

City of Biddeford
Policy Committee
June 29, 2020 10:00 AM Via ZOOM
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- 1. Roll Call**
- 2. Adjustments to the Agenda**
- 3. Acceptance of Minutes**
 - 3.1. June 25, 2020 Policy Committee Meeting Minutes
[6-25-2020 Policy Comm Meeting Minutes.docx](#)
- 4. Discussion/Review**
 - 4.1. Lorne Wine: Curbside Temporary Outdoor Restaurant Operation Permit Application
[6-29-2020 Lorne Wine Curbside Restaurant Application.pdf](#)
[6-29-2020 Lorne Wine Map.pdf](#)
- 5. Adjourn**

**Policy Committee Meeting
June 25, 2020**

*NOTE: Due to COVID-19, this meeting was held virtually (via ZOOM),
and was live streamed on the City's website*

Committee Chair, Councilor John McCurry, Jr. called the meeting to order at 10:00 a.m.

Roll Call: Councilors John McCurry, Jr., Norman Belanger and Doris Ortiz; Committee Members Renee O'Neil and Nathan Bean

Staff Members present: Carmen Morris, City Clerk, Roger Beaupre, Police Chief, Chief Operating Office, Brian Phinney, Code Enforcement Officer, Roby Fecteau and Planning & Development Director, Mathew Eddy

There were no adjustments to the agenda.

Acceptance of Minutes: **May 21, 2020**

Motion by Councilor Belanger, seconded by Member Bean to accept the minutes as printed.

Vote: Unanimous.

Discussion/Approval: Temporary Outdoor Restaurant and Retail Operation

The Committee discussed the Emergency Ordinance put into place by the City Council on June 2, 2020: ***Curbside Biddeford Temporary Outdoor Restaurant and Retail Operation***. Councilor McCurry explained that there are a couple of issues that have prompted this Policy Committee meeting. One is to consider and make a recommendation on the process of prompting Temporary Outdoor Restaurant and Retail Operation Permit Application to be reviewed by the Policy Committee; and the other is the proposal submitted by Magnus on Water.

Magnus on Water Temporary Outdoor Restaurant and Retail Operation Permit Application:

Motion by Councilor Belanger, seconded by Councilor Ortiz to accept the original plan as proposed by Magnus on Water, which proposes to locate an Airstream in Mechanics Park.

Discussion included concerns about parking the Airstream in Mechanics Park versus parking it on the street. Allowing use of Mechanics Park poses the problem that this space is widely used by the public, and anybody should be allowed to use the park if they want to purchase food and eat there, whether from Magnus on Water or another restaurant. Allowing the Airstream to park on the street not only violates City Ordinances (Sec. 42-57), it also takes up what is already very limited parking in that area.

Motion by Councilor Belanger, seconded by Councilor Ortiz to amend their original motion that the revised proposal submitted by Magnus on Water be accepted, which proposes to locate an Airstream on the street adjacent to the restaurant and cordon off part of Mechanics Park for patrons.

By way of a possible solution, Police Chief Roger Beaupre suggested allowing Magnus on Water to located their Airstream in the slip lane that runs from Water Street to Main Street, or in some vicinity

thereof. Code Enforcement Officer, Roby Fecteau confirmed that the proposal is to leave the Airstream parked rather than move it each day. Also, the owners of Magnus on Water would like to begin with a Thursday through Sunday schedule, with the option to offer additional days as business picks up. Chief Beaupre noted that Magnus on Water will need to file an amendment with the State Bureau of Alcoholic Beverages and Lottery Operations to allow consumption of alcohol in a noncontiguous area.

Councilors Belanger and Ortiz withdrew their motion.

Motion by Councilor Belanger, seconded by Member O'Neil to recommend that City Staff work with Magnus on Water on the best location for the Airstream and the best part of Mechanics Park to cordon off for patrons.

Vote: Unanimous.

Permission to Utilize Public Space for Outdoor Restaurant and Retail Activity:

Motion by Councilor Belanger, seconded by Councilor Ortiz to amend the Emergency Ordinance approved by the City Council on June 2, 2020 that at least three(3) Councilors be in opposition to a *Curbside Biddeford Temporary Outdoor Restaurant and Retail Operation Permit Application* to prompt a Policy Committee review.

