

UNLICENSED FOOD VENDING

92.-- PURPOSE.

This subchapter is enacted to protect, preserve, and promote the health, safety, and welfare, of the residents and visitors of Hermiston through the reduction, control, and prevention of the selling, vending, or retailing, of food items by businesses that do not have the appropriate certificate, license, or permit to do so.

92.-- FINDING

The unlicensed selling of food by a vendor is declared a nuisance within the City of Hermiston. Due to the dangers that come from uninspected food preparation, improper food handling, and food being sold to citizens of the City by individuals or groups of individuals that are not properly licensed or inspected to do so, food items sold by such individuals are deemed to be unsafe for consumption and an Unlicensed Food Vending nuisance is presumed to constitute an immediate danger to the public.

To be considered properly licensed a food vendor shall maintain upon the premises at all times a City of Hermiston business license, City of Hermiston mobile vending license, Umatilla County Public Health License or Oregon Department of Agriculture license, and Oregon Health Authority food handlers license.

The use of private or public property for unlicensed food vending without the consent of the owner is also found to be a nuisance.

92.-- JURISDICTION

This subchapter applies to all unlicensed food vending within the jurisdictional limits of the city.

92.-- DEFINITIONS

Food Vending: Any person(s), entity(s) or other parties who sell food from any tent, push cart, vehicle, trailer or other conveyance and is required to have a Class II, III, or IV mobile food unit license as defined by Oregon statutes, a temporary food license from the Umatilla County Health Authority or a license from the Oregon Department of Agriculture.

Food Vending Location: Any property, public or privately owned upon which food vending occurs and which is commercially zoned by the City of Hermiston. Food vending is not permitted on residentially zoned land except as allowed in 92.45 and 119.05 of the Hermiston Municipal Code.

Food: Food vending is classified by the State of Oregon as follows

Class I These units can serve only intact, packaged foods and non-potentially hazardous beverages. No preparation or assembly of foods or beverages may take place on the unit. Non-potentially hazardous beverages may be provided from covered urns or dispenser heads only. No dispensed ice is allowed.

Class II These units may serve foods allowed under Class I and provide hot and cold holding display areas from which unpackaged foods are displayed. Self-service by customers of unpackaged food is not allowed. Preparation, assembly or cooking of foods is not allowed on this unit.

Class III These units may serve any food item allowed under Class II, and may cook, prepare, and assemble food items on the unit. However, cooking of raw animal food on the unit is not allowed.

Class IV These mobile food units may serve a full menu.

Licensed: A license issued by the City of Hermiston for the operation of a business and the mobile vending of food. Also includes a license issued by the Umatilla County Health Authority for Class I, II, III, or IV mobile food vending or a license from the Oregon Department of Agriculture for the sale of seafood and shellfish, baked goods, home cooking and baking, meat, eggs, and dairy.

92.-- GENERAL PROHIBITION

- (A) No person shall sell food within the City of Hermiston unless first licensed and permitted to do so by all licensing agencies including but not limited to the City of Hermiston, Umatilla County Health, Oregon Health Authority, and the Oregon Department of Agriculture.
- (B) Any person vending food from a property without written consent from the landowner is in violation of this chapter.

92.-- ENFORCEMENT

The City Manager, Police Chief, Code Enforcement Official, or any designee(s) thereof will have primary responsibility for the enforcement of the regulations contained in this subchapter. If the City Manager or designee has reason to conclude that an unlicensed food vending nuisance exists, the City Manager or designee may, in their discretion:

- (A) Issue a citation or enforcement complaint as provided in Chapter 136 or 138;
- (B) Summary Abatement. Due to the danger to citizens caused by unlicensed food vending the City has found this nuisance to be an immediate danger to the public and under HMC 92.15(D),

the City may summarily and without notice, abate the nuisance including the closing down of the vending location. Notice of the abatement, including the reason for it, shall be given to the person(s) responsible for the nuisance as soon as reasonably possible. The costs of the summary abatement shall be charged to the person(s) responsible and become a lien upon the property in accordance with the provisions of this chapter applicable to costs of non-summary abatements.

(C) Nothing in this subchapter shall prevent the City Manager, Police Chief or Code Enforcement Official, or any designee(s) from obtaining voluntary compliance by way of warning, notice, or education.

(D) A private property owner that allows an unlicensed food vending nuisance to occur on the said property and the person responsible for an unlicensed food vending nuisance shall be jointly and severally responsible for any violation of this section or other applicable sections of the Hermiston Municipal Code.

92.99 PENALTY.

In addition to abatement or any other remedy provided by law, unless otherwise provided in this chapter:

- (A) Anyone who violates any provision of §§ 92.01 through 92.10, § 92.12, or § 92.13 commits a Class B violation.
- (B) Violation of any provision of § 92.11 or 92.-- is a Class A violation.
- (C) Violation of any provision of §§ 92.23 through 92.29 shall constitute a Class B violation.
- (D) Any person who shall attempt to commit a violation of this chapter but who for any reason is prevented from consummating the act, commits a Class C violation.
- (E) Each day's violation of a provision of this chapter constitutes a separate offense.