

Docket Item #3

Text Amendment #2007-0006
KING STREET OUTDOOR DINING
PROGRAM

Planning Commission Meeting
February 5, 2008

ISSUE: Consideration of a text amendment to Section 6-800 of the Zoning Ordinance, the King Street Outdoor Dining Overlay Zone.

STAFF: Department of Planning and Zoning

PLANNING COMMISSION ACTION, JANUARY 3, 2008: The Planning Commission noted the deferral of the text amendment request requested by staff.

PLANNING COMMISSION ACTION, DECEMBER 4, 2008: Without objection, the Planning Commission deferred the text amendment request.

STAFF RECOMMENDATION: Staff recommends approval of the following changes to the King Street Outdoor Dining Regulations:

1. Allow outdoor dining year round, but require that between the Monday before Thanksgiving and March 31 of the following calendar year, furniture and barriers be removed from the right-of-way daily when the restaurant is closed to the public and in accordance with Section 6-805(E).
2. Any restaurant that has a permanent barrier approved as part of an encroachment ordinance enacted prior to the King Street Outdoor Dining program shall be allowed to leave the barrier in its approved location year round, provided that all outdoor furniture so enclosed is removed according to City regulations.

Staff recommends maintaining the following changes as approved by City Council through an emergency ordinance in June 2007:

1. Require an annual renewal of the outdoor dining permit and assess a fee.
2. Lower the minimum required umbrella height to 6 feet and 8 inches.
3. Require a continuous five foot right of way for the entire length of dining areas.
4. Prohibit smoking in outdoor dining areas.
5. Prohibit tall tables and chairs (measuring greater than 32 inches above ground, which includes bar stools)
6. Require all restaurants with previously approved encroachments and special use

permits for outdoor dining to participate in and comply with the King Street program, except that locations with a greater number of seats approved through such previously approved ordinance and permit need not reduce that number.

I. ISSUE

At a legislative session in June 2007, the City Council approved an emergency ordinance to enact a number of changes to the King Street Outdoor Dining regulations. The emergency ordinance is due to expire on March 31, and the ordinance requires final approval and adoption by the City Council. Because the issue must go back to Council, there is an opportunity to revise regulations to address the few issues that have been raised since the June approval. As such, staff recommends the following additional changes to the King Street Outdoor Dining regulations:

1. Allow outdoor dining year round, but require that between the Monday before Thanksgiving and March 31 of the following calendar year, furniture and barriers be removed from the right-of-way daily when the restaurant is closed to the public and in accordance with Section 6-805(E).
2. Any restaurant that has a permanent barrier approved as part of an encroachment ordinance enacted prior to the King Street Outdoor Dining program shall be allowed to leave the barrier in its approved location year round, provided that all outdoor furniture so enclosed is removed according to City regulations. (Mai Thai)

II. BACKGROUND

In September 2004, City Council passed an ordinance establishing a pilot program for sidewalk cafe dining along Old Town's King Street corridor. This pilot program remained in effect, with an extension through the end of 2005. The pilot program was designed to identify potential issues and solicit input from the public on the desirability of outdoor dining.

Based on considerable input from citizens and business owners, a permanent outdoor dining program was established by Council ordinance in July 2005. The permanent program began on January 1, 2006 and included a requirement that outdoor dining furniture and barriers comply with design guidelines approved in January 2006 by the Old and Historic Alexandria Board of Architectural Review.

The King Street Outdoor Dining Program has now been operating on a permanent basis for more than two years. In June 2007, staff reported to the Planning Commission and City Council on the general success of the program and recommended certain clarifications and changes to the program regarding the width of pedestrian pathways, prohibition of storage of tables and chairs during winter months, establishment of an annual renewal and fee, and reduction of the required umbrella height.

At its meeting in June 2007, the Planning Commission approved staff's recommendation and added an amendment to prohibit smoking in outdoor dining areas located in the public right-of-way. On June 26, 2007, City Council approved the Planning Commission's recommendation and added

amendments to the recommended fee (approved a fee of \$100 plus \$1.50 per square foot for new applications and renewals) and prohibited tables and chairs taller than 32 inches, which includes bar stools. Council also required that all restaurants with previously approved encroachments and special use permits for outdoor dining be required to participate in and comply with all regulations of the King Street Outdoor Dining program. Finally, Council amended the date by which outdoor dining areas would have to be removed from the public right-of-way, including those restaurants that had previously approved encroachments, by designating the last day as the Monday before Thanksgiving, and maintained the season commencement date of April 1.

