

ORDINANCE NO. 0-2020-130

AN ORDINANCE APPROVING THE PLACEMENT OF TABLES, CHAIRS AND OTHER ITEMS ON CITY OF BENTONVILLE PUBLIC ON-STREET PARKING SPACES ADJACENT TO DOWNTOWN BUSINESS ESTABLISHMENTS THROUGH JANUARY 1, 2021 AND DECLARING AN EMERGENCY.

WHEREAS, on March 11, 2020, Governor Asa Hutchinson declared a public health emergency in the State of Arkansas due to the COVID-19 pandemic, and the emergency restrictions curbed local establishments' ability to conduct business in order to protect the public from exposure to Coronavirus; and

WHEREAS, Governor Hutchinson is now phasing in new guidelines to reopen businesses and has indicated that restaurants can reopen their dining rooms at only sixty-six percent (66%) capacity beginning on June 15, 2020; and

WHEREAS, many establishments located in downtown Bentonville do not have outdoor space or designated parking areas in which to provide outdoor dining or curbside pickup during the COVID-19 restrictions, and

WHEREAS, the City Council desires to support and assist Bentonville establishments so that they may increase their sales, provide food and drink to their patrons and produce revenue and jobs to help the economy while maintaining social distancing requirements.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF BENTONVILLE, ARKANSAS:

Section 1. That Attachment A: Downtown Encroachments Map shall be and is hereby adopted by reference as though it was copied herein fully.

Section 2. That business establishments located within the area identified in Attachment A: Downtown Encroachments Map, may submit a written request to the Bentonville Planning Department for an Encroachment Agreement to designate parking spaces adjacent to their establishment, hereinafter referred to as the "*encroached premises*," for the placement of tables, chairs and other items. The written request shall indicate if the establishment is using their designated *encroached premises* for outdoor seating, for curbside pickup or other purposes. The Encroachment Agreement shall be established in accordance with Governor Hutchinson's authority and guidelines for establishments to reopen, and shall include the following:

- a. **Indemnification.** Establishment shall agree to include a release and indemnification provision releasing and indemnifying the City of Bentonville from personal injury and property damage liability resulting from the use of the *encroached premises*;
- b. **Condition of encroached premises.** Establishment shall agree to inspect and report to the Street Department in a timely manner any defects in the *encroached premises*. The establishment owner shall be responsible for the cleanliness (including cleaning methods recommended by the CDC in response to the COVID-19 pandemic) maintenance, and upkeep of their *encroached premises*.
- c. **Insurance.** Establishment shall agree that, at its sole expense, shall maintain comprehensive general liability insurance, protecting against all claims for personal injury, death or property damage occurring upon, in or about the *encroached premises* resulting from the use or occupancy thereof, with a minimum of \$1,000,000 (one million dollars) in coverage and limits acceptable to the city for the entire term of the Encroachment Agreement insurance rated and any extension thereof. The city must be named in this policy as an additional insured entity. Further, if the establishment serves alcohol, then the establishment must have liquor liability insurance with a minimum of \$1,000,000 (one million dollars). The city must also be named in this policy as an additional insured entity. The establishment shall include copies of all policies of insurance with evidence of the payment of the premiums thereon with his, her or its application. The establishment shall deliver to the city at least ten (10) days prior to the expiration of such policy, evidence that it has been renewed. All policies of insurance carried hereunder shall provide that they cannot be canceled without giving at least ten days prior written notice to the city and shall be written by insurance companies licensed by the State of Arkansas and reasonably satisfactory to the city. Any insurance carried by an establishment on his, her or its own property or for his, her or its own benefit in connection with this section shall contain a clause waiving any claim by the insurance company for subrogation against the city.
- d. **Smoking.** The establishment shall agree to designate that the *encroached premises* will be non-smoking, due to the premises being an extension of the establishment.
- e. **Alcohol.** The establishment shall agree that alcoholic beverages may only be served or consumed in the *encroached premises* if the establishment is in compliance with their ABC liquor state and local licenses as approved by the state Department of Alcoholic Beverage Control or otherwise allowed by law.
- f. **Hours of Operation.** The establishment shall agree to not operate in the *encroached premises* earlier than 7:00 a.m. and all operations in the *encroached premises* must

cease and be vacated by the close of operation hours or up to 1:00 a.m., whichever occurs first.

