

ORDINANCE NO. 2372  
INTRODUCED BY: Humbert

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AMENDING CERTAIN SECTIONS OF TITLE 3, TITLE 5, AND TITLE 8 OF THE BRIGHTON MUNICIPAL CODE PERTAINING TO LICENSING OF OUTDOOR VENDORS

WHEREAS, vendors have relayed that the current provisions of the Brighton Municipal Code relating to outdoor vendors are too restrictive; and

WHEREAS, vendors have relayed that the process to obtain a permit is confusing; and

WHEREAS, the City Council supports modifying the Brighton Municipal Code to ease restrictions related to outdoor vending and simplify the process.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. Section 3-28-150 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 3-28-150. – Business license required for separate places of business.

In case business is transacted at more than one (1) premises by one (1) person, a separate license for each separate place of business shall be required, **except outdoor vendors issued a license in accordance with Article 5-98 of the Brighton Municipal Code who may transact business in multiple locations under one business license.**

Section 2. Section 5-98-10 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-10. – Definitions.

The following definitions as used in this Article:

*City block* shall mean the smallest area that is completely surrounded by public rights-of-way, or access easements that act as public rights-of-way, not to include alleys.

~~*Commissary* shall mean a commercial kitchen that is approved as such under the laws and regulations of the State and County that govern retail food establishments.~~

~~*Commissary prepared* shall mean food that is prepared, cooked, or assembled, or any combination of these, in a commissary, and is intended for consumption at another establishment or place.~~

*Food* shall mean any product sold for human consumption, the sale of which is not prohibited by law.

*Outdoor vendor (or vendor)* shall mean any person, whether as owner, agent, consignee, or employee who sells or attempts to sell, or who offers to the public free of charge any services, goods, wares, or merchandise, including, but not limited to, food or beverage, from any outdoor location, except that *outdoor vendor* shall not include a person who:

(1) ~~Vends from property owned by the City, if such vending is pursuant to a concession agreement or other agreement with the City.~~

(2) ~~V~~ vends at a yard sale; provided, however, that this exception shall not apply to a person who has vended at four (4) or more previous yard sales in the current calendar year.

~~*Permittee Licensee* shall mean a person who has been issued a temporary use permit license under the provisions of this Article Code.~~

*Public right-of-way* shall mean all streets, roadways, bikeways, sidewalks, and all other areas reserved for present or future use by the public, as matter of right, for the purpose of vehicular or pedestrian travel.

*Vend (or vending)* shall mean the sale, attempt to sell, or offering to the public of any services, goods, wares, or merchandise.

*Vending unit* shall mean any motorized or non-motorized vehicle, trailer, kiosk, pushcart, or other nonpermanent structure or device from which outdoor vending occurs.

*Yard sale* shall mean the offering of goods for sale from an informal stand or display on an individual lot whose primary land use is residential in nature by or with consent of the owner or resident of the lot, provided that such owner or resident is not in the business of selling at retail or wholesale the goods offered at the yard sale. *Yard sale* shall include, but is not be limited to, yard sales, garage sales, lemonade stands, and bake sales. Any additional sales of food items prepared in a private home are prohibited by law with the exception of those allowed under the Colorado Cottage Food Act.

Section 3. Section 5-98-20 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-20. – ~~Permit~~ **License** required.

- (a) It is unlawful for any person to engage in the business of an outdoor vendor, as defined in this Article, within the corporate limits of the City, without first obtaining a ~~temporary use permit~~ **license** as provided in this ~~Article Code~~.
- ~~(b) All outdoor vending on property not considered public right of way, including, but not limited to, private property, public parks, and schools, is required to obtain a location specific permit as provided in this Article, except for outdoor vending within a City park or other City facility as a concessionaire approved by the City pursuant to a facility specific permit issued by the City, or at a special event for which a temporary use permit has been issued.~~
- ~~(c) Any person who arranges for, or allows, one (1) or more outdoor vendors to operate at a special event must obtain a temporary use permit under this Article. Upon issuance of such permit, the outdoor vendor(s) vending at said special event shall be relieved of the obligation to obtain individual permits under this Article in order to operate as part of said event.~~
- ~~(d b)~~ Each ~~permittee licensee~~ shall prominently display the ~~permit license~~ issued hereunder in a location readily visible to the public on each vending unit ~~or at the special event~~.
- ~~(e c)~~ For the vending of food, documentation of regulatory approval as a retail food establishment by the ~~Tri County Health Department~~ **Colorado Department of Public Health and Environment** is required. The ~~Community Development Finance~~ Director may request and require such additional information or documentation as he/she deems necessary in order to consider the application and make the required determinations as set forth in this Article. The timeframe for review of any application shall be extended during the pendency of any such request for additional information.

