

City of Biddeford
City Council - Special Meeting

June 25, 2020 5:45 PM Please click the link below to join the webinar:

<https://biddeford.zoom.us/j/92748753823?pwd=ZmpiTlhRWGIveWRQWlQ2U2FIWmc3UT09>

Password: 232760

Or iPhone one-tap :

US: +16465588656,,92748753823# or +13017158592,,92748753823#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

**US: +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 9128 or +1
253 215 8782 or +1 346 248 7799**

Webinar ID: 927 4875 3823

International numbers available: <https://biddeford.zoom.us/j/92748753823>

Council Chambers

- 1. Roll Call**
- 2. Adjustment(s) to Agenda**
 - 2.1. Add Orders of the Day: 2020.52 and 2020.53

Orders of the Day:

2020.52) Amendment to Policy for Permission to Utilize Public Space for Outdoor Restaurant and Retail Activity/Prompting of Policy Committee Review

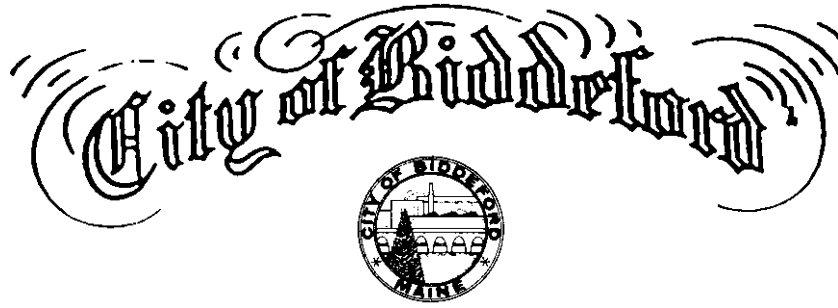
[6-25-2020 Temp Outdoor Service-Council Objection.doc](#)

[6-02-2020 Temp Outdoor Restaurant Operation.docx](#)

2020.53) Approval/Temporary Utilization of Public Space for Restaurant and Retail Operation/Magnus on Water Revised Proposal

[6-25-2020 Magnus on Water-Outdoor Service ORDER.doc](#)

- 3. Executive Session**
 - 3.1. 1 MRSA 405(6)(D)...Labor Contract - Fact Finding
 - 3.2. 1 MRSA 405(6)(A)...Personnel Matter
- 4. Adjourn**



2020.52

IN BOARD OF CITY COUNCIL...JUNE 25, 2020

BE IT ORDERED, that the Emergency Ordinance: *Permission to Utilize Public Space for Outdoor Restaurant and Retail Activity in the City of Biddeford*, approved on June 2, 2020 be amended by stipulating that at least three Councilors have to object to a proposed *Curbside Biddeford Temporary Outdoor Restaurant and Retail Operation Permit Application* in order to prompt a review by the Policy Committee.

Emergency Ordinance: Permission to Utilize Public Space for Outdoor Retail and Restaurant Activity in the City of Biddeford.

Whereas, on Sunday, March 15, 2020, Governor Mills signed a [Proclamation of State of Civil Emergency](#) addressing the issues of the COVID-19 pandemic; and

Whereas, the Governor issued an additional proclamation that closed all restaurants and bars statewide, closed to dine-in customers effective March 18, 2020 at 6:00 p.m. and as of May 27, 2020, extended that indefinitely in York county; and

Whereas, with the gradual re-opening of the state of Maine, the Governor's office also promulgated rules governing the operation of restaurants and retail operations that will, when reopened, restrict the ability of Biddeford businesses to successfully deliver their product within existing confines; and,

Whereas, the City of Biddeford would like to assist area businesses in easing the use of public spaces adjacent to their operations, including sidewalks, parking spaces, streets or parks, to better serve the public during this pandemic;

Therefore, in accordance with Chapter 6, Article IV, of the City Code of Ordinances, the City of Biddeford declares the following emergency ordinance:

1. The city will use the special permit authority under Article IV, Special Events, to declare that public space, including sidewalks, parking spaces, streets or parks adjacent or nearby the operation of private retail and restaurant businesses may be made available for outside operations;
2. Permission may be granted in accordance with Section 6-143 and 6-144 through the existing special permit authority, except that for applications associated with this emergency ordinance a separate *Curbside Biddeford Temporary Outdoor Restaurant and Retail Operation Permit Application* shall be available; and,
3. This ordinance will be in place from June 5, 2020 at 5:00 pm until 9:00pm Monday, October 12th, 2020 or upon rescission or other relevant modification of Governor's Rural Reopening Plan, whichever comes first.

