

13-0-0163

*Chela Henderson*

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
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 Vote

AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OF ORDINANCES BY REPEALING CHAPER 30, ARTICLE XXIII, (VENDING ON PUBLIC PROPERTY), IN ITS ENTIRETY; TO THEREBY ELIMINATE PUBLIC PROPERTY VENDING IN THE CITY OF ATLANTA; TO WAIVE CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

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

DEC 02 2013

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

Date Referred: *Jan 22, 2013*  
Referred To: *P.S & L.A*  
Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Date Referred: \_\_\_\_\_  
Referred To: \_\_\_\_\_

*PSLA* Committee

*1/29/13* Date

Chair \_\_\_\_\_

Action  
Fav, Adv, Hold (see rev. side)  
Other  
*2 weeks*

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 \_\_\_\_\_

Committee \_\_\_\_\_

Date \_\_\_\_\_

Chair \_\_\_\_\_

Action  
Fav, Adv, Hold (see rev. side)  
Other \_\_\_\_\_

Members \_\_\_\_\_

Refer To \_\_\_\_\_

CERTIFIED  
DEC 02 2013  
ATLANTA CITY COUNCIL PRESIDENT  
*[Signature]*

CERTIFIED  
DEC 02 2013  
*Flora Douglas Johnson*  
MUNICIPAL CLERK

MAYOR'S ACTION

AN ORDINANCE BY

COUNCILMEMBER CLETA WINSLOW

AN ORDINANCE TO AMEND THE CITY OF ATLANTA CODE OF ORDINANCES BY REPEALING CHAPTER 30, ARTICLE XXIII, (VENDING ON PUBLIC PROPERTY), IN ITS ENTIRETY; TO THEREBY ELIMINATE PUBLIC PROPERTY VENDING IN THE CITY OF ATLANTA; 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 during calendar year 2003; and

WHEREAS, on July 28, 2011, a lawsuit was filed in the Superior Court of Fulton County challenging the 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 08-O-1220 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, there are no legislative or administrative actions currently in effect which authorize the continued public property vending of those who were issued permits during the 2003 calendar year; and

WHEREAS, in accordance with the December 21, 2012 Superior Court Order, it is the desire of the Atlanta City Council to repeal Chapter 30, Article XXIII in its entirety, thereby eliminating public property vending in the City of Atlanta, including as previously authorized thereby and as previously authorized via permits issued thereunder in 2003.

**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 further amended such as it shall read as follows:

Secs. 1400-----1460-Reserved.

Section 3: This ordinance shall become effective on March 1, 2013.

Section 4: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

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**Atlanta, Georgia, Code of Ordinances >> PART II - CODE OF ORDINANCES—GENERAL ORDINANCES >>  
Chapter 30 - BUSINESSES >> ARTICLE XXIII. - VENDING ON PUBLIC PROPERTY >> DIVISION 1. -  
GENERALLY >>**

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## **DIVISION 1. - GENERALLY**

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Sec. 30-1400. - Statement of intent.

Sec. 30-1401. - Definitions.

Sec. 30-1402. - Permit required to use public property for vending purposes.

Sec. 30-1403. - Vending advisory board.

Sec. 30-1404. - Penalties.

Sec. 30-1405. - Vending locations.

Sec. 30-1406. - Records of vendors and public vending management companies; inspection of records.

Sec. 30-1407. - Duties of vendors.

Sec. 30-1408. - Restrictions on vending locations and operations.

Sec. 30-1409. - Public vending management program.

Sec. 30-1410. - Hours of operation of vendor stations.

Sec. 30-1411. - Persons selling from motor vehicles.

Sec. 30-1412. - Littering.

Sec. 30-1413. - Unlawful to display goods without a permit.

Secs. 30-1414—30-1425. - Reserved.

