

**A ORDINANCE BY
COUNCILMEMBER JIM MADDOX**

07-O-1100

**AS SUBSTITUTED BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

AN ORDINANCE AMENDING THE ATLANTA OUTDOOR EVENTS ORDINANCE, CHAPTER 142 OF THE ATLANTA CODE OF ORDINANCES, BY AMENDING SECTION 142-31(a) AND ADDING A NEW SECTION 142-43 WHICH WILL ALLOW OUTDOOR FESTIVAL AND ASSEMBLY PERMIT HOLDERS TO OBTAIN “FREE SPEECH ZONES” DURING THEIR EVENTS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (the “City”) is committed to respecting the constitutional rights of all citizens, including the rights protected by the United States Constitution’s First Amendment; and

WHEREAS, the United States Constitution, as interpreted by the Supreme Court and other courts throughout the country (“Federal Law”) provides broad rights to people who want to exercise their First Amendment rights in public places such as parks and sidewalks, but is clear that rights may be limited in certain ways by governmental entities; and

WHEREAS, Federal Law allows the City to restrict free speech rights, even in a park or on a sidewalk that is deemed a public forum, if the restriction is not based upon the content of the speech, and is a reasonable regulation of the speech’s time, location, and/or manner; and

WHEREAS, Federal Law recognizes that certain outdoor events, such as parades, are forms of expressive speech that are protected by the First Amendment. As a result, the government must allow the event organizer to shape her/his message, including allowing the organizer to determine what types of messages or speech may be portrayed or expressed in the event; and

WHEREAS, the City allows people to obtain a permit to hold an Outdoor Festival or Assembly (as defined in this Chapter 142 of this Code of Ordinances, sections 142-51 (h) and 142-81 respectively) on City property, both of which are forms of expressive speech protected by the First Amendment; and

WHEREAS, when the City issues an outdoor event permit, it authorizes the permit holder to conduct its event in a defined area of City property. For an Outdoor Festival, the permit holder pays a permit fee ranging from \$250 to \$15,000, depending on the size of the festival and whether the organizer is a non-commercial or commercial entity. The organizer is responsible for the welfare of the festival area, including sanitation,

restoration of the area to its original state, repair of any damages that occur during the event, and organizing and implementing a security plan for the area, including for the larger festivals hiring off duty security officers for the area. For Assemblies, the City closes during the time of the Assembly that area of the park, street, sidewalk, or other public right-of-way where the Assembly will occur. The Assembly permit holder is also responsible for sanitation, restoring the Assembly area to its original state, and repairing any damages that occur during the event.

WHEREAS, the City's decision of whether to issue an Outdoor Festival or Assembly permit is based upon objective criteria that are completely unrelated to the content of the message(s) that will be portrayed by the outdoor event organizer and participants; and

WHEREAS, the City has an interest in protecting the First Amendment rights of the organizer of a permitted public property Outdoor Festival or Assembly, and has a simultaneous interest in protecting the First Amendment rights of people wishing to conduct First Amendment activity in the same public property location, but whose message is not part of the permitted outdoor event; and

WHEREAS, allowing people who are not part of an Outdoor Event to conduct First Amendment activity at the same time and location of the permitted Outdoor Event can potentially interfere with the First Amendment rights of the Outdoor Event organizer. By way of example, if a vegetarian society is holding an Outdoor Festival in a park that celebrates vegetarianism, and a person who is not part of the festival is handing out flyers to festival attendees advocating the health benefits of including chicken in one's diet, such leafleting will interfere with and dilute the message of the vegetarian society; and

WHEREAS, to accommodate the First Amendment interests of both the permitted outdoor event organizer and the person who is not participating in the outdoor event, it is in the best interest of the City to designate Free Speech Zones for public property Outdoor Festivals and Assemblies, where the event organizer requests the creation of such a zone. Where a Free Speech Zone is designated, anyone exercising her/his First Amendment rights that is not part of the permitted outdoor event, must exercise those rights in the Free Speech Zone. The Zones should be located such that people using the area are close enough to the Festival or Assembly area that their message can be heard or seen by Festival/Assembly attendees, but the location shall be such that it does not interfere with the message of the outdoor event nor create a public safety concern.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS as follows:

Section 1: Chapter 142 of the Atlanta Code of Ordinances, section 142-31(a), shall be amended by deleting the last two sentences in their entirety and replacing them with the following:

“All Outdoor Events must obtain an Emergency Services Sub-Permit. Lastly, public property Outdoor Festival and Assembly Applicants may request a First

Amendment Zone Sub-Permit, authorizing the establishment and implementation of a First Amendment Zone during the course of the Festival or Assembly. This Article IV lists the types of Sub-Permits and when each type of Sub-Permit is required or may be requested.”

Section 2: Chapter 142 of the Atlanta Code of Ordinances shall be amended by adding a new section 142-43 that shall read as follows:

Section 142-43. Free Speech Zone Sub-Permit.

