

CITY COUNCIL

ORDINANCE NO. 2020- \_

AN EMERGENCY ORDINANCE REGULATING THE TEMPORARY  
CREATION AND EXTENSION OF COMMERCIAL SPACE AS RELATED TO THE  
COVID-19 GLOBAL PANDEMIC

**Preamble**

WHEREAS, the Bloomington City Council is the official governing body of the City of Bloomington, Minnesota (“City”); and

WHEREAS, on March 13, 2020, the Governor of Minnesota issued Emergency Executive Order 20-01 declaring a Peacetime Emergency and Coordinating Minnesota’s Strategy to Protect Minnesotans from COVID-19; and

WHEREAS, the Mayor of the City of Bloomington, Minnesota (“Mayor”) declared an Emergency to exist in the City of Bloomington, Minnesota (“City”) effective 6:00 p.m. on March 15, 2020 upon signing Declaration 2020-1; and

WHEREAS, Ordinance No. 2020-7 invoked the City’s Emergency Operations Plans and the Pandemic Response Plan and authorized the portions that are necessary for response to and recovery from the Emergency related to the novel coronavirus and the resulting COVID-19 disease as declared by the Mayor in Declaration No. 2020-1; and

WHEREAS, Ordinance No. 2020-7 declared that to the extent normal state laws and city policies and procedures impede an efficient response or compliance with federal and state directives and recommendations, the City Manager, Emergency Management (“Coordinator”), and their designees were authorized to suspend compliance with those laws, policies, and procedures authorized by the Emergency Executive Order 20-01 and by Minnesota Statutes, Sections 12.32 and 12.37, and to take those actions necessary to protect the public health, safety, and welfare; and

WHEREAS, Ordinance No. 2020-8, continued to operationalize the City’s Emergency Operations Plan and the Pandemic Response plan invoked by Ordinance No. 2020-7 until June 30, 2020, unless rescinded earlier by resolution of the City Council; and

WHEREAS, on March 16, 2020, the Governor of Minnesota issued Executive Order 20-04 ordering the closure of bars, restaurants, and other places of public accommodations; and

WHEREAS, on May 13, 2020 the Governor of Minnesota issued Executive Order 20-56 regarding safely reopening Minnesota’s economy and ensuring safe non-work activities during the COVID-19 Peacetime Emergency, which set forth the following: “ Plan to reopen bars, restaurants, and other places of public accommodation. The Commissioners of Health, Employment and Economic Development, and Labor and Industry are directed to develop a phased plan to achieve the limited and safe reopening of bars, restaurants, and other places of public accommodation

beginning on June 1, 2020. This plan will be ready for presentation to the public no later than May 20, 2020”; and

WHEREAS, on May 20, 2020, the State of Minnesota issued the “Stay Safe MN” Plan that provides for, among other things, for the safe reopening of bars, restaurants on June 1, 2020 provided a “COVID-19 Preparedness Plan” has been prepared and specific guidelines are maintained as set forth by the State Departments of Health, Employment and Economic Development, and Labor and Industry (“State Guidelines”); and

WHEREAS, the timing of the Governor’s issuance of the Stay Safe MN Plan prevented the City from providing ten-days published notice of the public hearing on this Ordinance prior to the regularly scheduled June 1, 2020 City Council meeting, because the Mayor and City Council find it is in the best interests of the public that businesses have sufficient time to adequately prepare to safely open outdoor service on June 1, 2020, and because the Mayor and City Council find it is in the best interests of the public to allow City staff the greatest amount of time possible to review requests to safely open such outdoor service on June 1, 2020; so the Mayor called an emergency meeting for May 26, 2020 at noon; and

WHEREAS, the Mayor and City Council believe an emergency ordinance is necessary for the immediate preservation of the public peace, health, morals, safety or welfare of the city so that the City’s businesses are adequately prepared to reopen consistent with requirements of State Law, Executive Order 20-56, the Stay Safe MN Plan and the requirements contained in each businesses COVID-19 Preparedness Plan, the State Guidelines, City Code, this Ordinance, and all other applicable laws, regulations, and requirements; and

WHEREAS, in furtherance of the federal, state and local government response, the City Council recognizes there is a need to provide multiple additional and alternative customer service areas on commercial sites in the City in order to protect public health and safety by limiting forward facing exchanges between customers and employees, and by promoting physical and social distancing between persons engaged in business activities within the City; and

WHEREAS, the City Council recognizes the continued risk and threat of community spread of the COVID-19 virus and the negative impact it has had on businesses and further recognizes the potential negative impact that may continue upon reopening if businesses do not have the ability to provide required distancing between patrons and employees while operating; and

