

**STATE OF GEORGIA
CITY OF HAPEVILLE**

ORDINANCE NO. _____

AN ORDINANCE TO REVISE CHAPTER 11 (“BUSINESS LICENSING AND REGULATION”), ARTICLE 11 (“COMMERCIAL SOLICITATIONS AND TRANSIENT MERCHANTS”) SECTION 11-11-2 (“DEFINITIONS”) AND SECTION 11-11-3 (“SOLICITING”) OF THE CODE OF ORDINANCES, CITY OF HAPEVILLE, GEORGIA TO PROVIDE FOR THE REGULATION OF MOBILE FOOD VENDORS; TO PROVIDE FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.

WHEREAS, the mayor and council shall have full power and authority to provide for the execution of all powers, functions, rights, privileges, duties and immunities of the city, its officers, agencies, or employees granted by the City of Hapeville’s Charter or by state law; and,

WHEREAS, the municipal government of the City of Hapeville (hereinafter “City”) and all powers of the City shall be vested in the mayor and council. The mayor and council shall be the legislative body of the City; and,

WHEREAS, existing ordinances, resolutions, rules and regulations of the City and its agencies now lawfully in effect not inconsistent with the provisions of the City’s charter shall remain effective until they have been repealed, modified or amended; and,

WHEREAS, amendments to any of the provisions of the City’s Code may be made by amending such provisions by specific reference to the section number of the City’s Code; and,

WHEREAS, every official act of the mayor and council which is to become law shall be by ordinance; and,

WHEREAS, the governing authority of the City finds it desirable to provide for the licensing, operation and regulation of Mobile Food Vendors.

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

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

Sec. 11-11-2. Definitions.

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

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

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

Solicit or *soliciting* shall mean taking orders, selling, or seeking orders or clients for the purchase of goods, wares, merchandise, foodstuffs, products, subscriptions, or services of any kind, character, or description whatsoever. The terms "solicit" or "soliciting" shall not include transient merchants.

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

Section Two. Chapter 11 (Business Licensing and Regulation), Article 11 (Commercial Solicitations and Transient Merchants) of the City Code of Ordinances is hereby amended and renamed to "Section 11-11-3 (Regulation and Licensing Mobile Food Vendors)" and said section is stricken in its entirety and replaced as follows:

Section 11-11-3 - Regulation and Licensing of Mobile Food Vendors.

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

(b) An application for a permit hereunder shall be submitted to the City Clerk or his or her designee setting forth all information required hereunder and in compliance with this ordinance. The City Clerk or his or her designee shall develop a form of application for the purpose of compliance with this article. The application shall be accompanied by an executed indemnity agreement indemnifying and releasing the City, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever arising in connection with the activities of the Mobile Food Vendor pursuant to the permit issued hereunder. Mobile Food Vendor permits shall be active for ninety (90) days commencing on the day of issuance. Three day food permits shall expressly state the days of validity on the permit.

(c) The following information shall be provided with each application for a Mobile Food Vendor permit, along with an application fee of \$100.00 for a 90-day permit or \$50.00 for a three consecutive day permit, and an executed Release and Indemnification Agreement provided by the City:

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

(d) A waiver of the application fee may be requested at the time of application by the applicant if: (1) the event is a 501(c) non-profit event and proof is submitted thereof; or (2) the event is a city-sponsored event as determined by the City Manager.

(d) Mobile Food Vendor shall conduct business or operate in the public right-of-way, only if parking in the right-of-way is legally allowed and it does not impede the flow of traffic. A determination of traffic impediment shall be made by the City of Hapeville Police Department. Mobile Food Vendors must be located in a lot that can safely be accessible by patrons. Mobile Food Vendors cannot be parked on sidewalks. Parking on public, city-owned grass areas is permissible with prior approval from the City Manager at the time of application.

(e) A Mobile Food Vendor shall not operate on any private property without the prior written consent of the owner. A Mobile Food Vendor shall not be allowed to park overnight on any private property without the prior written consent of the owner.

(f) A Mobile Food Vendor may operate on City owned property, if: (1) the Mobile Food Vendor has received permission to do so from the City Manager; and (2) has indicated the appropriate City owned location, date, and times of use on the application. At no time shall a Mobile Food Vendor be allowed to park overnight on any City owned property. Designated City lots, dates and times are attached hereto and incorporated herein as Exhibit "A".

(g) A Mobile Food Vendor shall maintain a one million dollar (\$1,000,000.00) liability insurance policy. Proof of current liability insurance, issued by an insurance company licensed to do business in Georgia, protecting the Mobile Food Vendor, the public and the City from all claims for damage to property and bodily injury, including death, which may arise from

operation under or in connection with the permit, shall be provided to the City as part of its permit application. If the Mobile Food Vendor does not have insurance, the Mobile Food Vendor may be under the umbrella of an existing business with the business' permission to do so. Such arrangement documentation shall be included with the application to the City.

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

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

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

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

(l) A Mobile Food Vendor shall not sell or offer to sell any goods, foods, products, or services between the hours of 10:00 p.m. to 9:00 a.m., unless otherwise approved and extended by the City Manager.

(m) 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.

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

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

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

- (1) Every vehicle shall be equipped with a reverse gear signal alarm with a sound distinguishable from the surrounding noise level.
- (2) Every vehicle shall be equipped with two (2) rear-vision mirrors, one (1) at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle.

(q) A Mobile Food Vendor may only sell food and non-alcoholic beverage items. A Mobile Food Vendor may sale alcoholic beverages if all proper licensing requirements are satisfied and if the Mobile Food Vendor has all necessary permits and/or licenses.

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

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

Section Five. Severability.

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

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

(c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

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

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

ORDAINED this _____ day of _____, 2019.

CITY OF HAPEVILLE, GEORGIA

Alan Hallman, Mayor

ATTEST:

City Clerk

APPROVED BY:

City Attorney