- (a) Any Applicant submitting an Application for an Outdoor Festival that will occur on Public Property, or for an Assembly, may request a Sub-Permit authorizing the establishment and implementation of a Free Speech Zone.
- (b) A Free Speech Zone is an area or areas designated and clearly demarcated by the City for use by any person exercising her/his United States Constitutional First Amendment rights to free speech and/or free expression during an Outdoor Event, where the person exercising her/his rights is not authorized to do so by the Outdoor Event Host. For purposes of this Section 142-43, a person shall be deemed to be exercising her/his First Amendment rights when s/he is: using a bullhorn or some other amplification device; distributing items, including without limitation leaflets and/or literature, to more than ten people s/he does not know; preaching to people s/he does not know; conducting a monologue with people s/he does not know; protesting; carrying a sign, including without limitation a picket sign or banner; wearing a sign that is larger than 8 inches by 11 inches or larger; and/or conducting a performance, including without limitation singing, performing a play or skit, or miming, at least in part for the benefit of or directed toward people that s/he does not know. For purposes of this Section 142-43, a person shall not be deemed to be exercising her/his First Amendment rights as a result of the clothing, buttons, jewelry, and/or patches that s/he is wearing.
- (c) There is no fee for a Free Speech Zone Sub-Permit.
- (d) The Free Speech Zone Sub-Permit Application shall be submitted to the SEM with the Outdoor Event Application. The SEM shall forward the Application to the Department of Police, the Department of Public Works, and the Department of Parks, Recreation and Cultural Affairs if a park may be impacted, for each to communicate with each other and make a joint recommendation to the Chief of Staff regarding the size and location of the Free Speech Zone, and the feasibility of having the requested Outdoor Event along with the Free Speech Zone at the time and location requested by the Applicant.
- (e) Where a Public Property Outdoor Festival Applicant or Assembly Applicant applies for a Free Speech Zone Sub-Permit, the City must approve the

Application, though the City shall have the right to alter the location or time of the requested Outdoor Event to accommodate the logistics and public safety concerns associated with the Free Speech Zone request. In addition, the City shall have the right to establish a Free Speech Zone during any type of Outdoor Event should it determine that such a zone is in the best interest of the City for reasons of public safety or public order

- (f) Where an Applicant requests a Free Speech Zone Sub-Permit, the City shall determine the size and location of the Free Speech Zone. These decisions shall be made by the Chief of Staff, after receiving a recommendation from the Department of Police, the Department of Public Works, and the Department of Parks, Recreation and Cultural Affairs where applicable.
 - (1) The size of the Free Speech Zone shall be based upon: the size of the Festival Gathering Area, but not including the size of the perimeter described in Section 142-51 (c) (1)-(4) or Assembly area; the anticipated number of attendees at the Outdoor Festival or Assembly; and the anticipated quantity of people who may wish to use the Free Speech Zone, based upon the Department of Police's experience with similar events and indications from the public that they may wish to use the Free Speech Zone.
 - (2) The location of the Free Speech Zone shall be such that: the people within the zone shall have a meaningful opportunity to have their message heard and/or seen by people attending, entering, and/or exiting the Outdoor Festival or Assembly; the messages of the people in the Free Speech Zone do not interfere with the message(s) of the Outdoor Festival or Assembly; the messages of the people in the Free Speech Zone are not perceived as being part of the message(s) of the Outdoor Festival or Assembly; the Free Speech Zone does not unreasonably block ingress or egress to and from the Outdoor Festival or Assembly; the Free Speech Zone causes minimal impact upon park landscaping and other park features; and there is minimal risk of altercation between Outdoor Festival or Assembly participants and people inside the Free Speech Zone. It is acceptable to have more than one area designated as a Free Speech Zone where feasible, as long as each location meets the requirements set forth in this subsection.
- (g) Where an Outdoor Festival Host receives a Free Speech Zone Sub-Permit, s/he shall be responsible for determining, prior to the commencement of each day of the event, who is authorized to exercise her/his First Amendment rights as part of the Outdoor Festival on that day, and shall issue such people a badge to be worn indicating such authorization. People wearing Host-issued badges identifying themselves as an official vendor or official participant of the Outdoor Event for that day shall also be deemed authorized to exercise their First Amendment rights at the event that day.

- (h) Because an Assembly involves the temporary closure of a park, sidewalk, street, or other City right-of-way, the Assembly Host may determine at any time, including during the Assembly, who shall be permitted into the demarcated Assembly area, and who must utilize the Free Speech Zone. This decision may be based upon any reason, including clothing, buttons, jewelry, and/or patches worn. In addition, for purposes of an Assembly, the Host may determine who may and may not participate in the Assembly without obtaining a Free Speech Zone Sub-Permit.
- (i) It shall be unlawful for anyone to exercise her/his First Amendment Rights at a Public Property Outdoor Festival that has a Free Speech Zone if that person: 1) is not authorized by the Outdoor Festival Host to exercise such rights; 2) is inside of the Festival Gathering Area, but not including the size of the perimeter described in Section 142-51 (c) (1)-(4); and 3) is not in a Free Speech Zone. In such event, a sworn officer working at the Outdoor Festival shall ask that person to cease the exercise of her/his First Amendment activity or relocate to a Free Speech Zone. Should s/he fail to cease the activity or relocate, s/he shall have committed and may be charged with a violation of this Code section. Upon conviction, s/he shall be subject to the penalties set forth in Section 1-8 of this Code.
- (j) It shall be unlawful for anyone to be inside of a demarcated Assembly area after being asked to leave by the Assembly Host or her/his designee. In such event, a sworn officer working at the Assembly shall ask that person to leave the demarcated Assembly area, and to relocate to a Free Speech Zone if appropriate. Should s/he fail to leave the Assembly area, s/he shall have committed and may be charged with a violation of this Code section. Upon conviction, s/he shall be subject to the penalties set forth in Section 1-8 of this Code.

Section 3: Any Public Property Outdoor Festival or Assembly that is scheduled to occur subsequent to the passage of this Ordinance, but where the completed Application for such Outdoor Event has already been submitted to the SEM, may file a Free Speech Zone Sub-Permit Application at any time up to 72 hours prior to the commencement of the Outdoor Event, and the City shall grant such Application where feasible. Where so granted, the provisions of this Ordinance shall apply.

Section 4: All existing ordinances or parts of ordinances in conflict with this ordinance shall be waived for purposes of this Ordinance only, and only to the extent of the conflict.