

**ELYSIAN CITY COUNCIL
SPECIAL MEETING
MAY 28, 2020**

The Elysian City Council met in special session on Thursday, May 28, 2020 at City Hall at 6:00 pm.

Roll Call: Mayor Tom McBroom; Councilmembers Robert Houlihan, Mary Opsahl, Dennis Schnoor, and Bryan Suemnick; City Administrator Lorri Kopischke; Public Works Director Ron Greenwald; City Attorney Jason Moran. Absent: None.

Also present: Brad & Jody Zimbrich, owners of Tuckers Tavern.

Minnesota Governor Walz has announced that as part of Phase II of his Stay Safe Plan, Outdoor dining can begin on June 1, with restaurants maintaining social distancing and seating no more than 50 patrons at a time. In addition to outdoor dining, restaurants and bars will be able to continue to offer takeout, curbside, and delivery services, which have been permitted throughout the pandemic in Minnesota.

To accommodate outdoor dining in the City of Elysian, the City Council considered Resolution 707/20 that will allow and regulate outdoor cafés. The Resolution will also allow for closing of the sidewalk or street adjacent to the business if requested by the owner.

Councilmember Schnoor introduced the resolution and was seconded by Councilmember Suemnick.

CITY OF ELYSIAN
LE SUEUR COUNTY
RESOLUTION NO. 707/20

A RESOLUTION ALLOWING OUTDOOR CAFÉS

WHEREAS, the COVID-19 pandemic has created unique challenges for the City, its residents, and its businesses; and

WHEREAS, the Governor's recent Executive Orders appear to encourage outdoor dining; and

WHEREAS, it is incumbent upon the City to come up with creative solutions to encourage business and economic activity in the City of Elysian, and in an attempt to help do so for our bars and restaurants:

THE CITY OF ELYSIAN, hereby Resolves as follows:

1. That outdoor cafés shall be allowed in the City of Elysian pursuant to this Resolution until October 15, 2020, or until this Resolution is terminated earlier.
2. That a bar or restaurant which serves food shall be allowed to apply to the City for permission to conduct outdoor dining and beverage service in the form of an outdoor café. Said business shall be granted permission to set up chairs and tables for food and beverage service on an adjacent city sidewalk, or on any property the applicant owns. In addition, the City Council may, from time to time, close off City Streets by Resolution, as deemed necessary in its sole discretion, and allow business the opportunity to set up a

café in specifically designated areas of City Streets under terms and conditions deemed appropriate solely by it.

3. Any person operating, maintaining, or otherwise engaged in the business of running an outdoor café in the City shall first present a plan to the City Administrator to do so. The City Administrator shall review the plan and either approve it or deny it. The plan presented for review must contain a map delineating the size and location of the outdoor café, must list the licensee's name, address, and contact information, and proposed hours of operating including those hours where beverage alcohol would be served. If beverage alcohol is to be supplied the applicant must have a valid liquor license precedent to serving alcohol. A survey is not needed. In the event of denial by the City Administrator an applicant may appeal said denial to the City Council.

4. Each outdoor café shall adhere to the following requirements:
 - a. Permission for the café may be suspended by the City Administrator when necessary to clear the sidewalk or street for repair, improvements, public safety, special events, or any other reason deemed necessary by the City Administrator in his or her sole discretion.
 - b. The serving and consumption of beverage alcohol on a city sidewalk or street is permitted if the applicant holds a valid liquor license in good standing with both the State and City. In the event that a liquor license is revoked or suspended, an applicant shall no longer serve beverage alcohol in the outdoor café.
 - c. The outdoor café shall be roped off or otherwise demarcated as such by the business owner as approved by the City Administrator. No outdoor café shall encroach upon the property of another business or resident. In terms of the area to be encompassed by the café in regard to the City's sidewalk, a particular business shall only be entitled to occupy that sidewalk's front footage as measured parallel to the businesses' respective property lines. In the event that the café occupies a portion of the City's street, it shall adhere to any regulations set forth by the City Council hereafter.
 - d. Tables, chairs, umbrellas, and any other objects in the café shall be cleaned, maintained, and have an attractive appearance, and shall be kept in safe and good repair at all times.
 - e. Beverage alcohol to be served in the café must remain in the café.
 - f. All beverage alcohol service must cease at 11:00 P.M. and all alcohol removed from the outdoor café by 12:00 A.M.
 - g. The Applicant must ensure and take measures to that no wastepaper, trash, garbage, or other debris or material leaves the café area.
 - h. The Applicant shall ensure that patrons of the permitted café do not become disorderly or otherwise disturb the peace of the residents of the City of Elysian.
 - i. The Applicant is prohibited from installing a loudspeaker, public address system, radio, television, amplifier, or any other sound emitting device which emits sound in the café that can be heard fifty (50) feet away from the café.

5. Any applicant not adhering to the Regulations set forth herein may have their outdoor café privileges revoked or suspended by the City Administrator as deemed necessary in his or her sole discretion. In the event of suspension or revocation, any aggrieved applicant may appeal said suspension or revocation to the City Council. No applicant has any property right to occupy the City's sidewalk or street, and the City, in opening its sidewalks and streets to outdoor cafés is simply trying to be creative in encouraging economic activity as balanced against the interest of ensuring minimal public nuisance, blight, or disorderly conduct.

Upon vote being taken:

Council Members voting in the affirmative: Houlihan, McBroom, Opsahl, Schnoor, Suemnick.

Council Members voting in the negative: None.

Passed unanimously by the City Council.