III. DISCUSSION

The two proposed regulations in this text amendment are: 1) allowing outdoor dining year round, and 2) allowing permanent barriers for outdoor dining areas approved with encroachments enacted prior to the King Street Outdoor Dining program to remain. Other issues to clarify in this discussion include maintaining the prohibition on tall tables and chairs, and the recourse if a proposed furniture color is denied by staff.

Year-Round Dining

Prior to June 2007, the King Street Outdoor Dining program allowed outdoor dining year round, except prohibited storage in the right of way during extended periods of time, such as during winter months. Despite this regulation, staff found during winter months that due to the infrequent opportunities for outdoor dining and the lack of interior storage space at restaurants to accommodate the outdoor furniture, several restaurants stored furniture and barriers in the right of way during winter months, either set up or stacked against the building. Extended storage outdoors during winter months not only created an eyesore, but created a target for accumulation of debris and slush as routine cleaning and snow removal became hampered. Staff found at that time that it would be easier for everyone, restaurant owners as well as City enforcement staff, if there was a specific period of time that chairs, tables, and barriers are not permitted on the sidewalk.

However, as Bittersweet illustrated this winter, there are days during winter months which are clearly appropriate for outdoor dining. Staff sought a solution to provide flexibility to allow restaurants to set up outdoor dining during winter months, without creating the negative situation that existed prior to the prohibition during winter months where the right of way became a storage facility for tables and chairs and accumulated debris.

The proposed text amendment includes language that staff finds can achieve this balance, which will allow dining year round, but require during winter months, between the Monday before Thanksgiving and March 31, that restaurants remove all furniture and barriers from the right of way daily when the restaurant is closed to the public and in accordance with Section 6-805(E) which identifies 11:00 p.m. as the closing hour for outdoor dining areas. Furniture for outdoor dining includes umbrellas and umbrella stands which, if used, must also be removed daily. Staff finds that the revised regulation would provide the flexibility for restaurants to provide outdoor dining on the few possible, nice weather days during winter months, but requires a clear method to ensure that extended outdoor storage does not occur and become a problem.

The daily removal requirement may mean that some restaurants choose not to participate during winter months due to a lack of interior storage space, or that they may reduce the number of tables and chairs that they provide to make interior storage feasible. Staff finds that this is an appropriate expectation considering that there were no objections to the proposed prohibition of dining during winter months as originally proposed in June, and that past experience revealed the need for more stringent standards during winter months. In addition, the previously approved outdoor dining approval at Bittersweet required that the furniture be brought inside each day year round, and the owner has not objected to the requirement.

Allowing Previously Approved Permanent Barriers

There are four locations where encroachments were approved in the public right-of-way along King Street prior to the adoption of the King Street Outdoor Dining program. These locations include the Mai Tai restaurant and Starbucks coffee shop in the unit block of King Street, Bittersweet Restaurant in the 800 block of King Street (100 block of N. Alfred Street), and the Uptowner in the 1600 block of King Street (at Harvard Street). Of these four encroachments, three were approved just for tables and chairs and no barriers (Starbucks, Bittersweet and Uptowner) and one was approved for tables, chairs and a barrier bolted to the sidewalk (Mai Tai).

In letters from Mai Thai, the restaurateur argues that removing the permanent barrier is a detriment to the restaurant. He argues that Mai Thai prepared drawings with an architect, gained Council approval on the encroachment, and had BAR approval for the barrier design. According to the applicant, the railing is designed to relate to the exterior design of the building, and that making the barrier temporary would require dismantling the railing and repairing the sidewalk where it is currently bolted.

