

Title 5 – BUSINESS REGULATIONS

CHAPTER 5.04 –TRANSIENT MERCHANT PERMITS AND REGULATIONS

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5.04.010 – Purpose.

This Chapter is enacted to ensure that Transient Merchant activities are conducted in compliance with applicable federal, state, and local laws, regulations and ordinances and in a manner comporting with public health, safety, and the general welfare of the citizens of Boardman; to secure revenue to assist in defraying the city's cost of administering and enforcing its laws and ordinances and the city's provision of certain municipal services; and to obtain valuable information for emergency responders, planning and building personnel, and economic development.

The chapter also acts to authorize and regulate transient merchants on all property, including city rights-of-way, within the City of Boardman.

5.04.20– Applicability.

This Chapter provides reasonable and necessary regulations for the licensing of Transient Merchants located within the City of Boardman as described in this Chapter. Nothing in this Chapter shall be construed to apply to any person transacting and carrying on any business within the City of Boardman which is exempt from taxation or regulation by the city by virtue of the constitutions of the United States or the State of Oregon, or applicable federal or state law.

Through this Chapter reasonable and necessary regulations will maintain the free flow of pedestrian and vehicular traffic on streets, sidewalks and areas open to the public; prevent interference with the peaceful enjoyment of the areas open to the public; and preserve, protect, and enhance the economic, scenic, historic, and aesthetic values and objectives of the city.

The regulations of the chapter are not intended to permit any violation of the provisions of any other law or regulation and apply to activities within the City of Boardman, including City-owned and leased property and rights-of-ways.

These regulations shall not apply to sales conducted by municipal, government, religious, charitable, educational, or other similar organizations, provided that the sale is conducted on premises owned or leased by the applicant for the regular conduct of its business or affairs. Exemption of a use from the provisions of this chapter shall not exempt the use from other applicable provisions of this Code.

5.04.030 – Definitions.

As used in this chapter.

“Applicant” means the person applying for a license to conduct a particular business within the City.

“Business” means any activity, trade, profession, occupation, or pursuit operated, engaged, conducted, or carried on for profit, gain, livelihood, or any other purpose, regardless of the form under which the activity, trade, profession, occupation, or pursuit is operated, engaged, conducted, or carried on within the City.

“License Administrator” is the City appointed authority for reviewing, approving, or denying applications under this Title.

“Day” means a calendar day unless otherwise noted.

“Doing business” means to engage in any activity in pursuit of profit, gain, livelihood, or any other purpose.

“Income” means the net income arising from any business, as reportable to the State of Oregon for personal income, corporation excise or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for net operating loss carry-forward or carry-back.

“License or Permit” means the permission granted by the City under this Title to operate, engage, conduct, or carry on a business within the City.

“Licensee or Permittee” means an applicant who has received a license or permit under this Title.

“Mobile Vending Unit” is a vehicle or other conveyance that is self-propelled, upon a street or highway and within which food is prepared, processed, or dispensed to consumers or other items are available for sale.

“Mobile Vendor” is a mobile vendor which offers food or other items for sale from a Mobile Vending Unit.

“Permanent location” means professions, trades, occupations, shops for every kind of calling carried on for profit, personal gain, trade or barter and livelihood at a fixed or permanently established place of business maintained within the city.

“Person” means the singular and plural of an individual, partnership, corporation, limited company, joint venture, cooperative or any other entity in law or in fact.

“Rights-of-way” means the public streets, alleys, avenues, thoroughfares, highways, places, and grounds located within city which are owned and controlled by city.

“Sidewalk Vendor” is a mobile vendor which offers food or other items for sale from a Mobile Vending Unit, and which can or does routinely change location, and which is located within the public right-of-way and/or property owned by a public entity.

“Sidewalk Vending Unit” is a vehicle or other conveyance that is pushed or can be pulled upon a street or highway and within which food is prepared, processed, or dispensed to consumers or other items are available for sale.

“Transient Merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever, or who operates out of a vehicle which is parked within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader or auctioneer does not exempt any person from being considered a transient merchant.”

5.04.040 – Activities Required to be Licensed, Permitted, and Regulated.

