

(Unless otherwise specified, new language is shown in double underline, and text to be removed is depicted with ~~strike through~~. Staff comments, in *italics*, are for context and are not a part of the revisions.)

## CHAPTER 4.10 VENDING ON PUBLIC PROPERTY

### 4.10.005 Findings and Purpose

- A. The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic.
- B. Unrestricted vending on public streets, sidewalks and other public places would interfere with the primary use of those public areas. However, vending on the public streets and sidewalks and upon certain public property that is limited to times and locations that minimize interference with public use promotes the public interest by contributing to an active and attractive pedestrian environment.
- C. The purpose of this chapter is to preserve the ability to use streets, sidewalks and other public places for their primary purposes while allowing limited vending in those areas to protect the public health, safety, and welfare.

### 4.10.010 Definitions

The following definitions apply within this chapter.

**Business Vending Area**. Public property determined by the City Council by resolution to be areas where vendors may sell or offer to sell food, beverages, merchandise or services from a stand.

**Stand**. Any table, showcase, bench, rack, pushcart, or wagon or other vehicle used for the displaying, storing or transporting of articles offered for sale by a vendor, or otherwise used in connection with any activities of a vendor. Stand does not include any item carried by a vendor and not placed on the ground or pavement for use or display.

**Mobile Stand**. A stand that is moved from place to place and that is engaged in vending from a single location in the public right of way for no more than 15 minutes in residential zoned areas or up to 2 hours at a time elsewhere in the city.

**Fixed standStand**. A stand at which vending occurs for more than 15 minutes in residential zoned areas or more than 2 hours at a time in a single location elsewhere in the city. Even

if a stand is easily movable, it is a fixed stand if it remains in place for more than 15 minutes in a residential zoned area or 2 hours elsewhere in the city in the course of a vending activity. For purposes of the definitions of “~~mixed-mobile~~ stand” and “fixed stand,” single location includes s 100 feet in all directions.

**Vending.** The activity of selling or offering for sale any food, beverage, merchandise or service on public property, streets or sidewalks from a stand, from the person or otherwise.

**Vendor.** Any person engaged in the activity of vending, whether directly or indirectly.

*Staff: The City last amended this section with Ordinance No. 2112, an ordinance that was adopted in May of 2017. That ordinance included a sunset clause that required further City Council action, a step that did not occur, meaning the changes were revoked as of January 1, 2018. Ordinance No. 2112 changed the transition point from mobile to fixed stands from 15 minutes to 30 minutes to better accommodate food trucks. The proposed change extends that timeframe further to two (2) hours. A two (2) hour transition point aligns with Oregon Health Authority regulations that require access to an accessible restroom within 500-feet of the food truck. An endorsement for mobile vending authorizes a user to lawfully park for short periods of time on public streets throughout the city. Introducing a restroom verification requirement isn't something that could be reasonably accomplished in this context. Retaining the 15-min. transition point for residential zoned areas effectively limits vending in those areas to traditional, transient operators such as ice cream sales. The reference to "residential areas" has been clarified to read "residential zoned areas" at the request of the Commission (5/24/21 work session).*

#### 4.10.015 Vending On Public Property

- A. It shall be unlawful to engage in any vending activity upon any street, sidewalk, or other public property of the city except as specifically allowed by a vending endorsement on a business license or an exemption allowed by Subsections B. or C. of this section.
  
- B. Vending on any city-owned or city-administered property other than rights of way or business vending areas is prohibited without a Special Event Permit issued pursuant

~~to NMC Chapter 9.80 written agreement with the city.~~ Any vending ~~by written agreement with the city~~ authorized by a Special Event Permit is exempt from the prohibition on vending stated in Subsection A. of this section.

- C. Vending on sidewalks by persons under 13 years of age with the permission of the adjacent property owner is exempt from the provisions of this chapter, provided that the vending activity cannot block the sidewalk. The sole remedy under this section shall be the relocation of the activity so that the sidewalk is not blocked.

