

**Codes and Ordinances Committee**

Councilor Peter Lachapelle, Chair  
Councilor Elaine Lauterborn, Vice Chair  
Councilor Tom Abbott  
Councilor Laura Hailey  
Councilor Christopher Rice



**CODES AND ORDINANCES COMMITTEE**

Of the Rochester City Council

**Thursday, February 4 2021**

**31 Wakefield Street, Rochester, NH**

Meeting Conducted Remotely

**6:00 PM**

**Addendum to 2/4/21 Agenda**

**1. Chapter 80 – Outdoor Dining**

**1.1 Existing Ordinance P. 3**

**1.2 Edits to Ordinance resulting from Codes & Ordinances Meeting 1/7/21 P. 13**

**1.3 Additional suggested amendments from City Staff P. 17**

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City Clerk's Office

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§ 80-1

FOOD AND FOOD SERVICE

§ 80-2

## ARTICLE I

**Food Service Establishments**

**[Adopted 6-6-1995 as Ch. 25, Art. 3, of the 1995 Code; amended 8-4-1998; 6-15-2004; 5-1-2007]**

**§ 80-1. Food Code adopted. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

The City of Rochester hereby adopts the provisions of the Food Code of the State of New Hampshire, Department of Health and Human Services, Division of Public Health Services, as presently enacted and as may be amended from time to time.

**§ 80-2. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

**BOARD** — The Board of Health of the City of Rochester.

**FOOD CODE** — The State of New Hampshire, State Department of Health and Human Services, Food Code as adopted by § 80-1 above, and as the same shall be amended from time to time by the Department of Health and Human Services.**[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

**FOOD SERVICE ESTABLISHMENT** — Any fixed or mobile restaurant, temporary food service establishment, cafeteria, coffee shop, cocktail lounge, catering kitchen, sidewalk cafe, commissary, grill, luncheonette, short-order cafe, sandwich shop, soda fountain, ice cream shop, mobile ice cream truck, mobile lunch truck, tearoom, drive-in theater, mobile theater, drive-in restaurant, nightclub, roadside stand, grocery store, meat market, bakery, warehouse, juice bar, industrial feeding establishment, food vending operation (whether attended or unattended), private, public or nonprofit organization or institution serving the public, or similar place in which food is prepared for sale or consumption or any establishment where food is stored, manufactured and/or processed or packaged or any other eating or drinking establishment where food or drink is served or provided for the public with or without charge.

**HEALTH OFFICER** — The Health Officer of the City of Rochester or his/her designee.

**SEASONAL FOOD SERVICE ESTABLISHMENT** — Any food service establishment as defined above, fixed or mobile, which operates within the City of Rochester for a period of time longer than 14 days but no longer than six months during any fiscal year, and provided, further, that the applicant seeking a license for a seasonal food service establishment shall be required to designate in writing, at the time of filing an annual application for such license, the six months in which such seasonal food service establishment shall be operated, and such months shall be noted on the license issued to such applicant.

TEMPORARY FOOD SERVICE ESTABLISHMENT — Any food service establishment as defined above which operates at a fixed location for a temporary period of time, not to exceed 14 days, in connection with a fair, carnival, circus, public exhibition, or similar transitory gathering.

**§ 80-3. License required.**

It shall be unlawful for any person to operate a food service establishment within the City of Rochester who does not possess a valid license for that purpose issued to him/her by the Board. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a license. Licenses shall not be transferable from one person to another person or another place. A valid license shall be conspicuously posted in every food service establishment. Licenses for temporary food service establishments shall be issued for a period of time not to exceed 14 days.

**§ 80-4. Issuance of license; fees. [Amended 9-3-2013; 3-5-2019]**

Every applicant for a license to operate a food service establishment shall make written application therefor on forms provided by the Board. Upon receipt of an application and the designated license fee, and after inspection to ensure compliance with the Sanitary Food Code, a license shall be issued to the applicant by the Board if the requirements of this article have been met. All licenses issued hereunder shall expire on the first day of July in each year.