### **Sec. 30-1400. - Statement of intent.**

The Charter provides that the City of Atlanta may regulate or restrict the manufacture, sale, lease, rental, use, or solicitation of personal property by licenses, bonds, permits, or other regulatory methods and may allow or decline to allow the use of public spaces and right-of-way to offer such items to the public. Pursuant to those powers, it is the intent of the City Council to use this article and any other part of the Code to which this article refers to regulate vending on public property and the advertising of commercial products and services associated with the vending structures to achieve the following public policy objectives:

- (1) Serve and protect the health, safety and welfare of the general public;
- (2) Develop a public vending program to enhance the overall appearance and environment along public streets, pedestrian ways and other public property in a manner that will enhance the city's international image;
- (3) Increase the variety and quality of goods and services for sale or rent pursuant to contractual agreements between the City and private entities;
- (4) Provide guidelines for the erection of structures on public property under the general authority allowed by Division 7 of Article 2 of Chapter 138 of this Code as it now exists or it may be from time to time amended;
- (5) Authorize the use of public property for vending purposes through permitting the use of specifically identified sites on public property;
- (6) Provide economic development opportunities;
- (7) Allow limited commercial messages to be displayed on vending structures permitted on public property in order to defray the City's costs in managing the vending program, as

well as to maximize the revenue and economic development opportunities available as a part of the public vending management program;

- (8) Authorize a vending advisory board to act as a liaison between the City, vendors, vending management companies, the manufacturers of vending equipment and other interested parties for the purpose of offering advisory opinions on the operation of public property vending.

(Ord. No. 2008-74(08-O-1220), § 2, 9-8-08; Ord. No. 2009-68(09-O-1895), § 1(a), 11-24-09)

## **Sec. 30-1401. - 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:

*Applicable building code requirements* means any law or regulation which pertains to the erection or use of structures in the City of Atlanta including without limitation the "state minimum codes" listed in O.C.G.A. § 8-2-20(9)(B)(i) as it exists now or may be from time to time amended and all local amendments,

*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.

*Managed public vending area* means that public property which is the subject of a public vending management contract.

*Motorized vehicle* means any vehicle, trailer or bicycle propelled by a motor capable of moving a vending station from place to place which is used for vending food, merchandise or services for sale.

*Non-managed public vending area* means that public property which has been made available for use by persons whose designated location existing under a prior ordinance has been terminated or eliminated.

*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.

*Prior vending location* means a location on public property where vending was permitted prior to the institution of a public vending management program.

*Produce* means any agricultural product raised on a farm or orchard.

*Public festival* means a public function or activity which does not exceed two weeks in duration and which has been issued a festival permit in accordance with chapter 138, article VI of this Code.

*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.

*Public vending contractor* is a person or entity whose contract with the city allows such person or entity the right to conduct vending activities including, without limitation, the right to subcontract to other vendors, on property under the jurisdiction of the City of Atlanta other than city-owned parks.

*Public vending management contract* means that contract, between a public vending contractor and the City of Atlanta, granting the right to conduct vending activities on property under the jurisdiction of the City of Atlanta other than city-owned parks, and may include prescribed rules and procedures, in addition to the requirements in this article, which vendors at public vending sites must follow in the operation of those sites.

*Public vending management program* means that method of selecting and contracting with a public vending contractor to conduct and/or manage public vending activities pursuant to a contract with the City.

*Public vending management contract* means that contract, between a public vending contractor and the City of Atlanta, granting the right to conduct vending activities on property under the jurisdiction of the City of Atlanta and may include prescribed rules and procedures, in addition to the requirements in this article, which vendors at public vending sites must follow in the operation of those sites.

*Public vending site* means an individual vending site on public property.

*Pushcart/vending cart* means any portable vehicle or device from which property intended to be sold is displayed at an approved public vending site. The term "pushcart" shall be synonymous with the term "vending cart."

*Reasonable distance* shall mean 400 feet as measured from the edge of vending structure along the path of pedestrian travel to the nearest edge of the next vending structure including within such distance all public rights-of-way.

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

*Special events* means those which have regional, national or international significance and which attract a magnitude of people to the city up to a two-week period, e.g., the World Series, the Super Bowl, the Olympics, among others.

*Street furniture zone* means a geographical area located on the sidewalk portion of a street right-of-way whose width lies between the street curb extending four feet onto the sidewalk, as measured from the curb, and whose length extends from intersecting street to intersecting street.

*Street music* means a music performance for which the musician or musical group requires payment by the audience or business owner as a precondition for performing. The act of accepting donations from listeners while performing music in public is excluded from regulation under this Code section.