

City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 23, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: ORDINANCE TO ESTABLISH A PILOT PROGRAM FOR SIDEWALK CAFÉ SEATING IN THE KING STREET CORRIDOR

**ISSUE:** Ordinance to Establish a Pilot Program for Sidewalk Café Seating in the King Street Corridor.

**RECOMMENDATION:** That City Council conduct a public hearing, and pass the ordinance on second reading at its Tuesday, September 28 legislative meeting.

**DISCUSSION:** City staff is proposing a pilot program of expedited administrative approvals of outdoor restaurant seating along King Street from the waterfront to the Metro station and on intersecting streets. This proposal is designed to enhance the economic and social vitality of this important thoroughfare and to replicate on a daily basis the festive environment of this year's Fall Arts Festival. The recommendation stems from the success of the outdoor dining at the recent Arts Festival and from deliberations by the King Street Retail Advisory Committee whose function has been to help identify ways in which the City can assist businesses in this area. Also, increasingly downtown areas, life-style centers and neighborhood retail areas are offering outdoor restaurant dining. If Alexandria restaurants are to remain competitive outdoor dining is a key ingredient.

The proposed program is intended to encourage restaurants to provide outdoor seating by: (1) providing a comprehensive permitted zone of encroachment, for outdoor dining, along the public sidewalk right of way of King Street and intersecting streets, and (2) allowing individual restaurants to receive administrative approval allowing them to operate in the permitted zone.

This pilot program is proposed to begin immediately upon approval by Council and to run until December 31, 2004. This trial period is designed to identify potential problems and solicit input from the public on the desirability of this use and procedure. The City has the power to allow the use of its rights of way, and staff suggests it is appropriate, where favorable conditions exist, that it be used for outdoor seating, in order to support businesses and add to the vitality of the street.

### **History and Context**

The King Street Retail Advisory Committee has met throughout 2004 in order to recommend actions that would strengthen the retail appeal and vibrancy of King Street. Among the ideas that have surfaced in Committee Workshops are the goals of promoting more outdoor dining and of streamlining certain City approval processes. Outdoor dining during this month's Festival of the Arts was a successful short-term experiment in the provision of outdoor dining on King Street. This proposal helps to reach both of those goals.

### **Area Description**

The proposed area for the permitted zone of encroachment on King Street from the waterfront to the King Street Metro station includes those properties that directly abut King Street as well as restaurants located on the immediate blocks of all intersecting north-south streets. This area is illustrated on the attached map (Attachment I).

### **Administrative Process**

Currently, a restaurant that wishes to use outdoor seating that encroaches on a public right-of-way is required to apply for an encroachment permit from City Council. Under the proposed ordinance, restaurants within the identified zone would go through a simple, no-cost administrative approval process for outdoor seating.

- A simplified one-page application form will be distributed to restaurant operators and will be available on the City's web site and in the Planning and Zoning office. A copy of this application is attached (Attachment II).
- Each establishment wishing to obtain approval will submit the application form and a proposed seating diagram (with dimensions) in person at the Department of Planning & Zoning. No appointment is necessary, and no cost is involved.
- Applications will be reviewed by Planning Department and Code Enforcement staff immediately upon submission. Approval or comments/revisions will be made immediately.
- The applicant will agree to meet existing code requirements and regulations to assure health and safety. The basic requirements are attached to this memorandum (Attachment III).

All restaurant operators within the proposed zone will be notified in person by City staff that this pilot program is in place. Staff will seek to make contact with the manager of each eligible restaurant and will describe the pilot program. The notification will advise businesses of the requirements for outdoor seating plans, and provide contact information for any further questions. Information will also be posted on the City's web site.