Vote: 4/1; Councilor McCurry opposed.

Councilors Belanger and Ortiz, and Members O'Neil and Bean in favor.

Motion carries.

Councilor McCurry noted that there is a Special Council Meeting scheduled for this evening, and his intention is to include the two items voted on during this meeting be included on tonight's council agenda.

Motion by Councilor Belanger, seconded by Member Bean to adjourn.

Vote: Unanimous.

Time: 10:54 a.m.



CURBSIDE BIDDEFORD TEMPORARY OUTDOOR RESTAURANT AND RETAIL OPERATION PERMIT APPLICATION

1: INTRODUCTION

In accordance with Governor Janet Mills' Rural Reopening Plan of , 2020, all restaurants and retail operations that provide temporary outdoor areas must adhere to strict mitigation standards intended to prevent the spread of COVID-19. The City of Biddeford is making a temporary special event permit available to both restaurants and to retail operations that are located within the City. All temporary special event permits issued shall begin at 6:00am on June 5 , and shall expire at 9:00pm on Monday, October 12th, 2020 or upon rescission or other relevant modification of Governor's Reopening Plan, whichever comes first.

2: REQUIREMENTS

- ☒ The area occupied shall be that portion of abutting public property which least infringes on public use, passage, and traffic as determined by, and at the complete discretion of, the City of Biddeford.
- ☒ If an establishment already has its own adjacent side and/or rear areas, it is strongly encouraged to fully utilize them by placing its outside areas within those locations, and minimize any use of public ways or parking spaces.
- ☒ The City of Biddeford may place traffic barriers as determined by the City on a case by case basis along affected public streets for increased safety. Costs for such barriers will be at the expense of the requesting establishment.
- ☐ A retail operation may not use more than one parking space for its outdoor area.
- ☒ A restaurant may not use more than four parking spaces for its outdoor area, and may only expand in public space beyond their footprint with the permission of the adjacent business(es). When adjacent businesses are both utilizing public space, coordination or sharing of entry/exits is encouraged.

✓ A restaurant or retail operation's outdoor area must use non-permanent structures which must be set up, broken down and stored each day.

✓ Consumer-grade extension cords cannot be used to deliver electricity to an outside area; establishments wishing to extend electricity to an outside area must consult with a qualified electrician. The use of plugs (for winter lighting) in public street lighting is prohibited (they are not designed for high loads).

✓ A permit, if granted, will only be valid during the hours of 6:00am to 9:00pm each day, Sunday through Saturday, beginning at 6:00am June 5, 2020, and shall expire at 9:00pm on Monday, October 12th, 2020.

✓ All temporary outdoor areas shall be under the responsible direction and control of the restaurant or retail operation as identified in this application.

✓ All temporary outdoor areas must be as continuous as possible by locating the outdoor area in a single portion of an establishment's frontage; it may be located adjacent to the building or near the curb. Special arrangements, on a case by case basis, may be made for those using nearby, but not adjacent public space.

✓ Temporary outdoor areas that encroach into a public walkway must maintain at a safe path at all times of at least (4') feet in width, to allow for unimpeded, unobstructed pedestrian traffic.

✓ Building entrances, accessible parking spaces, firetruck access, dumpster access, and any furniture or fixtures related to outdoor areas must remain completely unobstructed. Access to street planters must be considered and provided for.

✓ The use of physical barriers (i.e., fences, barricades, etc., not to be confused with street barricades) to visually distinguish the boundary of the outdoor area is required.

✓ All improvements (i.e., furniture, fixtures) used in the outdoor area must be temporary in nature and there shall be no penetration of public walkway or street surfaces.

✓ The establishment must comply with all applicable city, state, and federal laws and regulations, including the Americans with Disability Act and the Maine Bureau of Alcoholic Beverages & Lottery Operations (sale of alcohol).

✓ The establishment is responsible for any damage to public property during the period of its use. The city may make repairs itself and bill the establishment accordingly.

3: INSURANCE AND LIABILITY (PLEASE CONSULT WITH YOUR INSURANCE CARRIER REGARDING THE FOLLOWING ITEMS)

✓ The establishment understands and expressly assumes all the risk of operating and conducting business under this permit.

