

**AN ORDINANCE**

**AMENDING**, the Municipal Code of the City of Marietta.

**NOW, THEREFORE BE IT HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MARIETTA, GEORGIA, THAT:**

**Section 1:** Chapter 8-39, Outdoor Cafes, is hereby amended as follows:

**8-39-010 Purpose**

This chapter shall apply to the establishment, operation and maintenance of all outdoor cafes within the Central Business District (CBD). The purpose of this chapter is to promote the general economic development and atmosphere of the CBD for the benefit of all businesses and citizens located there, and no right of individuals or individual businesses are created therein, and to create an aesthetic ambiance which will attract tourists to the Historic Marietta Square. Further, this chapter is designed to allow an array of café tables adjacent to a restaurant allowing pedestrians to stroll by while customers dine undisturbed and shall not impede the efficiency of the pedestrian path. The chapter shall not permit single or multiple tables or displays by organizations, establishments or businesses for vending goods, for distributing information or for displaying goods as these activities encourage people to stop, loiter, perhaps bargain, engage in dialogue or obtain correct change, all of which potentially impedes the efficiency of the pedestrian path, and conflicts with the city's style and ambience which the city seeks to preserve on the Historic Marietta Square. The city manager and zoning administrator shall have broad discretion to grant, modify, or revoke permits pursuant to this chapter in the interests of improving the public health, safety, and welfare.

**8-39-020 Definitions**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

“Design requirements” means the standards adopted with this chapter that shall guide design and materials in encroachment areas.

“Encroachment” means tables, umbrellas, chairs, or objects related to the business on the public right-of-way, sidewalk or common area on public property.

“Outdoor café” means the placing, locating, or permitting of the placing or location of chairs and tables on the right-of-way, such as sidewalks, adjacent to a business licensed to operate as an eating establishment where food and other refreshments are served or upon public property within designated areas.

“Permittee” means the recipient of an encroachment permit under this chapter.

“Sidewalk” means that area of public right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property lines reserved for pedestrian traffic, not including street crossings.

“Zoning administrator” means the director of development services or the person authorized by the director of development services to enforce this chapter.

**8-39-030 Prohibited Conduct.**

- A. Under this chapter, no merchant, vendor, business or property owner shall:
1. Place any tables, or chairs on any portion of the public property other than that directly in front of his existing place of business without the written consent of adjacent landowners and businesses. In no event shall such items be placed in the landscaped areas and tree wells or extend beyond the authorized 25 feet from each side of the owner’s business.
  2. Block or restrict the passageway to less than four feet in width or block the ingress/egress to any building. Also, no items shall be placed so as to block any driveway, crosswalk, or counter service window.
  3. Arrange the café tables and chairs so as to impede the efficiency of the pedestrian path. In areas of congested pedestrian activity, the zoning administrator is authorized to require a wider pedestrian path for the protection and welfare of the public.
  4. Place or allow single or multiple tables or displays by organizations, establishments or businesses for vending goods, for distributing information or for displaying goods in the permitted encroachment as these activities encourage people to stop, loiter, perhaps bargain, engage in dialogue or obtain correct change, all of which potentially impedes the efficiency of the pedestrian path, and conflicts with the city’s style and ambience which the city seeks to preserve on the Historic Marietta Square, unless sidewalk sale, festival or other appropriate permits have been granted.
  5. Sublicense the encroachment area separately to non-occupants of the premises.
  6. Place objects around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier.
  7. Use tables, chairs, umbrellas and any other objects of such quality, design, materials, and workmanship that are not approved or otherwise authorized by the zoning administrator.
  8. Use umbrellas or other decorative material which are not fire retardant, pressure treated, or manufactured of fire resistive material.
  9. Fail to secure permission of the landlord where a building has multiple occupants.
  10. Vend or display without the insurance coverage specified.

11. Sound or permit the sounding of any device on the public property which produces a loud noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device in violation of the noise regulations in Chapter 10-4-020. The city reserves the right to decrease noise levels of businesses if interfering with public activities of the Central Business District.
  12. Fail to daily pick up, remove and dispose of all trash or refuse left by the business on the public right-of-way.
  13. Store, park, or leave any stand or items overnight on any street or sidewalk except for tables and chairs which may be kept in the permitted area at the permittee's risk.
  14. Store, park, or leave any vehicle, truck, or trailer within the encroachment area.
  15. Use the encroachment area to place, display, or sell nonfood merchandise.
  16. Use the encroachment area to stock or store tables, chairs, or other items not in use.
  17. Fail to daily remove from the public right-of-way all grease, stains, food spots, etc. caused by the operation of the outdoor café.
  18. Allow customers to use or inhale, exhale, burn, or carry any lighted cigar, cigarette, pipe, electronic cigarettes, weed, plant or other combustible substance in any manner or form. A notice shall be placed on each table informing customers that such conduct is not allowed.
- B. The encroachment permit is a temporary license which may be denied, suspended or revoked for any conduct which is contrary to the section or for conduct of the business in such a manner as to create a public nuisance or constitute a danger to the operator's or public's health, safety, or welfare. No property right is created by this article, and the decision of the city manager shall be final.

