

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 11-11-4 (“REGULATION AND LICENSING OF TRANSIENT**
9 **MERCHANTS”) OF THE CODE OF ORDINANCES, CITY OF HAPEVILLE, GEORGIA**
10 **TO PROVIDE FOR THE REGULATION OF TRANSIENT MERCHANTS; TO PROVIDE**
11 **FOR SEVERABILITY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE AN**
12 **EFFECTIVE DATE; AND TO PROVIDE FOR OTHER LAWFUL PURPOSES.**

13
14 **WHEREAS**, the mayor and council shall have full power and authority to provide for the
15 execution of all powers, functions, rights, privileges, duties and immunities of the city, its officers,
16 agencies, or employees granted by the City of Hapeville’s Charter or by state law; and,

17
18 **WHEREAS**, the municipal government of the City of Hapeville (hereinafter “City”) and
19 all powers of the City shall be vested in the mayor and council. The mayor and council shall be
20 the legislative body of the City; and,

21
22 **WHEREAS**, existing ordinances, resolutions, rules and regulations of the City and its
23 agencies now lawfully in effect not inconsistent with the provisions of the City’s charter shall
24 remain effective until they have been repealed, modified or amended; and,

25
26 **WHEREAS**, amendments to any of the provisions of the City’s Code may be made by
27 amending such provisions by specific reference to the section number of the City’s Code; and,

28
29 **WHEREAS**, every official act of the mayor and council which is to become law shall be
30 by ordinance; and,

31
32 **WHEREAS**, the governing authority of the City finds it desirable to provide for the
33 licensing, operation and regulation of transient merchants and to make updates regarding the same.

34
35 **BE IT, AND IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF**
36 **THE CITY OF HAPEVILLE, GEORGIA THAT:**

37
38 **Section One.** Chapter 11 (Business Licensing and Regulation), Article 11 (Commercial
39 Solicitations and Transient Merchants), Section 11-11-4 (Regulation and Licensing of Transient
40 Merchants) of the City Code of Ordinances is hereby amended by striking said section in its
41 entirety and replacing it with the following language:

42 **Section 11-11-4 - Regulation and Licensing of Transient Merchants.**

43 (a) It shall be unlawful for any person to sell, or offer for sale, goods or food of any type from
44 without a permit first having been granted under this section.

45 (b) An application for a permit hereunder shall be submitted to the City Clerk or his or her
46 designee setting forth all information required hereunder and in compliance with this ordinance.
47 The City Clerk or his or her designee shall develop a form application for the purpose of
48 compliance with this article. The application shall be accompanied by an executed indemnity
49 agreement indemnifying and releasing the City, its agents, employees and elected officials from
50 any and all liability against any and all claims, actions and suits of any type whatsoever arising in
51 connection with the activities of the Transient Merchant pursuant to the permit issued hereunder.
52 Transient Merchant permits shall be active for:

53 a. ninety (90) days commencing on the day of issuance; or

54 b. three (3) consecutive days as expressly stated on the permit.

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

59 (1) Name of the Transient Merchant;

60 (2) Type and description of the vending unit or display cart/stand;

61 (3) Owner's contact information;

62 (4) Operator's contact information;

63 (5) Copy of approved permit from the Fulton County Health Department (if
64 applicable);

65 (6) List of operating locations and times including map detailing the position of the
66 vehicle, and current zoning in said locations;

67 (7) Signatures from property owners indicating consent for the use of their property;
68 and

69 (8) Signature of applicant indicating agreement to the listed requirements.

70 (d) A waiver of the application fee may be requested at the time of application by the
71 applicant if: (1) the event is a 501(c) non-profit event and proof is submitted thereof; or (2) the
72 event is a city-sponsored event as determined by the City Manager. However, all Transient
73 Merchants must fill out an application form, execute an Indemnification Agreement, and provided
74 the City with all necessary documentation required by the City.