Section 4. Section 5-98-30 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-30. - Application for ~~permit license~~; ~~permit~~**license** modifications.

- (a) An application for a ~~permit~~ **license** under this Article shall be submitted to the ~~Community Development Finance~~ Department no less than twelve (12) business days prior to the first day of the proposed operation.
- (b) A ~~permit~~ **license** issued under this Article is valid ~~for a time period not to exceed thirty (30) days for one year beginning January 1 or the date of issuance, whichever is later, and ending December 31 of the same year. Any extensions to this maximum time period shall be reviewed by the~~

~~Community Development Director based on the specific circumstances of the proposed vending permit application.~~

- (c) Applications for a ~~temporary use permit license~~ will not be accepted or thereafter processed unless all required supporting documents and submissions have been received by the ~~Community Development Finance~~ Director. The Director, in the Director's sole discretion, may waive the submission of any document upon the prior request of the applicant.
- (d) A completed application, the form of which shall be furnished by the ~~Community Development Finance~~ Department (as may be updated from time to time), shall be submitted in accordance with 5-98-30(a) above.
- (e) The fees to be paid to the City for the issuance, modification, or renewal of any ~~temporary use permit license~~ pursuant to this Article shall be set by the resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council.
- (f) A request for a modification of a ~~temporary use permit license to add vehicles, individuals, operations, or locations, or to modify other license restrictions or conditions, as applicable,~~ shall be submitted to the ~~Community Development Finance~~ Department and shall meet all of the requirements and be reviewed in the same manner as an application for a new ~~permit license~~.

Section 5. Section 5-98-40 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-40. - Specific procedures.

Applications shall be considered individually and in chronological order as established by the date of receipt of a properly completed application.

An application for a ~~temporary use permit license~~ for outdoor vending has the following specific procedures:

- (1) *Application review.* Upon receipt of a formal application, the ~~Community Development Finance~~ Director or designee will conduct an internal review and may forward copies of the application to any pertinent internal and external agencies for review and comment.
  - a. *Complete application.* Within two (2) business days of the filing of an application, a determination shall be made whether the application is complete according to the application requirements. The applicant shall be notified of any deficiencies in incomplete applications, and shall be granted a reasonable time in which to cure said deficiencies.
  - b. *Review by applicable departments and agencies.* Upon determination of a complete application, the application shall be dispersed for review to the applicable departments and agencies. Any comments from the City shall be returned to the applicant within ten (10) business days of a complete application determination.
  - c. *Decision.* If no revisions to the application are required by the reviewing departments or agencies, the ~~Community Development Finance~~ Director or designee shall grant approval or denial of the application within ten (10) business days after a complete application determination. A delay in decision, for any reason, shall not be deemed grounds for approval of the application.

Section 6. Section 5-98-50 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-50. - Restrictions for operation within the public right-of-way.

All outdoor vendors operating within the public right-of-way within the City of Brighton shall adhere to the following restrictions:

- (1) All posted parking requirements or restrictions shall be adhered to.

- (2) No ~~permittee~~ **licensee** shall operate for more than ~~five~~ **twelve (12)** hours in one (1) location within a twenty-four (24) hour time period, unless otherwise granted approval by the ~~Community Development Finance~~ Director.
- (3) Each ~~permittee~~ **licensee** shall provide for waste collection and shall pick up and dispose of any paper, cardboard, wood or plastic containers, wrappers, or any litter that is deposited within twenty-five (25) feet of the vending unit, ~~permitted vending~~ location, or within twenty-five (25) feet of the point of any sale or transaction, including litter that is not a direct result of the outdoor vending. The ~~permittee~~ **licensee** shall carry a suitable container for the placement of such litter by customers or other persons.
- (4) Other than a suitable container for placement of litter, no ~~permittee~~ **licensee** shall set up any structures, canopies, tables, chairs, or other equipment that is not attached to the vending unit.
- (5) Each ~~permittee~~ **licensee** shall maintain in safe condition any vending unit, vehicle, structure, device, or any other similar item described in the ~~temporary use permit application~~, so as not to create an unreasonable risk of harm to the person or property of others.
- (6) No ~~permittee~~ **licensee** shall leave unattended any vending unit while in the public right-of-way.
- (7) A vending unit shall not obstruct the movement of pedestrians or other vehicles and shall not be:
  - a. Parked or placed within fifty (50) feet of any intersection;
  - b. Parked or placed within twenty (20) feet of any marked crosswalk.
- (8) Each ~~permittee~~ **licensee** may only operate in areas where parallel parking is allowed and must serve the public from the sidewalk and not from the street or adjacent parking spaces.
- (9) No ~~or permittee~~ **licensee** shall operate within two hundred (200) feet of a City park without first obtaining written approval from the Parks and Recreation Department Director. Said written approval must be available for inspection at any time during vending operations.
- (10) In the Downtown zone district, the following additional restrictions shall apply:
  - a. Vendors must be associated with an existing business in the Downtown zone district, and must be able to present written proof of that association at any time.
  - b. Vendors must be located on the same city block as the business with which they are associated.
  - c. Vending units cannot operate within the extension of any building entranceway, doorway, or driveway.
- (11) In residential zone districts, the following additional restrictions shall apply:
  - ~~a. Vendors are only allowed to operate where parallel parking is allowed.~~
  - ~~b. Vendors of food may only serve commissary prepared, packaged and ready to eat, or commercially pre-packaged food in individual servings. Food is not allowed to be cooked from the vending unit.~~
  - e a. **Unless stopping to vend for fifteen (15) minutes or less, a vendor may operate no more than three times per calendar month** ~~Vendors cannot stop to vend for more than fifteen (15) minutes in any particular cul-de-sac or on any particular city block.~~
  - d b. Vendors may only operate between the hours of 10:00 a.m. and 8:00 p.m.

