

Docket Item #7  
Text Amendment #2007-0002

KING STREET OUTDOOR DINING  
PROGRAM

Planning Commission Meeting  
June 5, 2007

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

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**STAFF RECOMMENDATION:** Staff recommends approval of the following clarification of regulations and procedural changes:

- Maintain the required five (5) foot pedestrian pathway adjacent to the outdoor dining area, and require that it is continuous and parallel to the building face for the entire length of the dining area and does not weave around sidewalk obstructions such as trees, and allow the Director to require additional pedestrian pathway width where warranted.
- Maintain prohibition of outdoor storage of tables, chairs and barriers during winter months, which shall be defined as days between January 2 and March 31 (Section 6-805 (O)(5)).
- Require an annual renewal of the permit beginning in 2008, with an annual application fee of \$100 plus \$1 per square foot over 100 square feet of outdoor dining area. The renewal process will provide the opportunity on an annual basis to review the regulations for existing restaurant management and staff and to communicate requirements to any new staff at the restaurants.
- Amend the minimum umbrella height in the zoning ordinance and King Street Outdoor Dining Design Guidelines from seven (7) feet to six (6) feet eight (8) inches, consistent with the Code requirement for the lowest edge of an overhang on a post or pylon.

**I. ISSUE**

The Outdoor Dining Program has been operating as a permanent program for over a year following a pilot program that lasted a year and a half. This report provides an overview of how well the program has been operating, how issues are being addressed, and recommends some changes to existing procedures and regulations.

**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 enclosures comply with design guidelines approved in January 2006 by the Old and Historic Alexandria Board of Architectural Review.

**III. COMMUNITY AND BUSINESS COMMENTS**

Both citizens and business owners generally support the outdoor dining program. In April 2007, staff attended the Old Town Civic Association Board meeting and the Upper King Street Neighborhood Association meeting. Both associations expressed support for the program, and were generally supportive of the proposed changes to the regulations. There are concerns about ensuring that the minimum five (5) foot pedestrian pathway be maintained and enforced.

Responses from the business community are generally very positive. In April 2007, staff attended the Old Town Business and Professional Association meeting where they expressed general support of the program. Restaurant owners are also concerned about keeping the five (5) foot pedestrian walkway clear, and found they need to monitor customers who often push the barriers back to have more room for dining. There was an issue in the early stages of the program of retail businesses concerned about the dining areas blocking views to their store. In response to this concern, the zoning ordinance and Design Guidelines include a provision that the director may require that a dining area be set back two (2) feet from an adjacent retail space in order to maintain visibility to the retail business.

The Alexandria Commission on Persons with Disabilities (ACPD) is supportive of the outdoor dining program, but is concerned about the five (5) foot pedestrian pathway and the need to maintain it completely unobstructed. They recognize that sometimes the problem is with the restaurant staff and sometimes with the customer, but voice concern that a better education campaign and diligent city enforcement is needed. ACPD's letter is attached.

#### **IV. DISCUSSION**

The outdoor dining program has been very successful. Over 36 restaurants are enthusiastically participating in the program and report enjoying increased business as a result. Citizens and visitors seem to enjoy the festive atmosphere that prevails along King Street with outdoor dining. The April 2007 Washingtonian magazine identified the outdoor dining program as a "welcome change" to the area, noting that the "sidewalks along King Street and near the waterfront come to life in warm weather."

The changes in the permanent program that were made as a result of testing the program during the pilot phase have worked well and have helped solve some of the issues raised earlier. A few issues have come to staff's attention as needing correction. Following is a discussion of the issues that have been raised about the program.

- **Five (5) foot pedestrian walkway.** Under the permanent program, Section 6-805(F)(1) requires that at least five (5) feet of unobstructed sidewalk space must be maintained past the outside dining area for sidewalk pedestrian traffic to ensure a clear pedestrian passageway along the sidewalk. According to the design guidelines, the five (5) feet of pedestrian space must be clear of obstructions caused by trees, tree wells, posts, hydrants, or any other infrastructure. In addition, the design guidelines require that the outdoor dining enclosure must permit the movement of patrons and waitstaff inside the enclosure. Waitstaff may not serve patrons from beyond the perimeter enclosure of the outdoor dining area.