### **Eligible Seating Proposals**

Seating plans will be reviewed by staff for compliance with the following requirements:

- The total number of seats (both outdoor and indoor) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats.
- The plan for the outdoor seating is reasonable and attractive given the restaurant's immediate environment.
- There is adequate space on the sidewalk beyond the seating area to allow free passage for pedestrians. The outdoor seating plan must leave a usable sidewalk free of any obstructions that is at least 5 feet wide at all points adjacent to the outdoor seating area.
- Outdoor seating may be open to patrons from 6:00 a.m. to 11:00 p.m.
- The restaurant will be responsible for clearing litter and trash from the outdoor seating area throughout the day and at the close of business.
- The proposal otherwise complies with all City laws (such as SUP and Health Department requirements), state laws (such as Department of Alcoholic Beverage Control regulations), and federal laws (Americans with Disabilities Act).

The full set of conditions and technical requirements may be found in an attachment to this memorandum (Attachment III).

### **King Street Retail Plan**

This proposed pilot program is an advance recommendation emerging from the full scale King Street revitalization planning effort due to conclude early this winter. It is consistent with the goals identified by the planning process, especially those targeting enhanced economic activities and the streamlining of City procedures, and is supported by the King Street Retail Advisory Committee.

### **Future Outdoor Dining Program**

At its September 21 public hearing meeting Council asked staff to develop the outdoor dining program to begin in the spring as early as possible. As soon as the pilot program begins, and over the next three months, staff will be assessing the program's effectiveness, and determining whether and how it should be implemented on a long term basis. The long term outdoor dining program will be a component of the implementation of the King Street Retail Strategies Plan which will come forward early this winter.

Staff assumes that the pilot program will be expanded to one that will continue on a permanent basis. However, before embarking on that effort, it is important for the City and restauranteurs to

review the outdoor dining concept in practice, and be able to make whatever corrections to the program it finds are necessary. Key issues that staff will be looking for during the pilot include:

- How efficient is the application process for restaurants? Is the abbreviated administrative review sufficient to uncover potential problems. Are the requirements too onerous? Could the process be made even simpler?
- Are the proposed sidewalk locations adequate and appropriate? Are they sufficient for outdoor dining? Is there sufficient room for pedestrian access? Do the dining areas interfere with utility or street maintenance activities? Are there additional areas that could be included in the program?
- How popular is the program with restaurants and the dining public? Is there a need for more outdoor dining areas?
- What complaints if any have been received from the public regarding the dining areas, including regarding problems with noise, litter, or late night nuisance behavior.
- Is the program one that can be implemented in other parts of the City as well as on King Street?

With the above information about the pilot program, and after discussions with restauranteurs and the community, staff will make whatever revisions to the program are necessary, and will propose to Council a long term strategy which will likely include permanent ordinance revisions and some revisions to the technical details of the pilot program. Any long term ordinance changes will require public hearing so the full public can be involved in that discussion. Also, staff would begin the evaluation of additional outdoor dining opportunities (which may include temporary street closures) on a periodic or event basis in the future.