- A. Except as exempt under Section 5.04.050 below, it shall be unlawful for any person to engage in Transient Merchant activity within the City without first having obtained the necessary licenses or permits for the current year as provided under this chapter.
- B. If more than one Transient Merchant is conducting business on the same premises, each must obtain a separate license.
- C. A person representing him or herself or exhibiting any sign or advertisement that he or she is engaged in a Transient Merchant activity within the City of which a license or permit fee as levied by this Chapter shall be deemed to be engaged in such business and shall be liable for the payment of such license or permit fee and will be subject to the penalties for failure to comply with the requirements of this Chapter.
- D. The City may require proof of state registration. An applicant shall possess any county or state license or permit required or shall be awaiting final approval by the state before a City license or permit is issued.
- E. No person shall do Transient Merchant activities within the City as the employee, agent, or representative of another person unless either the principal or the employee, agent or representative has a current, valid City Transient Merchant license or permit, no matter where the principal offices of that business are situated.
- F. Home occupations, as permitted uses or conditional uses in the Boardman Development Code, shall be required to obtain any necessary license or permit in accordance with the provisions of this chapter if they are engaged in Transient Merchant activities.

5.04.050 – Exemptions.

The following are exempt from the licensing and permitting requirements:

- A. Transient Merchants who exclusively or primarily sell to, deliver to, and/or solicit orders from local retailers, businesses, governments, schools, and/or wholesale firms.
- B. The occasional sales of goods and/or services by local school students related to their school and/or school activities, and/or fundraising sales by local service clubs, groups, and/or charitable nonprofit organizations.
- C. Any political group seeking funds or membership.
- D. The sale of goods, merchandise, and/or food in, on, and/or about a right-of-way directly adjacent to the licensed brick and mortar business conducting the sale.

5.04.060 – Application Requirements.

Each person desiring to engage in Transient Merchant activity must apply for a license or permit to operate, engage, conduct, or carry on the activity on such forms and in such manner as the License Administrator may prescribe. Applications are submitted online via the City of Boardman website, through an online application portal. The application must be accompanied by the applicable license or permit fee as established in the City of Boardman Fee Schedule. The application submitted through the online portal shall include the following information:

- A. The date of the application;
- B. The name and address of the applicant and, if the applicant is an entity, the name and address of the authorized agent applying on behalf of the applicant
- C. The name and physical address of the location where the Transient Merchant will engage in its business activity;
- D. A brief description of the nature of the business;
- E. The date that business operations will commence;
- F. The number of persons employed that will be engaged in the Transient Merchant activity;
- G. The person who may be contacted in case of an emergency and the phone number at which that person may be reached;
- H. Identify any local, state, or federal licenses, certificates, registrations, or permits that are required for the business and submit those licenses, certificates, registrations or permits as part of the application;
- I. A verification by signature of the applicant, or authorized agent submitting the application on behalf of the applicant, of the following:
 - 1. The information stated in the application is true, accurate and complete;
 - 2. The business complies with all applicable federal, state, and local laws, regulations, and ordinances;
 - 3. The applicant or authorized agent has read, understands, and agrees to abide by this Chapter; and
 - 4. If the applicant is an entity, the authorized agent has the requisite power and authority to sign and submit the application on behalf of the applicant;
- J. A notice that the application is a public record, and that the City will exempt from disclosure only information of a sensitive and confidential nature to the extent required by the Oregon Public Records Law (ORS 192.410-192.505) and other applicable laws; and
- K. Any other information necessary to enable the License Administrator or designee to review the application to determine whether the application should be approved.
- L. Once the application is received the application fee will be requested and shall be paid prior to any license or permit under this chapter will be issued.

5.04.070 – Reserved

5.04.075 – Reserved

5.04.080 – Transient Merchant Requirements

Transient merchants shall not be permitted in residential zones within the City of Boardman. In addition to the application requirements stated above the following additional information shall be submitted for review.

- A. A description of the nature of the business operation the applicant will conduct.
- B. If prepared food is offered for sale, evidence that the Morrow County Health Department or other applicable state or local agency has approved of the activity.
- C. The location from which the applicant will operate or the area(s) within Boardman that the Transient Merchant activities will occur.
- D. The length of time the applicant will conduct the business.

