

AN ORDINANCE BY COUNCILMEMBER AMIR R. FAROKHI TO AMEND CHAPTER 138 OF THE CITY OF ATLANTA CODE OF ORDINANCES SO AS TO AMEND ARTICLE IV OF CHAPTER 138 TO BE ENTITLED “RIGHT OF WAY DINING”; TO ESTABLISH REGULATIONS RELATED TO AND PROCEDURES FOR THE AUTHORIZATION OF EATING AND DRINKING ESTABLISHMENTS THAT WISH TO OPERATE OUTDOOR DINING AREAS ON THE SIDEWALK IN THE PUBLIC RIGHT-OF-WAY; TO AMEND CHAPTER 10 OF THE CITY OF ATLANTA CODE OF ORDINANCES, (THE ALCOHOL CODE), SO AS TO PROVIDE FOR THE SALE AND SERVICE OF ALCOHOL FOR CONSUMPTION ON THE PREMISES PURSUANT TO A RIGHT OF WAY DINING PERMIT ISSUED UNDER CHAPTER 138; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in maintaining the health, safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, the City of Atlanta Charter provides that the City of Atlanta may lease, regulate the use of, and control public ways located in the City of Atlanta, (Atlanta City Charter, 1-102(c)(14); and

WHEREAS, “[t]he streets [and public ways] belong to the public and are primarily for the use of the public in the ordinary way . . . [t]heir use for the purposes of gain is special and extra ordinary and, generally at least, may be prohibited or conditioned as the legislature deems proper” Packard v. Banton, 264 U.S. 140, 144 (1924); Schlesinger v. City of Atlanta, 129 S.E. 861, 867 (1925) (individuals do not have the inherent right to conduct their private businesses in the streets and public property of a city, and a city may prohibit such business activities); and

WHEREAS, eating and drinking establishments, that maintain outdoor dining areas add character to the streetscape environment, and encourage pedestrian activity; and

WHEREAS, the City of Atlanta has the desire to encourage outdoor dining in portions of the sidewalk, in the public right-of-way provided there is sufficient pedestrian clearance; and

WHEREAS, the City has a substantial interest in regulating how eating and drinking establishment operators operate in the public right-of-way; and

WHEREAS, it is the desire of the Atlanta City Council that there be an established procedure through the Department of Public Works for granting permits to those eating and drinking establishments wishing to provide outdoor dining areas in the sidewalk in the public right-of-way in a manner that is effective, efficient and enforceable; and

WHEREAS, accordingly, the City of Atlanta desires to amend Chapter 138, Streets, Sidewalks and Other Public Places, of the City of Atlanta Code of Ordinances to create a new Article VII, to be entitled Right of Way Dining, to promulgate ordinances, and to authorize the establishment of administrative regulations, related to the operation of outdoor dining areas in the sidewalk within the City’s public

right-of-way, which shall include a requirement that a qualifying eating and drinking establishment secure a permit issued by the City for the operation of an outdoor dining area in the sidewalk within the City's public right-of-way as long as such location is in compliance with the City of Atlanta Zoning Ordinance; and

WHEREAS, it is the desire of the City to establish an annual permit fee to be paid by eating and drinking establishments which shall permit their operation of an outdoor dining area in portions of the sidewalk, in the public right-of-way, which shall offset any costs to the City related to the implementation and enforcement of the regulations contained in Chapter 138, Article VII of the City of Atlanta Code of Ordinances; and

WHEREAS, the purpose of all fees established in this Ordinance, is not to raise revenue, but to cover the cost of the regulatory activity associated therewith; Hadley v. City of Atlanta, 232 Ga. App. 871, 874, 502 S.E. 2d 784 (1998); and

WHEREAS, the City anticipates that the annual cost to the City of the regulatory activity required by this Ordinance exceeds the amount to be collected by any fees set forth herein as set forth in the fee study attached hereto as Exhibit A; and

WHEREAS, the City of Atlanta has an interest in regulating, through the lawful exercise of its police powers, the sale of alcoholic beverages within its territorial limits; and