WHEREAS, the City Council believes it is in the best interests of the City and its businesses to allow for the temporary creation or expansion of commercial areas so long as such businesses can provide evidence of their compliance with certain requirements for the immediate and sustained preservation of public peace, health, morals, safety, and the welfare of the City; and

WHEREAS, the City Council recognizes that the federal, state and local government laws, regulations, and guidance may change as we continue to learn more about the COVID-19 virus and the impacts of the temporary creation or extension our commercial areas contemplated in this

Ordinance, and the City Council desires the City's ongoing responses to those changes to appropriately preserve and maintain public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BLOOMINGTON, MINNESOTA, DOES HEREBY ORDAIN:

Section 1. The foregoing recitals of the preamble are incorporated herein by reference.

Section 2. Notwithstanding any Bloomington City Code provision to the contrary, an existing on-sale alcoholic beverage license holder may temporarily amend the licensed premises to include or expand temporary commercial areas so long as the licensed premises remains compact and contiguous.

Section 3. A business creating or expanding a temporary commercial area may be provided with a permit from the issuing authority so long as the following information has been received by the issuing authority:

1. A site plan; security plan; parking, pedestrian circulation, and traffic directional plan; and fire safety plan; if an on-sale alcoholic beverage license holder, the site plan must clearly show the proposed licensed premises and describe how the license holder will physically mark the licensed premises;
2. If an on-sale alcoholic beverage license holder, then the insurance must meet the requirements of section § 13.16 of the City Code for the temporarily amended licensed premises;
3. If the business is not the fee owner of the temporary commercial space, then the business must submit written consent from the fee owner of the commercial space;
4. Evidence of efforts to comply with the Stay Safe MN Plan including the COVID-19 Preparedness Plan and the State Guidelines; and
5. Any other evidence specifically requested in advance by the issuing authority.

Section 4. The City Council approves the attached form of the registration permit to temporarily amend the commercial area/licensed premises (Exhibit A) and grants the authority for the issuing authority to issue or revoke such permits without further City Council action. Any issued permits for commercial outdoor patios are not effective until June 1, 2020 as provided in the Stay Safe MN Plan and the State Guidelines, however commercial establishments may commence preparations prior to June 1, 2020.

Section 5. Unless specifically authorized by federal, state, or local officials, said temporary commercial areas must not be located in the public right of way or in fire or bike lanes; may not impede sidewalk usage or block disabled parking spaces or ramps; and must comply with the American with Disabilities Act accessibility standards. The temporary commercial area may be an outdoor patio-like space.

Section 6. Permittees must not create nuisance conditions for surrounding property owners. Amplified and live music in the temporary commercial area must end by 10:00 p.m.

Section 7. Permittees are authorized to erect temporary tables, tents, and sun or rain shelters. Any structure/tent/shelter requiring state building and fire code permits must submit plans and applications for accelerated review by City staff prior to being occupied by patrons or employees of the Permittee.

Section 8. Permittees must comply with all other applicable federal, state, and City statutes, laws, regulations, and ordinances.

Section 9. The City Manager, or its designee, shall have the authority to establish and amend rules and procedures to implement the terms of this Ordinance, as needed, and to provide a report of such rules and procedures to the City Council.

Section 10. No zoning, conditional use, or other permit as otherwise required under City Code shall be required for such temporary commercial operations except as set forth or allowable by this Ordinance.

Section 11. The terms and conditions of this Ordinance may be modified or clarified by subsequent City Council action and those changes may have retroactive effect.

Section 12. The issuing authority make revoke the permit if the permittee violates any federal, state, and City of Bloomington statute, law, regulation, or ordinance; and when this Ordinance expires or has been rescinded.

Section 13. The authority granted in this Ordinance shall not otherwise allow any use or operation that is not in compliance with any federal laws or regulations, Minnesota statutes, rules, and regulations, including the Minnesota State Building and Fire Codes, and the Minnesota and City alcohol licensing regulations.

Section 14. This Ordinance was adopted by at least five members of the City Council as required by Section 3.06 of the City Charter.

Section 15. The City Clerk is authorized and directed to file and to post notice of this Ordinance and any emergency regulations as authorized and required by State law, City Charter, and City Code.

Section 16. This Ordinance shall take effect immediately upon passage as permitted by Section 3.09 of the City Charter, and shall remain in place unless rescinded by the City Council by resolution or until the local emergency related to this COVID-19 pandemic is terminated.

Passed and adopted this \_\_\_\_ day of May, 2020.