Under the pilot program, in certain circumstances, the pedestrian walkway could be reduced to four (4) feet for short distances. This caused the pedestrian walkway to be too narrow and restricted free movement of pedestrians along the sidewalk. Because the four (4) foot rule did not work, the permanent program eliminated the four (4) foot option. The current standard of a minimum of five (5) feet generally works well, although better in some locations than others, depending on the existing sidewalk conditions, and the concentration of outdoor dining and pedestrians in a given block.

There were some issues with compliance with approved plans during the pilot phases. As a result, P&Z staff began to mark the perimeter of the dining area (with a nail and washer between the bricks) so that the restaurant and the enforcement staff know the boundaries of the approved outdoor dining area. This practice has proven very effective.

Despite the sidewalk markings, enforcement efforts by city staff, and more rigid enclosure barriers, customers or waitstaff occasionally push the barriers into the pedestrian walkway. The few complaints that P&Z staff have received about outdoor dining have principally focused on a violation of the five (5) foot pedestrian walkway. Although P&Z responds to any complaints, the ultimate answer to this problem requires the cooperation of outdoor dining restaurant owners, managers, waitstaff, and their customers.

There are a couple of approved outdoor dining plans that have had unintended consequences. One is a situation where, in order to maintain the five (5) foot clearance for pedestrians, the walkway meanders around obstructions such as a tree well, creating a zigzagging pedestrian pathway along the length of the outdoor seating area. In another instance, the outdoor dining area was spread out to occupy a significant portion of a wider sidewalk, leaving only the required five (5) foot public pathway against the street curb. While five (5) feet is a reasonable minimum, it does not have to be the maximum. In both instances, the outdoor dining area was more obtrusive than pleasant, and negatively impacted pedestrian movement.

Staff recommends that for all renewed and new applications, to provide flexibility to businesses while maintaining a high-quality public space, that the zoning ordinance be amended to require that a continuous unobstructed pathway be provided that is parallel to both the curb and building face. In addition, staff proposes that the director have the discretion to require additional measures as necessary to ensure a continuous pedestrian pathway, and provide a quality public environment for the numerous pedestrians utilizing the sidewalks. Finally, staff recommends that in areas where there are larger sidewalks, an increased pedestrian path may be required. The regulation intends to provide adequate dining area for individual businesses to continue to benefit from the program, while ensuring that the benefit of the wider sidewalks can be experienced by the general public.

There are a few restaurants that will be impacted by these new limitations, and staff has been working with them on ways to reconfigure the space to comply with the proposed regulation with the least impact to existing seating arrangements.

- **Curbside Dining.** The current regulations permit the outdoor dining area to be adjacent

to the building or at the curbside. The curbside option was included to allow flexibility to restaurants with limited space or obstructions near their building. If the outdoor dining

area is located near the sidewalk curb, there must be two feet of unobstructed space between the outdoor dining area and the curb. The rationale for the two foot space was to allow passengers in cars parked on the adjacent curb to disembark. Regardless of whether the restaurant wants to have its outdoor dining area adjacent to the building or at the curbside, the application and site plan must meet all of the other requirements and be approved by P&Z and Code Enforcement.

There have been some complaints about allowing curbside dining because it interferes with those who want to park on the adjacent curb. Code Enforcement staff had a concern that with outdoor dining areas both adjacent to the building and curbside sometimes results in a zigzag pedestrian walkway. P&Z staff feels that restaurants should have the flexibility to locate their outdoor dining area near the curb if that is their only reasonable location. For example, O'Connell's Restaurant and Warehouse Bar and Grill do not have enough space next to their buildings for outdoor dining. In the final analysis, P&Z and Code Enforcement will not approve outdoor dining permits if all the requirements are not met and applicants do not comply with the Design Guidelines. In addition, curbside dining in some locations is preferable because it can be situated among other streetscape elements, and the remaining sidewalk toward the building face remains completely open and unobstructed.

- **Removal of Furniture and Enclosures During Winter Months.** Section 6-805(O)(5) of the zoning ordinance states: Furniture and enclosures must be removed and may not be stored on the public right of way for extended periods, such as the winter months. This year there have been a few examples of restaurants that have stored some of their tables and chairs on the sidewalk and some have actually left their table and chairs up during cold winter weather.