Note: The temporary special event permit application template is provided as Attachment 1;

June 2, 2020

Motion by Councilor McCurry, seconded by Councilor Clearwater to grant the emergency ordinance.

Motion by Councilor Ready, seconded by Councilor McCurry to amend the ordinance to include that after an administrative review, and a 24-hour review period of the City Council, the City Manager will have the authority to give approvals; unless there are objections, then the application will be considered by the Policy Committee.

Vote on amendment: Unanimous.

Vote on ordinance, as amended: Unanimous.

Attest by: _____
Carmen J. Morris, City Clerk

CURBSIDE BIDDEFORD TEMPORARY OUTDOOR RESTAURANT AND RETAIL OPERATION PERMIT APPLICATION

1: INTRODUCTION

In accordance with Governor Janet Mills' Rural Reopening Plan of , 2020, all restaurants and retail operations that provide temporary outdoor areas must adhere to strict mitigation standards intended to prevent the spread of COVID-19. The City of Biddeford is making a temporary special event permit available to both restaurants and to retail operations that are located within the City. All temporary special event permits issued shall begin at 6:00am on June 5 , and shall expire at 9:00pm on Monday, October 12th, 2020 or upon rescission or other relevant modification of Governor's Reopening Plan, whichever comes first.

2: REQUIREMENTS

☐ The area occupied shall be that portion of abutting public property which least infringes on public use, passage, and traffic as determined by, and at the complete discretion of, the City of Biddeford.

☐ If an establishment already has its own adjacent side and/or rear areas, it is strongly encouraged to fully utilize them by placing its outside areas within those locations, and minimize any use of public ways or parking spaces.

☐ The City of Biddeford may place traffic barriers as determined by the City on a case by case basis along affected public streets for increased safety. Costs for such barriers will be at the expense of the requesting establishment.

☐ A retail operation may not use more than one parking space for its outdoor area.

☐ A restaurant may not use more than four parking spaces for its outdoor area, and may only expand in public space beyond their footprint with the permission of the adjacent business(es). When adjacent businesses are both utilizing public space, coordination or sharing of entry/exits is encouraged.

☐ A restaurant or retail operation's outdoor area must use non-permanent structures which must be set up, broken down and stored each day.

☐ Consumer-grade extension cords cannot be used to deliver electricity to an outside area; establishments wishing to extend electricity to an outside area must consult with a qualified

electrician. The use of plugs (for winter lighting) in public street lighting is prohibited (they are not designed for high loads).

☐ A permit, if granted, will only be valid during the hours of 6:00am to 9:00pm each day, Sunday through Saturday, beginning at 6:00am June 5, 2020, and shall expire at 9:00pm on Monday, October 12th, 2020.

☐ All temporary outdoor areas shall be under the responsible direction and control of the restaurant or retail operation as identified in this application.

☐ All temporary outdoor areas must be as continuous as possible by locating the outdoor area in a single portion of an establishment's frontage; it may be located adjacent to the building or near the curb. Special arrangements, on a case by case basis, may be made for those using nearby, but not adjacent public space.

☐ Temporary outdoor areas that encroach into a public walkway must maintain at a safe path at all times of at least (4') feet in width, to allow for unimpeded, unobstructed pedestrian traffic.

☐ Building entrances, accessible parking spaces, firetruck access, dumpster access, and any furniture or fixtures related to outdoor areas must remain completely unobstructed. Access to street planters must be considered and provided for.

☐ The use of physical barriers (i.e., fences, barricades, etc., not to be confused with street barricades) to visually distinguish the boundary of the outdoor area is required.

☐ All improvements (i.e., furniture, fixtures) used in the outdoor area must be temporary in nature and there shall be no penetration of public walkway or street surfaces.

☐ The establishment must comply with all applicable city, state, and federal laws and regulations, including the Americans with Disability Act and the **Maine Bureau of Alcoholic Beverages & Lottery Operations** (sale of alcohol).

☐ The establishment is responsible for any damage to public property during the period of its use. The city may make repairs itself and bill the establishment accordingly.

