

AN ORDINANCE BY COUNCILMEMBER

Hay Norwood
C. T. Martin

AN ORDINANCE TO AMEND CHAPTER 30, ARTICLE XXIII, OF THE CITY OF ATLANTA CODE OF ORDINANCES, (VENDING ON PUBLIC PROPERTY), IN ORDER TO CLARIFY THAT VENDORS SELLING ICE CREAM OR OTHER PRE-PACKAGED FOOD AND/OR NON-ALCOHOLIC PRE-PACKAGED BEVERAGES FROM MOTOR VEHICLES ARE SUBJECT TO THE PUBLIC PROPERTY VENDING CODE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta Charter provides that the City of Atlanta may lease, regulate the use of, and control public ways located in the City of Atlanta. Atlanta City Charter, 2-102(c)(14); and

WHEREAS, “[t]he streets [and public ways] belong to the public and are primarily for the use of the public in the ordinary way. Their use for the purposes of gain is special and extraordinary, and, generally at least, may be prohibited or conditioned as the legislature deems proper.” Packard v. Banton, 264 U.S. 140, 144 (1924); Schlesinger v. City of Atlanta, 129 S.E. 861, 867 (1925) (individuals do not have the inherent right to conduct their private businesses in the streets and public property of a city, and a city may prohibit such business activities); and

WHEREAS, the City of Atlanta’s Ordinances regulating the use of the public right of way for vending purposes is located at Chapter 30, Article XXIII of the City of Atlanta Code of Ordinances (the Public Property Vending Code); and

WHEREAS, Section 30-1426 sets forth that “[n]o public property vending shall occur without a permit issued pursuant to” Article XXIII; and

WHEREAS, public property vending includes vendors selling ice cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of motor vehicles in the manner typical of “ice cream trucks”; and

WHEREAS, nevertheless, there has been some confusion regarding the applicability of the Public Property Vending Code to such vendors; and

WHEREAS, it is the desire of the Atlanta City Council to amend the Public Property Vending Code in order to clarify that vendors selling ice cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages in the manner typical of “ice cream trucks” are subject to the Public Property Vending Code.

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

Section 1: That Chapter 30, Article XXIII, Division 1, Section 30-1404 of the City of Atlanta Code of Ordinances is hereby amended such that Section 30-1404 shall read as follows:

Sec. 30-1404. - Littering.

All vendors engaged in the sale of pre-packaged food, non-alcoholic pre-packaged beverages, prepared food, and/or prepared non-alcoholic beverages shall affix to their vending cart, or motor vehicle, or shall locate directly outside the kiosk ~~or~~ food truck, or motor vehicle a receptacle for trash, which shall be maintained and emptied regularly and which shall be marked as being for trash. Vendors engaged in the sale of the items permissible for sale listed in this section are responsible for the removal of trash within a 25-foot radius surrounding the vending cart, kiosk or food truck.

Section 2: That Chapter 30, Article XXIII, Division 1, Section 30-1405 of the City of Atlanta Code of Ordinances is hereby amended such that Section 30-1405 shall read as follows:

Sec. 30-1405. - Aesthetic standards.

Vending is permitted from kiosks, vending carts, ~~and~~ food trucks, and motor vehicles in accordance with Section 30-1436 only. Vending carts must comply with the following aesthetic standards:

- (a) Length of the cart may not exceed seven feet and width may not exceed four feet height-excluding canopies, umbrellas, or transparent enclosures-may not exceed five feet;
- (b) Umbrellas or canopies shall have a minimum clearance of seven feet and a maximum height of nine feet six inches above the sidewalk;
- (c) Umbrellas or canopies may not exceed 48 square feet (eight feet × six feet);
- (d) All carts must be mobile, and able to roll on wheels;
- (e) The design, materials, and colors are to be of natural wood or metal products and considerate of the immediate surroundings of the proposed location;
- (f) Materials must be in working order, and may not include peeling paint, visible defects or areas requiring maintenance;
- (g) The wheels located under the cart are preferred, however projecting wheels must have fenders; and
- (h) Hitches attached to the cart must be removable and detached when in operation;
- (i) If used, propane tanks must be enclosed.

Section 3: That Chapter 30, Article XXIII, Division 2, Section 30-1426 of the City of Atlanta Code of Ordinances is hereby amended such that Section 30-1426 shall read as follows:

Sec. 30-1426. - Vendor permit and business license required.

- (a) No public property vending shall occur without a permit issued pursuant to this article, except that no permit shall be required for persons selling newspapers at-large other than from a fixed location on public property.
- (b) Except for Vendors Selling Ice Cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of Motor Vehicles as prescribed in Section 30-1436, Public property vending shall be permitted only on the location or designated food truck area stated on the permit. This permit requirement is in addition to any general business license required or other special permission requirement.
- (c) No person shall engage in the business or trade of vending without first obtaining a business license. Disabled veterans and blind persons, as defined by O.C.G.A. § 43-12-1, are exempt from payment of business license fees, but must obtain such licenses.
- (d) All valid vendor permits are nontransferable, and must be displayed in clear view, together with the vending permit photo identification card, at the permitted location or designated food truck area at all times when the vendor or assistant vendor is present.
- (e) All valid vendor permits shall indicate if the permit authorizes the sale of licensed branded merchandise.

Section 4: That Chapter 30, Article XXIII, Division 2, Section 30-1436 of the City of Atlanta Code of Ordinances, currently Reserved, is hereby amended such that Section 30-1436 shall read as follows:

Sec. 30-1436. – Vendors Selling Ice Cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of Motor Vehicles.

- (a) Vendors Selling Ice Cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of Motor Vehicles shall be subject to this Section. This Section shall not apply to Food Truck Vendors operating from a Designated Food Truck Area. Vendors permitted in accordance with this Section shall not be permitted to sell Prepared Food or Prepared Non-alcoholic Beverages.
- (b) Every Vendor Selling Ice Cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of Motor Vehicles pursuant to this Section shall, before making any sale, park the vehicle at the right curb and at least eight feet from any other vehicle that may be parked on the street and not less than 100 feet from any intersecting street. When the vending vehicle stops, all sound

equipment or other devices used to notify customers of the presence of the vendor shall be stopped and shall not be resumed until the vehicle is again put in motion.

- (c) No vehicle using sound equipment or other method of attracting customers shall operate such equipment before 9:00 a.m. or after 9:00 p.m. daily or between the hours of 9:30 a.m. and 12:00 noon on Sundays. Furthermore, such equipment shall not be operated within one block of a church between the hours of 7:00 a.m. and 9:00 p.m. on Sundays. No motor vehicle shall be operated within 600 feet of any public school in the City between the hours of 7:30 a.m. and 3:30 p.m. on days in which schools are actually in session.
- (d) Vendors selling Ice Cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of Motor Vehicles pursuant to this Section, shall not stop or stand and do business for more than 30 minutes.
- (e) Vendors selling Ice Cream or other Pre-packaged Food and/or Non-alcoholic Pre-packaged Beverages out of Motor Vehicles pursuant to this Section shall not be restricted to an Operational Area, Valid Vendor Location selected via a Lottery-type Selection Process, or Location specifically described in Section 30-1431.

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

Section 6: This Ordinance shall become effective immediately upon its approval.

AAR

A true copy,

Municipal Clerk

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

DEC 01, 2014
DEC 10, 2014

2014-56 (14-O-1591)

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