

1 **STATE OF GEORGIA**
2 **CITY OF HAPEVILLE**

3
4 **ORDINANCE NO. _____**

5
6 **AN ORDINANCE TO REVISE CHAPTER 11 (“BUSINESS LICENSING AND**
7 **REGULATION”), ARTICLE 11 (“COMMERCIAL SOLICITATIONS AND TRANSIENT**
8 **MERCHANTS”) SECTION 11-11-2 (“DEFINITIONS”) AND SECTION 11-11-4**
9 **(“TRANSIENT MERCHANTS”) OF THE CODE OF ORDINANCES, CITY OF**
10 **HAPEVILLE, GEORGIA TO PROVIDE FOR THE REGULATION OF MOBILE FOOD**
11 **VENDORS; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING**
12 **ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR**
13 **OTHER LAWFUL PURPOSES.**

14
15 **WHEREAS**, the duly elected governing authority of the City of Hapeville, Georgia
16 (hereinafter the “City”) is the Mayor and Council thereof; and

17 **WHEREAS**, the City’s Business Licensing and Regulation code provides for the
18 regulation of for-profit commercial transactions conducted by Transient Merchants and for-profit
19 solicitations; and

20 **WHEREAS**, the governing authority of the City finds it desirable to provide for the
21 licensing, operation and regulation of Mobile Food Vendors whether through mobile food trucks
22 or Pushcarts.

23 **BE IT, AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF**
24 **THE CITY OF HAPEVILLE, GEORGIA THAT:**

25
26 **Section One.** Section 11-11-2 (Definitions) in Chapter 11 (Business Licensing and
27 Regulation), Article 11 (Commercial Solicitations and Transient Merchants) of the City Code of
28 Ordinances is hereby amended and revised as follows:

29 **Sec. 11-11-2. Definitions.**

30
31 As used in this article, the following terms shall have the respective meanings ascribed to
32 them:
33

34 *Commissary* shall mean an approved catering establishment, restaurant or other
35 approved place in which food, containers or supplies are kept, handled, prepared,
36 packaged or stored.

37
38 *Ice Cream Truck* shall mean a motor vehicle in which ice cream, popsicles, ice
39 sherbets or other frozen desserts of any kind are carried for the purpose of retail
40 sale on the streets of the city.

41
42 *Mobile Food Vendor* shall mean a retail food establishment that reports to and
43 operates from a Commissary and is readily moveable, is a motorized wheeled
44 vehicle or a towed wheeled vehicle designed and equipped to serve food.

45
46 *Pushcart* shall mean a non-self-propelled vehicle limited to serving commissary
47 prepared or prepackaged food and non-potentially hazardous food, unless the
48 equipment is commercially designed and approved to handle food preparation and
49 service(s). Pushcarts shall not be required to comply with mobile vehicular safety
50 requirements.

51
52 *Solicit* or *soliciting* shall mean taking orders, selling or seeking orders or clients for
53 the purchase of goods, wares, merchandise, foodstuffs, products, subscriptions or
54 services of any kind, character or description whatsoever. The terms "solicit" or
55 "soliciting" shall not include Transient Merchants.

56
57 *Temporary Food Establishment* shall mean a retail food establishment, other than
58 a licensed Mobile Food Vendor or Pushcart, that is not intended to be permanent
59 and that operates at a fixed location for a period of time of not more than fourteen
60 (14) consecutive days in conjunction with a single event or celebration.

61
62 *Transient Merchant* shall mean any person or entity who sets up or displays
63 merchandise for sale outside of a building on any lot where the person or entity
64 setting up or displaying such merchandise does not also lawfully conduct business
65 regularly in a building located on that lot. A Transient Merchant shall not include a
66 person conducting a yard sale at a private residence.

67
68 **Section Two.** Section 11-11-4 (Transient Merchants) in Chapter 11 (Business Licensing and
69 Regulation), Article 11 (Commercial Solicitations and Transient Merchants) of the City Code of
70 Ordinances is hereby amended and revised as follows:

71 **Sec. 11-11-4. - Transient Merchants.**

72 (a) *Registration required for Transient Merchants.* It shall be unlawful for Transient
73 Merchants to do business within the City unless a written permit has first been obtained in
74 accordance with this section. A Transient Merchant shall register with and obtain a written permit
75 from the city clerk by paying a \$150.00 fee and filing an application, on a form to be supplied by
76 the City Clerk, providing the following:

