



OFFICE OF THE CITY MANAGER

8140 Main Street • Dexter, Michigan 48130-1092 • (734) 426-8303 • Fax (734) 426-5614

Memorandum

To: Mayor Keough and City Council
From: Courtney Nicholls, City Manager
Re: Public Hearing: Pushcart Ordinance & Policy
Date: December 14, 2015

Attached for Council's review is an updated copy of the Pushcart Vending Ordinance & Policy. The name was updated due to the prohibition on food trucks. The ordinance has been drafted to specifically regulate pushcarts that sell food. The selling of non-food items is prohibited.

The policy states that one license will be issued per year. City Attorney Steve Estey commented that the availability of only one license could create a "monopoly" on the license if the vendor consistently renewed it for one year. If Council wanted to allow for more than one license in the future, it will not require a review of the entire ordinance, just an update to the policy.

A public hearing on the updated draft ordinance is scheduled for December 14, 2015.

AN ORDINANCE ESTABLISHING PROCEDURES FOR THE LICENSING OF PUSH CART VENDORS IN THE CITY OF DEXTER.

1. ORDINANCE OBJECTIVES:

- A. To protect the health, safety, and welfare of the residents of the City of Dexter.
- B. To protect businesses that pay property taxes located in the City of Dexter.
- C. To ensure that applicants meet all applicable federal, state, and local laws and health codes.
- D. To ensure that proposed businesses add to the vitality and aesthetic appeal of the community.

2. DEFINITIONS

- A. *Applicant* means any person who desires to conduct a pushcart vending operation on public property.
- B. *City* means the government organization that is the City of Dexter, Michigan.
- C. *Designated agent* means the person designated by the applicant to receive notices authorized by this ordinance on behalf of the applicant.
- D. *Food* means any products sold for human consumption, the sale of which is not prohibited by law.
- E. *Licensee* means an applicant who has obtained a license pursuant to this ordinance to conduct a pushcart vending operation on public property.
- F. *Pushcart vendor* means a person who engages in pushcart vending.
- G. *Pushcart Vendor License* means a license that permits a pushcart vendor to engage in pushcart vending.
- H. *Pushcart vending* means selling, serving, or offering food for sale from a pushcart located on public property. The vending, selling, serving, displaying or offering for sale of products other than food from a pushcart is prohibited on public property.
- I. *Mobile vending unit* means any motorized or non-motorized vehicle, cart, trailer, kiosk or other device designed to be portable and not permanently attached to the ground (other than a pushcart) that typically stops at a public or private property site for more than five minutes from which goods, wares, merchandise or food is vended, sold, served, displayed or offered for sale (e.g. food trucks). Vending, selling, serving, displaying or offering goods, wares, merchandise or food for sale from a mobile vending unit is prohibited on public property.
- J. *Public property* means any public street, highway, alleyway, parking space, park, sidewalk or other property owned by the City of Dexter or the City's Downtown Development Authority.
- K. *Pushcart* means a non-motorized cart, kiosk or portable stand under 10' x 10' designed to be readily moveable from which goods, wares, merchandise or food are sold.
- L. *Transitory vending unit* means a motorized vehicle that visits, or stops on, multiple public or private property locations on a daily basis for no more than five minutes per site per day from which food is

vended, sold, served, or offered for sale (e.g. ice cream trucks). Transitory vending is not subject to regulation under this ordinance section.

M. *Transitory vendor* means a person who sells, serves or offers to sell food, from a transitory vending unit. Transitory vendors are not subject to regulation under this ordinance section.

3. PUSCHART VENDOR LICENSING

A. No person shall engage in pushcart vending on public property, except as specifically authorized by a Pushcart Vendor License.

4. POLICY

A. The City Manager shall adopt, or approve for adoption, a policy containing rules and regulations respecting the acquisition of a license by an applicant or designated agent for pushcart vending. These regulations may include dates of operation, hours of operation, locations, liability insurance, refuse containment, outdoor storage, and any other regulations as may be deemed necessary to protect the health, safety, and welfare of the residents of Dexter.

B. An applicant for a Pushcart Vendor License shall file an application form provided by the City Manager or their designee, along with appropriate fees.

C. The City Manager or their designee shall issue a Pushcart Vendor License authorizing pushcart vending subject to state, county, local health rules and regulations, and all City ordinances and codes along with the requirements of this ordinance.

D. No person shall engage in pushcart vending, or employ or hire another to engage in such vending within the City, without possessing a valid license as provided in this ordinance.

