

13-0-0025

(Do Not Write Above This Line)

AN ORDINANCE TO AMEND CHAPTER 106, ARTICLE IV, DIVISION 1, SECTION 106-127, ENTITLED "SOLICITATION FOR AN ILLICIT SEXUAL ACT," TO MANDATE A SENTENCE OF A TERM OF PROBATION FOR A FIRST CONVICTION OF A VIOLATION OF SECTION 162-127, AND TO MANDATE BANISHMENT FROM GEOGRAPHIC AREAS WITHIN THE CITY OF ATLANTA DEFINED AS "AREAS OF PROSTITUTION" DURING THE TIME OF SAID PROBATION; TO REQUIRE BANISHMENT FROM "AREAS OF PROSTITUTION" DURING THE PROBATIONARY PERIOD MANDATED FOR A SECOND VIOLATION OF SECTION 162-127, SHOULD THE SENTENCING COURT DECLINE TO BANISH THE OFFENDER FROM THE CORPORATE LIMITS OF THE CITY AS CURRENTLY ALLOWED; TO REMOVE SUPERFLUOUS SENTENCING LANGUAGE; AND FOR OTHER PURPOSES. *As Amended*

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1ST ADOPT 2ND READ & REFER
- PERSONAL PAPER REFER

Date Referred: *1/22/13*
 Referred To: *Public Safety*
 Date Referred: *2/4/13*
 Referred To: *Public Safety*
 Date Referred: _____
 Referred To: _____

First Reading
 Committee *Public Safety and Legal Administration*
 Date *1/15/13*
 Chair *[Signature]*
 Referred To *Public Safety and Legal Administration*

Committee *PSLA*
 Date *1/29/13*
 Chair *[Signature]*
 Action *As Amended*
 Fav, Adv, Hold (see rev. side)
 Other
 Members *[Signatures]*
 Refer To

Committee *PSLA*
 Date *2/12/13*
 Chair
 Action *Hold* (see rev. side)
 Other
 Members
 Refer To

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

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

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
 Readings
 Consent V Vote RC Vote

CERTIFIED
 DEC 02 2013
 ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
 DEC 03 2013
Renee Daughlin Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

AUTOMATICALLY TERMINATED AND FILED BY CLERK PER CHARTER SECTION 2-407
 DEC 02 2013

AN ORDINANCE BY

THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO AMEND CHAPTER 106, ARTICLE IV, DIVISION 1, SECTION 106-127, ENTITLED "SOLICITATION FOR AN ILLICIT SEXUAL ACT," TO MANDATE A SENTENCE OF A TERM OF PROBATION FOR A FIRST CONVICTION OF A VIOLATION OF SECTION 162-127, AND TO MANDATE BANISHMENT FROM GEOGRAPHIC AREAS WITHIN THE CITY OF ATLANTA DEFINED AS "AREAS OF PROSTITUTION" DURING THE TIME OF SAID PROBATION; TO REQUIRE BANISHMENT FROM "AREAS OF PROSTITUTION" DURING THE PROBATIONARY PERIOD MANDATED FOR A SECOND VIOLATION OF SECTION 162-127, SHOULD THE SENTENCING COURT DECLINE TO BANISH THE OFFENDER FROM THE CORPORATE LIMITS OF THE CITY AS CURRENTLY ALLOWED; TO REMOVE SUPERFLUOUS SENTENCING LANGUAGE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has an interest in maintaining the health, safety and welfare of the citizens of the City of Atlanta and its visitors; and

WHEREAS, O.C.G.A. § 36-32-1(c) authorizes the Municipal Court to impose any punishment up to the maximums specified by general law; and

WHEREAS, the Municipal Court has the ability to impose banishment as a condition of probation, so long as the banishment is not from the State of Georgia altogether, Ga. Const. of 1983, Art. I, Sec. I, Par. XXI; *Terry v. Hambrick*, 284 Ga. 24, 26-29, 663 S.E. 2d 256 (2008); and

WHEREAS, accordingly, persons convicted of a second violation of Section 106-127 of the City of Atlanta Code of Ordinances, (Solicitation for an illicit sexual act), may, as a special condition of probation, be required to leave the corporate limits of the city and not return during their probationary period, ACC § 106-127(d)(2)(b); and

WHEREAS, the Atlanta Police Department has observed that a significant number of violations of Section 106-127 occur in certain geographic areas of the City of Atlanta; and

WHEREAS, these areas may be designated administratively based upon current crime statistical data; and

WHEREAS, it is the desire of the City of Atlanta to mandate banishment from these designated "Areas of Prostitution" for those having either a first or second conviction of Section 106-127 as a special condition of probation; and

WHEREAS, it is the desire of the City of Atlanta to ensure that the Municipal Court retains the ability to, in its discretion, require any person convicted of a second violation of Section 162-127, as a special condition of probation, to leave the corporate limits of the city and not return during the probationary period; and

WHEREAS, Section 106-127 currently includes two sets of sentencing provisions, one of which is superfluous; and

WHEREAS, it is also the desire of the City of Atlanta to remove the superfluous sentencing provisions from Section 106-127.

