

Ordinance No. BL2022-____

An ordinance amending various provisions of Chapters 6.104, 13.08 and 13.32 of the Metropolitan Code relating to sidewalk vending and the clearing of obstacles from the public right of way.

WHEREAS, the volume of pedestrian movement in downtown Nashville has increased and the capacity of the sidewalk is often exceeded, creating locations where sidewalk vending causes undue risks to public safety; and,

WHEREAS, the Metro Nashville Police Department, the Nashville Department of Transportation and Multimodal Infrastructure, the Nashville Fire Department, and the Davidson County Clerk need mechanisms to more effectively regulate, restrict and enforce the use of sidewalks in the public rights-of-way; and,

WHEREAS, the Nashville Traffic and Parking Commission has heard the concerns from a variety of stakeholders on the topic of sidewalk vending and has deliberated and agreed upon the provisions set forth in this ordinance to support its purpose of making the roads, streets, and other public ways safe for pedestrians, motorists, and others in the Metro Davidson County area.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Chapter 6.104 of the Metropolitan Code shall be deleted in its entirety.

Section 2. That Section 13.08.040 of the Metropolitan Code shall be deleted in its entirety and replaced with the following:

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, platform, table, 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 and permit issued by the County Clerk or NDOT under subsections (B)(3) and (4) of this section that satisfies this section and is vending in an approved location and not interfering with the movement of vehicular or pedestrian traffic or creating an unsafe condition;
- 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 stationary or mobile device or vehicle to sell such written materials and not interfering with the movement of vehicular or pedestrian traffic or creating an unsafe condition;
- 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 provided that the non-profit identifies itself and is able upon request to provide documentary proof of its non-profit status, the requirements for clearance at intersections set forth at [Section 13.12.190](#) are satisfied and the nonprofit does not utilize a cart, wagon, or any other mobile device or vehicle to sell such materials and is not interfering with the movement of vehicular or pedestrian traffic or creating an unsafe condition;

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, or such that any unsafe condition results.
- 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 other 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 or NDOT 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 (including one suspended from the vendor's person), 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 Metropolitan Government 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)—(c) 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 or NDOT. Those who engage in such conduct without having and displaying a valid permit (or while their permit is suspended, revoked or expired) may be prosecuted for a violation of Tenn. Code Ann. Section 39-17-307 and/or Tenn. Code Ann. Section 62-30-101 *et seq.* To acquire a permit, a vendor shall submit an application to the County Clerk or NDOT and provide all information, on a form supplied by the County Clerk or NDOT, necessary to determine whether a particular permit may be issued.

a. The application must include the vendor's full name, home address, permanent business address (if any), telephone number, email address, driver's license number a current full-face photograph of vendor, a 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. The County Clerk or NDOT may require additional information to confirm the eligibility of the applicant for the permit.

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. 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 obtain and 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, beverage, or substance vendor shall be subject to inspection by local health department officials as provided for by law at periodic intervals.

f. Insurance

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 covering the annual permitting period. If the vendor does not maintain this insurance coverage throughout the permit period, the permit shall be automatically revoked upon the termination of such insurance policy. The policy must name the Metropolitan Government of Nashville and Davidson County as additionally insured. The certificate must accompany the application.

g. Any intentional misrepresentation on the application by a vendor shall constitute grounds for denial, suspension or revocation of a permit. The applicant will not be allowed to reapply for an application for a 12-month period.

4. Fee

a. At the time of application, a vendor shall pay an annual permit fee as established by the Commission. This fee will authorize the location of one stand. If a vendor wishes to have more than one stand, they must pay an annual permit fee for each stand. There will be an additional fee for each vendor identification badge. This shall not include any other applicable fees.

5. Application Processing.

a. Upon receipt of an application, the County Clerk or NDOT shall:

i. Ensure the application is complete. Incomplete applications shall be denied and returned to the applicant.

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

iii. Determine whether the applicant has been found to be non-compliant with a provision of this section during the six-month period preceding the application. If the applicant has been found to have committed one or more violations of this section during the preceding six-months, the application shall be denied.

iv. Ensure that vendors offering foods, beverages, or substances have obtained all necessary licenses, permits, and/or inspections in accordance with subsection (B)(3)(e) 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.

b. If the application meets the requirements specified in subsection (B)(5)(a) of this section, the County Clerk or NDOT 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 or NDOT will notify the vendor of the decision to issue or deny the permit and, if denied, the reason for denial. The County Clerk or NDOT 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. An oral notification shall suffice for this purpose.

d. Granted permits shall be valid for one year after issuance (so long as all requirements are met and no disciplinary action is taken) and shall be renewable upon expiration in each subsequent year so long as the vendor remains in good standing and has been found to have committed 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 C.4. of this section.