Dated this 28th day of May, 2020.

Tom McBroom, Sr., Mayor

ATTEST:

Lorri Kopischke, City Administrator

The Council then discussed Resolution 708/20 that expresses opposition to Governor Walz's Executive Orders and urges the reopening of businesses and the rights of individuals to peacefully assemble.

Following considerable discussion, Councilmember Schnoor introduced the resolution and was seconded by Councilmember Houlihan.

CITY OF ELYSIAN
LE SUEUR COUNTY, MINNESOTA
RESOLUTION NO. 708/20

WHEREAS, the Mayor and the City Council for the City of Elysian, Minnesota ("Mayor") finds and Resolves the following to be in the best interest of the City of Elysian, Le Sueur County, Minnesota ("City"):

1. WHEREAS, councilmembers of the City Council for the City of Elysian, Minnesota, have taken Oaths to defend and uphold the Constitution of the United States of America and the Constitution of the State of Minnesota; and
2. WHEREAS, both the United States Constitution and the Minnesota State Constitution place restrictions and "checks and balances" on the Office of State Governor, Office of State Auditor, Office of Secretary of State, and the various other Elected Offices, and each of the

co-equal three branches of government; and

3. WHEREAS, the State derives its power solely from the People with the consent of the People; and
4. WHEREAS, all Laws and Regulations must be Constitutional, duly passed, and duly enacted to have full force and color of Law; and
5. WHEREAS, the Governor's recent Executive Orders have restricted, impeded, and in many cases closed viable businesses located within the Corporate Limits of the City of Elysian. Some of these businesses may permanently close, others have been, continue to be, and for the foreseeable future will suffer great economic harm; and
6. WHEREAS, the Governor's recent Executive Orders have restricted and impeded the free flow and movement of Elysian's residents and their ability to peacefully assemble and worship. Elysian's residents have been ordered to shelter-in-place, restrictions placed on public and family gatherings, graduation ceremonies Ordered cancelled, and recently the Governor's Executive Orders have made criminal the holding of graduation ceremonies, all the while allowing "big box" retailers, candy stores, grocery stores, and other select industries to open while others are Ordered closed; and
7. WHEREAS, we find that the Governor's various Executive Orders are not "narrowly tailored," "rational," or duly passed or approved by the Legislature, and as such both unprecedented and likely unconstitutional; and
8. WHEREAS, the Fourteenth Amendment to the United States Constitution specifically provides that "no State shall make or enforce any Law which shall abridge the privileges and immunities of the Citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;" and
9. WHEREAS, the City Council for the City of Elysian hereby and herein wishes to express its opposition to any Executive Order, Directive, Law, or Regulation, be it issued by any Governmental Official that would unlawfully restrict, impede, or interfere with the Constitutional Rights of the citizens of the City of Elysian to life, liberty or property, the ability to peacefully assemble, to worship, and to enjoy their various Constitutional Rights.

NOW THEREFORE, BASED UPON THE ABOVE, BE IT RESOLVED by the City Council for the City of Elysian, Minnesota:

1. That the City Council for the City of Elysian hereby expresses its intent to uphold and protect all of the Constitutional Rights of the Citizens of the City of Elysian; and
2. That the City Council for the City of Elysian hereby declares Elysian as a "Constitutional and Business Friendly Community;" and
3. That the City Council for the City of Elysian hereby declares its intent to oppose any infringement by Executive Order, or any other Directive, on the rights of law-abiding citizens to keep their businesses open, its residents to peacefully assemble, to worship, or to exercise their Constitutional Rights to life, liberty, property, or otherwise; and
4. That the City Council for the City of Elysian hereby requests relief from Governor Walz's Executive Orders and demands that the sole power of issuing Emergency Orders and

implementation related to the COVID-19 pandemic be restored to the individual municipalities and local government agencies; and

5. That the City Council for the City of Elysian not direct any City of Elysian resources to enforce any Executive Order or any Directive which unlawfully or unconstitutionally infringes on the rights of law-abiding citizens to keep their businesses open, its residents to peacefully assemble, to worship, or to exercise their Constitutional Rights as per both the United States Constitution and the Minnesota State Constitution; and
6. That the City Council for the City of Elysian will use any legal means to protect the Constitutional Rights of the residents of the Citizens of Elysian; and
7. That the City Council for the City of Elysian supports the choice of all residents to continue to shelter-at-home or the choice to move about freely within the City and to support the economy of Elysian while maintaining behaviors to preserve the health and safety of all residents; and
8. That the City Council for the City of Elysian encourages all citizens to follow Minnesota Department of Health and Federal CDC guidelines for social distancing and general conduct while out in public; and
9. That the City Council for the City of Elysian advises that all long-term care facilities restrict visitors, regularly check healthcare workers and residents for fevers and symptoms and limit activities within the facility to keep residents safe.

Upon vote being taken:

Council Members voting in the affirmative: Houlihan, McBroom, Schnoor, Suemnick.

Council Members voting in the negative: Opsahl.

Passed by the City Council of Elysian, this 28th day of May, 2020.

Thomas McBroom, Sr., Mayor City of Elysian

ATTEST:

Lorri Kopischke, City Administrator

Council directed that Resolution 708/20 be sent to the Office of Minnesota Governor Tim Walz for his consideration.

On motion by McBroom, seconded by Schnoor, all voting in favor, to adjourn the meeting at 6:50 pm.

Approved:

Tom McBroom, Mayor

Attested:

Lorri Kopischke, City Administrator