



LEGISLATIVE SPONSORS

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AN ORDINANCE OF THE MACON-BIBB COUNTY COMMISSION TO AMEND CHAPTER 16 BY ORGANIZING THE CURRENT PROVISIONS IN A NEW ARTICLE TO BE KNOWN AS ARTICLE I – GENERAL OFFENSES, AND TO ENACT NEW PROVISIONS UNDER A NEW ARTICLE TO BE KNOWN AS ARTICLE II – BUSINESS OFFENSES; TO AMEND SECTIONS 16-23 AND 7-294; AND FOR OTHER LAWFUL PURPOSES.

WHEREAS, Chapter 16 of the Macon-Bibb County Code of Ordinances, styled “Offenses,” currently lists forty-three county infractions within a single chapter, without subdivision; and

WHEREAS, the Macon-Bibb County Commission desires to adopt new provisions which concern the operation of certain businesses within Macon-Bibb County; and

WHEREAS, for ease of access and interpretation, the Macon-Bibb County Commission desires to organize the current provisions of Chapter 16 under a single article, and then enact a second article to separate out those offenses related to the operation of businesses; and

WHEREAS, Section 4-1 of the Macon-Bibb County Code of Ordinances defines a “vice mart” as, “a retail store that provides assorted, inexpensive items for neighborhood residents or travelers, such as processed shelf-stable or refrigerated food and drink items; fountain and brewed drinks; handheld prepared food items; automotive items; tobacco products; family planning products; lottery products; gifts; over-the-counter medications; or similar items. Stores are typically designed for expediency—with customers typically buying few items per transaction and spending only a short time in the store. Retail floor space is typically less than 10,000 square feet.

This term does not include Gas Stations, Grocery Stores, Food Marts, Small Box Discount Stores, Specialty Stores, or Drugstores”; and

WHEREAS, the Macon-Bibb County Commission finds that vice marts generally operate in high-poverty communities and promote harmful lifestyle choices by primarily offering for sale items such as alcoholic beverages, tobacco products, and processed or prepared foods with low nutritional value; and

WHEREAS, Section 4-1 of the Macon-Bibb County Code of Ordinances defines a “food mart” as “a retail store licensed by the Georgia Commissioner of Agriculture as a food sales establishment, which has a total retail floor space of less than 10,000 square feet, of which at least 85 percent is reserved for the sale of food and other nonalcoholic items, and which regularly sells, at a minimum and among other products: at least five different types of fresh fruits or vegetables; fresh, raw beef, chicken, or pork; fresh chicken eggs; bread; and fresh cow's milk. This term does not include Drugstores, Gas Stations, Grocery Stores, Small Box Discount Stores, Specialty Stores, or Vice Marts; provided that a Food Mart may or may not be licensed by the Georgia State Board of Pharmacy to operate a pharmacy”; and

WHEREAS, the Macon-Bibb County Commission finds that, like vice marts, food marts generally operate in high-poverty communities and promote harmful lifestyle choices by primarily offering for sale items such as alcoholic beverages, tobacco products, and processed or prepared foods with low nutritional value, although they may offer a minimal variety of fresh foods; and

WHEREAS, the Macon-Bibb County Commission finds that there are numerous vice marts and food marts in the community which are common locations of uncontrolled drug activity, gang activity, and violence; and

WHEREAS, the Macon-Bibb County Commission finds that the operators of these vice mart and food mart locations generally fail to prevent or defend against such criminal activity, and in at least some cases, may benefit commercially from the presence of such criminal activity; and

WHEREAS, a significant majority of criminal activity occurring at vice marts and food marts is occurring between the hours of 11:00 P.M. and 6:00 A.M.; and

WHEREAS, the Macon-Bibb County Commission finds that the harm, risk, and danger presented by vice marts and food marts between the hours of 11:00 P.M. and 6:00 A.M. significantly outweighs the benefits to the surrounding communities of such stores; and

WHEREAS, the Macon-Bibb County Commission finds that this Ordinance is necessary and proper to promote or protect the safety, health, peace, security, and general welfare of Macon-Bibb County and its inhabitants;

NOW, THEREFORE, BE IT ORDAINED by the Macon-Bibb County Commission, and it is hereby so ordained by the authority of the same as follows:

Section 1.

Sections 16-1 through 16-43 of Chapter 16 of the Macon-Bibb County Code of Ordinances are hereby recodified under a new Article of Chapter 16, to be known as:

Chapter 16 - OFFENSES

ARTICLE I. – GENERAL OFFENSES

Section 2.

