

13.08.040 - Offering merchandise for sale on or near public property prohibited—Exceptions.

A. No person shall stop, stand or park any wagon, pushcart, automobile, truck or other vehicle, or erect any temporary stands, signs or otherwise, upon or within any public property of the metropolitan government for the purpose of selling or offering for sale any goods, food, wares, merchandise or products of any kind, nor shall any person sell or offer for sale, upon or within any public property of the metropolitan government, any goods, food, wares, merchandise or products of any kind. The prohibitions contained in this subsection shall not affect or apply to any agreement with, or the written approval of, the respective department, board, agency, officer or other person having control or custody of that particular property.

B. 1. It is unlawful for any person to obstruct any public way, including alleys, roadways, sidewalks and streets as defined by Sections 12.04.010, 12.04.315, 12.04.335, and 12.04.375 of the Metropolitan Code, except as authorized by law. This subsection shall not apply to:

a. Any street vendor operating with a proper license or permit issued by the county clerk under subsections (B)(3) and (4) of this section that satisfies this section;

b. Vendors exclusively engaged in the sale of newspapers, magazines, periodicals or other such written items provided that the requirements for clearance at intersections set forth at Section 13.12.190 are satisfied and who do not utilize a cart, wagon, or any other mobile device or vehicle to sell such written materials;

c. Solicitation of donations by a nonprofit organization or the sale of merchandise by a nonprofit organization which constitutes, carries or makes a religious, political, educational, philosophical or ideological message or statement related to the purpose of the nonprofit organization;

d. Produce sellers licensed pursuant to the provisions of Chapter 6.104

e. Persons to whom a privilege has been extended under the provisions of Section 13.36.020 allowing them to come upon or take any position upon the area of the curb market or the auxiliary curb market.

f. In conjunction with, and as part of, an organized program of conventions, professional meetings, seminars and other similar events, any individual distributing free samples of goods from his or her person or vendors, merchants, exhibitors and salesmen who exhibit, demonstrate or solicit orders for goods at any such event.

g. These exceptions shall operate to create a privilege and not a franchise or license. In the event the exceptions stated in this subsection are repealed or otherwise revoked, the provisions of this section shall then apply and any wagons, pushcarts, stands, signs, displays and any news and literature distribution racks no longer excepted shall be removed at the owner's expense.

2. Definitions. Within the meaning of this section, these terms shall be construed as follows:

a. "Commission" means the metropolitan traffic and parking commission.

b. "To obstruct" means to so occupy the public ways so that the free use and enjoyment thereof by the public is in any way interrupted or interfered with, or such that the free ingress and egress to or from any building fronting on any public thoroughfare is impaired.

c. "Public way" means all areas legally open to public use and used and/or intended for vehicular or pedestrian traffic, including public streets, alleys, sidewalks, and roadways, but excluding any public property of the metropolitan government.

d. "Public property" means all property, real and personal, belonging to the metropolitan government, excluding that which is used and/or intended for use by vehicular or pedestrian traffic and defined herein as a public way.

e. "Street vendor" or "vendor" means any individual, including an employee or agent of a group of individuals, partnership, or corporation, who sells, or offers to sell services, food, beverages, goods, or merchandise on any public way whether such activity involves the sale of such items from the vendor's person or by use of a stand.

f. "License" or "permit" means the form issued by the county clerk evidencing that the vendor is allowed to sell or offer to sell goods and services on the public way.

g. "Stand" means any table, tarp, display, bench, booth, rack, handcart, pushcart, wagon or any other fixture or device which is not required to be licensed and registered by the department of motor vehicles, and is used for the display, storage, or transportation of food, beverages, goods or merchandise on any public way.

h. "Special event" means any occasion officially recognized by the mayor's office of film and special events including, but not limited to fairs, shows, exhibitions, municipality-wide celebrations, festivals and other similar events, within a specifically defined area of the municipality for a specified period of time.

