

MOBILE MERCHANTS

Sec. 24-16. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Identification card means the card issued to any individual in accordance with provisions of this article under a permit.

Kiosk vending means permitted vending from a kiosk or self-contained structure of a permanent or semi-permanent nature, which is allowed to encroach into the public right-of-way.

Mobile merchant means any person who sells any type of tangible personal property, including, but not limited to, food and drink, at or adjacent to the vehicle in which such tangible personal property is carried. This definition shall not include any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days, nor shall this definition include a person working or acting for a person holding a mobile merchant permit issued in accordance with this article.

Mobile sales unit means any vehicle used for carrying tangible personal property for sale at or adjacent to the vehicle in which such tangible personal property is carried. This definition shall not include any person providing or offering to provide scheduled delivery of food products to the door of any residence within the city at least once every seven (7) consecutive days.

Mobile merchant permit means the printed permit to be carried within any mobile sales unit after issuance of a permit to carry on activity as a mobile merchant.

Permit means the written authorization to carry on mobile merchant or kiosk vending activities regulated by this article.

Vending means engaging in the business of peddling, selling or displaying for sale any items of tangible personal property.

Sec. 24-17. Purposes.

The purposes of this article shall be to protect the health, safety and welfare of residents and of those working within the city, by means of reasonable investigation and regulation of mobile merchants and kiosk vendors, their employees, agents, lessees or independent contractors, and to levy fees for identification cards, mobile merchant permits and permits required under this article.

Sec. 24-18. Fees additional to transaction privilege tax.

All fees levied in this article shall be in addition to transaction privilege tax required by chapter 16 of this code. Failure of an applicant or permit holder to comply with such chapter shall be sufficient grounds for denial or revocation of any permit and of all mobile merchant permits and identification cards under such application or permit.

Sec. 24-19. Vending prohibited.

(a) It shall be unlawful for any person to engage in vending on any public sidewalk, right of way or city-owned property unless authorized pursuant to this article.

(b) It is not a defense to a violation of this section that the vending activity is offered on a donation basis, if there is credible evidence that the items offered for donation are subject to any minimum purchase price.

(c) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.

Sec. 24-20. Nature of permit, application and fees.

(a) Any permit issued pursuant to this article may be revoked by the finance and technology director or designee and does not confer a property right on its holder. Any amendment to location, conditions, hours or products must be approved in writing by the finance and technology director or designee. The city reserves the right to amend vending hours upon thirty (30) days notice to the permit holder.

(b) A permit issued pursuant to this article is nontransferable and nonassignable.

(c) Any person desiring to obtain a permit under this article shall make application to the finance and technology director or designee. The application shall be accompanied by an application fee, a permit fee, an identification card fee and a fingerprinting fee (see Appendix A).

(d) A permit issued pursuant to this article may be renewed by the finance and technology director or designee for successive annual periods following the initial permit if the permit holder is in compliance with this article. Such renewals are not subject to the initial selection procedure or application fee provided for initial applicants in this article. Permits shall expire annually on December 31. If a permit is not timely renewed, a late fee as established by the city council shall be assessed for a subsequent renewal (see Appendix A). Permits which are not renewed within 30 days after expiration shall be deemed cancelled and subject to the original application process.

(e) All fees, including late renewal fees when applicable, shall be nonrefundable and shall be paid to the finance and technology director or designee.

Sec. 24-21. Appeal.

Any person who wishes to dispute either the denial or revocation of a permit, or the determination that they are liable for any fees under this article may do so by submitting a request for an administrative review hearing in writing no more than ten (10) days after the denial or revocation. The city and the person disputing the denial, revocation or fee shall be given notice of the hearing and an opportunity to be heard. The hearing officer shall establish rules of administration and procedure to ensure the fair and orderly conduct of hearings held pursuant to this section.

Secs. 24-22 – 24-25. Reserved.

Sec. 24-26. Required authorizations.

(a) It shall be unlawful for any person to act within the city as a mobile merchant without first obtaining a permit authorizing such activity.

(b) It shall be unlawful for any person to carry on activity within the city as a mobile merchant unless the vehicle at or adjacent to which sales of tangible personal property are made bears a valid mobile merchant permit prominently displayed within the vehicle.

Sec. 24-27. Application procedure; required insurance.

(a) Any person desiring a permit to act as a mobile merchant within the city shall submit application on forms prescribed by the city. Required information shall include, but is not limited to, names and residence addresses of all owners, partners, general managers, principal officers, drivers and operators, proposed vending location and hours, products and costs, equipment to be used and signs. The applicant shall also submit a completed form provided by the city agreeing to operate in a manner consistent with a "good neighbor policy." The good neighbor policy shall include as guiding principles all of the following:

- (1) Maintaining public safety.
- (2) Respecting public and private property.
- (3) Managing potential impacts to adjacent or nearby establishments and residents as may be caused by noise, lighting, parking, and trash.
- (4) Being accountable, available, and responsive, as reasonable, to community comments and concerns.

