

Text Amendment #2019-00002
Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

Issue: (A) Initiation of a Text Amendment; and (B) Public hearing and consideration of a Text Amendment to the Zoning Ordinance to amend the King Street Outdoor Dining Regulations to include adding definitions 2-181.1 (Outdoor dining enclosures) and 2-181.2 (Outdoor dining furniture) and amend Section 6-805 to provide unobstructed clearance for fire department connections, update regulations related to loudspeakers, permit the secured installation of outdoor dining enclosures, update requirements for dining umbrella clearance requirements, and practical updates to the design of the outdoor dining facilities and process requirements.	Planning Commission Hearing:	April 2, 2019
	City Council Hearing:	April 13, 2019
Staff: Tony LaColla, AICP, Land Use Services Division Chief, anthony.lacolla@alexandriava.gov Mary Christesen, Zoning Manager, mary.christesen@alexandriava.gov Ashley Smith, Urban Planner, ashley.smith@alexandriava.gov		

PLANNING COMMISSION ACTION, April 2, 2019: On a motion by Vice Chair Wasowski, and seconded by Commissioner Lyle, the Planning Commission voted to initiate Text Amendment #2019-0002. The motion carried on a vote of 6-0.

On a motion by Vice Chair Wasowski, and seconded by Commissioner Lyle, the Planning Commission voted to recommend approval of Text Amendment #2019-0002, as submitted. The motion carried on a vote of 6-0.

Reason: The Planning Commission agreed with the staff analysis.

Commissioner McMahon asked staff to clarify if more than one Department of Transportation and Environmental Services permit would be required. Staff responded that two permits from the Department of Transportation and Environmental Services would be required

Chairman Macek asked about the rationale regarding regulating the use of tall tables. Staff explained that when the initial ordinance was passed, staff and council did not feel that tall tables established the desirable atmosphere for King Street outdoor dining. Staff further responded by indicating that further amendments would be proposed following more research.

Commissioner Lyle asked about the future proposed changes and the scope of the changes including concerns regarding expanding regulations outside of the King Street Overlay Zone. Staff clarified that oftentimes SUPs reference the King Street Outdoor Dining regulations, but the scope of future proposed changes would be considered.

Commissioner Macek responded to Commissioner Lyle and Staff by encouraging staff to streamline and simplify the processes used for historic districts and apply the processes outside of historic districts.

I. Issue

Outdoor dining has been a defining part of the King Street experience since the 2004 pilot program. The ability of residents and visitors to enjoy warm weather while patronizing local restaurants integrates the vibrant Old Town neighborhood with the commercial business district. Outdoor dining within the public right-of-way is a beneficial feature of the streetscape providing safe pedestrian movement and retaining the historic character of King Street. Outdoor dining at local restaurants is a positive addition to the community by creating a vibrant, walkable “main street.” Some restaurant owners have expressed concerns regarding the stability of outdoor dining enclosures that are not secured to the sidewalk.

The purpose of this text amendment is to allow restaurants the option of securing their required outdoor dining enclosures to City brick, concrete, and brick/concrete hybrid sidewalks. The standards provided in Section 6-800 and the approved Design Guidelines assist business owners in acquiring the necessary permits for outdoor dining seating areas. With an increase in popularity and changing industry standards, it is necessary to clarify and update these requirements especially regarding the secure installation of required outdoor dining enclosures. The Zoning Ordinance, in connection with the Design Guidelines, allows City staff to consistently apply these requirements to outdoor dining approvals in encroachments, and those on private property, to maintain the integrity of historical and natural resources while upholding public safety standards. Outdoor dining requirements maintain safe pedestrian movement, protect public property, protect adjacent properties, and facilitate public engagement with Old Town resources.

II. Background

Since the adoption of Section 6-800 King Street Outdoor Dining Regulations in 2005 and the Design Guidelines in 2006, the City of Alexandria has permitted outdoor dining along King Street and adjoining streets in Old Town. This authorization has been granted through an administrative interdepartmental permitting process reviewed by City staff. When an outdoor dining seating area is proposed within any portion of the public right-of-way, an administrative permit is required. This permit is issued by the Department of Planning and Zoning and is applicable only to City maintained right-of-way directly fronting or adjacent to the business applying for the permit. The permit for outdoor dining is valid from April 1 to March 31 of the following year. All outdoor dining furniture and outdoor dining enclosures must be removed from the dining area daily between the Monday before Thanksgiving and March 31.

