


**CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT**

AGENDA ITEM: Ordinance No. 65-21-43
SUBMITTED BY: Amanda Askew, Director of Planning and Community Development 
TODAY'S DATE: June 3, 2021
MEETING DATE: June 14, 2021

BACKGROUND: Currently, outdoor seating in conjunction with a restaurant is permitted on the City rights-of-way in the Commercial Business District (CBD)/Town Center area. Applicants are required to follow the regulations set forth in section 24-115 (f), which requires a right-of-way revocable license agreement.

Staff has had couple of inquiries for outdoor seating on the right-of-way outside the boundary limits of the CBD. Outdoor seating within rights-of-way can help create a sense of place by bringing socialization outside and drawing positive attention to the establishment. It can also add value to businesses by increasing the seating capacity, boosting revenue potential and supports small businesses. The seating activates streets by creating a more pedestrian friendly scale environment and provides economic development/redevelopment.

The proposed addition to Chapter 19 will allow the outdoor seating within the right-of-way. It was passed on first read on May 24th with conditions added by Commission. These new conditions are underlined in the attached ordinance. The conditions suggested by Commission added regulations that require the removal of the improvements in the right-of-way and the restoration of the right-of-way if the business vacates the property and requirements for new improvements to be constructed out of permeable surfaces.

The intent of the proposed ordinance is to allow outdoor seating on City rights-of-way in commercial areas. The major highlights of the ordinance include:

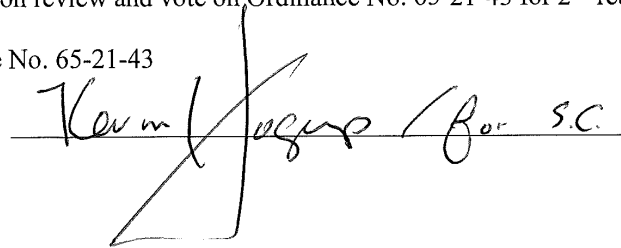
- Establishes a process for the expansion of outdoor seating in rights-of-way adjacent to a permitted business
- Establishes an application process including the review and approval procedures
- Requires a revocable license agreement and insurance
- Allows the city manager to revoke or suspend the license for various reasons (emergencies, seating is no longer deemed to be in public's best interest, failure to comply with regulations, change in city conditions, etc.)
- Regulates the location, design and operations of outdoor seating area
- Charging a nominal fee for the yearly revocable licenses agreement
- Removal of improvements and restoration of row if the business vacates
- Construct new eating areas out of permeable surfaces

BUDGET: None

RECOMMENDATION: Commission review and vote on Ordinance No. 65-21-43 for 2nd read

ATTACHMENT(S): Ordinance No. 65-21-43

REVIEWED BY CITY MANAGER:

 Kevin Wagner For S.C.

ORDINANCE NO. 65-21-43

**AN ORDINANCE OF THE CITY OF ATLANTIC BEACH,
COUNTY OF DUVAL, STATE OF FLORIDA, AMENDING
CHAPTER 19 OF THE CODE OF ORDINANCES, STREETS,
SIDEWALKS, AND OTHER PUBLIC PLACES, TO ADD NEW
SECTION 19-8, OUTSIDE SEATING LOCATED IN CITY
RIGHT(S)-OF-WAY; PROVIDING FOR CONFLICT; PROVIDING
FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Commission of the City of Atlantic Beach has determined that it is necessary to amend Chapter 19 to allow outdoor seating in City rights-of-way; and

WHEREAS, this Ordinance accommodates the use of City rights-of-way; and

WHEREAS, this Ordinance is intended to establish regulations to allow limited outside seating to encroach into the City rights-of-way as an ancillary component of an adjacent primary business which is located on private property; and

WHEREAS, the City Commission finds it necessary to establish permit conditions, specific location requirements and safety standards for outdoor seating in rights-of-way and necessary to protect and promote the general health, safety, and welfare of the residents of the City; and

