



**CITY COUNCIL  
ATLANTA, GEORGIA**

**20-O-1691**

**AN ORDINANCE BY TRANSPORTATION COMMITTEE TO AMEND CHAPTER 138 OF THE CITY OF ATLANTA CODE OF ORDINANCES SO AS TO CREATE ARTICLE VIII TO BE TITLED “ON-STREET 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 STREET IN THE PUBLIC RIGHT-OF-WAY; AND FOR OTHER PURPOSES.**

WHEREAS, the Governor and the Mayor have issued administrative and executive orders that advance best practices on social distancing; and

WHEREAS, the City of Atlanta (the “City”) seeks to provide safeguards to protect the health of its residents in addition to those contained in the orders issued by the Governor and the Mayor; and

WHEREAS, providing restaurants with additional space to operate through outdoor dining will provide them with additional ability to promote public health through social distancing; and

WHEREAS, to promote public health through social distancing, hundreds of cities across the nation, large and small, have implemented temporary programs to allow restaurants to establish full-service outdoor dining areas in the on-street public right-of-way; 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 public on-street right-of-way, provided that design guidelines ensuring the safety of patrons are followed; and

WHEREAS, Ordinance 19-0-1354, approved unanimously by the Council on November 4, 2019, and approved by operation of law on November 13, 2019, provided restaurant owners with the option to



apply for sidewalk right-of-way dining permits, which allows them to establish outdoor dining areas on public right-of-way sidewalks to expand outdoor seating offerings; and

WHEREAS, it is the desire of the Atlanta City Council that there be an established procedure through the Atlanta Department of Transportation for granting temporary permits, through the end of 2021, to those eating and drinking establishments wishing to provide outdoor dining areas in the public on-street right-of-way in a manner that is effective, efficient, enforceable and safe; and

WHEREAS, to encourage the use of on-street right-of-way dining which will provide safe, socially distant outdoor dining spaces, the City wishes to provide these temporary permits without charging a fee initially while expressly reserving the City's right to charge any applicable fees in the future.

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

SECTION 1: That Chapter 138 of the City of Atlanta Code of Ordinances is hereby amended to add Article VIII titled "On-Street Right-of-Way Dining" to read as follows:

**ARTICLE VIII. - ON-STREET RIGHT-OF-WAY DINING**

Sec. 138-242. - Purpose.

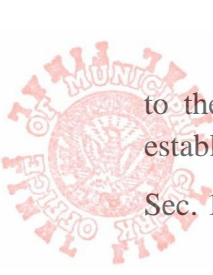
This article shall apply to the operation of on-street right-of-way dining areas on the street within the City's public right-of-way.

Sec. 138-243. - 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.

*On-street 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 street in the City's right of way. An on-street right-of-way dining area must be located on the street in the City's right of way directly in front or adjacent to an eating and drinking establishment. The width of the on-street right-of-way dining area may not exceed the width of the portion of the establishment facing or adjacent



to the right of way and may contain no more than 50 percent of the total seating capacity of the establishment.

Sec. 138-244. - Permit required.

- (a) It shall be unlawful for a person or entity to operate an on-street right-of-way area without a permit issued by the Commissioner of the Department of Transportation, or the Commissioner of the Department of Transportation's designee, pursuant to this article. Violations of this section shall be punishable in accordance with section 1-8.
- (b) Permit issuance for on-street right-of-way areas shall be subject to the rules and regulations for outdoor dining within the City of Atlanta Zoning Ordinance.

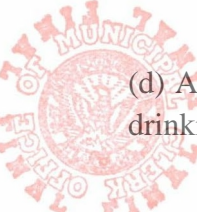
Sec. 138-245 - Permit requirements.

(a) Any person or entity applying for an on-street right-of-way dining area permit shall submit a permit application to the Department of Transportation. The application must be made by the owner(s) or lessee(s) of the premises benefitting from the proposed on-street right-of-way dining area and shall be sworn to by the applicant and must include the following:

- (1) Completed on-street 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 on-street right-of-way dining purposes, and the location of all furniture including tables and chairs to be used within the proposed on-street right-of-way dining area.
- (5) Address and contact information of the applicant.
- (6) 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.

(b) The on-street right-of-way dining area permit shall be valid through the end of calendar year 2021.

(c) Upon approval, the on-street right-of-way dining area permit shall be specifically limited to the area shown on the to-scale site plan included with the application.



(d) An on-street right-of-way dining area permit may only be issued in conjunction with an eating and drinking establishment.

(e) An on-street right-of-way dining area permit shall be non-transferable.

Sec. 138-246. - Operational rules.

(a) The on-street 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 on-street right-of-way dining area.

(c) On-street right-of-way dining areas may operate only during the following hours: Sunday through Thursday: 7am to 11 pm; and Friday and Saturday, 7am to 12am.

(d) On-street right-of-way dining area delineation. The boundaries of the on-street right-of-way dining area shall be physically delineated in a manner established by the Commissioner of the Department of Transportation.

(e) On-street right-of-way dining area furniture. All tables, chairs, and other furniture shall be located within the on-street 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 pavement, tree, post, sign or other fixtures within the on-street 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 Transportation. No furniture in the on-street right-of-way dining area may encroach into any tree wells or adjacent travel lanes.

(f) All on-street right-of-way dining area furniture and any other objects provided within an on-street right-of-way dining area shall be maintained with a clean and attractive appearance and shall be in good repair at all times. The on-street dining 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, trash, and dining materials on a periodic basis during the day, and again at the close of each business day.

(g) All on-street right-of-way dining area furniture and any other objects provided within an on-street right-of-way dining area shall be removed from the public street by the permit holder as notified by the City for street cleaning, utility access, emergency access, road improvement, or any other reason deemed necessary by the City or its affiliated and/or permitted contractors.