*Staff: Private activities conducted on public property other than rights-of-way or business vending areas require a Special Event Permit. That clarification was made with Ord. No. 2170. This section of the code is being amended to direct persons to the Special Event permitting process.*

#### 4.10.020 Application

An application for a business license with a vending endorsement shall contain the following additional information:

- A. The names, residence and business addresses and residence and business telephone numbers of each person who may be engaged in operating such business or stand.
- B. A description of the type of food, beverage, merchandise or service to be sold or offered for sale as part of the vending operation.
- C. The location(s) where any stand(s) will be located.
- D. A description and photograph or drawing of any stand to be used in the operation of the business. The requirement for a drawing or photograph may be waived for stands operated on sidewalks adjacent to the place of business of the license holder.
- E. Proof of liability insurance covering personal injury and property damage, with coverage limits of at least ~~\$500,000~~ 2,000,000, naming the city as an additional insured.

*Staff: Insurance requirement is updated to align with current City practice. This was noted in the regulatory concept memo distributed at the 4/12/21 work session.*

#### 4.10.025 Vending Locations

- A. Fixed stands are permitted only within:
1. Business vending area locations, or
  2. The sidewalk area immediately adjacent to the applicant's place of business and the standards of Section 4.10.035 are met. Stands authorized under this agreement must be operated by the operator of the adjacent business.
- B. The vending endorsement for a fixed stand shall specify the location where the fixed stand may be located and is valid only for that location.
- C. The Council may, by resolution, limit the number of fixed stands at each business vending area. ~~If the applications~~ Applications for a vending endorsement for fixed stands in a business vending area ~~exceed the maximum number of fixed stands, endorsements shall be awarded by lot from the applications received by May 31 for the period beginning July 1, shall be issued on a first come, first served basis, except that preference is to be given to vendor(s) that possessed a vending endorsement to operate at the business vending area the previous fiscal year.~~
- Staff: This change was requested by Commission members at the 7/12/21 public hearing. The rationale is that a vendor that invested time, energy and resources into a fixed stand at a business vending area should not be at risk of losing the vending opportunity every time their license is up for renewal.*
- D. Vending other than from fixed stands are not specific to a location but are subject to the restrictions in [Section 4.10.035\(A\)](#).
- E. Vending endorsements for stands at business vending area locations are limited to one stand. Vending endorsements for areas adjacent to a permanent place of business may include more than one stand.

#### 4.10.030 Fees

- A. ~~An endorsement application surcharge of \$10.00 or such other amount as may be established by Council resolution shall be~~ A surcharge shall be added to the business license application fee ~~if a vendor's endorsement is applied for to recover the city's administrative costs for processing vending endorsement applications.~~ An entity exempt from payment of the business license fee is exempt from payment of the endorsement application surcharge.
- B. An additional fee ~~of \$50.00 per calendar month of operation~~ shall be charged for each fixed stand in a business vending areas and for each mobile stand. The endorsement shall list the months that the stand may operate. Endorsements may be amended to add months, but no refunds shall be given if the licensee does not exercise all rights under the endorsement.
- C. An additional fee ~~of \$50.00 per calendar month, not to exceed a total of \$250.00 per calendar year,~~ shall be charged to holders of endorsements to operate stands adjacent to the business, as permitted by Section [4.10.025\(A.\)\(2.\)](#). The endorsement shall list the months that the stands may operate. Endorsements may be amended to add months, but no refund shall be given if the licensee does not exercise all rights under the endorsement.
- D. Vending endorsement fees shall be established by resolution of the City Council.

*Staff: This section has been amended to remove references to specific dollar amounts in favor of having the fees set by resolution. It is a housekeeping change that the City has been making as sections of the Municipal Code are amended.*

#### 4.10.035 Restrictions

A. No vendor shall:

- 1(a) Vend within 500 feet of the grounds of any elementary or secondary school during the period commencing one-half hour prior to the start of the school day and ending one-half hour after dismissal at the end of the school day;

*Staff: The Planning Commission received testimony from Janet Webster that the City needs to address the provision barring vending in road rights-of-way or on public property that is within 500-feet of an elementary or secondary school when school is in session (ref: 3/26/21 and 4/12/21 emails). Her concern namely relates to its potential impact on private property that she and her husband own that is not impacted by these regulations, since the Chapter 4.10 provisions are limited to road rights-of-way and public property.*