New sections 16-44 through 16-99 are hereby adopted into Article I of Chapter 16 of the Macon-Bibb County Code of Ordinances, and reserved.

Section 3.

A new Article of Chapter 16 of the Macon-Bibb County Code of Ordinances is hereby adopted to provide as follows:

Chapter 16 – OFFENSES

ARTICLE II. – BUSINESS OFFENSES

Sec. 16-100 – Definitions.

As used in this Article, the following words have the following definitions:

Business – means any business, trade, occupation, vocation or calling of any kind for gain or profit, directly or indirectly;

Employee – means any person falling within the definition of “employee” as provided in 29 U.S.C. §203(e);

Food Mart – means any Business falling within the definition of “food mart” as provided in Chapter 4 of this Code, regardless of whether such Business sells or offers for sale alcoholic beverages;

Manager – means any person present on the Premises of any Business having or exercising discretionary authority over any Employees of that Business or over any aspect of the operations of that Business;

Owner – means any person with a direct or indirect ownership interest of greater than 25% in any Business, or any person who holds any class of ownership interest which is less than 25% but which, because of the privileges afforded to such class, such person is authorized to exercise legal control over the Business;

Premises – means the entire grounds of a Business, including all interior, store front, parking lot, and curtilage areas of the Business, as well as the entirety of any tax parcel or land lot on which such Business is located; provided that, if a Business is located in a building or structure which contains multiple Businesses with different Owners, then the Premises of a Business shall be limited to those areas over which the Business has sole responsibility and control, and shall not include any common areas made available for the use of the proprietors and customers of all businesses in the building or structure.

Vice Mart – means any Business falling within the definition of “vice mart” as provided in Chapter 4 of this Code, regardless of whether such Business sells or offers for sale alcoholic beverages.

Section 16-101. – Hours of Operation.

- (a) Any Business operating as a Food Mart or Vice Mart to be open for business, including the business of receiving deliveries, after 11:00 P.M. or before 6:00 A.M. on any day, shall be in violation of this Code Section. Any customer inside of such Business at 11:00 P.M. may be permitted to complete any purchases they intend to make with the Business, but must leave the Business by 11:05 P.M.
- (b) Any Manager or Employee of a Food Mart or Vice Mart may be inside of the Business for the purpose of performing closing, maintenance, stocking, or other operational duties after 11:00 P.M. and before 6:00 A.M., so long as no customers are allowed inside of the Business, and so long as all exterior doors of the Business remain locked during that time.

- (c) No person other than a Manager or Employee of the Business, or any person exercising regulatory or law enforcement jurisdiction over the Business, shall be suffered or permitted to be present on any part of the Premises of any Vice Mart or Food Mart between the hours of 11:05 P.M. and 6:00 A.M., and the presence of any person other than as provided in this paragraph on the Premises of any Vice Mart or Food Mart on longer than a transient basis between the hours of 11:05 P.M. and 6:00 A.M. shall be a violation of this Code Section.
- (d) Each Owner of any Business operating in violation of paragraphs (a) or (c) of this Section shall be guilty of the violation of operating a Vice Mart or Food Mart outside of permitted hours, regardless of whether such Owner is present on the Premises at the time of the violation, and shall be punished with a fine of \$1,000.00 and up to 6 months in jail per violation.
- (e) Each Manager of any Business operating in violation of paragraphs (a) or (c) of this Section shall be guilty of the violation of managing a Vice Mart or Food Mart outside of permitted hours, if such Manager is present on the Premises at the time of the violation, and shall be punished with a fine of \$1,000.00 and up to 6 months in jail per violation, provided that no person shall be found guilty of a violation under both this paragraph and paragraph (d) for the same incident.
- (f) If any person or persons are adjudicated guilty of any violations under this Section in connection with two or more incidents, in the aggregate, occurring at any Business within a six-month period, then that fact shall be a per se basis for denying or revoking any or all alcohol licenses issued under Chapter 4 of this Code to that person, or to any or all Businesses owned or managed by that person, and the Macon-Bibb County Commission shall be authorized to deny or revoke such alcohol licenses on its own motion, in accordance with the procedure set forth in Article XI of Chapter 4 of this Code.
- (g) If any person or persons are adjudicated guilty of any violations under this Section in connection with three or more incidents, in the aggregate, occurring at any Business within a twelve month period, then such business shall constitute a nuisance per se, and in addition to any other penalties imposed for the individual violations of this Section, the Municipal Court shall, upon the filing of a proper petition in rem, and at the earliest possible opportunity, order that such steps be taken as are necessary and appropriate to abate such

nuisance, up to and including ordering the cessation of all Business activity on the premises for a period of up to twelve months.

