



**CITY MANAGER
EXECUTIVE ORDER 2022-03
OFF PREMISE DINING & BAR OPERATIONS**



March 21, 2022

A handwritten signature in black ink, appearing to read "Tim Gleason".

Tim Gleason, City Manager

§ 22.3.1 AUTHORITY

This executive order is issued pursuant to Chapter 38, Section 78(C) of the City Code.

§ 22.3.2 BACKGROUND

To help provide safer dining options as a result of the COVID-19 pandemic, the City streamlined its process for allowing off-premise dining using its emergency powers. Although the City Council recently repealed its emergency ordinance, the City Council adopted a companion ordinance that amended the City Code to allow the City Manager to establish, by written executive order, guidelines and provisions that allow outdoor dining inconsistent with the City's standard approval process.

§ 22.3.3 ADOPTION OF RULES FOR OUTDOOR SERVICE OPERATIONS

- A. Effective April 11, 2022, the Outdoor Dining & Bar Service Operation Rules, attached as Exhibit A, shall apply to establishments providing regulated outdoor dining and/or bar service. Any applicable fees shall be waived. In order to operate an outdoor service area, the application and agreement, similar in substance to that attached as Exhibit B, and a floor plan of the proposed outdoor service area (hand drawn plans will be acceptable) must be submitted and approved by the City Manager, or designee, prior to the opening any off premise outdoor service area.
- B. All Establishments must comply with all ADA requirements and sign the City's Accessibility Acknowledgment Notice, included in Exhibit B.
- C. Any establishment utilizing outdoor heating must comply with the City's Temporary Outdoor Heating Guidelines attached as Exhibit C.
- D. Any establishment utilizing a tent or related structure are subject to and must follow the Tent/Membrane Structure Check List attached as Exhibit D.
- E. Penalties for violating the Outdoor Dining & Bar Service Operation Rules shall be as set forth in the section on Violation Enforcement in Exhibit A, which is incorporated herein as if fully stated.

§ 22.3.4 EXISTING OUTDOOR SERVICE OPERATIONS

Permanent outdoor service areas established prior to local emergency orders and the State plan, may be used, but must also comply with existing local, state, and federal rules, as well as the rules attached as Exhibit A.

§ 22.3.5 NOISE RESTRICTIONS

Music may be played until 10:00 p.m., provided it does not disturb neighboring residences or businesses, and does not violate the noise ordinance of the City of Bloomington located in Chapter 28, Section 107 of the Bloomington City Code. Music shall cease after 10:00 p.m.

§ 22.3.6 CLOSING TIMES OF OUTDOOR SERVICE AREAS

All outdoor service areas must close at 10:30 p.m. daily. It is the sole responsibility of the business owner (permit holder) to enforce closure times including prohibiting loitering in outdoor areas. The City Manager, through written approval, reserves the right to amend times depending upon circumstances.

§ 22.3.7 EFFECTIVENESS

This City Manager Executive Order 2022-3 shall be effective April 11, 2022, through October 31, 2022, unless repealed or amended further by the City Manager. Outdoor dining applications may be taken in advance of April 11, 2022, but no permits shall be effective earlier than April 11, 2022.