✓ As a condition of being granted this permit, during the term of this permit, the permittee shall defend, indemnify, save and hold the City of Biddeford, and its inhabitants, officers, employees and agents completely harmless from and against any and all liabilities, losses, suits, claims, costs, expenses, judgments, fines or demands arising by reason of injury to or death of, or asserted by, any person or persons, including the permittee's agents, clients, invitees or employees, or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney's fees, court costs, and expert witness fees), of any nature whatsoever arising out of or incident to this permit and/or the use, occupancy, conduct, or management of the demised premises or the acts or omissions of the permittee's officers, clients, agents, employees, contractors, subcontractors, licensees, or invitees, except to the extent such injury, death, or damage is caused by the negligent acts or omissions of the City, its agents, employees, clients or invitees. The permittee shall give to the City reasonable notice of any such claim or actions. The permittee shall also use counsel reasonably acceptable to the City in carrying out its obligations under this article.

The permittee further expressly agrees that it will defend, indemnify, save and hold the City of Biddeford harmless from any and all claims made or asserted by the permittee's agents, servants or employees arising out of the permittee's activities under this permit. For this purpose, the permittee hereby expressly waives any and all immunity it may have under Maine's Workers Compensation Act in regard to such claims made or asserted against the City by the permittee's agents or employees. For this purpose, the permittee further expressly waives any charitable immunity it may have under applicable law as to any and all claims of any person made or asserted against the City arising out of the permittee's use and occupancy of the demised premises or other activity of the permittee under this Permit.

The indemnification provided under this section shall extend to and include any and all costs incurred by the City to answer, investigate, defend and settle all such claims, including but not limited to the City's costs for attorneys' fees, expert and other witness fees, the cost of investigators, and payment in full of any and all judgments rendered in favor of the permittee's agents, invitees, licensees, clients, servants or employees against the City in regard to claims made or asserted by such persons.

In exercising the rights granted under this permit, the permittee shall at all times be regarded as an independent entity conducting its own business and operations and shall not at any time act, hold itself or purport to act as an agent, contractor, co-partner, joint venture or employee of the City.

✓ The permittee, during the entire term of this permit shall maintain, at its sole expense, insurance in the type and amount shown below (insert sample insurance agreement) with companies authorized to do business in the State of Maine for the protection of the City of Biddeford against any and all liability, including wrongful death, against all claims, losses, costs or expenses arising out of injuries to persons whether or not employed by the permittee or damage to property whether resulting from acts, omissions, negligence or otherwise of the permittee, its directors, officers, clients, employees and agents and arising from the permittee's use of the demised premises or any part or portion thereof: 1) commercial general liability insurance with a minimum limit of \$1,000,000 combined single limit per occurrence and

\$2,000,000 in the aggregate; and 2) workers compensation and employers liability insurance with a minimum limit of \$500,000 per occurrence.

The permittee shall cause to be furnished to the City, at the time of execution of this permit, evidence in the form of certificates of insurance of the existence in force of the insurance required hereunder. Said certificates shall name the City as an additional insured and loss payee. The permittee shall cause to be furnished to the City replacement certificates of insurance whenever the insurance policies are renewed. The City shall be notified prior to any changes or discontinuances of coverage.

The City agrees to promptly notify the permittee in writing of the existence or filing of any claim, demand or action arising out of an occurrence covered hereunder of which the City has knowledge, and to cooperate with the permittee in the investigation and defense thereof.

The minimum insurance coverage required under this article shall be deemed to be automatically adjusted whenever the Maine State Legislature shall increase the City's maximum liability beyond such minimums for personal injury, wrongful death or property damage claims brought under the Maine Tort Claims Act. In the event of such an increase, the minimum insurance coverage required shall be no less than the amounts required herein or no less than the City's maximum liability for such claims under the Maine Tort Claims Act, whichever is greater.

4: ENFORCEMENT

☑ The rights and duties granted herein shall be under the supervision and control of the City of Biddeford's Code Enforcement Officer and the City of Biddeford's Chief of Police. In the event of a breach of this permit by permittee, the City may, for the first breach, issue a verbal warning to Permittee; in the event of a second breach, terminate this Permit.