Section 7. Section 5-98-60 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-60. - Restrictions for operations outside the public right-of-way.

All outdoor vendors operating on land that is not considered public right-of-way, including, but not limited to, private property, public parks, and school district property, shall adhere to the following restrictions:

- (1) All ~~permittees~~ **licensees** must have written permission from the property owner for the parcel on which the vending will take place. ~~Said written permission must be submitted with the application and be available~~ **and have said permission available** for inspection at any time while vending operations are taking place.
- ~~(2) All vending units shall be required to apply for and be approved for a temporary use permit for vending.~~
  - ~~a. All permits~~ **licenses** ~~will define the location and allowed operating time for vending.~~
- (32) All vendors operating in public parks must receive written permission from the Parks and Recreation Director, ~~to be submitted with the corresponding permit application and be~~ **have said permission** available for inspection at any time while vending operations are taking place.
- (43) All vendors operating on school district land must receive written permission from the school district, ~~to be submitted with the corresponding permit application and~~ **have said permission** available for inspection at any time while vending operations are taking place.
- (4) **Vending units shall not occupy parking spaces required to be provided for the businesses on site and shall not block or inhibit access to or through the property.**
- (5) In residential zone districts:
  - a. ~~No property may~~ **Vending may occur on public or private property with written permission from the property owner, except that a private residence may only** host a vending unit ~~more than one (1) day~~ **three times** per calendar month.
  - b. Vendors may only operate between the hours of 10:00 a.m. and 8:00 p.m.
  - c. Yard sales shall not operate for a period longer than three (3) consecutive days.

Section 8. Section 5-98-70 of the Brighton Municipal Code is hereby amended to read as follows:

Sec. 5-98-70. - Suspension or revocation.

Licenses ~~and permits~~ issued pursuant to the provisions of this Article may be revoked or suspended by the City Council after notice for any of the following causes:

- (1) Fraud, misrepresentation, or false statement(s) contained in the application for ~~permit~~ **a license**;
- (2) Fraud, misrepresentation, or false statement(s) made in the course of carrying on the business for which the ~~permit~~ **license** is issued;
- (3) Any violation of a City ordinance or state statute; and
- (4) Conduct of the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace or danger to the health, safety or general welfare of the public.

Section 9. Article 8-40 of the Brighton Municipal Code is hereby repealed in its entirety.

~~ARTICLE 8-40—Ice Cream Vendors~~

~~Sec. 8-40-10.—Purpose.~~

~~The purpose of this Article is to allow and regulate the sale and vending of prepackaged ice cream, Popsicles or frozen desserts from an ice cream vehicle or pusheart on public streets or sidewalks.~~

~~Sec. 8-40-20.—Definitions.~~

~~As used in this Article, the following words, terms and phrases shall have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning:~~

- ~~(1) *Applicant* means an individual, corporation, partnership, limited partnership, limited liability company or any organization applying for issuance of a license.~~
- ~~(2) *Chief of Police* means the Chief of Police, or designee, of the City.~~
- ~~(3) *City Clerk* means the City Clerk, or designee, of the City.~~
- ~~(4) *Ice cream vehicle* means any vehicle in which prepackaged ice cream, Popsicles or frozen desserts of any kind are carried for purposes of retail sale on the City streets, on which the standard emblem designating it as a *slow moving vehicle* is clearly attached.~~
- ~~(5) *License* means the authority under this Article to operate and vend from an ice cream vehicle or pusheart.~~
- ~~(6) *Licensee* means a person who operates an ice cream vehicle or pusheart for vending purposes and who has been issued a license under this Article.~~
- ~~(7) *Pushcart* means a nonmotorized food service vehicle which is designed to be moved by hand on City sidewalks.~~
- ~~(8) *Vend or vending* means the business of offering prepackaged ice cream, Popsicles or frozen desserts for sale from an ice cream vehicle on the City streets or from a pusheart on the City sidewalks.~~