- E. The hours of operation.
- F. Authorization of the landowner(s) for placement of a mobile or sidewalk vending unit, if applicable. Mobile vending units cannot be placed in public right-of-way. Sidewalk vending units can be placed on public streets through this permitting process.
- G. A mobile or sidewalk unit, including all items associated with the operation, shall not obstruct pedestrian pathways, driveways, or drive aisles of any off-street parking area, and shall not be located to create a traffic or safety hazards.
- H. Mobile or sidewalk unit operators shall pick up any paper, cardboard, wood, or plastic containers, wrappers, or any litter which is deposited by any person within 20 feet of the mobile unit when conducting business. Trash cans or other trash containers shall be available for customer use.
- I. The use of the right-of-way or public property will not interfere with existing utilities, pedestrian use, or pose a hazard to vehicular traffic. The use shall be consistent with the use for which the property is zoned. The location shall be limited to that which was approved on the permit or license.
- J. Proof of general liability insurance and proof of products liability and errors and omissions insurance if applicable to the type of business being conducted.

5.04.085 – Reserved

5.04.090 – Reserved

5.04.100 – Reserved

5.04.110 – Application Review.

The License Administrator may refer each application to the persons or departments designated by the License Administrator for review. The license or permit may not be issued if the business as described in the application would not comply with this Title, or other City Codes. Issuance of the license or permit itself does not mean the applicant has complied with all Federal or State laws, and if it is later determined that the applicant has failed to comply with any Federal or State law and fails to correct such violation within thirty (30) days the applicant's license or permit may be revoked as described herein.

5.04.120 – Fee Schedule

- A. An annual license or permit fee is imposed on the act of doing business within the city. The City Council will annually establish the fees provided for in this chapter as part of the Master Fee Schedule.
- B. Fees are due at the time of the initial application. Renewal fees are due annually by January 1 of the respective year.
- C. Nothing contained in this chapter shall vest any right in a license or permit as a contract obligation on the part of the city as the amount of the fee. The fees required by this Title may be increased or decreased, additional fees may be imposed, and classifications may be changed.
- D. A person operating more than one business shall pay the license or permit fee prescribed for each of the businesses, except as specifically provided by this Title.

5.04.130 – Approval Process.

- A. Approval of Application.
 - 1. The License Administrator shall issue a decision on an application for a license or permit within 30 days of the submission of a complete application and required fee upon a finding that the applicant has submitted all the necessary application material, met all the

- requirements of this Title, and complied with applicable federal, state, and local laws.
2. The License Administrator shall issue a license or permit renewal upon finding that the applicant has submitted all the necessary application material, met all the requirements of this Title, and complied with applicable federal, state, and local law.
 3. If an application for a new license or permit is approved, the License Administrator shall notify the applicant through CitizenServe, the online application portal. The notice shall state any conditions or limitations placed on the license or permit as a condition of maintaining the license or permit which the License Administrator or other review staff deems necessary to protect the public health, safety, or welfare which is required by this Title and applicable federal, state, or local law.

5.04.140 – Denial, Suspension, or Revocation.

- A. Denial, Suspension, or Revocation of Application. The License Administrator may deny, suspend, or revoke a license or permit issued under this Title upon finding that:
 1. The licensee or permittee fails to meet the requirements of, or is doing business in violation of this Title and/or federal, state, or local laws;
 2. The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the applications, related materials, or license or permit;
 3. The applicant's past or present violation of law presents a reasonable doubt about their ability to perform the licensed or permitted activity without endangering property or the public health or safety;
 4. The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed or permitted activity; or
 5. The licensed or permitted activity would endanger property or the public health or safety.
- B. Notice. The License Administrator shall provide written notice to the applicant or licensee or permittee of the denial, suspension, or revocation. The notice shall state the reason for the action taken and shall inform the applicant or licensee or permittee of the right to appeal under 5.04.150 of this Title. For suspensions or revocations, the notice shall be given at least 15 days before the action becomes effective. If the violation ends within 15 days, the License Administrator may discontinue the suspension or revocation proceedings.
- C. Reapplication. A person whose application for a business or activity license or permit that has been denied, suspended, or revoked, may, after 90 days from the date of the denial, suspension, or revocation, apply for a license or permit or reinstatement upon payment of the application fee and submission of a complete application.
- D. Disqualification. A person whose application for any license or permit under this Title that has been denied or whose license has been revoked for a total of two times within one year, or who has a total of four denials, suspensions, or revocations, shall be disqualified from applying for a license or reinstatement for a period of two years from the date of the final denial, suspension, or revocation.
- E. Summary Suspension. Upon determining that a licensed or permitted activity presents an immediate danger to a person or property, the License Administrator or designee may summarily suspend the license for the activity. The suspension takes effect immediately upon notice of the suspension being received by the licensee or permittee or being delivered to the licensee or permittee's business address as stated on the application for the license being suspended. Such a notice shall state the reason for the suspension and inform the licensee or permittee of the provisions for appeal as outlined in 5.04.150.

