

#5

13-0-1198  
*[Handwritten signatures and scribbles]*

**First Reading**

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair *[Signature]*  
Referred To \_\_\_\_\_

**FINAL COUNCIL ACTION**  
 2<sup>nd</sup>  1<sup>st</sup> & 2<sup>nd</sup>  3<sup>rd</sup>  
**Readings**  
 Consent  V Vote  RC Vo

**AN ORDINANCE**  
**BY: COUNCILMEMBERS MICHAEL JULIAN BOND, C.T. MARTIN AND KWANZA HALL**

**AN ORDINANCE TO REPEAL CHAPTER 30, ARTICLE XXIII, (VENDING ON PUBLIC PROPERTY), IN ITS ENTIRETY; TO AMEND CHAPTER 30, ARTICLE XXIII TO CREATE TEMPORARY VENDING REGULATIONS; TO ALLOW PERSONS WHO IN 2012 POSSESSED PERMITS TO VEND ON PUBLIC PROPERTY EITHER IN KIOSKS INSTALLED IN THE CITY'S RIGHT OF WAY OR AT LOCATIONS NEAR TURNER FIELD TO APPLY FOR TEMPORARY VENDING PERMITS TO VEND AT THOSE SAME LOCATIONS; TO PROVIDE FOR THE EXPIRATION OF THE TEMPORARY PUBLIC PROPERTY VENDING REGULATIONS AND ALL TEMPORARY VENDING PERMITS ON DECEMBER 31, 2013; TO WAIVE CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.**

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1<sup>ST</sup> ADOPT 2<sup>ND</sup> READ & REFER
- PERSONAL PAPER REFER

Date Referred: *7/15/13*  
Referred To: *Public Safety*  
Date Referred: *9/16/13*  
Referred To: *PSELA*  
Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_

**PSLA** Committee  
Date *7/29/13*  
Chair *[Signature]*  
Action *[Signature]*  
Fav. Adv. Hold (see rev. side)  
Other *5 years / Max - kiosk*  
Members *[Signature]*  
Refer To *[Signature]*

**PSLA** Committee  
Date *10/29/13*  
Chair *[Signature]*  
Action *[Signature]*  
Fav. Adv. Hold (see rev. side)  
Other *File*  
Members *[Signature]*  
Refer To \_\_\_\_\_

**PSLA** Committee  
Date *10/1/13*  
Chair *[Signature]*  
Action *[Signature]*  
Fav. Adv. Hold (see rev. side)  
Other \_\_\_\_\_  
Members *[Signature]*  
**FILED**  
**NOV 04 2013**  
*By Council*  
Refer To \_\_\_\_\_

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Action \_\_\_\_\_  
Fav. Adv. Hold (see rev. side)  
Other \_\_\_\_\_  
Members \_\_\_\_\_  
Refer To \_\_\_\_\_

**CERTIFIED**  
NOV 04 2013  
ATLANTA CITY COUNCIL PRESIDENT  
*[Signature]*  
**CERTIFIED**  
NOV 04 2013  
Ronda Duesler Johnson  
MUNICIPAL CLERK

**MAYOR'S ACTION**

RCS# 3116  
11/04/13  
2:20 PM

Atlanta City Council

13-O-1198

REPEAL COA CODE CHAPTER 30; VENDING ON  
PUBLIC PROPERTY  
FILE

YEAS: 14  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 1  
EXCUSED: 0  
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	B Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

13-O-1198

AN ORDINANCE BY

COUNCILMEMBERS MICHAEL JULIAN BOND, C.T. MARTIN AND KWANZA HALL

AN ORDINANCE TO REPEAL CHAPTER 30, ARTICLE XXIII, (VENDING ON PUBLIC PROPERTY), IN ITS ENTIRETY; TO AMEND CHAPTER 30, ARTICLE XXIII TO CREATE TEMPORARY VENDING REGULATIONS; TO ALLOW PERSONS WHO IN 2012 POSSESSED PERMITS TO VEND ON PUBLIC PROPERTY EITHER IN KIOSKS INSTALLED IN THE CITY'S RIGHT OF WAY OR AT LOCATIONS NEAR TURNER FIELD TO APPLY FOR TEMPORARY VENDING PERMITS TO VEND AT THOSE SAME LOCATIONS; TO PROVIDE FOR THE EXPIRATION OF THE TEMPORARY PUBLIC PROPERTY VENDING REGULATIONS AND ALL TEMPORARY VENDING PERMITS ON DECEMBER 31, 2013; TO WAIVE CONFLICTING ORDINANCES; 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, on September 2, 2008, the Atlanta City Council adopted 08-O-1220, which was approved by the Mayor on September 8, 2008; and