- 77 (1) Name of the applicant;
- 78 (2) Permanent address of the applicant;
- 79 (3) Names and addresses of employer, firm, corporation or organization represented;
- 80 (4) Nature of merchandise to be sold or offered for sale;
- 81 (5) Location at which the merchandise will be sold or offered for sale, including map
82 detailing the position of the vehicle or Pushcart, and current zoning;
- 83 (6) The date(s) the merchandise will be sold or offered for sale;
- 84 (7) Written permission from the property owner authorizing the Transient Merchant to sell
85 or offer to sell merchandise at the location; and
- 86 (8) If the vendor meets the definition of "Transient Merchant" under O.C.G.A. § 43-46-2,
87 a valid Transient Merchant license pursuant to Title 43, Chapter 46 of the Georgia Code.
- 88 (9) If applicable, documentation verifying nonprofit 501(c)(3) status in the state of Georgia.

89 The application shall be accompanied by **proof of insurance as required under this chapter**
90 **along with** an executed indemnity agreement indemnifying and releasing the City, its agents,
91 employees and elected officials from any and all liability against any and all claims, actions and
92 suits of any type whatsoever arising in connection with the activities of the transient vendor
93 pursuant to the permit issued hereunder. If the applicant does not have insurance, the applicant
94 may be under the umbrella of an existing business with the business' expressed written consent.

95 No permit shall be issued to a person who has been convicted of a violation of the provisions
96 of this article or to any person whose permit issued hereunder has previously been revoked as
97 provided herein.

98 The permit fee required by this section may be reduced or waived by City Council upon review
99 of any documentation verifying nonprofit 501(c)(3) status provided with Transient Merchant
100 application.

101 (b) *Issuance of Transient Merchant permit; presentation.* Upon submission of all
102 requirements in accordance with this section, a written permit may **be issued** to allow a Transient
103 Merchant to sell merchandise at a specified location, to be valid for ninety (**90**) days after the date
104 of issuance, provided that a Transient Merchant will not sell merchandise at the specified location
105 more than three (3) consecutive calendar days per week during the 90-day period. A Transient
106 Merchant shall, at all times while conducting business, carry upon his or her person the permit so
107 issued and shall display such permit whenever he or she is requested to do so by any police officer.
108

109 (c) *Revocation of Transient Merchant permit.* A Transient Merchant permit shall be
110 revoked by the city clerk if the holder of the permit is convicted of a violation of any of the
111 provisions of this article, has made a false material statement in the application or otherwise
112 becomes disqualified for the issuance of a permit under the terms of this article. Immediately upon

113 such revocation, written notice thereof shall be given to the holder of the permit in person or by
114 certified United States mail addressed to his or her home address set forth in the application.

115 Immediately upon the City sending such notice, the permit shall become null and void and
116 must be turned into the City Clerk.

117 (d) *Regulations for Transient Merchants.*

118 (1) A Transient Merchant shall comply with the city's ordinances for zoning,
119 occupational taxes and all other issues.

120 (2) A Transient Merchant shall not sell or offer to sell merchandise between the hours
121 of 10:00 p.m. to 9:00 a.m.

122 (3) A Transient Merchant cannot obtain more than four (4) Transient Merchant permits
123 per calendar year.

124 (4) A Transient Merchant cannot obtain a Transient Merchant permit for consecutive
125 ninety (90) day periods.

126 (5) A Transient Merchant cannot obtain more than one (1) Transient Merchant permit at
127 any given time. A Transient Merchant may apply for a new license for a business currently
128 operating under a Transient Merchant license which is set to expire no sooner than 15 days
129 before the expiration of any such Transient Merchant license. Transient Merchant will not
130 sell merchandise at the specified location more than three (3) consecutive calendar days
131 per week during the 90-day period.

132 (6) A business cannot have more than one (1) Transient Merchant per location at any
133 given time unless in connection with a city approved special event.

134 **Section Three.** Chapter 11 (Business Licensing and Regulation), Article 11 (Commercial
135 Solicitations and Transient Merchants) of the City Code of Ordinances is hereby amended and
136 revised to add a new Section 11-11-4.1 (Regulation and Licensing of Mobile Food Vendors) as
137 follows:

138 **Section 11-11-4.1 - Regulation and Licensing of Mobile Food Vendors.**

139 (a) It shall be unlawful for any person to sell, or offer for sale, food of any type from a
140 Commissary, Mobile Food Vendor, Pushcart or Temporary Food Establishment without a license
141 first having been granted under this section, except for such activities conducted in connection
142 with City-sponsored events.

