

**City of St. Joseph
Berrien County, Michigan**

An ordinance to amend Chapter 21, "Vending Ordinance" of the City of St. Joseph Code of Ordinances

THE CITY OF ST. JOSEPH ORDAINS:

Chapter 21 of the St. Joseph Code of Ordinances is hereby amended in its entirety and shall now read as follows:

**Chapter 21
VENDING ORDINANCE**

- Sec. 21-1. Purpose.
- Sec. 21-2. Definitions.
- Sec. 21-3. Vending locations.
- Sec. 21-4. Special Event Vendor licenses.
- Sec. 21-5. Licenses, fees and application.
- Sec. 21-6. Additional regulations
- Sec. 21-7. Enforcement.
- Sec. 21-8. Revocation.
- Sec. 21-9. Right to appeal
- Sec. 21-10. Canvassers
- Sec. 21-11. Other permits or licenses
- Sec. 21-12. Appearance tickets.
- Sec. 21-13. Civil infraction.
- Sec. 21-14. Severability.

Sec. 21-1. 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, alleys and sidewalks; to encourage, preserve and enhance the "small town charm" and ambiance of the downtown area; to safeguard against insect and rodent infestation; to assure the highest quality offering of food and other products; to otherwise protect the health; safety and welfare of the people of the City; and to protect the citizens' quiet enjoyment and peace while leaving ample business opportunity and means for Vendors.

Sec. 21-2. Definitions.

1. *Vendor*: Every person who offers goods or services for sale on the streets or from a vehicle or a stand open to the street, whose business is conducted from a vehicle, cart, stand or temporary structure. For purposes of this chapter, Vendor shall be described as the following: Stationary Vendor, Day Vendor, Special Event Vendor, Moving Vendor and Peddler. A person conducting a garage sale as defined in Chapter 24 of the Code in a zoning district in which a garage sale is permitted is not considered a Vendor for purposes of this Chapter. For the purposes of this chapter, a temporary structure includes those structures defined as personal property under MCL 211.8.

- a. *Day Vendor*: Operator of a portable vending cart or motorized vending unit, selling goods from a single approved site. The portable vending cart or motorized vending unit must be removed every evening after vending hours have ended.
- b. *Moving Day Vendor*: Operator of a portable vending cart or motorized vending unit selling goods while moving along an approved vending location.
- c. *Special Event Vendor*: Operator of a stationary stand or portable vending cart licensed for a limited, specific period in association with a special event. The stationary stand or portable vending cart may be left on site for the duration of the event, and may be located on private property. The Special Event Vendor shall be licensed by the special event organization which has been approved by the city commission to organize a special event or by the City of St. Joseph if the special event organization has waived vending rights.
- d. *Peddler*: Every person traveling by foot, wagon, bicycle or other similar conveyance from place to place, house to house, business to business, or street to street, selling or offering for sale any goods or services, whether for current or future delivery.

Excluded from this definition are persons: (1) making delivery of goods previously ordered by any business or personal customer; (2) a person or business whose activity in major part is driving a regular route to the location of existing customers who have arranged for return visits; (3) all Vendors that fall under an approved Special Event designation;(4) persons working on behalf of a religious, political or non-profit charitable organization selling goods or services for that organization for its fund-raising, seeking donations, distributing information or seeking signatures on petitions; (5) canvassers.

- e. *Stationary Vendor*: Operator of a stationary stand, which shall remain on a single approved site for the entire period of the Vendor license, and if preparation and sale of unpackaged food products is offered, must have water, sanitary sewer and electric and/or gas utilities.
2. A business located and operated in a permanent building or permanent structure having a fixed location and a roof supported by columns, walls or other support and used or built for the conduct of business and defined as real property under MCL 211.2, is not considered a Vendor for the purpose of this chapter.
 3. *Canvasser*: *Canvasser* means any person traveling by foot, wagon, motor vehicle or other conveyance, from place to place, house to house, business to business, or street to street, on behalf of a religious, political, educational or non-profit charitable organization selling goods or services for that organization for its fund-raising, seeking donations, distributing information or seeking signatures on petitions. A Canvasser is not considered a Vendor for purposes of this chapter, but is subject to regulation as further set forth in this Chapter.
 4. *Vending Stand and Cart Definitions*:
 - a. *Motorized Vending Unit* shall mean any licensed motorized vehicle with two (2) or more wheels, the primary purpose and design being for vending purposes.