WHEREAS, to promote public safety and general welfare, the City of Atlanta has promulgated ordinances which regulate the sale of alcoholic beverages within the City of Atlanta found in Chapter 10 of the City of Atlanta Code of Ordinances; and

WHEREAS, currently a person holding a license to sell alcoholic beverages for consumption on the premises may operate an outdoor dining area as part of the operation of the licensed premises as a Sidewalk Café on certain private property, but at no time within the public right of way; and

WHEREAS, in accordance with the amendments to Chapter 138 contained in this Ordinance, it is the desire of the City of Atlanta that a person or entity holding a permit for an outdoor dining area in the public right-of-way, be allowed to sell alcoholic beverages for consumption on the premises in the outdoor dining area in the public right of way, pursuant to the ordinances regulating of the sale of alcohol for consumption on the premises contained in Chapter 10 of the City of Atlanta Code of Ordinances (the Alcohol Code).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

SECTION 1: That Chapter 138, entitled Streets, Sidewalks and Other Public Places, be amended, to create a new Article VII, to be entitled "Right of Way Dining" which shall read as follows:

Article VII. Right of Way Dining.

Sec. 138-231. Purpose.

This Article shall apply to the operation of Right-of-Way Dining Areas in the sidewalk within the City's public right-of-way.

Sec. 138-232. Definitions.

As used in this article, unless specifically stated otherwise, the following terms shall mean and include:

City means the City of Atlanta, Georgia, a municipal corporation of the State of Georgia.

Right-of-Way Dining Area means a space in which an eating and drinking establishment serves food and beverages as part of the operation of the eating and drinking establishment on the sidewalk in the City's right of way. A Right-of-Way Dining Area must be located on the sidewalk in the City's right of way directly in front of an eating and drinking establishment and may only be separated from the establishment by portions of the right of way reserved for pedestrian clearance. The width of the Right-of-Way Dining Area may not exceed the width of the portion of the establishment facing the right of way and may contain no more than 50 percent of the total seating capacity of the establishment.

Sec. 138-233. Permit Required.

- (a) It shall be unlawful for a person or entity to operate a Right-of-Way Dining Area without a permit issued by the Commissioner of the Department of Public Works, or his designee, pursuant to this Article. Violations of this section shall be punishable in accordance with Section 1-8.

Sec. 138-234. Permit Requirements.

- (a) Any person or entity applying for a Right-of-Way Dining Area permit shall submit a permit application to the Department of Public Works. The application must be made by the owner(s) or lessee(s) of the premises benefitting from the proposed Right-of-Way Dining Area and shall be sworn to by the applicant and must include the following:
 - 1. Completed Right-of-Way permit application form;
 - 2. City Occupational Tax Certificate (business license);

3. Insurance and indemnification documentation evidencing the requirements of this Article have been met;
 4. An existing to-scale site plan showing the location of the adjacent private property and adjoining private properties, the area (including square footage) of public right of way for which a permit is sought for Right-of-Way Dining purposes, and the location of all furniture including tables and chairs to be used within the proposed Right-of-Way Dining Area such that no furniture will encroach into any tree wells, and must clearly show the minimum five (5) feet of pedestrian clearance in the remaining portion of the sidewalk not utilized by the Right-of-Way Dining Area unless otherwise required by the zoning code. The existing to-scale site plan must also show the property and building lines, sidewalks, streets, and other public areas, and any underground vaults including utility vaults or building basements, for the entire area within twenty (20) feet of where the Right-of-Way Dining Area is proposed.
 5. An original copy of an affidavit by a licensed engineer attesting to the structural adequacy and condition of any basement vaults below the sidewalk and proof that the basement vault is compliant with city encroachment regulations.
 6. Address and contact information of the applicant.
 7. A signed affidavit that the applicant is a U.S. citizen or legal alien as required by the Systematic Alien Verification of Entitlements (SAVE) program.
 8. Application fee of \$250.00.
- (b) The annual Right-of-Way Dining permit fee shall be \$500.00 annually for the use of up to 250 square feet of the City's right of way, \$750.00 annually for the use of 250-500 square feet of the City's right of way, and \$1,000.00 annually for the use of over 500 square feet of the City's right of way.
 - (c) The Right-of-Way Dining Area permit shall be valid for 12 months from the date of the original issuance of the permit and shall thereafter expire. All permit holders shall be required to renew their permits annually on forms prescribed by the Department of Public Works.
 - (d) Upon approval, the Right-of-Way Dining Area permit shall be specifically limited to the area shown on the to-scale site plan included with the application.
 - (e) A Right-of-Way Dining Area permit may only be issued in conjunction with an eating and drinking establishment.
 - (f) A Right-of-Way Dining Area permit shall be non-transferable.

