



CITY OF DOVER

CITY OF DOVER - RESOLUTION

Agenda Item#:

Resolution Number: **R - 2022.03.23 -**

Resolution Re: Authorizing a Permit Program for Outdoor Dining Use of Certain Parking Spaces from April 15, 2022 to October 15, 2022

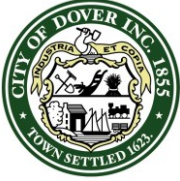
WHEREAS: In 2020 and 2021, the City of Dover allowed outdoor dining during the COVID-19 State of Emergency in keeping with the Governor's Emergency Order. The outdoor dining, in part, allowed private businesses to use public parking spaces; and

WHEREAS: The City's Parking Commission has studied and reviewed the issue of outdoor dining for 2022 using public parking spaces and has recommended the City offer a limited outdoor dining program.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND DOVER CITY COUNCIL THAT:

The City Manager is authorized to create, oversee, and administer a permit program allowing public parking spaces for outdoor dining or substantially equivalent business use, subject to the following conditions and terms:

- a) The program is temporary and limited to April 15, 2022 and October 15, 2022;
- b) The proposed public parking spaces must be located away from arterial roads;
- c) Sidewalk seating should first be sought and exhausted before requesting use of any public parking spaces. A proposed permittee must demonstrate that sidewalk seating is inadequate or not available;
- d) No City property or expenditure of funds be made for permittees; the proposed permittee shall supply and maintain its own barriers or other protection as deemed necessary to ensure safety, at the permittee's sole cost;
- e) The proposed permittee shall obtain approval from the City's Parking Commission of the location and number of proposed spaces to be used;
- f) The proposed permittee shall submit a proposed plan outlining the public parking spaces to be used, the arrangement of tables or other furniture to be kept on site, the ingress and egress details, and details concerning barriers or other protection to be used along with the proposed methods of installing and securing the foregoing, all for review and comment by the City Planning Board's Technical Review Committee;
- g) Endorsement, concurrence in writing, or, if required, a restaurant license issued by the City of Dover's Inspection Services Division;
- h) Endorsement, concurrence in writing or, if required, a separate obstruction permit issued by the City's Community Services Director;
- i) The proposed permittee shall obtain and submit written consent of any person or entity owning the real property (or properties) directly beside the proposed parking spaces to be used, which shall form a continuing condition/contingency of the use agreement outlined below;
- j) The proposed permittee shall be required to enter into a use agreement outlining and incorporating the foregoing, as well as: (i) a fee of \$1,100 per space to be paid to the City Parking Bureau by the permittee as a one-time fee at the inception of the use, (ii) a term from April 15, 2022 to and including October 15, 2022, (iii) indemnity and insurance requirements of the permittee in



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favor of the City, (iii) a requirement that all substantive provisions of the Dover Code applicable to sidewalk seating shall likewise apply, as a minimum requirement, to the public parking space use as well, *see* Dover Code Chapter 125-20; and (iv) the permittee's agreement to comply with any and all applicable federal, state, and local laws, including but not limited to Dover Code chapter 85, and any applicable building, fire, safety, life safety, or other such codes, which may require provisions more stringent than the aforesaid provisions applicable to sidewalk seating.

- k) Such other additional terms and requirements as the City Manager may also deem advisable and in the best interests of the City.

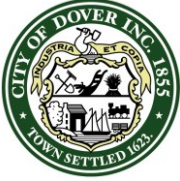
AUTHORIZATION

Approved as to Funding: Daniel R. Lynch
Finance Director

Sponsored by: Mayor Robert Carrier
By Request

Approved as to Legal Joshua M. Wyatt
Form and Compliance: City Attorney

Recorded by: Susan M. Mistretta
City Clerk



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DOCUMENT HISTORY:

First Reading Date:

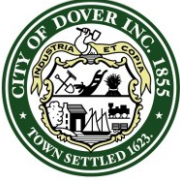
Public Hearing Date:

Approved Date:

Effective Date:

DOCUMENT ACTIONS:

VOTING RECORD		
Date of Vote:	YES	NO
Mayor Robert Carrier		
Deputy Mayor Dennis Shanahan		
Councilor Michelle Muffett-Lipinski, Ward 1		
Councilor Robert Hinkel, Ward 2		
Councilor Deborah Thibodeaux, Ward 3		
Councilor Debra Hackett, Ward 4		
Councilor Fergus Cullen, Ward 6		
Councilor Linnea Nemeth, At Large		
Councilor Lindsey Williams, At Large		
Total Votes:		
Ordinance does does not pass.		



