

Recommended By: The Public Safety Committee

Submitted by: The City Attorney

ORDINANCE NO. 14-113

AN ORDINANCE AMENDING TITLE 12, CHAPTER 5 OF THE GENERAL CITY CODE, 1980 TO ADD A NEW SECTION TO ESTABLISH REGULATIONS FOR LARGE GROUP CHARITABLE FOOD SERVICES IN THE CITY OF BIRMINGHAM, ALABAMA.

WHEREAS, Alabama municipalities are authorized to regulate the use of public streets, sidewalks and rights-of-way for public health, safety, welfare and convenience; and

WHEREAS, all cities and towns in Alabama have the power to maintain the health and cleanliness of the city or town within its limits and within the police jurisdiction thereof. (Ala. Code, 1975, § 11-47-130 *et seq.*); and

WHEREAS, no person, firm, association, or corporation is authorized or permitted to use the streets, avenues, alleys, or public rights-of-way of any municipality for the operation of any private enterprise, without first obtaining the consent of the proper authorities of such municipality (Ala. Const. Art. XII, § 220; Ala. Code, 1975, § 11-49-1 (a)); and

WHEREAS, no person shall stand on the City's rights-of-way or city-owned property for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city having jurisdiction over said property. (Ala. Code, 1975, § 32-5A-216 *et seq.*); and

WHEREAS, the City of Birmingham appreciates those that take part in the charitable act of providing food for those in need and finds and determines that such activities are of general benefit to the health, safety and welfare of all citizens; and

WHEREAS, the City of Birmingham recognizes that there are many who are unable to provide food for themselves and must rely on the generosity of charitable organizations; and

WHEREAS, the City Council finds and determines that the coordination of the efforts of those who provide charitable food services will mutually benefit those who receive the food, those who provide the food and the public at large by enacting regulations that the rights-of-way is kept in a sanitary condition; and

WHEREAS, regulating the time, place and manner of charitable food service events will benefit the public by ensuring that public rights-of-way remain passable, accessible and kept in a sanitary condition; and

WHEREAS, such feeding activity, while well intended, often generates litter, refuse, waste food, and other unsanitary materials left behind on the property where the feeding occurs, to the detriment of the property owner and the health and safety of the general public; and

WHEREAS, the City Council finds and determines that the use of selected sites as designated by the City’s Traffic Engineer, and the use of other selected city-owned properties for charitable food services events serves a public purposes in that it allows the City to manage the flow of pedestrian and vehicular traffic and maintain its public rights-of-way and city-owned property in clean and attractive condition, readily available to citizens in a safe and sanitary manner; and

WHEREAS, the Council of the City of Birmingham finds it in the interest of the public health, safety, welfare and convenience to regulate the operation of charitable food service events within the public rights-of-way of the City of Birmingham, in order to protect the safe and convenient use of public rights-of-way.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Birmingham, Alabama, that Title 12, “Licensing and Regulation” Chapter 5 “Demonstrations, Parades, and Emergencies, is hereby amended to add a new section as follows:

1. Purpose.

The general purpose of this ordinance is to authorize the use of the City’s public rights-of-way and city-owned property for charitable food service events by creating a permitting process that includes reasonable guidelines and regulations that promote the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Birmingham; and to regulate the flow of pedestrian and vehicular traffic; and to encourage the safe, convenient and sanitary use of the City’s public rights-of-way and city-owned property.

2. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Applicant" means any person or business that applies for a permit or renews a permit under the provisions of this Chapter.

“Charitable food services” means providing food without charge, payment or other compensation to benefit large groups of people at an outdoor location not owned, leased or controlled by the individual or organization providing the food. Charitable food services shall not be conducted when an admission, donation or collection of any item of value is required of any of the participants or members of the public as a condition of participation or attendance.

“Charitable food site” is an area designated by the Traffic Engineer for the specific operation of charitable food service events within the public rights-of-way or city-owned property.

“Charitable food service event” means each instance in which charitable food services are provided by the permittee within the public rights-of-way or on city-owned property that are intended to attract, attracting, or likely to attract twenty-five (25) or more people, including distributors and servers.

“City-owned Property” means property owned by the city, including any property which is operated, managed or administered by the park and recreation board of the city, (not limited to, the following) public buildings, developed parking decks, plazas, piazzas and parking areas under bridges and overpasses.

“Health Department” shall mean a county health department. Such term shall be construed to include the Jefferson County Health Department and any officer or agent of a department authorized to act for and on behalf of the department

"Permit or charitable food service permit" means a written authorization issued by the Traffic Engineer to conduct a charitable food service event within the public rights-of-way of the City of Birmingham or city-owned property.

