

AN ORDINANCE BY CLETA WINSLOW



THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

AN ORDINANCE TO CLARIFY THAT THE VERSION OF CHAPTER 30, ARTICLE XXIII, (VENDING ON PUBLIC PROPERTY), EXISTING PRIOR TO THE APPROVAL OF 08-O-1220, AND WAS LAWFULLY REPEALED THEREBY REMAINS REPEALED; TO WAIVE CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.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WHEREAS, 08-O-1220 repealed the version of Article XXIII of the City of Atlanta Code of Ordinances in effect at the time of 08-O-1220’s approval; and

WHEREAS, additionally, 08-O-1220 amended Chapter 30, Article XXIII of the City of Atlanta Code of Ordinances, (Vending on Public Property), to create a new Public Property Vending Program; and

WHEREAS, on July 28, 2011, a lawsuit was filed in the Superior Court of Fulton County challenging the constitutionality of the new Public Property Vending Program, *Larry Miller and Stanley Hambrick v. City of Atlanta*, 2011CV203707; and

WHEREAS, on December 21, 2012, the Superior Court issued an Order declaring the new Public Property Vending amendments to 08-O-1220 to be void and without effect; and

WHEREAS, the version of Chapter 30, Article XXIII, as it existed prior to the approval of 08-O-1220 remains lawfully repealed by the Atlanta City Council, and such repeal was approved by the Mayor; and

WHEREAS, it is the desire of the City of Atlanta to develop 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, it is the desire of the Atlanta City Council to ensure that the development and eventual enactment of the new Public Property Vending program not be impeded by any further assertion or belief that the version of Chapter 30, Article XXIII, existing prior to the approval of 08-O-1220 and which was lawfully repealed thereby, is still in effect.

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

Section 1: That the version of Chapter 30, Article XXIII, existing prior to the approval of 08-O-1220, and which was lawfully repealed thereby, remains repealed and without any effect.

Section 2: This Ordinance shall become effective immediately upon its approval.

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