3: INSURANCE AND LIABILITY (PLEASE CONSULT WITH YOUR INSURANCE CARRIER REGARDING THE FOLLOWING ITEMS)

☐ The establishment understands and expressly assumes all the risk of operating and conducting business under this permit.

☐ As a condition of being granted this permit, during the term of this permit, the permittee shall defend, indemnify, save and hold the City of Biddeford, and its inhabitants, officers, employees and agents completely harmless from and against any and all liabilities, losses, suits, claims, costs, expenses, judgments, fines or demands arising by reason of injury to or death of, or asserted by, any person or persons, including the permittee's agents, clients, invitees or

employees, or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney's fees, court costs, and expert witness fees), of any nature whatsoever arising out of or incident to this permit and/or the use, occupancy, conduct, or management of the demised premises or the acts or omissions of the permittee's officers, clients, agents, employees, contractors, subcontractors, licensees, or invitees, except to the extent such injury, death, or damage is caused by the negligent acts or omissions of the City, its agents, employees, clients or invitees. The permittee shall give to the City reasonable notice of any such claim or actions. The permittee shall also use counsel reasonably acceptable to the City in carrying out its obligations under this article.

The permittee further expressly agrees that it will defend, indemnify, save and hold the City of Biddeford harmless from any and all claims made or asserted by the permittee's agents, servants or employees arising out of the permittee's activities under this permit. For this purpose, the permittee hereby expressly waives any and all immunity it may have under Maine's Workers Compensation Act in regard to such claims made or asserted against the City by the permittee's agents or employees. For this purpose, the permittee further expressly waives any charitable immunity it may have under applicable law as to any and all claims of any person made or asserted against the City arising out of the permittee's use and occupancy of the demised premises or other activity of the permittee under this Permit.

The indemnification provided under this section shall extend to and include any and all costs incurred by the City to answer, investigate, defend and settle all such claims, including but not limited to the City's costs for attorneys' fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the permittee's agents, invitees, licensees, clients, servants or employees against the City in regard to claims made or asserted by such persons.

In exercising the rights granted under this permit, the permittee shall at all times be regarded as an independent entity conducting its own business and operations and shall not at any time act, hold itself or purport to act as an agent, contractor, co-partner, joint venture or employee of the City.

☐ The permittee, during the entire term of this permit shall maintain, at its sole expense, insurance in the type and amount shown below (insert sample insurance agreement) with companies authorized to do business in the State of Maine for the protection of the City of Biddeford against any and all liability, including wrongful death, against all claims, losses, costs or expenses arising out of injuries to persons whether or not employed by the permittee or damage to property whether resulting from acts, omissions, negligence or otherwise of the permittee, its directors, officers, clients, employees and agents and arising from the permittee's use of the demised premises or any part or portion thereof: 1) commercial general liability insurance with a minimum limit of \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate; and 2) workers compensation and employers liability insurance with a minimum limit of \$500,000 per occurrence.

The permittee shall cause to be furnished to the City, at the time of execution of this permit, evidence in the form of certificates of insurance of the existence in force of the insurance

required hereunder. Said certificates shall name the City as an additional insured and loss payee. The permittee shall cause to be furnished to the City replacement certificates of insurance whenever the insurance policies are renewed. The City shall be notified prior to any changes or discontinuances of coverage.

The City agrees to promptly notify the permittee in writing of the existence or filing of any claim, demand or action arising out of an occurrence covered hereunder of which the City has knowledge, and to cooperate with the permittee in the investigation and defense thereof.

The minimum insurance coverage required under this article shall be deemed to be automatically adjusted whenever the Maine State Legislature shall increase the City's maximum liability beyond such minimums for personal injury, wrongful death or property damage claims brought under the Maine Tort Claims Act. In the event of such an increase, the minimum insurance coverage required shall be no less than the amounts required herein or no less than the City's maximum liability for such claims under the Maine Tort Claims Act, whichever is greater.

4: ENFORCEMENT

☐ The rights and duties granted herein shall be under the supervision and control of the City of Biddeford's Code Enforcement Officer and the City of Biddeford's Chief of Police. In the event of a breach of this permit by permittee, the City may, for the first breach, issue a verbal warning to Permittee; in the event of a second breach, terminate this Permit.

