



CITY OF CONCORD

REPORT TO MAYOR AND CITY COUNCIL

FROM: Councilor Erle Pierce, Chair, Ad-Hoc Dining Committee

DATE: May 8, 2023

SUBJECT: Outdoor Dining Program Modifications

Recommendation:

Accept this report and approved proposed modifications to the City's Outdoor Dining Program as described herein.

Background:

On August 13, 2018, the City Council approved Ordinance 5-1-17 which authorizes certain private activities on public property, including outdoor dining. The Ordinance also granted rule making authority to the City Manager.

In spring 2020, the City instituted a policy whereby restaurants located in the Downtown Central Business District could secure permits to encumber and utilize on-street parking spaces for outdoor dining activities during spring / summer / fall months. This policy was enacted to support restaurants during the Covid-19 Pandemic due to emergency orders that precluded, or severely limited, indoor dining related thereto. Emergency orders associated with the Covid-19 Pandemic expired in June 2021.

Though the Covid-19 Pandemic has waned, the City has continued to permit outdoor dining in on-street parking spaces.

Historically, only four restaurants have used parking spaces for outdoor dining. The restaurants are: The Barley House, Siam Orchid, Revival and The Draft.

In July 2021, the City acquired 35 water filled plastic barricades to partially enclose dining areas to improve public safety. These barriers were furnished to restaurants free of charge.

During the pre-dawn hours of July 5, 2022, a motor vehicle accident occurred, which involved the Barley House's dining area located in on-street parking spaces. Due to the time of accident, no injuries occurred. However, the amount of property damage stemming from the incident was significant.

In the wake of the Barley House incident, the Ad-Hoc Outdoor Dining Committee initiated a review of barricades used to facilitate outdoor dining activities within on-street parking spaces. This process included a review of approaches utilized in other municipalities with similar dining programs.

On January 10, 2023, the Ad-Hoc Outdoor Dining Committee voted to recommend that the City Council approve certain modifications to rules for dining in parking spaces, as well as to appropriate funds to acquire concrete barricades to enclose dining areas located within parking spaces.

On March 13, 2023 the City Council held a public hearing and subsequently approved modifications to the City's Outdoor Dining regulations requiring concrete "jersey" barricades to be deployed to enclose outdoor dining areas located within on-street parking spaces in accordance with layout plans which complied with NH Department of Transportation (NHDOT) standards for temporary placement of barrier in highway rights-of-way. Said layout plans for dining areas in parking spaces were provided to, and accepted by, the City Council. Simultaneously, the City Council also approved Resolution #9545, which appropriated \$34,000 to acquire and beautify approximately 30 pieces of 10' concrete barricade for this purpose. Said funds were also intended to finance the installation and seasonal removal of the barricades for the 2023 Season, as well as sand filled barrels to protect "blunt ends" of barriers as shown on layout plans.

As part of its approval, the City Council directed City Administration to provide said barriers at no cost to participating businesses on a first come, first served basis. However, participating restaurants remain subject to the \$1,000 / space parking encumbrance fee, as well as other programmatic outdoor dining fees.

Following the City Council's March 13, 2023 meeting, the annual permitting renewal process began for the 2023 Outdoor Dining Season, which began on April 15, 2023. Shortly thereafter, the four restaurants that historically had outdoor dining areas located in on-street parking spaces expressed concerns about certain requirements pertaining to the concrete barriers. Specifically, said concerns centered upon the need to encumber additional parking spaces in order to install barriers in accordance with NHDOT standards, as well as the refusal of abutting owners to grant their consent to either continue, or otherwise expand, closure of on-street spaces along their respective properties to facilitate installation of concrete barriers.

Discussion:

The Ad-Hoc Outdoor Dining Committee met on April 19, 2023 and May 4, 2023 to review the concerns raised by representatives of the Barley House, the Draft, Siam Orchid, and Revival. The Committee also invited property owners and businesses abutting said restaurants to attend. The meetings were open to the public.

During the meetings, some retail merchants expressed concerns about the City's Outdoor Dining Program, including the length of the season (April 15 – November 15) and use of parking spaces for dining activities. Specifically, retail merchants expressed their opinion that use of parking spaces should be terminated as emergency orders associated with the Covid-19 Pandemic expired in summer 2021. Additionally, retail merchants expressed concerns that continued use of parking spaces limits parking along their establishments and obstructs their storefronts, thus negatively impacting their businesses. They also expressed concerns that the dining program unfairly favors restaurants over retail merchants.

During its May 4, 2023 meeting, it was the consensus of the Ad-Hoc Outdoor Committee to recommend that the City Council adopt the following policy changes concerning the Outdoor Dining Program:

1) Duration of Season: The Outdoor Dining Season shall be modified from April 15 - November 15 to May 1- October 31 annually.

2) Dining Areas Located Within Parking Spaces:

- a. That the City Council approve use of the attached alternative layout plans in lieu of those previously accepted by the City Council on March 13, 2023 that complied with NHDOT standards for temporary placement of barriers in highway rights-of-way.

All of the attached alternative layout plans only affect parking areas along the direct frontage of the restaurants. Therefore, consent of abutting property owners, while still preserved, will not be required for this implementation.

The participating restaurants shall be prohibited from encumbering any additional parking spaces for the 2023 Season; however, the Draft may update their permit to encumber an additional parking space along their frontage shown in blue dash on the attached alternative layout plan. Additionally, the bicycle lane along the frontage of the Draft shall be maintained.

- b. That said alternative layout plans be implemented on a trial basis for the 2023 Outdoor Dining Season. In accordance with City Council's past direction, barriers will be provided to participating restaurants free of charge for the 2023 season on a first come, first served basis.
- c. The Committee recommends that the City rent said barricades for the upcoming season. Because the barriers will be rented, the City will refrain from any beautification measures thereof for the 2023 season. In addition, restaurants shall be prohibited from painting barricades, or otherwise attaching, affixing or placing signage, decorations, or other materials / items onto barricades.
- d. Construction of platforms shall be permitted within parking space dining areas so as to raise the elevation of said dining areas to be consistent with abutting sidewalks. The design of said platforms shall be approved by the City Code Administrator and City Engineer. Said platforms shall not obstruct stormwater flow, or impede access to public or private utilities or other infrastructure. Construction of said platforms shall comply with applicable building codes and permitting requirements.
- e. City Administration will work to develop formal design standards for dining areas located in on-street parking spaces. Said standards shall be reviewed by the Ad-Hoc Dining Committee during its annual review this coming fall / winter.
- f. The Ad-Hoc Committee will make recommendations to the City Council regarding dining in parking spaces, as well as potential acquisition and beautification of barricades related therewith, following the conclusion of the 2023 dining season.

Please see the attached alternative barrier layout plans and updated Outdoor Dining Regulations for more information.