143 (b) An application for a license or a permit hereunder shall be submitted to the City Clerk or
144 his or her designee setting forth all information required hereunder and in compliance with this
145 ordinance. The City Clerk or his or her designee shall develop a form of application for the purpose

146 of compliance with this article. The application shall be accompanied by an executed indemnity
147 agreement indemnifying and releasing the City, its agents, employees and elected officials from
148 any and all liability against any and all claims, actions and suits of any type whatsoever arising in
149 connection with the activities of the Transient Vendor pursuant to the permit issued hereunder.

150 (c) The following information shall be provided with each application for a Mobile Food
151 Vendor permit:

- 152 (1) Name of the Mobile Food Vendor;
- 153 (2) Make, model and license plate number of vending unit;
- 154 (3) Owner's contact information;
- 155 (4) Operator's contact information;
- 156 (5) Type of vendor (street vending unit or sidewalk vending unit);
- 157 (6) Copy of approved permit from the Fulton County Health Department;
- 158 (7) List of operating locations and times including map detailing the position of the
159 vehicle, and current zoning in said locations;
- 160 (8) Signatures from property owners indicating consent for the use of their property;
161 and
- 162 (9) Signature of applicant indicating agreement to the listed requirements.

163 (d) Except for Ice Cream Trucks, no Mobile Food Vendor shall conduct business or operate
164 in the public right-of-way.

165 (e) A Mobile Food Vendor shall not operate on any private property without the prior consent
166 of the owner.

167 (f) A Mobile Food Vendor shall maintain a one million dollar (\$1,000,000.00) liability
168 insurance policy. Proof of current liability insurance, issued by an insurance company licensed to
169 do business in Georgia, protecting the Mobile Food Vendor, the public and the City from all claims
170 for damage to property and bodily injury, including death, which may arise from operation under
171 or in connection with the permit, shall be provided to the City as part of its permit application.
172 Such insurance shall name the City as an additional insured and shall provide that the policy shall
173 not terminate or be canceled prior to the expiration date without thirty (30) days' advanced written
174 notice to the City. If the Mobile Food Vendor does not have insurance, the Mobile Food Vendor
175 may be under the umbrella of an existing business with the business' expressed written consent.
176 Such arrangement documentation shall be included with the application to the City.

177 (g) A Mobile Food Vendor shall not make sounds or announcements to call attention to the
178 mobile food vehicle either while traveling on the public rights-of-way or when stationary. At all
179 times said Mobile Food Vendor shall be in compliance with the City's noise ordinance.

180 (h) The license under which a Mobile Food Vendor is operating must be firmly attached and
181 visible on the Mobile Food Vendor or Pushcart at all times.

182 (i) Any driver of a Mobile Food Vendor motorized vehicle must possess a valid Georgia
183 driver's license.

184 (j) Mobile Food Vendors are allowed only in commercial zoning districts.

185 (k) Mobile Food Vendors shall not be located within fifteen (15) feet of any street intersection
186 or pedestrian crosswalk or ten (10) feet of any driveway.

187 (l) A Mobile Food Vendor shall not sell or offer to sell merchandise between the hours of
188 10:00 p.m. to 9:00 a.m.

189 (m) Vending structures shall not be left unattended or stored at any time on the open vending
190 site when vending is not taking place or during restricted hours of operation.

191 (n) No sale or offer for sale of ice cream, frozen milk, frozen dairy or ice confection products
192 shall be made from a Mobile Food Vendor unless each side of the vehicle is marked, in letters and
193 numbers at least three (3) inches in height, with the name and address of the Mobile Food Vendor
194 licensee.

195 (o) Mobile Food Vendors shall comply with all state, federal and local health and safety
196 regulations and requirements and shall obtain and maintain any and all licenses required by any
197 other health organization or governmental organization having jurisdiction over this subject
198 matter.

199 (p) The following safety regulations shall apply to any and all vehicles operating under this
200 article or used for mobile retail food establishments:

201 (1) Every vehicle shall be equipped with a reverse gear signal alarm with a sound
202 distinguishable from the surrounding noise level.

203 (2) Every vehicle shall be equipped with two (2) rear-vision mirrors, one (1) at each
204 side, firmly attached to the outside of the motor vehicle, and so located as to
205 reflect to the driver a view of the highway to the rear, along both sides of the
206 vehicle.

