

MEMORANDUM

CITY OF BLOOMINGTON LEGAL DEPARTMENT

TO: Common Council
FROM: City of Bloomington Legal Department
RE: Ordinance 23-20
DATE: September 6, 2023

Ordinance 23-20 proposes adding a new Section 12.04.130 to the Bloomington Municipal Code, entitled “Obstructing the right-of-way.” Ordinance 23-20 is modeled on Indianapolis’ ordinance governing right-of-way obstructions and comes to the Common Council from staff and from the Board of Public Works.¹

In legal terms, a “right-of-way” establishes the right to pass through property owned by another. Public right-of-way provides a right of passage to all persons. Conceptually, public right-of-way exists to let all members of a community travel from one place to another. For local governments including Bloomington, properly establishing and then responsibly stewarding the public’s right-of-way to serve this core purpose is a universal and core mission.

Because enabling travel for all is the primary purpose for public right-of-way, any other use is secondary. Accordingly, the Code carefully regulates when and how a private actor may use the public’s right-of-way for their own purposes and interfere with the right of way’s principal purpose of public travel. The Code outlines in detail the relevant permitting and licensing processes for:

- Seating encroachments
- Merchandise encroachments
- Right-of-way excavation permits
- Shared-use motorized scooters
- Pushcarts
- Mobile food vendors
- Velocabs
- Special events
- Taxicabs
- Physical encroachment agreements

¹On August 15, 2023, the City of Bloomington Board of Public Works amended and then unanimously recommended that the City Council adopt Ordinance 23-20. Pursuant to Indiana Code § 36-9-6-2, the Board of Public Works is the body charged with supervising and managing the public’s right-of-way.

In each of these cases, the City carefully considers the impact on public access to the right of way and reviews and approves the proposed use before approving it through a license or permit. In this way, the City acts evenhandedly toward the public, protects the public's interest in the use of the right-of-way, and ensures that the City fulfills its legal obligation to keep the right-of-way open for travel.

In this regard, it is critical to note that under the Americans with Disabilities Act (ADA), the City has an affirmative responsibility to make sure the public's right-of-way is available for safe travel by community members and visitors experiencing mobility challenges. ADA considerations are top of mind when the City reviews a private request for a seating encroachment, special event closure, maintenance of traffic plan, or right-of-way excavation permit, and the City's increased scooter enforcement activities.

Ordinance 23-20 is designed to provide clear and more direct authority than current code language for addressing obstructions in the public right of way.² Ordinance 23-20 does this by defining the circumstances under which a sidewalk, street, or public right-of-way is considered obstructed. The Ordinance states that a sidewalk, street, or right-of-way is obstructed:

- (1) if more than half of its width is blocked at any point;
- (2) if the normal flow of pedestrians or vehicles is disrupted;
- (3) if pedestrians are compelled to step onto the street or otherwise expose themselves to danger in order to pass around the blockage; or
- (4) if it is rendered inaccessible to those protected by the Americans with Disabilities Act (ADA) or other local, state, and federal laws.

As noted above, Ordinance 23-20 largely mirrors the approach that Indianapolis, another progressive community, has taken to public right-of-way obstructions. Ordinance 23-20 directs that someone causing a right-of-way obstruction must be given an opportunity to eliminate the obstruction; staff's hope and expectation is that this will avoid the need for further enforcement activity.

Notably, Indianapolis' "Obstruction of public right-of-way prohibited" ordinance appears within an article of Indianapolis' Code titled "Protections for the Homeless." Indianapolis' Ordinance, and Bloomington's proposed Ordinance 23-20, serve dual purposes: (1) they provide an important tool for the City to make sure the right-of-way may be safely used by everyone, and particularly those residents who are most vulnerable to right-of-way obstructions; and (2) they provide clear guidance to our community on ways to lawfully use the right-of-way without

² Ordinance 23-20 is intended to address obstructions generally; staff plans to bring to Council proposed code changes with respect to micromobility travel methods (bikes, e-bikes, and seated and standing scooters) that will specifically address obstructions those items may cause in the right of way.

inhibiting the right-of-way's primary purpose: travel. Staff recommends that the Council adopt Ordinance 23-20.