

*Tabled
Indefinitely
on 9/20/2016*

A RESOLUTION OF THE NEWTON COUNTY BOARD OF COMMISSIONERS REGARDING APPROVAL OF AN AMENDMENT TO CHAPTER 17 OF THE CODE OF NEWTON COUNTY, GEORGIA – REGULATIONS FOR PUBLIC HEALTH – TO INSERT A NEW SECTION PERTAINING TO PUBLIC PROPERTY USE AND PERMIT REQUIREMENTS FOR PUBLIC GATHERING AND PUBLIC DISTRIBUTION; TO REPEAL CONFLICTING PROVISIONS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the County may adopt clearly reasonable ordinances, resolutions and regulations; and

WHEREAS, there is an increasing interest the use of public property within unincorporated Newton County, Georgia for the purposes of public gathering and temporarily selling, dispensing, or otherwise distributing food, drink, merchandise, and other products to the public; and

WHEREAS, the County wishes to provide for permit requirements for the use of public property for such activities to regulate competing uses of the area and to assure public access to and safe use of such property; and

WHEREAS, the Newton County Board of Commissioners finds it is in the best interest of Newton County to require such public property use permits in order to protect the health, safety, and welfare of the County and its residents.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners, Newton County, Georgia, and by the authority of same as follows:

1. Division II of the Code of Newton County, Georgia, as amended, is hereby amended by adopting and inserting Section 17-104, titled "Public Property Use Permits," as contained in Exhibit "A," attached hereto and incorporated herein by reference.
2. Any and all other conflicting ordinances and resolutions or parts thereof are hereby repealed.
3. The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and if any phrase, clause sentence, paragraph, or section of this Ordinance

shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

4. This Resolution shall take immediate effect upon its adoption.

BE IT SO RESOLVED, by the authority aforesaid, and it is hereby resolved by authority of the same, this 20th day of September 2016, the public health, safety and general welfare demanding it.

NEWTON COUNTY BOARD OF COMMISSIONERS

William K. Ellis, Chairman

Attest:

Jackie Smith, County Clerk

[SEAL]

EXHIBIT "A"

Section 17-104 – Public Property Use Permits

- **Purpose.**

The purpose of this section is to provide for permit requirements for the use of public property for concerted gathering on and occupying of property in the County, and/or the temporary selling, dispensing, or otherwise distributing of food, drink, merchandise, and other products on public property to regulate competing uses of the area and to assure public access to and safe use of the property.

- **Definitions**

For purposes of this section, the following terms, phrases, words and their derivations shall have the meaning given herein:

- (a) *Public gathering* shall mean any event involving eight (8) or more people acting in concert and occupying a portion of County public property.
- (b) *Public property* shall mean real property that is owned or leased by the County or any of its departments or agencies, including but not limited to any such sidewalk, street, right-of-way, alley, park, facility, or common area.

- **Public Gathering Permit.**

Any person or groups of persons desiring to hold a public gathering upon public property in the County shall first provide notice to the County and obtain a Public Gathering permit from the County Manager, or his or her designee, pursuant to the provisions of this section, unless such a permit is prohibited or otherwise exempted under federal, state or local law.

- **Distribution Permit.**

No person, groups, organization, or business shall temporarily sell or otherwise distribute food, drink, merchandise or other product(s) upon any public property without first providing notification to the County and obtaining a Distribution permit from the County Manager, or his or her designee, pursuant to the provisions of this section, unless such a permit is prohibited or otherwise exempted under federal, state or local law.

- **Conditions.**

- (a) In the conduct of any such gathering or distribution activities under this section, persons engaged in such activities on public property shall not position themselves or place signs, shields, or banners so as to block any doorway, driveway, walkway, or street intersection, and shall not interfere with the general flow of traffic, whether pedestrian or vehicular.

- (b) Any person or organization wishing to sell or otherwise distribute food, drink, or other edible goods under this section shall comply with all food health and safety regulations under federal, state or local law, and other ordinances of the County.
- (c) Nothing in this section shall be deemed to waive or supersede the requirement to obtain any other license or permit required by this ordinance.

- **Application; Fee.**

Every applicant for a permit under this section shall make application on forms promulgated by the County Manager, and shall contain all the information required by the form and be accompanied by all required fees, documents, and hold harmless agreements required by this section, including any required attachments, before it will be processed. Each public property use requires a separate permit.

- (a) A complete permit application under this section shall require, at a minimum, the following information:
 - (1) Applicant's name, phone number, and address;
 - (2) If applicable, legal name of business or entity, and state of incorporation or filing of a partnership or articles of association;
 - (3) Description of the proposed public property activity, including location, dates, and times of use;
 - (4) Anticipated number of participants;
 - (5) If applicable, description of item(s) being distributed;
 - (6) If applicable, description of proposed parking arrangements for vehicles and equipment; and
 - (7) Any additional information which the County Manager may find reasonably necessary to the fair administration of this section.
- (b) Each permit application shall be signed and sworn to by the applicant. False statements in any application shall be grounds for immediate denial or revocation of the permit, and denial of future applications.
- (c) The application fee shall be \$_____.00. Except as otherwise set forth in this section, all fees are nonrefundable.
- (d) Applications shall be submitted to the County Manager no later than five (5) working days preceding the permit period.

(e) Public Gathering short notice provision. Notwithstanding the foregoing, if the timing of the public gathering is based upon the occurrence of an identifiable event, the date of which could not have been predicted with certainty, the County Manager, or his or her designee, shall have the authority to issue a Public Gathering permit upon one (1) hour's notice.

