



Request for City Council Committee Action from the Department of Regulatory Services

Date: May 16, 2011

To: Council Member Elizabeth Glidden, Chair – Regulatory, Energy & Environment Committee

Subject: Outdoor Rooftop Dining Report

Recommendation: That the Regulatory, Energy & Environment Committee support the development of standards for operating conditions for outdoor areas.

Previous Directives: At the April 18, 2011 Regulatory, Energy & Environment Committee staff, was directed to review best practices and develop recommendations for criteria for business license operating conditions for outdoor rooftop dining that addresses noise abatement options.

Department Information

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Approved by:

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Financial Impact

- No financial impact

Community Impact

- City Goals
 1. Jobs & Economic Vitality: Businesses — big and small — start here, stay here, thrive here.
 2. Livable Communities, Healthy Lives: Our built and natural environment adds character to our city, enhances our health and enriches our lives.

Supporting Information

In recent years, the City of Minneapolis has enjoyed a surge in restaurants which offer different outdoor dining options, from sidewalk cafes and decks, to garden patios and rooftops. These areas are primarily operated from May to September.

The operation of these outdoor areas can potentially come into conflict with the interests of adjoining areas. The increase in noise is the most common problem. This conflict has been an ongoing concern for city officials and staff, residents, as well as the business owners. In an effort to manage the potential issues, city staff has placed operating conditions on some businesses, including limiting amplified sound, limiting entertainment, limiting hours and erecting screening/sound barriers.

For example, there are currently 14 establishments operating rooftop dining spaces, all of which are licensed to serve alcoholic beverages. These rooftops are located in downtown and uptown exclusively. Of these 14 rooftops, one in downtown and three in uptown have specific operating conditions which reflect the need as determined through the application process.

The city also has approximately 170 sidewalk cafes on city property and 135 outdoor areas on private property. Again, many of these outdoor areas are operating with conditions that were individually tailored to meet the circumstances of the community in which they operate.

Authority to Regulate

Current zoning codes, business licensing ordinances and alcohol regulations provide the city with tools to regulate rooftop and outdoor areas. For example, the current zoning code restricts the proximity of outdoor areas to residentially zoned uses. Chapter 548.180 (b) (1) states:

Outdoor dining shall be allowed subject to the following conditions: the outdoor dining area shall be no closer than twenty (20) feet from an adjacent residence or office residence district boundary or from an adjacent ground floor permitted or residential conditional use and shall be screened from such boundary or residential use, as specified in chapter 530, Site Plan Review

Other relevant city ordinances require a public hearing prior to obtaining or expanding a license, therefore providing an opportunity for nearby residents to present their comments and concerns regarding the outdoor area application. The material gathered from the hearing informs city staff and the City Council of the public's concern and supplies a basis for requiring appropriate operating conditions on the license. Chapter 360.100 states:

Regulation of Outdoor Areas in On-Sale Liquor, Wine, and Beer Establishments. The following regulations shall apply to all outdoor areas in on-sale liquor, wine, and beer establishments, including establishments holding sidewalk cafe permits:

(a) Every outdoor area must be approved as part of the original licensed premises or by the granting of an application for expansion of the licensed premises. Any expansion of the outdoor area of a licensed premises shall require a public hearing and notification as described in section 265.300 of this Code.

During the public hearing and application review process, city staff and the City Council hear comments regarding the need for the use of the outdoor area to be restricted, while at other times that the use to be more permissive. For example, in 2009 city staff reviewed an application for a business in NE Minneapolis, (Skyline Cafe) and found it necessary to be very restrictive in the use of their rooftop outdoor area. The current ordinances allowed

staff to require conditions, and when the applicant did not agree to the conditions, staff was prepared to recommend denial of the application. This review was not legally challenged and the applicant subsequently withdrew the entire application. Conversely, with an application in south Minneapolis, (Glacier Café), the consensus of the community was that the use of the outdoor area could be more permissive than the Class E entertainment restriction in MCO 360.100(b)(3).

Comparable Cities

Of the eight other cities researched, two strictly regulate rooftops by ordinance requirements related to distance to residents, operating hours and entertainment. Two cities do not regulate rooftop patios. The other four cities use conditions that are tailored to the specific applications and do not support a 'one size fits all' approach to regulating outdoor areas.

Enhanced Standard Operating Procedures and Zoning Code Standards

Addressing the neighborhood livability concerns about outdoor areas may require changes in both license application process and Zoning Code.

Updating our standard operating procedures and license application forms to include specific outdoor area considerations will provide additional information and accountability from the applicant and improve consistency of review by staff. Currently all applicants submit a Business Plan as part of their alcohol application. Well developed and executed business plans and operating conditions, if merited, have a significant impact on proper management and mitigation of issues at alcohol establishments. In addition to providing information about menus, hours of operation, litter/maintenance, and entertainment, the following is a sample of what is required:

[Alcohol Server](#) Training Materials and Plan. MCO 370.10 and 362.360

- Describe staff training. Many organizations can train your staff in alcohol service. A list of a few [programs](#) is available on our website.
- Ongoing and regular training program
- Policy for carding and the use of electronic [ID scanners](#)
- Reward and discipline policy for serving alcohol to minors
- Self audits

[Security Plan](#)/Staffing Model. MCO 259.250

- Attach your security plan which addresses how you will take appropriate action to prevent illegal conduct by any persons on your business premises and parking areas

[Noise Abatement](#) MCO 389

- Provide a detailed plan describing how your establishment will be address potential noise issues

Each of the underlined items listed above opens a worksheet "link". Adding "Outdoor Area Management" to this list provides an additional tool for the applicant to manage issues, staff to determine if conditions are warranted or deemed beneficial, and the public to evaluate at public hearings. Licenses' staff is concurrently working on similar standard operating procedures as part of the Entertainment District Management Workgroup for security reviews for all licensed alcoholic beverage establishments and extended hours license holders.

A second component of enhancing our standard operating procedures includes improving our tracking mechanism for these areas which do not require a license and their respective conditions through our computer system (KIVA).

Recommendation

That the Regulatory, Energy & Environment Committee request staff to:

- Finalize license application materials and procedures that would ensure consistent review of outdoor areas and allow staff and the City Council to customize business license operating conditions.