WHEREAS, it is intended that such outdoor seating will not unduly restrict public access or public utilities or that detracts from the appearance of the surrounding area or is in conflict with other uses in the area; and

WHEREAS, it is the intent of these regulations to encourage outdoor seating in rights-of-way that is compatible with associated and nearby uses and does not obstruct pedestrian or vehicle circulation or create an unsightly appearance or unrestricted clutter; and

WHEREAS, the issuance of an outdoor seating revocable license agreement in City rights-of-way shall not constitute nor shall it be construed to constitute a vacation or abandonment by the City of its interest in the right-of-way or any easements; and

WHEREAS, there is a desire for establishments in certain pedestrian-oriented areas of the City to provide a unique environment for relaxation and food consumption; and

WHEREAS, limited and controlled outdoor seating will encourage additional pedestrian traffic and will encourage more activity, economic development and redevelopment in the City's commercially-zoned areas; and

WHEREAS, the City Commission wants to provide support small business owners by providing opportunities for outdoor dining; and

WHEREAS, implementation of this Ordinance is in the best interest of the citizens of the City of Atlantic Beach.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION ON BEHALF OF THE PEOPLE OF THE CITY OF ATLANTIC BEACH, FLORIDA:

SECTION 1. Regulation Added. Section 19-8 of the Code of Ordinances of the City of Atlantic Beach, Florida, is hereby added to read as follows:

Sec. 19-8. – Outside seating located in City rights-of-way

(a) *Intent.* This Section is intended to activate sidewalks and other non-vehicular traffic areas within City rights-of-way to be used for outside seating that contributes to a pedestrian-friendly environment and encourages economic development in the city's commercial districts.

(b) *Applicability.* A bar, brewpub, café, coffee shop, hotel/motel, indoor recreation/entertainment facility, brewery, nightclub, restaurant, or other food/beverage related use, authorized under the applicable commercial zoning district regulations, may apply for a revocable license to authorize outside seating in the City right-of-way adjacent to the authorized food/beverage use subject to the provisions of this Section, and as may be applicable, the provisions of Section 24-115(f) and Section 24-116(f). Where there is a conflict between said provisions, the requirements of this Section shall apply.

(c) *Application.* Outside seating areas are characterized by tables and chairs and may be shaded by awnings, canopies, or umbrellas if building permits for same have been obtained. Applications, on a form provided by the City, for outside seating shall be submitted to the Planning and Community Development Department and shall include, but not be limited to, the following information:

- (1) Name, address, and contact information of the applicant and adjacent business and written consent by property owner.
- (2) A copy of a valid City of Atlantic Beach business tax license and any other applicable operating licenses for the adjacent food/beverage business, and the total number of chairs (both indoor and outdoor) to be utilized.
- (3) A copy of current certificates of insurance in the amounts and categories required in this Section.
- (4) A drawing to scale showing the layout and dimensions of the portion of the proposed outside seating area and of the adjacent private property, right-of-way and sidewalk; the size and number of tables, chairs, lighting, steps, planters and umbrellas, as applicable, and any other items proposed to be located within the proposed outside seating area; the location of doorways, trees, parking spaces, parking meters, bus shelters, sidewalk benches, trash receptacles, signage and any other obstruction either existing or proposed located within fifty (50) feet of the proposed outside seating area.
- (5) Photographs, drawings or manufacturers' brochures fully describing the appearance of all proposed tables, chairs, umbrellas or other objects proposed to be located within the outside seating area.
- (6) If deemed necessary by the Planning and Community Development Director or designee, a survey showing the right-of-way including any utilities, fire hydrants, pavement locations, and other objects in/on the right-of-way.
- (7) A nonrefundable base application fee of three hundred dollars (\$300.00).

(8) A proposed draft revocable license agreement.

(9) Plans for the operation of the proposed outside seating area, including but not limited to, hours of operation, maintenance of the outside seating area and services to be provided.