• **Procedure For Issuance.**

(a) The County Manager, or his or her designee, shall issue a permit as provided for in this section when, from a consideration of the application, and from such other information as may otherwise be obtained by consultation with the Newton County Sheriff's Office, Fire Services, Public Works, and any other appropriate County department, it is found that:

- (1) The conduct of such activity will not unduly interfere with traffic or pedestrian movement or endanger the health, safety and welfare of the public generally;
- (2) The conduct of such activity will not unduly interfere with normal governmental or County operations, threaten to result in damage or detriment to public property, or result in the County incurring costs or expenditures in either money or personnel not reimbursed in advance by Applicant;
- (3) The conduct of such activity within or adjacent to parks and recreation facilities will not unduly interfere with the public's use and enjoyment for recreational activities and events, or with existing contracted concessionaires; and
- (4) The conduct of such activity will not constitute a fire hazard or any other type of hazard and all safety precautions will be taken as determined by the heads of the aforementioned departments or their designees.

(b) Notwithstanding the considerations above, the County Manager may deny an application if:

- (1) The applicant failed to comply with all requirements of this section;
- (2) The applicant previously caused significant damage to County property and has failed to adequately repair the damage or reimburse the County for repair and/or restoration.

(c) The County Manager may impose reasonable conditions in a permit under this section to protect the health, safety and welfare of the public generally. Any such condition shall be based on a compelling interest in public health or safety and shall be narrowly tailored to meet that end. The County Manager shall enumerate in writing the grounds for any condition in the permit.

(d) The final decision to issue, conditionally issue, or deny a permit under this section shall rest with the County Manager and shall be final, unless appealed in writing within five

(5) working days in accordance with the provisions of this section below. No distinction shall be made on the basis of the content of the message, the identification of the participants, or any other matter which does not directly and substantially impact public health, safety and welfare.

- (e) The County Manager may issue as many permits under this section as he or she deems appropriate. Where more than one permit application is received for the same location at the same time, and the County Manager reasonably determines both uses cannot occur simultaneously, the first complete application that is received by the County shall be given priority as to the requested location and time. The County Manager shall make reasonable efforts to accommodate any other applications to identify alternative suitable locations and times. Any application fees paid by an unsuccessful applicant due to the unavailability of a requested property use location shall be fully refundable.
- (f) All activities under a permit issued shall be conducted in a peaceable and orderly manner in compliance with the permit condition(s), if any, and all federal, state and local laws, and ordinances of the County.

- **Expiration.**

- (a) Permits under this section are valid for the period of time for which they are granted and expire on the date indicated on the permit. Permits are not automatically renewable. A permittee who wishes to continue operating after the expiration of the permit shall follow the application procedures required of a new applicant.
- (b) A permit issued under the provisions of this section is not transferable or assignable.
- (c) Whenever any permittee desires to change the location or activity of the permit issued, the permittee shall follow the review and approval process required of a new applicant for any affected permit.

- **Hold Harmless Agreement.**

Newton County and its agents are not responsible for any damage or harm arising from any occurrence occasioned by the activities of any permit issued under this section. Applicant shall execute an indemnification and hold harmless agreement as provided by the County prior to the issuance of any permit under this section.

- **Cleanup and Restoration.**

A permittee is responsible for maintaining the area within and in proximity to the permitted use location in an orderly, clean and hazard-free condition, including, without limitation:

- (1) Continuous attention to cleaning and disposing of all trash and debris. The areas used shall be completely cleaned of trash and debris to the County's reasonable satisfaction within one (1) hour of the completion of the activity each day, and all trash and debris disposed of off-site;
- (2) Removal of all structures and equipment, including but not limited to any tents, tables, chairs, signs, or other temporary assemblies at the conclusion of each day and when otherwise not in operation; and
- (3) Restoring any damaged or disrupted area before leaving the site each day, to the reasonable satisfaction of the County. If, after notice and a reasonable opportunity to provide repairs, the site is not repaired or restored to the County's reasonable satisfaction, the County shall have the necessary restoration and/or repairs performed and shall bill the applicant for any reasonable costs incurred by the County. Applicant shall reimburse County for the reasonable cost of such work within thirty (30) days of receipt of the invoice.

- **Suspension, Revocation, and Appeal.**

- (a) A permit issued under this section may be suspended or revoked by the County Manager based on any change in condition that would have otherwise resulted in the denial of the permit had the change occur prior to issuance, for violation of the requirements of this section, or for breach of any condition in the permit.
- (b) If a permit is suspended, revoked, or denied under this section, the County Manager shall provide the holder or applicant of the permit with written notice of the reasons for such decision and the effective date of such action, if applicable, and shall contain information regarding his or her right of appeal. The holder or applicant of the permit shall have the right to appeal to the Chairman of the Board of Commissioners by submitting an appeal in writing to the Chairman within five (5) working days of the effective date of the revocation, suspension, or denial.
 - (1) Pending action on the appeal, a permit which has been suspended, revoked, or denied shall be considered suspended, revoked, or denied.
 - (2) If a written appeal is not submitted within the five working days of suspension, revocation, or denial, or if the appeal is denied, the permit shall hence be considered suspended, revoked, or denied.
- (c) The Chairman of the Board of Commissioners shall review any application so appealed de novo and shall render an opinion within three (3) working days of receipt of a proper appeal. Such de novo review shall include the power to eliminate, adopt or modify conditions placed on any permit prior to the appeal. Any such condition shall be based on a compelling interest in public health or safety and shall be narrowly tailored to meet that end. No distinction shall be made on the basis of the content of the message, the

identification of the participants, or any other matter which does not directly and substantially impact public health and safety. The Chairman shall enumerate in writing the grounds for any condition or denial of the permit reviewed.