

Chapter 30

VENDING ORDINANCE

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Sec. 30-1. Purpose.

The purpose of this Chapter is to license and regulate the movement, location, business practices and hours of operation of vendors in the City; to reduce vehicular and pedestrian traffic congestion; to promote the safe use of the streets and sidewalks; to retain the "small town charm" of the downtown area; to protect the citizens' quiet enjoyment and peace while leaving ample business opportunity and means for vendors; and to protect the health, safety and welfare of the people of the City.

Sec. 30-2. Definitions.

The following words and phrases, when used in this Chapter, shall have the meanings respectively ascribed to each:

"Busking" shall mean any person performing for a tip or gratuity, and includes street performing. Busking is not considered vending and is not authorized under this Chapter unless approved and regulated as part of a special events license issued under Sec. 30-6 of this Chapter.

"Commercial vendor" shall mean any vendor who sells goods, foodstuffs, services for the purpose of making a profit or who does not qualify as a charitable vendor.

"Charitable vendor" shall mean any vendor who represents that the net proceeds over reasonable expenses derived from its vending, will be used solely for a charitable, religious, patriotic, civic, educational or philanthropic organization recognized by the Internal Revenue Service as a tax exempt entity.

"Moving vendor" shall mean any vendor, solicitor, canvasser, or peddler traveling by foot, wagon, automobile vehicle, or other conveyance from place to place, house to house, or street to street. Moving vendors must maintain continuous movement in a manner designed to travel from place to place, house to house, or street to street. Moving vendors may not stay in one location any longer than reasonably necessary to complete a transaction.

"Person" shall mean any individual, firm, co-partnership, corporation, company, association, or joint stock association, church, religious sect or denomination, society, organization or league, and includes

any trustee, receiver, assignee, agent or other similar representative.

"Removable Stand" shall mean a trailer, cart or stand that is not permanently affixed to a location, the primary purpose of which is for vending purposes. Removable stands must be removed from the designated zone between 11:30 p.m. and 8:30 a.m. each day or as otherwise restricted on a location basis by park hours or by resolution of the City Commission or as permitted by the Director of Public Safety.

"Stationary vendor" shall mean any vendor, solicitor, canvasser, or peddler who utilizes a removable stand without the necessity of moving from place to place. Stationary vendors may be located on private property with written approval of the owner. Stationary vendors are not permitted in residential districts.

"Vendor" shall mean any person or entity offering goods, foodstuffs, information, canvassing for information, or offering services of any kind, whether or not a transfer of money is involved, including taking or attempting to take orders for immediate or future delivery or performance, whether or not such person has, carries, or exposes a sample of the product or information.

Sec. 30-3. Vending Location Restrictions. Unless otherwise provided below, vendors may operate within the City limits pursuant to the requirements of this Chapter.

A. Stationary vendors are not permitted publicly owned locations in the City, with the following exceptions:

1. The number of stationary vendors permitted at each of the following authorized public locations, shall be determined by the City Manager or his/her appointed representative.

- a. City Center / Dwight Mitchell Park;
- b. Charles Yarbrough Park;
- c. The Arts District;
- d. Broadway and Empire Streets intersection area; and
- e. Fair Avenue interception areas at Britain Avenue.

2. Stationary vendors shall be permitted in the Blossomtime Festival Grand Floral Parade Route area during the time the route is closed to traffic, the specific sites along such route to be determined by the City Manager.

B. Moving vendors are not permitted, in the Jean Klock Park or on the public sidewalk abutting it or the public sidewalks abutting the Arts District area. Moving commercial vendors shall not be permitted in the DDA district or Arts District areas except on the Blossomtime Festival Grand Floral Parade Day, on the days of the Harbor Autofest, Krasl Art Festival and "Artoberfest" and on the days Independence Day and Labor Day are each observed.

C. Vending location restrictions shall not apply to special event applications approved by the City Commission.

Sec. 30-4. License Requirements and Fees.

A. *License required.* It shall be unlawful for any vendor, peddler, or solicitor to engage in such business within the City without first obtaining a license as provided in this Chapter. Fees shall be charged as determined by resolution.

B. *Applications.* The license application shall be made upon a form provided by the City Inspections Department. Completed applications and an application fee shall be given to the City Inspections Department no later than ten (10) business days prior to the requested effective date. Applications submitted less than ten (10) days in advance of the event shall be charged a surcharge as indicated in the Schedule of Fees.

C. *Fees.* Application and license fees shall be set by resolution of the City Commission, Emergency Financial Manager, or Emergency Manager. Application fees shall be nonrefundable and paid at the time the application is submitted. License fees shall be paid after the application is approved and before the license is issued.

D. *Exemption from Fees.* The following may be exempt from payment of application and/or license fees:

1. Any honorably discharged member of the United States Coast Guard, Army, Navy, Air Force, Marines Merchant Marine, or National Guard, who is a resident of the state shall have the right to take orders for, or sell, his/her own goods, wares and merchandise within the City by procuring a license as provided in this Chapter.

