

### **DIVISION 3. SIDEWALK VENDING\***

**\*Editor's note:** Ord. No. 2002-066, adopted Aug. 21, 2002, amended former Div. 3, §§ 11-251--11-263, in its entirety to read as herein set out. Former Div. 3 pertained to the same subject matter and derived from the Code of 1979.

**Cross references:** Streets, sidewalks and other public places, ch. 22.

---

#### Sec. 11-251. Findings.

- (a) The primary purpose of the public streets and sidewalks is the use by vehicular and pedestrian traffic.
- (b) Vending on the public sidewalks promotes the public interest by contributing to an active and attractive pedestrian environment.
- (c) Reasonable regulation of sidewalk vending is necessary to protect the public health, safety and welfare.
- (d) The regulations contained in this division do not prohibit free speech but merely regulate activities which are commercial in nature.
- (e) The granting of franchises for the use of public streets and the making of charges therefor are authorized by S.C. Code 1976, § 5-7-30, and are subject to such conditions as the council may impose to protect the public interest, welfare and convenience.  
(Ord. No. 2002-066, 8-21-02)

#### Sec. 11-252. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Cart* means any portable vending device, pushcart or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the department of motor vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor, and which does not exceed four feet in width, six feet in length, and five feet in height, excluding canopy or cover.

*Vending district* means the zone or area specifically designated for vending franchises.

*Vendor* means any person engaged in the selling, or offering for sale, of food, beverages or merchandise on the public streets or sidewalks, from a cart.

(Ord. No. 2002-066, 8-21-02)

#### Sec. 11-253. Permitted merchandise.

No merchandise shall be sold by a vendor from a cart in a vending district except the merchandise approved for the specific location of the cart. Permitted merchandise shall be limited to hot dogs, sausages, hamburgers, tacos, burritos, baked potatoes, bagels, pastries, candy, prepackaged sandwiches, chips, biscuits, popcorn, nuts, pretzels, ice products, ice cream, milk products, frozen yogurt, hot and cold beverages containing no alcohol, flowers, and items related to permitted merchandise.

(Ord. No. 2002-066, 8-21-02; Ord. No. 2003-005, 1-15-03)

#### Sec. 11-254. Franchise and license required; franchise fee; transfer of franchise.

- (a) It shall be unlawful to sell, or offer for sale, any food, beverage or merchandise on any street or sidewalk within the city from a cart without first obtaining a franchise and business license therefor.

(b) A nonexclusive franchise for not more than one year may be granted for the operation of one or more carts at locations specified by resolution of city council within a vending district prior to the acceptance of applications for a franchise. Notice of availability and nature of franchises shall be given by conspicuously posting at least one notice at the proposed location. At least one such notice shall be visible from each public thoroughfare that is within 100 feet of the proposed location. Such notice shall be posted 15 days prior to the public hearing.

(c) An annual franchise fee of \$300.00 per location shall be paid in advance. One business license for each franchisee shall be required at the applicable rate pursuant to Article II of this chapter.

(d) A franchise may not be transferred in any manner. Sale of a majority of stock in a corporate franchisee by stockholders listed on the franchise application or sale of a majority interest in a partnership as listed on the franchise application shall be deemed a transfer of the franchise which is prohibited.

(e) The provisions of this division shall not apply to festivals, community projects or public events which occur on a periodic basis and which are specifically approved by the city council.

(Ord. No. 2002-066, 8-21-02)

#### Sec. 11-255. Application to business license division for franchise.

The application to the business license division for a vendor's franchise include the following information:

(1) The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the cart to be used in the operation of the vending business.

(2) A description of the type of food, beverage or merchandise to be sold.

(3) A list of the proposed location of the vending cart for which a franchise is sought.

(4) A description and photograph or drawing of the cart proposed to be used.

(5) The location and description of off-street cart storage facilities.

(6) The method and routes for transporting carts to and from sidewalk locations and storage facilities.

(7) The names, addresses and percentage of stock owned by shareholders in a corporate applicant, and the percentage interest of each partner in a partnership applicant.

(8) Such other information as the applicant may choose or as may be requested by the city council to demonstrate that the applicant has the financial ability to perform the conditions of a franchise.

(Ord. No. 2002-066, 8-21-02)

#### Sec. 11-256. Issuance of franchise.

(a) The franchise required by section 11-254 shall be issued by ordinance in accordance with section 2-81. Any franchise issued pursuant to this division shall be subject to modification by ordinance at any time deemed necessary by the council for protection of public interests. Any franchise shall be granted as a privilege and not as a matter of right. Vending at any location may be temporarily suspended or relocated by the city manager upon reasonable notice when private or public construction or activities of the city make it unsafe or impractical to allow vending.

