

City of Houston, Texas, Ordinance No. 2020-\_\_\_\_\_

**AN ORDINANCE ESTABLISHING THE “MORE SPACE: MAIN STREET” PILOT PROGRAM AUTHORIZING THE CLOSURE AND USE OF PORTIONS OF THE RIGHT OF WAY OF MAIN STREET, AND SUSPENDING CERTAIN SECTIONS OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON TO FACILITATE THE SALE OR PROVISION OF FOOD AND BEVERAGES OUTDOORS ON PUBLIC SIDEWALKS BY RESTAURANTS AND BARS; AMENDING SECTION 40-10.1, SIDEWALK CAFES, TO ADD DEFINITION OF RECLAIMED PEDESTRIAN AREA AND APPLY ITS PROVISIONS TO THIS PROGRAM; PROVIDING FOR OTHER MATTERS RELATED TO THE SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the COVID-19 pandemic is causing unparalleled economic damage to Houston’s restaurant community and beverage industry; 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 attendance for some public gatherings, 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**, restaurants and bars may have received support from various sources and programs to assist them and their employees withstand the shock of these prolonged closures; and

**WHEREAS**, City Council finds that innovative measures at the local level will provide additional support and options for Houston’s restaurants and bars; and

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

**WHEREAS**, State directives allow restaurants to open at partial capacity to serve customers; and

**WHEREAS**, recently issued State directives allow bars to reopen at partial capacity, either by being reclassified as restaurants, or upon the issuance of an order by the County Judge allowing them to operate; and

**WHEREAS**, Council adopted the More Space Program as a pilot program to allow restaurants to utilize private parking areas for tables and serving areas, by Ordinance No. 2020-688; and

**WHEREAS**, restaurants in downtown Houston, specifically along Main Street, have no such private parking areas to expand into due to the development patterns of downtown so the More Space Program as written is not usable; and

**WHEREAS**, features such as businesses at sidewalk level, METRO's light rail line bisecting the street, and lack of dedicated off-street parking along the Main Street corridor require a tailored approach; and

**WHEREAS**, the "More Space: Main Street Program" is a pilot program developed and designed to improve access to available outdoor space by allowing the use of portions of Main Street right-of-way, which will be closed off to traffic and reclaimed as pedestrian area, so that restaurants that have business addresses along Main Street may accommodate customers within that area. This will allow restaurants, and bars once they are allowed to open, 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 More Space: Main Street Program will allow the City to test the re-use of public space for active land use by pedestrians; and



**WHEREAS**, the City of Houston Planning and Development Department has coordinated this program extensively with multiple City of Houston Departments including the Houston Fire Department, Health Department, Houston Public Works, the Houston Downtown Management District, and METRO to ensure public safety; and

**WHEREAS**, the closing of portions of Main Street from vehicular traffic, to allow for tables and seating for service will boost the local economy, and match best practices for placemaking strategies to create pedestrian-friendly activity; and

**WHEREAS**, the City Council finds that the suspension or modification of certain provisions of the Code of Ordinances of the City of Houston, as set forth herein, reasonably protect the public health, safety and welfare and such suspension or modification will further the goals of the More Space: Main Street Program; and

**WHEREAS**, the City Council affirms that this program does not vacate or abandon or permanently close any portion of Main Street, and that participants acquire no expectation of continued use of Main Street, and that the program may be terminated without notice should the public necessity and convenience or public safety require it; and

**WHEREAS**, City Council finds that designating such closed street area for “reclaimed pedestrian use” will make the area usable for eating and drinking, it is designed to comply with TABC rules on issuance of alcohol permits, and allow the application of the City’s Sidewalk Café Ordinance, Sec. 40-10.1 of the Code of Ordinances of the City of Houston, to a broader area; and

**WHEREAS**, City Council recognizes that a variety of downtown businesses, in addition to restaurants and bars, 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 program is continued or expanded; and

**WHEREAS**, City Council finds that the purpose of this program is to assess the program, determine what works and does not work, and better understand the level of community interest in the program. Restaurants and bars fronting on Main Street, with clearly established seating areas, socially distanced, and personal protective equipment guidelines, 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 More Space: Main Street Program moves forward, City Council may 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 this Ordinance hereby creates the More Space: Main Street Program as set forth below, which will allow restaurants, and bars once authorized by the Governor, Harris County Judge, or Mayor, to access certain portions of Main Street right-of-way being reclaimed as pedestrian areas for serving food and beverages (serving only, not food preparation or storage), provided that in the additional space of the reclaimed pedestrian area, all patrons, restaurant and bar management and 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, GA-29, and GA-32, issued by the Governor of the State of Texas and any amendments or successor orders or proclamations thereto, and any orders issued by the Governor or Harris County Judge or Mayor authorizing bars to open in any capacity. All persons utilizing the additional space of the reclaimed pedestrian area as part of the Main Street 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: MAIN STREET 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:

*Bar* means a business that derives more than 50% of its gross revenue from the sale of alcoholic beverages for on-site consumption.