(b) In addition to the mobile merchant permit application, any person desiring to act as a mobile merchant within the city shall submit an application for an identification card. Additional applications for identification cards to ensure compliance with section 24-29(g) may also be submitted. The applicant and each individual desiring the required identification card shall also provide three (3) character references, a statement of any prior felony conviction and any prior misdemeanor conviction involving moral turpitude, and any other information which the finance and technology director or designee deems necessary. The individual applicant shall also provide proof of a valid state chauffeur's or driver's license and (if food or drink is to be sold) proof of health clearance from the county health department before issuance of the identification card. The applicants and each individual desiring the required identification card shall submit a full set of fingerprints to the Tempe Police Department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the finance and technology director or designee. No identification card shall be issued prior to clearance of such fingerprints by the city. The finance and technology director or his agent may, at his discretion, approve the issuance of an identification card despite record of criminal conviction; provided, that such conviction occurred more than two (2) years prior to the date of application and was listed by the applicant on his application form. If the individual applying for an identification card provides satisfactory evidence that he is under eighteen (18) years of age, fingerprinting shall be waived and the identification card stamped "juvenile". No identification

card shall be issued except under authorization of an approved permit to operate as a mobile merchant within the city.

(c) No mobile merchant permit shall be issued until a certification of insurance is received by the City of Tempe with no less than the following limits: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations, insuring the city against any and all liability or expense that may be incurred by reason of any accident to any person, persons or property arising from or in any way growing out of the use of the right-of-way by the mobile merchant. The general aggregate limit shall apply separately or the general aggregate shall be twice the required per occurrence limit.

(d) All mobile merchant permits and identification cards shall expire yearly, and a renewal application shall be required for any subsequent year, including fingerprinting where applicable.

(e) It shall be unlawful for any individual to omit required information from any application or to provide false information on any application submitted. Failure to provide required information or falsification of information shall be grounds for disapproval or revocation of any permit or identification card.

(f) A mobile merchant planning to operate multiple mobile sales units may request multiple mobile merchant permits to be issued pursuant to a single application to ensure compliance with section 24-26(b).

Sec. 24-28. Revocation of permits and identification cards.

Any mobile merchant permit or identification card may be revoked by the finance and technology director or designee on the basis of information received after issuance concerning criminal record, or on the basis of violations of this article, the city's "good neighbor policy," or any applicable law or for reasons of public health, safety or welfare. Identification cards issued under a revoked permit shall automatically be revoked at the same time, and any identification card shall be revoked upon notification from the permit holder that the identification card holder is no longer associated with the permit holder. Revocation shall be effective on the date set by the city.

Sec. 24-29. Prohibited activities.

(a) It shall be unlawful to sell any type of tangible personal property from a vehicle upon any arterial street as defined by ordinance, and it shall be unlawful to sell any type of tangible personal property from a vehicle upon any street within an area bounded by, and including, the streets of Farmer Avenue on the west, College Avenue on the east, University Drive on the south, and Tempe Town Lake on the north, unless otherwise authorized by a special event permit.

(b) It shall be unlawful for any mobile merchant to engage in business operations in any residential area of the city between the hours of 10:00 p.m. and 7:00 a.m.

(c) It shall be unlawful for any mobile merchant to ring bells, play chimes, play recordings or make other noise in any residential area of the city for advertising purposes between the hours of 8:00 p.m. and 8:00 a.m. and between the hours of 1:00 p.m. and 3:00 p.m.

and no such noise shall be made when the vehicle is parked. This section shall not be construed as permitting any noise or vibration construed as a public nuisance under chapters 20 or 21 of this code.

(d) No mobile merchant shall claim or attempt to establish any exclusive right to park at a particular street location, and no mobile merchant shall park at or within five hundred (500) feet of any location on a public street for more than four hours within any eight (8) hour period.

(e) It shall be unlawful for any person to sell any type of tangible personal property from any vehicle, stand or other movable or temporary contrivance or by peddling within five hundred (500) feet of any school grounds between that time period commencing one-half (1/2) hour prior to the start of each school day and ending one-half (1/2) hour after school is dismissed. The words "school grounds", as used in this section, shall not include the campus of Arizona State University.

(f) No person shall sell any tangible personal property, including, but not limited to, food or drink, from any vehicle, stand or other movable or temporary contrivance on or within public parks, city property or the public right of way. Provided, however, that the city council may authorize the calling of competitive bids to provide food sales in one or more public parks or on city property and may grant use of space to one or more persons submitting the best bids. Provided further, that a mobile merchant may be authorized by the finance and technology director or designee, upon the recommendation of the community services director or designee, to sell food and drink in any city park not having a permanent concession facility without respect to competitive bid provisions if a private group or organization requests that the specific mobile merchant be permitted to sell to their group during a specified period at a specified location.

(g) It shall be unlawful for any mobile merchant to engage in business operations unless it is staffed by at least one person having an identification card and, upon request by a city employee, the identification card shall be produced for inspection.

(h) Any person or persons guilty of violating any of the provisions of this section shall be deemed guilty of a misdemeanor and punishable as set forth in § 1-7 of this code.

Secs. 24-30 – 24-35. Reserved.