Sec. 138-235. Operational Rules.

- (a) The Right-of-Way Dining Area permit shall not operate to permit any activity on private property.
- (b) No live entertainment or amplified sound may occur within the Right-of-Way Dining Area.
- (c) Right-of-Way Dining Areas may operate only during the following hours:
 - 1. Sunday through Thursday: 7am to 11pm; and
 - 2. Friday and Saturday, 7am to 12am.
- (d) *Right-of-Way Dining Area delineation.* The boundaries of a Right-of-Way Dining Area shall be physically delineated with movable decorative fencing or planters or other decorative barriers provided they do not exceed a height of 36 inches including any plant material, installed in areas and consisting of materials as set forth in administrative regulations promulgated by the Commissioner of the Department of Public Works.
- (e) Right-of-Way Dining Areas must be at the same grade as the sidewalk, unless existing topography prohibits otherwise. In such cases, the applicant may apply to the Commissioner of the Department of Public Works for approval of certain non-permanent raised platforms to be utilized in order to level-off the slope.
- (f) *Right-of-Way Dining Area Furniture.* All tables, chairs, and other furniture shall be located within the Right-of-Way Dining Area and shall be as set forth on the site plan approved with the application. No furniture may be affixed to any tree, post, sign or other fixtures within the Right-of-Way Dining Area. Furniture, including any umbrellas, shall be of materials set forth in the administrative regulations promulgated by the Commissioner of the Department of Public Works. No furniture in the Right-of-Way Dining Area may encroach into any tree wells.
- (g) All Right-of-Way Dining Area furniture and any other objects provided within a Right-of-Way Dining Area shall be maintained with a clean and attractive appearance and shall be in good repair at all times. The sidewalk area covered by the permit shall be maintained in a neat and orderly appearance at all times and the area shall be cleared of all debris on a periodic basis during the day, and again at the close of each business day.
- (h) All Right-of-Way Dining Area furniture and any other objects provided within a Right-of-Way Dining Area shall be removed from the public sidewalk by the permit holder as notified by the City for sidewalk cleaning.

Sec. 138-236. Clearance Requirements.

- (a) Right-of-Way Dining Areas must be located in such a manner such that there shall always be a minimum of five (5) feet of pedestrian clearance, unless otherwise required by the zoning code, provided continuously, completely unobstructed by any objects, and parallel to the street except as provided in this Section.
- (b) No Right-of-Way Dining Area furniture may be permitted within six (6) feet of a pedestrian crosswalk, ramp, fire hydrant, or fire connection.
- (c) No Right-of-Way Dining Area furniture may be permitted within fifteen (15) feet of transit stops or transit shelters.
- (d) An unobstructed corridor of a minimum of five (5) feet in width straight out must be maintained between any business establishment entrance and the pedestrian clearance path.
- (e) Curbside Right-of-Way Dining Areas may be approved by the Commissioner of the Department of Public Works where they are parallel to streets with a posted speed of 35 miles per hour or less.

Sec. 138-237. Signage.

No signs, including without limitation, business identification signs, shall be permitted in the area of a Right-of-Way Dining Area, with the exception of commercial messages on items incidental and integral to the furnishing of a Right-of-Way Dining Area such as an outdoor table umbrella or a table top menu display. Such incidental signage shall be permitted on umbrellas, provided that the size, shape and color of all umbrellas shall be identical; and the establishment must sell the product associated with the incidental signage.