OUTDOOR DINING & BAR SERVICE OPERATION RULES

Section 1. General Rules

1. Outdoor seating areas shall be allowed within public rights-of-way (sidewalks, green spaces, alleys, parking spaces, parking lots, etc.) along the business' frontage. Establishments may expand outdoor dining in front of neighboring businesses or to other areas with written permission from immediately adjacent property/business owners or from the City of Bloomington.
2. Permit period for April 11, 2022, to October 31, 2022
**Unless earlier terminated by the City. The City of Bloomington may terminate any temporary outdoor seating permit if it determines that a business is in violation, or if it is in the City's best interest to do so.*
3. Outdoor seating areas must comply with any and all applicable requirements of the Americans with Disabilities Act ("ADA") and execute an Accessibility Acknowledgement Notice that they are aware of the requirements and are in compliance. More information on ADA compliance and requirements can be found on the City's website at www.cityblm.org/ada. It should be noted these are minimum requirements, and the City encourages all establishments to pursue even greater accessibility for patrons. Establishments that desire to do more and/or that have questions on compliance should contact the Chris McAllister, Building Official, at 309-434-2447.
4. Establishments must create physical boundaries for outdoor seating areas and avoid creating conflict points between pedestrians and vehicles. Examples include caution tape, planters, parking blocks, etc. If the use of City owned barriers are required, establishments are not permitted to hang or affix items to said barriers.
5. Areas may not block handicapped parking spaces, fire lanes, hydrants, or sprinkler system connections and must leave at least 6 feet of passable distance if established on sidewalks.
6. Outdoor seating areas shall be located at least one parking spot from a corner or protected by a concrete barrier, sidewalk bulb-out, or other similar feature if located at the corner. All City placed barriers must not be moved or adjusted by the Establishment. Moving said barriers may result in revocation of the Establishment's permit.
7. Outdoor dining area is restricted to table seating. Standing room only is not permitted.
8. Establishments shall be responsible for providing adequate trash, litter, and refuse disposal in and around the expanded area.
9. Indoor restroom access must be provided to customers. Appropriate spacing for waiting and ordering and an accessible route from outdoor eating areas to restrooms shall be created.
10. If constructed, outdoor dining area decking must be flush with the curb and may not have more than ½" gap from the curb. If decking is installed, a minimum 36" ADA accessible entryway to the parklet must be maintained for all parklets. Decking must be constructed of durable material capable of withstanding weather elements. Deck installation shall not damage the sidewalk, street, curb, or any aspect of the public right-of-way.
11. Music may be played until 10:00 p.m., provided it does not disturb neighboring residences or businesses, and does not violate the noise ordinance of the City of Bloomington located in Chapter 28, Section 107 of the Bloomington City Code. Music shall cease after 10:00 p.m.
12. **Outdoor seating areas must close to the public by 10:30 p.m. daily.** The City reserves the right to amend times depending upon circumstances.
13. Establishments with existing liquor licenses, with no pending violations, may serve alcohol in the temporary expanded area after notifying the City Clerk via completion of the Outdoor Dining & Service Application. Open alcohol may not be removed from this area.
14. Establishments may only use unbranded tents with a minimum of 2 sides open shall be allowed upon approval by the City of Bloomington.
15. Establishments shall provide outdoor hand washing /sanitizing stations.
16. Off premise cooking, bartending, or buffets outside shall not be allowed. Smoking is likewise prohibited.
17. The permittee must agree to indemnify and defend the City of Bloomington against any loss or claim from any third party resulting in any way from the permittee's establishment or operation of a temporary outdoor seating area. Permittee must also have adequate liability insurance coverage for its establishment and operation of the temporary outdoor seating area naming the City of Bloomington

as an additional insured. Proof of said insurance must be kept on file and up to date with the City Clerk.

18. **PRIVATE PROPERTY ONLY:** Establishments located on private property may utilize up to 50% of their parking lot for outdoor service.

Section 2. Violations

1. If any establishment is believed to be in violation of the General Rules or terms of its application, including the provisions on ADA requirements, the Outdoor Heating Guidelines, and/or the Tent/Membrane Structure Check List, a compliance check shall be made by the City. If the establishment is found out of compliance, the establishment will be given a warning and shall have seven (7) days to make corrections. If, after the compliance period, the corrections are not made, the establishment shall be fined not less than \$50 nor more than \$500 for each offense; and a separate offense shall be deemed to have occurred on each day during or on which a violation occurs or continues. Any fines assessed as a result of the violation of the terms of this application, or applicable requirements, are separate from any potential fines that may be associated to a violation of the liquor license. If three or more violations are found to have occurred, rather at one time or over a period of time, the City may revoke the Outdoor Dining Permit for the remainder of the year.
2. Citations and/or alleged violations shall be heard in the City's administrative court and shall be subject to administrative review.