A. Fees. Based upon highest classification.

- (1) Class A. Food service establishments having a seating capacity of 200 persons or more; retail food store with four or more food preparation areas: three hundred dollars (\$300.).
- (2) Class B. Food service establishments having a seating capacity of 100 through 199 persons; retail food store with two to three food preparation areas: two hundred dollars (\$200.).
- (3) Class C. Food service establishments having a seating capacity of more than 25 but fewer than 100 persons; retail food store with one food preparation area; caterers; bar or lounge that serves food; service/fraternal clubs with bar/liquor lounges; nursing homes: one hundred fifty dollars (\$150.).
- (4) Class D. Food service establishments with a seating capacity of 25 or fewer (including but not limited to bakeries); food service establishments with take-out service and no seating; drive-in movie theaters; service/fraternities and sororities; group day-care facilities; shared homes; rest homes; sheltered homes; boarding homes; home food manufacturers; and mobile food operators: one hundred dollars (\$100.).
- (5) Class E. Bed-and-breakfast; ice cream vendors - scooping; lodging facilities serving continental breakfast: eighty-five dollars (\$85.).

- (6) Class F. Retail food store - no preparation areas; wholesalers/distributors of TSC\* food; vending machines serving TSC\* foods; bakeries which do not serve TSC\* food or have seating; food service establishments selling only pre-packaged products: seventy-five dollars (\$75.). (\*TSC - Time/Temperature Control for Food Safety)
  - (7) Class G. Bar or lounge with no food preparation area that serves alcohol; arena/theater concessions serving non-TSC\* food; retail food stores serving pre-packaged ice cream only; institutions; private schools; senior meal sites; sellers of pre-packaged frozen USDA meat or poultry; temporary food establishments; vending machine operators per location that do not dispense TSC\* food; social clubs; residential day-care facilities: fifty dollars (\$50.). (\*TSC - Time/Temperature Control for Food Safety)
  - (8) Class H. Nonprofit charitable organizations not holding a liquor license and not serving meals on a daily basis; public and private schools; government facilities: no fee.
  - (9) Class I. Seasonal food service establishments (open less than six months of the year): fee is 1/2 the annual fee for corresponding nonseasonal Class A through Class H establishments set forth above.
  - (10) Class J. Food establishments at Rochester Fair: sixty-five dollars (\$65.).
- B. All applications for food service establishment licenses shall be filed with the Board on or before June 20 of each year. In addition to the fees provided for in this section, there shall be a late fee of ten dollars (\$10.) for any renewal application received after June 20 of any year.

#### **§ 80-5. Suspension of license.**

- A. If in the judgment of the Health Officer a licensee has failed to comply with any provision of this article, the licensee shall be notified in writing by the Health Officer of such failure of compliance and the licensee shall thereafter immediately bring his/her food service establishment into compliance with this article. If the licensee fails to bring his/her food service establishment into compliance with this article, the Health Officer may petition the Board in writing that the license be suspended and the Board shall give the licensee at least seven days' notice of the scheduling of the hearing on said petition. As a result of said hearing, the Board may suspend the license during such a period of time as the failure of compliance exists.
- B. Notwithstanding any other provision of this article, whenever the Health Officer or Board finds unsanitary or other conditions in the operation of a food service establishment which, in his/her or its judgment, constitute a substantial and immediate hazard to the public

health, the Health Officer or any member of the Board may issue a written notice to the licensee citing such condition and the corrective action to be taken and specifying the time period within which such action shall be taken. Any person to whom such order is issued shall immediately comply therewith but upon written petition to the Board shall be afforded a hearing as soon as possible and not later than seven days from submission of such petition. Pending a hearing on such petition, if the Health Officer finds an immediate and substantial hazard to public health, he/she may order that the license be immediately suspended and all food service operations immediately discontinued.