2. Any person exempt by law.

3. A charitable vendor shall pay an application fee; however, it shall be exempt from payment of a license fee. The applicant shall provide the City Inspections Department with proof of the claimed exemption. The City Inspections Department shall indicate upon the face of the license that it was issued, pursuant to such exemption without any fee being paid.

E. *License period.* The license term for all stationary vendor licenses shall be April 1 through October 31 of the year issued, with no prorating of fees. Stationary vendor applications may be accepted beginning January 1st of each year. All other licenses issued under this Chapter shall be daily, or as otherwise indicated in the fee structure of this ordinance, throughout the calendar year January 1 through December 31, with no prorating of fees.

Sec. 30-5. Exemptions. The following activities are exempt from this Chapter:

A. Solicitations made to a congregation or group in attendance at one location and made by the person or organization inviting the individuals composing the congregation or group;

B. Solicitations made in books, magazines, periodicals, newspapers and other similar publications or through the mail;

C. Solicitations made over the radio, television or telephone;

D. The distribution of handbills or leaflets where the individual distributing them does not accept payments, orders or contributions;

E. Sales of goods, wares or merchandise of any description raised, produced or manufactured by the individual offering the same for sale at the seller's residence:

- F. Sales of vegetables, fruits or perishable farm products at any established City market.
- G. Sales at a stall at the City market or a concession approved under special event licensing.
- H. Sales at City approved rummage sale, garage sale, or outdoor market.

Sec. 30-6. Special Events Licensing. The City Commission, in its sole discretion and by resolution, subject to approval of the Director of Public Safety, may authorize additional licenses for special events that may include additional hours and locations than what is otherwise provided in this Chapter.

Sec. 30-7. License Application.

A. *Applications.* Applicants for a license under this Chapter shall file with the City Inspections Department a sworn application in the form required by the City Inspections Department, which shall include the following:

1. Name and a copy of the photo identification of the applicant;
2. Permanent home address and phone number of the applicant;
3. Name, address, and telephone number of the business or organization represented;
4. Telephone number where applicant can be reached during the day and in the evening;
5. Names and addresses of individuals who will be soliciting on behalf of the business or organization;
6. Length of time and exact dates for which the license is requested;
7. A brief description of the nature of the business or organization; and if a charitable license is requested, proof of its tax exempt status;
8. Credentials establishing applicant's relationship with the business or organization;
9. The type of goods or property being sold, the location here the goods or property are sought to be sold and the proposed method of delivery;
10. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed.
11. No license shall be issued to a food vendor who will cook, process, or prepare food on site until the applicant has provided either approval by the Berrien County Health Department or provides proof of payment for a Berrien County Health Department permit.
12. For vendors who will cook, process, or prepare food, proof of liability insurance in the amount of One Hundred Thousand (\$100,000.00) Dollars and in such form as required and as may be amended from time to time by the City. The City, its officials, employees, and representatives shall be named on such policies as additional insured parties.

B. *Basis for granting licenses.* To assure the safety of citizens, to reduce congestion of pedestrian and vehicular traffic, to promote safe use of streets and sidewalks, to preserve "small town charm" and assure the highest quality offering of food and other products, licenses will be granted based upon:

1. The application.
2. The quality and legitimacy of the product offered.
3. Construction and design of the stand, cart or mobile vending unit to be used, if applicable.
4. Previous performance as a vendor.

C. *Review by the Director of Public Safety.*

1. After an application has been filed, the City Inspections Department shall refer it to the Director of Public Safety, or appointed officer(s) of the Department of Public Safety, who shall review the applicant's background and shall respond to the City Inspections Department with a recommendation on issuance of the license within three (3) business days of receipt. No license shall be issued without approval of the Director of Public Safety.

2. The Director of Public Safety, or appointed officers of the Department of Public Safety, shall report to the City Inspections Department all violations of this Chapter and the City Inspections Department shall maintain a record for each license issued and record the reports of violations. The City Inspections Department shall file with the Director of Public Safety a copy of each license and the Director of Public Safety shall report to the City Inspections Department any complaints against any licensee and any convictions, pleas or other findings of responsibility for violations of this Chapter. The City Inspections Department shall keep a record of all such complaints and violations.

D. All charitable vendor applications shall be reviewed by the City Building Official, who shall issue the license upon determination that the application meets all provisions of this Ordinance.

Sec. 30-8. Additional Regulations.

A. *Business hours.* No moving vendor shall engage in business before the hour of 9:00 a.m., or after 7:00 p.m. or sundown, whichever occurs first. These restrictions shall not apply to special event applications approved by the City Commission or the Emergency Financial Manager.

B. *Loud noises, speaking devices, lights.* No vendor shall utilize a drum, loudspeaker, amplifier, or other instrument or device which creates noise, or flashing lights which are for the purpose of attracting attention to commercial or non-commercial enterprises so as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling or other residence, or other place of employment or repose shall be used and may be treated as a violation under this Chapter, and Ch. 25, of the Code of Ordinances.

