

**THE UNIFIED GOVERNMENT OF ATHENS-CLARKE COUNTY
COMMISSION AGENDA ITEM**

SUBJECT: Sidewalk Café Ordinance Amendments

DATE: June 30, 2021

BUDGET INFORMATION:

REVENUES: N/A

EXPENSES: N/A

FUNDING SOURCE: N/A

COMMISSION ACTION REQUESTED ON: August 3, 2021

PURPOSE:

To request that the Mayor and Commission approve Sidewalk Café Ordinance amendments to:

- a. Make sidewalk cafes available to businesses that serve prepared food products and non-alcoholic beverages and do not meet the current definition of a restaurant;
- b. Further clarify the application of the ordinance on East Clayton Street; and,
- c. Provide an appeal process for variances or the suspension, revocation, or denial of permits.

HISTORY:

1. On January 8, 2019, Mayor Kelly Girtz assigned to the Government Operations Committee (GOC) a review of the Sidewalk Café Ordinance.
2. On February 21, 2019 and March 21, 2019, the GOC reviewed recommended changes to the Sidewalk Cafés layout, focusing on implementation on Clayton Street after the finalization of the Streetscape Project downtown. The Committee also discussed restricting glass containers.
3. On April 18, 2019, the GOC voted unanimously to recommend changes to the Sidewalk Café Ordinance.
4. On June 4, 2019, M&C approved the GOC-recommended changes to the Sidewalk Café Ordinance.
5. On February 26, 2021, staff met with business owners on the south side of Clayton Street near Lumpkin Street to review current construction and better understand their concerns regarding how the streetscape project will change the use of their sidewalk cafes. This review generated proposed edits to the Sidewalk Café Ordinance in order to make cafes viable along East Clayton Street.

6. On April 6, 2021, the M&C adopted revisions to the Sidewalk Café Ordinance to improve their viability on East Clayton Street.
7. On April 20, 2021, under suspension of rules, the M&C approved a revision to the preliminary plans for the streetscape elements of the Clayton Street Infrastructure and Transportation Improvements project.
8. In May of 2021, staff were approached by a food-related business in the downtown area to inquire about obtaining permission for a sidewalk café for their business.
9. In June of 2021, the Clayton Street Streetscape project completed surface level hardscape improvements for the first section of the project.
10. On June 8, 2021, staff met with business owners on the south side of Clayton Street near Lumpkin Street to hear additional concerns regarding what is allowed by ordinance for the placement of their sidewalk café rails.

FACTS & ISSUES:

1. In the wake of the Clayton Street improvements, staff has identified several proposed changes to the Sidewalk Café Ordinance. The proposed ordinance amendments (**Attachment #1**) have three primary outcomes:
 - a. It adds “specialty shop” as a business use eligible to utilize a sidewalk café;
 - b. It further clarifies the ordinance for East Clayton Street to account for additional site constraints; and,
 - c. It defines an appeal process for ordinance violations and permitting complications.
2. The 2019 modifications to the Sidewalk Café Ordinance (History #4) were developed in anticipation of the East Clayton Street Streetscape Project. Part of these changes included incorporating a definition of “restaurant” and “bar.” The new definition of “restaurant” inadvertently made businesses that sell food products, but do not serve meals or operate as a bar, ineligible to utilize a sidewalk café. Examples of such non-compliant uses include ice cream parlors, coffee shops, chocolatiers, and bakeries.
3. East Clayton Street businesses have begun to apply for Sidewalk Café permits as the first section of the East Clayton Street surface improvements have been completed (History #9). This application process has revealed additional challenges with the most recent ordinance modifications (History #6).
4. As staff worked through permitting challenges, they identified the need for an appeals process for applicants. An appeals process establishes a path for ACCGov to permit non-compliant sidewalk cafes that are designed specifically to address unique challenges in the downtown area in a manner that does not set a precedent for all potential sidewalk café

permittees. The Attorney's Office recommends that the Administrative Hearing Officer serve as a mechanism for appeals as it relates to variances or ordinance enforcement.

