STATE OF MINNESOTA
Executive Department

Governor Tim Walz

Emergency Executive Order 20-70

Authorizing use of State Right of Way for Outdoor Dining During the COVID-19 Peacetime Emergency

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

The COVID-19 pandemic presents an unprecedented challenge to our State. Minnesota has taken proactive steps to ensure that we are ahead of the curve on COVID-19 prevention and response. On March 13, 2020, I issued Executive Order 20-01 and declared a peacetime emergency because this pandemic, an act of nature, threatens the lives of Minnesotans, and local resources are inadequate to address the threat. After notifying the Legislature on April 13, 2020, and again on May 13, 2020, I issued Executive Orders extending the peacetime emergency declared in Executive Order 20-01.

Slowing the spread of COVID-19 has required the closure or limited operation of many businesses. These necessary closures and limitations during the COVID-19 pandemic have slowed the spread and help us prepare, but they have also been an economic hardship for business owners and employees of those impacted establishments. Our increased preparedness to treat those most vulnerable to COVID-19 allows us to slowly and safely reopen our economy in accordance with guidance from the Minnesota Department of Health ("MDH"), the Department of Employment and Economic Development ("DEED"), and the Department of Labor and Industry ("DLI"). Businesses reentering the economy must ensure compliance with the Minnesota Occupational Safety and Health Act of 1973, Minnesota Statutes 2019, Chapter 182 ("Minnesota OSHA Standards"), in addition to guidelines related to COVID-19 set forth by MDH and the Centers for Disease Control and Prevention ("MDH and CDC Guidelines").

Carefully reopening bars and restaurants to help mitigate both the public health and economic impacts of the COVID-19 pandemic is crucial for the wellbeing of our State. On May 20, 2020, I shared the Stay Safe Plan, which outlines Minnesota's phased approach for safely reopening various business and social settings, and on May 27, 2020, I issued Executive Order 20-63, which implemented the Stay Safe Plan and allowed bars and restaurants to serve food outdoors beginning on June 1, 2020. Executive Order 20-63 includes requirements for bars and restaurants

who serve food onsite to protect the health and safety of Minnesotans, such as social distancing and mask requirements for bar and restaurant workers.

Evidence from recent public health studies shows that bars and restaurants can enhance the safety of operations by conducting outdoor dining service and following safety protocols, including spacing guidelines and capacity controls. As restaurants reopen, creating distance between restaurant patrons and wait staff, in addition to placing seating away from walk spaces, entrances, and exits, will help improve the public health. Allowing restaurants additional usable space will help them achieve maximum social distancing. Using adjacent streets for seating allows for additional outdoor space. Currently, Minnesota Rules 2019, part 8810.5400, provides that "[n]o part of the right-of-way of a trunk highway or of a street over which a trunk highway is routed may be used for . . . the conduct of private business." Further, Minnesota Statutes 2019, section 160.2715, prohibits or limits certain uses of the highway and the right of way located on or within the highway. These provisions have the effect of prohibiting bars or restaurants from utilizing outdoor space located on a trunk highway right of way for outdoor dining purposes as encouraged by Executive Order 20-63. By easing these restrictions, we can provide restaurants with additional space to achieve social distancing goals while being outdoors and protect the public health.

In Minnesota Statutes 2019, section 12.02, the Minnesota Legislature recognized the "existing and increasing possibility of the occurrence of natural and other disasters of major size and destructiveness" and conferred upon the Governor the emergency powers "in order to (1) ensure that preparations of this state will be adequate to deal with disasters, (2) generally protect the public peace, health, and safety, and (3) preserve the lives and property of the people of the state." Pursuant to Minnesota Statutes 2019, section 12.21, subdivision 1, the Governor has general authority to control the State's emergency management as well as carry out the provisions of Minnesota's Emergency Management Act.