#### **§ 80-6. Reinstatement of suspended license.**

Any person whose license has been suspended may, at any time, make application for a reinspection for the purpose of reinstatement of the license. Within five days following receipt of a written request, including a statement signed by the applicant that in his/her opinion the conditions causing suspension of the license have been corrected, the Health Officer shall make a reinspection. If the Health Officer shall find that the food service establishment is in compliance with the requirements of this article, he/she shall so certify in writing to the Board and the license shall be reinstated forthwith.

#### **§ 80-7. Revocation of license. [Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

For serious or repeated violations of any of the requirements of this article or for interference with the Health Officer in the performance of his/her duties, the license may be permanently revoked after opportunity for hearing has been provided by the Board. Prior to such action, the Board of Health shall notify the licensee in writing, stating the reasons for which the license is subject to revocation and advising that the license shall be permanently revoked at the end of five business days following the service of such notice, unless a request for hearing is filed with the Board by the licensee within such five-day period. A license may be suspended for cause pending its revocation or hearing relative therein.

#### **§ 80-8. Hearing.**

The hearings provided for in this article shall be conducted by the Board at the time and place designated by it. The Board need not make a record of such hearing beyond that required by the Right To Know Law.<sup>1</sup> The Board shall make its finding based upon the evidence and testimony presented at the hearing and shall sustain, modify or rescind any official notice or order in issue at the hearing. The Board may make any further findings, orders or rulings it shall deem necessary and appropriate as a result of such hearing. A written report of the hearing decision shall be furnished to the licensee by the Board.

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1. Editor's Note: See RSA 91-A.

**§ 80-9. Inspection of food service establishments.**

At least annually the Health Officer shall inspect each food service establishment located in the City of Rochester and shall make as many additional inspections and reinspections as are necessary for the enforcement of this article.

**§ 80-10. Access to establishments.**

The Health Officer, after proper identification, shall be permitted to enter at any reasonable time any food service establishment for the purpose of making inspections to determine compliance with this article. He/she shall be permitted to examine the records of the establishment and to obtain pertinent information pertaining to food and supplies purchased, received, or used, and persons employed.

**§ 80-11. Service of notices.**

Notices provided for under this article shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the licensee or person in charge of the food service establishment or such notice has been sent by registered or certified mail, return receipt requested, to the last known address of the licensee. A copy of such notice and return receipt shall be filed with the records of the Health Officer.

**§ 80-12. Food from food service establishments outside City.**

Food from food service establishments from outside the City of Rochester may be sold within the City of Rochester if such food service establishment conforms to the provisions of this article or to substantially equivalent provisions. To determine the extent of compliance to such provisions the Health Officer may accept reports from responsible authorities in other jurisdictions where such food service establishments are located.

**§ 80-13. Review of future construction.**

When a food service establishment is hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a food service establishment, plans and specifications for such construction, remodeling or alteration, showing layout, arrangement and construction materials or work areas and the location, size and type of fixed equipment and facilities, shall be submitted to the Health Officer for approval with respect to compliance with this article before such work is begun. No building permit shall be issued until such approval has been given by the Health Officer.

## ARTICLE II

**Outdoor Dining Establishments****[Adopted 1-12-2016 (§ 26.10 of the 1995 Code)]****§ 80-14. Requests for use of City property.**

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by February 1 with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

**§ 80-15. Site plans required.**

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager.

**§ 80-16. Area service agreement; season. [Amended 3-1-2016]**

The terms and conditions of any such requests that are approved by the City Manager in any given year shall be described in an annual area service agreement, which includes a clear depiction of the area approved for outdoor dining use and the time period of approved use ("season"), with said area service agreement to be signed by the City Manager and the party or parties making the request. The season shall run from April 1 through October 31.

- A. Area service agreements shall not be assignable to other parties.
- B. Use of the area subject to the area service agreement (the "area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager at any time during the season in order to accommodate special municipal events.