OUTDOOR DINING & BAR SERVICE OPERATION RULES
(Please read through all rules as changes may have been made.)

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15. Establishments shall provide outdoor hand washing /sanitizing stations.
16. Off premise cooking, bartending, or buffets outside shall not be allowed. Smoking is likewise prohibited.
17. The permittee must agree to indemnify and defend the City of Bloomington against any loss or claim from any third party resulting in any way from the permittee's establishment or operation of a temporary outdoor seating area. Permittee must also have adequate liability insurance coverage for its establishment and operation of the temporary outdoor seating area naming the City of Bloomington as an additional insured. Proof of said insurance must be kept on file and up to date with the City Clerk.
18. **PRIVATE PROPERTY ONLY:** Establishments located on private property may utilize up to 50% of their parking lot for outdoor service.



I, _____, swear or affirm that:

1. I am authorized to sign as an owner, officer, or authorized agent, of the above listed establishment; and
2. I declare that I have read and understand the Outdoor Dining & Bar Service Operation Rules.

Initials



VIOLATION ENFORCEMENT

(Please read as changes may have been made.)

Violations will be enforced if any establishment or employee has been found violating the requirements listed in this application, and the following actions will be taken:

1. Compliance Check
 - 1A. **Initial Voluntary Compliance Check.** Upon Initial set up, all permitted establishments will receive one compliance check at beginning of permit. The establishment shall have 15 days to make adjustments to bring outdoor dining area into compliance. If found not in compliance after 15 days, the establishment will be considered in violation.
 - 1B. **Upon Receipt of Complaint:** City staff will perform one compliance check. If establishment is found out of compliance, they will be issued a warning and have 7 days to make corrections.
2. If, after the compliance period, the corrections are not made, the establishment shall be fined not less than \$50 nor more than \$500 for each offense; and a separate offense shall be deemed to have occurred on each day during or on which a violation occurs or continues. Any fines assessed as a result of the violation of the terms of this application are separate from any potential fines that may be associated to a violation of the liquor license.
3. Establishments found continuously violating the terms of this application could lose their Outdoor Dining Permit for the year. For the purposes of this violation, continuous violation shall be considered an establishment that has received at least 3 fines as a result from violations of the terms of this application.

I, _____, swear or affirm that:

1. I am authorized to sign as an owner, officer, or authorized agent, of the above listed establishment; and
2. I declare that I have read and understand the Violation Enforcement process.

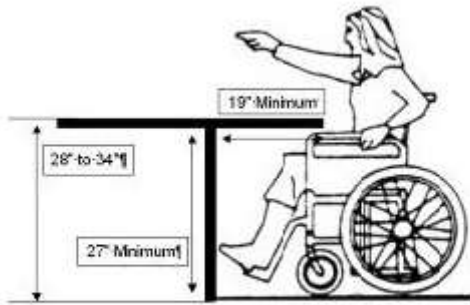
Initials



ACCESSIBILITY ACKNOWLEDGMENT NOTICE
(Please read as changes may have been made.)

By execution of this Accessibility Acknowledgment Notice ("Notice"), I acknowledge and agree that I have read and been informed about the content, requirements and expectations of Americans with Disabilities Act ("ADA") compliance related to my provision of outdoor dining and/or bar service. Specifically, I acknowledge and agree that outdoor seating areas must comply with any and all applicable requirements of the ADA. As a result, I acknowledge and agree that I must have accessible tables and routes for my establishment's outdoor guests and patrons. This specifically includes:

1. **Accessible tables:** At least 5% of the tables, or at least 1 if less than 20 are provided, must be accessible and accommodate people using wheelchairs if doing so is readily achievable. Movable chairs can be used for these tables with chairs removed when people using wheelchairs use the table(s).
2. **Location of accessible tables:** Accessible surfaces where required shall be dispersed throughout the dining spaces and not clustered in a single area. If not readily achievable, services must be provided in another accessible location available to all customers. This means that accessible tables must be provided in the outdoor dining area (i.e., on the street or sidewalk).
3. **Table height:** Accessible tables must have a surface height of no more than 34 inches and not less than 28 inches above the floor. At least 27 inches of knee clearance must be provided.
4. **Accessible route:** There must be access to each accessible table and a clear floor area of 30 inches by 48 inches. The clear floor area extends 19 inches under the table for leg and knee clearance.