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

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

*Furniture* means any tables, chairs, umbrellas, and planters placed in a reclaimed pedestrian area.

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

*Reclaimed pedestrian area* means the areas of Main Street being closed for the purposes of the Main Street Program which are re-designated as public sidewalks for the purpose of food and beverage services, and for participation in the Sidewalk Café program under Section 40-10.1 of the City Code.

*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 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.

## **2. GENERAL PROVISIONS**

- 2.1 The More Space: Main Street Program (“Main Street Program”) is hereby established to provide an economic boost to restaurants and bars by increasing the customer seating area within certain blocks of Main Street. Participation is voluntary and may be accomplished by submitting the application as described below in Section 2.4 and as further detailed on the Planning and Development Department website. Participation and approval of applications is subject to review by appropriate City departments of public safety precautions and requirements, and application submittal is in no way a guarantee that an application will be approved. Participation may be terminated as provided below in Sections 3.2 and 3.3.
- 2.2 The Department of Planning and Development, in coordination with the Downtown Management District, has developed the More Space: Main Street Program Design Guidelines (“Design Guidelines”), a copy of which is attached hereto and fully incorporated as Exhibit A. The Design Guidelines will also be maintained on the Planning Department website. The Planning Official is authorized to revise and update the Design Guidelines as determined necessary to refine the requirements stated therein without further action by Council. A restaurant or bar will be permitted to utilize a share of the reclaimed pedestrian area of Main Street, in accordance with the map and the rules for use described in the Design Guidelines, to serve food and beverages upon approval of an application. Pursuant to the City of Houston Health Department rules, this authorization to serve food and beverages includes drink and food service only; food preparation, display, or storage are not allowed in these areas.
- 2.3 All participating restaurants, bars, and their owners and management shall ensure their individual continued compliance with Texas Alcoholic Beverage Commission (TABC) rules, including the additional service area for each individual permit, and their ability to serve alcoholic beverages in the reclaimed pedestrian area.
- 2.4 To participate, a restaurant or bar, through its owner or management, must complete and submit the Houston More Space: Main Street Program Application, located at: <https://www.houstontx.gov/planning/MoreSpace.html>, or mailing or physically delivering same to the Planning and Development Department, 6<sup>th</sup> Floor, at 611 Walker Street, Houston, Texas 77002.
- 2.5 All participating restaurants, bars, and their owners, management, and staff, shall conclude food and beverage service and close all food and beverage service within the reclaimed pedestrian area at or prior to their normal operating hours.



- 2.6 In the reclaimed pedestrian area, restaurant or bar owners, management, staff, and customers shall comply with and ensure continued compliance with all applicable government laws, regulations, permits, and orders or proclamations issued by the federal government, the Governor, the Harris County Judge, the City of Houston and Mayor, as they may be amended from time to time.
- 2.7 Furniture may be utilized in the reclaimed pedestrian area as described in the Design Guidelines. No permanent structures, aside from platforms, ramps, or guards, each secured to the reclaimed pedestrian area in accordance with the City of Houston Construction Code, are allowed. The restaurant or bar owner, management, and staff must secure or remove all furniture at the conclusion of their normal operating hours from the reclaimed pedestrian area. The City and the Downtown Management District will not be liable for any loss of furniture or other business items placed outside.
- 2.8 Restaurant owners and staff must place furniture within the reclaimed pedestrian area in a manner that does not obstruct pedestrian and driveway access, obstruct the visibility of nor interfere with the operations of METRO Rail.
- 2.9 Customers must be vacated and all furniture must be removed immediately at the request of Houston Public Works staff or Houston Fire Department to allow access to any manhole, standpipe, waterline, or other public infrastructure, whether for an emergency or non-emergency situation. Any manhole or infrastructure covered by a platform in the reclaimed pedestrian area must be signed for easy identification and access.

### **3. TERMINATION**

- 3.1 The Main Street Program as established by this Ordinance is anticipated to continue through 12:00 AM, March 31, 2022. Participants do not gain or accrue any property right or interest in the use or continued use of the public right-of-way by participation; the City is not abandoning or vacating any portions of the Main Street right-of-way. The Main Street Program may be activated, continued, suspended, or terminated in whole or in part at the discretion of the Mayor of the City of Houston or the Mayor's designee, when it is determined that the public necessity or the public health, safety and welfare require the use of the right-of-way for vehicular traffic. Termination or suspension of the Main Street Program, whether in whole or in part, automatically terminates or suspends, as applicable, the closure of portions of Main Street, and that same are no longer suspended pursuant to Section 2 of this Ordinance as of the date and time the Main Street Program is suspended or terminated.
- 3.2 The planning official or HPW Director may investigate and terminate the participation of any restaurant or bar upon its failure to comply with the requirements of the Main Street Program, or receipt of proof of the suspension or revocation of the restaurant's or bar'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 to control the spread of COVID-19.