**§ 80-17. Fee.**

A minimum fee for the season of twenty-five dollars (\$25.) shall be required even if the size of the area subject to the agreement is less than 100 square feet. A fee of one dollar (\$1.) per square foot will be charged for the area



subject to the agreement for all square feet above 100 square feet. The fee shall be due and payable to the City of Rochester prior to authorization to use the area.

**§ 80-18. Restoration of area. [Amended 3-1-2016]**

The area specified for outdoor dining use in the area service agreement shall be restored upon termination of the area service agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City. Semi-permanent objects may remain in the area at season's end at the discretion of the City Manager.

**§ 80-19. Indemnification; insurance.**

Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured. A certificate of insurance documenting said types and amounts of insurance is to be submitted to the City's Legal Department before the start of the season.

**§ 80-20. Damaging or obstructing public facilities.**

Outdoor dining establishments shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make the same inaccessible for public use (other than within the approved area) or maintenance purposes.

**§ 80-21. Hours of operation.**

Outdoor dining establishments may utilize the area for outdoor dining during their normal business hours, except that all tables within the area shall be cleared of all food and alcoholic beverages by 11:00 p.m. Monday through Saturday and by 10:00 p.m. on Sunday with no alcohol served within the area subsequent to 1/2 hour before the foregoing closure times.

**§ 80-22. Alcoholic beverages.**

- A. Outdoor dining establishments shall agree at all times to comply with all laws, rules and regulations of the New Hampshire State Liquor Commission and all other local, state and federal laws. Approval of the area service agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission and the City Manager. See RSA 178:24 and 179:27.
- B. Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

**§ 80-23. Accessibility.**

Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act (ADA).

**§ 80-24. Suspension of area service agreement.**

The area service agreement may be suspended at the sole discretion of the City on an administrative basis.

**§ 80-25. Revocation of area service agreement.**

The area service agreement may be revoked in its entirety, excepting for indemnity provisions, by the City Manager at any time.

**§ 80-26. Site design standards for establishments with alcohol service.**

Outdoor dining establishments with alcohol service should meet the following site design standards:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent municipal sidewalk by an enclosure system consisting of heavy-duty black decorative metal materials or equivalent as approved by the City Manager or his/her designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and ensure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches.
- B. Outdoor dining establishments shall not have live entertainment of any type located outside, and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.
- C. Seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the area approved by the City Manager. Exceptions to this provision will be allowed consistent with New Hampshire State Liquor Commission approval for particular licensees. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- D. The internal dimensions and table/chair layout of the outdoor dining area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- E. Outdoor dining establishments must provide a five-foot radius clearance from the center of restaurant doorways (exterior), and doorways shall be kept clear at all times and a five-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.

- F. The enclosure system, tables and chairs shall be movable/nonpermanent.
- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining. Table umbrellas are allowed, but must not extend beyond the area.
- I. No object strictly related to advertising shall be allowed in the area.
- J. No improvements or personal property located within the area shall extend on or over any City property located outside the area.

#### **§ 80-27. Rules and regulations.**

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, service windows, service counters, wait stations, or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating.
- C. Only decorative lighting shall be permitted.
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

**§ 80-28. Approval of agreement.**

No area service agreement should be approved by the City Manager except in conformance with the foregoing.

**§ 80-29. Other terms and conditions.**

The above are policy guidelines that will serve as the basis for area service agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

**§ 80-30. Number and location of establishments.**

The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manager acting in the public interest, and no entitlement is created by this policy for any party to have outdoor dining at any location.

**§ 80-31. Use of property other than sidewalks. [Added 4-5-2016]**

Use of City property, other than sidewalks, for outdoor dining as defined in this article and the terms of said use must be separately negotiated with the City outside of the above-delineated permitting process.