Source: <https://www.adacertified.com/casp-blog/accessible-restaurant-tables>

THIS DIAGRAM SHOWS A COMPLIANT TABLE

More information on ADA compliance and requirements can be found on the City's website at www.cityblm.org/ada.

I, _____, swear or affirm that:

1. I am authorized to sign as an owner, officer, or authorized agent, of the above listed establishment;
2. Due to the very minimum and basic requirements outlined above, I acknowledge these are readily achievable and will advise the City, in writing, with any requirement that is not readily achievable for my establishment including a detailed explanation of why such requirement cannot be achieved.
3. I acknowledge my Outdoor Dining permit may be revoked for failure to abide by the ADA requirements and standards; and
4. I acknowledge these are minimum accessibility requirements, and that the City encourages all establishments to pursue even greater accessibility for patrons. I further I acknowledge I have been given the contact information for the Chris McAllister, Building Official, at 309-434-2447, for who to contact if I have questions or want to discuss increasing accessibility for patrons beyond the minimum requirements.

Initials



FINAL ACKNOWLEDGMENT

In consideration of being issued authorization to conduct off-premises services, the undersigned Establishment (also referred to as "Permittee") agrees as follows:

1. The Establishment agrees to and shall follow the City of Bloomington ("City") Outdoor Dining & Bar Service Operation Rules ("Rules") and all other applicable laws. Failure to comply may result in suspension of off premise operation privileges and/or other applicable citations or violations.
2. A floor plan of the proposed outdoor service area (hand drawn plans acceptable) is attached to this application or will be promptly submitted, which Permittee agrees to maintain while providing off premise services. The floor plan must demonstrate physical boundaries, as required by the Rules, that will be used for the outdoor seating area.
3. In accordance with this application and agreement, the Permittee agrees to indemnify and defend the City of Bloomington against any loss or claim from any third party resulting in any way from the permittee's establishment or operation of a temporary outdoor seating area.
4. Permittee agrees to and will provide adequate liability insurance coverage for its establishment and operation of the temporary outdoor seating area naming the City of Bloomington as an additional insured. Proof of said insurance must be kept on file and up to date with the City Clerk.
5. The Establishment is in compliance with ADA Standards, including those specifically identified in the Rules, has executed the Accessibility Acknowledgement Notice and understands that any non-compliance of the aforementioned, will cause the permit to be revoked, and continued operation shall cause the business entity to be in violation of City Code for operating without a permit.
6. The authorization for temporary outdoor seating shall continue only through October 31, 2022, unless earlier terminated by the City.

I, the undersigned, swear or affirm that:

1. **I am authorized to sign as an owner, officer, or authorized agent, of the above listed establishment;**
2. **I declare that all the information included in this application, and any attachment hereto, is true and accurate to the best of my information, knowledge, and belief;**
3. **All applicants of the establishment are qualified and eligible to obtain the license applied for;**
4. **I have read and understand the requirements of this permit.**

Name (Please Print)

Title

Signature

Date



TEMPORARY OUTDOOR HEATING GUIDELINES

PORTABLE OUTDOOR GAS-FIRED HEATERS (PATIO HEATERS)

Section 603.4.2 of the Fire Code specifically regulates portable outdoor gas-fired heating appliances, commonly known as patio heaters.

Appliance Location Restrictions

- **Clearance to Combustible Materials**

Portable outdoor gas-fired heating appliances shall not be located beneath, or closer than 5 feet to combustible decorations and combustible overhangs, awnings, sunshades, or similar combustible attachments to buildings.