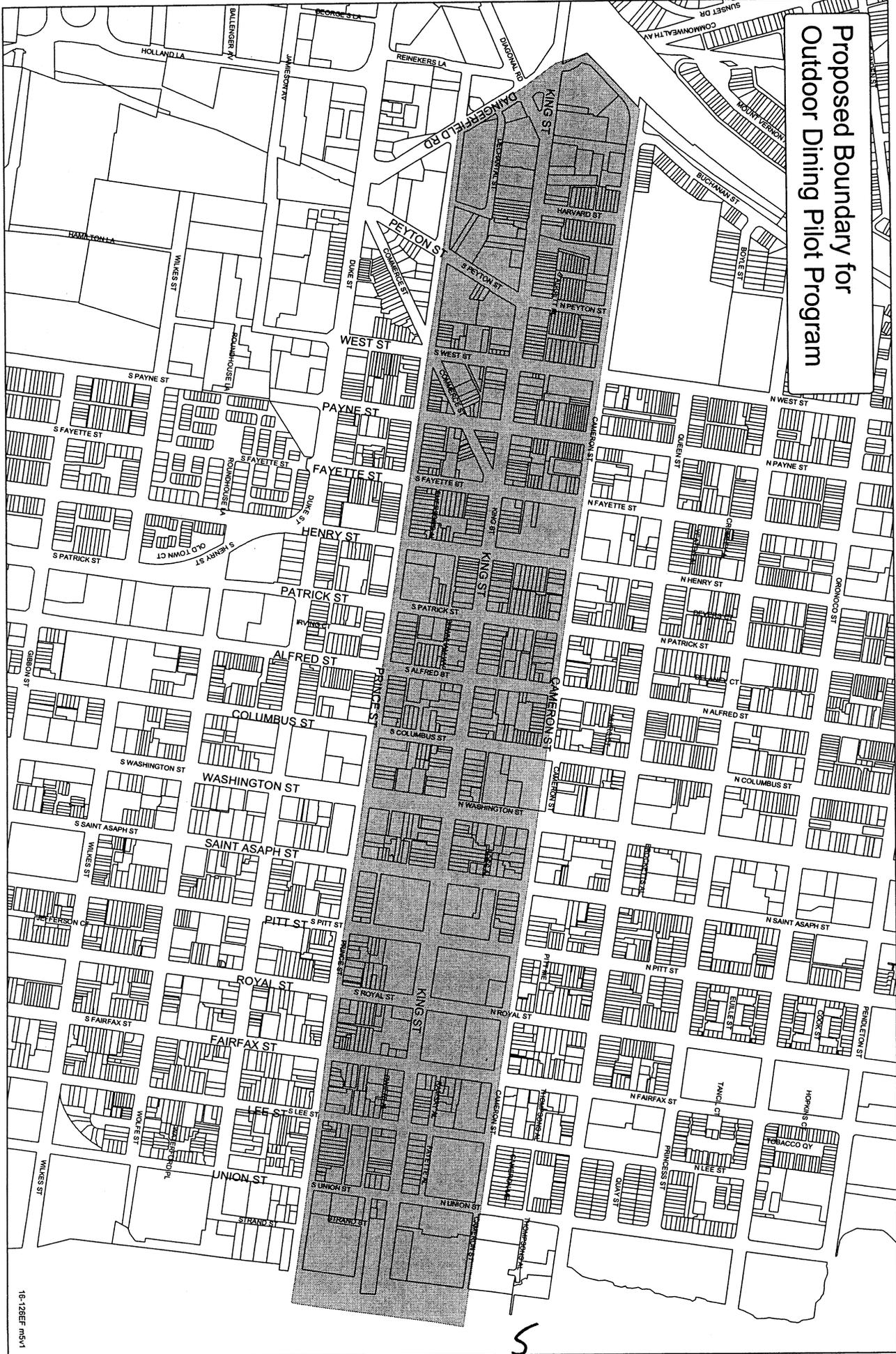
**ATTACHMENTS:**

Attachment I. Pilot Program Boundary Map  
Attachment II. Outdoor Dining Application Form  
Attachment III. Outdoor Dining Conditions

**STAFF:**

Mark Jinks, Assistant City Manager  
Eileen Fogarty, Director, Department of Planning and Zoning  
Rich Baier, Director, Department of Transportation and Environmental Services  
Arthur Dahlberg, Director, Code Enforcement

Proposed Boundary for  
Outdoor Dining Pilot Program





**CITY OF ALEXANDRIA  
OUTDOOR DINING CONDITIONS  
KING STREET PILOT PROGRAM**

The following is a summary of City requirements as applied to the King Street pilot program for outdoor dining in the public right-of-way.