(b) In determining the acceptability of an application, the council may consider any factors presented in the application, at a public hearing, or in any staff report or investigation of matters related to the past record and ability of the applicant to perform conditions of this division and the franchise agreement in a manner which serves the public interests.

(c) Not later than 30 days after the filing of a completed application for a vendor's franchise, the applicant shall be notified by the city manager of the date of a public hearing before a decision on the issuance or denial of the franchise.

(d) It will be presumed that the owner of a food service business selling the same merchandise approved for a location within 50 feet of the principal public entrance to the food services business area can best serve the public convenience and interests. If two or more equally acceptable applications

for the same location are received, the earliest application, if approved, shall be awarded the franchise. If the franchise is denied pursuant to section 11-262, the applicant shall be provided with a statement of the reasons therefor entered in writing on the application.

(Ord. No. 2002-066, 8-21-02)

Sec. 11-257. Evidence of compliance with health and fire regulations; insurance.

(a) A certificate of inspection or compliance as required by applicable health regulations and evidence of compliance with the fire code shall be filed with the city clerk before any sales are made from carts.

(b) Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the owner and the city from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the owner, shall be filed with the city clerk prior to use of the franchise and annually. Such policy shall be a general liability policy naming the franchisee as insured in an amount not less than \$500,000.00 per occurrence and \$1,000,000.00 aggregate combined single limit for bodily injury, personal injury and property damage. The policy shall specifically provide that the insurer shall provide written notice to the city at least 30 days prior to cancellation, termination or modification of the coverage provided to the city.

(Ord. No. 2002-066, 8-21-02)

Sec. 11-258. Prohibited locations.

No cart location in a vending district shall be:

(1) Within 50 feet of the principal public entrance to any food service business area not owned by the vendor which sells merchandise approved for sale by a vendor.

(2) At any location which does not provide a clear passageway for pedestrians of at least four feet in width.

(3) Within ten feet of an entranceway to any building.

(4) Within 50 feet of any driveway entrance to a police or fire station, or within 25 feet of any other driveway.

(5) At any location where it would obstruct pedestrian traffic at crosswalks or sight clearance at intersections.

(6) Within 25 feet of any bus stop sign.

(Ord. No. 2002-066, 8-21-02)

Sec. 11-259. Prohibited conduct.

No vendor shall:

(1) Vend on any street or sidewalk where vending is otherwise prohibited.

(2) Vend between 11:00 p.m. and 6:00 a.m. of the following day.

(3) Leave any cart unattended.

(4) Store, park or leave any cart overnight on any street or sidewalk.

(5) Sell food or beverages for immediate consumption unless there is a litter receptacle which is available for patrons' use.

(6) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor.

(7) Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the cart.

(8) Set up, maintain or permit the use of any table, crate, carton, rack or other device to increase the selling or display capacity of his cart.

(9) Solicit or conduct business with persons in motor vehicles.

(10) Sell anything other than that for which a franchise and license to vend have been issued.

(11) Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public.

(12) Vend without the insurance coverage specified in section 11-257.

(13) Allow the stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's permission.

(Ord. No. 2002-066, 8-21-02)

Sec. 11-260. Advertising.

No advertising shall be permitted on any cart except to identify the name of the product or the name of the vendor, and the posting of prices.

(Ord. No. 2002-066, 8-21-02)

Sec. 11-261. Renewal of franchise.

All franchises granted under this division are valid for the entire franchise period unless revoked or suspended prior to expiration. An application to renew a franchise shall be made not later than 60 days before the expiration of the current franchise.

(Ord. No. 2002-066, 8-21-02)

Sec. 11-262. Denial, suspension or revocation of franchise.

Any franchise granted under this division may be denied, suspended or revoked by the council for any of the following reasons:

(1) Fraud or misrepresentation contained in the application for a franchise.

(2) Fraud or misrepresentation made in the course of carrying on the business of vending.

(3) Conduct of the franchised business in such manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.

(4) Conduct which is contrary to the provisions of this division or the franchise.

(5) Failure to use the franchise fully in accordance with its terms within 90 days after notice of the grant of franchise, or within 15 days after notice of non-use, during the term of the franchise.

(6) Failure to qualify for a business license or determination that any condition in section 11-44 or 11-45 exists.

(7) A determination that the applicant is not able or qualified, by reason of background, medical limitations, financial condition or conditions related to the vending business, to render acceptable service to the public pursuant to this division.

(8) A determination that a more qualified applicant for the same location will accept a franchise.

(9) A determination that no franchise should be granted to any applicant and that a location should be removed from the vending district approved list.

(Ord. No. 2002-066, 8-21-02)

Secs. 11-263--11-290. Reserved.