

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 22, 2007

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES K. HARTMANN, CITY MANAGER *J*

FROM: FARROL HAMER, DIRECTOR, PLANNING AND ZONING *FH*

SUBJECT: KING STREET OUTDOOR DINING PROGRAM

**ISSUE:** City Council consideration of proposed changes to the King Street Outdoor Dining Program

**RECOMMENDATION:** That the City Council adopt the changes proposed in the report to Council on June 16 and that these changes be effective immediately for new applications, and on April 1, 2008, for renewals of current applications. These changes include instituting a fee for new applications and renewals, regulating sidewalk width and path, and changing the height for umbrellas. If Council determines that barstools should not be permitted as part of the King Street Outdoor Dining Program, staff requests that those establishments with barstools be provided a reasonable period of time to comply.

**BACKGROUND:** At the June 16 Council meeting, Council members asked staff to respond to several concerns about the King Street Outdoor Dining Program, including enforcement, fees, curbside dining, design guidelines, and outdoor dining areas approved prior to the initiation of the King Street program. This memo is in response to those concerns.

**DISCUSSION:**

**Enforcement**

As discussed at the Council hearing, staff conducted comprehensive inspections of a majority of the participating restaurants this spring. The enforcement efforts included significant outreach and education similar to prior years of the program. However, maintaining compliance is an on-going effort.

Zoning inspectors patrol the dining areas at least once each week, in addition to responding to specific complaints. In addition, zoning staff will be conducting evening and weekend spot checks periodically over the summer.

Code Enforcement also has a key role in enforcing the regulations of the program. Code is involved in inspecting the premises prior to issuance of a dining permit and is involved in follow-up inspections depending on the nature of a particular complaint. Evening and weekend complaints about outdoor dining can be reported at any time to the Nuisance Hotline at 703-836-0041. As there are only two Code personnel on duty during nights and weekends for the entire city, they will respond to non-emergency outdoor dining complaints only if they are not otherwise occupied with matters of life and safety that may arise elsewhere in the City. Any complaints received by Code will be reported to Planning and Zoning, who will do the necessary follow-up. The evening and weekend Code personnel also may be available for occasional monitoring along King Street.

**Staff Training**

Inspectors and staff currently assigned to process applications and conduct inspections during daytime hours have been trained regarding the requirements of the program. We will be training other daytime inspectors. Evening and weekend staff also will be trained as part of an inspectors training session to be held in July. In addition, Police personnel assigned to monitor King Street can also be trained on the general regulations of the program to be able to identify violations, and the procedures for enforcing them.

To assist the various personnel who could potentially respond to a complaint, and to ensure restaurant staff are aware of the approved dining area, staff included, in the proposed text amendment, regulations that require restaurants to post their approved plans inside the restaurant. This way, if there is any question regarding the approved area, it is readily available for all to view and verify the dining area configuration.

**Fees**

Under the existing King Street Outdoor Dining Program, no fee is charged to participate in the program. Because of the compliance issues observed during recent enforcement efforts, staff is proposing that an annual renewal process and fee be required. This will assure that the outdoor seating areas are installed and maintained in compliance with the program requirements.

In determining the appropriate fee, staff reviewed the fee structures of numerous jurisdictions both in and out of the immediate area, some of which are shown below:

<u>City</u>	<u>Application Fee</u>	<u>Annual Renewal Fee</u>	<u>Per Sq Ft Fee</u>
Annapolis	\$300	\$300	
Arlington <i>(includes Clarendon and</i>	SUP (\$1500) or Administrative Site Plan (\$500)	NA	NA

<i>Shirlington)</i>			
Washington, DC	\$260	\$5/sq ft unenclosed café; \$10/sq ft enclosed cafe	NA
Montgomery County ( <i>includes Silver Spring and Bethesda</i> )	\$0	NA	NA
Asheville, NC	\$175	\$25	
Charleston, SC	\$150	\$200	\$9 historic district; \$3 or \$6 in other areas.
San Diego, CA	\$350	NA	NA

Keeping in mind that there is currently no fee, and that the program is intended to provide the public benefit of a more active streetscape, staff proposed a fee that would contribute to some of the staff costs, without being a considerable cost to restaurants. The proposed \$100 base fee would be applied to all applications, and the additional \$1 per square foot fee would be a mechanism to assess an increased fee for larger dining areas. The square feet of approved dining areas ranges from 52 square feet at Nickels and Scheffler, up to 420 square feet at the Starbucks in front of the Hilton near the King Street Metro station. Landini Brothers has 390 square feet. Twenty-five restaurants have greater than 100 square feet, with seven of those being greater than 300 square feet. The average size of the outdoor dining areas along King Street is 189 square feet.

