

## ORDINANCE #

## THE CITY OF PORTSMOUTH ORDAINS

That Chapter 6, LICENSE, Article XVII – OUTDOOR DINING ENCUMBRANCE PERMIT, Sections 6.1701- 6.1707, of the Ordinances of the City of Portsmouth, be amended as follows (deletions from existing language **stricken**; additions to existing language **bolded**; remaining language unchanged from existing):

### CHAPTER 6 LICENSE

### ARTICLE XVII- OUTDOOR DINING ENCUMBRANCE PERMIT

#### **Section 6.1701: STATEMENT OF PURPOSE**

The City Council determines that it is a lawful purpose to temporarily encumber sidewalks, loading zones and parking spaces for outdoor dining through the City's issuance of an Outdoor Dining Encumbrance Permit, which will balance the shared use of the public realm by city residents, visitors, restaurant owners and other downtown businesses. ~~competing interests for use of the public realm by~~ The Council encourages outdoor dining under the conditions set forth in this ordinance because it enhances ~~ing~~ the economic vitality of the City, will ensure ~~ing~~ Americans with Disabilities Act ("ADA") accessibility, and ~~preserve~~ access to downtown businesses and while maintaining the safe flow of vehicular and pedestrian traffic. This permit does not limit or impact the availability of other permits and licenses.

#### **Section 6.1702: TERM**

Outdoor Dining Encumbrance Permits will be issued annually for a term beginning May 1<sup>st</sup> through the day after Indigenous Peoples' Day.

#### **Section 6.1703: FEE**

The Fee Schedule Study Committee shall establish the annual fee for Outdoor Dining Encumbrance Permits based on the Economic Development Commission's fee considerations for the first year of the effective date of the ordinance. For each successive year, the Outdoor Dining Encumbrance Permit fee shall be established in accordance with Chapter 1, Article XVI, relative to the adoption of fees by City Council budget resolution.

#### **Section 6.1704: ~~\_\_\_\_\_~~ AUTHORITY**

~~The City Council authorizes the issuance of Outdoor Dining Encumbrance Permits through its online permitting system that requires city departments, including but not limited to, Fire, Police, Inspections, Health, Planning, Public Works and Legal, ("City Departments") to review the application for compliance with Fire, Building and Health Codes, City ordinances, state statutes and ADA requirements. City Departments may adopt and incorporate into the permit other reasonable rules, regulations and policies, including but not limited to the Design, Installation and Maintenance Standards, which are necessary for the proper administration and enforcement of this ordinance.~~

#### **Section 6.1704: AUTHORIZED LOCATIONS FOR OUTDOOR DINING**

Outdoor dining is permitted on city sidewalk(s), parking spaces and loading zones. Outdoor Dining is prohibited on all city streets, except on streets if traffic is less than 1,000 vehicles a day, and the design and location is approved by City Staff, including the Fire Department, for public safety.

#### **Section 6.1705: ~~CONTENT OF APPLICATION~~ PERMIT APPLICATION PROCESS**

The City Manager or their designee ~~City Departments~~ will create online forms for the Outdoor Dining Encumbrance Permit. The Content of the Application shall include, but not be limited to, the following:

A. Applicant, Owner and Abutter Information, which shall include:

~~Every Application shall include the following:~~

1. The Name and contact information for the representative of the Applicant (food establishment entity ("Entity"));
- ~~2. Contact information for representative of the Entity;~~
- ~~3.2. City Tax Map and Lot and name of Owner of building where Entity is located; and~~
- ~~4. Name of Owner of building where Entity is located;~~
- ~~5.3. If any portion of the outdoor dining area is in front of an abutter's property, the City Tax Map and Lot of the abutting building(s), name of Owner and abutting the outdoor dining encumbrance area; and~~ 6. a statement of permission from first floor occupants of abutting building. Name and contact information of first floor occupants of the abutting buildings and

~~statement of permission from first floor abutters if any portion of the outdoor dining encumbrance area is located in front of abutter's building.~~

~~B.~~ **B. Site Plan:** ~~Location, Existing Conditions, Lay Out and Compliance with Design, Installation and Maintenance Standards:~~

Every Application will include a Site Plan, created by Applicant with assistance from City Staff, with sufficient detail that shall include the following:

~~1. Location~~

~~The Site Plan will demonstrate that the encumbered area for outdoor dining is in a permitted location, which includes city sidewalk(s), and parking spaces. Outdoor Dining is prohibited on all city streets, loading zones and in locations where sight lines for crosswalks, intersections, and access to underground utilities, fire hydrants or Fire Department connections would be impeded or obstructed; and~~

1. Location:

The Plan will show that the outdoor dining area is in a permitted location.

