

ORDINANCE 22-01

AN ORDINANCE ESTABLISHING AND APPROVING THE EXPANDED OUTDOOR DINING PROGRAM IN THE DOWNTOWN CORRIDOR

WHEREAS, on June 17, 2020, the Common Council passed Ordinance 20-11, which suspended portions of the Bloomington Municipal Code during the public health emergency caused by the COVID-19 virus; and

WHEREAS, Ordinance 20-11 relaxed certain City regulations, including sign and seating encroachment regulations, which made it possible to assist local restaurants by extending the outdoor seating area into parklets; and

WHEREAS, the City also temporarily closed portions of Kirkwood Avenue to make it available for enhanced social distancing and outdoor seating; and

WHEREAS, due to the success of the program and the continued necessity of additional space for social distancing in response to the COVID-19 pandemic, the Common Council extended the terms of Ordinance 20-11 by resolutions through October 31, 2021; and

WHEREAS, the public health emergency and the COVID-19 pandemic, as well as their impact on Bloomington's local economy, continue; and

WHEREAS, the measures taken in such a program continue to be useful to our downtown for the health and safety of downtown patrons as well as the wellbeing of our vibrant downtown business community; and

WHEREAS, the City desires to continue the Expanded Outdoor Dining Program ("Program") in the downtown corridor through 2022 as detailed by the program guidelines that are attached to this Ordinance as Exhibit A; and

WHEREAS, to continue the Program, it is necessary for the Common Council to suspend certain elements of the Municipal Code and allow for the temporary closure of Kirkwood Avenue, similar to what was done in Ordinance 20-11; and

WHEREAS, the Board of Public Works on December 21, 2021, approved Resolution 21-71 authorizing alternative seating and encroachment policies and expressing its support for the Program; and

WHEREAS, the Common Council therefore wishes to extend the Program through proactive measures to assist the Bloomington business community's recovery;

NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY INDIANA, THAT:

SECTION 1. The Common Council hereby approves the Program as set forth by the Program Guidelines in Exhibit A.

SECTION 2. The Program shall operate from March 1, 2022, until October 31, 2022, unless earlier terminated under SECTION 7 of this Ordinance. The Common Council reserves the right to further extend the term of this Ordinance for additional one-year terms through an authorizing resolution.

SECTION 3. The Common Council authorizes City Staff, pursuant to Board of Public Works Resolution 21-71 and in coordination with the Fire, Engineering, and Planning and Transportation departments to close portions of Kirkwood Avenue from Walnut Street to Indiana Avenue as necessary to implement the Program.

SECTION 4. The Common Council hereby adopts the program guidelines and the modifications to the seating and encroachment permit policies as passed by the Board of Public Works in Resolution 21-71, attached to this Ordinance as Exhibit B.

SECTION 5. The Common Council approves fees for the operation of the Program in the amount of \$50 permitting fee per participating business in the Program, and the following fee schedule:

Program	Fee	Condition
Parklet	\$1,250 per space	Cost may be split between businesses sharing parklet space(s)
Kirkwood Seating	\$500	Business with seating capacity under 20 seats
	\$1,250	Business with seating capacity between 20 and 100 seats
	\$3,500	Business with seating capacity over 100 seats

In the event that the Common Council extends the Program under SECTION 2 of this Ordinance, it shall explicitly set new fees in the authorizing Resolution.

SECTION 6. Through December 31, 2022, the City of Bloomington Common Council hereby temporarily suspends the following sections of the Bloomington Municipal Code for the sole purpose of extending the Program:

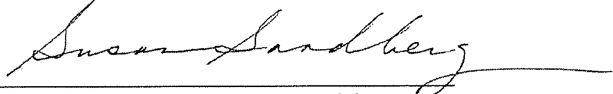
Standard	B.M.C. Section	Temporary Waiver and Guidelines
Standards for Encroachment	12.06	The businesses participating in the Program and their seating areas shall be subject to the Program Guidelines in <u>Exhibit A</u> and B.M.C. 12.06 as modified by the Board of Public Works Resolution 21-71. Existing encroachments shall continue to be subject to the full rules, requirements, and conditions of B.M.C. 12.06.
Use of Right-of-Way	12.08	Program participants shall not be required to obtain an additional permit for the use of right-of-way under B.M.C. 12.08, provided that the right of way is not blocked or used for anything other than those uses explicitly authorized by the Program. All other uses, closures, or access to right-of-way as indicated in B.M.C. 12.08, even in areas being used for the Program or by Program participants, shall continue to be subject to the full rules, requirements, and conditions of B.M.C. 12.08.
Intoxicating beverages	14.36.090	Designated parklets and areas along Kirkwood participating in the Program shall be excepted