**8-39-040 Permit Required.**

- A. It shall be unlawful for any person to create, establish, operate, maintain or otherwise be engaged in the business of running an outdoor café or place outdoor display café items upon the sidewalks or public property in the zoned CBD in the City unless he shall hold a currently valid permit issued under the terms of this chapter.
- B. A permit shall be issued only to a validly licensed business that wished to provide cafe tables and chairs on the public property directly adjacent to the business for an outdoor café to be used by the general public.
- C. A permit shall only be issued for the operation of an outdoor café directly adjacent to and by a restaurant which receives over 50 percent of its annual revenue from the sale of prepared food items including soft drinks and coffee.

**8-39-050 Application.**

- A. Application for a permit required by this division shall be made at the planning office in a form prepared and deemed appropriate by the zoning

administrator. Such application shall include but is not limited to the following information:

1. Contact information for the applicant, including but not limited to, name, home and business address, email address and phone number; and contact information for the owner of the business, if other than the applicant, including but not limited to, name, home and business address, email address and phone number.
  2. Contact information, including but not limited to, name, home address, email address and phone number of a responsible person whom the city may notify or contact at any time concerning the applicant's encroachment.
  3. A copy of a valid business license to operate a business establishment adjacent to the public property, which is the subject of the application.
  4. Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the encroachment permit. The policy shall be renewed by the zoning administration for verification that the insurance adequately protects the city and meets the intent of this section. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advanced written notice to the city. The policy shall be a minimum of \$1,000,000 or higher, if deemed necessary by the city attorney.
  5. A sketch to scale of the proposed location showing the layout and dimensions of the existing public area and adjacent private property.
  6. Proof of any required ABC license, health permits or other state permits for the business involved.
  7. Photographs, drawings, or manufacturer's brochures fully describing the appearance of tall proposed tables, chairs, umbrellas, or other objects related to the business. Umbrellas shall not have advertising on them and shall be placed so that they do not pose a hazard to pedestrians. Plastic tables and chairs shall not be allowed.
- B. Not later than 15 days after the filing of a complete application for a temporary encroachment permit, the applicant shall be notified by the planning office of the decision on the issuance or denial of the permit. Upon issuance of the permit, an annual fee shall be due and payable as follows:
- The encroachment area will be charged at a rate of \$2.00 per square foot with a minimum annual charge of \$50.00. However, the March 14, 2020 declaration of a Public Health State of Emergency and subsequent executive orders issued by Georgia Governor Brian Kemp require, among other things, that restaurants and dining rooms enforce social distancing. Due to the impact of these requirements, the encroachment area will be charged at a rate of \$1.00 per square foot with a minimum charge of \$50.00 until August 31, 2020.
  - This fee is in addition to the business license required for operation within the city. Only new permits shall be prorated on a quarterly basis.

- No fees shall be charged for encroachments solely for the purpose of beautification, but all other provisions of this sections shall apply.
- C. Application for a permit shall be made at the planning office within 48 hours of written notice for failure to obtain a permit. Where the same owner, occupant, or person responsible has been given written notice for the same violation at the same location within the previous 180 days, such requirements of written notice may be waived, and legal proceedings commenced immediately.

**8-39-060 For and condition of permit.**

The permit required by this chapter shall be issued on a form prepared and deemed suitable by the zoning administrator. In addition to naming the permittee and any other information deemed appropriate by the zoning administrator, the permit shall contain the following conditions:

1. The permit issued shall be personal to the permittee, only, and shall not be transferable in any manner.
2. The permit may be suspended by the zoning administrator when necessary to clear the public property for public safety or for a community or special event authorized by a permit issued by the city.
3. The zoning administrator may require the temporary removal of items within the encroachment area when street, sidewalk, common areas or utility repairs necessitate such action.
4. The permit shall be specifically limited to the area shown on the site plan attached to and made part of the permit.
5. The encroachment 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 on a periodic basis during the day and again at the close of each business day.
6. No advertising is allowed in the encroachment area except for the posting of menu items or prices on approved equipment or objects.
7. No tables and chairs or any other parts of the business shall be attached, chained, or in any manner affixed to any tree, post, sign, other fixture, curb or sidewalk within or near the permitted area. No additional outdoor seating authorized in this article shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of an ABC license for any establishment or be used as the basis for computing required seating for restaurants and dining rooms or as grounds for claiming exemption from such requirements under the provisions of any city ordinance or state law.
8. The issuance of a permit does not grant or infer vested rights to use of the area by the permittee. The city retains the right to deny the issuance of a permit or the renewal of a permit for any reason.
9. Tables, chairs, umbrellas, and any other objects provided shall be maintained with a clean and attractive appearance and shall be kept safe and in good repair at all times.
10. The city retains the right to suspend the privilege of using glass containers within the encroachment area during major festivals and events and when streets are closed. The use of glass containers will be revoked if an incident jeopardizes the

health, safety and welfare of customers or the general public. Any violation of state or local laws will also result in a revocation of this privilege. Repeated offenses may result in revocation or denial of the encroachment permit.

**8-39-070 Denial, revocation or suspension; removal and storage fees; emergencies.**

- A. Under this chapter, the zoning administrator or designee may deny, revoke, or suspend a permit at any time for any business authorized in the city if it is found that:
  - 1. Any necessary business or health permit has been suspended, revoked or canceled.
  - 2. The permittee does not have insurance in force which is correct and effective in the minimum amount described herein.
  - 3. Changing conditions of pedestrian or vehicular traffic cause congestion necessitating removal of the encroachment. Such decision shall be based upon findings of the zoning administrator that the minimum four-foot pedestrian path is insufficient under existing circumstances and represents a danger to the health, safety, or general welfare of pedestrians or vehicular traffic.
  - 4. The permittee has failed to correct violations of this chapter or conditions of his permit upon receipt of the zoning administrator's notice of violations delivered in writing to the permittee.
  - 5. The permittee has failed to take positive actions to prohibit violations from recurring.
  - 6. The permittee has failed to make modifications upon receipt of the zoning administrator's notice of modifications delivered in writing to the permittee.
- B. Tables, chairs and other vestiges of the business may be removed by the public works office, and a reasonable fee shall be charged for labor, transportation, and storage; if the permittee fails to remove the items within 36 hours of receipt of the zoning administrator's final notice to do so for any reason provided for under this chapter. If the action is taken based on Subsection A.2 or A.3 of this section, the action shall become effective upon the receipt of such notice, and the permittee shall have four hours to remove the items.
- C. Upon denial or revocation, the zoning administrator shall give notice of such action to the applicant or the permittee in writing stating the action which has been taken and the reason thereof. The action shall be effective upon giving such notice to the permittee.
- D. The permittee shall have the right to appeal the decision of the zoning administrator to the city manager within five working days from receipt of notice. An appeal does not stay the denial or revocation of the encroachment permit. The hearing shall be held within two working days from the date of notice of the request. The permittee or applicant may be represented by an attorney and may present witnesses, affidavits and any relevant documentary evidence. Formal rules of evidence shall not apply. The city manager or his designee shall notify the permittee or applicant of the determination in writing.
- E. Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine or imprisonment or by both. Each day any violation of this section shall continue shall constitute a separate offense.

**8-39-080 Indemnity.**

As part of the permitting process set forth herein, any person or entity receiving a permit set forth herein shall execute an indemnity agreement indemnifying and releasing the City of Marietta, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever.

**8-39-090 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.

**8-39-100 Liability**

The city shall not be liable to any permittee or any license holder for any damage, loss, inconvenience, business interruption, demolition, loss of business, loss of property or any other loss as a result of any public safety emergency vehicle responding to an emergency call which must encroach upon the public right-of-way of the City of Marietta.

**Section 5:** It is hereby declared to be the intention of this Ordinance that its sections, paragraphs, sentences, clauses and phrases are severable and if any section, paragraph, sentence, clause or phrase of this Ordinance is declared to be unconstitutional or invalid, it shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance.

**Section 6:** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**Section 7:** This Ordinance shall become effective upon the signature or without the signature of the Mayor, subject to Georgia laws 1983, page 4119.

**Final Ordinance submitted by:**

  
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**Rusty Roth, Director**  
**Department of Development Services**

**Approved as to form:**

  
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**Douglas R. Haynie, City Attorney**

**Approved by City Council:**

**APPROVED:**

**DATE:** May 13, 2020

  
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**Steve Tumlin, Mayor**

**ATTEST:**

*Stephanie Guy*  
\_\_\_\_\_  
**Stephanie Guy, City Clerk**