5. This recommendation supports the following Mayor and Commission Strategic Commitments:

- Shared Prosperity
- Accountable and Responsive Government

OPTIONS:

1. The Mayor and Commission approve the recommended Sidewalk Café Ordinance amendments (**Attachment #1**).
2. The Mayor and Commission do not approve the Sidewalk Café Ordinance amendments.
3. Commission defined option.

DEPARTMENT RECOMMENDED ACTION: Option #1

DEPARTMENT: Central Services
Prepared by: Angel Helmly



Andrew Saunders
Central Services Director

6/30/2021
Date

ADMINISTRATIVE COMMENTS:

ADMINISTRATIVE RECOMMENDATION: Option #1



Manager

July 13, 2021
Date

ATTACHMENTS:

Attachment #1 - Proposed Sidewalk Cafe Ordinance Amendments

CHAPTER 6-10. - SIDEWALK CAFES

Sec. 6-10-1. - Purpose.

This chapter shall apply to the establishment, operation, and maintenance of all outdoor cafes within Athens-Clarke County on public sidewalks. The purpose of this chapter is to promote the general economic development and atmosphere of Athens-Clarke County for the benefit of businesses and citizens located there, and no vested property right of individuals or individual businesses is created herein, and to create an aesthetic ambiance which will attract tourists to the Athens area. Further, this chapter is designed to maintain the efficiency, accessibility and safety of the pedestrian path.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 1](#))

Sec. 6-10-2. - Definitions.

- (a) *Sidewalk cafe*. The term "sidewalk cafe" shall mean the location and possible use of furnishings which shall be limited to dividers, tables, umbrellas and/or chairs on the public sidewalk as permitted in this chapter and operated as an extension of a food or beverage establishment and which sidewalk cafe shall be an incidental activity of the establishment.
- (b) *College Square*. The term "College Square" shall mean that portion of College Avenue between East Broad Street and East Clayton Street, including all public rights-of-way within such area.
- (c) *Manager*. The term "manager" shall mean the Manager of Athens-Clarke County, Georgia, or his designee.
- (d) *Common area sidewalk cafe*. The term "common area sidewalk cafe" shall mean the location and use of tables, umbrellas and chairs only in the paved brick areas of College Square which are not abutting the fronts of businesses.
- (e) *Permittee*. The term "permittee" shall mean the recipient of a sidewalk cafe permit under the terms and provisions of this chapter.
- (f) *Downtown Athens District*. The term "Downtown Athens District" shall mean that area of Athens-Clarke County, Georgia, defined as "the Downtown Athens Area" as set forth in Section 2 of Georgia Laws 1977, page 3533, pages 3534—3535 (entitled "Downtown Athens Development Authority Created").
- (g) *Restaurant*. Any public place kept, used, maintained, and advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment, having employed a sufficient number of cooks and kinds of employees to prepare, cook, and serve suitable food at tables with seating, and holding a certificate of inspection and approval from the county health department. At least one meal per day shall be served at least five days a week, with the exception of holidays, vacations, and periods of remodeling, and the serving of such meals shall be the principal business conducted, with the serving of alcoholic beverages to be consumed on the premises as only incidental thereto. A restaurant shall have 50 percent or more of its total annual gross sales of food and alcoholic beverages from the sale of prepared meals or food. Such gross sales shall not include sales of prepared meals or food sold or delivered off-site as part of a catering business.
- (h) *Bar*. The term "bar" shall mean an establishment holding an Athens-Clarke County alcoholic beverages license authorizing consumption of alcoholic beverages on the premises and that is not a restaurant as defined in this Section.
- (i) *Banding Strip*. The term "banding strip" shall mean the decorative sidewalk inlay or marking running parallel with the street that delineates the pedestrian path.

(j) *Specialty Shop.* Any public place kept, used, maintained, and advertised and held out to the public as a place where prepared food products, desserts, or non-alcoholic beverages are prepared and served, such place being provided with adequate and sanitary kitchen, and holding a certificate of inspection and approval from the county health department. Examples of specialty shops include coffee shops, ice cream parlors, chocolatiers, and cookie shops.

