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CITY OF HAVERHILL

In Municipal Council May 23 2023

~~ORDERED:~~

MUNICIPAL ORDINANCE

CHAPTER 222

AN ORDINANCE RELATING TO OUTDOOR DINING

BE IT ORDAINED by the City Council of the City of Haverhill that the Code of the City of Haverhill Chapter 222, Streets and Sidewalks, as amended, being and is hereby further amended as follows:

By deleting "Article XII, Outdoor Dining" in its entirety and by inserting the following in place thereof:

**"Article XII
Outdoor Dining**

§ 222-66 Purpose/Eligible outdoor areas

Purpose: The intent of the program is to facilitate outdoor dining throughout the City to allow restaurants, cafes, fast-food outlets, coffee shops, and other similar places of public accommodation offering food and beverages, including alcoholic beverages, ("establishments") for on-premises consumption to operate safely in outdoor settings.

Eligible outdoor areas: Under this program, eligible businesses may be able to utilize private property, including on their own property or on a neighboring property (with permission from the other property owner) and the use of any number of off-street parking spaces, and, public right-of-ways, including sidewalks, street parking spaces, public parking lots and any other public areas. Use of public right of ways, excepting sidewalks and Parklets as defined by §222-84 of the Code, shall require permission of the Mayor and City Council. No permit holder shall obtain any property right in the continued private commercial use of any public right-of-ways granted herein.

Allowed use of sidewalk areas shall be as follows:

- A. **Food and beverage service** – Notwithstanding any other provisions of the Code of the City of Haverhill, licensed food service establishments located within the City on a public way,

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which includes a sidewalk of no less than four feet in width and is restricted to pedestrian traffic only, shall be allowed, subject to the provisions below, the use of said contiguous adjacent sidewalk areas to serve food and beverages from March 1 to October 31.

B. No food and beverage service – Notwithstanding any other provisions of the Code of the City of Haverhill, licensed food service establishments located within the City on a public way may use a contiguous adjacent sidewalk area to place movable tables, chairs or benches from March 1 to October 31, provided they do not seek to serve food and beverages on the area. The adjacent sidewalk must be at least four feet in width and restricted to pedestrian traffic only. Use of the adjacent sidewalk area must comply with the provisions of §222-66 to 222-69 below; however, no permit or further permission shall be required. Prior to use of the adjacent sidewalk area, the establishment must complete a sidewalk placement notice as required by the Director of Public Works, who shall be responsible for enforcement of the provisions of this subsection. No sidewalk bond shall be required; however, the establishment must name the City of Haverhill as an additional insured for general liability coverage in an amount of not less than \$1,000,000 for the seasonal period and provide proof of same. No permit holder shall obtain any property right in the continued private commercial use of the public sidewalk.

§ 222-67 Permit required; fee; purpose.

A. Establishments seeking the use of said adjacent sidewalk areas and other public and private outdoor areas to serve food and beverages shall annually apply for and obtain a permit to be issued by the License Commission. No other permit or license, except as provided in §222-66, from any other board, department or officer of the City shall be required; however, any permit application shall be sent to the Board of Health, Building Inspector, Superintendent of Highways, Police Department, Fire Department and Mayor for comment.

B. The permit application shall include a description and diagram of the area where service will be provided, which shall include the number and type of tables, chairs, umbrellas, heat lamps and any barriers, railings or other temporary dividers to be used. Applicants for use of public right-of-ways shall also provide a certificate of insurance and a sidewalk bond, both of which shall name the City as an insured. Other information shall be provided as required by the License Commission to carry out the purpose of this article. An application fee of \$100 for a permit shall be paid at the time of filing for either a new or renewal permit.

C. The License Commission shall grant or deny the permit no later than 30 days from the date the application is received by the License Commission and, if no determination is made within that period by the License Commission, the permit shall be deemed to be allowed. If an establishment seeks to serve alcoholic beverages as a component of outdoor dining, the application for a permit shall be considered as required by the License Commission pursuant to the provisions of Massachusetts General Laws. The License Commission shall have the authority to set reasonable hours of operation for outdoor dining.