5.04.150 – Appeal.

In the event an applicant for a license or permit under this Title is denied such license or permit, or in the event a license or permit is suspended or revoked, the applicant or licensee or permittee shall have the right to appeal.

- A. The written notice of appeal to the City Manager shall be filed with the License Administrator within 14 days after the license denial, suspension, or revocation.
- B. The appeal shall state:
 - 1. The name and address of the applicant;
 - 2. The nature of the determination being appealed;
 - 3. The reason the determination is incorrect; and
 - 4. What the correct determination of the appeal should be.
- C. The City Manager or designee shall review and decide in regard to the appeal within 15 days of filing.
- D. Final appeal, if filed by the applicant, shall be filed with the City Manager's office to be heard by the Boardman City Council. The Boardman City Council will hear the appeal at the next regular meeting of the City Council for which there is adequate time to include the appeal information in the Council Packet. The decision of the City Council on the appeal shall be final and conclusive.

5.04.160 – Posting and Display of License or Permit.

A licensee or permittee shall post the license or permit in a conspicuous place upon the business premises, available for inspection by the public and any employees and prospective employees of the business. When the licensee or permittee has no office, business premises or other established place of business within the City, the license must be in the possession of the agent or representative of the business who is present in the City at all times during which business is being transacted by the agent or representative in the City. If a licensed or permitted business is based in a motor vehicle, a photocopy of the license must be carried in the motor vehicle.

5.04.170 – Violations and Penalties.

- A. Any person convicted of violating any of the provisions of this Title shall be punished by a fine as determined in the Consolidated Fee Schedule for any one offense, each day constituting a separate offense.
- B. Offenses under this chapter shall be tried in the Morrow County Justice Court as a violation and not as a crime. As a violation there is no right to a jury trial or court-appointed counsel.
- C. Entity responsibility. An individual person and other entities may act in violation of this Title. If the party acting in violation of this Title is an entity, the entity shall be subject to fine, abatement or other penalties allowed by this Title and by law. In such cases where an entity is the offending party, a citation may be served upon the entity by serving an owner, officer, a person in charge of the premises, or any person or firm designated as an official or agent of the entity. The entity shall be named on the citation. The citation shall require appearance by a representative of the entity at the time indicated on the citation. If a representative fails to appear as required by the citation the city attorney may seek appropriate remedies for the failure to appear and default against the officers, owners and agents of the entity. For application of this section, the term "entity" shall also include corporations, partnerships, limited liability companies or partnerships, associations, sole proprietorships, and other forms of entities.
- D. Evidence of doing business. In a prosecution for a violation of this Title, evidence that the business made a public representation, by way of newspaper, radio, television or similar media advertisement or by signs conspicuously displayed for public view, that the business was being conducted, expressly or impliedly offering to sell goods or services in the course of the business to the public, shall constitute prima facie evidence that the business was transacting the business suggested by the public representation within the city on the date or dates during which the representations were made.

- E. Inspection and Right of Entry. Whenever they shall have cause to suspect a violation of any provisions of this Title, or when necessary to investigate an application to, or revocation of a license under any of the procedures prescribed in this Title, officials for the enforcement or administration of this Title, or their duly authorized representatives, may enter on any site, or into any structure, for the purpose of investigation providing they do so in a reasonable manner. If an owner or occupant denies access for an inspection, the city will seek a warrant. No secured building shall be entered without the consent of the owner or occupant unless under the authority of a lawful warrant.
- F. Abatement. Any business which is established, operated, moved, altered, enlarged, or maintained contrary to the licensing or permitting requirements of this Title shall be, and is hereby declared to be, unlawful and a public nuisance, and may be abated as such.
- G. Legal Proceedings by City Attorney. In addition to the enforcement provisions of this Title, upon request by the City Council, the City Attorney may institute any additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this Title.