- (h) Upon the third or subsequent conviction of any person under this Section, in addition to the monetary penalties imposed under this Section, such person shall be sentenced to a minimum of one week in jail, up to a maximum of six months.

Secs. 16-102 – 16-199. – Reserved.

Section 4.

Section 16-23 of the Macon-Bibb County Code of Ordinances is hereby repealed in its entirety and replaced with the following:

Chapter 16 – OFFENSES

ARTICLE I. – GENERAL OFFENSES

Section 16-23. – Loitering or prowling.

(a)Offense defined. A person commits the offense of loitering or prowling when one is in a place, at a time or in a manner not usual for law abiding individuals under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Any person other than an Owner, Manager, or Employee of a Vice Mart or Food Mart, as those terms are defined in Section 16-100 of this Code, who is present on the Premises of such Vice Mart or Food Mart between the hours of 11:05 P.M. and 6:00 A.M. on longer than a transient basis is guilty of the offense of loitering or prowling.

(b)Flight; obligations of law enforcement officer. Among the circumstances which may be considered in determining whether such alarm is warranted is the fact that the person takes flight upon the appearance of a law enforcement officer, refuses to identify himself, or manifestly endeavors to conceal himself or any object. Unless flight by the person or other circumstances makes it impractical, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself and explain his presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer fails to comply with the foregoing procedure, or if it appears at trial that the explanation given by the person was true and would have dispelled the alarm or immediate concern.

(c)Penalty. A person convicted of the offense of loitering or prowling shall be guilty of a violation of this section and, upon conviction, shall be punished as provided in the general penalty section of this Code.

Section 5.

Section 7-294 of the Macon-Bibb County Code of Ordinances is hereby repealed in its entirety and replaced with the following:

Chapter 7 – BUSINESS REGULATIONS

ARTICLE II. – BUSINESSES

DIVISION 12. – MISCELLANEOUS BUSINESSES

Sec. 7-294. Convenience stores.

(a) All persons who own or operate a convenience store are required to ensure that at least seventy-five (75) percent of the window area through which the cash register or transaction area may be seen is free from signage or other obstructions and further must ensure that there is at all times a clear view of the cash register or transaction area along normal lines of sight from the outside of the store through all such window areas.

(b) For purposes of this section, the term "convenience store" shall include any small retail store that is stocked to sell primarily prepackaged food items, but may also sell beverages, periodicals, and other household supplies to customers who purchase relatively few items per visit. Such stores may or may not also sell fuel.

Section 6.

The Clerk of Commission, County Attorney, Chief Communications Officer, and Tax Commissioner of Macon-Bibb County are hereby requested to take affirmative steps to provide reasonable notice of the provisions in this Ordinance to those stores operating as Vice Marts or Food Marts in Macon-Bibb County, to the extent that they can be reasonably identified as such.

Section 7.

(a) It is hereby declared to be the intention of the Macon-Bibb County Commission that all sections, paragraphs, sentences, clauses, and phrases of this Ordinance are and were, upon their enactment, believed by the Macon-Bibb County Commission to be fully valid, enforceable, and constitutional.

(b) It is hereby declared to be the intention of the Macon-Bibb County Commission that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Chapter 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 Macon-Bibb County Commission 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 Macon-Bibb County Commission 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 8.

In the event scrivener's errors shall be discovered in this Ordinance or in the Exhibits hereto after the adoption hereof, the Commission hereby authorizes and directs that each such scrivener's error shall be corrected in all multiple counterparts of this Ordinance.

Section 9.

Except as specifically provided herein, any and all ordinances or resolutions or parts of ordinances or resolutions in conflict with this Ordinance shall be and the same hereby are repealed.

Section 10.

In the event that this Ordinance or part thereof is found by any court of competent jurisdiction to be substantively more appropriately denominated an act of resolution by the Macon-Bibb County Commission, it is the intent of this Commission that this Ordinance or such portion thereof shall be considered to have been adopted as a resolution of the Macon-Bibb County Commission. Where any law bearing on the subject matter of this Ordinance calls for the taking of any legislative action by the governing authority of Macon-Bibb County, and such law specifies

for such action to be taken by resolution or by ordinance, it is the intent of this Commission that this Ordinance satisfy such requirement, and that this Ordinance be construed accordingly.

Section 11.

This Ordinance shall become effective thirty days following its approval by the Mayor or upon its adoption into law without such approval.

SO ORDERED AND ORDAINED this _____ day of _____, 2022.

LESTER M. MILLER, Mayor

Attest: _____
(SEAL) JANICE S. ROSS, Clerk of Commission

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