D. The purpose of this article is to promote and encourage outdoor dining in the downtown area of the City and shall be interpreted in accordance with that intent. The License Commission may deny a permit only upon a finding that it would be detrimental to the public interest to have

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outdoor dining at the location applied for. In making such a determination, the License Commission may consider the following factors, among others:

- (1) Objections and/or concerns received from Board of Health, Building Inspector, Superintendent of Highways or Police Department.
- (2) Previous licensing, health or public safety complaints against the applicant.
- (3) The health and cleanliness of the establishment.
- (4) Excessive noise complaints or concerns, allowing for reasonable activity for the purpose of encouraging outdoor dining downtown.
- (5) Violations of any other laws, rules, or regulations.

E. The License Commission shall have the authority to deny, revoke or suspend the permit upon finding that any provision of this article, including the factors enumerated in Subsection D above, or condition of approval will be or has been violated. The License Commission shall give notice of any such action to the permit holder in writing stating the action taken and the reason therefore. The action may be effective immediately, but the applicant or permit holder may make a written request for a final hearing before the License Commission, which shall render a final decision concerning the permit. The Superintendent of Highways, after notice to the permit holder and the License Commission, may suspend the permit temporarily if the public interest requires use of the right-of-way for a public event, construction, repair, or any other purpose.

§ 222-68 Furnishings.

Only movable tables, chairs, umbrellas and heat lamps shall be placed on any public right-of-way area. Awnings over public right-of-way areas may be used; however, no permanent roof or shelter over the public right-of-way area shall be erected. Barriers, railings or other temporary dividers may be used to designate the area where service will be provided.

Establishments which are licensed to serve alcohol within the establishment's public right-of-way seating area, must be separated from any pedestrian walk space with a nonmovable system of enclosure, such as decorative fencing with removable bollards. Establishments using public right-of-way areas that do not serve alcohol do not need this nonmovable system of enclosure.

No equipment which would amplify sound, including but not limited to: Live music, music over speakers, radio, television or loudspeaker call systems shall be allowed, except with permission of the License Commission.

Should the permit holder not utilize the public right-of-way area as authorized for a period of 48 hours or more, all the tables and materials shall be removed therefrom, including the period from November 1st to the last day of February.

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§ 222-69 Refuse storage.

No trash, garbage or refuse disposal shall be permitted to be maintained in any outdoor dining area at any time. Outdoor dining areas and all things placed there shall at all times be maintained in a clean and orderly condition. Outdoor dining areas must be cleaned daily, including adjacent public right-of-way areas.

§ 222-70 Hours of operation.

The use of outdoor dining areas to serve food and beverages by establishments shall be limited to the hours of operation provided for by current state law, municipal ordinances or licensing provisions, including those granted to the License Commission herein.

§ 222-71 Parking.

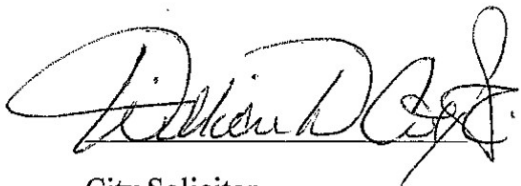
There shall be no further requirement for the provision of parking spaces by any establishment due to the maintenance of an outdoor dining area of 200 square feet or less.

§ 222-72 Pedestrian access.

Adequate room for passage by pedestrians on the remaining area of the sidewalk shall be provided at all times. Food service establishments which are not located on a sidewalk of at least four feet in width or for which no sidewalk exists on a public way may be allowed to obtain a permit for outdoor dining upon a finding by the License Commission that the establishment of an outdoor dining area, as shown on the description and diagram of the area where service will be provided, will not impede the passage of pedestrian traffic and where public safety would not be jeopardized."

And, by deleting "Article XVI, Outdoor Dining Addition", in its entirety.

Approved as to legality:



City Solicitor

REPLACED ON FILE for at least 10 days

Attest:

Kathleen M. Wright City Clerk

IN CITY COUNCIL: June 13 2023

MOTION TO AMEND THE ORDINANCE BY DELETING THE FOLLOWING FOR s222-67 (D): "The purpose of this article is to promote and encourage outdoor dining in the downtown area of the City and shall be interpreted in accordance with that intent."

MOTION PASSED AND PASSED AS AMENDED

Attest: Kathleen M. Wright City Clerk

APPROVED:

[Signature] Mayor