WHEREAS, 08-O-1220 amended Chapter 30, Article XXIII of the City of Atlanta Code of Ordinances to create a Public Property Vending Management Program coordinated under a contract with a Public Property Vending Management Company which would manage public property vending in the City of Atlanta; and

WHEREAS, following the passage of 08-O-1220, certain parties were issued permits to vend within the Public Property Vending Management Program in accordance with the prescriptions contained in Chapter 30, Article XXIII as amended by 08-O-1220; and

WHEREAS, due to various delays in the implementation of the Public Property Vending Management Program, other parties were permitted, though various temporary legislative and administrative actions, to continue to vend pursuant to permits issued pursuant to Chapter 30, Article XXIII as it existed during calendar year 2003; and

**WHEREAS**, on July 28, 2011, a lawsuit was filed in the Superior Court of Fulton County challenging the constitutionality of the Public Property Vending Ordinances enacted pursuant to 08-O-1220, and the resulting Public Property Vending Management Agreement. *Larry Miller and Stanley Hambrick v. City of Atlanta*, 2011CV203707; and

**WHEREAS**, on December 21, 2012, the Superior Court issued an Order declaring The Public Property Vending Ordinances and the Public Property Vending Management Agreement void and without effect; and

**WHEREAS**, as a result, Chapter 30, Article XXIII is now void and without effect; and

**WHEREAS**, therefore, no public property vending permits may be issued thereunder, and those previously so issued are no longer in effect; and

**WHEREAS**, the continued public property vending of those who were issued permits during the 2003 calendar year is no longer permitted as Chapter 30, Article XXIII, as it existed prior to the approval of 08-O-1220 was lawfully repealed by the Atlanta City Council; and

**WHEREAS**, in accordance with the December 21, 2012 Superior Court Order, it is the desire of the Atlanta City Council to remove the void text of Chapter 30, Article XXIII from the City of Atlanta Code of Ordinances; and

**WHEREAS**, it is the desire of the City of Atlanta to develop a new permanent public property vending program; and

**WHEREAS**, it is the desire of the Atlanta City Council that certain persons vending during calendar year 2012 be permitted to apply for temporary public property vending permits to allow them to continue vending between the removal of the void text of Chapter 30, Article XXIII from the City of Atlanta Code of Ordinances and the eventual approval of a new permanent public property vending program; and

**WHEREAS**, in an attempt to develop a new permanent public property vending program, the City of Atlanta is reviewing various examples of public property vending programs across the United States and assessing the unique needs of the City of Atlanta as they relate to public property vending; and

**WHEREAS**, in doing so the City of Atlanta is considering the inclusion of certain locations previously determined to be suitable for public property vending; and

**WHEREAS**, the locations wherein kiosks have been installed in the City's right of way have previously been determined to be suitable for public property vending; and

**WHEREAS**, because the City of Atlanta has previously established a desire to promote vending on property in connection with events held at athletic venues having a seating capacity in excess of 3,500, ACC §§ 1461; 1468, and thus, locations near Turner Field have previously been determined to be suitable for public property vending; and

**WHEREAS**, the City of Atlanta is considering the inclusion of the kiosk locations and the public property vending locations established prior to the approval of 08-O-1220 near Turner Field in a permanent public property vending program; and

**WHEREAS**, during the City's development of a permanent public property vending program, it is the desire of the Atlanta City Council to re-create the status-quo as it existed before the issuance of the Court's Order in Larry Miller and Stanley Hambrick v. City of Atlanta, 2011CV203707 as it relates to persons vending at the locations being considered for inclusion in a permanent public property vending program; and

**WHEREAS**, it is the desire of the Atlanta City Council that individuals previously issued permits to vend at the kiosk locations and the public property vending locations established prior to the approval of 08-O-1220 near Turner Field have the opportunity to apply for temporary permits to vend at their previously assigned kiosk and Turner Field vending locations; and

**WHEREAS**, it is the desire of the Atlanta City Council to adopt temporary regulations which shall govern those granted temporary public property vending permits; and

**WHEREAS**, it is the desire that all fees associated with the issuance of temporary public property vending permits be identical to those applicable to private property vending permits issued pursuant to Chapter 30, Article XXIV, and established by Ordinance 04-O-0615; and

**WHEREAS**, it is the desire of the Atlanta City Council that all temporary public property vending regulations created by the approval of this Ordinance, and all temporary public property vending permits issued in accordance with this Ordinance shall expire on December 31, 2013.