(Ord. of 11-4-2003, § 1; Ord. of 7-5-2011, § 1; [Ord. of 4-7-2015\(2\), § 2](#))

Sec. 6-10-3. - Permit.

It shall be unlawful for any person to operate a sidewalk cafe except as permitted in this Chapter. It shall be unlawful for any person to operate a sidewalk cafe as described in this ordinance without a permit issued by the manager, or to fail to comply with all sections of the sidewalk cafe ordinance. Such permit may be renewed annually at a time to be designated by the manager.

The issuance of a sidewalk cafe permit shall not be construed or interpreted to convey any vested property rights or any leasehold rights or interests to any person or business. The holder of a permit shall have the right to enforce trespass laws within a sidewalk cafe area. Permittee's use of the sidewalk cafe area is subject to the rights of utility companies pursuant to franchise or easement. Prior to acceptance of a permit, a permittee shall acknowledge that permittee has inspected the sidewalk area and determined that the area is suitable for its purposes and that it assumes all risks associated with its use of such area. The provisions of this chapter are subject to change and amendment by the mayor and commission from time to time.

Sidewalk cafe permits are non-transferable. Permits will expire upon the earlier of transfer of ownership, change in use of the establishment, and December 31 of each year.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 3](#))

Sec. 6-10-4. - Application.

Any person desiring to operate a sidewalk cafe shall submit an application, on a form prescribed by the manager, to the central services department. The application shall include, but not be limited to, the following:

- (1) Name of applicant;
- (2) Name, address, and telephone number of establishment;
- (3) A copy of a valid Athens-Clarke County occupational tax certificate for the establishment of which the sidewalk cafe will be an incidental activity;
- (4) A copy of a current certificate of insurance in the amounts and categories required by section 6-10-9 of this chapter;
- (5) A sketch identifying the perimeter area, the dimensions of the area, the dimensions from perimeter to curb or nearest obstacle, and the proposed design and materials of the cafe railing system.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 4](#))

Sec. 6-10-5. - Issuance of permit.

Applicant shall be notified within two weeks of application submission of approval/denial of permit. If permit is denied, applicant shall be provided an explanation of the denial.

(Ord. of 11-4-2003, § 1)

Sec. 6-10-6. - Permit fee.

The annual permit fee to operate a sidewalk cafe shall be \$100.00 plus \$1.00 per square foot for the approved/permitted area.

Prior to issuance or renewal of a sidewalk cafe permit, the government's finance department shall verify that there are no outstanding debts, taxes, fines or fees owed to the government by the person or entity requesting a sidewalk cafe permit. A sidewalk cafe permit will not be issued until all outstanding debts, taxes, fines or fees to the Unified Government of Athens-Clarke County are paid in full. Any permit that is renewed pursuant to this Chapter shall be subject to any of the enforcement actions and imposition of any of the remedies provided in section 6-10-10 of this Chapter even though conduct that is the basis of such enforcement action may have occurred in a previous permit year or an administrative hearing pursuant to section 1-5-1 of this Code with respect to such permit may have been initiated in a prior permit year. In the event that a permit has been revoked by the administrative hearing officer, and the permittee has appealed such revocation to the Superior Court, or the time for filing such an appeal has not expired, consideration or issuance of any application for renewal of such permit for a subsequent year shall be suspended until final judgment in the appeal has been entered by the Court or the revocation has become final with no appeal being filed.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 5](#))

Sec. 6-10-7. - Regulations generally.