(d) *Insurance required.* The owner/lessee/lessor of the adjacent food/beverage related business establishment, the licensee and the property owner (if the parties are not the same) shall each agree in writing to hold the City of Atlantic Beach harmless for any personal injury or property damage arising from or related to the existence or operation of any outside seating area, and the condition and maintenance of the right-of-way upon which any outside seating is located, and shall furnish evidence of general liability insurance in the amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate with the City of Atlantic Beach as additional named insured, liquor liability (if applicable) and workers' compensation, each with 30 day cancellation notices.

(e) *Application review and approval.*

Applications for outside seating areas shall be reviewed and approved by the city manager or designee and shall be issued in the form of a revocable license agreement, subject to the provisions of this Section. The city manager or designee may approve plans, designs and specifications for an outside seating area that comply with the provisions of this Section and do not unreasonably interfere with any of the following:

- (1) Adequate pedestrian flow;
- (2) Access to public utilities, building entrances, crosswalks or bus stops;
- (3) Pedestrian or traffic safety; or
- (4) Any other health or safety concerns.

In addition, the city manager or designee may deny an application for an outside seating area if in the reasonable discretion of the city manager or designee:

- (5) The application does not contain the required information;
- (6) The proposal does not comply with the operational/locational/design requirements set forth in this Section; or
- (7) Any material information submitted in the application is found to be incorrect.

No later than twenty (20) days prior to approval of a revocable license agreement, the Planning and Community Development Director shall send notice of the application for outside seating to all property owners within 300 feet of the subject business parcel.

Revocable license agreements shall be approved for a one year period and the annual fee shall be two dollars (\$2.00) per square foot of the outside seating area and shall not be transferable- The annual one year period (October 1 through September 30) and fee shall be administered by the City's Finance Department in the same manner as business tax licenses. A licensee may apply to renew the license by submitting a renewal application no later than thirty (30) days prior to the expiration of the license agreement.

The revocable license agreement shall require the licensee and property owner to remove all improvements in the right-of-way and restore the right-of-way to pre-improvement conditions no later

than thirty (30) days after the expiration of the license agreement or the licensee vacates the adjacent business.

(f) *Revocation or suspension of license.* All license agreements are revocable by the city manager or designee at all times. A license may be revoked or suspended if the city manager or designee reasonably determines that:

- (1) Any necessary business or health permit or license pertaining to the licensee or to the operation of the business on the adjacent property has been suspended, revoked or canceled.
- (2) The licensee does not have policies of insurance which are correct and effective in the minimum coverages and amounts described in this Section or the license agreement.
- (3) The licensee exceeds the approved square footage by placing any additional tables, chairs or other items or equipment beyond the boundaries of the approved outside seating area.
- (4) The licensee has failed to correct violations of this section, terms or conditions of their license agreement within seventy-two (72) hours of receipt of the city manager's, or his designee's, notice of same delivered in writing to the licensee. In the event the licensee fails to take all corrective actions as required by said notice within seventy-two (72) hours of receipt of the notice of violation, the city manager shall have the right but not the obligation, to remove said objects. The licensee or property owner shall pay all costs associated with such removal and restoration of the outside seating area.
- (5) Changing conditions of pedestrian or vehicular traffic exist that cause congestion necessitating the removal of the outside seating which represent a danger to the health, safety or general welfare of pedestrians or vehicular traffic.
- (6) The outside seating is deemed a threat to public safety for any other reason.
- (7) The outside seating no longer meets the purpose or intent of the commercial zoning district or any applicable overlay/special area plan.
- (8) The licensee has failed to comply with any of the requirements, conditions or terms of this Section or included in the applicable revocable license agreement.
- (9) The licensee or property owner has outstanding code enforcement violations related to the adjacent parcel or business.
- (10) The city needs to conduct utility work, street repairs or other repairs necessitating closure of the outside seating area.

