

A background image of a busy city street. In the foreground, a person is sitting on a ledge. To the right, there is an outdoor dining area with a red metal frame and people sitting at tables. In the background, there are trees and city buildings. A red vertical bar is visible in the top right corner.

19-0-1354

**“Right-of-Way Dining”
Ordinance**

PRESENTATION TO CITY UTILITIES COMMITTEE

COUNCIL MEMBER AMIR FAROKHI

10/29/19

Overview:
19-O-1354



Birmingham, AL



GOAL:

A street life to match our skyline.

Key Points

- ▶ Creates a permitting process through which eating and drinking establishments can operate on the sidewalk in the public right-of-way
 - ▶ Notably, this differs from “outdoor dining,” which already exists in city code, and refers to outdoor dining on private rather than public property.
- ▶ At the moment, there aren’t any regulations facilitating this behavior, which can lead to confusion and unintentional law breaking, such as operating in conflict with ADA sidewalk provisions
- ▶ Where the ordinance is in conflict with SPLs or other special zoning designations, those rules supersede the ability to obtain a permit
- ▶ The bill
 - ▶ 1) Regulates a current statutory grey area
 - ▶ 2) Improves quality of life and the dynamism of our public right-of-way
 - ▶ 3) Grows the economy by allowing businesses the chance to expand operations

Guidelines for Applicants

- ▶ 5' of sidewalk access must be left for the general public per ADA guidelines
- ▶ Applications cost \$250, with annual fees of \$250-\$1,000 based on square footage
- ▶ No amplified sound allowed in these areas
- ▶ Hours of operation are Sunday-Thursday 7am-11pm and Friday and Saturday 7am-12am
- ▶ Boundaries must be made clear with fencing, plant material, or other decorative barriers
- ▶ Only permissible “curbside” in areas with a speed limit of 35MPH or lower

Legislative Review

- ▶ This is the fourth time since 2009 that a “sidewalk dining” or “right-of-way dining” bill has been attempted in some form.
- ▶ Required coordination across the Law Dept. relating to Public Works, City Planning, and Public Safety.
- ▶ Ongoing dialogue with each of the major CIDs, to ensure that the bill meets with the approval of all of the city’s major commercial areas.
- ▶ The bill has already been through the Public Safety Committee, a 45-day zoning review process, and a public hearing since introduction.
- ▶ TODAY’S ASK: Vote to refer the bill to the Zoning Committee, as the amendments added today make this primarily a zoning paper.

Answers to
Questions
from CUC's
Oct. 13
Meeting



New Orleans, LA

Questions from Council Member Hillis

- ▶ ***“Will Public Works make sure that sidewalks are up to code before handing out permits? If not, is the restaurant responsible for repairs?”***
 - ▶ Yes, DPW will inspect the quality of the sidewalks as part of a site review
 - ▶ The business owner would incur the costs, but would have the option to rescind their request for the permit if the repairs are too expensive
- ▶ ***“What’s the fine (as of today) for illegally blocking the public right of way?”***
 - ▶ \$1,500 is the maximum fine whether in violation of the ADA or other law
 - ▶ This is a question of code enforcement
 - ▶ The proposed ordinance allows people to pay for use of this space, and should not lead to an increase in illegal behavior

Questions from Council Member Matzigkeit

- ▶ **“Can someone walk us through the fee study?”** (presentation following)
- ▶ **“Where will the proceeds go?”**
 - ▶ The proceeds should be minimal as Public Works can speak to, but under the amended bill, at the request of CUC, any revenue will go towards sidewalk repair and construction
- ▶ **“Is outdoor dining on private property separate from this bill?”**
 - ▶ Yes, “outdoor dining” and “right-of-way dining” would be separately defined under city code.

Questions from Council Member Sheperd

▶ ***“Can you speak to the width requirements of the sidewalks?”***

- ▶ In accordance with ADA guidelines, there needs to be 5' of unimpeded sidewalk remaining for the public after the use of a restaurant

▶ ***“What is the cost of a permit and won't this be a burden on small or low-income businesses?”***

- ▶ There is a one-time \$250 application fee, and then \$500 every 250 sq. ft. of public space being used
- ▶ Small businesses don't take a hit because this is completely optional. If they want to apply for this additional space and pay the associated costs that's up to them.

▶ ***“Are there zoning concerns to be dealt with?”***

- ▶ Yes, In cases where an SPI or other specially designated area exists, then the rules governing that space hold. It would be up to those special zones to amend their rules if they wanted access to this permitting process.

Questions from Council Member Shook

- ▶ ***“Has this been to the NPUs? What were their comments?”***
 - ▶ This bill has been through the entire 45-day zoning review process and a public hearing has been held. There were no concerns expressed by the NPUs.
- ▶ ***“Is there a revenue projection from the fee study?”***
 - ▶ This will be covered in the succeeding presentation

Questions from Council Member Smith

- ▶ ***“Can you explain the amendment to this bill?”***
 - ▶ A line has been inserted to say that this bill is subject to zoning rules, which simply means that where in conflict with special zoning districts, the rules governing those districts still apply
 - ▶ The amendment also now includes the requested dedication of revenue to sidewalk repair and maintenance
- ▶ ***“Will the Law Dept. let us know if dedicating the funds is legal?”***
 - ▶ Yes. The Law Department believes it to be legal and approved the new language to that effect.
- ▶ ***“Can we ensure that wait staff will follow ‘TIP rules’ surrounding alcohol?”***
 - ▶ The same rules governing any restaurant in the City holding a license to serve alcohol apply here

Questions from Council Member Winslow

▶ ***“Who asked for this?”***

- ▶ There have been four efforts since 2009 to pass a comprehensive right-of-way dining ordinance, each breaking down at various stages for different reasons
- ▶ This effort began roughly 10 months ago when the city’s Commercial Improvement Districts approached my office

▶ ***“For narrower setups, can restaurants use bar stools and less traditional configurations to make the most of their space?”***

- ▶ Yes. So long as restaurants leave the 5’ of unimpeded space required, they can use the permitted space how they like

▶ ***“Why are we doing this? What problem are we solving?”***

- ▶ There is a desire, particularly within the major commercial corridors, to allow restaurants to become more fully integrated with the public space.
- ▶ This is a boost for the city’s economy. It also increases quality of life for residents looking to live and work in spaces with vibrant, dynamic use of space.



Questions?