“Permittee” a person has been granted a permit by the Traffic Engineer to conduct charitable food service events within the rights-of-way of the city or on city-owned property.

“Person” means any natural person, firm, partnership, association, charitable organization or corporation. Whenever the word “person” is used in any section in this Chapter prescribing a penalty or fine as applied to a partnership or association, the word shall include the partners or members thereof; such word as applied to corporations shall include the officers, agents, or employees thereof who are responsible for any violation of such section.

3. Use of the rights-of-way or city-owned property without a permit is prohibited.

The use of the City rights-of-way or city-owned property to conduct a charitable food service event without a permit is prohibited, except for activities of a volunteer emergency first responders or governmental agency, including, but not limited to the Red Cross, FEMA, and similar organizations within the scope of its governmental authority, or by declarations of a state of emergency by the Governor or Mayor, unless specifically permitted to do so by a permit or approval issued pursuant to this Chapter.

- 1) It shall be unlawful for any person to hold any charitable food service event within the public rights-of-way or on city-owned property without a permit issued by the City’s Traffic Engineer or his/her designee.
- 2) Written approval by the Director of the Park and Recreation Board or his/her designated representative shall be required for any charitable food service event to be held on city-owned property operated, managed or administered by the park and recreation board.

- 3) Unless another location is approved by the Traffic Engineer, charitable food service events shall be allowed only at the following locations:

Weekdays and Weekends:

Open lot on NW corner of 16th Street N and 7th Avenue N (700 16th Street N)

Weekdays Only:

North side of Park Place, first parking space east of 20th Street N (Parking Meter #38)

North side of Park Place, first parking space west of 20th Street N (Parking Meter #37)

Weekends Only:

Municipal Court Parking Lot: NE corner of 17th Street N and Rev Abraham Woods Jr Blvd N (801 17th Street N)

City Hall Parking Lot: SW corner of 19th Street N and Rev Abraham Woods Jr Blvd N (718 19th Street N)

4. Term of permit.

A large group feeding permit shall be valid for six (6) months from the date of issuance.

5. Application for large group feeding for charitable food services.

- 1) To secure a permit, written application shall be made to the city Traffic Engineer on forms provided by the Traffic Engineering Department, setting forth:
 - a) The name, address and telephone number of the person seeking to conduct such or charitable food service event and of the primary contact person;
 - b) The name, address and telephone number of the individual responsible in case a policing, fire safety, E.M.S., or other emergency should arise.
- 2) A signed statement that the applicant shall hold harmless the City and its officers and employees, and shall indemnify the City, its officers, employees and agents for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.
- 3) An application must be submitted to the City Traffic Engineer a minimum of 7 days prior to the event.

6. Appeal Procedure.

Any applicant shall have the right to appeal the denial, revocation or suspension of a permit by appealing the decision to the City Council. The appeal to City Council shall be taken by the applicant within five (5) days after receipt of the notice of denial by filing a written notice with the

City Clerk with a copy to the Traffic Engineer. The City Council shall consider the appeal at the next regularly scheduled meeting following receipt by the City Clerk of the notice of appeal.

7. Reserving a charitable food site.

A permit number shall be required to reserve a charitable food site online at informationbirmingham.gov. A maximum of two permittees shall be authorized to conduct charitable food service events, per authorized location, during the available time slots. The permit shall be subject to additional limitations on hours and days of operation that the City determines are appropriate to prevent conflict with special events. The Traffic Engineer may designate alternate locations to prevent conflicts with special events.

8. General Rules and Regulations.

- 1) No persons conducting a charitable food service event on private property shall be permitted to operate in the following manner:
 - a) The charitable food service event may not obstruct the use of any street intersection or pedestrian crosswalk.
 - b) The charitable food service event shall not impede or obstruct the ingress or egress to the driveway of adjoining owners.
 - c) The charitable food service event shall not obstruct pedestrian traffic on the public rights-of-way.
 - d) The charitable food service event shall not impede or obstruct the ingress or egress of any building on adjoining property.
 - e) Amplified sound or sound equipment must comply with the City of Birmingham Noise Ordinance. (§ 11-8-21 *et seq.* of the *General Code of the City of Birmingham, 1980, as now or hereafter amended.*)
 - f) Any and all signage must be contained on the private property. At no time shall any signage be placed within the public rights-of-way.
- 2) The permit shall be subject to additional limitations on hours and days of operation that the City determines are appropriate to prevent conflict with special events. Examples of special events include, but are not limited to, construction, parades, sponsored marathons and blocked streets to allow licensed events.
- 3) No charitable food service event shall cause congestion that impedes pedestrian or vehicle traffic or interfere with the city or public's use of any public rights-of-ways. This shall include but is not limited to activity of customer queues, table, chairs and other accessories, or signage that in any way impedes or impairs access to adjacent parking, pedestrian or vehicle traffic.

