

April 28, 2021

To: Mayor and Members of City Council
From: Paula Boggs Muething, City Manager
Subject: OUTDOOR DINING IN NEIGHBORHOODS

202101177

Reference Document #202100636

The Council at its session on March 3, 2021 referred the following item for review and report.

MOTION, submitted by Councilmembers Landsman and Mann, WE MOVE that the Administration conduct a report into the possibilities of expanding outdoor dining to other neighborhoods in Cincinnati; we ask that in recognition of the urgency of the pandemic, the report be done in the next 30 days. (BALANCE ON FILE IN THE CLERK'S OFFICE)

OUTDOOR DINING PROGRAMS AND STRUCTURE

Prior to the pandemic, the City maintained one primary program for outdoor dining within the public right-of-way—this program is still effective City-wide in all neighborhoods and is known as the Café Sidewalk Dining Program. This program is structured to allow for private parties to apply to the City for a revocable street privilege (RSP), which grants a revocable permission for the private party to utilize a portion of the public right-of-way under Cincinnati Municipal Code Chapters 718 and 723. If granted, the private party is permitted to use a portion of the existing sidewalk for outdoor dining purposes.

Through the RSP approval process, the Department of Transportation and Engineering (DOTE) coordinates a full administrative review of the proposal to ensure that adequate pedestrian mobility is maintained and to ensure compliance with the Americans with Disabilities Act (ADA). A fee is paid by the applicant for each RSP application. The fee amount helps the City to recover the cost of administering the program.

The primary reason the City uses RSPs for this program—as opposed to leases for instance—is because RSPs allow the City to quickly review and approve applications, which reduces transactional costs, and also to maintain control of the right-of-way, which provides the City flexibility to address unanticipated concerns or operational needs that may arise.

The City Administration would not recommend the use of leases for the outdoor dining program, as the many benefits associated with RSPs would be lost. Since an RSP is not a leasehold interest, the City may quickly revoke the permissions granted should another public need arise for use of the right-

of-way. Leases also pose additional legal risks that could make it more difficult to terminate the interest of the private party or give rise to other liabilities. Further, lease negotiations would add additional time and costs to approvals for outdoor dining programs, as Council approval and legal review would be necessary for each application.

Any outdoor dining use on City-owned property that is not dedicated right-of-way property would be handled on an individual basis with the City department that is in control of and manages that City-owned land. This is inclusive of City parks. Interested applicants should contact the individual department that controls the land or the City's Real Estate Department for more information and to assess feasibility.

OUTDOOR DINING REGULATION AND COMMUNITY INPUT

The City regulates the location of outdoor dining uses on both private and public property through the zoning code and, when applicable, its right-of-way codes. Depending on location, outdoor dining uses are either permitted as-of-right, as a conditional use, or are prohibited. This process restricts uses to minimize any negative community impacts and, when not permitted as-of-right, provides an opportunity for communities to be heard on the appropriateness of new outdoor dining locations, particularly those in proximity to residential zones. The neighborhood planning process provides another opportunity for communities to influence uses such as outdoor dining, as this process informs zoning code changes.

ADA COMPLIANCE

As described above, ADA compliance and accessibility is maintained through the RSP approval process. In addition to this safeguard, the City currently maintains 5916000.com and the related Fix It Cincy application for intake and recording of complaints, including for issues of accessibility such as right-of-way encroachment and sidewalk obstruction. In the event of repeated violations, the RSP structure provides the City with an appropriate enforcement mechanism by reserving the ability of the City to revoke the RSP of an applicant, thereby disallowing the continued use of the right-of-way.

OUTDOOR DINING PROGRAMS IMPLEMENTED IN RESPONSE TO COVID-19

On May 13, 2020, Mayor John Cranley and City Health Commissioner Melba R. Moore issued joint emergency order No. 11 authorizing the City Administration to implement a temporary outdoor dining program to provide expanded outdoor seating options at restaurants and bars in Cincinnati. Starting on May 15, 2020, the City's Outdoor Street Dining pilot program allowed for suspension of certain code and permit requirements to allow restaurants to apply for expedited City approval of a RSP to use the public right-of-way (streets and sidewalks) for temporary outdoor dining areas. All outdoor street dining areas permitted under this temporary program must comply with state and local health requirements intended to slow or prevent the transmission of COVID-19, including, but not limited to, six-foot separation requirements.

Under the pilot program, the City granted RSPs permitting the creation of parklets (also referred to as streeteries) to create outdoor dining space in one or more on-street parking spaces. Additionally, in some areas, the City approved limited street closures to allow for more flexibility and space for

outdoor dining, to increase enjoyment of the outdoor dining experience and to avoid conflicts with motor vehicles and the outdoor dining use.

The Outdoor Street Dining program was a pilot program instituted in the Central Business District, Over-The-Rhine, and Pendleton and then expanded to all neighborhoods City-wide in coordination with community partners and local businesses. The pilot program enabled the City to gain experience addressing frequent issues for applicants, evaluating relevant traffic safety and circulation issues, and monitoring public health effects of the outdoor dining program.

Due to the successful implementation of the pilot program, the City Administration pursued the creation of a permanent City-wide parklet and permanent outdoor street dining program. City Council passed ordinance 0056-2021 on February 18, 2021, which amended the Cincinnati Municipal Code and provided the flexibility needed to accomplish this goal. Therefore, the permanent program is now effective for all neighborhoods and interested applicants can apply to DOTE through the City's Open Counter permitting platform: <https://cincinnati.opencounter.com/projects/549536/direct/outdoor-street-dining> and visit www.cincinnati-oh.gov/covid19/business-recovery/bars-and-restaurants for more information. Attached are the Parklet Program guidelines. The permanent program builds on the successes and lessons learned from the temporary pilot program. Due to the financial hardships during the pandemic, the City is currently waiving all fees for the outdoor street dining program and the new approved parklet installations.

Street closures are a much more complex undertaking than a parklet installation with a greater potential for impacts to the general public, property owners, and communities. Therefore, any proposed street closure must be evaluated on an individual basis by DOTE and is subject to a higher degree of scrutiny, engagement, and review. Proponents of any proposed street closure should contact DOTE for additional information.

Attachment I – Parklet Program Guidelines

cc: John S. Brazina, Director, Transportation and Engineering