		from the prohibition of consuming alcoholic beverages in or on any public street or right of way as long as the beverage is procured at a participating business that is operating in accordance with a license from the Indiana Alcohol and Tobacco Commission. It shall be unlawful for any participating business to continue to serve alcohol within the Kirkwood street closure, excepting permanent encroachments under B.M.C. 12.06, past 11:00 p.m.
Loading Zones	15.32.100	For the duration of the Kirkwood closure, the loading zones from 100 E. Kirkwood through the 500 block of E. Kirkwood, as indicated in Schedule O of B.M.C. 15.32.100, shall be suspended.
Parking Meter Charges	15.40.010 Schedule U	Meter fees for onstreet parking spaces that are to be used as parklets and from 100 E Kirkwood through the 500 block of E Kirkwood Avenue shall be suspended.
Signs	20.04.100	For the avoidance of doubt, any signs that may be required under the Program, shall be considered public signs under B.M.C. 20.04.100(c)(2)(A).

SECTION 7. In cases of emergency, lack of participation, or any other reason that may render the Program impractical, the Common Council authorizes City Staff to permanently or temporarily suspend the Program, in part or in whole. If City Staff suspends operation of the Program or any part of the Program, except in cases of emergency, it shall provide notice to participating businesses no later than 14 days prior to suspension and report back to the Common Council the reasons for the suspension within 45 days of the action taken. In cases of emergency, any part or participating area of the Program may be immediately terminated. City staff shall notify businesses and City Council of the emergency termination within 72-hours of the action.

SECTION 8. If any section, sentence, or provision of this ordinance, or the application thereof to any person or circumstance, shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid section, sentence, provision or application, and to this end the provisions of this ordinance are declared to be severable.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 19 day of January, 2022.


 SUSAN SANDBERG, President
 Bloomington Common Council

ATTEST:



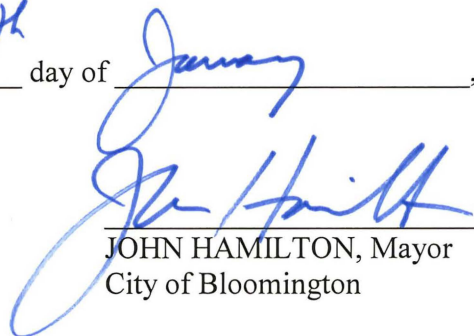
NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 20 day of January, 2022.



NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 24th day of January, 2022.



JOHN HAMILTON, Mayor
City of Bloomington

SYNOPSIS

Ordinance 22-01 establishes the Expanded Outdoor Dining in the Downtown Corridor Program for the continued use of parklets and Kirkwood Avenue for additional seating space and suspends certain portion of the Bloomington Municipal Code in order to facilitate the Program. The Program is authorized to continue through October 31, 2022, and may be extended by an authorizing resolution by the Common Council.

Distributed to: Clerk, Controller, Council Attorney, Economic & Sustainable Development Department, Legal, Mayor, and Planning & Transportation Department.

Exhibit A: Program Guidelines

Costs to Participating Businesses:

- All:
 - All extended outdoor dining covered under this program will be subject to the \$50 permitting fee to the Engineering Department.
 - All fees are due in full by Mar. 1, 2022.
 - Businesses are responsible for any direct costs associated with utilizing a parklet or outdoor dining on Kirkwood, such as furniture or heaters.
 - Each participating business must submit a certificate of insurance to the Planning and Transportation and Economic and Sustainable Development Departments establishing proof of a comprehensive general liability policy naming the City of Bloomington as additional insured to the extent of at least \$500,000 bodily injury and \$100,000 property damage, which shall be in effect during the term of this authorization.
- Parklets:
 - Cost to businesses will be \$1,250 per parking space for the 2022 season, payable to Parking Services. A two-space parklet will cost \$2,500, plus the permitting fee(s).
 - Businesses which share a parklet may split the cost between them.
- Kirkwood conversion outdoor dining permit:
 - For businesses with a capacity of under 20, the cost will be \$500 for utilization of the extended outdoor space on Kirkwood during the 2022 season.
 - For businesses with a capacity between 20 and 100, the cost will be \$1,250 for utilization of the extended outdoor space on Kirkwood during the 2022 season.
 - For businesses with a capacity 100 and above, the cost will be \$3,500 for utilization of the extended outdoor space on Kirkwood during the 2022 season.