*The Commission considered Ms. Webster's comments when it met in work session to consider the draft amendments and indicated that it could potentially support lifting the prohibition as it relates to secondary schools (i.e. the middle and high school). Before acting upon any such change, the Commission asked staff to meet with the District. That meeting occurred on 6/23/21 and the School District provided written testimony on 6/28/21. The District requests that the City retain the existing standard, indicating, among other things, that allowing food carts could compromise a free lunch program they offer that relies upon student participation and would potentially conflict with closed campus policies that they have in place for the middle school or are considering for grades 9 and 10 at the high school. This is documented in letters dated 6/28/21 and 7/12/21. The Commission received written testimony from Janet Webster on 7/11/21, Front Street Marine, LLC (Steven Webster) on 7/12/21, and Victor Mettle on 7/12/21 objecting to the District's request and refuting their rationale, particularly as it relates to student safety and the nutritional quality of food truck/cart products.*

*Following the 7/12/21 hearing, the Commission requested that the District provide additional information about the*

*free lunch program and asked that these two options be kept on the table for further consideration on 7/26/21.*

*The Planning Commission received the information it requested from the District and, after taking testimony, elected to retain the existing 500-foot limitation. In doing so, the Commission accepted the District's arguments that introducing mobile food units in close proximity to secondary schools could compromise the District's free lunch program and increase truancy. Further, even with the 500-ft limitation in place, the code changes will make available a substantial amount of right-of-way to food trucks/carts, consistent with the Council's goal.*

2. Vend within the Nye Beach or Bayfront parking districts, the geographic boundaries of which are defined in NMC Section 14.14.100, except within a business vending area or as authorized by a Special Event Permit issued pursuant to NMC Chapter 9.80.

*Staff: This provision was added, at the Commission's request, in response to public testimony received at the 7/12/21 hearing. A request was made that food trucks/carts be limited to pods in Nye Beach and the Bayfront given the level of activity and congestion in these areas. The proposed language leaves in place the option of vendors operating within the districts if they are located within a designated vending area or as part of a Special Event Permit. NMC 14.14.100 includes boundary descriptions for the districts and is logical in that it coincides with areas where timed parking is used to manage demand. A map illustrating the district boundaries was included with the 7/26/21 agenda packet materials. After taking testimony, the Commission elected to include the language as part of its recommendation, with a request that the City council designate a small number, possibly 2 or 3, additional business vending areas along the Bayfront sized sufficient to accommodate mobile food units.*

3. Vend between the hours of 9:00 P.M. and 6:00 A.M.
4. Leave any stand unattended.
5. Sell food or beverages for immediate consumption along rights-of-way or public property that front an eating or drinking establishment or in areas where aif

litter receptacles ~~are~~is not available within 25 feet of the vendor.

*Staff: This change addresses the second bullet point in the 7/6/21 letter from Hallmark Inns and Resorts, Inc., requesting the Commission prohibit food carts/trucks from setting up in a parking space that is in front of an existing eating or drinking establishment. This would help prevent friction between users and avoids what could be viewed as unfair competition for patrons. Following the 7/12/21 hearing, the Commission confirmed that this revision is warranted.*

6. Leave any location without first picking up, removing and lawfully dispersing of all trash or refuse remaining from sales made by the vendor or otherwise resulting from the vendor's activities.
7. If vending is from a stand, allow any items relating to the operation of the vending business to be placed anywhere other than in, on, or under the stand.
8. If the license includes a stand, expand the stand beyond what is described in the application and allowed in the permit.
9. Vend anything other than that which the vendor is licensed to vend;
10. Violate any city ordinance regulating sound or noise.
11. Vend within any portion of ~~any~~a vehicle travel lane ~~portion of any~~within a street other than at times when the street is closed to allow vending. This prohibition does not prohibit the use of mobile stands legally parked and selling to persons not within the vehicle ~~use travel lane portion~~use travel lane portion of a street. For the purpose of this subsection, "legally parked" means the vehicle is located within a striped parking stall or other area designated for vehicle parking.

*Staff: This subsection has been revised for clarity. At its 5/24/21 work session, the Commission inquired as to whether or not a vehicle can park across multiple striped parking spaces. The Police Chief indicated that he is unaware of a law that would prevent that from occurring, so language has been added to define legally parked, in*



*the context of vending, as being parked within a striped stall or other area designated for parking.*

12. Operate a stand without displaying a copy of the business license with the vending endorsement on the stand or engage in other vending activity without having the business license with vending endorsement immediately available for inspection.