Notwithstanding these provisions regarding penalties for breaches or any other provision of this permit, in the event that the City, in its sole discretion, determines that further use of the premises under this permit is not in the best interests of the City, the rights granted herein may be suspended or terminated upon 24 hours written notice to the permittee.

☐ At the end of the term of this permit, or if this permit is suspended or terminated, all fencing, tables, seating, or equipment must be removed from any City of Biddeford public walkway or public area. The City may move or remove any of said items if they are not removed before the end of the term of this permit or before the 24-hour notice period expires. For such removal, the City may bill the establishment accordingly.

5: APPLICATION (ALL RESPONSES ARE REQUIRED):

Legal Name:

DBA Name: _____

Physical Address: _____ Biddeford, ME
04005

Mailing

Address: _____
Street/PO Box City State Zip

Phone: _____ Fax: _____ Email
address: _____

Name, address, telephone number of Property Owner (if property is rented or leased, need a copy
of rental agreement / lease):

Which hours do you plan to have these additional areas open (no earlier than 6:00am, and no
later than 9:00pm)? _____

For extension of License on Premise

Licennse # (if requesting extension of liquor license): _____ Expiration
Date: _____

Start Date: _____ End Date:

Reason for Request:

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On the following page, sketch out your plan for your outdoor area. In your sketch you must include and clearly indicate the relative locations of the following components:

- ☐ Existing dimensions/boundaries of your business;
- ☐ Parking spaces, public walkways, and/or adjacent areas that you are looking to utilize; Please indicate contiguous and non-contiguous space you plan to use.
- ☐ Path(s) through your area(s) that will allow for pedestrian traffic;
- ☐ Arrangement of tables and other structures which have proper spacing;
- ☐ Barriers to be used;
- ☐ Awnings, umbrellas, and/or other rain- and sun-shielding devices to be used (optional)
- ☐ Lights or lighting systems to be used; and
- ☐ Reflectors to be used.

For extension of license on premise:

- ☐ There must be stanchion or fence completely enclosing the area, with signs for exit/entry. Openings shall be no less than 4 feet. Signs must be posted, stating “no alcohol beyond this point”
- ☐ There must be sufficient employees at the extension of premise, which would be able to control and monitor the area
- ☐ Please indicate the contiguous and non-contiguous areas you plan to use (you may be permitted to use both).. See the section of Maine’s liquor laws that govern these areas at <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec1051.html>. See section 3 and 9.

Signature of Owner/Corporate Officer

Printed Name of Owner/Corporate Officer

EXTENSION AREA PREMISE DIAGRAMS

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including methods of monitoring and containment of certain area which you are requesting approval from the Division of liquor consumptions.

6: SUBMISSION OF YOUR COMPLETED APPLICATION

When completed, please submit your application via regular mail or via e-mail to:

Roby Fecteau

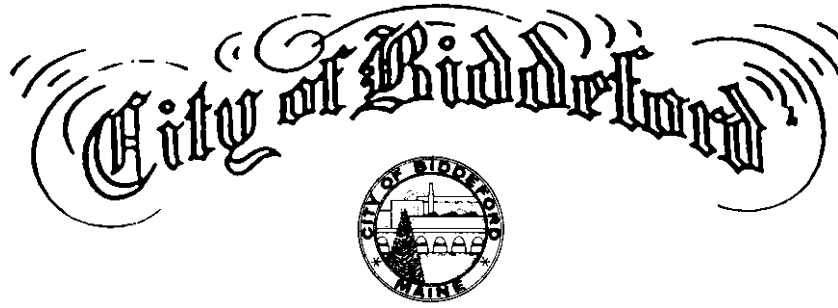
Codes Enforcement Officer

2 Main Street

Biddeford, Maine

Fecteau, Roby <roby.fecteau@biddefordmaine.org>

Attachment 2--Summary of Business Survey:



2020.53

IN BOARD OF CITY COUNCIL...JUNE 25, 2020

BE IT ORDERED, that the City Council of the City of Biddeford does hereby approve, in part, the proposal submitted by Magnus on Water to utilize public space for outdoor restaurant activity. Specifically, the proposed use of an Airstream will be allowed to be located on the slip lane from Water Street to Main Street, or in the vicinity thereof; as well as the use of a cordoned off area of Mechanics Park near the Airstream for use by Magnus on Water patrons.

NOTE: The Policy Committee has recommended that City Staff work with Magnus on Water to come up with a viable and safe setup.