City of Jamestown, North Dakota

RESOLUTION

Introduced by Council Member Phillips, who moved its adoption; March 26, 2020
Be It Resolved by the City Council of the City of Jamestown, to wit:

TEMPORARY MORATORIUM PERTAINING TO THE RETAIL SALE OF ALCOHOLIC BEVERAGES

WHEREAS, the Mayor has declared a state of emergency as a result of the COVID-19 pandemic, by order and proclamation of March 14, 2020; and,

WHEREAS, the Governor of the State of North Dakota, declared, by executive order of March 19, 2020, that, "[e]ffective at 12:00 p.m., Friday, March 20, all restaurants, bars, breweries, cafes and similar on-site dining establishments are closed to on-sale/on-site patrons; take-out, delivery, curbside, drive-through or off-sale services may continue; this requirement will continue through Monday, April 6, 2020; and,

WHEREAS, pursuant to Chapter 40-05.1 of the North Dakota Century Code and the Home Rule Charter of the City of Jamestown, the City has the authority to provide for the public health, safety, and morals of the City by regulating the sale and consumption of alcoholic beverages; and,

WHEREAS, North Dakota cities are authorized under N.D.C.C. §40-05-01(1) & (29) "to enact or adopt all such ordinances, resolutions, and regulations, not repugnant to the constitution and laws of this state, as may be proper and necessary to carry into effect the powers granted to such [cities] . . . as the general welfare of the municipality may require . . ." including the power "[t]o regulate the use and . . . sale of alcoholic beverages . . ."; and,

WHEREAS, Under the City of Jamestown Municipal Code Section 5-1, the definition of an "on-sale" license is "[t]he sale of alcoholic beverages for consumption on the premises where sold"; and,

WHEREAS, the City of Jamestown Municipal Code 5-11(a) prohibits the delivery of alcohol; and,

WHEREAS, it is hereby found and declared that the health, safety and welfare of the City and its occupants will be benefited by providing appropriate means for the delivery of meals, including beverages, to individuals and families that fosters appropriate social distancing for the curbing of the COVID-19 pandemic;

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. **MORATORIUM ESTABLISHED.** A moratorium is hereby established as to the enforcement within the jurisdictional limits of the City of Jamestown of Section 5-11(a) of the City of Jamestown Municipal Code, as follows:

a) **On-sale.** Any sale of sealed cans or bottles of alcoholic beverages to customers taking delivery of prepared food from a restaurant within the City, also licensed to serve on-sale alcoholic beverages by way of "take-out," "curbside delivery," "drive-through," by agents, officers or employees of the on-sale license holder or by other lawful means of delivery shall be deemed to be an "on-sale" service or sale of such alcoholic beverages. License holder shall be responsible to ensure compliance with City Code 5-6 and 5-8 relating to the sale of individuals under the age of 21 for any individual purchasing or accepting the alcoholic beverage.

b) For purposes of this moratorium, the definition of the term "on-sale", as set forth in Section 5-1 of the Jamestown Municipal Code shall be expanded to include sealed cans or bottles of alcoholic beverages along with food or meals sold by the restaurant and served or delivered by means of "take-out", "curbside delivery", "drive-through" or other such lawful means are hereby deemed to have been consumed on the licensed premises so long as said beverages are accompanied by food purchased from the restaurant.

c) **Off-sale**. As to restrictions applicable to "off-sale" licenses under Section 5-11(a) of the City of Jamestown Code, agents, officers or employees of the license holder may accept orders for the delivery of any alcoholic beverage with prepayment arrangements. Officers, employees or agents of the license holder may deliver such sealed cans or bottles of alcoholic beverages to a private residence. License holder shall be responsible to ensure compliance with City Code 5-6 and 5-8 relating to the sale of individuals under the age of 21 for any individual purchasing or accepting the alcoholic beverage.

2. **Mayor Authorized to Implement by Further Order or Orders**. The Mayor of the City is hereby authorized to promulgate and issue one or more executive orders as may be necessary to implement and clarify the terms of this moratorium, under the authority of 2-56 and 2-57 of the City Code and hereof, which executive orders may be further ratified or amended by the City Council as may be necessary or appropriate.

3. **Effect of Moratorium – Limitation of Enforcement.** This moratorium as to the enforcement of certain regulations or ordinances of the City shall serve to instruct, order and limit the police officers and prosecutors of the City or any other law enforcement officers or agents to refrain from enforcing City ordinances contrary to the terms hereof and to refrain from charging or citing persons, firms or other entities accordingly and, furthermore, said instruction, order and limitation in enforcement shall survive the termination of this moratorium for deliveries which occur during the moratorium, whether such termination occurs by lapse of time or by affirmative act.

4. **Effective Date and Term.** This moratorium shall take effect immediately upon the adoption hereof [the "Effective Date"] and shall extend until the 4th day of May, 2020, unless it is otherwise terminated or extended by executive order of the Mayor or resolution or motion of the City Council.

ATTEST:

Sarah Hellekson, City Administrator

APPROVED:

Dwaine Heinrich, Mayor

Council Member Steele seconded the motion for adoption.

Roll Call No. 2 showed: 5 ayes, 0 nays, 0 absent.