

**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 11-11-4 (“TRANSIENT MERCHANTS”) OF THE CODE OF ORDINANCES, CITY OF HAPEVILLE, GEORGIA TO PROVIDE FOR THE REGULATION OF TRANSIENT MERCHANT S; 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in effect not inconsistent with the provisions of the City’s charter shall remain effective until they have been repealed, modified or amended; and,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 transient merchants.

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

Section One. Chapter 11 (Business Licensing and Regulation), Article 11 (Commercial Solicitations and Transient Merchants), Section 11-11-4 (Transient Merchants” of the City Code of Ordinances is hereby amended and renamed to “Section 11-11-4 (Regulation and Licensing of Transient Merchants)” and said section is stricken in its entirety and replaced as follows:

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

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

(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 Transient Merchant pursuant to the permit issued hereunder. Transient Merchant permits shall be active for ninety (90) days commencing on the day of issuance. Three-day transient merchant permits shall expressly state the days of validity on the permit.

(c) The following information shall be provided with each application for a Transient Merchant 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 Transient Merchant;
- (2) Type and description of the vending unit or display cart/stand;
- (3) Owner's contact information;
- (4) Operator's contact information;
- (5) Copy of approved permit from the Fulton County Health Department (if applicable);
- (6) List of operating locations and times including map detailing the position of the Transient Merchant, and current zoning in said locations;
- (7) Proof of current liability insurance of at least one million dollars (\$1,000,000.00), issued by a an insurance company licensed to do business in Georgia, protecting the Transient Merchant, 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;
- (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) Transient Merchants may 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.

Transient Merchants must be located in a lot that can safely be accessible by patrons. Selling goods on public, city-owned grass areas is permissible with prior approval from the City Manager at the time of application.

(e) A Transient Merchant shall not operate on any private property without the prior written consent of the owner. Transient Merchants are not allowed to leave up displays, carts or stands overnight.

(f) A Transient Merchant may operate on City owned property, if: (1) the Transient Merchant 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 Transient Merchant 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 Transient Merchant shall not make sounds or announcements to call attention to the station either while traveling on the public rights-of-way or when stationary. At all times said Transient Merchant shall be in compliance with the City's noise ordinance.

(h) The license under which a Transient Merchant is operating must be firmly attached and visible on the Transient Merchant stand, display or cart at all times.

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

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

(k) A Transient Merchant 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.

(l) 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.

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

(n) Transient Merchants 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, if applicable.

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

DRAFT