- 4) No permittee shall provide charitable food service to occupants of vehicles in the public rights-of-way.
- 5) Charitable food service event equipment shall not be left unattended or stored at any time on the charitable food site when a charitable food service event is not taking place.
- 6) Any power required for the permittee located on a public right-of-way shall be self-contained. The permittee shall not draw its power from utilities location in the public rights-of-way. No power cable or equipment shall be extended at grade or overhead across any public street, alley or sidewalk.
- 7) The permittee shall comply with all applicable laws including but not limited to the Americans with Disabilities Act.
- 8) Any charitable food service being provided from a mobile food vehicle in the right-of-way shall only occur from the side of a food vehicle that is parked facing the curb.
- 9) No permittee shall have a drive-through service within the right-of-way.
- 10) A permittee operating at any unauthorized location or beyond the hours for which the operation has been permitted shall be deemed operating without a permit in violation of this section and may be subject to enforcement.
- 11) The City Council shall, in the best interest of the City, have the authority to reduce the size and/or location of a charitable food site at a later date, when doing so is necessary to protect the public health and safety.
- 12) The permittee shall not dump or allow the dumping of grease or other food service equipment on any street, sidewalk, right-of-way, streetscape or landscape area.
- 13) Permittee shall cooperate with the Traffic Engineer in the scheduling and siting of food service events, with the goal of maximizing the benefit of such charitable food services to the needy.
- 14) It is unlawful to fail to produce and display the charitable food service permit during or after a charitable food service event, while still on site, to a law enforcement officer upon demand. It is an affirmative defense to this violation if the offender can later produce, to the City Prosecutor or the Court, a charitable food service permit issued to the offender, which was valid at the time of the event.
- 15) Permittee agrees to provide adequate personnel, trash receptacles, and trash containment and removal measures to contain all trash, refuse, and litter on the charitable food site during a charitable food service event. Permittee shall be responsible for cleaning of the charitable service site and all areas affected by the assembly at the charitable service event, including all parks, closed streets, sidewalks, rights-of-way, hardscape and landscape areas, and to remove all trash, refuse, litter and unused foods from the charitable food site at the conclusion of the

food service event within a reasonable time not to exceed three (3) hours of the end of the event, unless such time period is modified by the Traffic Engineer.

9. Enforcement.

- 1) *Enforcement.* The provisions of this Chapter or any rules and regulations shall be enforceable by the Birmingham Police Department and the Traffic Engineering Department.
- 2) *Fine for Violation.* Any permittee in violation of any provision of this ordinance shall be subject to a fine of up to five hundred (\$500.00) dollars per violation. Each violation shall constitute a separate and distinct offense. Each day shall be considered a separate offense.
- 3) Any permit holder charged with a violation of any section of this ordinance, may be issued a summons or citation.

10. Revocation of Permit.

- 1) The City Council may revoke a charitable food service permit granted to any person found in violation of any provisions of this ordinance.
 - 2) The City Council shall set a time for a public hearing on the matter of the revocation of any permit issued pursuant to this chapter, and notice of the date and time of such hearing will be given to the permittee in writing by the City Clerk not less than seven days prior to such hearing. Such notice shall state the reason for the hearing and shall advise the permittee that he may appear in person and/or by attorney and that he may present his position, arguments and contentions in writing and/or orally, and that he may present evidence in his behalf and examine witnesses appearing for and against him. The City Council shall receive any relevant evidence and hear any relevant testimony on the matter of revocation prior to making its decision on such matter.
 - 3) The permittee or any of its principals fails to satisfy any qualification or requirement imposed by this ordinance, or other local, state or federal laws or regulations that pertain to the particular permit; or
 - 4) The permittee or any of its principals has been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years; or
 - 5) The application contains material omissions or false, fraudulent, or deceptive statements; or
- 1) The charitable food service event is operated in such a manner as constituting a public nuisance per the Birmingham City Code or state statutes; or
 - 2) The permittee or his agents or employees interfere with an inspection of the permittee by a Health Department inspector; or

The provisions of this ordinance are not exclusive. This ordinance shall not preclude the enforcement of any other provisions of local, state and federal laws and regulation, including those imposed by a County Health Department to protect against health hazards related to charitable food service events+.

SECTION 2. EFFECTIVE DATE. This Ordinance shall become effective upon passage, approval and publication or as otherwise provided by law.

SECTION 3. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by declaration of any court of competent jurisdiction, such declaration shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. PRESERVATION. Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following: Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

Adopted by the Council July 29, 2014 and Approved by the Mayor August 8, 2014



A CERTIFIED COPY
Lee Frazier, City Clerk
Birmingham, Al
Lee Frazier