Sec. 138-238. Insurance and Indemnification.

- (a) All Right-of-Way Dining Area permit holders shall maintain liability insurance with the City as the certificate holder in the amounts determined by the Office of Risk Management.
- (b) All Right-of-Way Dining Area permit holders shall indemnify and hold harmless the City of Atlanta, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

Sec. 138-239. Enforcement.

- (a) The primary authority and responsibility for the enforcement of the provisions of this Article shall be vested in the Commissioner of the Department of Public Works.

- (b) Upon a determination that a Right-of-Way Dining Area permit holder is in violation of this Article or any administrative regulations promulgated by the Commissioner of the Department of Public Works, the City of Atlanta shall issue notice or issue a citation. Notices of violation or citations may result in:
1. The revocation or suspension of up to 12 months of a Right-of-Way Dining Area permit after written notice and reasonable opportunity to cure; and/or
 2. An administrative fine not exceeding \$1,000.00 per day for each violation of a provision of this Article or any administrative regulations promulgated by the Commissioner of the Department of Public Works.
- (c) *Appeals*. The appeal of a notice or citation issued under this Section shall be filed in the City of Atlanta Municipal Court within 14 days of the issuance of the notice or citation.
- (d) If a permit issued under this Article is revoked, the permit holder may not reapply for a new permit for twelve (12) months.

Sec. 138-240. Right-of-Way Dining Areas as Public Property.

The Right-of-Way Dining Area are considered public property including, but not limited to accordance with Section 106-12 of the City of Atlanta Code of Ordinances, Urban camping and improper use of public places.

Sec. 138-241. Administrative Regulations.

To assist in the successful performance of the functions and services enumerated in this Article, there shall also be established a set of administrative regulations. The Commissioner of the Department of Public Works shall be responsible for the establishment of written administrative regulations as the Commissioner deems necessary to successfully perform the operations and responsibilities of this Article, of which the public shall have notice.

Secs. 138-242 - 138-255. Reserved.

SECTION 2. That Chapter 10, Article I, Section 10-1 of the City of Atlanta Code of Ordinances, entitled “Definitions” be amended such as the definitions of “*Outdoor Dining Area*”, “*Premises*”, and “*Sidewalk Café*”, contained therein shall read as follows (with permanent deletions in strikethrough font and permanent additions in underline font):

Outdoor dining area means a space in which a licensee serves food and beverages as part of the operation of the licensed premises as a sidewalk café. An outdoor dining area must be located directly in front of a licensed restaurant and may only be separated from the licensee's premises by a sidewalk. Except where operated in conjunction with a Right-of-Way Dining Area permit issued in accordance

with Chapter 138 of this Code, No part of a sidewalk café shall be located within a public right-of-way. The width of an outdoor dining area shall not exceed the width of the licensed premises. An outdoor dining area shall contain no more than 50 percent of the premises total seating capacity. The space within an outdoor dining area shall be enclosed within a clearly delineated area, which is surrounded by a continuous physical barrier no less than 36 inches and no more than 40 inches in height, except that where a sidewalk café is operated in conjunction with a Right-of-Way Dining Area permit issued in accordance with Chapter 138 of this Code, the portion of the sidewalk café so operated shall be subject to the specific delineation and fencing applicable thereto, only. An outdoor dining area shall have a single point of ingress and egress that is controlled by the licensee. Music and/or live entertainment shall not be provided within an outdoor dining area.

