

Raleigh Appearance Commission – Outdoor Seating Design Review Committee
Minutes of the Meeting
Wednesday, January 13, 2016

Members Present: Brian O’Haver, Brandy Thompson, Jed Gant, Asa Fleming, Jamie Ferguson, Rolf Blizzard, Lauren Dickens, Candice Andre

Staff Present: Roberta Fox, Carter Pettibone, Dhanya Sandeep, Rotonda McKoy, Martha Lobo

Brian O’Haver called the meeting to order at 3:05pm. He mentioned meeting minutes would be posted online. He also talked about the scope of the committee and its charge from City Council. He then went over the agenda and stated that the review and approval of the 1/6 meeting minutes would be moved to the end of the meeting.

Enforcement Discussion

Roberta Fox gave a presentation to begin the enforcement discussion item. She stated the presentation was the same one that was given on November 3, 2015 as part of the Outdoor Seating update for City Council. She described the items referred to the Commission from Council

Brian O’Haver asked how many of the 42 businesses who applied for outdoor seating had received their permits. Martha Lobo answered that 39 had. Brian O’Haver also asked for clarification on the comparison of time periods for violations.

Rolf Blizzard asked who it is that receives the permit. Martha Lobo said the establishment receives the permit.

Asa Fleming asked what entity issues the alcohol violations. Staff stated that it was the Raleigh Police Department (RPD).

When finished, Roberta Fox introduced Martha Lobo with the City’s Zoning Enforcement office, who was attending the meeting to answer enforcement related questions. She stated that currently the RPD is handling enforcement, but Zoning is hiring three positions and will taking over enforcement of the Outdoor Seating Ordinance. She said it would done on a periodic basis, mainly during weekend evening hours.

Brandy Thompson asked about the difference between Zoning and Police enforcement. Martha Lobo said that Zoning tries to work with the businesses and build relationships. She mentioned that often Zoning will give a verbal warning and come back to see if the violation had been corrected. She also mentioned Zoning’s enforcement is done on a complaint basis.

Brandy Thompson asked what Zoning is looking for during inspections. Martha said that Zoning looks at the outside of areas, to see if walkways are blocked, and see if the area is over capacity. She said they sometimes give a friendly reminder first before issuing violation.

Brian O’Haver asked what the Police were issuing violations for. Martha Lobo said enforcement for items in the ordinance will transfer to Zoning, but the Police were mainly issuing violations for not having a permit or operations outside of permitted times.

Brian O’Haver asked for a clarification on fines for establishments that violate the ordinance, in particular businesses that do not have a permit. Martha Lobo said that the three levels (“three strikes”) of fines are only for businesses that have a permit. The issuance of a violation for businesses that don’t have a permit don’t count toward the “three strikes.”

Brandy Thompson asked how many staff will be conducting inspections and which areas of the City would be enforced or if it was City wide. Martha Lobo said that while three new staff are being hired, all zoning staff would be trained and participate. She also said that while the ordinance is City-wide, the area is mainly Downtown with the furthest business being Tupelo Honey on Oberlin Road.

Rolf Blizzard asked if the area included Glenwood South. Martha Lobo said it includes Glenwood Avenue up to the 600 block. Rolf Blizzard asked how many businesses have encroachments that allow exemption from the ordinance and if the rules were different for them. Martha Lobo said she was aware of three that were exempt and that the rules were different, mainly in their physical characteristics.

Asa Fleming asked if businesses could still receive these exemptions. Staff said that it was possible if City Council granted an encroachment for them.

Brian O’Haver asked about the 30 day conditional period and whether it was just for existing permit holders. Martha described the period as to allow temporary approval with a conditional permit for existing permit holders.

Rolf Blizzard asked if any of the 7 violations mentioned in the presentation were for violations related to stanchions. Martha said that since August none were related to stanchions.

Brian O’Haver asked whether the requirement to have a scaled drawing for the permit forces applicants to hire a professional designer. Roberta said the Urban Design Center has provided assistance with the drawings. Brian O’Haver asked if the UDC had the capacity to continue to do so. Roberta Fox said that once that new staff are hired the UDC would have the ability. She also reminded the committee that all permits expire June 30, resulting in a potential rush of applications.

Attendees asked if the annual permit end date could be moved to the end of the calendar year instead of June, which would be better for insurance purposes. Staff stated that all PUPs permits end June 30 each year.

Rolf Blizzard asked when annual ABC permits are renewed. Attendees responded that ABC renewals are in April. Staff said the June timing allows the City to verify insurance and ABC compliance. Attendees asked if they could apply in May. Staff said that was possible, but permits would still go into effect on July 1.

Jed Gant asked what would happen if a new business takes over a space previously occupied by a business that had a permit. Would they be able to use the same drawings? Staff said that the permit would not transfer, but if the UDC created the drawing the new business could use an existing drawing as basis for their own.

Roberta Fox then showed example layouts for existing permits. She described how the area is defined by the ordinance, elements of the streetscape that affects the area, and the potential “Swiss cheese” result

of holes in the qualifying area for certain elements. One example was for the Foundation Bar, which qualifies for 24 seats.

Will Alphin (attendee), owner of the Foundation Bar, said that under the previous rules he could have 32 seats. He also that he was not sure why there was a requirement for a 5 foot clear radius from the trunk of a street tree if the tree grate is ADA accessible.