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RESOLUTION BACKGROUND MATERIAL:

Dover's outdoor dining program succeeded in 2020 and 2021 in assisting businesses adversely impacted by the COVID-19 pandemic. This year, with vaccines widely available and infections and hospitalizations trending down, the prior need for outdoor dining is diminished. Yet, COVID-19 infections remain a concern for many in the community, including those who cannot get vaccinated, who are immunocompromised, or who otherwise would prefer to use outdoor dining options.

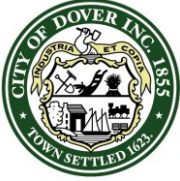
While sidewalk seating has been available in certain instances for many years, the City has only recently allowed public parking spaces to be re-purposed temporarily in keeping with existing Emergency Orders issued by the Governor. In 2021, the legislature amended [RSA 178:24](#) to now provide that "a [liquor] licensee may expand into a shared space, such as a sidewalk or street, with the approval of local officials."

In 2022, certain restaurant businesses have approached the City to inquire whether outdoor dining would be permitted again using public parking spaces. On March __, 2022, following review and study, the City's Parking Commission voted __ to __ to recommend the program outlined in this resolution. The recommended charge of \$1,100 per parking spot is based on the anticipated lost revenue from that parking space, which revenue supports the operation of the parking and parking enforcement program itself. While in the past the City had provided jersey barriers and water to fill those barriers, the Parking Commission recommended to avoid any City property or funds being used to provide direct support this year.

For sidewalk seating, Dover Code 125-20 currently provides as follows:

A business that regularly and customarily sells food or drink may obtain a permit from the Director to operate an outdoor seating area on a sidewalk, for service and consumption of food or drink prepared on premises, on the terms and conditions set out below. The permit shall specify the area to be used for outdoor seating, the furniture to be used within the outdoor seating area, and the proposed arrangement of the furniture. Permits may only permit outdoor seating between May 15 and November 15 and shall only be valid for the calendar year in which issued. Businesses wishing to serve alcohol in an outdoor seating area shall also comply with the provisions of Chapter 85, Food Service Establishments, § 85-11, of the Code of the City of Dover. Such permit shall be issued by the Community Services Department on an application provided by the Department. All applications for a permit for sidewalk seating shall include, for each application, the fee listed in the annual Schedule of Fees adopted by the City Council. An outdoor seating area shall meet all of the following requirements:

- A. The building in which the licensed business operates must share a common boundary line with a sidewalk.
- B. The outdoor seating area shall not extend beyond the boundaries fronting the licensed business and shall be open and available to all individuals, not solely customers of the permittee.



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- C. The outdoor seating area shall allow a minimum four-foot-wide unobstructed pedestrian corridor at all times. Wider pedestrian corridors or increased clearances may be required where warranted by pedestrian traffic or other circumstances. Furniture in an outdoor seating area may be located next to the curb, with two-foot clearance, and/or adjacent to the building, so long as clearances are maintained. Where existing obstructions are present (such as fire hydrants), the corridor can be measured to go around these obstructions.
- D. The outdoor seating area must not block access to public amenities like street furniture, trash receptacles, and way-finding or directional signs.
- E. Furniture must be made of durable material. No plastic or unfinished or pressure-treated wood furniture is permitted.
- F. Planters or pots may be used to define the outdoor dining space but are not required.
- G. Lighting must not cause glare to pedestrians or vehicular traffic and must not be affixed to City trees.
- H. The outdoor seating area must be kept clean and neat, and all trash shall be properly disposed.