A SUBSTITUTE ORDINANCE **06-O-1947**

BY CITY UTILITIES COMMITTEE

TO AMEND SECTIONS 138-25 AND 138-26 OF THE OFFICIAL CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA, TO ESTABLISH A NEW PROCESS TO DETERMINE THE MONTHLY RENTAL RATES FOR THE AIR SPACE OR SUBSURFACE SPACE OCCUPIED BY BRIDGES, TUNNELS OR SIMILAR STRUCTURES ACROSS STREETS OR PUBLIC ALLEYS, AS WELL AS BALCONIES OVER SIDEWALKS OF THE CITY OF ATLANTA, TO REMOVE CERTAIN PROVISIONS; AND FOR OTHER PURPOSES.

WHEREAS, Section 138-25 (b)(3) a and b of the Code of Ordinances ("Code") of the City of Atlanta ("City") establishes the process and parameters by which monthly rental rates for the air space or subsurface space occupied by bridges or tunnels shall be determined; and

WHEREAS, Section 138-25 (b)(3) c of the Code establishes the process for advertising in the right-of-way, which is strictly prohibited by the Code and therefore contradictory; and

WHEREAS, Section 138-26 (c)(7) of the Code establishes the process and parameters by which monthly rental rates for the air space occupied by balconies, which extend over a sidewalk of the City or a portion thereof, shall be determined; and

WHEREAS, the current process relies upon the Atlanta City Council ("Council") to set the monthly rental rates for the air space occupied without the benefit of an appraiser's expertise; and

WHEREAS, the city desires to establish a monthly rental rate that is equivalent to the appraised fair market value of air space occupied by bridges, tunnels and other structures which cross above or below the surface of the right-of-way and for balconies that extend into the right-of-way for the first ten years of the requisite agreement and subject to adjustments every ten (10) years thereafter based upon re-appraisal.

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

SECTION 1: That Chapter 138, Section 138-25(a) of the City Code of Atlanta which reads:

> (a) It shall be unlawful to erect a bridge, tunnel or similar structure which crosses any public street or public alley, whether above or below the surface of the right-of-way, for the purpose of providing a passageway between property or structures

adjacent to the right-of-way shall be permitted to be erected across any public street or public alley except upon the approval and authorization of the council by ordinance and upon compliance with all applicable sections of this Code and other ordinances of the city, including this sections, as follows:

(1) It shall be unlawful to place supports for any bridge or tunnel or any other obstructions shall be placed within the public right-of-way of any street or public alley or of any portion thereof set aside for or used for sidewalk purposes.

is hereby amended to read as follows :

(a) It shall be unlawful to erect a bridge, tunnel or similar structure which crosses any public street or public alley, whether above or below the surface of the right-of-way, for the purpose of providing a passageway between property or structures adjacent to the right-of-way ~~shall be permitted to be erected across any public street or public alley~~ except upon the approval and authorization of the council by ordinance and upon compliance with all applicable sections of this Code and other ordinances of the city, including this sections, as follows:

(1) It shall be unlawful to place supports for any bridge or tunnel or any other obstructions ~~shall be placed~~ within the public right-of-way of any street or public alley or of any portion thereof set aside for or used for sidewalk purposes.

SECTION 2: That Chapter 138, Section 138-25 (b)(3) a and b, which read:

(3) The owner, lessor or lessee shall pay to the city a monthly rental for the air space or subsurface space occupied by the bridge or tunnel, as follows:

a. The monthly rental rate for all bridges or tunnels used for pedestrian transportation or utility purposes only shall be determined by the council, on a per-cubic-foot basis, which shall be subject to change from time to time by ordinance and which shall be calculated by the outside dimensions of each such bridge or tunnel.

b. The monthly rental rate for each bridge or tunnel used for the sale of merchandise and mercantile displays shall be the fair market value of the space occupied by such bridge or tunnel, which rate per cubic foot shall be determined by the council annually after submission of an appraisal by a competent appraiser selected by the director, bureau of purchasing and real estate. A fee to cover the cost of such appraisal shall be paid by the owner, lessor or lessee. The appraisal shall be submitted in ordinance form and shall be reviewed and approved by the city utilities committee before submission to the council.

are hereby amended to read as follows:

(3) The owner, lessor or lessee shall pay to the city a monthly rental for the air space or subsurface space occupied by the bridge or tunnel, as follows:

a. The monthly rental rate for all bridges or tunnels used for pedestrian transportation or utility purposes only shall be **the fair market value** ~~**of the space occupied by the outside dimensions**~~ **of each such bridge or tunnel** ~~**on a per cubic foot basis**~~**, as determined by a certified general real estate appraiser selected by the chief procurement officer. A fee to cover the cost of such appraisal shall be paid by the owner, lessor or lessee. The appraisal shall be submitted to and shall be reviewed and approved by the city utilities committee before submission to the council. The monthly rate as determined by the appraiser shall be for an initial period of ten years from the execution date of the agreement and shall be subject to re-appraisal every ten (10) years**

b. To the extent currently authorized by other applicable sections of this Code, the monthly rental rate for each bridge or tunnel used for the sale of merchandise and mercantile displays, shall be the fair market value of the space occupied by such bridge or tunnel, which rate ~~**, on a per cubic foot basis**~~ shall be determined by ~~**the commissioner of public works annually after submission of an appraisal**~~ by a ~~**competent**~~ **certified general real estate** appraiser selected by the **chief procurement officer**. A fee to cover the cost of such appraisal shall be paid by the owner, lessor, or lessee. The appraisal shall be submitted ~~**in ordinance form and**~~ **to and** shall be reviewed and approved by the city utilities committee before submission to the council. **The monthly rate as determined by the appraiser shall be for an initial period of ten years from the execution date of the agreement and shall be subject to re-appraisal every ten (10) years.**

SECTION 3: That Chapter 138, Section 138-25 (b) (3) c, which currently reads:

c. The monthly rental rate for each bridge or tunnel used for the purpose of general advertising shall be determined by the fair market value of the space occupied by such bridge or tunnel and in accordance with standard advertising practices to establish such rate, which shall be determined by the council annually after submission of an appraisal by a competent appraiser selected by the director, bureau of purchasing and real estate. A fee to cover the cost of such appraisal shall be paid by the owner, lessor or lessee. The appraisal shall be submitted in an ordinance form and shall be reviewed and approved by the city utilities committee before submission to the council.

is hereby deleted in its entirety.

SECTION 4: That Chapter 138, Section 138-26 (c)(7), which reads:

c) The granting of permission to construct these balconies so as to extend over the public sidewalks shall be contingent upon the owner, lessor or lessee of the building onto which the balconies are constructed, the owner of the land upon which the building is erected and all creditors secured by all or a part of the land or building entering into an agreement with the city which shall include but not be limited to agreements by the owner or lessee of the building to which the balconies are attached to:

(7) Pay to the city a monthly rental for the air space occupied by the balconies extending over a sidewalk of the city or a portion thereof at a rate per square foot, as determined by the council, of the total area of the balconies, which rate per square foot shall be subject to change by the council by an amendment to the ordinance establishing those rates.

be hereby amended to read as follows:

c) The granting of permission to construct these balconies so as to extend over the public sidewalks shall be contingent upon the owner, lessor or lessee of the building onto which the balconies are constructed, the owner of the land upon which the building is erected and all creditors secured by all or a part of the land or building entering into an agreement with the city which shall include but not be limited to agreements by the owner or lessee of the building to which the balconies are attached to:

(7) Pay to the city a monthly rental for the air space occupied by the balconies extending over a sidewalk of the city or a portion thereof at a rate per square foot, as determined by the **Commissioner of Public Works** ~~of the total area of the balconies~~.

SECTION 5: That all ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

CITY COUNCIL
ATLANTA, GEORGIA

06- O -1947

AN ORDINANCE
BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND SECTIONS 138-25 AND 138-26 OF THE OFFICIAL CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA, TO AUTHORIZE THE COMMISSIONER OF PUBLIC WORKS TO DETERMINE THE MONTHLY RENTAL RATES FOR THE AIR SPACE OR SUBSURFACE SPACE OCCUPIED BY BRIDGES, TUNNELS OR SIMILAR STRUCTURES ACROSS STREETS OR ALLEYS AND BALCONIES OVER SIDEWALKS OF THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

WHEREAS, Section 138-25 (b)(3) (a) and (b) of the Code of Ordinances ("Code") of the City of Atlanta ("City") establishes the process and parameters by which monthly rental rates for the air space or subsurface space occupied by bridges or tunnels shall be determined; and

WHEREAS, Section 138-25 (b)(3)(c) of the Code establishes the process for advertising in the right-of-way, which is strictly prohibited by the Code and therefore contradictory; and

WHEREAS, Section 138-26 (c)(7) of the City Code establishes the process and parameters by which monthly rental rates for the air space occupied by balconies, which extend over a sidewalk of the City or a portion thereof, shall be determined; and

WHEREAS, the current process is arduous and time consuming and would be more efficiently carried out by the Commissioner of the Department of Public Works.