- g. **Minimum Design Standards.** Establishment shall agree that the *encroached premises*, at the sole expense of the establishment, must be effectively blocked off and visibly marked in order to ensure safety of patrons from vehicles in the area. If table, chairs or other seating is being provided, the *encroached premises* shall meet the following minimum requirements. Additional elements may be allowed in the *encroached premises* if the design meets the guidelines of parklet design as established by NACTO.

(1) Size

- a. Length: The maximum length of a parklet is limited to the length of the responsible business's frontage. If a business wishes to exceed this requirement, they must include a letter of support from adjacent business owners. This letter of support must expressly grant permission to occupy the parking spaces in front of their business.
- b. Width: The maximum width of a parklet is the area between the curb and travel lane of the parking space it replaces.

(2) Location

- a. A parklet may not intrude into travel lanes. Parklet elements should provide a minimum 1-foot buffer between the travel lane and the parklet.
- b. To allow for clear visibility at intersections, a parklet may not be located within 20-feet of an intersection, measured from the right-of-way of the intersection to the edge of the parklet.
- c. Parklets must be buffered a minimum of 4-feet on each end from adjacent parking stalls. Wheel stops are required to clearly delineate the buffer zone.
- d. Parklets shall not block critical curbside or street infrastructure. These include, but are not limited to: fire apparatus, utility meters or manholes, and handicap-accessible parking spaces.

(3) Minimum Safety Standards

- a. Parklets may not interfere with the sightlines of traffic nor pedestrians. Parklets shall conform to AASHTO's sight visibility requirements.
- b. To clearly delineate between the parklet and the travel way, a parklet must have a continuous barrier along the travel lane. The barrier may be composed of railings, barricades, planters, and/or a seat wall. The barrier may be a maximum of 42 inches in height. Parklets are encouraged to incorporate seating and plantings in their design.
- c. Parklets must meet the requirements of the Americans with Disabilities Act. The seating area must accommodate a 60-inch turning circle for a wheelchair and the entrance to the parklet must be a minimum of 60-inches in width. The parklet must be designed to be flush with the adjacent curb. A steel transition plate can ensure a flush transition.

(4) Design Requirements

- a. Parklets should be temporary in nature. The parklet must be designed to be removable; wood frame, steel frame, or pedestal support systems are encouraged.
- b. Applicants are encouraged to utilize high quality, weather-resistant materials that fit within the context of downtown. The surface of the parklet should be slip and weather resistant to ensure safety and accessibility.
- c. The design of the parklet should not inhibit the adequate drainage of stormwater.

Section 3. An Encroachment Agreement may be revoked by the city upon a finding by the Planning Director that the establishment has violated any terms of the agreement; or that the encroachment causes a health/safety risk; or that a city ordinance or state or federal law has been violated; or the establishment or an employee of the establishment has been convicted of serving alcohol to a minor. The establishment may appeal this revocation to the City Council within 14 days of the notice of revocation.

Section 4. This ordinance shall expire at 11:00 p.m. on January 1, 2021.

Section 5. That this Ordinance is necessary to preserve the public peace, health, safety and welfare, and because of such, an emergency is declared to exist, and this Ordinance shall be in full force and effect from the date of its passage and approval.

PASSED AND APPROVED this 14th day of July, 2020.

APPROVED:

Stephanie Orman
Stephanie Orman, Mayor

ATTEST:

Greg R Spence, City Attorney
City Clerk
Res Ord # 0-2020-119