6. Restrictions

- a. 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 will be available.
- b. The sale of goods or services by street vendors is limited to the DTC and CF zoned districts. Provided, however, that no such sales may occur in the area (i) between Union Street and Korean Veterans Boulevard, spanning from the Cumberland River to 8th Avenue, or (ii) Symphony Place between Third Avenue South and Fourth Avenue South, or (iii) the John Seigenthaler Pedestrian Street Bridge. Additionally, vending is not allowed to occur on the portion of the street designed for vehicular traffic, excluding those permitted for a special event. These “No Vending” areas may be created or enlarged by the Commission upon reasonable public notice and specific notice to current permit holders. Notwithstanding the above and to the extent consistent with public safety, the Traffic and Parking Commission has the authority to establish a pilot vending program within any area previously described in section i above as “No Vending” or otherwise..
- c. 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.
- d. Each street vendor must prominently display the permit, in addition to any business tax license the vendor may be required to possess, and if applicable, the health permit must also be prominently displayed. I.D. badges issued by the County Clerk or NDOT 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 removed upon order of the metropolitan police department or NDOT until the deficiency is corrected.
- e. 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](#).
- f. 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.
- g. No vendor or owner of any wheeled and mobile vehicles, temporary stands, signs or displays or racks shall be entitled to compensation by virtue of being required to move to protect the public safety, allow access to utilities, or allow the free flow of pedestrian traffic, regardless of the length of time incurred thereby.
- h. Permits are nontransferable.
- i. 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, including designating appropriate clearances around other features of the right of way, such as intersections, disabled parking spaces, fire hydrants, parking meters, loading zones, bus stops, building entrances and the like. In so

doing, the commission may adopt a map or maps showing locations where vending is prohibited and/or where it is permitted.

j. Vending permits issued under this section shall be suspended during 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, and vending shall be prohibited during the limited period of time specified for the special event and within the area covered by the special event permit except by those vending with the express written permission of the event permit holder.

k. A vendor shall promptly comply with an order of an officer of the Metropolitan Police Department, the Nashville fire department, or employee of NDOT to temporarily move to another location when necessary to accommodate unusually heavy pedestrian or vehicular traffic, any obstructions in the public space, an accident, fire or other emergency situations, a parade, demonstration or other such event or occurrence at or near such location.

C. Suspension, Revocation or Denial of Permits.

1. Any permit issued under this section may be suspended or revoked by the commission, or its staff, 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 business contrary to the conditions of the permit and/or these regulations; or,
- d. Conducting business 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, as applicable.

2. The Commission, or its staff, 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. Written Notice of Suspension, Revocation or Denial

a. Upon suspension, revocation or denial of the issuance of a permit, the Commission, or its staff, 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.

b. The written notice shall be delivered to the permit holder's or applicant's place of business, as described on the application, or last known address. Placement of such notice in the U.S. mail shall constitute delivery.

c. 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.

d. 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 or applicant 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 or NDOT 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 is provided for in Section 1.01.030 of this Code, or, to the extent permitted by law, as follows:

Penalties

First offenseup to \$250.00

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

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

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

These penalties may be assessed by the commission and will be deposited into the general fund of the metropolitan government. Commission and/or Nashville Department of Transportation staff are authorized to issue citations for these violations, and charged with doing so, as well as peace officers.

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.

Section 3. That Section 13.32.100 of the Metropolitan Code shall be deleted in its entirety and replaced with the following:

13.32.100 - Removal of obstructions—Offender's responsibility

No person or other entity shall permit any rocks, wood, lumber, abandoned property or other obstruction whatever, other than a legally parked motor vehicle, to remain on the public square or any street, public right of way, sidewalk or alley. Officers of the metropolitan police department, Nashville Fire Department, and Nashville Department of Transportation and Multimodal Infrastructure (NDOT) shall cause the prompt removal of such material or obstruction, whether by the person or entity responsible for the obstruction or otherwise. In addition to any penalty imposed for the violation of this section, the person or entity offending shall be liable to pay the reasonable expense of removing and disposing of such material or obstruction, together with all costs of storage and administrative costs. For purposes of this section, abandoned property shall mean personal property, other than a motor vehicle, that is not the property of the Metropolitan Government, that is not the subject of an encroachment permit or other lawful metro permit, that does not consist of utility infrastructure and that is placed in a public place or right of way (i) for at least 48 continuous hours (ii) in a manner that interferes with vehicular or pedestrian traffic or otherwise creates a reasonable safety concern or (iii) the owner of the property is arrested for violation of Tenn. Code Ann. Sections 39-17-307 or 62-30-101 *et seq.*, or any other applicable criminal law.

Section 4. That a new Section 13.32.105 shall be enacted, reading as follows:

13.32.105 Property removed from the public right of way or other publicly-owned location pursuant to Section 13.32.100 shall be taken to a place of impoundment designated by the chief of police or director of NDOT as indicated on the itemized receipt. If present at the time of the removal, the owner of the property shall be given an itemized receipt listing the items removed, a duplicate of which will be retained for the Metropolitan Government's records. Perishable items shall be immediately disposed of for health reasons at the time of impoundment. The metropolitan government shall have no liability to the owner of the property for the disposal of or damage resulting from the removal or storage of the removed property. Reasonable efforts shall be made to notify the owner of any removed property who is not present at the time of removal. Removed property remaining unclaimed after 10 business days shall be deemed forfeited and may be disposed of by sale or otherwise. The director of NDOT shall have authority to make regulations to address the procedure for property removal, forfeiture, sale and redemption. An owner seeking to recover removed property shall pay the metropolitan government's reasonable costs incurred in removal and storage at the time of recovery.

Section 5. This ordinance shall take effect from and after its final passage, the welfare of the Metropolitan Government requiring it.

RECOMMENDED BY:

INTRODUCED:

Diana Alarcon, Director
Department of Transportation &
Multi-modal Infrastructure

APPROVED AS TO AVAILABILITY OF FUNDS:

Sponsor(s)

Kelly Flannery, Director
Department of Finance

APPROVED AS TO FORM & LEGALITY:

Assistant Metropolitan Attorney