- **Clearance to Buildings**

Portable outdoor gas-fired heating appliances shall be located at least 5 feet from buildings.

- **Prohibited Storage or Use**

The storage or use of portable outdoor gas-fired heating appliances is prohibited in any of the following locations:

- o Inside of any occupancy when connected to the fuel gas container
- o Inside of tents, canopies and membrane structures
- o On exterior balconies

- **Proximity to Exits**

Portable outdoor gas-fired heating appliances shall not be located within 5 feet of exits or exit discharges.

Installation and Operational Requirements

In accordance with Section 603.4.2.2 of the Fire Prevention Code, portable outdoor gas-fired heating appliances shall be installed and operated in accordance with the following regulations:

- **Listing & Approval**

Only listed and approved portable outdoor gas-fired heating appliances utilizing a fuel gas container that is integral to the appliance shall be used.

- **Installation & Maintenance**

Portable outdoor gas-fired heating appliances shall be installed and maintained in accordance with the manufacturer's instructions.

- **Tip-over Switch Required**

Portable outdoor gas-fired heating appliances shall be equipped with a tilt or tip-over switch that automatically shuts off the flow of gas if the appliance is tilted more than 15 degrees from the vertical.

- **Guard Against Contact Required**

The heating element or combustion chamber of portable outdoor gas-fired heating appliances shall be permanently guarded to prevent accidental contact by persons or material.

Fuel Gas Containers

In accordance with Section 603.4.2.3 of the Fire Prevention Code, fuel gas containers for portable outdoor gas-fired heating appliances shall comply with the following:

- **Approved Containers**

Only approved DOTn or ASME gas containers shall be used.

- **Container Replacement Restriction**

Replacement of fuel gas containers in portable outdoor gas-fired heating appliances shall not be conducted while the public is present.

- **Container Capacity Limitation**

The maximum individual capacity of gas containers used in connection with portable outdoor gas-fired heating appliances shall not exceed 20 pounds.

Fuel Gas Containers Cont.



- **Prohibited Storage of Containers**

Gas containers shall not be stored inside of buildings, or in any location near exit access doors, exits, stairways, or areas normally used, or intended to be used, as a means of egress. Containers not connected for use shall not be stored on roofs.

- **Outside Storage of Containers**

Gas containers approved for outside storage shall be located in a manner that minimizes exposure to excessive temperature rise, physical damage, and/or tampering, which includes a lockable, ventilated metal cabinet or other approved enclosure.

PORTABLE ELECTRIC SPACE HEATERS



General Regulations

In accordance with Section 604.10 of the Fire Code, portable electric space heaters shall be permitted to be used in accordance with the following regulations:

- Shall be listed and labeled in accordance with UL 1278. (604.10.1)
- Shall be installed and maintained in accordance with the listing and instructions. (604.7)
- Shall be operated only in locations for which they are listed. (604.10.4)
- Shall be plugged directly into an approved receptacle. (604.10.2)
- Shall not be plugged into extension cords. (604.10.3)
- Shall not be operated within 3 feet of any combustible materials. (305.1 & 604.10.4)
- Heating elements shall be permanently guarded so as to prevent accidental contact by persons or material. (603.5.1)

ADDITIONAL PROHIBITIONS & REQUIREMENTS



Approval, Listing, and Labeling

Portable heating equipment must be listed and/or labeled for its intended use. In some cases, portable heating equipment may be required to be approved.