C. *Off-limit locations.* No vendor shall conduct business within fifty (50) feet of any school, church, synagogue or place of worship during services or within one-hour of services; courthouse; police station; or other public location unless specifically authorized pursuant to the terms of the license. In addition, the City Manager shall have power to designate such streets, sidewalks,

parts of streets, or sidewalks, districts or areas where it shall be unlawful for any licensee to operate or conduct her/his business, such designation to be made based upon congested traffic conditions, character of the neighborhood, or if the conduct of such business constitutes a public nuisance.

D. *"No Soliciting" sign.* No vendor shall enter into property that has a posted "No Soliciting" sign or shall remain on property after being requested to leave by the occupant.

E. *Threatening or harassing behavior.* No vendor shall threaten or harass any citizen in the course of their activities or in any way engage in conduct that threatens the health and safety of another or causes a nuisance.

F. *Effect of delinquent property taxes or other debts to the City.* No vendor license shall be granted to any person owing any property taxes (real or personal) or other indebtedness to the City, or who contemplates using any personal property or real property on which personal property taxes are owed, in the operation of such business.

G. *Sales limited to products on application.* Vendors shall be limited to the sale of products specified on the application. Application for amendments to originally approved applications may be made to the City Inspections Department. However, an application fee in the amount of Fifty (\$50.00) Dollars or as established from time to time by action of the City Commission, the City Manager, or the Emergency Financial Manager must accompany each request for a new item.

H. *Licenses non-sellable and nontransferable.* Vendors licenses issued under the authority of this Chapter shall be non-sellable and nontransferable, either as to individuals or as to location.

I. *Traffic regulations, obstructing public places.*

1. Vendors shall observe all traffic and parking regulations. Unless specifically approved, vendors shall not conduct business in a congested area, or occupy a stationary location on a public street, sidewalk, parkway, park, parking lot, or any other public property which is to be used by pedestrians or persons operating motor vehicles.

2. Sales to persons standing in roadway, to vehicles at red lights and to vehicles in moving traffic lanes are prohibited.

J. *Display of license required.* All vendors shall display the license or identification badge provided or approved by the City Inspections Department, on his or her person or in a prominent place and in plain view. The failure of a vendor to conspicuously and constantly exhibit such license when engaged in his/her licensed business shall be sufficient cause for the suspension or revocation of his/her license.

K. *Prices posted.* A stationary vendor shall have posted in plain view, the current prices charged for each item sold and no item shall be sold for more than the posted price.

L. *Litter clean-up required.* Vendors shall (at their own expense) keep the sidewalks, streets, and other public places adjoining and adjacent to their locations of business clean and free from any refuse generated from the operation of their business. Failure to comply shall result in rejection of any future vendor application.

Sec. 30-9. Enforcement.

A. It shall be the duty of any officer of the Public Safety Department to require any person seen soliciting, merchandising, or vending and who is not known by such officer to be duly licensed, to show proof of a license issued by the City Inspections Department, and to enforce the provisions of this Chapter against any person found to be violating them.

B. Any officer of the Public Safety Department may enter any licensed premises at any time during business hours for the purpose of ascertaining the manner in which such business is conducted and to investigate complaints. At all such times, the officer shall be permitted access to the books of such business to ascertain compliance with the provisions of this Chapter.

C. It shall be the duty of any officer of the Public Safety Department to examine all places of business and persons in their territories subject to the provisions of this Chapter to verify compliance with this Chapter and to enforce the provisions of this Chapter.

Sec. 30-10. Revocation.

A. The City Building Official or the Director of Public Safety is authorized to revoke any license issued under this Chapter for violation of the provisions of this Chapter, including, but not limited to the following:

1. Vendor has violated any provision of this Chapter, any provision of the Benton Harbor Code of Ordinances, or state or federal laws, rules or regulations.
2. Vendor has made a false material statement in the application or has otherwise become disqualified for issuance of the permit.
3. Vendor has had a written complaint filed against it for violation of this Chapter and probable cause exists for substantiation of the complaint.
4. Vendor has acted in a manner contrary to the public health, safety or welfare of the citizens of Benton Harbor.

B. The City Inspections Department shall provide the vendor with written notice at the address on the application for the license and allow the vendor to file a written request with the City Inspections Department's office for a hearing to appeal the revocation; such request shall be filed with the City Inspections Department within five (5) days from the date appearing on the notice of revocation. The hearing shall be held by the City Manager or the City Manager's designated representative.

Sec. 30-11. Other Permits or Licenses. A license obtained under this Chapter shall not relieve a person of the responsibility for obtaining any other license or authorization required by any other ordinance, statute or administrative rule.

Sec. 30-12. Appearance Tickets. The Director of Public Safety and the appointed officers of the Department of Public Safety, or such officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this Chapter pursuant to Section 1 of Act 147 of Public Acts of 1968, as amended, being MCL 764.9c(2). Appearance tickets shall be in such form as determined by the City attorney.

Sec. 30-13. Civil Infraction. A person who violates any provision in this Chapter is responsible for a

civil infraction and subject to a fine of not less than \$100 or more than \$500, per occurrence.