Except as otherwise provided in section 6-10-8 herein, a sidewalk cafe shall comply with the following regulations:

- (1) *Limitations on area.* The area in which a sidewalk cafe is operated shall abut the outside front wall of the establishment of which it is an extension and shall not extend parallel in either direction beyond the outside front wall of the establishment. The area permitted for a sidewalk cafe shall not extend more than 50% of the minimum sidewalk width, measured from the back of the curb to the face of the building or the property line, whichever is less, measured perpendicular from the outside wall of the establishment; however, a minimum width of five feet shall be provided at all times for continuous unobstructed pedestrian traffic on the sidewalk between the sidewalk cafe area and the edge of sidewalk pavement or fixed obstacles.
- (2) *Divider required.* The area permitted for a sidewalk cafe shall be separated from the remaining sidewalk area by a system of connected rigid metal rails and posts, or other fixed physical features at the manager's discretion, that would serve to contain crowds and maintain the boundaries of the cafe. The system shall be designed and constructed such that it resists movement and can be disassembled and removed if necessary. The design must be included in the application and must be approved by the manager prior to issuance of a permit. Such divider shall not be less than three feet nor more than four feet in height. All furnishings shall be located totally within the limits of the divider. It shall be the responsibility of the permittee to maintain the divider in its exact/approved location at all times and to ensure that all furnishings remain within the area permitted.
- (3) *Sanitation.* It shall be the responsibility and duty of the establishment to which the sidewalk cafe permit is issued to maintain the area covered by the permit in a clean, neat, and orderly manner at all times. The area shall be cleared of all debris at all times. Pressure washing by permittee shall be conducted using water only. The use of cleaning agents is prohibited. All furnishings are to be kept clean, sanitary, safe, and in structurally sound condition at all times.

- (4) *Removal of furnishings.* All tables, chairs, umbrellas and dividers of a sidewalk cafe shall be removed from the public sidewalk area as notified by the solid waste department for sidewalk cleaning.
- (5) *Suspension or modification of operation.* The manager shall have the authority to require any sidewalk cafe operating in an area created by this section to suspend operation and clear such area, or to move or modify the location or operation of the sidewalk cafe, for reasons such as, but not limited to:
 - a. Any permitted special event;
 - b. Any street, sidewalk, or utility construction;
 - c. Any emergency situation; or
 - d. The protection of the health, safety, and welfare of the public.
- (6) The sale and consumption of alcoholic beverages within sidewalk cafes that abut the establishment's building may be allowed in accordance with Chapter 6-3 of this Code, provided however, that glass bottles are prohibited within sidewalk cafes.
- (7) Alcoholic beverages are prohibited in the common area sidewalk cafe areas.
- (8) No items, materials (other than furnishings used in the normal operation of the sidewalk cafe), or trash shall be stored, kept, or maintained within the sidewalk cafe area.
- (9) Smoking is prohibited in sidewalk cafes operated by a restaurant or specialty shop.
- (10) When maximum sidewalk café depths are identified in this ordinance, they are to be calculated based on a building average that excludes alcoves that extend back into private property. A building average is generally calculated by measuring at the most prominent fixed points on a building or store front at their corners, and approximate center in a location that is not utilized for building ingress/egress.

(Ord. of 11-4-2003, § 1; Ord. of 7-5-2011, § 2; [Ord. of 4-7-2015\(2\), § 6](#))

Sec. 6-10-8. - Exceptions.

- (a) Common area sidewalk cafes on College Square are exempt from paragraph (2) of section 6-10-7, which requires the installation of cafe dividers. Such dividers are prohibited within common area sidewalk cafes. In addition to all other provisions applicable to sidewalk cafes as provided for in section 6-10-7 herein, the following additional provisions shall apply to common area sidewalk cafes:
 - (1) Common area sidewalk cafes may be provided within the paved brick areas at the four corners of College Square located on either side of College Avenue at its intersections with East Clayton Street and with East Broad Street.
 - (2) Common area sidewalk cafes may be designated in the six paved brick areas between the large concrete planters on either side of College Square parallel to the public concrete sidewalk.
 - (3) The outer limits of each such area provided for in paragraphs (1) and (2) above shall be clearly marked as prescribed by the manager. Furnishings shall not extend beyond such limits. A minimum of two feet of unobstructed space shall be maintained at all times around any permanent public fixture within or adjacent to the designated area.
 - (4) Any eligible establishment fronting on College Square and located at any corner of College Square shall be granted the right of first refusal to operate a common area sidewalk cafe that fronts their business. Upon any such refusal, the immediately adjacent eligible businesses shall have the next right of refusal on a first come first served basis.
 - (5) Each table may be equipped with an umbrella that, when open, shall extend to at least the same diameter as the table it serves and shall be anchored with a weighted base. Any umbrella

protruding into public space shall be positioned at a minimum height of seven feet. An umbrella may display the name or logo of the bar, restaurant, or specialty shop operating the sidewalk cafe and/or advertise a product. Each umbrella shall be maintained in good, clean, and operable condition.