- b. *Portable Vending Cart* shall mean a cart with at least two (2) operating wheels, which is movable by one (1) person, the primary purpose and design being for vending purposes.
- c. *Stationary Stand* means a non-motorized vending trailer or shed, tent or other vending stand not movable by one (1) person.

5. *Vending Location Definitions:*

- a. *Day Vendor Location:* A site suitable for a portable vending cart to remain fixed during vending hours and, removed after vending hours. The location shall be as established by resolution of the city commission. Approval of a Day Vendor site means the Vendor has an exclusive right to the location for the period of the license.
- b. *Street Vending Locations:* Sites specified for Moving Day Vendors as established by resolution of the city commission, which may include parks, right of ways, sidewalks, or vacant City property. Moving Day Vendors shall not remain fixed on one site any longer than reasonable and necessary to complete a transaction. Moving Day Vendors have no exclusive right to any location and shall not block sidewalks or cause traffic congestion.
- c. *Special Event Vendor Location:* Vendor sites in an area approved under a Special Event Vendor license for a specified period of time. The area in which Day Vendors may operate is designated in a special event application. The city commission shall approve the Special Event Vendor license by resolution. The special event organization approves Vendors based upon their own criteria. The city commission may by Resolution approve special event vending locations in those cases where the special event organization has waived vending rights.
- d. *Stationary Location:* A site where a stationary Vendor places a stationary stand for the duration of the vending season. No public property or right of way shall be utilized for stationary vending.

Sec. 21-3. Vending Locations.

1. The city commission shall by resolution establish vending areas where vending may be located and the number and types of Vendors by area, except as follows:
 - a. Vendor licenses are not permitted in the Whirlpool Compass Fountain park area or the public sidewalks abutting it, or on the public sidewalks abutting the Silver Beach Center.
 - b. Moving Day Vendors and Peddlers are not permitted in the DDA district.
2. Vendor licenses may be granted for sales from a stationary stand, portable vending cart or motorized vending unit operating on private property in the D-Downtown District under the following circumstances:
 - a. No more than one (1) Vendor is permitted per lot of record at any one time, providing the Vendor has met the licensing requirements set forth in this Chapter and all applicable standards of the zoning and/or building ordinances for outdoor display of goods have been met, or

- b. The Vendors are authorized under a Special Event Vendor license.
- 3. Vendor licenses are not required for sales on private property not in the D-Downtown District when such sales are sanctioned by the property owner and conducted from a portable vending cart or motorized vending unit.

Sec. 21-4. Special Event Vendor License.

- 1. Vending license limitations may be expanded or waived during approved special events authorized by resolution of the city commission.
- 2. The city commission may authorize the city manager to issue a Vendor license to valid local not-for-profit organizations sponsoring and operating a special event within a specified area of the City. No person, group or organization shall sell any food, merchandise, goods, services, amusements, rides or other items on any public street, alley, sidewalk or other public property within the special event area during the time of the special event without first being approved by the sponsoring not-for-profit organization overseeing the special community event.

Sec. 21-5. License; fees and application.