Parklet Logistics:

- Eligibility:
 - Eligibility is limited to any food service establishment adjacent to metered parking in downtown Bloomington.
 - All participating businesses must agree to cease alcohol sales in parklets by midnight.
 - Eligible businesses must complete the application and payment process as outlined in this memo.
- Application process:
 - Application form will go live on the City's webpage on Jan. 20, 2022.
 - Applications are due by Feb. 11, 2022. Businesses may submit applications in advance of the deadline.
 - Fees are payable by check or card to Parking Services by Mar. 1, 2022.
- Implementation:
 - The Parking Services division in the Department of Public Works will install and remove the orange jersey barriers at the beginning and end of the 2022 season.
 - City staff will fill the jersey barriers with water on the day they are installed. Participating businesses will be required to top off the barriers with water as needed, and the barriers must remain sufficiently full for safety reasons.
 - If the weather in mid-Mar. 2022 is not conducive to outdoor dining, City staff may exercise discretion on the exact dates that the parklets are installed
 - If a parklet is removed, either by request of the business or by determination of City staff, it may not be reimplemented in the same calendar year. Any fees paid by the business will not be refunded
- Requirements for participating businesses:
 - Participating businesses are required to provide their own furniture, decorations, etc.

- Participating businesses must meet all local, state, and national legal requirements for their extended outdoor seating, including those from the Indiana Alcohol Tobacco Commission (ATC), state and county health department, and all Americans with Disabilities Act (ADA), safety and insurance requirements.
- Participating businesses must comply with Indiana Fire Code regulations relating to the use of heaters and tents, specifically Chapter 31, Section 3107.4.
 - Tents are allowed to be used on a temporary basis, with a maximum cumulative number of 30 days of operation in a calendar year
 - Heaters are allowed to operate but must be 10 feet from any combustible material, including tents, buildings, seating, awnings, etc.

Kirkwood Conversion Logistics:

- Eligibility
 - Eligibility is limited to any business or organization located in the participating blocks of Kirkwood Ave. This program is focused on, but not limited to, food service establishments.
 - All participating businesses must agree to cease alcohol sales in parklets and on Kirkwood by midnight.
- Application process:
 - Application form will go live on the City's webpage on Jan. 20, 2022.
 - Applications are due by Feb.11, 2022. Businesses may submit applications in advance of the deadline.
 - Fees are payable by check or card to Parking Services by Mar. 1, 2022.
- Implementation logistics:
 - City staff will temporarily reconvert the participating 2.5 blocks of Kirkwood Ave. during the 2022 season. No permanent physical changes will be made to the streetscape.
 - All cross streets will remain open.
 - A fire lane will be left in the middle of the street as necessary, as determined by the Bloomington Fire Department.
 - Where the street is closed with a contiguous barrier (i.e. orange jersey barriers as opposed to bollards), there will be a bike lane so that bikes and scooters may retain a path despite Kirkwood being a dismount zone.
 - City staff have analyzed the quantity and location of ADA parking spaces in the downtown area and are in the process of determining where additional ADA spaces can be added, taking into consideration which blocks of Kirkwood will be closed to vehicular traffic in 2022. These additional ADA spaces will be implemented in the spring of 2022, with exact dates determined by weather.
 - Areas not occupied by businesses or the fire lane will have greater arts programming, such as live music, mural and plein air painting, performances, or festivals. The nature and timing of this programming will be determined by City staff, in conjunction with community stakeholders.
- Requirements for participating businesses:
 - Participating businesses are required to provide their own furniture, decorations, etc.
 - Participating businesses must meet all local, state, and national legal requirements for their extended outdoor seating, including those from the ATC, state and county health department, and all ADA, safety, and insurance requirements.
 - All businesses utilizing the extended outdoor space on Kirkwood will be required to have a temporary ADA-compliant ramp from the sidewalk into the section of the street they are utilizing.
 - Participating businesses must comply with Indiana Fire Code regulations relating to the use of heaters and tents, specifically Chapter 31, Section 3107.4.
 - Tents are allowed to be used on a temporary basis, with a maximum cumulative number of 30 days of operation in a calendar year
 - Heaters are allowed to operate but must be 10 feet from any combustible material, including tents, buildings, seating, awnings, etc.