The reason that the staff drafted the regulation and was not more specific about “the winter months” was that in the past couple years there have been very pleasant days in December and January where outdoor dining was possible. Unfortunately this flexibility makes it more difficult for City sidewalk and street cleaning during the winter months. In addition it creates an eyesore to have furniture and enclosures stored outside during the winter months. Staff observed a few restaurants over the winter that did not remove the dining area as required (the restaurants subsequently complied with the requirement at staff's request).

Staff believes it will be easier for everyone, restaurant owners as well as City

enforcement staff, if there is a specific period of time that chairs, tables, and barriers are not permitted on the sidewalk. P&Z will notify all outdoor dining permit holders that furniture and enclosures must be removed and may not be stored on the public right of way during the winter period January 2 to March 31 each year. The most extreme winter temperatures and weather are most often experienced during January and February, with March a month of transition. Ideally, commencement of the outdoor dining each year will follow the sidewalk power washing conducted by T&ES during the middle of March (weather dependent).

- **Education.** In anticipation of the beginning of the permanent outdoor dining program, City staff in July 2005 sent an invitation to all restaurant owners in the King Street area to attend an Outdoor Dining Education Program meeting to be briefed on the new permanent outdoor dining requirements. A manager or supervisor from each restaurant with an outdoor dining permit was required to attend one of the three scheduled meetings. City staff from the City Manager's Office, P&Z, and Code Enforcement described the new requirements and emphasized the need to keep five (5) feet of "unobstructed" sidewalk space for pedestrian use. At the meetings, Code Enforcement also stressed the need for restaurant owners to keep Fire Department Connections (FDCs) and egress doors/paths clear of encroachments or obstructions. As a follow-up to that meeting, and to discuss the proposed amendments to the outdoor dining policies and regulations discussed in this report, staff held two other educational meetings in April 2007. Existing regulations were reviewed and discussed at the meetings, as were the proposed regulation changes discussed in this report.
- **Annual Permit Renewal and Fee.** With new restaurants applying for outdoor dining permits as well as the normal turnover of staff in the existing restaurants, staff recommends that all restaurants apply annually for a renewal of the permit. In addition, the outdoor dining program has been extremely time-intensive for staff, which includes education and outreach about the program, working with applicants on submitting adequate plans, reviewing the plans, conducting site inspections for compliance, and conducting follow-up inspections for on-going enforcement. Because of the significant cost associated with the program, staff proposes assessing a fee of \$100 for each restaurant plus \$1 per square foot over 100 square feet of outdoor dining area, on an annual basis. In determining the fee, staff considered the fees of a number of jurisdictions, including Annapolis, Arlington and Washington, DC, which had a range of cost structures from a one-time \$500 fee, up to \$10 per square foot annually. The ordinance establishing the permanent outdoor dining program prohibited the charging of fees, so this will require a zoning ordinance change.

The sidewalk markers that will be placed in the sidewalk by staff will guide the

placement of the boundaries year after year. To receive approval of the renewal, the applicant will only be required to review the outdoor dining regulations with staff and confirm the location of the seating as depicted on the original or revised plan as determined by staff. It is anticipated that this can be accomplished at the counter, in one visit. Restaurant managers must also make sure that all of their present and new employees understand the importance of the outdoor dining requirements so that the program will continue to achieve community support. To ensure compliance, staff will inspect the outdoor dining area once it is set up for the season.

- **Outdoor Dining Design Guidelines.** The Outdoor Dining Design Guidelines were approved in January 2006 by the Old and Historic Alexandria District Board of Architectural Review. Prior to the Board's approval, a public hearing was held in December 2005 where restaurant owners indicated their agreement with the Guidelines.

The Design Guidelines have proven to be very helpful to restaurant owners and have resulted in high quality outdoor dining areas. A number of restaurants purchased black sectional metal fencing for their outdoor dining barriers – a welcome improvement over rope or chain barriers.