Community Development
BUILDING SAFETY DIVISION
115 E. Washington St., PO BOX 3157
Bloomington, IL 61702-3157
Phone: 309-434-2226

Tent/ Membrane Structure Check List

- Tent Size- What is the total square footage of the tent/membrane structure? Is it over 400 square feet?
- Use period- how many days will this tent/membrane structure be erected?
 - a) Shall not be erected for more than 180 days in a 12 month period.
- Is the occupant load 50 or more persons for the tent/membrane structure?
 - a) If occupant load is 50 or more persons, a detailed site and floor plan for tents/membrane structures shall be provided with each application for approval. The floor plan shall indicate details of the means of egress, seating capacity, arrangement of seating and location and types of heating and electrical equipment. The documents shall include analysis of structural stability.
- Location- Tents or membrane structures shall not be located within 20 feet of lot lines, buildings, other tents or membrane structures, parked vehicles or internal combustion engines.
 - a) Exceptions for separation distance between tent structures if not used in cooking and floor area of structure does not exceed 15,000 square feet.
 - b) Exceptions for separation from buildings if all of the following are met:
 1. Floor area does not exceed 10,000 square feet.
 2. Floor area of the building and tent structure shall not exceed the allowable floor area including increases as indicated in the International Building Code.
 3. Required means of egress are provided for both the building and the tent/membrane structure including travel distance.
 4. Fire apparatus access roads are provided in accordance with Section 503 of International Fire Code.
- Structural Stability/Anchorage- Has the tent/membrane structure been designed and installed to withstand the elements of weather and prevent collapsing? Documentation shall be provided to fire code official.
- Means of Egress- Has the minimal required means of egress been established?
 - a) At least one means of egress shall be established and maintained for tent/membrane structures with an occupancy load of less than 10 persons.
 - b) At least two means of egress shall be established and maintained for tent/membrane structures with an occupancy load of more than 10 persons to 199 persons.
 - c) Minimal width of means of egress shall be not less than 36 inches for membrane structures and 72 inches for tent structures.
 - d) Exit signs shall be provided for tent/membrane structures with occupancy loads of 50 or more persons.

- e) Means of egress illumination- Means of egress shall be illuminated with light having an intensity of not less than one foot candle at floor level while the structure is occupied. Fixtures required for means of egress illumination shall be supplied from a separate circuit or source of power.
- f) Maintenance of means of egress- The required width of exits, aisles, and passageways shall be maintained at all times to a public way. Guy wires, guy ropes, and other support members shall not cross a means of egress at a height of less than 8 feet. The surface of means of egress shall be maintained in an approved manner.
- Flame propagation performance treatment- Does the tent/membrane structure meet compliance with NFPA 701 of Test Method 2?
 - a) A certificate/documentation submitted that indicates the tent/membrane structure to include sidewalls, tarps, and drops are composed of materials meeting the flame propagation performance of Test method 2 of NFPA 701. This documentation shall attest to the following:
 1. Names and address of owners of the tent/membrane structure.
 2. Date the fabric was last treated with flame retardant solution.
 3. Trade name or kind of chemical used in treatment.
 4. Name of person or firm treating the material.
 5. Name of testing agency and test standard by which the fabric was tested.
 - b) Label- Tent/membrane structures shall have a permanently affixed label bearing the identification of size and fabric or material type.
- Heating- Temporary heating shall comply with code references that are addressed in Temporary Heating Guidelines.
- Electrical- Electrical equipment and wiring shall comply with NFPA 70.
- Combustible materials- Hay, straw, shavings or similar combustible materials shall be located with any tent, or membrane structure containing an assembly occupancy.
- Smoking- Smoking shall not be permitted in tents or membrane structures. Approved "No Smoking" signs shall be conspicuously posted.
- Open or exposed flame- Open flame or other devices emitting flame, fire, or heat or any flammable or combustible liquids, gas, charcoal, or other cooking device or any other unapproved devices shall not be permitted inside or located within 20 feet of the tent or membrane structures while open to the public unless approved by the fire code official.
- Fireworks- Fireworks shall not be used within 100 feet of tents or membrane structures.
- Fire Extinguishers- Approved portable fire extinguishers complying with the fire code shall be provided and placed in locations as required by the fire code official.
- Flammable/combustible liquid storage- Shall be stored outside not less than 50 feet from tents/membrane structures in an approved manner. Shall meet storage requirements in Chapter 57 of fire code.
- A) Refueling- Shall be performed in an approved location not less than 20 feet from tents/membrane structures.