75 (e) Transient Merchants may conduct business or operate in the public right-of-way, only
76 if parking in the right-of-way is legally allowed and it does not impede the flow of traffic. A

77 determination of traffic impediment shall be made by the City of Hapeville Police Department.
78 Transient Merchants must be located in a lot that can safely be accessible by patrons. Transient
79 Merchants cannot be parked on sidewalks. Parking on public, city-owned grass areas is permissible
80 with prior approval from the City Manager at the time of application.

81 (f) A Transient Merchant shall not operate on any private property without the prior written
82 consent of the owner. A Transient Merchant shall not be allowed to park overnight on any private
83 property without the prior written consent of the owner.

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

89 (h) A Transient Merchant shall maintain a one million-dollar (\$1,000,000.00) liability
90 insurance policy. Proof of current liability insurance, issued by an insurance company licensed to
91 do business in Georgia, protecting the Transient Merchant, the public and the City from all claims
92 for damage to property and bodily injury, including death, which may arise from operation under
93 or in connection with the permit, shall be provided to the City as part of its permit application. If
94 the Transient Merchant does not have insurance, the Transient Merchant may be under the
95 umbrella of an existing business with the business' permission to do so. Such arrangement
96 documentation shall be included with the application to the City.

97 (i) A Transient Merchant shall not make sounds or announcements to call attention to the cart
98 or display either while traveling on the public rights-of-way or when stationary. At all times said
99 Transient Merchant shall be in compliance with the City's noise ordinance.

100 (j) The permit under which a Transient Merchant is operating must be firmly attached and
101 visible on the Transient Merchant at all times.

102 (k) Transient Merchant shall not sale any goods out of a motorized vehicle or a cart, stand or
103 display being towed by a motorized vehicle.

104 (l) Transient Merchants shall not be located within fifteen (15) feet of any street intersection
105 or pedestrian crosswalk or ten (10) feet of any driveway.

106 (m) A Transient Merchant shall not sell or offer to sell any goods, foods, products, or services
107 between the hours of 10:00 p.m. to 9:00 a.m., unless otherwise approved and extended by the City
108 Manager.

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

111 (o) No sale or offer for sale of ice cream, frozen milk, frozen dairy or ice confection products
112 shall be made from a Transient Merchant unless each side of the vehicle is marked, in letters and
113 numbers at least three (3) inches in height, with the name and address of the Transient Merchant
114 licensee.

115 (p) Transient Merchants shall comply with all state, federal and local health and safety
116 regulations and requirements and shall obtain and maintain any and all license and permits required
117 by any other health organization or governmental organization having jurisdiction over this subject
118 matter.

119 **Section Two. Codification and Certify.** This Ordinance adopted hereby shall be codified
120 and certified in a manner consistent with the laws of the State of Georgia and the City.

121
122 **Section Three. Severability.**

123
124 (a) It is hereby declared to be the intention of the Mayor and Council that all sections,
125 paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment,
126 believed by the Mayor and Council to be fully valid, enforceable and constitutional.

127
128 (b) It is hereby declared to be the intention of the Mayor and Council that, to the greatest
129 extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this
130 Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this
131 Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the
132 greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance
133 is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this
134 Ordinance.

135
136 (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance
137 shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable
138 by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of
139 the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the
140 greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any
141 of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to
142 the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and
143 sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and
144 effect.

145
146 **Section Four. Repeal of Conflicting Ordinances.** All ordinances and parts of ordinances
147 in conflict herewith are hereby expressly repealed.

148
149 **Section Five. Effective Date.** The effective date of this Ordinance shall be the date of
150 adoption unless otherwise stated herein.

151 **ORDAINED** this _____ day of _____, 2019.

153 **CITY OF HAPEVILLE, GEORGIA**

154
155
156
157
158
159

Alan Hallman, Mayor

160
161
162
163
164
165
166
167
168
169
170
171
172
173
174

ATTEST:

City Clerk

APPROVED BY:

City Attorney

DRAFT