- **Cleanliness.** Existing regulations require that the outside dining area must be kept sanitary, neat and clean at all times. The area must be kept free from food, litter, snow, ice and other unsanitary matter, with no food preparation, and the restaurant must participate in an approved rodent control program. Staff is not aware of significant issues with compliance with these requirements, but reinforced the requirement at the educational meeting that was held in April 2007.
- **Umbrella height and projection.** There was an issue of umbrella height and projection into the sidewalk during the pilot program phases. Section 6-805(I) of the zoning ordinance, and the adopted design guidelines includes a requirement that umbrellas be contained entirely within the outdoor seating area, including the fabric and supporting ribs, and that the umbrella measure at least seven (7) feet above the dining area. In a recent comprehensive inspection of outdoor dining participants, staff found that most restaurant umbrellas were violating this condition. In talking with restaurateurs, it is difficult to find umbrellas seven (7) feet tall that can fit within the narrow dining areas on King Street. The seven (7) foot requirement was intended to ensure adequate headroom under the umbrellas, and was in part based on the required height for awnings above the public right of way, which allow for easy pedestrian passage underneath. However, the outdoor dining program requires that umbrellas be completely contained within the dining area, leaving the circulation underneath limited to seated diners and waitstaff. The Code required height for doorways and the lowest edge of an overhang on a post or pylon is 80 inches (six (6) feet eight (8) inches), and staff finds this to be a more than

reasonable height for umbrellas within a dining area. To provide some relief to the restaurants, and to be consistent with an existing Code requirement, staff recommends that the lowest dimension of the umbrella maintain a vertical clearance of six (6) feet eight (8) inches instead of seven (7) feet.

- **Enforcement.** Staff frequently checks outdoor dining areas, both in response to complaints and as part of routine inspections. Violation of any of the outdoor dining regulations may result in ticketing and fines. Repeated violations may result in revocation of the permit. Staff has worked cooperatively with restaurants on compliance, and ticketing has thus far not been warranted.

Most recently, staff conducted a comprehensive inspection of each outdoor dining area, and notified managers of violations. All but a few restaurants had varying degrees of compliance issues. Staff has notified each restaurant of these issues, and is working with owners and managers on ways to remedy those issues.

Complaints about outdoor dining should be directed to the Department of Planning and Zoning, at 703-838-4666. For urgent issues during non-business hours, Code Enforcement staff can be called at 703-838-0041. Complaints are logged into a database and a City inspector investigates the complaint, resolves the issue, and follows up with the person who called in the complaint.

## V. **CONCLUSION**

The Outdoor Dining Program has been successful in adding vitality to the street. Both businesses and citizens generally support the program. Staff recommends the following clarification of regulations to address issues that have been raised over the past year:

- Maintain the required five (5) foot pedestrian pathway adjacent to the outdoor dining area, and require that it is continuous and parallel to the building face for the entire length of the dining area and does not weave around sidewalk obstructions such as trees, and allow the Director to require additional pedestrian pathway width where warranted.
- Maintain prohibition of outdoor storage of tables, chairs and barriers during winter months, which shall be defined as days between January 2 and March 31 (Section 6-805 (O)(5)).
- Require an annual renewal of the permit beginning in 2008, with an annual application fee of \$100 plus \$1 per square foot over 100 square feet of outdoor dining area. The renewal process will provide the opportunity on an annual basis to review the regulations for existing restaurant management and staff and to communicate requirements to any new staff at the restaurants.
- Amend the minimum umbrella height in the zoning ordinance and King Street Outdoor



Dining Design Guidelines from seven (7) feet to six (6) feet eight (8) inches, consistent with the Code requirement for the lowest edge of an overhang on a post or pylon.

Continued vigilance by restaurant owners and city enforcement staff is necessary to make sure that the program continues to have the support of the larger community.

**ATTACHMENTS:**

Attachment 1: Section 6-800 of the Zoning Ordinance

Attachment 2: King Street Outdoor Dining Design Guidelines, January 2006

Attachment 3: Alexandria Commission on Persons with Disabilities letter, April 17, 2007

Attachment 4: Excerpt from April 2007 Washingtonian Magazine

**STAFF:**

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TA #2007-0001  
King Street Outdoor Dining Program

**REPORT ATTACHMENTS AVAILABLE IN THE PLANNING AND ZONING OFFICE**