

Panel to set fees, number of temporary outdoor seats

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submitted at the time of the approval.

If a business changes its outdoor-seating plan and a change has occurred in the outdoor-seating ordinance, the business would need to comply with the current ordinance, he said.

Monzo said the sense he received from the business community was if money were being contributed as a user fee from temporary outdoor seats to a city fund to create more parking, it was better than having outdoor-seating fees go into the city's general fund.

"We calculated a fee based on the average meter revenue," he said.

City regulations require one parking space for every four restaurant seats. Monzo said temporary outdoor seats may not have the same intensity of use. The ordinance calls for one parking space for eight temporary seats.

An annual fee of \$1,200 would be assessed for each parking space based on meter revenue representing eight temporary seats, he said.

"That fee would go into the city's parking trust account and that would be used for the sole purposes of finding alternative parking areas including any engineering and feasibility studies," Monzo said.

The proposed ordinance would limit a business to a number of temporary outdoor seats equal to 25 percent of the establishment's approved seats. For example, an establishment that has 200 approved seats could have 50 temporary outdoor seats, Monzo said. He said any new site plan application should include

temporary outdoor seating on the plan.

Committee member Curtis Bashaw said if the policy were to get as much money as possible to get a parking structure built quickly, the city may not want to cap outdoor seating at 25 percent if enough space were available at a business.

City Manager Bruce MacLeod said the maximum amount a parking meter can produce annually, if in constant use, is \$2,160. Bashaw said the outdoor-seating fee amounted to about \$200 per seat.

"If I had a temporary seat where a server actively managed the seat, \$200 may be fine. But if I have an Adirondack chair in front of Congress Hall where someone occasionally goes with a glass of wine purchased at our bar, it doesn't pay," he said.

He asked if he needed to put a sign on the Adirondack chair stating a customer was not allowed sit there if they have a beverage.

"I think that whether it's consumed or served is an interesting consideration," Bashaw said.

Montreal Inn owner Larry Hirsch said a fee of \$200 per temporary outdoor seat seemed high "given all the variables."

MacLeod said a few businesses have been approved to take chairs from inside their restaurant outside. He said if a restaurant were approved for 200 seats, it would be allowed 50 temporary outdoor seats but is already entitled to take 50 seats outside.

"If you apply the straight formula, now is that person going to have 50 approved seats for outside or are they going to end up with 100 because I'm already entitled

to 50 and mathematically I get another 50?" asked MacLeod.

Monzo said an exception could be created in the ordinance's definition of a seat for seats in which beverages are not served but just consumed. He said most businesses would provide full service anywhere on site.

MacLeod said some businesses in town have incrementally added seats for which approval has not been sought.

"Something has to be decided in regards to how those individuals move forward," he said.

If a business has a mercantile license stating the establishment is entitled to 20 seats, those are not being applied for under the temporary seating provision, MacLeod said.

"If you've got 20 more that aren't entered on the mercantile license, you need to make an application under this new language for these other 20 seats," he said.

Monzo said if a business has 20 seats not on its mercantile license application, the applicant would not necessarily meet the conditions to get 20 seats approved under the proposed ordinance. He said the applicant would exceed the 25 percent rule and the seats may not be covered by the ordinance.

"This ordinance only addresses those seats that are not part of full dining service, restaurant tables and chairs," Monzo said.

MacLeod said he did not know if the ordinance would solve various code enforcement-related issues. Monzo said the ordinance was not meant to allow non-

conforming restaurant seats to come into compliance. He said an issue was whether a grandfather clause would be created for existing temporary seats and would the city only grandfather the number of temporary seats but require full compliance with all other aspects of the ordinance including paying an annual fee.

"This ordinance isn't going to be an eraser that will clean the slate for every violation that has taken place in the past and start anew," committee member Jules Rauch said. "The violations that are in existence need to be cleaned up."

Michael Slawek, an owner of the Ugly Mug and Delany's on the Washington Street Mall, suggested a tiered structure for fees for temporary outdoor seats with a lower fee for a seat where the customer would just be served a glass of wine.

Mahaney said most establishments in town have approvals mainly through the planning and zoning boards that stipulate the number of seats for dining.

"I think that is the legally defensible number," he said.

Whether or not the mercantile licenses have the proper number of seats on them or whether city employees properly checked them, the mercantile license is not an approval process for zoning, Mayor Edward Mahaney said, adding that he did not agree the ordinance should be geared to creating a grandfathering clause for existing seats.

Monzo said the committee must determine the percentage of temporary outdoor

seating allowed in relation to total approved seats, the annual fee per seat and whether there are any additional exceptions to what is considered temporary seating.

He noted the city's Parking Trust Fund would not

cover the costs of building a parking garage. Mahaney said the funds would likely be used for a feasibility study.

The Outdoor Seating Committee's next meeting is scheduled for 1 p.m. Aug. 23 in the City Hall auditorium.

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