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

**Section 1:** That Chapter 30, Article XXIII of the City of Atlanta Code of Ordinances, (Vending on Public Property), is hereby amended by repealing the text thereof, as set forth in Exhibit A, in its entirety.

**Section 2:** That Chapter 30, Article XXIII shall be amended such as it shall read as follows:

**DIVISION 1. - GENERALLY**

**Sec. 30-1400. - Definitions.**

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

*Assistant vendor* means a person who assists a vendor at the vendor's assigned vending site.

*Blind person* means a person whose vision, with correcting glasses, is so defective as to prevent the performance of activities for which eyesight is essential. See O.C.G.A. § 49-4-51(b).

*Class C food vending station* means a fully enclosed, self-contained, non-motor vehicle that is approved by the Fulton County health department for the purpose of vending on city streets or from a public assigned location.

*Disabled individual* means an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment or being regarded as having such impairment as determined by the Americans with Disabilities Act of 1990.

*Disabled veteran* means a resident of the state who may be either a war veteran or veteran of peace-time service as set forth below and such person must obtain a certificate of exemption issued by the state commissioner of veterans' service.

- (1) A war veteran must furnish satisfactory proof that the veteran has a physical handicap which is disabling to the extent of ten percent or more; that the veteran's service in the armed forces of the United States was terminated under conditions other than dishonorable; and that the veteran's service or some part thereof was rendered during a war period, as defined by an act of the Congress of the United States, approved March 20, 1933, entitled, "An Act to Maintain the Credit of the United States," and commonly known as PL 2, 73rd Congress; or that some part of the veteran's service was rendered on or after December 7, 1941 and before December 31, 1946; or that some part of the veteran's service was rendered on or after June 27, 1950 and before January 31, 1955; or that some part of the veteran's service was rendered on or after August 5, 1946, and before May 8, 1975. Proof of such ten percent disability shall be established upon the written certificate of two physicians as to such disability or by letter or other written evidence from the United States Department of Veterans Affairs stating the degree of disability or by written evidence from the branch of the armed forces of the United States in which such veteran served.
- (2) A veteran of peacetime service in the United States armed forces must furnish proof that the veteran has a physical disability to the extent of 25 percent or more incurred in the line of duty during the period of such service by a letter or other evidence from the United States Department of Veterans Affairs stating the degree of disability or by written evidence, from the branch of armed forces of the United States in which such veteran served, that the veteran's service in the armed forces of the United States was terminated under conditions other than dishonorable.

- (3) That disabled veterans and blind persons shall only have to show proof of their disability upon their initial application, as opposed to annually. If the current language of O.C.G.A. § 43-12-2 is amended, then this definition of disabled veteran shall be controlled by O.C.G.A. § 43-12-2, as amended.

*Display goods for sale or distribution* means the act of offering goods for sale or the act of free distribution of goods by display or arrangement of the goods on a table, stand, or ground cover or by offering such goods from the hands of individuals.

*Household* means a principal place of abode comprised of a group of persons constituting a distinct domestic or social body living in the same residence. A household can include parents, children, stepchildren, domestics, lodgers and boarders.

*Immediate family* shall include the spouse, domestic partner registered under Section 94-133, mother, father, sister, brother, and natural or adopted children.

*Motor vehicle vending* means the use of any motorized vehicle, approved for use by the department of police, and used by a lawfully permitted vendor for the purpose of vending from place to place and on city streets. No such vehicle shall be authorized to vend from any fixed location. The vehicles include rolling stores, catering trucks, ice cream trucks and motorized carts.

*License and Permits Unit* means that unit of the Atlanta Police Department which issues permits for public vending or any other unit or division of the Atlanta Police Department assigned by the Chief of Police to undertake the duties of the License and Permits Unit.

*Moral turpitude* means the act or behavior of baseness, vileness or the depravity in private and social duties which people owe to their fellow people, or to society in general, contrary to accepted and customary rule of right and duty between person and person; act or behavior that gravely violates moral sentiment or accepted moral standards of community and is a morally suitable quality held to be present in some criminal offenses as distinguished from others.

