



National Press Photographers Association

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VIA EMAIL & FACSIMILE

October 2, 2015

Hon. Kasim Reed
City of Atlanta
55 Trinity Ave. SW #2500
Atlanta, GA 30303

RE: Photography on public streets in Atlanta

Dear Mayor Reed:

It has come to the attention of the National Press Photographers Association and the eleven (11) other news organizations listed below that some police officers in your city are informing photographers that it is illegal to take photographs on public sidewalks. This week, one of our members was stopped for taking pictures near the Fox Theater. On September 28, 2015, officer R. Thomas, Jr., told the photographer that taking pictures was a violation of a city ordinance and he would arrest him and confiscate his camera equipment if he didn't cease taking pictures.

The officer cited the following city ordinance regarding "sidewalk photographers":

Sec. 30-1316. - Prohibited acts.

It shall be unlawful for any person to engage in the business of taking photographs, intended to be offered for sale, of persons on the streets and sidewalks of the city in front of any place of business other than the person's own, unless the person shall have secured and have with such person at the time the written consent of the owner or manager of that place of business. *The taking of photographs of persons on the streets in front of the place of business of another without the written consent of the other shall be deemed an offense* under this section, whether or not a charge is made at the time of taking the photographs, if the photographs are taken for the purpose of sale (emphasis added).

While this ordinance appears to be intended to address people taking photos and selling prints to their subjects while on the street, its overly broad and vague language is being used to prevent journalists (or anyone else with a camera) from taking pictures on a public street. This is a violation of the First Amendment. Streets, sidewalks and public parks are "traditional public spaces" in which "the rights of the state to limit the exercise of First Amendment activity are sharply circumscribed."¹ Photography is strictly protected by the Constitution as (in this case) both an expressive form of speech and for newsgathering.² The mere fact that photographs are offered for sale (or licensing) does not alter their status as protected First Amendment activity. Books, newspapers, magazines, and films are all sold at a profit but that does not affect their level of First Amendment protection.³

¹ See *Glik v. Cunniffe*, 655 F.3d 78, 84 (1st Cir. 2011).

² See *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) ("The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.").

³ *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 502 (1952) ("That books, newspapers, and magazines are published and sold for profit does not prevent them from being a form of expression whose liberty is safeguarded by the First Amendment.").

Nationwide, photographers are increasingly subject to harassment by police officers, who, under color of law, cite privacy, safety and security concerns as a pretext to chill free speech and expression or to impede the ability to gather news. Given the experience of one of our members this week in your city, the NPPA is concerned that this ordinance has provided the police with unbridled discretion to abridge the rights of photographers covering matters of public concern.

It is our position that this facially defective regulation will only further contribute to the erroneous belief by law enforcement that public photography may be arbitrarily limited or curtailed. We therefore respectfully request that it be repealed immediately. In the alternative, we propose to work with your office to draft revised language that would be more narrowly tailored to serve a substantial government interest as a reasonable time, place and manner restriction on commercial photography.

Thank you for your attention in this matter. I look forward to your prompt response so that we may resolve this issue as expeditiously and amicably as possible.

Very truly yours,

Mickey H. Osterreicher

Mickey H. Osterreicher
General Counsel

On behalf of:

American Society of News Editors
American Society of Media Photographers
Associated Press Photo Managers
Associated Press Managing Editors
Association of Alternative Newsmedia
Atlanta Press Club

Georgia Press Association
Reporters Committee for Freedom of the Press
Society of Professional Journalists
Student Press Law Center
The Associated Press

cc:

Council Member Ceasar C. Mitchell
Council Member Carla Smith
Council Member Kwanza Hall
Council Member Ivory Lee Young
Council Member Cleta Winslow
Council Member Natalyn M. Archibong
Council Member Alex Wan
Council Member Howard Shook
Council Member Yolanda Adrean
Council Member Felicia Moore
Council Member C.T. Martin
Council Member Keisha Bottoms

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Council Member Joyce Sheperd
Council Member Michael Julian Bond
Council Member Mary Norwood
Council Member Andre Dickens
City Attorney Cathy Hampton
Director of Communications Ann Torres