i. "Business" or "property owner" means any individual, including an employee or agent of a group of individuals, partnership, or corporation who is a tenant in or who owns property abutting the public way.

j. "Pedestrian" means a person who is walking or otherwise traveling on the public way.

k. "Sign" or "sandwich board" means any portable sign used to convey information of a commercial nature.

l. "Street performance" means any theatrical, musical, visual, or other presentation for entertainment purposes on the public way. "Street performer" means any person or group of persons who conducts a street performance.

m. Distance. All measured distances and distance requirements addressed in this regulation shall be distances measured in a straight line from the nearest edge of the vendor's stand or sign to the nearest edge of the object from which the sign or stand is to be distant.

3. It is unlawful for vendors of goods or services not meeting the exception in subsection (B)(1)(b)-(f) of this section to sell, display, or offer for sale any food, beverage, goods, or merchandise on a public way before acquiring a street vendor's permit from the county clerk. To acquire a permit, a vendor shall apply for a permit from the county clerk and must provide all

information, on a form supplied by the county clerk, necessary to determine whether a particular permit may be issued.

- a. The application must include, but is not limited to, the vendor's full name, home address, permanent business address (if any), telephone number, driver's license number, three copies of a current full-face photograph of vendor, three current full-face photographs of each of vendor's employees, proof of identity for each vendor and/or employee and proof that any other required permits or authorizations have been obtained.
 - b. The application shall also state a brief description of the nature and character of the food, beverages, goods or services to be sold and shall be accompanied by a photograph of the vendor's stand(s).
 - c. If the vendor is employed by or is an agent of another, the application shall state the name and business address of the principal or hiring person, firm, association, organization, company or corporation.
 - d. Vendors with multiple stands, displays, carts, wagons or any other means by which to offer goods or services to the public must procure a permit for each space occupied.
 - e. Vendors not holding a general vending permit who wish to offer goods and services to the public in conjunction with any special event shall apply for a temporary vending permit.
 - f. Any vendor engaged in the sale of food or beverages must, in addition to the above requirements, comply with the following:
 - i. Vendors of food and beverages shall be required to maintain a health permit from the local health department in addition to the general vending permit. Upon application for the general vending permit, vendors of food and beverages shall have their applications forwarded to the health department for approval and shall submit their equipment for inspection.
 - ii. Upon approval by the local health department, the food and beverage vendor shall be subject to inspection by local health department officials as provided for by law at periodic intervals.
 - g. The application must include a provision indemnifying and holding harmless the metropolitan government from any and all claims arising out of the vendor's operation. Applicants must provide, as part of the application, a copy of a certificate of liability insurance with a minimum coverage of one million dollars. The policy must name the Metropolitan Government of Nashville and Davidson County as additionally insured. Certificate must accompany the application.
 - h. Any intentional misrepresentation on the application by a vendor shall constitute grounds for denial, suspension or revocation of a permit.
4. At the time of application, a vendor shall pay an annual permit fee of one hundred dollars. Vendors seeking a temporary vending permit shall pay a fee of twenty-five dollars. No vendor shall be permitted to obtain any temporary permit(s) authorizing vending in excess of ten days, cumulatively, during any twelve month period. Any vendor who wishes to conduct operations for more than ten days per year must obtain a general vending permit.

5. Application Processing.

a. Upon receipt of an application, the county clerk shall:

i. Ensure the application is complete. Applications which are not complete shall be denied and returned to the applicant.

ii. Ensure that all fees have been properly paid and that a certificate of insurance has been provided. Applications for which all applicable fees have not been paid or which do not contain a certificate of insurance shall be denied.

iii. Determine whether the applicant has been convicted of violation of this section during the twelve month period preceding the application. If the applicant has been convicted of three or more violations of this section during the preceding twelve months, the application shall be denied.

iv. Ensure that vendors offering foods or beverages have obtained all necessary licenses, permits, and/or inspections in accordance with subsection (B)(3)(f) of this section. If the required permits, licenses and/or inspections have not been obtained, the application shall be denied.