Upon suspension or revocation, the city manager or designee shall give written notice of such action to the licensee and property owner. If the action is based on (f)(1), (2) or (4), the action shall be effective immediately. Otherwise, such notice shall be effective within ten (10) days.

(g) *Emergencies.* The city manager or designee may remove any of the improvements authorized by a license agreement in times of foul weather or for any emergency purposes, as reasonably determined by the city manager, without notice, and the licensee, the adjacent business operator and property owner shall each be responsible for the reasonable expenses incurred by the city for the removal and storage of said objects. The city shall not be responsible for said objects relocated during emergencies. Emergency determination by the city manager or designee shall not be subject to appeal.

(h) *Location, design, and operational requirements.*

(1) Outside seating shall be immediately adjacent to the building, building unit, or other existing outside seating operated by the business reflected in the revocable license agreement. The outside seating shall only serve the business reflected in the revocable license agreement, shall be personal to the licensee only and not transferrable in any manner, and said business shall have an active business tax license with the city.

(2) Outside seating shall not be permitted any closer than five (5) feet from the curb line of the street or from any fire hydrants located in the right-of-way. At no time may the outside seating interfere with vehicular or pedestrian sight lines. Outside seating areas may not displace any existing parking spaces.

(3) Outside seating areas shall be bounded by an enclosure of at least three (3) feet but no more than four (4) feet in height measured from the ground or sidewalk level, unless waived by the Planning and Community Development Director. Enclosures and the seating area shall be designed in compliance with ADA guidelines - Such enclosure may consist of screens, planters, fencing or other similar materials.

(4) If a new surface is proposed in the application, only stabilized permeable surfaces may be authorized.

~~(45)~~ Lighting to serve outside seating areas shall be shielded and shall be installed and directed so as to not project light output: onto residences or adjacent uses; past the object being illuminated; skyward; or onto any roadway. All lighting shall be aimed, located, designed, fitted and maintained so as to not present a hazard to drivers or pedestrians by impairing their ability to safely traverse and so as not to create a nuisance by projecting or reflecting light into a neighboring use or property. Outdoor lighting may remain illuminated during operating hours, and no later than one-half hour after closing of the adjacent business. Outdoor lighting shall be automatically extinguished using a programmable controller.

~~(56)~~ No live entertainment, amplified music, or speakers shall be allowed in the outside seating area, unless authorized as a special event pursuant to Section 19-4 of this Chapter.

~~(67)~~ The hours of operation for outside seating shall not extend beyond those of the associated adjacent business licensee, unless otherwise specified in the license agreement. The city may further limit the hours for outside seating based on the proximity of the seating area to residential uses.

~~(78)~~ No preparation or storage of any food or beverages is allowed within any outside seating area or the right(s)-of-way. All food and beverages must be prepared within the main structure of the adjacent business and no "window service" shall be permitted.

~~(89)~~ All furnishings shall be maintained by the outside seating licensee in a clean and attractive appearance and shall be in good repair at all times. The city manager shall have the authority to secure or remove any furnishing(s) or other improvements associated with the outside seating if necessary in the interest of public safety. The licensee and landowner (if different parties) shall agree in writing to maintain that portion of the right-of-way where the outside seating is located and shall be responsible for repair or restoration of any damage to the right(s)-of-way caused by the business or its patrons. As may be necessary to complete any repair or restoration projects, by either the city or the licensee, the city manager may require the licensee to temporarily remove the outside seating and all related improvements. The outside seating licensee shall be responsible for removing all furnishings at least 24 hours prior to the date identified in writing by the city manager. The city shall not be responsible for any costs associated with the removal or the return and installation of any such furnishings.

~~(910)~~ No outside display of merchandise shall be allowed in the designated outside seating area or elsewhere within the right(s)-of-way.