- 1. *License required:* It shall be unlawful for any person to engage in business as a Vendor within the City without first having obtained a license from the city clerk as provided in this Chapter. A separate license is required for each Vendor stand, motorized vending unit or portable vending cart unless exempt under Sec. 21-3.3.
- 2. *License term:* The term for a Vendor License shall be:
 - a. Day Vendors - Seasonal
 - b. Moving Day Vendors – Daily
 - c. Special Event Vendors – Daily or per the special event approval
 - d. Stationary Vendors – Seasonal
 - e. Peddlers – Daily

Seasonal shall mean April 1 through October 31 of the year issued.

- 3. *Application Deadline:* The application deadline for vending Licenses shall be:
 - a. Seasonal Vending Licenses – January 31st of each year. Applications shall be presented to the city commission for approval at the second regularly scheduled meeting in February.
 - b. Daily or Special Event Licenses – No less than ten (10) days before the city commission meeting during which approval will be requested.
- 4. *Fees:* All fees for the various categories of Vendor licenses shall be established by resolution of the city commission. Upon certification of the County Clerk, an eligible veteran will be exempt from all vending fees (MCL 35.61 - .62).

5. *Application:* An applicant shall file with the city clerk a written application, upon a form provided for that purpose. The following information is required in the application:
 - a. Name, address, date of birth, driver's license number, and telephone number of the applicant;
 - b. The criminal history of the applicant;
 - c. A color photograph of the stand or cart;
 - d. The nature, character and quality of the goods or services offered for sale or delivery;
 - e. Nature of business and method of distributing products;
 - f. Nature of license requested and proposed location;
 - g. Dates and times of operation being requested;
 - h. Names and addresses of employees or agent who will be assisting the applicant in the proposed business;
 - i. License number of any vehicle which is to be used;
 - j. Proof that the applicant possesses all licenses or permits required by this municipality, Berrien County or State of Michigan for the operation of the proposed business and that such license or permits are consistent with the terms of the vending being proposed by the applicant (must be provided before license will be granted);
 - k. Proof that the applicant possesses a valid retail Vendor sales tax permit from the Michigan Department of Treasury, if a sales tax permit is required for the type of proposed operation (must be provided before license will be granted);
 - l. Proof of insurance as required in this Chapter (must be provided before license will be granted);
 - m. Any other information which is required by the city clerk to clarify items on the application.
6. *Basis for reviewing and granting licenses:* To assure that the purposes of this Chapter are met, licenses will be reviewed and granted based upon:
 - a. The completeness of the application;
 - b. The quality and legitimacy of the product offered for sale;
 - c. The construction and design of the stand, cart or mobile vending unit to be used;
 - d. The Vendor's previous vending performance, including citizen complaints, ordinance violations, etc.

7. *Minimum Requirements:*

a. The following are minimum requirements that must be met:

- 1) The applicant must be over the age of 18;
- 2) The applicant must be current in all payments due to the City, including but not limited to taxes, fees, fines or penalties;
- 3) The applicant must completely and truthfully answer all questions and provide all requested information on the application;
- 4) The applicant must provide proof of a license or permit required by this chapter or by County or State law for the operation of the proposed business;
- 5) The applicant, applicant's employees or agents, individually or cumulatively, may not have been convicted of a violation of this chapter, within the three years immediately preceding the application. A plea of guilty or no contest in any court of law shall constitute a conviction for purposes of this provision. A conviction on appeal shall have no effect.
- 6) The applicant must pay the required application fee;
- 7) The applicant and the proposed business must be in compliance with all applicable laws, rules, ordinances, and regulations of the federal, state, and city government, including all regulatory agencies;
- 8) The applicant's business or method of doing business must not substantially interfere with traffic flow on public streets or sidewalks; and
- 9) Approved sites, as designated by the city commission, must be available.

b. If the city clerk finds any of the requirements listed above have not been met, the city clerk shall deny the application and send to the applicant by registered mail, return receipt requested, a written statement setting forth the reason or reasons for the denial and notifying the applicant of his or her right to appeal.