In response to Council’s inquiries about the cost to administer and enforce the King Street Outdoor Dining Program, staff reviewed several elements of the program and their associated costs. These elements include the initial application for an outdoor dining permit, any required revisions to the application, review by staff (P&Z, Code and T&ES), issuance of the permit, and inspection of the premises to determine compliance with requirements. Staff also factored in the cost to conduct spot inspections for continued compliance with requirements, respond to complaints, provide education, orientation and training to restaurant operators and City staff, and conduct year end inspections for compliance with removal of furniture. The cost associated with all of these tasks is approximately \$360 per restaurant.

### **Curbside Dining**

Accommodating outdoor dining on the narrow sidewalks on King Street is a challenge. Currently, outdoor dining is allowed either adjacent to the building, or adjacent to the curb. Curbside dining is required to be set back from the curb a distance of two feet to allow any parked vehicles an area to open doors. There have been concerns raised about curbside dining, including the potential conflicts between pedestrians and waitstaff crossing the sidewalk to serve curbside diners. While this may be a concern and conflicts have been identified and discussed with the particular restaurants, staff finds the benefits of curbside dining outweigh the minor congestion created by the crossing of pedestrians and waitstaff.

Several other jurisdictions allow curbside dining, many even encourage it as the dining can be situated among other streetscape elements, such as tree wells, lights, and trash cans, leaving the unobstructed pathway adjacent to the business fronts. For this same reason, members of the Commission on the Persons with Disabilities prefer curbside dining.

A majority of the restaurants on King Street provide their outdoor seating adjacent to the building. However, the following seven restaurants are approved for curbside dining because sufficient seating cannot be accommodated along the building front:

- O’Connell’s
- The Warehouse
- 219 King Street
- La Tasca
- Old Town Theater (not currently in business)
- Five Guys
- Hard Times Café

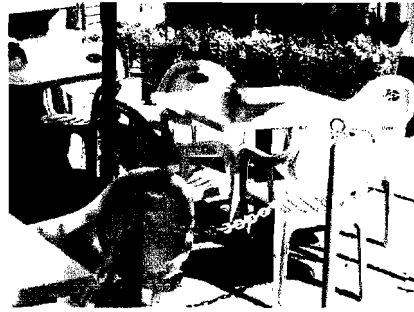
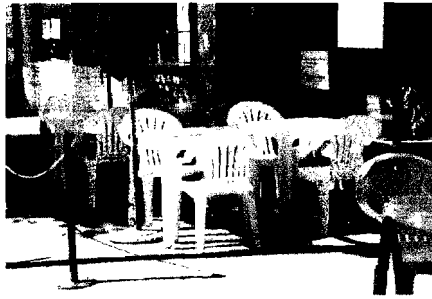
Prohibiting curbside dining would prevent these businesses from having any sidewalk dining. In addition, the proposed text amendment includes a provision that would require outdoor dining areas to be straight and continuous and not meander around sidewalk obstructions. Approval of this provision as currently proposed, along with any prohibition of curbside dining, would require three additional restaurants to significantly reduce the size of their seating areas or be excluded from the program. These restaurants are Casablanca, Bistro Lafayette, and Las Tapas. In total, 10 of the 36 restaurants participating in the program would be negatively impacted by a prohibition on curbside dining.

## **Design Guidelines**

The King Street Outdoor Dining Design Guidelines (Guidelines) were approved by the Board of Architectural Review in January of 2006. The Guidelines include specifications on materials and dimensions for furniture and barrier materials and dimensions, some of which were developed in consultation with the Commission on Persons with Disabilities.

### *Furniture (Colors)*

Outdoor dining furniture becomes a prominent part of the streetscape when used in the front of buildings, and such furniture needs to uphold the high standards applied to buildings and other improvements in Old Town. The Guidelines were developed to ensure that the fixtures in the dining areas are compatible with the historic district. The Guidelines do not regulate specific colors of the furniture and barrier materials, except that “white plastic or ...any fluorescent or other strikingly bright or vivid color” is prohibited. White plastic was prohibited because it can quickly and easily show dust and dirt and generally does not create the high-quality ambience the program is intending to achieve. Fluorescent colors were prohibited because they are inconsistent with the historic character of King Street.