- B. No vendor selling other than at a fixed stand shall vend at any location where the sidewalk is not at least eight feet in width, or within 10 feet of an entrance way to any building or within 20 feet of any crosswalk or intersection. No vendor shall block or allow customers to block a sidewalk.
- C. No vendor shall allow his or her stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure without the owner's permission.
- D. Vending activities, whether from a stand or otherwise, shall be conducted in such a way as to not block pedestrian use of a sidewalk. Pedestrian use is considered blocked if two persons cannot pass each other walking in opposite directions.

#### 4.10.040 Vending Stands

- A. Vending stands licensed for business vending areas shall not exceed five feet in length and five feet in height, excluding canopies and umbrellas, unless an alternative vending stand size limitation is established for a business vending area(s) by City Council resolution.

*Staff: The Commission considered three options that get at the size allowances for vending stands at "business vending areas," which are public sites designated for vending by Council resolution. Areas currently designated include the plaza at the Nye Beach Turnaround (up to 3 licenses) and the lift station site at Hatfield and Bay Blvd (up to 2 licenses). One option would have retained the existing language, which limits the size of stands to a footprint that can accommodate food vending pushcarts or small tables for retail sales. Another option would have expanded the size allowance for a stand to accommodate a food truck/cart, in line with the recommendation listed under the third bullet point of the 7/6/21 letter from Hallmark Inns and Resorts, Inc. Ultimately,*

*they elected to recommend the above language, which gives the City Council the option of identifying, by resolution, business vending areas where stands larger than 5-ft x 5-ft are appropriate. As for that future Council resolution, the Commission would like to see it retain the 5-ft x 5-ft size limitation in Nye Beach.*

- B. Umbrellas and canopies shall be a minimum of seven feet above the sidewalk. Umbrellas or canopies may not exceed 100 square feet in area.
- C. Vending stands on sidewalks adjacent to the licensee's place of business are permitted only in the following areas:
  - 1. On SW Coast Highway between SW Angle Street and SW Fall Street.
  - 2. On SW Bay Boulevard between SW Bay Street and SE Eads Street.
  - 3. On Hurbert Street between SW 7<sup>th</sup> Street and SW 9<sup>th</sup> Street.
  - 4. In the area bounded by Olive Street on the south, NW 6<sup>th</sup> Street on the north, NW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, "Olive Street" means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.
  - 5. Any other location designated by the Council by resolution.

#### 4.10.045 Denial and Revocation

- A. A vendor's endorsement may be denied or revoked for any of the following causes:
  - 1. Fraud or misrepresentation contained in the application for the business license with vending endorsement.
  - 2. Fraud or misrepresentation made in the course of carrying on the vending business.

3. Conduct of the vending business in such manner as to create a public nuisance or constitute a danger or hazard to the public health, safety, or welfare.
4. Violation of any provision of this subchapter or of any other law or regulation relating to the vending business.
5. Felony convictions or misdemeanor convictions involving moral turpitude. In deciding whether to deny an application for a past conviction, the city may consider the length of time since the conviction, whether the applicant appears to have been successfully rehabilitated, and the risk to the public.
6. Failure to obtain or maintain liability insurance covering personal injury and property damage, with policy limits of at least ~~\$500,000.00~~ \$2,000,000 and naming the city as an additional insured.

*Staff: The liability insurance amount has been increased to align with the change that was made to Section 4.10.020.*

#### 4.10.050 Appeal

If an application is denied or a license is revoked, the license holder may appeal by filing a written appeal with the city manager. The deadline for an appeal of a denial is 15 days after a denial is mailed, and the deadline for an appeal of a revocation is two days after the revocation is delivered. A revocation sent by mail shall be deemed delivered two business days after the date of mailing. The Council shall hear and decide the appeal at its next regular meeting held at least 10 days after the filing of the appeal. The decision of the Council shall be final.

#### 4.10.055 Violation

Violation of any provision of this chapter is a civil infraction, with a maximum penalty of \$500.00. Each day during which a violation shall continue is a separate offense. Violations of separate provisions are separate infractions.