8. *Investigation:* When an application and fee have been filed and approved as meeting all minimum requirements, the city clerk shall transmit the application to the public safety director. The public safety director shall make an appropriate investigation of the applicant, which may include but is not limited to, a review of the applicant's background, an inspection of the stand or cart, and an inspection of the proposed vending location, to insure compliance with this chapter. No license will be issued against the recommendation of the public safety director.

9. *City commission approval:* With the approval of the public safety director, the application shall be placed on the agenda for review and consideration by the city commission at its next regularly scheduled meeting.

10. *Issuance of license:* Upon receipt of the license fee and proof of all other required certificates, licenses and insurance, the city clerk shall issue the license to the applicant within ten (10) business days of city commission approval.

Sec. 21-6. Additional regulations. All Vendors shall abide by the following additional requirements and restrictions:

1. Sales limited to products on application: Sales shall be limited to the products specified on the application.
2. *Licenses; non-assignable and non-transferable:* Licenses issued under the authority of this chapter shall be non-assignable and non-transferable.
3. *Display of license required:* All licenses shall be displayed in a prominent place on the stationary stand, portable cart or motorized vending unit. The failure of a licensee to conspicuously display such license when engaged in licensed business shall be sufficient cause for the suspension or revocation of the license. All Moving Day Vendors and Peddlers shall display a name tag supplied by the City of St. Joseph and clearly stating Vendor approval dates.
4. *Prices posted:* All prices charged for each item offered for sale shall be posted on the stand or push cart, no item shall be sold for more than the posted price.

Business hours, restrictions: Day Vendors, Moving Day Vendors and Stationary Vendors may conduct business between 9:00 a.m. and 10:00 p.m. or as otherwise regulated on a location basis as determined by resolution of the city commission. Peddlers may engage in business between 9:00 a.m. and sundown. These restrictions shall not apply to Special Event Vendors operating under a Special Event Permit approved by the city commission.

5. *Traffic regulations:* All Vendors must comply with all traffic, parking, and sidewalk regulations and policies.
6. *Obstructing public places:* Moving Day Vendors shall not 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, or operate in such a manner as to cause obstruction or blocking of pedestrian or vehicular access. Such Vendor shall be presumed to have occupied a stationary location if he/she has conducted business in any such place for a period in excess of ten (10) minutes.
7. *Prohibited locations for sale:* Sales shall not be made to persons standing in the roadway, to occupants of vehicles at red lights, or to occupants of vehicles in moving traffic lanes.
8. *Off-limit locations:* Business shall not be conducted 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.

9. *Proof of insurance:* All Vendors must obtain and maintain a policy of liability insurance by a company licensed to do business in the State of Michigan and approved by the City. Insurance coverage must be in the minimum amount of One Million Dollars (\$1,000,000.00) for personal injury and property damage arising out of the licensed operation, including operation by employees, agents or independent contractors. Proof of insurance must be provided to the City before a license can be granted and thereafter upon reasonable request. The insurance policy for Vendors operating on public property shall directly protect the City of St. Joseph, its officers, employees and agents as additional named insureds, and shall provide that the insurance be primary. The policy shall provide thirty (30) days prior written notice of revocation, cancellation, or amendment to the City.
10. *Hold harmless:* All Vendors shall agree to hold harmless and protect the City of St. Joseph, its officers, employees and agents from any liability, claims, costs, expense or attorney fees arising out of the licensed operation that is not covered by the Vendor's required insurance.
11. *Litter clean up required:* All Vendors shall keep the sidewalks, street 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. Vendors shall dispose of their own refuse and shall not use City trash receptacles.
12. *Loud noise/speaking devices/lights:*
 - a. Vendors shall not, or cause any person on the Vendor's behalf to, shout, cry, blow a horn, ring a bell, or use any sound device, including loud speakers or sound amplifiers, upon any streets, alleys, parks or other public places of the City, or upon any private premises, for the purpose of attracting attention to any goods, wares or merchandise which the Vendor proposes to sell.
 - b. Vendors shall not, or cause any person on the Vendor's behalf to, use or employ any flashing lights on any vehicle or any other device for the purpose of attracting attention to any goods, wares or merchandise which the Vendor proposes to sell.
13. *"No Soliciting" sign:* Vendors shall not enter onto property that has a posted "no trespassing," "no visitors," "no soliciting," "no peddling," "do not disturb," or similar notification making apparent the desires of the owner or occupant of the premises, and shall immediately leave the property after being requested to leave by the occupant.
14. *Threatening or harassing behavior:* Vendors shall not 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.
15. *Sales limited to products on application:* Vendors shall be limited to the sale of products specified on the application. Amendments to originally approved applications may be made to the city clerk. However, an application fee of an amount established from time to time by resolution of the city commission must accompany each request for a new item.