Two years ago, before the Guidelines were approved, there were some locations that had white plastic and/or bright colored furniture. Staff received complaints about the appearance of the furniture at these locations. After the Guidelines were approved in January 2006, the restaurants were required to replace the furniture. Although those restaurateurs were reluctant to change furniture, they have since done so to comply with the Guidelines. Since that time staff has not received any complaints from restaurants regarding the limitation in the Guidelines.

### *Bar Stools*

The Guidelines do not limit the particular chair type, size or height. As such, they do not specifically prohibit bar stools. Bar stools have been approved at two locations, one of which is the Old Town Theater, currently not in operation, and the other being Hard Times Café. Another location, while not serving alcohol to the outdoor dining area, has tall chairs which may or may not be considered a bar stool depending on one's interpretation. The three examples are represented below:



*Bar Stool  
(Old Town Theater)*



*Bar Stool  
(Hard Times Café)*



*Tall Chair*

The Council may consider prohibiting bar stools, but should provide direction as to whether tall chairs and tables should also be prohibited.

### **Outdoor Dining Areas Approved Prior to the King Street Program**

Staff is aware of three locations along King Street where there is outdoor dining on the public right-of-way that was approved prior to the adoption of the King Street Outdoor Dining Overlay Zone. The three restaurants, approvals, and general conditions are as follows:

	<b>Bittersweet 821-823 King St</b>	<b>Starbucks 100 S. Union St</b>	<b>Mai Thai 6 King St</b>	<b>King Street Program</b>
Approvals (for restaurant seats and occupying r-o-w)	SUP for Restaurant; Encroachment for Outdoor Seating	Grandfathered Restaurant; Encroachment for Outdoor Seating	Grandfathered Restaurant; Encroachment for Outdoor Seating	King St Outdoor Dining Permit (TBD)
Number of Seats Allowed	24	# that fits in encroachment area (15)	# that fits in encroachment area (20)	Up to 20
Required Sidewalk Width	5 feet	6 feet minimum	5 feet minimum	5 feet minimum
Amenities Required	N/A	Landscape planters, city trash can	Landscape planters, city trash can	N/A
Furniture Design	No specification	No specification	BAR approval for permanent barrier	Comply with Design Guidelines
Leading edge, barrier and penetration of sidewalk	None required	None required	Barrier required by ABC. Permanently bolted to sidewalk, approved by BAR.	Leading edge required for all restaurants, barrier for alcohol sales or extending more than 3ft in to r-o-w. No penetration of sidewalk permitted (no permanent barriers)
Liability Insurance	Required	Required	Required	Required
Alcohol service	Alcohol not permitted in outdoor dining area (per SUP)	No specification	Allowed	Allowed with full enclosure of dining area

The three restaurants approved prior to the program went through a much more rigorous approval process to allow the outdoor dining. Conditions of approval for these three restaurants are, for the most part, as stringent as requirements under the existing Outdoor Dining Program. Balancing the various differences in approval processes and requirements, staff finds that the prior approvals are consistent with the goals of the current program, and that they should continue to operate under their existing approvals. Changes required for these restaurants to comply with the current Outdoor Dining Program would include limitation of outdoor seating to no more than 20 (reducing Bittersweet outdoor seating by 4 seats), allowing alcohol sales, and requiring an annual outdoor dining permit and fee.

## **Dogs**

Restaurant owners are required to obtain permission from the Alexandria Health Department prior to allowing dogs in their outside dining areas. Restaurants must provide a plan for control of the animals and clean-up procedures. There are also requirements relative to the type of utensils and glassware that can be used.

## **Conclusion**

Staff proposes that the changes outlined in the report to Council on June 16 be effective immediately for new applications, and on April 1, 2008 for renewals. These changes include instituting a fee, regulating sidewalk width and path and changing the height for umbrellas. If Council determines that barstools should not be permitted as part of the King Street Outdoor Dining Program, staff requests that those establishments with barstools be provided a reasonable period of time to comply.