- (b) Sidewalk cafes operated outside of the Downtown Athens District are exempt from paragraph (2) of section 6-10-7, which requires the installation of cafe dividers. Cafe dividers are optional outside of the Downtown Athens District. If installed, cafe dividers must comply with the requirements of paragraph (2) of section 6-10-7 and must be approved as part of the sidewalk cafe permit. In addition to all other provisions applicable to sidewalk cafes as provided for in section 6-10-7 herein, the following additional provisions shall apply to sidewalk cafes operated outside of the Downtown Athens District:
- (1) Establishments located on the corner of two streets may apply for a sidewalk cafe permit that includes both street faces of the establishment.
 - (2) The permittee shall have the responsibility to ensure that patrons are informed that open containers of alcohol, if otherwise permitted, are not allowed outside of the permitted sidewalk cafe area when no cafe dividers are present.
- (c) For sidewalk cafes operated by restaurants and specialty shops on East Clayton Street, the following provisions shall apply:
- (1) When café dividers are utilized, the area permitted for a sidewalk café operated by a restaurant or a specialty shop shall not extend beyond the building side of the banding strip where present while maintaining a minimum width of five feet at all times for Americans with Disabilities Act-compliant pedestrian traffic on the sidewalk between the sidewalk café area and any fixed obstacles. Café dividers may not be anchored into the banding strip.
 - (2) Café dividers are optional for sidewalk cafes operated by restaurants and specialty shops.
 - a. When café dividers are not utilized, the area permitted for a sidewalk café may extend to the street side of the banding strip so long as the café maintains a minimum width of four feet of Americans with Disabilities Act-compliant pedestrian traffic on the sidewalk between the sidewalk café furniture or fixtures, and any fixed obstacles.
 - b. Within a twelve month period, any permitted sidewalk café that is documented to have three or more incidences of encroachment of sidewalk café furniture or fixtures beyond the street side of the banding strip, will be required to install café dividers compliant with the requirements of this ordinance if the café is to remain in operation.
 - c. For sidewalk cafes operated by restaurants, A-alcohol may be served to, and consumed by, seated patrons only.
 - d. The permittee or operator of a sidewalk café shall have the responsibility to ensure that patrons are informed that open containers of alcohol, if otherwise permitted, are not allowed outside of the permitted sidewalk café area when no café dividers are present.
- (d) For sidewalk cafes operated by bars on East Clayton Street, the following provisions shall apply:
- (1) Where an average of at least 36" of space exists between the building and the building side of the banding strip, the area permitted for a sidewalk cafe operated by a bar shall not extend more than four feet measured perpendicular from the face of the building, or to the building side of the banding strip where present, whichever is less, while maintaining a minimum width of five feet at all times for Americans with Disabilities Act-compliant pedestrian traffic on the sidewalk between the sidewalk cafe area and any fixed obstacles.
 - (2) Where an average of less than 36" of space exists between the building and the building side of the banding strip, the area permitted for a sidewalk cafe operated by a bar shall not extend more than four feet measured perpendicular from the face of the building, or to within four six inches of the street side of the banding strip where present, whichever is less, while maintaining a minimum width of four feet, for Americans with Disability Act-compliant pedestrian traffic on the sidewalk between the sidewalk cafe area and any fixed obstacles.

- (3) Café dividers may not be anchored into or within two inches of the banding strip.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 7](#))

Sec. 6-10-9. - Liability and insurance.