(10) Service and consumption of beer, wine or alcohol shall only be allowed within the outside seating area in accordance with the licensee's State of Florida operational license and in accordance with all applicable City regulations and permits for the service and on-site consumption of beer, wine or alcohol issued to the licensee's adjacent business.

~~(140)~~ Signs, lettering and images of any type are prohibited within the outside seating area or right of way and on umbrellas, chairs, tables and other permissible fixtures which are located within the designated outside seating area or elsewhere in the right-of-way.

~~(123)~~ The outside seating area shall be specifically limited to the area approved in the revocable license agreement.

~~(134)~~ The licensee shall use positive action to assure that the operation of the outside seating area in no way interferes with sidewalk users or limits their free, unobstructed passage.

~~(145)~~ The area included within the license agreement and the sidewalk and roadway, street or alley immediately adjacent to it shall be maintained in a neat and orderly appearance at all times by the licensee, and the area shall be cleared of all debris as needed during the day, again at the close of each business day and as determined by the city manager or designee. The licensee shall also be responsible for cleaning the floor surface within the outside seating area.

~~(156)~~ No tables, chairs or any other parts of the outside seating areas shall be attached, chained or in any manner affixed to any tree, post, sign or other fixture, curb or sidewalk in or near the outdoor seating area.

~~(167)~~ Upon the issuance of a "Hurricane Watch or Warning" by Duval County, or similar foul weather or high wind event, the licensee shall forthwith place indoors all tables, chairs and other equipment located in the outside seating area. The issuance of such "Hurricane Watch or Warning" or similar foul weather or high wind event shall constitute an emergency situation as referenced herein.

~~(178)~~ No tables, chairs, or any other parts of the outside seating area shall block an ADA access, pedestrian walkways, sidewalks, required parking spaces, drive aisles, or driveways.

~~(189)~~ No smoking at any time shall be allowed in the outside seating area.

~~(4920)~~ A covenant not to sue and indemnity provisions in favor of the city (in form approved by the city attorney) shall be required, to be included in the license agreement from both the licensee and the property owner.

~~(201)~~ Dogs are permissible provided a permit is obtained and maintained as required by Chapter 24, section 24-158, as may be amended, in the Code of Ordinances.

(i) *Appeals.*

(1) Appeals shall be initiated within ten days of the date of the written denial, suspension or revocation (but not emergency determinations made to subsection (g) above) of a revocable license agreement by the city manager by filing a written notice of appeal with the Planning and Community Development Director. Such appeal shall state the reasons for reinstatement or issuance of a revocable license agreement.

(2) The Planning and Community Development Director shall place the appeal on the next available regular Community Development Board agenda. At the hearing upon appeal, which shall be a do novo hearing, the Board shall hear and determine whether the appeal should be granted or denied. If the Board determines that there is a reasonable basis for the denial, suspension or revocation, the Board shall uphold the decision of the city manager. The Board may deny, grant or grant with conditions any appeal. The decision of the Board shall be final.

(3) The filing of a notice of appeal by a licensee shall not stay an order by the city manager or designee. Vestiges of the outside seating shall be removed immediately as set out in this Section, pending disposition of the appeal and the final decision of the Board.

SECTION 2. Conflict. All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the City or any of its officials and in conflict with this Ordinance are repealed to the extent inconsistent herewith.

SECTION 3. Severability. If a Court of competent jurisdiction at any time finds any provision of this Ordinance to be unlawful, illegal, or unenforceable, the offending provision shall be deemed severable and removed from the remaining provisions of this Ordinance which shall remain in full force and intact.

SECTION 4. Effective Date. This ordinance shall take effect upon final reading and approval.

PASSED by the City Commission on first reading this 24th day of May, 2021.

PASSED by the City Commission on second and final reading this ____ day of _____, 2021.

CITY OF ATLANTIC BEACH

Ellen Glasser, Mayor

Attest:

Donna L. Bartle, City Clerk

Approved as to form and correctness:

Brenna M. Durden, City Attorney