v. Take reasonable steps to verify the truthfulness of the information provided on the application. Applications found to contain false information shall be denied.

vi. If the application is for a temporary permit, determine the number of previous temporary permits obtained during the previous twelve months. No more than ten temporary permits may be issued during any twelve-month period. Applications requesting temporary permits in excess of this number shall be denied.

b. If the application meets the requirements specified in subsection (B)(5)(a) of this section the county clerk shall issue the permit and I.D. badges for the permittee and any employees identified in the application. A permit holder may apply for additional I.D. badges if needed. The I.D. badge shall include a picture of the employee, employee name and the permit number.

c. The county clerk will notify the vendor in writing of the decision to issue or deny the permit and, if denied, the reason for denial. The county clerk will provide the notification as soon as is practicable, but in no case shall notification occur later than thirty days after the filing of a properly completed application. In the event an application has not been granted or denied within thirty days from receipt for filing, an interim permit, renewable at ten day intervals, shall be issued to the applicant. Additional interim permits shall issue until such time as the application is granted or denied. The permit shall be valid for one year after issuance and shall be renewable upon expiration in each subsequent year so long as the vendor remains in good standing and has been convicted for no more than three violations of this section in the previous twelve-month period. In the event that a vendor is denied a permit, either upon application or at renewal, the vendor shall have an opportunity to appeal the denial as described in subsection four of this section.

6. Restrictions. The granting of a permit confers a privilege, not a franchise or license. A permit does not guarantee a particular space or that any space or particular space will be available.

- a. The sale of goods or services by street vendors is limited to the DTC and CF zoned districts.
- b. Nothing herein shall exempt any vendor from the provisions of Section 12.52.130 regarding sales to persons in vehicles from a street or sidewalk.
- c. Each street vendor must prominently display the permit, in addition to any business tax license the vendor may be required to possess, and if a vendor of food or beverage, the health permit must also be prominently displayed. I.D. badges issued by the county clerk are to be in the possession of vendors and their employees at all times and are not transferable. Vending operations in violation of this provision shall be ordered removed until the deficiency is corrected.
- d. Vending at the Nashville Convention Center, the Municipal Auditorium, the Nashville Arena or any other facility identified in Chapter 6.32 of the Metropolitan Code shall be in compliance with the more particular regulations set forth in Chapter 6.32
- e. Street vendors operating on the public way agree to indemnify and hold harmless the metropolitan government from any cause of action arising from the vendor's operation.
- f. Street vendors operating within the DTC and CF districts in the area of Demonbreun Street are subject to additional restrictions that must be located only in marked spaces, a map of which is available from the county clerk. These spaces shall be occupied on an unreserved and first come basis. Such spaces shall not be assigned or reserved in any manner. Further, street vendors shall not be permitted to operate within the DTC and CF districts on Second Avenue North between Broadway and Church Street, and on Commerce Street between Second Avenue North and Third Avenue North.
- g. The owner of any wheeled and mobile vehicles, temporary stands, signs or displays or racks shall gain no right to compensation by virtue of being forced to move to allow access to utilities, regardless of the length of time incurred thereby. Nothing in this section shall be construed to prohibit or otherwise affect the practice of vending on any public roadway, street or sidewalks during the course of any special event as defined in subsection (B)(2)(h) of this section for which the metropolitan government has given its official written permission to close or otherwise alter the normal, everyday use of any public roadway, street or sidewalk for a specified, limited period of time.
- h. Permits are nontransferable.
- i. The sale of fresh produce shall be in compliance with the more particular regulations set forth in Chapter 6.104
- j. The operation of the curb market and auxiliary curb market shall be in compliance with the more particular regulations set forth in Chapter 13.36 of the Metropolitan Code.
- k. The commission shall have the authority to publish and enforce such other regulations related to vending, street performers, and other temporary sidewalk encroachments as shall be necessary to effectuate this section and to ensure the free flow of pedestrian and vehicular traffic and to ensure the safety of the public.