E. Licenses issued pursuant to this ordinance shall not be transferable from one person to another. Any change in information provided in the application shall be provided to the City Manager or their designee within ten calendar days of any such change.

F. Any license issued to a pushcart vendor shall be displayed on the pushcart and shall be produced upon request of any law enforcement officer, city code inspector or county health inspector. Any required health inspection certificates shall also be displayed on the pushcart. Any change in the information provided in the application shall be provided to the City Manager or their designee within ten calendar days of any such change.

5. FEES

A. Each applicant to whom a license is granted under this article shall pay a nonrefundable fee in an amount established by City Council resolution.

6. LICENSE DENIAL; REVOCATION; SUSPENSION

A. Any application for a license may be denied, or any license may be revoked or suspended for a period up to one year by the City Manager or their designee for any of the following reasons:

1. Fraud, misrepresentation, or false statement contained in the application.
2. Any violation of the provisions of this ordinance or the accompanying policy regulating pushcart vending within one year prior to the date of application.
3. The applicant or designated agent has had any vendor license issued by any municipality revoked or suspended within the previous year.

4. The applicant has a suspended driver's license or has employed or hired a designated agent who has a suspended driver's license to transport the pushcart by motorized vehicle.

5. An application for a Pushcart Vendor License will be denied if the maximum number of Pushcart Vendor Licenses for the City as set forth in the pushcart vending policy has already been reached. Failure to use a Pushcart Vendor License may result in the City revoking the license.

B. In determining the appropriate administrative sanction, the City Manager or their designee shall consider the following factors: nature and timing of prior warnings; date(s) of violation; previous violations; duration of license; investment in business; circumstances of the violation; punishment imposed for previous violations; cooperation with City officials; and other aggravating or mitigating circumstances directly relating to any violation. If the City Manager or their designee determines that an application should be denied or that a license should be revoked or suspended, the City Manager or their designee shall notify the applicant or licensee in writing and identify the grounds by certified mail to the most recent mailing address as reflected in the records of the City Manager or their designee.

C. Appeals relating to the denial of a license application may be made to City Council. All such appeals shall be filed within 21 days after the City provides the applicant with written notice of the denial.

D. It shall be unlawful for any person to operate a pushcart vending operation while the license for the pushcart vending operation is suspended or revoked. No license suspended or revoked shall be reinstated until a fee has been paid.

7. EXEMPTIONS

A. The following persons are exempt from the licensing requirements of this ordinance:

1. Any person exempt from the licensing requirements of this chapter under state or federal law.
2. A person selling at a farmer's market, fair, festival or special event in connection with an approved special event.

8. VIOLATIONS AND PENALTIES

A. Any licensee, designated agent, or other person having control over any pushcart vending operation who causes, permits or facilitates any violation of any provision of this ordinance is guilty of a misdemeanor, pursuant to Chapter XXXX of the City of Dexter code and may be enforced by a police officer or other authorized City official. Each day any violation of any provision of this ordinance, or the failure to perform any act or duty required by this ordinance, exists shall constitute a separate violation or offense.

9. SAVINGS CLAUSE

A. The various parts, sections and clauses of this ordinance are declared to be severable. If any part, sentence, paragraph, section or clause is judged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

10. REPEAL

A. This ordinance will supersede Ordinance Chapter 34 with regard to pushcart vending on public property. In all other regards, Ordinance Chapter 34 will control.

B. All regulatory provisions contained in other City ordinances which are inconsistent with the provisions of this ordinance are repealed.

11. EFFECTIVE DATE; PUBLICATION

A. This ordinance shall become effective upon publication of a notice in a newspaper circulated in the City, stating the date of the enactment and the effective date of the ordinance, a brief notice as to the subject matter of this ordinance, and such other facts as the City Manager or their designee shall deem pertinent and that a copy of the ordinance is available for public use and inspection at the City office.

PUSHCART VENDING POLICY – CITY OF DEXTER

1. OBJECTIVES

A. The objectives of this policy shall be in accordance with City Ordinance Section XX “An Ordinance establishing procedures for the licensing of pushcart vendors in the City of Dexter.”

B. Definitions for relevant terminology may be found in Ordinance XX, Section 1 “Definitions.”

2. APPLICATION REVIEW

A. Pushcart vendors will only be permitted to vend at specific locations in the City:

1. Grassy triangular piece of public property located immediately in front of 8060 Main St., between the businesses and Main Street.
2. The piece of public property located adjacent to 3203 Broad St., next to the free-standing clock.
3. The public alleyway adjacent to 8101 Main St. and 3150 Broad St.

