

Docket Item #10
Text Amendment #2007-0006
KING STREET OUTDOOR DINING
PROGRAM

Planning Commission Meeting
December 4, 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

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

1. Any restaurant that has an approved enclosure as part of an encroachment ordinance shall be allowed to leave the enclosure in its approved location year round provided that all outdoor furniture so enclosed is removed according to City regulations.
2. Outdoor seating may consist of tall tables and chairs provided that the tall chairs have seat backs and that such outdoor seating shall be provided full meal service and menus. Barstools (tall chairs without seat backs) shall not be permitted.

I. ISSUE

Two issues arose subsequent to the approval of amendments to the King Street Outdoor Dining Regulations in June 2007. One issue had to do with the existence of permanent barriers enclosing outdoor seating areas that were approved prior to the approval of the Outdoor Dining Program. The other issue related to the existence of barstools, tall chairs and tall tables. City Council asked for staff's guidance on regulating these beginning with the next outdoor dining season in April 2008.

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.

The King Street Outdoor Dining Program has now been operating on a permanent basis for almost 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, requiring an annual renewal and fee, and amending the umbrella height.

At their 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 asked staff for guidance on regulating bar stools, tall chairs and tables. Council also 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 into the public right-of-way, by designating the last day as the Monday before Thanksgiving and asked that all restaurant.

III. DISCUSSION

The two issues addressed in this text amendment are 1) allowing permanent outdoor dining enclosures as previously approved through the encroachment process and, 2) providing guidance/standards for tall tables and chairs as part of the outdoor dining program.

Outdoor Dining Area Enclosures

There are three 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 and the Bittersweet Restaurant in the 800 block of King Street and 100 block of North Alfred Street. Of these three encroachments, two were approved just for tables and chairs and no enclosures (Starbucks and Bittersweet) and one was approved for tables, chairs and an enclosure (Mai Tai). The changes adopted in June to the Outdoor Dining program prohibited the use of these permanent barriers and required that they be removed consistent with other temporary outdoor dining barriers.

The issue with regard to enclosures is whether those that have been approved as encroachments into the public right-of-way can continue to exist in place year round, as long as the outdoor seating that is enclosed by them has been removed.

Since the only permanent enclosure approved as an encroachment in the King Street right-of-way is the enclosure of seating at the Mai Tai in the unit block of King Street, if enclosures are allowed year round, this would be the only one affected.

Tall Tables and Chairs

Design Guidelines were adopted by the BAR in June 2006 for the King Street Outdoor Dining program. Currently there is no prohibition on the use of tall tables, chairs and barstools. 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 and are more efficient and flexible. 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 much match each other by being of visually similar design, construction and color.

The issue with tall tables and chairs seems to be that they convey more of a bar than restaurant atmosphere. Certainly traditional barstools without backs contribute more to this type of atmosphere. However, many restaurants use tall tables and chairs with seat backs inside their establishments to provide a variety of seating to accommodate the varying tastes of their clientele. Such tables and chairs are used for dining as are more traditional tables and chairs of lower heights. Taller tables and chairs can also be just as space efficient as lower ones.

IV. RECOMMENDATION

Based on the above, staff recommends the following:

1. Any restaurant that has an approved enclosure as part of an encroachment ordinance shall be allowed to leave the enclosure in its approved location year round provided that all outdoor furniture so enclosed is removed according to City regulations.
2. Outdoor seating may consist of tall tables and chairs provided that the tall chairs have seat backs and that such outdoor seating shall be provided full meal service and menus. Barstools (tall chairs without seat backs) shall not be permitted.

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 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 6/21/05 (date of adoption).
- 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 lampposts, traffic signs and signal poles, trash receptacles, benches, and other sidewalk obstructions; as well as

the 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 on the restaurant premises.
- 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 the Monday before Thanksgiving, and shall be renewed on an annual basis. A fee based on the gross square feet of outdoor dining area, plus a base processing fee, shall be assessed for each application.

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 that 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 walkway, the pedestrian passageway shall remain in a straight line, parallel to the building face and curb for the entire length of the dining area. The director may require additional measures that contribute to achieving a straight and unobstructed pathway along the entire blockface.
 - (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.
- (5) Furniture and enclosures may not be stored on the public right of way for extended periods, and must be removed between the Tuesday before Thanksgiving and March 31.

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. Smoking shall be prohibited in outdoor dining areas located on public property.

S. **Any restaurant that has an approved enclosure as part of an encroachment ordinance shall be allowed to leave the enclosure in its approved location year round provided that all outdoor furniture so enclosed is removed according to City regulations.**

T. **Outdoor seating may consist of tall tables and chairs provided that the tall chairs have seat backs and that such outdoor seating be provided full meal service and menus. Barstools (tall chairs without seat backs) shall not be permitted.**

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.