- (a) Except for actions arising out of Athens-Clarke County's sole negligence, the permittee shall indemnify, defend, save, and hold harmless the Unified Government of Athens-Clarke County, its officers and employees, from any and all claims, liability, damages, and causes of action which may arise out of the permit or the permittee's activity on the premises.
- (b) The permittee shall meet and maintain for the entire permit period, at its own expense, the following requirements:
 - (1) Commercial general liability in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The Unified Government of Athens-Clarke County must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
 - (2) The Unified Government of Athens-Clarke County must receive 30 days written notice prior to any cancellation, non-renewal, or material change in the coverage provided.
 - (3) The permittee must provide an original certificate of insurance as evidence that the above requirements have been met prior to issuance of a permit.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 8](#))

Sec. 6-10-10. - Revocation or suspension of permit.

The approval of a sidewalk cafe permit is conditional at all times. A sidewalk cafe permit may be revoked or suspended by the administrative hearing officer pursuant to the provisions of section 1-5-1 if it is found that:

- (1) Any necessary business or health permit or license has been suspended, revoked, or cancelled.
- (2) The permittee does not have insurance which is correct and effective in the minimum amounts described in section 6-10-9.
- (3) The permittee has failed to correct violations of this chapter or any other ordinance within 48 hours of receipt of the manager's notice of same delivered in writing to the permittee.
- (4) The permittee has a history of violations of this chapter of three or more within a two-year period, or immediately upon any violation depending upon severity of the violation.
- (5) Permits may be suspended for a period up to 12 months depending upon history and severity of violations.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 9](#))

Sec. 6-10-11. - Civil fines for violators.

The Administrative Hearing Officer may impose the following minimum civil fines for violations of this chapter:

- (1) First violation: \$100.00 civil fine.
- (2) Second violation (within one-year period): \$250.00 civil fine.

(3) Third violation (within one-year period): \$500.00 civil fine.

(Ord. of 11-4-2003, § 1; [Ord. of 4-7-2015\(2\), § 10](#))

Sec. 6-10-12. - Americans with Disabilities Act.

Any person or entity receiving a permit hereunder agrees to fully comply with all requirements of the Americans with Disabilities Act as currently existing or as may be hereafter amended.

(Ord. of 11-4-2003, § 1)

Sec. 6-10-13. - Severability of part of Code.

It is hereby declared to be the intention of the mayor and commission that the sections, paragraphs, sentences, clauses, and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph, or section of this chapter shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this chapter, since the same would have been enacted by the mayor and commission without the incorporation in this chapter of any such invalid phrase, clause, sentence, paragraph, or section.

Sec. 6-10-14 Administrative Appeal and Variances

- 1) The suspension, revocation, or denial of a permit shall entitle the person submitting the application or holding the permit to a hearing before the Administrative Hearing Officer within thirty (30) days of written notice from the issuing authority of suspension, revocation, or denial of a permit.
- 2) Sidewalk café permit holders and applicants may request a variance review with the Administrative Hearing Officer to contest a staff ruling on sidewalk café design, spacing, or use. Such variance may be granted in such individual case of unnecessary hardship upon deliberation of the evidence and a finding by the Administrative Hearing Officer that:
 - (a) There are extraordinary and exceptional conditions pertaining to the particular sidewalk cafe in question because of right-of-way, building or sidewalk size, shape, character, or topography that do not apply generally to other cafes in the vicinity; and
 - (b) The strict application of the provisions of this title to this particular cafe would create an undue and unnecessary hardship so that the grant of the variance is necessary for the preservation and enjoyment of a sidewalk café and not merely to serve as a convenience to the applicant; and
 - (c) The special conditions and circumstances do not result from the actions of the applicant; and
 - (d) The variance, if granted, does not conflict with the Americans with Disabilities Act; and
 - (e) The benefits of granting the variance will be greater than any negative impacts and will further the purpose and intent of this title and the comprehensive plan of Athens-Clarke County.
- 3) No petition for the same variance involving the same applicant once heard and acted upon by the Administrative Hearing Officer shall be accepted for a rehearing until the expiration of at least 12 months immediately following the previous decision.