III. Discussion of Proposed Text Changes

Staff proposes to amend Section 6-800 and Article II of the Zoning Ordinance to allow businesses to secure outdoor dining enclosures to public sidewalks through permits obtained through the Department of Transportation and Environmental Services. Section 6-805-(O)(3) currently prohibits penetration of the public sidewalk surfaces. This prohibition was included in the Zoning Ordinance out of concern that there would be damage to the City’s sidewalks, increasing the maintenance burden on City staff. Prompted by a request from a restaurateur who suggested that affixed dining enclosures would be safer, the Department of Transportation and Environmental Services reviewed the issue

Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

and determined that with the proper installation, the enclosures could be affixed in a manner that results in ease of seasonal removal and minimal impact to the sidewalk.

This text amendment will allow outdoor dining enclosures to penetrate public brick, concrete and concrete/brick hybrid sidewalks to install outdoor dining enclosures through City approval per City standards. The proposed amendments will not require any restaurant to secure their outdoor dining enclosures. In addition to the required King Street Outdoor Dining annual permit, restaurateurs wishing to secure dining enclosures to the sidewalk will be required to obtain necessary permits from the Department of Transportation and Environmental Services. The permit processes ensure that the installation of outdoor dining enclosures provides adequate, safe public access while minimizing the impact on historic public infrastructure. Any damage created by the installation of outdoor dining enclosures would be the responsibility of the business owner.

Other proposed changes to regulations under Section 6-800 update the language to ensure consistency with outdoor dining approvals outside the King Street Outdoor Dining area to clarify a discrepancy between clearance height under umbrellas in the ordinance and the King Street Dining Design Guidelines. Regarding loudspeakers, staff proposes to amend Section 6-805 (K) to regulate noise in outdoor dining areas. Staff also proposes to add definitions related to outdoor dining to distinguish between outdoor dining enclosures and outdoor dining furniture. Creating definitions for these components of outdoor dining will help make the application and approval process for outdoor dining clear and consistent.

While the proposed definitions related to outdoor dining can be applied City wide, the other sections of this text amendment pertain only to restaurants within the boundaries of the King Street Outdoor Dining Overlay. Staff intends to do a more comprehensive study of outdoor dining throughout the City. The proposed text amendment will allow City staff to administratively approve the installation of outdoor dining enclosures to brick, concrete, and brick/concrete hybrid sidewalks meeting the revised criteria outlined in Section 6-800 and Transportation and Environmental Services standards subject to all applicable Building Code requirements. Additionally, an amendment to Section 5-2-29 of the City Code will be brought forward to allow outdoor dining enclosure encroachments at the same time as the implementation ordinance for this text amendment.

IV. Recommendation

Staff **recommends approval** of the change to the Zoning Ordinance as proposed in the following attachments.

Staff: Tony LaColla, AICP, Land Use Services Division Chief
Mary Christesen, Zoning Manager
Ashley Smith, Urban Planner

Attachment #1

PROPOSED ZONING TEXT CHANGES

Article II – DEFINITIONS

2-181.1 Outdoor dining enclosure. Barriers surrounding a dining area which provide a clear separation between the approved dining area and pedestrian area.

2-181.2 Outdoor dining furniture. Any movable tables, chairs, planters, umbrellas or other components used for the outdoor dining. This does not include outdoor dining enclosures.

~~2-181.1~~ 2-181.3 Outlot. Any unit of land that does not meet the requirements of section 11-1700.

~~2-181.2~~ 2-181.4 Parcel. A unit of land of such size and dimensions that it may be divided into two or more lots in accordance with the requirements of the zone in which it is situated.

~~2-181.3~~ 2-181.5 Park. A public area reserved for natural or artificial landscaping, which may include recreational facilities and structures.

Section 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 ~~street scape~~ 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~~ 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.

6-804 – 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 lamp posts, traffic and parking signs, signal poles, trash receptacles, benches, and other sidewalk features or obstructions, as well as 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,

Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

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 at the restaurant premises, and visible to customers and the public.

(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 March 31 of the following calendar year, subject to Section 6-805(O)(5), and shall be renewed on an annual basis. A permit fee, established pursuant to Section 11-104 of this ordinance, and based on the gross square feet of outdoor dining area, plus a minimum processing fee, shall be assessed annually.

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 ~~street scape~~ 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 as the director deems necessary, of unobstructed corridor space must be maintained past the outside dining area for

Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

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 pedestrian walkway, the pedestrian passageway shall be a straight line, parallel to the building face and the curb line, for the entire length of the dining area. The director may require additional measures that contribute to maintaining a straight and unobstructed pedestrian passageway along the entire block face.

- (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 outdoor dining furniture or enclosures. ~~fixtures related to outdoor dining.~~
- (5) An unobstructed clearance of three feet must be maintained between a fire department connection and any outdoor dining furniture or enclosures.

(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~~ seven feet 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 on the frontage of the restaurant facing King Street, 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.

Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

(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 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 (outdoor dining furniture and enclosures fixtures) used in an outdoor dining area on the public right-of-way must be ~~readily~~ removable without damage to the surface of the public right-of-way.
- (2) An outdoor dining area within the public right-of-way shall be contained by sturdy ~~barriers~~ outdoor dining enclosures in conformity with City Standards. The City will, following issuance of the King Street Outdoor Dining permit, mark the corners of the approved outdoor dining area with conspicuous markers.
- (3) Permits must be obtained from the Department of Transportation and Environmental Services in order to penetrate the public sidewalk surface or install an outdoor dining enclosure which penetrates the public sidewalk. 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. The Board's guidelines shall provide reasonably objective guidance as to acceptable colors, materials and related design standards.
- (5) Storage and removal of outdoor dining furniture and enclosures: ~~Furniture and enclosures may not be stored on the public right-of-way for extended periods, and must be removed from the right-of-way daily when the restaurant is closed to the public, in accordance with Section 6-805(E), between the Monday before Thanksgiving and March 31 of the following calendar year.~~

Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

- (a) Between April 1 and the Sunday before Thanksgiving of the same calendar year, all outdoor dining furniture and enclosures may be stored on the public right-of-way daily when the restaurant is open or closed to the public.
- (b) Between the Monday before Thanksgiving and March 31 of the following calendar year, all outdoor dining furniture and enclosures must be removed from the public right-of-way daily when the restaurant is closed to the public, in accordance with Section 6-805(E).

(6) Tall tables and tall seating for tables shall not be permitted in the public right-of-way. As used in this Section 6-805, a “tall table” is defined as any table with a table-top surface higher than 32 inches above the ground, and “tall seating” is defined as chairs, seats, stools, or benches designed or intended for use with tall tables.

(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) The restaurant operator shall not permit smoking in outdoor dining areas located in the public right-of-way.

6-806. - Additional encroachment requirements.

(A) Any such encroachment shall be subject to and conditioned upon the restaurant maintaining a policy of general liability insurance in the amount of \$1,000,000 which will indemnify the owner (and all successors in interest) and the City as an additional named insured, against all claims, demands, suits and related costs, including attorneys’ fees, arising from any bodily injury or property damage which may occur as a result of the encroachment. A policy of general liability insurance to establish and maintain the encroachment and operate a restaurant within the encroachment area 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. ~~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 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

Secured Dining Enclosures and Practical Updates for King Street Outdoor Dining

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 [Section] 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 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.

(F) No fees or charges imposed pursuant to Sections 3-2-81 through 3-2-85 of the City Code shall be applicable to encroachments authorized by this Section 6-800, but the fee established pursuant to Section 6-804(F) shall be applicable.

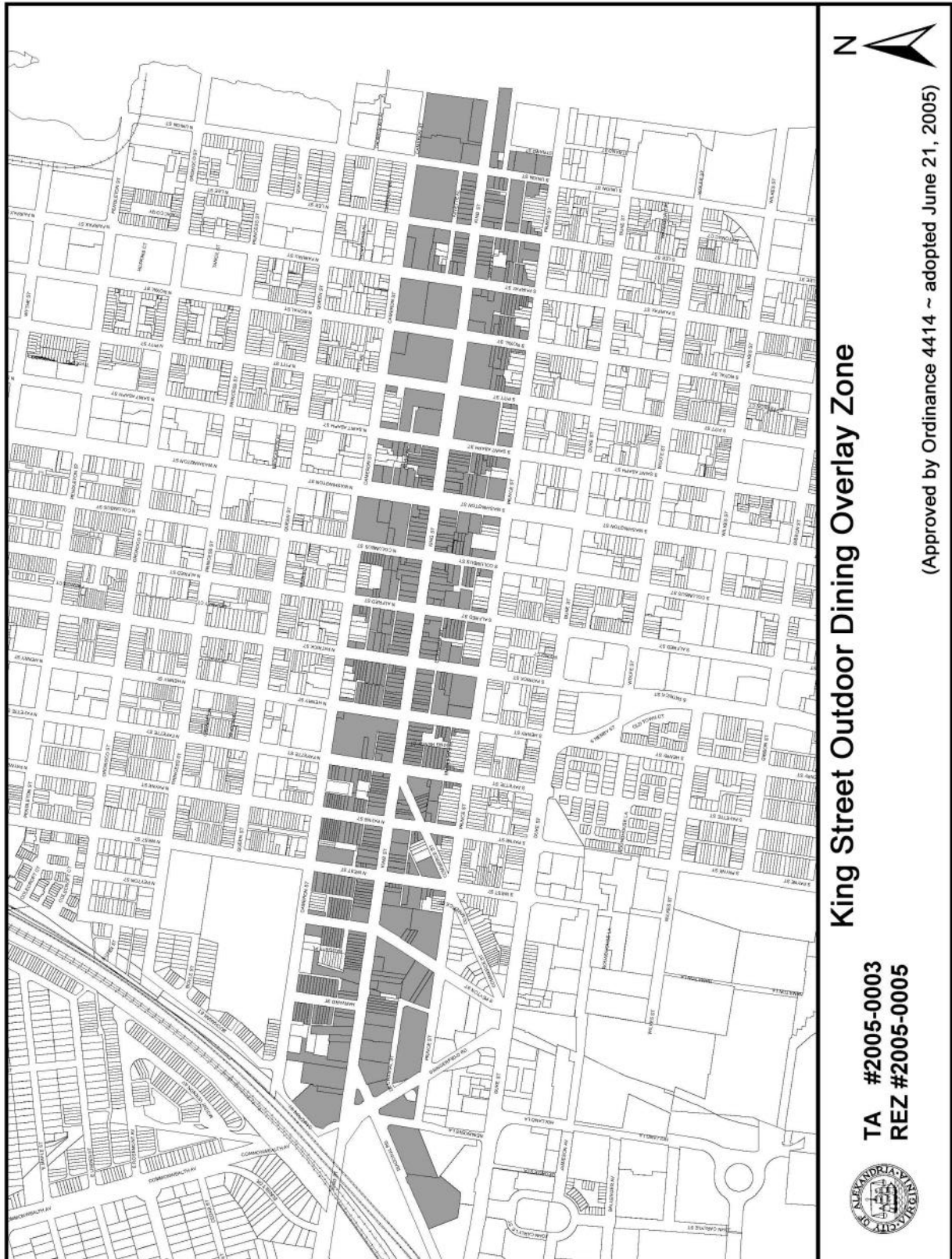
6-807. - Section Controlling.