2. Existing Conditions: ~~and Layout~~

The Site Plan shall ~~be drawn to scale with sufficient detail to depict~~ include the existing conditions of the public infrastructure in the encumbered area, which includes but is not limited to, curb lines, light poles, signpost, bike racks, street trees, tree grates, manhole covers, meters, sidewalk curb cuts, fire hydrants, Fire Department connections and proximity in feet to crosswalks and intersections, if applicable. City Staff will work with Applicant to identify existing conditions on the plan.

3. Layout and Compliance with Design Standards:

The Site Plan shall also show ingress and egress to the encumbered area and the layout of all objects in the encumbered area, including the dimensions and materials of tables and chairs, lighting and power sources, heaters, stands, A-frame signs, parklets, barriers and planters. The layout will comply with Design Standards recommended by the Economic Development Commission, which will be reviewed and approved along with this ordinance, and as may be further amended by the City Council.

**C. Compliance**

Applicant will acknowledge receipt of and compliance with the Design, ~~Installation and Maintenance~~ Standards. Applicant shall also provide confirmation that it has the permission from the New Hampshire State Liquor Commission to serve alcohol in the outdoor dining encumbrance area, if applicable, and will comply with all state

statutes, rules and regulations of the New Hampshire State Liquor Commission and all other City ordinances, rules and regulations.

#### **Section 6.1706 DUTIES OF APPLICANT UPON ISSUANCE OF PERMIT**

Every Applicant that is issued an Outdoor Dining Encumbrance Permit shall:

- A. Agree to permit the City to conduct all reasonable inspections of the outdoor dining encumbrance area;
- B. Comply with all applicable governing laws, Codes, City ordinances, state statutes, Design Standards and City rules, regulations and policies;
- C. Maintain and install all infrastructure in the encumbered area in a safe, clean and appropriate manner and take all action necessary to protect the public safety;
- D. Refrain from damaging the encumbered area and to restore it to its original condition upon termination of the permit;
- E. Refrain from operating outdoor dining after expiration of the permit or at any time during periods of revocation or suspension;
- F. Remove all Applicant's property from the encumbered area by the day after Indigenous Peoples' Day or within 24 hours after the encumbered area is no longer used for outdoor dining. If Applicant fails to remove its property from the encumbered area after the expiration of the permit, the City will remove and store the property for 48 hours. The Applicant will be assessed a \$250 removal and storage fee. If the removal and storage fee is not paid or the property is not retrieved by the Applicant before the expiration of the 48-hour storage period, the Applicant will forfeit ownership of the property to the City; and
- G. Comply with all terms, conditions and other additional requirements set forth in the permit, including but not limited to an agreement to indemnify the City and to name the City as an additional insured in an amount prescribed in the permit and payment of permit fee.

#### **Section 6.1707 DENIAL, SUSPENSION, REVOCATION AND PENALTIES**

- A. Denial and Temporary Suspension:

The City may deny or temporarily suspend the Outdoor Dining Encumbrance Permit if it would interfere with special events or for any maintenance or construction which requires closure of streets, sidewalks, loading zones or parking spaces.

- B. Suspension and Revocation:

The Outdoor Dining Encumbrance Permit will be suspended or revoked for breach of the terms and conditions of the permit and for failure to comply with this ordinance. The permit will be suspended 48 hours after receipt of written notice from the City. No 48 hours' notice is required if it is an emergency.

C. Penalties:

If the Applicant violates the provisions of this ordinance, it shall be subject to all penalties set forth in City Ordinance, Chapter 1, Article XIII and all other additional remedies permitted by law.

The City Clerk shall properly alphabetize and/or re-number the ordinances as necessary in accordance with this amendment.

All ordinances or parts of ordinances inconsistent herewith are hereby deleted.

This ordinance shall take effect upon its passage.

APPROVED:

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Deaglan McEachern, Mayor

ADOPTED BY COUNCIL:

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Kelli L. Barnaby, City Clerk