*Permissible food item* means any food product or substance, including beverages, that legally may be dispensed for the public's consumption pursuant to the rules and regulations of the county health department.

*Public property* and "*public space*" both mean for the purpose of this article any property owned by the City of Atlanta within street rights-of-way, including any roadways and sidewalks, but excluding city-owned parks.

*Public vending* means vending activity as permitted on publicly owned property under the jurisdiction of the City of Atlanta other than on city-owned parks,

except where such activity is associated with a special event and/or subject to regulation under a more specific permit.

*Recording* means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored, or a copy or reproduction that duplicates in whole or in part the original. An illicit recording is a recording produced without the authorization of the recording's owner, or which is otherwise sold or offered for sale in violation of any state or federal law pertaining thereto.

*Registered agent* means any person who is authorized by a vendor or itinerant vendor and who agrees to accept service or process and legal notices on behalf of the vendor or itinerant vendor.

*Site plan* means a visual depiction of the vending site showing 1) the exact location of the vending operation on the property; 2) the length, width, and height of the vending stand; 3) the location of all on-site parking spaces which serve the property; and 4) the location of any power sources which the vendor intends to use. The site plan shall be filed along with each application.

*Stand* means any fixed or movable structure, table or device used by a vendor for the purpose of displaying or storing any merchandise, article or food which is offered for sale.

*Valid vendor location* means an area which is authorized in this Article, in which vending can take place.

*Valid vendor permit* means a permit issued by the department of police. Such permit shall consist of a police photo identification card which contains the vendor's name, photograph, vending type and classification, authorized location and time period for which such permit is valid.

*Vending business* means any commercial enterprise operated for profit in which merchandise, food, services or a combination thereof are rendered for sale to the general public on public property and approved by the city.

*Vendor* means any person whose primary business is the selling or bartering, or carrying for sale or barter, or exposing therefor, any goods, wares, merchandise, services, food, confectionery or drink carried by hand from portable stands or tables, by manually propelled vehicles, or by motor vehicle.

**Sec. 30-1401. – Purpose, intent and applicability.**

- (a) The provisions contained in this Article are temporary. Only persons authorized to vend on public property in 2012, either in the kiosks physically installed in the City's right of way or at locations near Turner Field may apply for permits to vend

in accordance with this Article at the valid vendor locations at which they vended in 2012.

- (b) The provisions contained in this Article shall expire on and have no further effect after December 31, 2013.
- (c) All permits issued in accordance with this Article shall expire on and have no further effect after December 31, 2013.
- (d) Vending on public property in the city, as defined in this Article, shall be subject to regulation as set forth in this Article, including the requirement of regulatory licenses and permits.
- (e) It is the intent of council in enacting this Article to:
  - (1) Serve and protect the health, safety and welfare of the general public.
  - (2) Establish a uniform set of rules and regulations which are fair and equitable.
  - (3) Provide economic development opportunities for small entrepreneurs in the city.
  - (4) Provide a variety of goods and services for sale.
  - (5) Promote stable vendors who will enrich the city's ambiance and be assets to public security.

**Sec. 30-1402. - Vending business required to keep records.**

- (a) Every vendor shall maintain a permanent record book in which shall be entered in ink and in legible English at the time any property is acquired for the purpose of retail sale.

Nothing in this section shall prohibit the suspension or revocation of any permit by the police department's license and permit section, the license review board, or the mayor in accordance with the provisions of Division 2 of this Article.

- (b) Vendors, by filing an application, agree to produce documents and records which may be considered pertinent to the ascertainment of facts relative to the issuance and maintenance of the license, including but not limited to the following:
  - (1) The vendor's bank or other financial institution records, including those which are personal or from any business in which the vendor has any interest, such as savings and checking account records, bank statements, ledgers, deposit tickets, withdrawal slips, canceled checks, check stubs,

bank drafts, cashier's checks, certificates of deposit, money market accounts, pass books and applications for each account;

- (2) Personal state and federal income tax statements for the past five years; and
- (3) Records of sales and receipts for purchases and expenses from any business in which a vendor has any interest.