Staff agrees with the applicant that BAR approved the railing design and deemed the design appropriate, and that approval of the permanent barrier by the City Council, with review by various City departments, also deemed it to be safe and unobtrusive to pedestrians in the unit block. Therefore, staff does not object to allowing Mai Thai to maintain its permanent barrier year round, but it will have to comply with all other aspects of the King Street Outdoor Dining program.

Tall Tables and Chairs

Design Guidelines were adopted by the BAR in June 2006 for the King Street Outdoor Dining program. In addition to standards on materials, color and configuration as outlined in the guidelines, City Council included in the June 2007 emergency ordinance a prohibition of tall tables and chairs, which includes bar stools. Generally, the guidelines state that tables and chairs should be functional and contribute to the overall atmosphere of Old Town's commercial district and be complementary in both appearance and quality. In regard to size and shape, restaurants should strive for space-efficient seating layouts and furniture configuration due to Old Town's narrow sidewalks. Square or rectangular tables are strongly recommended for use in Old Town's outdoor dining areas. Square or rectangular tables are more flexible for use in outdoor dining areas. Such tables may be combined to seat larger parties much more effectively than can round tables. Smaller tables work better than larger tables, are more efficient and flexible, and minimize the impact to pedestrian circulation. Although optimal table size varies by each restaurant's specific outdoor dining layout, smaller tables are preferred. With regard to chairs used within a particular establishment's outdoor seating area, they must match each other by being of visually similar design, construction and color.

City Council included the prohibition on tall tables and chairs because of the concern that bar stools convey a bar-like atmosphere in the public right-of-way and may be more visually obtrusive to pedestrians, which may adversely impact neighboring businesses and residences, and hinder the goal of the program of adding vitality and promoting a pedestrian and retail friendly street. Because of this concern, staff recommends maintaining the prohibition. Of the almost 40 restaurants that participated in the program last year, only the Old Town Theater and Hard Times Café have bar stools. Bittersweet has used tall chairs with seatbacks in the past, however it was only two of the 24 outdoor seats allowed at the restaurant.

Furniture Color

At the June hearing, Council members expressed concern that early in the implementation of the program staff required Misha's Coffee shop to replace its outdoor furniture with a less vivid color. According to the King Street Outdoor Dining Design Guidelines, "Chairs may be colored or of a natural unpainted material (i.e., wood, metal etc.). Chairs are not permitted to be white plastic or of any fluorescent or other strikingly bright or vivid color." Chairs, like other outdoor dining elements, must contribute to the overall atmosphere of Old Town's commercial district and must be complementary in both appearance and quality. As such, the design guidelines include prohibitions on vivid color schemes and materials that may be inappropriate. Staff has not had any cases of disputed colors since the Misha's case two years ago. However, if at some point staff denies a furniture color finding it inconsistent with the intent of the guidelines, an applicant may go to the Board of Architectural Review for reconsideration of the color. Staff finds that this provides adequate recourse for applicants who do not agree with a staff determination regarding color, while ensuring that the integrity of the historic district is maintained.

IV. RECOMMENDATION

Based on the above, staff recommends **approval** of the following:

1. Allow outdoor dining year round, but require that between the Monday before Thanksgiving and March 31 of the following calendar year, furniture and barriers be removed from the right-of-way daily when the restaurant is closed to the public and in accordance with Section 6-805(E).
2. Any restaurant that has a permanent barrier approved as part of an encroachment ordinance enacted prior to the King Street Outdoor Dining program shall be allowed to leave the barrier in its approved location year round, provided that all outdoor furniture so enclosed is removed according to City regulations. (Mai Thai)

ATTACHMENTS:

Attachment 1: Section 6-800 of the Zoning Ordinance

STAFF:

Faroll Hamer, Director, Department of Planning and Zoning,
Richard Josephson, Deputy Director,
Stephen Milone, Division Chief, Zoning & Land Use Services,
Valerie Peterson, Urban Planner

PROPOSED REVISIONS TO KING STREET OUTDOOR DINING OVERLAY ZONE

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Sec. 6-800 King Street Outdoor Dining Overlay Zone