Premises means the definite closed or partitioned-in locality, whether room, shop or building, wherein alcoholic beverages are sold or consumed. Premises also includes any area or patio immediately adjacent to the main licensed facility and located on property owned or leased by such licensee, or within the public right of way pursuant to a Right-of-Way Dining Area permit issued in accordance with Chapter 138 of this Code. The area or patio need not be covered, but must be completely enclosed, except for entrances and exits, by a wall, fence, shrubbery or other decorative material no less than 30 inches in height, except that where a sidewalk café is operated in conjunction with a Right-of-Way Dining Area permit issued in accordance with Chapter 138 of this Code, the portion of the sidewalk café so operated shall be subject to the specific delineation and fencing applicable thereto, only. Premises of an open air café need not be completely partitioned, and patios attached to such an establishment must be enclosed, except for entrances and exits, by a wall, fence, shrubbery or other decorative material no less than 30 inches in height or by a body of water at least three feet wide and one foot deep or by some other architectural or landscaping barrier which would prevent access to the premises. Open air cafés shall be subject to all other requirements contained in this definition.

Sidewalk café means an establishment that serves food during all hours of operation, ~~that has a seating capacity of at least 30 people,~~ operates an outdoor dining area, and is either located within a mixed-use development (as that term is defined in section 16-29.001(24)) that has zoning approval for at least 50,000 square feet of retail space, 100,000 square feet of office space and 300 residential units; or is operated in conjunction with a Right-of-Way Dining Area permit issued in accordance with Chapter 138 of this Code. A sidewalk café shall not provide any outdoor seating or any other outdoor service unless it is within an outdoor dining area. When interpreting the hours of operation listed in section 10-209(c) and 10-209(d) of this Code, sidewalk cafés shall be subject to the same limitations as restaurants. Sidewalk cafés must operate in compliance with the city's noise ordinance, found in chapter 74 of the City of Atlanta Code of Ordinances, and with section 10-60(a)(4)(b)(3). ~~As provided for in section 10-109(a)(17) of this part.~~

SECTION 3: Should any ordinance or part thereof be found in conflict with this ordinance or the provisions thereof, then those sections contained herein shall be deemed controlling.

SECTION 4: The amendments in this ordinance shall become effective ninety (90) days after approval.

SECTION 5: That the Municipal Clerk is instructed to retain all legislative history references in the codified version of Chapters 10 and 138, including Editor's notes, and shall not delete any such references, but shall amend them to include this ordinance.

EXHIBIT "A"

FEE STUDY

**CITY COUNCIL
ATLANTA, GEORGIA**

19-O-1354

SPONSOR SIGNATURES



Amir K Farokhi, Councilmember, District 2

CITY COUNCIL
ATLANTA, GEORGIA

19-O-1354

AN ORDINANCE BY COUNCILMEMBER AMIR R. FAROKHI TO AMEND CHAPTER 138 OF THE CITY OF ATLANTA CODE OF ORDINANCES SO AS TO AMEND ARTICLE IV OF CHAPTER 138 TO BE ENTITLED "RIGHT OF WAY DINING"; TO ESTABLISH REGULATIONS RELATED TO AND PROCEDURES FOR THE AUTHORIZATION OF EATING AND DRINKING ESTABLISHMENTS THAT WISH TO OPERATE OUTDOOR DINING AREAS ON THE SIDEWALK IN THE PUBLIC RIGHT-OF-WAY; TO AMEND CHAPTER 10 OF THE CITY OF ATLANTA CODE OF ORDINANCES, (THE ALCOHOL CODE), SO AS TO PROVIDE FOR THE SALE AND SERVICE OF ALCOHOL FOR CONSUMPTION ON THE PREMISES PURSUANT TO A RIGHT OF WAY DINING PERMIT ISSUED UNDER CHAPTER 138; AND FOR OTHER PURPOSES.

Workflow List:

Clerk of Council	Completed	06/18/2019 11:58 AM
Atlanta City Council	Completed	06/17/2019 1:00 PM
Public Safety & Legal Administration Committee	Completed	06/25/2019 3:45 PM
Mayor's Office	Pending	

HISTORY:

06/17/19 Atlanta City Council REFERRED WITHOUT OBJECTION

**REFERRED TO PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE
WITHOUT OBJECTION**

RESULT: REFERRED WITHOUT OBJECTION

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Certified by Presiding Officer	Certified by Clerk
<p>Mayor's Action</p> <p><i>See Authentication Page Attachment</i></p>	