RESOLUTION 2021-71

Authorizing the Planning & Transportation Department to Utilize an Alternative Procedure for Sidewalk Seating and Merchandising Encroachments and to Approve Applications for Said Encroachments as Part of an Initiative to Assist the Local Business Community's Recovery Following the COVID-19 Pandemic

- WHEREAS, the City of Bloomington, along with the rest of the country, remains in the midst of a public health emergency due to the COVID-19 pandemic; and
- WHEREAS, on June 8, 2020, the Board of Public Works passed Resolution 2020-28 that allowed for the temporary closure of Kirkwood Avenue and authorized an alternative procedure for sidewalk seating and merchandise encroachments; and
- WHEREAS, the Board extended the program and authorization in on June 9, 2021; and
- WHEREAS, City staff have proposed extending the seating program along Kirkwood Avenue an additional year pursuant to a new authorizing ordinance; and
- WHEREAS, pursuant to Chapter 12.06 of the Bloomington Municipal Code, the Board has authority to grant final approval of all sidewalk seating and merchandising encroachment applications; and
- WHEREAS, the City Council is currently considering Ordinance 22-02, which proposes a temporary waiver of certain formalities related to seating and merchandising encroachments and other municipal regulations, and
- WHEREAS, among the measures being taken by the City to address the economic fallout felt by Bloomington's local business community is a request that the continue the seating program necessitating the City to close portions of Kirkwood Avenue to vehicular traffic in order to expand seating capacity into the right-of-way so that local businesses may safely serve additional patrons; and
- WHEREAS, a temporary relaxation of the City's seating and merchandising encroachment regulations would assist the local business community with its continued recovery;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS FOR THE CITY OF BLOOMINGTON, INDIANA,

- Section 1. Beginning on March 1, 2021, for the limited purpose of those areas along Kirkwood Avenue where the City will be closing portions of the roadway to vehicular traffic, the City's Seating and Merchandising Encroachment Application and other rules related to seating and merchandising encroachments are modified as described in proposed City Council Ordinance 22-02, portions of which are copied below. The specific temporary measures related to sidewalk seating and merchandising encroachments are as follows:

1. The following portions of the City's application for a seating and/or merchandising encroachment shall be temporarily suspended or modified:

Under Seating and Retail Requirements:

Suspend:

“(1) Proposed use, materials, colors and design”

“(2) Relationship of the outdoor seating to the adjacent existing building with identified uses and entrances;”

“(5) The existing and proposed circulation pattern for pedestrians and other ambulatory citizens with exact dimensions of the clear straight pathway;”

Add:

Require proof of approval from the Monroe County Department of Health and, where applicable, Indiana Alcohol and Tobacco Commission.

Under Additional Requirements:

Suspend:

“(2) Application / Renewal Fee: To process an initial application, or renewal, for an outdoor seating or merchandising encroachment permit at a specific location, the fee is \$100.00. Only payment by cash, check or money order made payable to the City of Bloomington will be accepted. No application will be processed until the fee is collected in full.”

“(3) No fee shall be charged for processing applications for encroachments that will be limited to four days or less in a calendar year.”

“(4) No refund shall be made where a permit is revoked or suspended for any reason. “

Add:

Each participating business must submit a certificate of insurance to the Planning and Transportation Department establishing proof of a comprehensive general liability policy naming the City of Bloomington as additional insured to the extent of at least \$500,000 bodily injury and \$100,000 property damage, which shall be in effect during the term of this authorization.

Under Permit Issuance and Conditions:

Add:

“(1) Each permit shall be effective for the period of approval granted by the Board of Public Works or staff, as the case may be.”

“(7) All signage must be in compliance with the Bloomington Municipal Code and/or any temporarily altered signage requirements.”

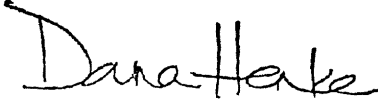
Section 2. Staff at the Economic and Sustainable Development Department are authorized to receive and give final approval to an application submitted by a Kirkwood merchant for additional seating and/or merchandising encroachments from March 1, 2022, through October 31, 2022, provided that the submitted application(s) meets all requirements as modified by this Resolution and by anticipated City Council Ordinance 22-02 and the attached Program Guidelines. No additional approval from this Board shall be required.

Section 3. This Resolution shall only have any force and effect provided that the City Council passes proposed Ordinance 22-02. It is anticipated that the City Council will consider Ordinance 22-02 for final approval on January 19, 2022. In the event that Ordinance 22-02 is approved with no significant substantive changes that would have an impact on this Resolution, this Resolution may be considered to be in full force and effect upon passage of Ordinance 22-02 by the City Council.

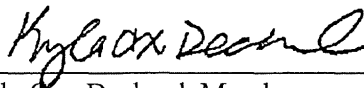
Section 4. These unique measures are temporary in nature, and shall be in place until October 31, 2022, unless said measures are extended by the City Council or this Board, as the case may be.

PASSED AND ADOPTED by the Board of Public Works of the City of Bloomington, Monroe County, Indiana, upon this 21st day of December, 2022.

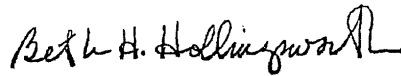
BOARD OF PUBLIC WORKS:



Dana Henke, President



Kyla Cox Deckard, Member



Beth H. Hollingsworth, Member