In order to establish a uniform set of regulations for outdoor dining in the public right-of-way, the provisions of this Section 6-800 shall supersede ~~supersede~~ and preempt conflicting provisions applicable in the public right-of-way, which are included in any encroachment ordinance, special use permit or administrative permit approved prior to June 26, 2007; provided, however, that nothing in this Section 6-807 shall be deemed to reduce the approved number of seats, or to require the removal of any approved barrier permanently fixed or attached to the right-of-way, authorized by any such ordinance or permit.

(Ord. No. 4414, § 2, 6-21-05; Ord. No. 4494, § 1, 6-26-07; Ord. No. 4521, § 1, 3-15-08)

Attachment # 2

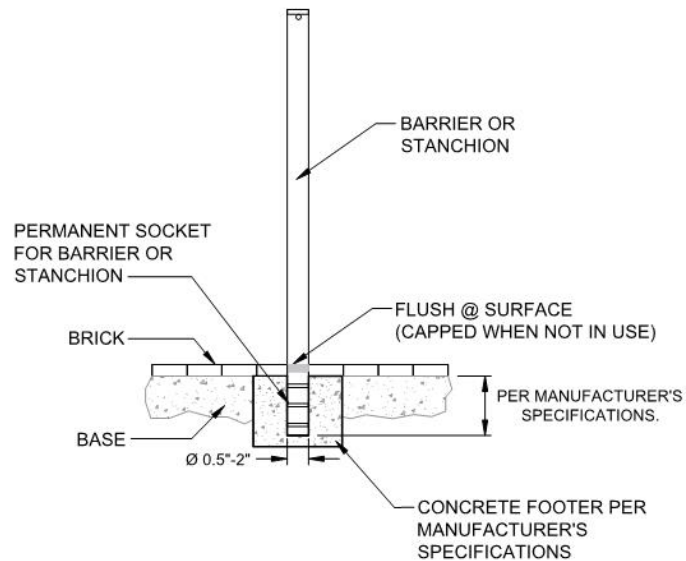
APPROVED KING STREET OUTDOOR DINING OVERLAY ZONE MAP



(Approved by Ordinance 4414 ~ adopted June 21, 2005)

Attachment # 3

PROPOSED DETAIL FOR SECURING OUTDOOR DINING ENCLOSURE TO BRICK, CONCRETE, AND CONCRETE/BRICK HYBRID SIDEWAL



(N.T.S.)

NOTE: THE INFORMATION SHOWN HEREIN THIS DOCUMENT IS FOR GENERAL GUIDANCE ONLY AND IS NOT INTENDED FOR CONSTRUCTION PURPOSES. ITS USE SHALL NOT RELIEVE THE DESIGN PROFESSIONAL OR CONTRACTOR OF ANY LEGAL RESPONSIBILITY.

**SECURING OUTDOOR FURNITURE TO BRICK,
CONCRETE, AND CONCRETE/BRICK HYBRID SIDEWALK**

DATE 03/04/2019

DEPARTMENT OF TRANSPORTATION &
ENVIRONMENTAL SERVICES

CSSO - 1

APPROVED

DATE

ALEXANDRIA

VIRGINIA

PAGE 55