RESOLUTION NO. 2020-6.8

OF THE GOVERNING BODY OF
THE BOROUGH OF BLOOMINGDALE

RESOLUTION OF THE BOROUGH OF BLOOMINGDALE, COUNTY OF PASSAIC AND STATE OF NEW JERSEY TEMPORARILY MODIFYING CERTAIN OUTDOOR DINING REQUIREMENTS TO ENABLE LOCAL RESTAURANTS TO IMPLEMENT SOCIAL DISTANCING AND FACILITATE SMALL BUSINESS RECOVERY IN LIGHT OF THE COVID-19 PUBLIC HEALTH EMERGENCY

**WHEREAS,** a worldwide pandemic has occurred involving a novel Coronavirus more commonly known as COVID-19; and

**WHEREAS**, on March 9, 2020, Governor Murphy issued Executive Order 103 declaring a State of Emergency and a Public Health Emergency in response to the outbreak of the novel Coronavirus within the State of New Jersey; and

**WHEREAS**, on March 16, 2020, Governor Murphy issued Executive Order 104 enacting several “social distancing” regulations, including but not limited to, limiting public gatherings to no more than 50 people, closing educational facilities, closing various recreation and entertainment based businesses, imposed restrictions on scope of service and hours of operation for other non-essential retail, recreational, restaurants/bars and entertainment businesses; and

**WHEREAS**, on March 21, 2020, Governor Murphy issued Executive Order 107 which expanded the social distancing regulations set forth within Executive Order 104, including but not limited to, directing all New Jersey remain in their home or place of residence with specific limited exceptions, prohibited gatherings of any size, closed all non-essential retail businesses and identified essential businesses permitted to continue to operate subject to specific limitations, and reiterated and strengthened social distancing requirements when in public; and

**WHEREAS**, on March 21, 2020, Governor Murphy also issued Executive Order 108 which specifically voided and precluded County and Municipal Governments from imposing or enforcing any restrictions/regulations that in any way would or might conflict with any of the provisions of Executive Order 107, with the exception of regulating online marketplaces for arranging or offering lodging, municipal or country parks, and beaches and boardwalks; and

**WHEREAS**, Executive Order 107 specifically regulates the continued operation of Bars/Restaurants and provides, in part, that “All restaurants, cafeterias, dining establishments and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses;” and

**WHEREAS**, on June 3, 2020, Governor Murphy issued Executive Order 150 which allows outdoor dining at food or beverage establishments in New Jersey starting on Monday, June 15, 2020, provided that establishments follow a number of COVID-19 health and safety protocols issued by the New Jersey Department of Health, including a limit of eight customers per table, requirements of at least six feet of distance between parties, and a prohibition on smoking in any outdoor areas designated for the consumption of food and/or beverages; and

**WHEREAS**, Executive Order 150 further notes that Municipal Governments are permitted to use their existing authority to allow food or beverage establishments to expand their footprint to outdoor areas, both within their property and among municipally-governed areas, including but not limited to sidewalks, streets, or parks; and

**WHEREAS,** in consideration of the above and the great hardship and uncertainty the COVID-19 public health emergency has caused to the businesses of Bloomingdale, the Governing Body desires to support the economic recovery of local restaurants and businesses by temporarily modifying certain outdoor dining restrictions so that restaurants are able to serve customers while satisfying social distancing requirements; and

**WHEREAS**, the Borough Planner and the Borough Attorney have reviewed same and found the temporary modification satisfactory; and

**WHEREAS**, the Governing Body finds it in the best interest of the Borough to temporarily modify certain restrictions; and

**WHEREAS**, the Mayor and Borough Council find it in the best interests of the Borough of Bloomingdale to temporarily modify certain outdoor dining restrictions in accordance with Executive Order 150, the associated Board of Health guidance and the Division of Alcoholic Beverage Control’s COVID-19 Expansion of Premises Permit regulations.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Borough of Bloomingdale, in the County of Passaic and State of New Jersey, as follows:

1. Outdoor dining shall be temporarily permitted as an accessory use to all restaurant uses, sandwich shops, cafés, as well as bars and taverns, as defined and set forth in the Borough Code.
2. The regulations pertaining to “outdoor cafes” set forth at §4-8 of the Borough Code shall be temporarily suspended and replaced with the following standards which shall be applicable to temporary outdoor dining:
	1. The number of seats permitted in the outdoor dining area may not exceed the total seating capacity previously approved for the eating and/or drinking establishment.
	2. Outdoor dining areas can be located on patios, plazas and courtyards in a manner that does not impair pedestrian circulation. Outdoor dining areas may also be located, at the discretion of the Zoning Officer, on a portion of sidewalks, lawn areas, and in parking lots, provided that pedestrian and vehicular circulation is not impaired and further provided, in the case of parking lots, that outdoor dining shall only be permitted thereon if the number of parking spaces is sufficient, taking into consideration the modified seating limitations.
	3. Where outdoor dining is proposed within a parking lot, bollards or other protective structures shall be erected along the perimeter of the outdoor dining area in order to enhance public safety.
	4. If the outdoor dining area is proposed to be utilized after dark, temporary lighting shall be required.
	5. Landscaping around and/or within the outdoor dining area shall be permitted, but not required.
	6. Awnings, umbrellas, canopies and open air tents attached to a building wall, and heating units shall be permitted within outdoor dining areas; however, closed tents are not permitted.
	7. All outdoor dining areas must be closed by 10 pm.
	8. An applicant for a proposed temporary outdoor dining area must have previously secured site plan approval as a restaurant from the Borough Zoning Board of Adjustment or Planning Board for a restaurant, bar, sandwich shop , café and must otherwise be in compliance with its existing site plan approval.
	9. In multi-tenanted properties, an approved temporary outdoor dining area must be discontinued or reduced in size if other retail, personal service and/or commercial establishments are permitted to reopen and there is no longer an adequate number of parking stalls available and/or if the prior approved site plan is no longer functioning, as determined by the Borough Zoning Officer.
3. The Borough Zoning Officer shall have the discretion to create additional standards for a particular property and to fashion such conditions as may be necessary to further the purposes of Chapter 92 of the Borough Code, as well as the goals and objectives of the Borough Master Plan.
4. A permit shall be required, with application being made to the Borough Zoning Officer. Application for a permit pursuant to this Resolution must be accompanied by an informal layout and/or plan for the outdoor dining area, the number of seats proposed, the parking availability and the COVID-19 Expansion of Premises Permit from the NJ Division of Alcoholic Beverage Control if applicable. The fee for this temporary permit shall be waived.
5. Restaurants may display one temporary sign to notify the public of in-house, take-out as well as outdoor dining options and any restrictions in place due to the COVID-19 public health emergency.
6. In accordance with Executive Order 150, restaurants availing themselves of the use of outdoor dining, must ensure they follow these requirements:
	1. Ensure all areas designated for food and/or beverage consumption are in conformance with applicable local, State, and Federal regulations;
	2. Limit capacity to a number that ensures all patrons can remain six feet apart from all other patrons at all times, except for those patrons with whom they are sharing a table;
	3. Satisfy all standards issued by the New Jersey Department of Health pursuant to Executive Order 150;
	4. Ensure that tables seating individual groups are 6 feet apart in all directions and that individual seats in any shared area that is not reserved for individual groups, such as an outdoor bar area, are also 6 feet apart in all directions;
	5. Prohibit patrons from entering the indoor premises of the food or beverage establishment, except to walk through such premises when entering or exiting the food or beverage establishment in order to access the outdoor area, or to use the restroom;
	6. Require patrons to wear a face covering while inside the indoor premises of the food or beverage establishment, unless the patron has a medical reason for not doing so or is a child under two years of age; and
	7. Prohibit smoking in any outdoor areas designated for the consumption of food and/or beverages. The requirement that food or beverage establishments impose this prohibition shall automatically sunset once food or beverage establishments are permitted to offer in-person service in indoor areas.
7. Restaurants must continue to follow all rules and regulations of the local Board of Health, the NJ Department of Health, and Division of Alcoholic Beverage Control (“ABC”), as well as all applicable local, state and federal laws.
8. Specifically, all restaurants must adhere to the following requirements as set forth by the New Jersey Department of Health:
9. Food or beverage establishments offering service at outdoor areas pursuant to Executive Order No. 150 must adhere to the protocols listed below:
10. Obtain all required municipal approvals and permits before offering food and/or beverage consumption at outdoor areas;
11. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19 should enter the food or beverage establishment;
12. Limit seating to a maximum of eight (8) customers per table and arrange seating to achieve a minimum distance of six feet (6) between parties;
13. Rope off or otherwise mark tables, chairs and bar stools that are not to be used;
14. Demarcate 6 feet of spacing in patron waiting areas;