**Sec. 30-1403. - Vending restrictions and prohibitions.**

- (a) Any power sources must be depicted on the site plan and must meet all applicable electrical code standards.
- (b) Vending structures shall not be left unattended or stored at any time on the open vending site when vending is not taking place or during restricted hours of operation.
- (c) Hours of operation shall be 5:00 a.m. to 2:00 a.m.
- (d) Amplified sound or sound equipment must comply with the City of Atlanta Noise Ordinance.
- (e) Any and all signage must comply with the City of Atlanta Sign Ordinance.

**Sec. 30-1404. - Littering.**

All vendors engaged in food vending shall affix to their vending station a receptacle for litter, which shall be maintained and emptied regularly and which shall be marked as being for litter.

**Sec. 30-1405. - Penalties.**

Any person violating any of the provisions of this article shall, upon conviction thereof, be punished as follows:

- (1) First conviction. A fine of not less than \$100.00 nor more than \$1,000.00 and costs or imprisonment in the city jail for not more than 60 days or both.
- (2) Second conviction. A fine of not less than \$200.00 nor more than \$1,000.00 and costs or imprisonment in the city jail for not more than 60 days or both.
- (3) Third conviction. A fine of not less than \$500.00 nor more than \$1,000.00 and costs or imprisonment in the city jail for not more than 60 days or both.
- (4) Fourth conviction. Any person convicted of four or more violations of this Article shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00 and costs or imprisonment in the city jail for not more than 60 days or both; and a

court-ordered referral shall be forwarded to the chief of police for revocation of their permit.

**Sec. 30-1406. - Aesthetic standards.**

- (a) Vending is permitted from kiosks installed in the City's right of way or skirted tables only. Tables shall not extend beyond the perimeter of the covered canopy area.
- (b) Canopy. If used, must be a portable folding canopy only. One canopy shall be permitted (not required), shall be white in color, shall not contain any writing and shall not exceed ten by 20 feet in size.
- (c) With the exception of kiosks installed in the City's right of way, vending structures must be removed from the open vending site when the vendor is not doing business and during restricted hours of operation.
- (d) Vending structures must be in good repair at all times.
- (e) Merchandise shall be displayed within the kiosk or on the table only and shall be stored within the interior area of the kiosk / canopy.
- (f) All storage of merchandise shall be beneath the skirted tables or within the kiosk.
- (g) If signage is allowed, no more than one sign which shall not exceed two × three feet in size and displayed only on or attached to the vending table or the open portion of the kiosk. Any such sign shall be included in the site plan, if signage is to be used.
- (h) A description of the structure and the hours of operation shall be included in the site plan.

**Sec. 30-1407-----30-1425 - Reserved.**

**DIVISION 2. – Permits and Licenses**

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

- (a) No person shall vend any article, merchandise, produce, permissible food item, or service on public property in the city without first having obtained a temporary vending permit pursuant to this Article and satisfied all other requirements, including but not limited to those of the health department in the county in which the vending site is located. No permit shall be required for persons selling newspapers at-large other than from a fixed location on public property.
- (b) No person shall vend in the city on public property, except in conformity with the privileges granted via this Article and only on the location 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 permits issued to vendors or assistant vendors, or registered agents are nontransferable, and must be displayed in clear view, together with the vending permit photo identification card, at the permitted location at all times when the vendor or assistant vendor is present.
- (e) All permits issued to vendors shall contain a general description of the merchandise, food, services, or any combination thereof to be offered for sale by such vendor at the permitted location, and shall indicate if the permit authorizes the sale of recordings.

**Sec. 30-1427. - Classification of permits.**

- (a) *Food permit.* A food permit shall authorize a person to vend permissible food items in an individually assigned vending site. A food permit shall allow the sale of food only pursuant to the conditions specified by the health department of the county in which the vending site is located. Fulton County Health Department regulations class A nonhazardous, nonregulated foods do not require a health department food service permit. Where applicable, class B and class C foods require a valid certificate of inspection from the county in which the vending site is located and must specify the particular foods authorized to be sold. No vendors shall sell any cooked food from an open-pit barbecue grill from any public property location within the city without first obtaining written approval from the health department of the county in which the vending site is located.
- (b) *Merchandise permit.* A merchandise permit shall authorize a person to vend items including but not limited to the following:
  - (1) Crafts:
    - a. Baskets.
    - b. Jewelry.
    - c. Leather.
    - d. Quilts.
    - e. Wood carvings.
    - f. Needle crafts.
    - g. Fragrances/incenses.
  - (2) Fresh flowers.
  - (3) Clothing and apparel.