Brandy Thompson asked if the commission could make a recommendation on the requirement to maintain a 5 foot clear radius around tree trunks. Brian said that he thought it affected the capacity issue. Roberta said a recommendation on it should be related to design considerations, such as minimum specifications for furniture.

Brandy Thompson asked if proposed changes would require businesses buying new furniture. Zach Medford (attendee) said he thought that businesses don't want to have to buy new furniture, but if they could get more capacity by doing so, they would consider it.

Brian O'Haver asked how the Foundation was able to have 8 more seats previously. Zach Medford mentioned that seats are lost since areas around benches have to be clear. Brian O'Haver asked if the Foundation could get the 8 seats back if the clear area around the street trees was reduced. Will said maybe.

Lauren Dickens asked where the 15 square foot requirement came from. Brian O'Haver said it was based on NC Building code for chair seating in building interiors. He also added that the interior maximum for standing room was 5 square feet per person and seven foot per person for bar stools. Brandy Thompson added that the calculation includes room for egress from the building and that the areas in question are already outside. Discussion followed regarding building code requirements.

Brian O'Haver said that he thought the issue is under the Commission's purview.

Jennifer Martin (attendee) said that the ordinance includes a provision for 24 hour notification when the City needs to have furniture moved for cleaning.

Asa Fleming asked if we could get rid of the stanchions. Brian O'Haver said he would like to do that, but there was still more work to do in analyzing ABC rules. Rolf Blizzard said that if it is an ABC issue, then it is universal within the state and other cities have to comply.

Brian O'Haver asked if anyone wanted to get rid of stanchions, based on possible reason including them being unsightly, having maintenance issues, and that they are not conducive to business. Discussion followed regarding ADA issues related to stanchions.

Zach Medford suggested that the stanchions should not be banned, but they should not be required. Will Alphin added that they should not take away the ability to use stanchions or other physical barriers.

Will Marks (attendee), Downtown resident, talked about the number of residents living on Fayetteville Street. He also mentioned he did not think everyone's concerns were being taken into consideration and that the group needed to look at the residents' side. He mentioned that during the trial enforcement period, noise went down significantly.

Ashley Melville (attendee), with the Downtown Raleigh Alliance, said that she thought both side of the issue are being considered. She also said she thought the group should provide merchants options in their recommendation.

Brandy Thompson asked if the committee could recommend specific tables and chairs. Roberta Fox said that the committee could refine options for specifications during discussion on furniture. It could also look at the effects of those specifications on space calculation.

Brian O’Haver requested that the committee move back to discussing stanchions. Rolf Blizzard said that they should be allowed but not required, or possibly only required at a certain time of night.

Attendees stated that moving barriers out to the sidewalk would be an imposition for some businesses. They mentioned that the “three strikes” rule was effective in providing self-enforcement and that stanchions on sidewalks other than Fayetteville would take up a significant amount of the sidewalk.

Jed Gant said that other options for barriers should be considered as well as aesthetics for them.

Brandy Thompson suggested that some form of baseline delineation should be required and that other physical barriers should be allowed. Jed Gant added that the group could consider a minimum and maximum height.

Brian O’Haver said that the group should reach consensus on the idea now and could deal with specific details later. Discussion followed regarding creating a baseline for delineation and developing guidelines for vertical elements that would be allowed.

Jed Gant asked if the group would be keeping a record or tally of what the group discussed. Staff said it was doing so.

Rolf Blizzard mentioned there seemed to be consensus for requiring a medallion type delineation and allowing vertical elements, but not requiring them.

Candice Andre asked questions about what the Commission would be submitting to Council and who would be writing it. Roberta Fox stated Staff would assist the Commission in writing the recommendations according to what it wanted. Rolf Blizzard asked if the report could include items for further study. Staff said that it could.

Candice mentioned that the group should recommend that a physical or vertical barrier is not required, that Staff continues to work with applicants, and that the group provides options for barriers. Discussion followed which summarized the discussion: the minimum would be a medallion or something similar on the ground; there would be design standards or guidelines if applicants choose to have vertical barriers; and if something different is proposed the Commission could review the alternate. Aside from those points, the group wanted to address the “Swiss cheese” and 15 square foot per person issues.

Brian O’Haver said that the group should stay within its mandate, and he was not sure how to tie those additional issues to design standards. He then asked Staff what they should discuss at the next meeting. Roberta Fox recommended addressing furniture and signage at the next meeting.

Candice Andre asked if the “no alcohol” text is required in the City’s ordinance. Staff responded that it is.

Rolf Blizzard asked if other cities had standards for furniture and signage. Roberta Fox said that other cities had guidelines or specifications, but she was not aware of any that required uniformity for those elements.

Roberta Fox mentioned that Staff could bring the previous PUPS document with guidelines as well as the current ordinance so they could be compared. She also said Staff could include a photo inventory of what was currently being used for furniture and signage.

Zack Medford asked that as part of the recommendation that examples of the proposed guidelines are available as a resource.

Review and Approval of Minutes

Brian O'Haver asked if anyone had changes to the minutes, to which there were none. Rolf Blizzard moved to approve the minutes and was seconded by Asa Fleming. The motion passed unanimously.

Meeting adjourned at 5:10.