- 6-801 *Purpose.* The King Street Outdoor Dining Overlay Zone is intended to facilitate outdoor dining in Old Town in order to create an active streetscape, enhance the economic and social vitality of King Street, and promote pedestrian and retail friendly activity; to allow for the use of the public right of way for such outdoor dining; and to expedite the approval of such facilities while ensuring that the public's use of the sidewalks will not be significantly impaired by such dining, and that adjacent commercial and residential uses will be protected from any adverse impacts from such dining.
- 6-802 *Application of overlay zone.* The King Street Outdoor Dining Overlay Zone includes the King Street corridor, 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, "King Street Outdoor Dining Overlay Zone," dated June 21, 2005.
- 6-803 *Administrative permit availability.* The requirements of obtaining approval of a special use permit under section 11-500 of this ordinance and of obtaining approval of an individual encroachment ordinance under section 5-2-29 of the city code otherwise applicable, shall not apply to outdoor dining facilities that meet the requirements of this section 6-800 and for which an administrative permit is approved pursuant to this section.
- 6-804 *Administrative permit process.*
- A. An applicant for an outdoor dining permit shall file an application with the director on such forms and subject to such procedures as the director may establish for the purpose.
 - B. The application shall include a plan with dimensions showing the layout for the outdoor dining area which accurately depicts the existing sidewalk conditions, including sidewalk width from building face to curb; location and dimensions of tree wells; locations of lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions, as well as design, location, size and space of the dining area, chairs, tables, barriers, umbrellas and other facilities to be located within the outdoor dining area, and such additional

information as the director may reasonably require.

- C. The director shall review the application to determine if the proposed dining establishment, and any encroachment into the public right of way, 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.
- D. The director may approve, approve with conditions, or deny the application. The approved plan and permit shall be posted at the restaurant premises, and visible to customers and the public.
- E. No material change to the approved plan shall be made without prior written approval by the director.
- F. The outdoor dining permit shall be valid ~~only~~ between April 1 and **March 31 of the following calendar year, subject to Section 6-805(O)(5)** ~~the Monday before Thanksgiving of each calendar year~~, and shall be renewed on an annual basis. A permit fee, established pursuant to section 11-104 of this ordinance, and based on the gross square feet of outdoor dining area, plus a minimum processing fee, shall be assessed annually.

6-805 *Standards for outdoor dining.*

- A. The outside dining area is to be attractive, and promote pedestrian and retail friendly vitality in the King Street corridor.
- B. The outside dining area shall be located adjacent to the property of an existing and lawfully operating restaurant and shall be under the responsible direction and control of the restaurant. It may be located adjacent to the building or near the curb but shall be contained within the location delineated by the permit.
- C. If the outdoor dining area is in a location on the property that is not in the sidewalk area in front or on the side of the restaurant, it shall be reviewed to determine whether its location supports the purpose of the zone to create an active streetscape and to protect residential areas from adverse impacts.
- D. The total number of seats (both indoor and outdoors) shall not exceed the restaurant's previously approved maximum number of seats by more than 20 seats, and the number of seats permitted is dependent on the amount of space available and on building and fire code requirements. Any increase

in number of seats for outdoor dining in the public sidewalk approved under this section shall not be deemed by the director to constitute an intensification of use.

- E. The outdoor dining area may be open to patrons from 6:00 a.m. to 11:00 p.m. daily.
- F. In order to allow adequate pedestrian traffic areas and emergency access around outdoor dining areas, the following dimensional requirements must be observed:
 - (1) At least five feet, or such additional space as the director deems necessary, 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. In locations where the sidewalk provides additional width or where there are fewer obstructions, the director may require more than five feet. In order to achieve a continuous pedestrian walk way, the pedestrian passageway shall be a straight line, parallel to the building face and curb line, for the entire length of the dining area. The director may require additional measures that contribute to maintaining a straight and unobstructed pedestrian passageway along the entire block face.
 - (2) A space at least 44 inches wide for unobstructed ingress/egress must be maintained between any restaurant doorway and the pedestrian traffic corridor.
 - (3) Outdoor dining areas located near the sidewalk curb must leave at least two feet of unobstructed sidewalk depth between the curb and the outer dimension of the outdoor dining area.
 - (4) An unobstructed clearance of five feet must be maintained between a fire hydrant and any furniture or fixtures related to outdoor dining.
- G. The outside dining area must be kept sanitary, neat and clean at all times. It shall be free from accumulation of food, litter, snow, ice, and other potentially dangerous or unsanitary matter. The restaurant must participate in an approved rodent control program.
- H. No food preparation is permitted in the outside dining area.
- I. 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, if the umbrellas are completely contained within the outdoor dining area, even when fully extended, and if the lowest dimension of the umbrella maintains a minimum vertical clearance of six feet, eight inches above the sidewalk to allow for patron and server circulation.