207 (q) A Mobile Food Vendor may only sell food and non-alcoholic beverage items.

208 (r) *Extended Transient Merchant License for Mobile Food Vendor Licenses.* Notwithstanding
209 the foregoing, should any Mobile Food Vendor wish to continuously locate their mobile food
210 business on the private premises of a landowner within the City limits for a period longer than
211 thirty (30) days, such Mobile Food Vendor may apply for an Extended Transient Merchant License
212 for Mobile Food Business License (hereinafter "Extended Transient License").

213 (1) *Premises of Pre-existing Licensed Business.* Should the pre-existing business which
214 has been issued an occupational business license by the City, and such pre-existing

215 business' license being valid and all taxes owed to the City being paid, the Mobile
216 Food Vendor may apply for an Extended Transient License for a period of no longer
217 than six (6) months..

218 (A) Such Extended Transient License for Mobile Food Vendors must include:

219 (i) A signed and notarized statement of the business owner of pre-
220 existing business, said owner being the owner of record with the
221 City, stating that said owner consents to the Mobile Food Vendor
222 locating on the business premises for up to six (6) months.

223 (ii) Proof of insurance as required by this section covering Mobile Food
224 Vendor for up to six (6) months.

225 (iii) All other requirements of Mobile Food Vendors mandated by this
226 section.

227 (iv) An application fee of \$300.00. The application fee required by this
228 section may be reduced or waived by City Council upon review of
229 any documentation verifying nonprofit 501(c)(3) status provided.

230 (B) A Mobile Food Vendor may locate its mobile business upon the premises
231 for a pre-existing, properly licensed business for no more than three (3)
232 consecutive calendar days per week during the six (6) month period. The
233 six (6) month period shall commence upon the date of approval by the City
234 of the Extended Transient License application of the Mobile Food Vendor

235 (2) Should the Mobile Food Vendor wish to locate on property to which that business
236 or occupation licensed from the City has not been assigned, the Mobile Food
237 Vendor may also apply for a temporary extended license for Mobile Food Vendors
238 for no longer than three (3) months.

239 (A) In the case of a property that is not current occupied by a licensed business,
240 such Extended Transient License application shall include:

241 (i) A signed and notarized statement of the business owner of pre-
242 existing business, said owner being the owner of record with the
243 City, stating that said owner consents to the Mobile Food Vendor
244 locating on the business premises for up to three (3) months.

245 (ii) Proof of insurance as required by this section covering Mobile Food
246 Vendor for up to three (3) months.

247 (iii) All other requirements of Mobile Food Vendors mandated by this
248 section.

249

250 (iv) An application fee of \$150.00. The application fee required by this
251 section may be reduced or waived by City Council upon review of
252 any documentation verifying nonprofit 501(c)(3) status provided.

253 (B) A Mobile Food Vendor may locate its mobile business upon the premises
254 for a pre-existing, properly licensed business for no more than three (3)
255 consecutive calendar days per week during the 90-day period. The three (3)
256 month period shall commence upon the date of approval by the City of the
257 temporary extended license application of the Mobile Food Vendor

258 **Section Four. Preamble Incorporated.** The preamble of this Ordinance shall be considered
259 to be and is hereby incorporated by reference as if fully set out herein.

260 **Section Five. Codification.** This Ordinance shall be codified in a manner consistent with the
261 laws of the State of Georgia and the City.

262 **Section Six. Severability.**

263 (a) It is hereby declared to be the intention of the Mayor and Council that all sections,
264 paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment,
265 believed by the Mayor and Council to be fully valid, enforceable and constitutional.

266 (b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest
267 extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this
268 Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this
269 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the
270 greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance
271 is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this
272 Ordinance.

273 (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance
274 shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable
275 by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of
276 the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the

277 greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any
278 of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to
279 the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and
280 sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and
281 effect.

282 **Section Seven. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances
283 in conflict herewith are hereby expressly repealed.

284 **Section Eight. Effective Date.** The effective date of this Ordinance shall be the date of
285 adoption unless otherwise stated herein.

286 **ORDAINED** this _____ day of _____, 2018.

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CITY OF HAPEVILLE, GEORGIA

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Alan H. Hallman, Mayor

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ATTEST:

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City Clerk

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APPROVED BY:

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City Attorney

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