**Amendments to Chapter 80 of the General Ordinances of the City of Rochester Regarding Outdoor**

**Dining**

THE CITY OF ROCHESTER ORDAINS:

That Chapter 80 of the General Ordinances of the City of Rochester and currently before the Rochester City Council, be amended as follows (deletions ~~struck out~~ additions in RED):

**Article II  
Outdoor Dining Establishments**

**[Adopted 1-12-2016 (§ 26.10 of the 1995 Code)]**

**§ 80-14 Requests for use of City property.**

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by February 1 with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

**§ 80-15 Site plans required.**

Such requests shall include a dimensioned site plan of the existing conditions, including a depiction of public infrastructure such as curblines, light poles, bike racks, street trees, tree grates, manhole covers, meters, licensed A-frame signs, adjacent on-street parking and loading zones, adjacent accessible sidewalk curb cuts and the like. Such requests shall also include a dimensioned site plan depicting the proposed table/chair layout plan for outdoor dining, **lighting**, dimensioned routes of travel within the outdoor dining area and on the adjoining public sidewalk, as well as detail sheets for the proposed enclosure system, tables, chairs, lighting, trash receptacles, and the like. These plans will be reviewed by the Technical Review Group and suggestions forwarded to the City Manager. **Once Site Plans are approved, no changes shall be allowed without the approval of the City Manager.**

**§ 80-16 Area service agreement; season.**

**[Amended 3-1-2016]**

The terms and conditions of any such requests that are approved by the City Manager in any given year shall be described in an annual area service agreement, which includes a clear depiction of the area approved for outdoor dining use and the time period of approved use ("season"), with said area service agreement to be signed by the City Manager and the party or parties making the request. The season shall run from April 1 through October 31.

- A. Area service agreements shall not be assignable to other parties.
- B. Use of the area subject to the area service agreement (the "area") may be precluded, modified or made subject to any such terms and conditions as may be determined by the City Manager at any time during the season in order to accommodate special municipal events.

**§ 80-17 Fee.**

A minimum fee for the season of twenty-five dollars (\$25.) shall be required even if the size of the area subject to the agreement is less than 100 square feet. A fee of one dollar (\$1.) per square foot will be charged for the area subject to the agreement for all square feet above 100 square feet. The fee shall be due and

payable to the City of Rochester prior to authorization to use the area.

**§ 80-18 Restoration of area.**  
**[Amended 3-1-2016]**

The area specified for outdoor dining use in the area service agreement shall be restored upon termination of the area service agreement at season's end. Specifically, at season's end, the enclosure system, tables, chairs and all other materials in their entirety shall be removed from the City-owned area with the area left in an unobstructed, undamaged, clean and sanitary condition at no cost to the City. Semi-permanent objects may remain in the area at season's end at the discretion of the City Manager.

**§ 80-19 Indemnification; insurance.**

Outdoor dining establishments on City property shall indemnify and hold harmless the City of Rochester and shall maintain and provide insurance of the types and amounts specified by the City's Legal Department and shall list the City as additional insured. A certificate of insurance documenting said types and amounts of insurance is to be submitted to the City's Legal Department before the start of the season.

**§ 80-20 Damaging or obstructing public facilities.**

Outdoor dining establishments shall not damage sidewalks, curbing, bike racks, street trees, light poles, trash containers, utilities or any other City amenities or infrastructure, or make the same inaccessible for public use (other than within the approved area) or maintenance purposes.

**§ 80-21 Hours of operation.**

Outdoor dining establishments may utilize the area for outdoor dining during their normal business hours, except that all tables within the area shall be cleared of all food and alcoholic beverages by 1:00 am Monday through Sunday with no alcohol served within the area subsequent to 1/2 hour before the foregoing closure times.