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

Section 1: That Chapter 106, Article IV, Division 1, Section 106-127, of the City of Atlanta Code of Ordinances, which currently reads as follows:

Sec. 106-127. - Solicitation for an illicit sexual act.

(a) It shall be unlawful for any person, while in any place open to the public and whether as a pedestrian or in a motor vehicle, to offer or consent to perform any illicit sexual act for money. Furthermore, it shall be unlawful for any person, while in any place open to the public and whether as a pedestrian or in a motor vehicle, to attempt to induce, entice, solicit, pander, purchase or procure another to commit any illicit sexual act for money. An illicit sexual act is defined as one or more of the following:

- (1) Prostitution;
- (2) Sodomy for hire; or
- (3) Masturbation for hire.

Any person in violation of this Code section shall be guilty of the offense of idling and loitering for the purpose of committing an illicit sexual act.

(b) For the purpose of subsection (a) any person shall include solicitors of illicit sexual acts or panderers, who solicit, procure or purchase an other to perform any illicit sexual act in exchange for money, and who are commonly referred to as "johns" or "tricks".

(c) The following penalties shall be imposed upon the conviction of the offense of idling and loitering for the purpose of committing an illicit sexual act.

- (1) *First conviction.* Punishment as provided in section 1-8.
- (2) *Second conviction.* Sixty days incarceration in the city jail or stockade without a reduction in time.
- (3) *Third and subsequent convictions.* Six months in the city jail or stockade without a reduction in time.

(d) The following penalties shall be imposed upon the conviction of subsection (a), (b) or (c) of this section.

- (1) *First conviction.* A mandatory minimum term of imprisonment of 15 days in the city jail and a minimum mandatory fine of \$250.00.

- (2) *Second conviction.*
- a. A mandatory term of 180 days imprisonment with a minimum of 60 days of said sentence of imprisonment to be served in confinement in the city jail. The remaining 120 days may be served on probation as prescribed in subsection 2(b);
 - b. The sentencing court may, in its discretion, require any person convicted of a second violation of subsection (a), (b) or (c) of this Code section, as a special condition of probation, to leave the corporate limits of the city and not return during the probationary period;
 - c. Any person convicted of a second violation of subsection (a), (b) or (c) of this Code section shall also pay a fine of \$1,000.00.
- (3) *Third and subsequent convictions.* A mandatory term of six months of imprisonment in the city jail.
- (4) None of the mandatory sentences referred to in this Code section shall be suspended, probated, deferred or withheld, except as provided herein.
- (5) Nothing in this Code section shall affect the sentencing court's authority to impose any other condition of probation as set forth in O.C.G.A. § 42-8-5.
- (6) The city solicitor may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section and provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may impose a reduced or suspended sentence if he finds that the defendant has rendered such substantial assistance.
- (7) *Diversion program*
- a. Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication of guilt, the sentencing court may, in its discretion, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and enroll the defendant in an educational program administered by the City Solicitor's Office in accordance with Official Code of Georgia Annotated 15-18-80, and designed to address issues related to idling and loitering for the purpose of committing an illegal sexual act and/or prostitution.
 - b. Upon fulfillment of the terms of the educational program, including a showing that the defendant has not violated this Code Section for a period of one year, the defendant shall be discharged without court adjudication of guilt.
 - c. The City Solicitor's Office is authorized to assess and collect from each defendant who enters the program a fee as set forth in O.C.G.A. 15-18-80

for the administration of the program. Any such fee collected shall be deposited into the City of Atlanta General Fund.

- (8) With the exception of those fees collected in accordance with 106-127(d)(7), all fines paid to and collected by the city's courts pursuant to conviction under this section shall be deposited to the Inmate Welfare Program Trust Fund, 3PO2494008121CL9999, to defray the cost of inmate programs and services in the department of corrections.

be amended so that it shall read as follows:

Sec. 106-127. - Solicitation for an illicit sexual act.