15. Provide physical guides, such as tape on floors, sidewalks, and signage on walls to ensure that customers remain at least 6 feet apart in line for the restroom or waiting for seating;
16. Eliminate self-service food or drink options such as buffets, salad bars, and self-service drink stations;
17. Disinfect all tables, chairs and any other shared items (menus, condiments, pens) after each use;
18. Install physical barriers and partitions at cash registers, bars, host stands and other area where maintaining physical distance of 6 ft is difficult;
19. Ensure 6 feet of physical distancing between workers and customers, except at the moment of payment and/or when employees are servicing the table;
20. Require infection control practices, such as regular handwashing, coughing and sneezing etiquette, and proper tissue usage and disposal;
21. Require frequent sanitization of high-touch areas like credit card machines, keypads, and counters to which the public and workers have access;
22. Place conspicuous signage at entrance alerting staff and customers to the required 6 feet of physical distance; and
23. Require all food or beverage establishments to have an inclement weather policy that, if triggered, would require the food or beverage establishment to adhere to Executive Order No. 125 (2020) and offer takeout or delivery service only.
24. Food or beverage establishments offering service at outdoor areas pursuant to Executive Order No. 150 must impose the following requirements on employees:
25. Require employees to wash and/or sanitize their hands when entering the food or beverage establishment;
26. Conduct daily health checks (e.g. temperature screening and/or symptom checking) of employees safely and respectfully, and in accordance with any applicable privacy laws and regulations;
27. Require employees with symptoms of COVID-19 (fever, cough, or shortness of breath) be sent home;
28. Require all employees to wear face coverings, except where doing so would inhibit the individual’s health, and require employees to wear gloves when in contact with customers and when handing prepared foods or serving food, utensils, and other items to customers;
29. Provide all employees with face coverings and gloves;
30. Provide employees break time for repeated handwashing throughout the workday; and
31. Provide sanitization materials, such as hand sanitizer and sanitizing wipes to staff.
32. Food or beverage establishments offering service at outside areas pursuant to Executive Order No. 150 must institute the following policies with respect to customers:
33. Inform customers that safety measures such as social distancing, wearing face coverings when they are away from their table and unable to social distance or when they are inside the indoor portion of the premises of the food or beverage establishment (unless the customer has a medical reason for not doing so or is a child under two years of age), and hygiene practices must be adhered to while in the food or beverage establishment;
34. Encourage reservations for greater control of customer traffic/volume;
35. Require customers to provide a phone number if making a reservation to facilitate contact tracing;
36. Recommend customers wait in their cars or away from the food or beverage establishment while waiting for a table if outdoor wait area cannot accommodate social distancing;
37. Alert customers via calls/texts to limit touching and use of shared objects such as pagers/buzzers;
38. Encourage the use of digital menus;
39. Decline entry to the indoor portion of the establishment to a customer who is not wearing a face covering, unless the customer has a medical reason for not doing so or is a child under two years of age; and
40. Provide a hand sanitizer station for customers.
41. All restaurants wishing to serve alcoholic beverages on-site for consumption in the outdoor dining areas must apply through the ABC for a COVID-19 Expansion of Premises Permit.
42. Restaurants may erect open air tents or canopies over seating areas, so long as social distancing requirements are maintained.
43. This Resolution shall be effective on June 15, 2020 in accordance with Executive Order 150.
44. This Resolution shall remain in effect for 120 days from the date that outdoor dining is permitted by Executive Order unless this Resolution is otherwise amended or vacated by the Borough Council.
45. Temporary outdoor dining plans in accordance with this Resolution shall require the approval of the Borough Zoning Officer and Borough Health Officer.
46. The Zoning Officer, Chief of Police and Borough Administrator reserve the right to deny the modification of the rules or put in place specific requirements or restrictions in order to protect the health, safety and welfare of the general public. Appeals of such requirements may be filed with the Borough Council.
47. This Resolution does not permit the construction of or alteration to any building or structure. No changes may be made that alter the existing character of any building or structure.
48. This Resolution applies only to establishments already approved to operate as a restaurant as of this Resolution’s date of adoption.
49. Except for the relaxation of requirements as specifically authorized by this Resolution, all provisions of Chapter 92, Zoning, of the Borough Code remain in full effect, including but not limited to hours of operation, litter control plan, dishes and utensil requirements, sufficiency of construction of tables and chairs.

***Record of Council Vote on Passage***

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| Council person | aye | nay | Abstain | Absent | Council person | aye | nay | Abstain | Absent |
| D’Amato | X |  |  |  | Juhlin | X |  |  |  |
| Dellaripa | X |  |  |  | Sondermeyer | X |  |  |  |
| Hudson | X |  |  |  | Yazdi | X |  |  |  |

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Governing Body of the Borough of Bloomingdale at an Official Meeting held on June 9, 2020.

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Breeanna Calabro, R.M.C.

Municipal Clerk, Borough of Bloomingdale