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**CITY OF PORTSMOUTH
ECONOMIC DEVELOPMENT COMMISSION**

Recommendations Regarding Outdoor Dining on Municipal Property

September 8, 2023

Purpose and Scope

In February, 2023, the City Council requested that the EDC review existing city policies related to outdoor dining on municipal owned properties, principally, streets, sidewalks, parking spaces, and delivery spaces in the downtown. In the course of its review and deliberations, the Commission examined the 2012 City Council Policy regarding sidewalk cafes, and amendments thereto; the programs and policies enacted to support restaurants during the Covid-19 pandemic; and recommendations and reports from city staff based upon prior program implementation. The Commission received written comments and oral testimony from a number of members of the public including downtown merchants.

The EDC's objective is to present recommendations on best practices for Outdoor Dining to the City Council to guide creation of an ordinance to take effect in 2024. Priorities include:

- Regulate the safety and flow of vehicular and pedestrian traffic
- Define a standard of visual appropriateness and streetscape conformity within historic downtown Portsmouth
- Create outdoor dining spaces easily usable by people with disabilities
- Create a fair and equitable model for the sharing of the public realm by city residents, visitors, restaurant owners and other downtown businesses
- Create a framework for the fee committee

The scope of review was confirmed to include the following, based on existing conditions:

- Downtown area only
- Restaurant usage of outdoor public space

The scope of review did not include use of public property by food trucks or non-restaurant businesses or for transitory events such as parades, concerts, fairs, and similar activity during which food and/or beverages may be served.

Principles

It is the opinion of the EDC that outdoor dining has proven to be a vital part of Portsmouth's downtown experience and a contributor to the economic vibrancy of the city.

It is the EDC's opinion that the city council should act in 2023 to enact a new outdoor dining ordinance effective for the 2024 Outdoor Dining season that:

- Ensures public safety and equitable access through adoption of ADA-compliant configurations.
- Considers both the value and the fully-burdened costs that the use of public space has for

restaurants in determining a fee structure.

- Includes the recommendations provided by City Staff.
- Is streamlined and simple to maximize program success.

Recommendations

- The EDC recommends that the new outdoor dining ordinance supersede the existing Sidewalk Café Policy No. 2012-02 adopted in 2012 and as subsequently amended but that most of the provisions of Policy 2012-02, not inconsistent with the recommendations contained herein (e.g., insurance requirements, alcohol service, etc.) be incorporated in the new ordinance and associated design standards.

- The EDC recommends adopting the input from City Staff on outdoor dining (exceptions as noted below)

Specific areas of recommendation as below:

Traffic:

The EDC recommends enacting the 2023 City Staff recommendations related to traffic flow, which includes:

1) No dining in travel lanes, with the exception of:

- a. *Allow for the temporary closure of one-way streets if traffic is < 1,000 vehicles per day and design is approved by City Staff, including Fire Department, for safety.*

Ground Floor Business Approval:

- Restaurants shall be required to obtain approval from abutting 1st floor businesses/tenants annually if seeking to expand beyond restaurant's frontage.

Fee Considerations:

- The EDC recommends the Fee be determined on an annual basis by the City Council following the review and recommendation of the Fee Schedule Study Committee.
- The EDC recommends that the Fee Committee develop a base fee based upon a uniform pricing per square foot of public space used, including sidewalks, other pedestrian walkways, parking spaces, loading zones and travel lanes. No fractional parking spaces shall be permitted.
- The EDC recommends that the base fee recognize both the intrinsic value of the space to the public and other users excluded by the restaurant user and the economic value to a restaurant to be able use public space to supplement its operations, acknowledging that removal from the public realm shall result in a financial gain to the user.
- The EDC also recommends the Fee Committee, in setting the fee, consider the fully burdened cost recovery, inclusive of lost parking revenue, cost of jersey barrier installation, maintenance and storage, and administrative expenses incurred by City.
- For restaurants using on street space requiring jersey barriers, in addition to the per square foot base fee, the restaurant shall pay a barrier delivery, set up and removal fee.

Design Standards:

The EDC recommends the development and approval of a separate document on design standards to mandate safety and ADA compliance as well as provide guidelines on space design to inform approval of applications.