- (a) It shall be unlawful for any person, while in any place open to the public and whether as a pedestrian or in a motor vehicle, to offer or consent to perform any illicit sexual act for money. Furthermore, it shall be unlawful for any person, while in any place open to the public and whether as a pedestrian or in a motor vehicle, to attempt to induce, entice, solicit, pander, purchase or procure another to commit any illicit sexual act for money. An illicit sexual act is defined as one or more of the following:

- (1) Prostitution;
- (2) Sodomy for hire; or
- (3) Masturbation for hire.

Any person in violation of this Code section shall be guilty of the offense of idling and loitering for the purpose of committing an illicit sexual act.

- (b) For the purpose of subsection (a) any person shall include solicitors of illicit sexual acts or panderers, who solicit, procure or purchase another to perform any illicit sexual act in exchange for money, and who are commonly referred to as "johns" or "tricks".

- ~~(c) The following penalties shall be imposed upon the conviction of the offense of idling and loitering for the purpose of committing an illicit sexual act.~~

- ~~(1) *First conviction.* Punishment as provided in section 1-8.~~
- ~~(2) *Second conviction.* Sixty days incarceration in the city jail or stockade without a reduction in time.~~
- ~~(3) *Third and subsequent convictions.* Six months in the city jail or stockade without a reduction in time.~~

- ~~(d) The following penalties shall be imposed upon the conviction of subsection (a), (b) or (c) of this section.~~

***Areas of Prostitution.* For purposes of this section "Areas of Prostitution" shall mean certain geographic areas of the City of Atlanta wherefrom significant numbers of violations of this section have occurred. Areas of**

Prostitution shall be designated in writing by the Atlanta Police Department and delivered to the Chief Judge of the Municipal Court of Atlanta by no later than February 1 of each year. This designation shall be based upon the crime statistics from the previous calendar year.

(1) *First conviction.*

- a. A mandatory minimum term of **180 days** imprisonment with a **minimum** of 15 days of said sentence of imprisonment to be served in confinement in the city jail, **the remaining 165 days to be served on probation, where as a special condition thereof, the sentencing court shall require the person to stay out of Areas of Prostitution during the probationary period.**
- b. **Any person convicted of a first violation of this section shall also pay** a minimum mandatory fine of \$250.00.

(2) *Second conviction.*

- a. A mandatory term of 180 days imprisonment with a minimum of 60 days of said sentence of imprisonment to be served in confinement in the city jail, ~~the remaining 120 days may~~ **to be served on probation as prescribed in subsection 2(b) where as a special condition thereof, the sentencing court shall require the person to stay out of Areas of Prostitution during the probationary period; except that** the sentencing court may, in its discretion, require any person convicted of a second violation of subsection (a), (b) or (e) of this Code section, as a special condition of probation, to leave the corporate limits of the city and not return during the probationary period.
- b. Any person convicted of a second violation of ~~subsection (a), (b) or (e) of this Code~~ section shall also pay a fine of \$1,000.00.

e. _____

(3) *Third and subsequent convictions.* A mandatory term of six months of imprisonment in the city jail.

(4) None of the mandatory sentences referred to in this Code section shall be suspended, probated, deferred or withheld, except as provided herein.

(5) Nothing in this Code section shall affect the sentencing court's authority to impose any ~~other~~ additional condition of probation as set forth in O.C.G.A. § 42-8-5.

(6) The city solicitor may move the sentencing court to impose a reduced or suspended sentence upon any person who is convicted of a violation of this Code section and provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, co-conspirators, or principals. Upon good cause shown, the motion may be filed and heard in camera. The judge

hearing the motion may impose a reduced or suspended sentence if he finds that the defendant has rendered such substantial assistance.

(7) *Diversion program*

- a. Upon a verdict or plea of guilty or a plea of nolo contendere, but before an adjudication of guilt, the sentencing court may, in its discretion, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and enroll the defendant in an educational program administered by the City Solicitor's Office in accordance with Official Code of Georgia Annotated 15-18-80, and designed to address issues related to idling and loitering for the purpose of committing an illegal sexual act and/or prostitution.
- b. Upon fulfillment of the terms of the educational program, including a showing that the defendant has not violated this Code Section for a period of one year, the defendant shall be discharged without court adjudication of guilt.
- c. The City Solicitor's Office is authorized to assess and collect from each defendant who enters the program a fee as set forth in O.C.G.A. 15-18-80 for the administration of the program. Any such fee collected shall be deposited into the City of Atlanta General Fund.

- (8) With the exception of those fees collected in accordance with 106-127(d)(7), all fines paid to and collected by the city's courts pursuant to conviction under this section shall be deposited to the Inmate Welfare Program Trust Fund, 3PO2494008121CL9999, to defray the cost of inmate programs and services in the department of corrections.

Section 2: That this ordinance shall become effective February 1, 2013.

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