- J. No signs are permitted in the outside dining area except those signs that have a valid City permit.
- K. Loudspeakers outside are prohibited, and amplified sounds from inside the restaurant must not be audible in any outside dining area on the public right of way.
- L. Any door leading into a restaurant may not be positioned to remain open or otherwise supported in an open position.
- M. The restaurant must comply with all applicable city, state and federal laws and regulations.
- N. In order to serve alcoholic beverages, an application must be approved by the Virginia Department of Alcoholic Beverage Control (ABC), and it will require the following:
 - (1) The dining area must have a sturdy enclosure.
 - (2) There must be only one well defined entrance to the outdoor dining area and it must be located directly in front of the egress doors.
 - (3) Customers are not permitted to carry their own alcohol to the outdoor dining area.
 - (4) The dining area must have adequate illumination during evening hours.
- O. The design of the outdoor dining facilities which are visible from the public street or way, shall comply with the following:
 - (1) All improvements (furniture and fixtures) used in an outdoor dining area on the public right of way must be readily removable without damage to the surface of the right of way.
 - (2) An outdoor dining area within the public right of way shall be contained by sturdy barriers in conformity with city standards.

- (3) There shall be no penetration of the public sidewalk surfaces, except that the city will, following issuance of the permit, mark the corners of the approved outdoor dining area with conspicuous markers.
- (4) The design of the area shall comply with any Board of Architectural Review approved design guidelines. The Board's guidelines shall provide reasonably objective guidance as to acceptable colors.
- (5) Furniture and enclosures may not be stored on the public right of way for extended periods, and must be removed from the right-of-way **daily when the restaurant is closed to the public, in accordance with Section 6-805(E)**, between the Monday before Thanksgiving and March 31 of the following calendar year.
- (6) **Tall tables and tall seating for tables shall not be permitted in the public right of way. As used in this Section 6-800, a tall table shall be defined as any table higher than 32 inches above the ground; tall seating shall be defined as seating or stools designed to fit tables which are higher than 32 inches above the ground. This paragraph shall be effective April 1, 2008.** ~~No tables which are higher than 32 inches above the ground, or seating or stools for tables which are higher than 32 inches above the ground, shall be permitted in the public right of way. This paragraph shall be effective April 1, 2008.~~
 - P. The director shall, on a case-by-case basis, require adjustments to the layout, dimensions, or distance from the property line of any outdoor dining area in order to ensure pedestrian visibility of the ground floor of buildings that adjoin those with outdoor dining areas.
 - Q. The applicant shall comply with such additional reasonable terms as the director may include in the permit.
 - R. The restaurant operator shall not permit smoking in outdoor dining areas located in the public right-of-way.

6-806 *Additional encroachment requirements.* An outdoor dining area located within the public right of way shall also comply with the following specific requirements for encroachments:

- A. 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.

- B. 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.
- C. The authorization granted by a permit approved under this 6-800 to establish and maintain the encroachment is not intended to constitute, and shall not 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.
- D. 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.

- E. The authorization granted by a permit approved under this section 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.

- F. 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 section 6-800, but the fee established pursuant to section 6-804(F) shall be applicable.

6-807 *Section controlling.* In order to establish a uniform set of regulations for outdoor dining in the public right-of-way, the provisions of this section 6-800 shall supercede and preempt conflicting provisions applicable in the public right-of-way, which are included in any encroachment ordinance, special use permit or administrative permit approved prior to June 26, 2007; provided, however, that nothing in this section 6-807 shall be deemed to reduce the **approved** number of seats **or to require the removal of a permanent barrier** approved by any such encroachment ordinance or permit.