Minnesota Statutes, section 12.21, subdivision 3, states that the Governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions" of Minnesota Statutes 2019, Chapter 12. When approved by the Executive Council and filed in the Office of the Secretary of State, such orders and rules have the force and effect of law during the pendency of a peacetime emergency. Any inconsistent rules or ordinances of any agency or political subdivision of the State are suspended for the duration of the emergency.

For these reasons, I order as follows:

1. Definitions.

    a. "Bar" and "restaurant" mean only those food establishments licensed under Minnesota Statutes 2019, Chapter 157.

    b. "Trunk highway right of way" means those streets and roads under the jurisdiction of the Minnesota Department of Transportation ("MnDOT"), and for the purposes of this Executive Order, excludes the Interstate Highway System.

c. "Municipality" means a city or township authorized by the Commissioner of Transportation to issue an outdoor dining permit to a bar or restaurant for the use of trunk highway right of way to conduct outdoor food and beverage services.

d. "Outdoor dining permit" is a permit issued by a municipality to a permitted business for use of trunk highway right of way for the placement of outdoor dining components to conduct outdoor food and beverage services.

e. "Outdoor dining components" are those items placed on the trunk highway right of way by the permitted business to create an outdoor dining area, including tables, chairs, and refuse containers.

f. "Permitted business" means a bar or restaurant that has been issued an outdoor dining permit.

2. The restrictions in Minnesota Rules 2019, part 8810.5400, and Minnesota Statutes 2019, section 160.2715, are waived to the extent that they prohibit or limit use of the trunk highway right of way by bars and restaurants for the purposes of providing outdoor dining services. This Executive Order does not apply to any right of way that is under the jurisdiction of a local government entity that has been designated as the road authority.

3. I authorize the Commissioner of Transportation to develop and implement a process to issue temporary permits to municipalities in Minnesota to allow and authorize the municipality to issue an outdoor dining permit to a bar or restaurant for the use of trunk highway right of way to conduct outdoor food and beverage services. The development and implementation of this process is not subject to the requirements in Minnesota Statutes 2019, Chapter 14, pertaining to agency rulemaking.

4. MnDOT is authorized to exclude areas of trunk highway right of way for outdoor dining services if the area is determined to not be suitable based on safety considerations, current usage, or any other pertinent data.

5. MnDOT may require permitted municipalities to comply with additional conditions and restrictions, such as setting and enforcing appropriate traffic control measures designed to protect the safety of the traveling public and those individuals participating in outdoor dining activities.

6. In issuing an outdoor dining permit to a bar or restaurant, permitted municipalities must require that the bar or restaurant:

    a. Limit its use of trunk highway right of way to food and beverage service only.

    b. Adhere to:

        i. Applicable restrictions as set forth by Executive Order 20-63 or any subsequent executive order.

ii. The Minnesota Food Code, Minnesota Rules 2019, Chapter 4626.

iii. Applicable liquor licensing and regulations as provided in Minnesota Statutes 2019, Chapter 340A.

iv. The Minnesota OSHA Standards.

v. Applicable federal law, such as the Americans with Disabilities Act.

vi. MDH and CDC Guidelines and applicable guidance available at DEED's website (https://mn.gov/deed/guidance).

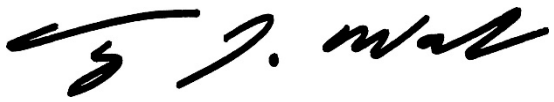
vii. Applicable state, local, and municipal rules, regulations, and ordinances.

7. Nothing in this Executive Order may be construed to provide an exemption from other applicable state laws or federal regulations, such as restrictions on outdoor advertising.

Pursuant to Minnesota Statutes 2019, section 4.035, subdivision 2, and section 12.32, this Executive Order is effective immediately upon approval of the Executive Council. It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority, whichever occurs sooner.

A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on June 2, 2020.



Tim Walz
Governor

Filed According to Law:

Steve Simon
Secretary of State

Approved by the Executive Council on June 3, 2020:

Alice Roberts-Davis
Secretary, Executive Council

Filed on June 3, 2020
Office of the Minnesota
Secretary of State,
Steve Simon