C. Suspension, Revocation or Denial of Permits.

1. Any permit issued under this section may be suspended or revoked by the commission for any of the following reasons:

- a. Fraud or misrepresentation in the application for the permit; or,
- b. Fraud or misrepresentation in the course of conducting the business of vending; or,
- c. Conducting the business of the vending contrary to the conditions of the permit and/or these regulations; or,
- d. Conducting the business of vending in such a manner as to create a public nuisance or to constitute a danger to the public health, safety or welfare; or,
- e. Cancellation of health department authorization for food or beverage vendors.

2. The commission shall consider the following factors in determining whether a permit should be suspended or revoked:

- a. The number of citations for violation of this section previously received by the vendor; and
- b. The number of previous suspensions and/or revocations imposed upon the vendor; and
- c. The number of occasions for which the vendor's permit was subject to suspension or revocation and was not suspended or revoked; and
- d. The seriousness of the violation or misrepresentation and the danger to the health and/or safety of the public presented by the vendor's misrepresentation, noncompliance and/or misconduct; and
- e. Whether or not the condition subjecting the vendor to suspension or revocation is of a nature that has been or can be corrected.

3. Upon suspension, revocation or denial of the issuance of a permit, the commission shall deliver written notice to the permit holder or applicant stating the action taken and the reasons supporting such action, and the right to reconsideration of that decision as set forth below. The written notice shall be delivered to the permit holder's or applicant's place of business or last known address. Placement of such notice in the U.S. mail shall constitute delivery. A permit which has been suspended shall remain suspended until such time as the condition causing the suspension has been corrected to the satisfaction of the commission. A permit which has been revoked shall remain revoked for one year following the date of revocation. No vendor whose permit has been suspended or revoked may apply for a new permit during the period of suspension or revocation.

4. Any permit holder or applicant whose permit is suspended or revoked or whose application for a permit is denied may within fifteen days of the date of that action notify the commission that the permit holder or applicant desires reconsideration of that decision. A hearing of the request shall be scheduled for the next regular meeting of the commission. The suspension or revocation shall remain in effect pending the hearing. At the hearing, the permit holder or applicant will be afforded an opportunity to be heard and to present facts and witnesses on his own behalf. The permit holder shall not be entitled to an adversarial hearing or to examine any witness except those the permit holder may present on his or her own behalf.

D. Renewals. Permits may be renewed, provided an application for renewal of the permit and the required fee are received by the county clerk no later than the date of expiration of the existing permit and provided that the vendor has no more than three violations of this regulation within any twelve-month period. A vendor whose permit has been revoked may submit an application upon the expiration of the revocation. Applications received after that date shall be processed as new applications. The commission shall review each renewal application to ensure that the vendor is in full compliance with the provisions of this regulation. If the commission determines that the vendor has complied with the above requirements, the commission will renew the permit for one year.

E. Penalties.

1. Any person who offers merchandise for sale in violation of this regulation or who violates any other provision of this regulation shall be penalized as follows:

Penalties

First offense\$250.00

Second offense (within one (1) year of the first offense)350.00

Third offense (within one (1) year of the first offense)500.00

Fourth offense and all subsequent offense (regardless of the time period since the third or last offense)500.00

All penalties paid pursuant to this section will be deposited into the general fund of the metropolitan government.

2. The permit of any person who offers merchandise for sale in violation of the regulation or who violates any other provision of this regulation may be suspended. The permit of any person who seriously endangers the health and/or safety of the public by misrepresentation or violation of this regulation or who is convicted of three or more violations of this regulation during any twelve-month period shall be revoked.

(Ord. BL2009-587 § 3, 2010; Ord. BL2003-38 § 1, 2004; Ord. 99-1575 § 1, 1999; Amdts. 1 and 2 with Ord. 98-1191, § 1 1998)