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

SECTION 1: Article II, Division 1, Chapter 138, Section 138-25 (b)(3) (a), (b), and (c), which reads:

(3) The owner, lessor or lessee shall pay to the city a monthly rental for the air space or subsurface space occupied by the bridge or tunnel, as follows:

a. The monthly rental rate for all bridges or tunnels used for pedestrian transportation or utility purposes only shall be determined by the council, on a per-cubic-foot basis, which shall be subject to change from time to time by ordinance and which shall be calculated by the outside dimensions of each such bridge or tunnel.

b. The monthly rental rate for each bridge or tunnel used for the sale of merchandise and mercantile displays shall be the fair market value of the space occupied by such bridge or tunnel, which rate per cubic foot shall be determined by the council annually after submission of an appraisal by a competent appraiser selected by the director, bureau of purchasing and real estate. A fee to cover the cost of such appraisal shall be paid by the

owner, lessor or lessee. The appraisal shall be submitted in ordinance form and shall be reviewed and approved by the city utilities committee before submission to the council.

c. The monthly rental rate for each bridge or tunnel used for the purpose of general advertising shall be determined by the fair market value of the space occupied by such bridge or tunnel and in accordance with standard advertising practices to establish such rate, which shall be determined by the council annually after submission of an appraisal by a competent appraiser selected by the director, bureau of purchasing and real estate. A fee to cover the cost of such appraisal shall be paid by the owner, lessor or lessee. The appraisal shall be submitted in an ordinance form and shall be reviewed and approved by the city utilities committee before submission to the council.

be hereby amended to read as follows:

(3) The owner, lessor or lessee shall pay to the city a monthly rental for the air space or subsurface space occupied by the bridge or tunnel, as follows:

a. The monthly rental rate for all bridges or tunnels used for pedestrian transportation or utility purposes only shall be determined by the **commissioner of public works**, on a per-cubic-foot basis, which shall be subject to change from time to time and which shall be calculated by the outside dimensions of each such bridge, tunnel, or similar structure..

b. The monthly rental rate for each bridge or tunnel used for the sale of merchandise and mercantile displays, to the extent currently allowed by other applicable code sections, shall be the fair market value of the space occupied by such bridge or tunnel, which rate per cubic foot shall be determined by the **commissioner of public works** annually after submission of an appraisal by a competent appraiser selected by the **chief procurement officer**. A fee to cover the cost of such appraisal shall be paid by the owner, lessor, or lessee. The appraisal shall be submitted in ordinance form and shall be reviewed and approved by the city utilities committee before submission to the council.

SECTION 2: Article II, Division 1, Chapter 138, Section 138-26 (c)(7), which reads:

c) The granting of permission to construct these balconies so as to extend over the public sidewalks shall be contingent upon the owner, lessor or lessee of the building onto which the balconies are constructed, the owner of the land upon which the building is erected and all creditors secured by all or a part of the land or building entering into an agreement with the city which shall include but not be limited to agreements by the owner or lessee of the building to which the balconies are attached to:

(7) Pay to the city a monthly rental for the air space occupied by the balconies extending over a sidewalk of the city or a portion thereof at a rate per square foot, as determined by the council, of the total area of the balconies, which rate per square foot shall be subject to change by the council by an amendment to the ordinance establishing those rates.

be hereby amended to read as follows:

c) The granting of permission to construct these balconies so as to extend over the public sidewalks shall be contingent upon the owner, lessor or lessee of the building onto which the balconies are constructed, the owner of the land upon which the building is erected and all creditors secured by all or a part of the land or building entering into an agreement with the city which shall include but not be limited to agreements by the owner or lessee of the building to which the balconies are attached to:

(7) Pay to the city a monthly rental for the air space occupied by the balconies extending over a sidewalk of the city or a portion thereof at a rate per square foot, as determined by the **commissioner of public works**, of the total area of the balconies.

SECTION 3: That all ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: GREG PRIDGEON**

Legislative Counsel (Signature):_Megan S. Middleton_____ Megan S. Middleton

Contact Number:__6207_____

Originating Department: _Public Works_____

Committee(s) of Purview: __City Utilities_____

Council Deadline:_August 15, 2006_____

Committee Meeting Date(s): August 29, 2006__ Full Council Date: Sept. 5, 2006

Commissioner Signature David E. Scott, P.E (EVJP)

CAPTION

AN ORDINANCE TO AMEND SECTIONS 138-25 AND 138-26 OF THE OFFICIAL CODE OF ORDINANCES OF THE CITY OF ATLANTA, GEORGIA, TO AUTHORIZE THE COMMISSIONER OF PUBLIC WORKS TO DETERMINE THE MONTHLY RENTAL RATES FOR THE AIR SPACE OR SUBSURFACE SPACE OCCUPIED BY BRIDGES, TUNNELS OR SIMILAR STRUCTURES ACROSS STREETS OR ALLEYS AND BALCONIES OVER SIDEWALKS OF THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) $00.00

Mayor's Staff Only

Received by Mayor's Office: 8/21/06 (date) Reviewed by:

Submitted to Council: 8/22/06 (date)