Sec. 138-247. - Clearance requirements.



Requirements regarding clearance will be established in the administrative regulations promulgated by the Commissioner of the Department of Transportation.

Sec. 138-48. - Signage.

No signs, including without limitation, business identification signs, shall be permitted in the area of an on-street right-of-way dining area, with the exception of commercial messages on items incidental and integral to the furnishing of an on-street 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. 138-249. - Insurance and indemnification.

(a) All on-street 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 on-street 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.

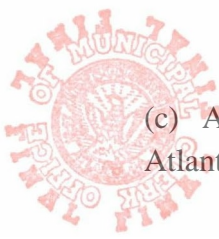
Sec. 138-250. - Enforcement.

(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 Transportation.

(b) Upon a determination that an on-street 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 Transportation, 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 an on-street 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 Transportation.



(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.

Sec. 138-251. - Right-of-way dining areas as public property.

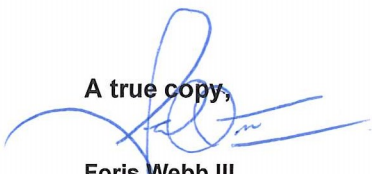
The on-street right-of-way dining areas are considered public property including, but not limited to accordance with Section 106-12 of the City of Atlanta Code of Ordinances, Urban camping and improper use of public places.

Sec. 138-252. - 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 Transportation 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. 138-253-138-255. - Reserved.

**SECTION 2:** All ordinances and parts of ordinances in conflict herewith are hereby waived only to the extent of the conflict.

A true copy,  
  
Foris Webb III  
Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED per City Charter Section 2-403

DEC 07, 2020  
DEC 16, 2020



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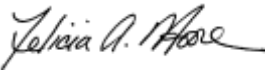

**Workflow List:**

Tim Keane	Completed	10/30/2020 7:26 PM
Jonathan S Futrell	Completed	11/02/2020 9:05 AM
Mayor's Office	Completed	11/02/2020 5:33 PM
Office of Research and Policy Analysis	Completed	11/03/2020 4:32 PM
Transportation Committee	Completed	11/09/2020 9:30 AM
Atlanta City Council	Completed	11/16/2020 1:00 PM
Atlanta City Council	Completed	11/16/2020 1:00 PM
Transportation Committee	Completed	12/02/2020 9:30 AM
Atlanta City Council	Completed	12/07/2020 1:00 PM

**HISTORY:**

11/09/20	Transportation Committee	ACCEPTED												
<table border="0" style="width: 100%;"> <tr> <td style="width: 15%;"><b>RESULT:</b></td> <td style="width: 60%;">ACCEPTED [UNANIMOUS]</td> <td style="width: 25%; text-align: right;"><b>Next: 11/16/2020 1:00 PM</b></td> </tr> <tr> <td><b>AYES:</b></td> <td colspan="2">Dickens, Westmoreland, Farokhi, Brown, Ide, Matzigkeit, Overstreet</td> </tr> </table>			<b>RESULT:</b>	ACCEPTED [UNANIMOUS]	<b>Next: 11/16/2020 1:00 PM</b>	<b>AYES:</b>	Dickens, Westmoreland, Farokhi, Brown, Ide, Matzigkeit, Overstreet							
<b>RESULT:</b>	ACCEPTED [UNANIMOUS]	<b>Next: 11/16/2020 1:00 PM</b>												
<b>AYES:</b>	Dickens, Westmoreland, Farokhi, Brown, Ide, Matzigkeit, Overstreet													
11/16/20	Atlanta City Council	REFERRED WITHOUT OBJECTION												
<table border="0" style="width: 100%;"> <tr> <td style="width: 15%;"><b>RESULT:</b></td> <td style="width: 60%;">REFERRED WITHOUT OBJECTION BY CONSENT VOTE</td> <td style="width: 25%; text-align: right;"><b>Next: 12/2/2020 9:30 AM</b></td> </tr> </table>			<b>RESULT:</b>	REFERRED WITHOUT OBJECTION BY CONSENT VOTE	<b>Next: 12/2/2020 9:30 AM</b>									
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12/02/20	Transportation Committee	FAVORABLE												
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<b>AYES:</b>	Dickens, Westmoreland, Farokhi, Brown, Ide, Matzigkeit, Overstreet													
12/07/2020	Atlanta City Council	ADOPTED												

**RESULT:** ADOPTED BY CONSENT VOTE [14 TO 0]  
**MOVER:** Marci Collier Overstreet, Councilmember, District 11  
**SECONDER:** Andrea L. Boone, Councilmember, District 10  
**AYES:** Westmoreland, Dickens, Smith, Farokhi, Brown, Winslow, Archibong, Ide, Shook, Matzigkeit, Hillis, Boone, Overstreet, Sheperd  
**AWAY:** Michael Julian Bond

Certified by Presiding Officer	Certified by Clerk
<p style="text-align: center;"><b>CERTIFIED</b></p> <p style="text-align: center;">12/7/2020 ATLANTA CITY COUNCIL PRESIDENT</p> 	<p style="text-align: center;"><b>CERTIFIED</b></p> <p style="text-align: center;">12/7/2020 MUNICIPAL CLERK</p> 
<p>Mayor's Action</p> <p><i>See Authentication Page Attachment</i></p>	

**ADOPTED BY COUNCIL**

**12/07/2020**



**MAYOR'S ACTION AUTHENTICATION PAGE**



**20-O-1691**

**Adopted by the Atlanta City Council  
December 7, 2020**

**APPROVED**

**DEC 16 2020**

**WITHOUT SIGNATURE  
BY OPERATION OF LAW**

**MAYOR'S ACTION**