It is the EDC's recommendation that these standards remain separate from the ordinance given their detail, and to allow for periodic revision in response to changes in safety standards, and visual appropriateness

A sample draft of recommended design standards is attached hereto as Exhibit I.

Partnerships:

- To implement the recommendations, the EDC recommends that the City Council engage with the following groups:
 - Fee Schedule Study Committee to study and recommend a structure that addresses the Fee Considerations above
 - The Historic District Commission to review and provide feedback on an Outdoor Dining specific Design Standards Document that can be used as part of the application process to ensure quality and consistency. The EDC does not recommend that the HDC review, consider or comment on the designs of individual applicants.
 - City Staff as appropriate in keeping with existing Outdoor Dining application, inspection and certification process.

Future Considerations:

In addition to what was referred by the Council for Outdoor Dining, the EDC recommends the following in the future:

- Redevelopment and studies for Downtown, the West End, and other commercially zoned areas consider both public and expanded commercial use of outdoor space in the design and implementation of streetscapes and infrastructure
- The upcoming Master Plan includes studies for expanded public and commercial use of outdoor space inclusive of restaurant and retail use and impacts.

Exhibit I

Design Standards

The following represents best practices for the design of outdoor dining and should be adopted as part of the annual permitting for outdoor dining on Public Space owned by the City.

Objectives:

- Create an easy-to-modify document that can evolve as downtown needs change and future downtown master planning occurs.
- Regulate the safety and flow of pedestrian & vehicular traffic.
- Define a standard of visual appropriateness and streetscape conformity within historic downtown Portsmouth.
- Create outdoor dining spaces easily usable by people with disabilities.
- Require annual application & applicable permits from to/from City to confirm compliance with required spacing, ingress/egress, pedestrian/patron flow, and accessibility and other safety requirements in order to obtain Certificate of Occupancy for usage of outdoor public space, issued following satisfactory inspection confirming compliance with design.
- Application required to include drawings and cut sheets, detailed plans and any power source requirements.

Furniture:

- Restaurants must provide sturdy tables and chairs suitable for outdoor use and capable of withstanding different weather conditions. Tables made of metal, finish grade wood and sturdy recycled materials are encouraged. Seating must be properly finished such that there is no rust, splintering or deterioration.
- *Details must be provided in advance for approval*
- Tables may not exceed 30" in height.
- Tables must accommodate people who use wheelchairs either by using movable seating, a 19" deep tabletop overhang, or a space for a wheelchair.
- No advertisements or logos on umbrellas and furniture.

Barriers/Sidewalk:

- Sturdy barriers such as freestanding sectional fencing, rope or chain are acceptable, not to exceed 36" in height. Barriers may not be supplemented with plants or other materials that cause the height to exceed 36". No advertisements are allowed on barrier fencing. Stanchions with rope or chain are permitted for sidewalk use.
- Entry access to dining spaces to be no less than 44" wide

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- Materials not manufactured for fencing or pedestrian control, including but not limited to buckets, food containers, tires, tree stumps, pallets, etc. may not be used as components of barriers. No chain link fencing, plastic, vinyl, chicken wire or cyclone fencing. Alternative materials may be used with City approval.

Barriers/Parking Space:

- Maximum barrier height of 3 feet (36")
- Planters may be used as part of or on top of barriers; combination barriers / plants / greenery are not to exceed 6 feet (72") in height above the sidewalk. Maximum total height not to exceed 3.5 feet (42") within 20 feet of a crosswalk.
- City-provided jersey barriers will be used on the leading edge of dining areas and may also be used on other edges for safety, to be determined by City. • Alternate barriers require approval from the City.

Platforms, Parklets:

- Platforms or parklets shall be used in all on-street dining in both parking spaces, loading zones and travel lanes, unless the space is curbless.
- Platforms and parklets must be flush with the curb to create a seamless extension of the sidewalk.
- Platforms and parklets are limited to a maximum width of the on street parking space so as to not encroach upon any travel lanes 10' from curb edge, or no more than 10' in the case of diagonal parking spaces.
- Platforms and parklets will be built from durable materials such as wood or metal.
- Parklets may extend taller than 3 feet (36"). The space above 36" must be primarily transparent (see-through) to maintain visibility of street level activity. In no case should height exceed 6 feet (72").