**OVERVIEW:**

- The pilot area includes restaurant properties that abut King Street (from the waterfront to the King Street Metro Station) and on the immediate blocks of all intersecting north-south streets (See map).
- This pilot program will begin immediately and last until December 31, 2004. The program will be evaluated and changed as necessary for full implementation in early 2005.
- Restaurants will submit an application for a permit, which will include a dimensional plan for the outside dining area that depicts the location and size of the seating area, and width of the sidewalk. The plan will also illustrate the number of chairs, tables, and any other improvements. There will be no charge for the permit.
- If all information is provided, the application will be reviewed by Planning and Zoning and Code Enforcement at the counter and will normally be approved at the first visit.
- Any proposed change in the outdoor dining plan must be approved by the City through a revised application before the change is implemented.
- Hours of service for outside dining can be anytime between 6:00 AM to 11:00 PM, seven days a week consistent with any previously approved restaurant hours.
- The total number of seats (both outdoor and indoor) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats.

**PROGRAM CONDITIONS:**

- The outside dining area should be attractive, and promote pedestrian and retail friendly vitality in the King Street corridor.
- The outside dining area shall be located on the public sidewalk in front of the restaurant property and must be under the responsible direction and control of the restaurant. It may be located adjacent to the building or near the curb.
- At least 5 feet of unobstructed corridor space must be maintained past the outside dining area for sidewalk pedestrian traffic in order to ensure a clear pedestrian passageway along the sidewalk. Exceptions may be granted on a case-by-case basis to reduce the sidewalk corridor space to 4 feet for short lengths. Such exemptions will be granted at the time the application is submitted.

- At least 44 inches of unobstructed ingress/egress space must be maintained between any restaurant doorway and the pedestrian traffic corridor.
- An unobstructed clearance of 5 feet must be maintained between a fire hydrant and any furniture or fixtures related to outdoor dining.
- All improvements (furniture and fixtures) used in the outdoor seating area must be temporary in nature. There shall be no penetration of the sidewalk surfaces.
- The outside dining area must be kept neat and clean at all times. It shall be free from accumulation of litter, snow, ice, and other potentially dangerous matter.
- No food preparation is permitted in the outside dining area.
- Tents or awnings are not permitted without obtaining a separate building permit. Table umbrellas are permitted if they do not have signs or advertisements on them and if the umbrellas are completely contained within the outdoor dining area, even when fully extended.
- No signs are permitted in the outside dining area except those signs that have a valid City permit.
- Loudspeakers outside are prohibited, and amplified sounds from inside the restaurant must not be audible in the outside dining area.
- Any door leading into a restaurant must not be propped open or otherwise supported in an open position.
- The restaurant must comply with all applicable city, state and federal laws and regulations.

### **STATE ALCOHOLIC BEVERAGE CONTROL (ABC) CONDITIONS**

As a courtesy, the following is a summary of conditions that apply if restaurants wish to serve alcoholic beverages in the outside dining area. A restaurant applicant must make a request in writing to the Virginia Department of Alcoholic Beverage Control (ABC) and provide a plan that shows the proposed seating area. It will take 2 to 4 days for ABC to review approve an application.

- The dining area must have a sturdy enclosure.
- There must be only one well defined entrance to the outdoor dining area.
- Customers are not permitted to carry their own alcohol to the outdoor dining area.
- The dining area must have adequate illumination during evening hours.

ORDINANCE NO. 4360

AN ORDINANCE to establish a pilot program for the administrative approval of outdoor dining or sidewalk cafe dining along the King Street corridor, from the Potomac River to the King Street Metro Station.

WHEREAS, the King Street Retail Advisory Committee has identified outdoor dining or sidewalk cafe dining as an important component in promoting pedestrian and retail friendly vitality in the King Street corridor from the Potomac River to the King Street Metro Station; and

WHEREAS, the fall 2004 Festival of the Arts, during which outdoor dining or sidewalk cafe dining along portions of King Street, demonstrated the desirability and feasibility of such outdoor dining; and

WHEREAS, current law requires that the City Council approve a site-specific encroachment ordinance to authorize outdoor dining in the public sidewalk right-of-way; and