B. No more than one pushcart vendors shall be licensed in the City at any given point in time. Failure to use a Pushcart Vendor License for three consecutive weeks may result in the license being revoked.

C. In accordance with City Ordinance XX, applicants must submit an application to the City Manager or their designee, along with appropriate fees to be eligible for a Pushcart Vendor License. Information to be included on the application shall include:

1. The applicant’s name, current business address and telephone number.
2. Current government-issued identification document with photo of the applicant and any designated agent or person proposed to conduct pushcart vending.
3. The name under which the pushcart vendor will be doing business.
4. The proposed location(s) or geographic area from which the applicant intends to engage in pushcart vending.
5. A brief description of the nature of the pushcart vending operation and the items to be sold.
6. County health permits, if applicable.
7. A description of the pushcart to be used in the pushcart vending operation.
8. Whether the applicant or his or her designated agent has ever had any vendor license revoked or suspended and the date and jurisdiction of the denial, suspension or revocation.

D. The City Manager or their designee will review applications for conformance with the stated requirements and grant the license or deny the application.

E. Applications will be considered on a first-come-first-served basis until the specified locations are reserved for any given period of time. The City Manager or their designee will coordinate the location of use.

3. LICENSE FEES

A. Each applicant to whom a license is granted under this article shall pay a nonrefundable fee based on the period of use in the following amounts:

1. Less than one year - \$250.00
2. Less than six months - \$125.00
3. Less than three months - \$75.00
4. Less than 24 hours - \$15.00

4. REQUIREMENTS – PUSCHART VENDORS

A. Pushcart vendors, with valid Pushcart Vendor Licenses, may engage in pushcart vending on public property at specifically designated locations in the City, subject to the following requirements:

1. Pushcart vending shall be subject to Chapter 54 of the City of Dexter's Code of Ordinances "Traffic and Vehicles."
2. Licensees shall not block or impair vehicular or pedestrian traffic.
3. Licensees shall not stop a on public property without being specifically approved for a specific location.
4. Licensees shall comply with all health requirements of the Federal Government, State of Michigan, and Washtenaw County health departments.
5. Licensees shall comply with Article 3 of the City of Dexter's Code of Ordinances "Noise," and specifically section 18-61 "Noise Restrictions."
6. Tables, carts, chairs, umbrellas or other vending-related installations separate from the pushcart shall not be erected on public property.
7. Licensees shall contain all materials and supplies in the pushcart and shall not store supplies or other materials on public property.
8. A pushcart shall not be left unattended while on a public street, highway or public parking space for longer than 15 minutes.
9. Pushcart vending activity shall not violate the Americans with Disabilities Act.
10. No pushcart vendor shall operate between the hours of 11:00 p.m. and 8:00 a.m.
11. Any pushcart shall be removed from public property during the hours of non-operation.
12. Licensees shall keep the areas around their pushcart vending operation clean and free from litter at all times. A licensee shall remove all garbage and debris originating from its vending operation from the City and shall not dispose of its garbage and debris in City trash receptacles or City trash compactors unless authorized by the City.
13. Licensees shall supply a refuse container for public use that is capable of accommodating all refuse generated by the vending activity which shall be maintained and emptied regularly.
14. A pushcart vendor shall at no time make use of any outdoor cooking facilities, including grills.

15. A pushcart vendor shall at no time utilize outdoor storage, or warming or refrigeration devices, except for disposable tableware.

16. Licensees shall not connect a pushcart to a source of City electricity, water, or sewer.

17. Public property shall not be altered and permanent fixtures of any kind shall not be installed on public property by the licensee unless authorized by the City. A pushcart shall not be secured or affixed to any public structure unless authorized by the City.

18. Licensees shall not use amplification or noise-making devices.

19. A pushcart's wheels shall be safely secured while the licensee is conducting business.

5. INDEMNITY AND INSURANCE

A. The Licensee shall, to the fullest extent permitted by law, defend, indemnify, and hold the City harmless against any claim that may arise from its use of public property. The Licensee shall obtain and maintain during the term of the license a comprehensive general liability insurance policy written on an occurrence basis having policy limits of no less than \$300,000 per occurrence. A certificate of insurance naming the City as an additional insured shall be filed by licensee with the approved application. The certificate shall provide that the City will receive 30 days prior written notice of cancellation or non-renewal.