**§ 80-22 Alcoholic beverages.**

- A. Outdoor dining establishments shall agree at all times to comply with all laws, rules and regulations of the New Hampshire State Liquor Commission and all other local, state and federal laws. Approval of the area service agreement by the State Liquor Commission is required. Alcoholic beverage violations shall be self-reported to the State Liquor Commission and the City Manager. See RSA 178:24 and 179:27.
- B. Outdoor dining establishments shall only serve alcoholic beverages to patrons who are seated at a table and who are ordering food with service at tables conducted by wait staff only.

**§ 80-23 Accessibility.**

Outdoor dining establishments will agree that they shall be solely responsible for compliance with the Americans with Disabilities Act (ADA).

**§ 80-24 Suspension of area service agreement.**

The area service agreement may be suspended at the sole discretion of the City on an administrative basis.

**§ 80-25 Revocation of area service agreement.**

The area service agreement may be revoked in its entirety, excepting for indemnity provisions, by the City Manager at any time.

**§ 80-26 Site design standards for establishments with alcohol service.**

Outdoor dining establishments with alcohol service should meet the following site design standards:

- A. Outdoor dining establishments shall be separated from the public pedestrian space on the adjacent

municipal sidewalk by an enclosure system ~~consisting of heavy-duty black decorative metal materials or equivalent~~ as approved by the City Manager or his/her designee; special attention shall be paid to the method used to support the enclosure system in order to avoid damage to public property and ensure public safety; the minimum height of the enclosure system shall be 30 inches and the maximum height shall be 36 inches, **measured from the lowest point of the public space being utilized.**

- B. Outdoor dining establishments shall not have live entertainment of any type located outside **unless the establishment has applied for and received a Special Event permit pursuant to RSA 286 and Chapter 123 of this Code.**, ~~and no visual entertainment shall be situated on the inside of the building in such a manner that it is directed toward patrons in the outdoor dining area.~~
- C. Seating shall be appurtenant and contiguous to a doorway accessing the main restaurant facility with service provided within the area approved by the City Manager. Exceptions to this provision will be allowed consistent with New Hampshire State Liquor Commission approval for particular licensees. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- D. The internal dimensions and table/chair layout of the outdoor dining area must allow for the passage of customers and wait staff and shall, in any event, meet ADA requirements.
- E. Outdoor dining establishments must provide a five-foot radius clearance from the center of restaurant doorways (exterior), and doorways shall be kept clear at all times and a five-foot minimum clear pedestrian path in front of restaurant doorways (exterior) shall be maintained at all times.
- F. The enclosure system, tables and chairs shall be movable/nonpermanent. **The applicant shall affix and maintain rubber tips or equivalent to the legs of any table or chairs used on concrete, brick or granite surfaces. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property**
- G. In all areas where outdoor dining establishments are allowed the width for the pedestrianway adjacent to the area shall, at a minimum, be three feet and, in any event, meet ADA requirements, but will depend on site conditions. The pedestrianway in both instances shall allow for and provide clear unimpeded passage and access along the area. The pedestrianway shall be located entirely on the public sidewalk and shall meet criteria that ensure pedestrian safety, usability and ADA compliance. In no event shall the area interfere with accessibility or public safety, including safe lines of sight for motor vehicles.
- H. Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining.~~ **Commercial grade umbrellas, porticos, structures or tents shall be allowed if they meet NFPA or IBC codes. They must be securely fastened or anchored in a manner approved by the City Manager and must not extend beyond the area approved for outdoor dining. It is recommended that applicants contact the appropriate City department before purchasing said items to ensure the product is allowed.**

~~Table umbrellas are allowed, but must not extend beyond the area and must be anchored.~~
- I. No object strictly related to advertising shall be allowed in the area.
- J. No improvements or personal property located within the area shall extend on or over any City property

located outside the area.

- K. Decorations must be fire retardant and meet NFPA 701 Standards. No decorations permitted except those approved on the site plan. No loosely hanging material.