WHEREAS, the City Council finds and determines that the public interest would be served by the establishment of a pilot program to permit more expeditious approval of outdoor dining or sidewalk cafe dining, which will promote pedestrian and retail friendly vitality, ensure that the public's use of the sidewalks will not be significantly impaired by such seating, and ensure that adjacent commercial and residential uses will be protected from any adverse impacts from such seating; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That outdoor dining shall be permitted to encroach into the public sidewalk right-of-way along King Street, from the Potomac River to the intersection of King Street and Daingerfield Road, and along all streets intersecting therewith, north to Cameron Street, and south to Prince Street, as shown on the map entitled "Proposed Boundary for Outdoor Dining Pilot Program," attached hereto, until December 31, 2004; provided, that such permission shall be subject to the provisions set forth below.

Section 2. That no such encroachment shall be permitted unless and until an application therefor, which shall consist of a dimensional plan for the area which reasonably depicts the location, size and space of the seating area, chairs, tables and other facilities to be located in the public right-of-way, and such additional information as the Director may reasonably require, has been approved by the Director of Planning and Zoning, after determining that the proposed encroachment will be reasonable, attractive, and promote pedestrian and retail friendly vitality in the King Street corridor, and that there is adequate space remaining within the public right-of-way to facilitate safe circulation of pedestrian traffic. No material change to the approved plan shall be made without prior written approval by the Director.

Section 3. That any such encroachment shall be subject to the following terms and conditions:

- (A) The seating area shall be adjacent to the property of an existing and lawfully operating restaurant, and outdoor dining shall be under the responsible direction and control of such restaurant.
- (B) The total number of seats (both outdoor and indoor) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats. Any temporary increase in number of seats for outdoor dining in the public sidewalk right-of-way authorized pursuant to this ordinance shall not be deemed by the Director to constitute intensification of use.
- (C) Hours of operation for the outdoor dining area shall not exceed 6:00 a.m to 11:00 p.m., seven days per week. All patrons must leave the outdoor dining area by the closing hour.
- (D) Loudspeakers shall be prohibited, and amplified sounds from inside the restaurant shall not be audible, within the encroachment area.
- (E) All furniture and fixtures placed in the right-of-way shall be temporary and shall be readily removable without any damage to the surface of the right-of-way.
- (F) The restaurant shall maintain the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other similar matter.
- (G) The restaurant shall comply with all applicable city, state and federal laws and regulations.
- (H) Such additional, reasonable terms and conditions as the Director may include in the written approval for the encroachment.

Section 4. That any such encroachment shall be subject to and conditioned upon the restaurant maintaining liability insurance, with commercially reasonable limits and coverages, including for its operation within the encroachment area, and permission to establish and maintain the encroachment shall not be construed to relieve the restaurant of liability for any negligence on the restaurant's part on account of or in connection with the encroachment.

Section 5. That by accepting the authorization granted by a permit authorized by this ordinance to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the restaurant shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 6. That the authorization granted by this ordinance to establish and maintain the encroachment is not intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees.

Section 7. Neither the City of Alexandria nor any public utility company shall be responsible for damage to property encroaching into the public right-of-way during repair, maintenance or replacement of the public right-of-way or any public facilities or utilities in the area of encroachment.

Section 8. That the authorization granted by this ordinance to establish and maintain the encroachment shall be terminated whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from the restaurant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by the restaurant without cost to the city. If the restaurant shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of the restaurant, and shall not be liable to the restaurant for any loss or damage to the structure of the encroachment or personal property within the encroachment area, caused by the removal.

Section 9. That no fees or charges imposed pursuant to Sections 3-2-81 through 3-2-85 of the City Code shall be applicable to encroachments authorized by this ordinance.

Section 10. That this ordinance shall be effective upon the date and at the time of its final passage, and shall expire on December 31, 2004.

WILLIAM D. EUILLE  
Mayor

Attachment: Map depicting Boundary for Outdoor Dining Pilot Program

Final Passage: September 28, 2004