Notwithstanding these provisions regarding penalties for breaches or any other provision of this permit, in the event that the City, in its sole discretion, determines that further use of the premises under this permit is not in the best interests of the City, the rights granted herein may be suspended or terminated upon 24 hours written notice to the permittee.

☑ At the end of the term of this permit, or if this permit is suspended or terminated, all fencing, tables, seating, or equipment must be removed from any City of Biddeford public walkway or public area. The City may move or remove any of said items if they are not removed before the end of the term of this permit or before the 24-hour notice period expires. For such removal, the City may bill the establishment accordingly.

5: APPLICATION (ALL RESPONSES ARE REQUIRED):

Legal Name:

Sheehan James LLC

DBA Name: Lorne Wine

Physical Address: 61 Main Street, 1st Floor Biddeford, ME
04005

Mailing

Address: PO Box 1423

Biddeford

ME

04005

Street/PO Box

City

State

Zip

Phone: (646)752-8424

Fax:

Email

address: erin@lornewine.com, carson@lornewine.com

Name, address, telephone number of Property Owner (if property is rented or leased, need a copy of rental agreement / lease):

Medley Properties, 63 Federal Street, Portland, ME 04101

Contact: Josh Corbeau, (207)651-7368

Which hours do you plan to have these additional areas open (no earlier than 6:00am, and no later than 9:00pm)? noon until 9:00pm

For extension of License on Premise

License # (if requesting extension of liquor license): RES-2019-11835 Expiration

Date:

Start Date: 07/11/2020

End Date:

10/12/2020

Reason for Request:

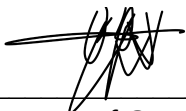
We are requesting a temporary outdoor license in order to keep our business afloat while providing safe outdoor service for customers. Our indoor premises are small and the only way to offer safe service is outside.

On the following page, sketch out your plan for your outdoor area. In your sketch you must include and clearly indicate the relative locations of the following components:

- ☒ Existing dimensions/boundaries of your business;
- ☒ Parking spaces, public walkways, and/or adjacent areas that you are looking to utilize; Please indicate contiguous and non-contiguous space you plan to use.
- ☒ Path(s) through your area(s) that will allow for pedestrian traffic;
- ☒ Arrangement of tables and other structures which have proper spacing;
- ☒ Barriers to be used;
- ☒ Awnings, umbrellas, and/or other rain- and sun-shielding devices to be used (optional)
- ☒ Lights or lighting systems to be used; and
- ☒ Reflectors to be used.

For extension of license on premise:

- ☒ There must be stanchion or fence completely enclosing the area, with signs for exit/entry. Openings shall be no less than 4 feet. Signs must be posted, stating "no alcohol beyond this point"
- ☒ There must be sufficient employees at the extension of premise, which would be able to control and monitor the area
- ☒ Please indicate the contiguous and non-contiguous areas you plan to use (you may be permitted to use both).. See the section of Maine's liquor laws that govern these areas at <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec1051.html>. See section 3 and 9.



Signature of Owner/Corporate Officer

Erin R Sheehan

Printed Name of Owner/Corporate Officer

EXTENSION AREA PREMISE DIAGRAMS

In an effort to clearly define your extension please draw a diagram below that will include the area you want for a temporary license premise. Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including methods of monitoring and containment of certain area which you are requesting approval from the Division of liquor consumptions.

6: SUBMISSION OF YOUR COMPLETED APPLICATION

When completed, please submit your application via regular mail or via e-mail to:

Roby Fecteau

Director of Code Enforcement

205 Main Street

Biddeford, Maine

roby.fecteau@biddefordmaine.org

7. APPROVAL PROCESS

After an administrative review, and a 24-hour review period of the City Council, the City Manager will have the authority to grant approval of the applicant's plan. If there are objections to the plan, then the application will be considered by the Policy Committee.

61 Main Street, Biddeford, ME 04005
Lorne Wine
Site plan for temporary outdoor seating area

Overview:
We propose a seating area using the 4 parking spots directly in front of 61/65 Main Street. This is the address occupied by our business and Dizzy Birds.

The building is owned by Medley Properties.

- Existing business location
- Proposed expanded seating area