Sec. 21-7. Enforcement.

1. It shall be the duty of any police officer 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 clerk, and to enforce the provisions of this chapter against any person found to be violating them.
2. Any police officer 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.
3. It shall be the duty of any police officer 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. 21-8. Revocation.

1. The city clerk 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:
 - a. The Vendor has violated any provision of this Chapter, any provision of the St. Joseph Code of Ordinances, or state or federal laws, rules or regulations.
 - b. The Vendor has made a false material statement in the application or has otherwise become disqualified for issuance of the permit.
 - c. The Vendor has had a written complaint filed against it for violation of this Article and probable cause exists for substantiation of the complaint.
 - d. The Vendor has acted in a manner contrary to the public health, safety or welfare of the citizens of St. Joseph.
2. The city clerk shall provide the Vendor with written notice of the revocation by personal service or by first class mail at the address listed on the license application. The city clerk shall also inform the Vendor of its right to appeal. An appeal shall not stay the action of the city clerk.

Sec. 21-9. Right to Appeal. A Vendor may appeal the city clerk's or public safety director's license denial, or a license revocation, by filing a written request with the city clerk's office within fourteen (14) days of the date appearing on the notice of revocation. The hearing shall be held by the City manager or the City manager's designated representative within seven (7) days of the appeal being filed.

Sec. 21-10. Canvassers.

1. *Canvasser registration required:* All canvassers shall register with the city clerk's office prior to canvassing in the City. Such registration shall require: the name, address, telephone number, photo identification review, vehicle license number and date of birth of the peddler. The canvasser shall describe the goods or services being sold and the general terms of the transactions. The canvasser shall provide the name, address, telephone number, and

information about the company or venture the canvasser represents. The canvasser shall further provide the name, address, telephone number, business hours of a contact person at the organization the canvasser represents. Copies of brochures or promotional materials shall be left with the city clerk. The city clerk's office may examine samples, catalogs or other materials. The city clerk or director of public safety or his/her designee may verify the canvasser's affiliation or authority to represent the non-profit charitable organization.

2. *Prohibited canvassing:* Canvassing is prohibited on any privately owned premises that is posted with a sign or other notice stating "no trespassing," "no visitors," "no soliciting," "no peddling," "do not disturb," or similar notification making apparent the desires of the owner or occupant of the premises and shall immediately leave the property after being requested to leave by the occupant or person in charge of such premises.
3. *Business hours, restrictions:* Canvassing may be conducted between 9:00 a.m. and sundown.

Sec. 21-11. Other permits or licenses.

A license obtained under this Article 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. 21-12. Appearance tickets.

The director of public safety and the appointed officers of the public safety department, 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; MCL 764.9c(2). Appearance tickets shall be in such form as determined by the City attorney and shall be in conformity with all statutory requirements.

Sec. 21-13. Civil Infraction.

A person who violates this Chapter is responsible for a civil infraction and subject to a fine of not less than \$100 or more than \$500, per occurrence.

Sec. 21-14. Severability.

Should any section, subsection, sentence, clause, phrase or portion of this chapter be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions of this chapter.