- 3.3 The Chief of the Houston Fire Department may terminate the participation of any restaurant or bar or modify the boundaries of any reclaimed pedestrian area utilized by a restaurant or bar, if in his determination, public safety requires such action.

#### **4. CONFLICTS**

In the event of a conflict between the Main Street 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 3.** That, for the purpose of implementing the More Space: Main Street Program established by this Ordinance, the Director of Houston Public Works is authorized to close portions of Main Street between Commerce Street and Rusk Street to vehicular traffic within those blocks only, so that traffic on the cross-streets may continue, to allow the use of the Main Street right-of-way within those blocks to become an extended pedestrian area when determined to be practical and safe by the Chief of the Houston Fire Department and the Director of Houston Public Works. Houston Public Works is authorized to establish such traffic control plans and signage as required to implement this Program in accordance with all other traffic regulations of the City. These portions of Main Street are hereby designated as public sidewalks for the duration of the More Space: Main Street Program. The Director of Houston Public Works is authorized to enter into any administrative agreements with the Houston Downtown Management District necessary for services to implement this program.

**Section 4.** That this Ordinance and the Design Guidelines attached as Exhibit A modify or suspend certain provisions of the Code of Ordinances of the City of Houston, with



reference to the reclaimed pedestrian area, for the duration of the More Space: Main Street Program. These specifically include:

- Sections of Chapters 16, 18, and 23 of the Houston Construction Code are hereby modified to the extent of any conflict with the Design Guidelines attached to this Ordinance; provided however, that the Building Official or the Fire Chief may determine that the public health, safety and welfare at a particular site requires the application of non-modified standards and require compliance with the same.
- Sections 101.2 and 105.1 of the Houston Construction Code are hereby modified to the extent of any conflict associated with requiring building permits for structures located within the reclaimed pedestrian area of the “Main Street More Space Program”.
- Section 1601.1 of Chapter 16 of the Houston Construction Code is hereby modified to require building permits for the construction of wood framed assembly platforms and ramps in connection with and to located within the reclaimed pedestrian area of the “Main Street More Space Program. Anchorage and conventional light-frame construction and decking of wood framed platforms shall comply with the provisions of Sections 1604.8.3 and 602, 722.6.2(4), 1604, 1608, 2304.8 and Tables 722.62.4 and 1607.1(#4-platform assembly 100lbs uniform). The provisions of Section 1607.3 or the applicable concentrated live loads, in pounds (kilo Newtons), and identified in Table 1607.1. whichever produces the greater load values shall be used to design the proposed deck.
- Section 40-10.1(c) is hereby modified to provide that the license required for a sidewalk café is satisfied by approval of the permit described herein.
- Section 40-10.1(d) is hereby modified to provide that no fees shall be required for application to the More Space: Main Street Program; and that the traffic engineer reviewing the permit shall coordinate with the planning official and fire chief before approving any application.
- Section 40-10.1 k.(2) is hereby modified to make the following subsections for applications processed under this Ordinance inapplicable: k(2)c., k(2) d.1. and k(2)d.2.
- Section 40-10.1 k(3) is hereby modified to be inapplicable to applications processed and approved under this Ordinance.

**Section 5.** That Section 40-10.1, Sidewalk Cafés, of the Code of Ordnances of the City of Houston is hereby amended to add the definition of “Reclaimed Pedestrian Area” as defined herein for the term of this program and any extension thereof, and to apply the terms of that definition to the More Space: Main Street Program.

**Section 6.** Except as herein provided, no other ordinances, regulations or requirements of the City Code are suspended or modified.

**Section 7.** The More Space: Main Street Program shall expire on the earlier of: (i) the date the Mayor of the City of Houston (“Mayor”) states, in writing, that public necessity or the public health, safety and welfare requires the re-opening to vehicular traffic of one or more blocks of Main Street or (ii) March 31, 2022.

**Section 8.** That except as herein provided, all other ordinances, provisions of the Code, and the regulations and rules of the City, and any requirements of City-issued permits issued to a restaurant or bar, remain in full force and effect.

**Section 9.** 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 10.** 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 \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.



---

Mayor of the City of Houston

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

---

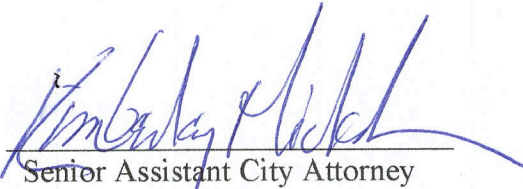
City Secretary

Prepared by Legal Dept.

KM/ 11/17/2020

Requested by Margaret Wallace-Brown, Director,  
Planning and Development Department

L.D. File No. 0612000289001



Senior Assistant City Attorney