### **STAFF:**

Faroll Hamer, Director, P&Z

Rich Josephson, Deputy Director, P&Z

Kathleen Beeton, Neighborhood Planning Chief, P&Z

Valerie Peterson, Neighborhood Planning, P&Z

Steve Milone, Land Use Services Chief, P&Z



Mai Thai  
ไหม ไทย

23:24  
6-26-07

26 June 2007

**City of Alexandria**  
**Mayor and Members of City Council**  
301 King Street, Room 2100  
Alexandria VA 22313

RE: Outdoor Dining at **Mai Thai** at 6 King Street

The Honorable Mayor William D. Euille and Members of the City Council:

It is our understanding that the City Council is considering placing Mai Thai into the City's Outdoor Dining Program and make the restaurant to adhere to its requirements. We object to the change in policy and feel that it will be detrimental to our restaurant.

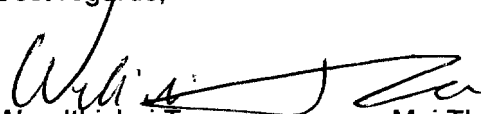
In order to get the approval to allow outdoor seating, Mai Thai prepared drawings with an architect, retained council, and presented to the City Council to receive approval on the encroachment. We also presented to the BAR for historic approval. Our architect spent a good deal of time working with the historic staff to create a railing design that was acceptable to the City. The railing is designed to relate to the patterns of the interior of the restaurant and was always understood as a permanent part of the design reflected on the exterior of the building. We feel that removing it for part of the year would be detrimental to the restaurant. Also, to make the railing removable would require a substantial redesign and rebuilding of the metal railing, and repairing of the sidewalk. The railing is welded construction and we may not even be able to reuse the existing rail if it had to be changed.

Mai Thai is careful to keep the area clean and maintains the outdoor seating constantly. The location of the restaurant at the end of King Street does not cause problems for pedestrian traffic.

We feel that the review process and approval that Mai Thai received for the outdoor seating is more stringent than the current program and that we should be allowed to keep our railing and seating as was approval by the City Council and BAR originally. To change our City-approved design to meet the requirements of the new program would be a step backward and would hurt the restaurant. We have developed a reputation in the City and do not want to damage that.

Thank you for your time and please contact me with any questions.

Best regards,

  
Woodthichai Tongrugs, owner Mai Thai  
703.622.9527 cell





<rmarkus@richmarkusarchitects.com>

06/26/2007 06:41 PM

Please respond to  
<rmarkus@richmarkusarchitects.com>

To <alexvamayor@aol.com>, <timothylovain@aol.com>, <councilmangaines@aol.com>, <council@krupicka.com>, <delpepper@aol.com>, <paulcsmedberg@aol.com>, cc bcc Subject COA Contact Us: outdoor dining for Mai Thai at 6 King Street

**Time: [Tue Jun 26, 2007 18:41:56] IP Address: [70.21.125.157]**

**Response requested: []**

**First Name:** Rich  
**Last Name:** Markus  
**Street Address:** Architect for  
Mai Thai  
6 King Street  
**City:** Alexandria  
**State:** VA  
**Zip:** 22313  
**Phone:** 2023332733  
**Email Address:** rmarkus@richmarkusarchitects.com  
**Subject:** outdoor dining for Mai Thai at 6 King Street  
On behalf of the ownership of Mai Thai at 6 King Street, I am forwarding this letter regarding the outdoor seating area. This letter is also being hand delivered by the owner Woody Tongrugs to tonight's City Council meeting.  
Thank you for your consideration  
Rich Markus

26 June 2007

City of Alexandria  
Mayor and Members of City Council  
301 King Street, Room 2100  
Alexandria VA 22313

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**Comments:**

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Woodthichai Tongrugs, owner Mai Thai  
703.622.9527 cell



"Fred Parker"  
<fredp@hardtimes.com>  
06/26/2007 04:35 PM

To <jackie.henderson@alexandriava.gov>  
cc  
bcc  
Subject message for the Mayor and city council

23824  
6-26-07

Mister Mayor and City Council:

The Hard Times Café has been in business on King Street since 1980. We were pleased when the city encouraged restaurants to offer outside dining and for the last two years have offered three high top tables with stools in front of our building.

We have had many compliments from our customers and no complaints from the city.

I was recently concerned to here that our seating arrangement may not be acceptable if the council decides stools are not appropriate for side walk dining.

Since I am not aware of any complaints regarding the Hard Times I'm not sure why there is a problem. If you have seen our seating arrangement I'm sure you would agree is appropriate for the Hard Times.

I hope I can count on the council to not approve a stool restriction or at least allow the opportunity for a restaurant to appeal the decision.

Thank you for your consideration.

Fred Parker