**§ 80-27 Rules and regulations.**

Outdoor dining establishments shall agree at all times to comply with all local laws, rules, regulations and orders, including but not limited to the following:

- A. The Health Department shall approve outdoor food service operations and cleaning operations, with the area to be left in a clean and sanitary condition at all times, and no outdoor garbage containers will be permitted. The area shall be left in clean condition at close of business with all garbage removed in its entirety from the area, and any ground debris swept up, at close of daily business. No food prep, grilling, ~~cooking, appliances, service windows, service counters, wait stations,~~ or bus buckets shall be allowed in the area and no condiments, paper products or the like shall be stored on the tables in the area. The Health Department shall review/approve that kitchen facilities are sufficient to support additional seating.
- B. The Director of Buildings, Zoning, and Licensing Services shall review/approve that bathroom facilities are sufficient to support outdoor dining seating. **Outdoor dining capacity must be in compliance with State law and the Food Code to ensure that each restaurant is approved for additional seating.**
- C. ~~Only decorative lighting shall be permitted.~~
- C. **The permittee is responsible for removing trash and regularly cleaning the areas being used for outdoor dining (including the areas where servers traverse between the restaurant and extended tables and chairs). Restaurant patron trash shall only be disposed of in the restaurant's commercial trash containers and not in the sidewalk trash receptacles.**
- D. A place of assembly inspection and updated place of assembly permit shall be required from the Fire Department, and the Fire Department shall review/approve means of egress as part of the Technical Review Group process.

**§ 80-28 Approval of agreement.**

No area service agreement should be approved by the City Manager except in conformance with the foregoing.

**§ 80-29 Other terms and conditions.**

The above are policy guidelines that will serve as the basis for area service agreements, which may include other terms and conditions deemed by the City Manager to be in the public interest.

**§ 80-30 Number and location of establishments.**

The number and location of outdoor dining establishments on City property shall be at the sole unfettered discretion of the City Manager acting in the public interest, and no entitlement is created by this policy for any party to have outdoor dining at any location.

**Effective immediately upon passage.**



**§ 80-14. Requests for use of City property.**

Requests for use of City property for outdoor dining providing food and alcohol service shall be made in writing to the City Manager on an annual basis by **February 1** with no expectation of continued year-to-year use of the City property on a continuing basis. Requests will only be accepted by businesses licensed to serve food to the public. In the event that a new business opens during the outdoor dining season and wishes to incorporate outdoor dining in its plans, an application will be allowed for the remainder of the dining season only.

As Amended: February 1<sup>st</sup> instead of March 1<sup>st</sup> as shown above.

**§ 80-26 Site design standards for establishments with alcohol service.**

Outdoor dining establishments with alcohol service should meet the following site design standards:

F. The enclosure system, tables and chairs shall be movable/nonpermanent. **The applicant shall affix and maintain rubber tips to the legs of any table or chairs used on concrete, brick or granite surfaces. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property.**

As amended: The enclosure system, tables and chairs shall be movable/nonpermanent. The applicant shall ~~be responsible to repair any damage to ground surfaces~~ **affix and maintain rubber tips or equivalent to the legs of** ~~created by~~ any table or chairs **or other structures** used on concrete, brick or granite surfaces. It is the applicant's responsibility to ensure that all movable items within the outdoor dining area are secured against wind or theft. The City accepts no liability for lost, stolen or damaged property

H. Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is,~~ **there shall be no vertical supports in or around the outdoor dining.** Table umbrellas are allowed, but must not extend beyond the area. **No tents or covers shall be permitted over the outdoor dining space.**

As Amended: Canopies over the outdoor dining areas shall not be allowed. ~~unless they are completely supported by hardware on the building structure, that is, there shall be no vertical supports in or around the outdoor dining.~~ Commercial grade umbrellas, porticos, structures or tents shall be allowed if they meet NFPA or IBC codes. They must be securely fastened or anchored in a manner approved by the City Manager and must not extend beyond the area approved for outdoor dining. It is recommended that applicants contact the appropriate City department before purchasing said items to ensure the product is allowed.