The amount and type of security necessary will be determined by the SBSDAC, upon review of the application and the Department of Police's recommendation. Private security must be obtained pursuant to the recommendations of the SBSDAC.

(2)

Utilities. The business is responsible for payment for any utility use, with payment made directly to the affected department or utility provider. Where available, meters will be checked by a City representative and the business. The affected department shall send a copy of the bill or invoice rendered to the business to the SBSDAC as that bill or invoice is rendered.

(3)

Signage. All signage placed for the use of the exterior premises should follow any and all requirements for signs allowable under applicable law. The business shall be responsible for erecting and dismantling any signage or banners it is permitted to hang.

[K.] L.

Tents and temporary structures. When the business indicates that they may use tents or any other kind of temporary structure, in determining whether to approve the use of the exterior premises and establishing its conditions, the SBSDAC will set forth reasonable conditions for the

erection, maintenance and dismantling of the tent or other temporary structure for the purpose of protecting the health, welfare and safety of the public and persons and property in the vicinity of the exterior premises, including the duration of the erection and maintenance of the tent or temporary structure. The business is responsible for obtaining necessary permits from the Bureau of Fire Prevention and other relevant agencies or departments and meeting any other applicable requirements. If the business is permitted to erect a tent or other temporary structure, the business is responsible for erecting the tent or other temporary structure and maintaining that tent or temporary structure. The business is responsible for dismantling the tent or other temporary structure, when the necessity for the tent or other temporary structure ceases or upon order of the City.

§ 415-12. Penalties for offenses.

A.

Fine. Exterior premises shall not be used without the authorization of the SBSDAC nor held in contravention of the terms and conditions set forth by the SBSDAC (excluding reversions by the Common Council on appeal pursuant to § 415-7C). Violation of this chapter may subject the business to a fine of $500 in addition to any other penalty provided in the ordinances or in any other law on account of using an exterior premise without required permits, licenses or authorization.

B.

If an outdoor dining/outdoor display area becomes a nuisance to the health, safety and general welfare of the neighborhood or if the area is not being used according the terms and conditions of the approval, the Department of Permit and Inspections Services shall order the closure of the outdoor use. The outdoor use may only be reestablished if after a hearing with the Department of Permit of Inspection Services an agreement has been reached which eliminates the concerns which led to the revocation of the use.

§ 415-13. Effective date.

Pursuant to Sec. 35 of the Charter, this chapter is effective immediately upon its adoption and shall sunset on [May 1, 2021] <u>November 15, 2021.</u>

I. This Ordinance Amendment shall take effect once it is duly ratified pursuant to City Charter § 3-19.

IT IS HEREBY CERTIFIED, pursuant to Section 3-19 of the Charter of the City of Buffalo, that immediate passage of this Ordinance Amendment is necessary.

Byron W. Brown
Mayor

NOTE: Matter underlined is new, matter in brackets is to be deleted.

APPROVED
AS TO FORM ONLY

Corporation Counsel

By _____