/s/\_\_\_\_  
Mayor

ATTEST:

/s/\_\_\_\_  
Secretary to the Council

Approved:  
/s/\_\_\_\_\_  
City Attorney



## Registration for Permit to Allow for the Temporary Creation or Extension of Commercial Space

<b>Select one and then complete the following information:</b>	
<input type="checkbox"/> Business serving Alcoholic Beverages	<input type="checkbox"/> Business not serving Alcoholic Beverages
Business Name	
Business Owner	
Address	
Contact Person	
Email	
Phone	
<b>If the owner of the property is different than the Business Owner, complete the following information regarding the property owner:</b>	
Property Owner	
Address	
Contact Person	
Email	
Phone	
<input type="checkbox"/> Initial Here if written consent of the property owner has been submitted to the City	
<b>Site Plan Information</b>	
Current Capacity	
Indoor:	Outdoor:
Proposed Capacity	
Indoor:	Outdoor:
<input type="checkbox"/> Initial Here if your proposed capacity complies with Stay Safe MN requirements and State Guidelines.	
<input type="checkbox"/> Initial Here if Site Plan has been submitted to the City showing the following:	
	Location(s) of seating. Seating may not obstruct sidewalks, required drive aisles, or fire lanes. The outdoor dining area must be at least 50 feet away from abutting properties zoned and used residentially.
	Quantity of seating (include #s). The number of added temporary outdoor seating must not exceed the number of indoor seats.
	Description of how seating area will be marked (i.e., ropes, cones, planters, fencing, etc). Seating must be separated from vehicles by a substantial barrier(s). If landscaping will be removed to accommodate the outdoor dining, then it must be replaced by May 31, 2021.
	Description and location of any structures (including tents, canopies, etc)
	Description of security plan
	Description of parking, pedestrian circulation, and traffic directional plan. Sufficient off-street parking must be preserved.
<b>Additional Requirements:</b>	

	Initial Here if you intend to have amplified or live sound/music outside. Amplified and live music in the temporary commercial area is not allowed after 10:00 p.m. and before 9:00 a.m. if within 300 feet of properties zoned and used residentially. City Code compliance is required.
	Initial Here to acknowledge that you have a sufficient setback from surrounding properties.
	Initial Here to acknowledge that outdoor dining spaces must be kept in a clean and orderly manner and that no food or beverages or unwrapped plates, cups, silverware and the like may be stored outdoors.
	Initial Here to acknowledge that the hours of operation for outdoor dining will comply with City Code.
	Initial Here if you intend to add new electrical or plumbing connections. The business is required to obtain required approvals and inspections.
	Initial Here if the Business has complied with the Stay Safe MN Plan including the COVID-19 Preparedness Plan and the State Guidelines
<b>If the Business sells, serves, or allows consumption of Alcoholic Beverages, complete the following:</b>	
	Initial Here if you have submitted proof of insurance for the temporary amended licensed premises to the City (only for on-sale alcoholic beverage license holders as required by § 13.16 of the City Code)
	Initial here if you have submitted proof that the licensed premises will be completely enclosed by a fence and that access to the fenced area will be through the licensed business.
	Initial here to certify that the Business currently complies and will continue to comply with all applicable federal, state and City alcohol laws, rules, and regulations.

By signing below, I hereby certify the following:

- The information provided on this form is accurate.
- I will comply with all building code and fire code regulations and understand that violations of such codes may be grounds for revocation and may limit my ability to have temporary outdoor dining space.
- I have read and acknowledge the laws, regulations, and requirements described in City Ordinance 2020-\_\_ and this form.
- I understand that additional permits or approvals may be required.
- I understand that this permit is temporary and may be rescinded or suspended as required by federal, state, or local action.
- I understand the City may inspect the commercial space any time to enforce compliance with the requirements of the laws, rules, and regulations and to suggest improvements in the interests of public health, safety, and welfare.
- (For alcohol license holders) I understand that by submitting this form, I am altering the licensed premises of my alcohol license. I understand that any violations of federal, state or local laws, rules, or regulations may result in civil or criminal penalties against me or my against my license. I further understand that liability insurance must be maintained for the entire licensed premises at all times, including any temporary licensed premises.

Restaurant Owner Signature \_\_\_\_\_

Date \_\_\_\_\_

Property Owner Signature \_\_\_\_\_

Date \_\_\_\_\_

Submit completed form to: Bloomington City Clerk, 1800 West Old Shakopee Road, Bloomington, MN 55431 or [cityclerk@BloomingtonMN.gov](mailto:cityclerk@BloomingtonMN.gov). You may request expedited review.

Last updated May 22, 2020.