~~Sec. 8 40 30. License required.~~

~~It shall be unlawful for any person to engage in the business of vending prepackaged ice cream, Popsicles or other types of frozen desserts without first obtaining an annually renewable license from the office of the City Clerk for each ice cream vehicle or pusheart according to the provisions of this Article. The fee for each license shall be as established from time to time by resolution of the City Council. The license is valid for one (1) calendar year.~~

~~Sec. 8 40 40. Insurance required.~~

~~Each holder of a license hereunder shall at all times maintain commercial liability insurance in amounts not less than required by the City per City Council fees and charges resolution, and evidenced by a certificate, signed by an agent of an insurance carrier authorized to conduct business in the State. Such certificate shall verify insurance status and set forth the limits of each policy, policy number and insurer, the effective and expiration date of each policy, and a copy of an endorsement placed on the submitted policy requiring ten (10) days' notice by mail to the City prior to policy cancellation for any reason.~~

~~Sec. 8 40 50. Unlawful acts designated.~~

~~It is unlawful for any person operating or vending an ice cream vehicle or pusheart to:~~

- ~~(1) Violate any traffic law;~~
- ~~(2) Deliver products to customers other than when the ice cream vehicle/cart is lawfully stopped and the vehicle's hazard lights are in operation;~~
- ~~(3) Fail to comply with all applicable health and sanitation statutes, rules, regulations, ordinances or other laws established by the City;~~
- ~~(4) Vend from any part of the vehicle other than from the side of the ice cream vehicle away from moving traffic and as near as possible to the curb or the side of the street;~~
- ~~(5) Vend to anyone standing in the roadway;~~
- ~~(6) Back up any ice cream vehicle to make or attempt to make a sale;~~

- ~~(7) Vend within five hundred (500) feet of any City park or recreation facility at which organized recreation and/or leisure programs are being conducted;~~
- ~~(8) Vend other than on residential streets;~~
- ~~(9) Drive an ice cream vehicle in excess of ten (10) miles per hour while vending;~~
- ~~(10) Allow any person to hang onto the ice cream vehicle or allow any person to ride in or on the ice cream vehicle, except a bona fide assistant; or~~
- ~~(11) Vend in a manner which endangers the health, safety or welfare of the citizens of the City.~~

~~Sec. 8-40-60. License application; issuance.~~

- ~~(a) Each applicant for an ice cream vending license, and all associated employees, shall submit copies of the following documentation, in duplicate, to the City Clerk:
 
  - ~~(1) Name and description of the applicant;~~
  - ~~(2) Address, including address where the applicant can be reached in the City area;~~
  - ~~(3) Driver's license;~~
  - ~~(4) Social Security number;~~
  - ~~(5) Brief description of the nature of the business and the goods to be sold;~~
  - ~~(6) Map of proposed route;~~
  - ~~(7) Completed ice cream vendor's application for the City, including "Background Investigation Questionnaire";~~
  - ~~(8) Completed City sales tax application;~~
  - ~~(9) Required fee; and~~
  - ~~(10) Such other information as the City Clerk shall deem necessary for the public health, safety and welfare.~~~~
- ~~(b) Immediately subsequent to the submission of the documents referred to in Subsection (a) above to the City Clerk, the City Clerk shall refer one (1) copy to the Chief of Police. Upon such referral, the Chief of Police shall cause an investigation of the applicant's business and character to be conducted to the extent necessary for the protection of the public health, safety and welfare. The Chief of Police shall notify the City Clerk of the outcome of the background investigation, together with his or her recommendation for approval or denial. The cost for such background check shall be borne by the applicant.~~
- ~~(c) No ice cream vending license shall be issued to or held by any person unless that person is satisfactory to the Chief of Police with respect to moral character and record. Factors to be considered in determining moral character and record shall include, but not be limited to:
 
  - ~~(1) The prior conviction in any jurisdiction of a felony, or of a crime which, if committed in the State, would constitute a felony;~~
  - ~~(2) Conviction of any criminal offense involving sexual crimes committed against children or involving the exploitation of children through pornographic or obscene materials;~~
  - ~~(3) Revocation or suspension of the applicant's or an employee's driver's license for any reason in the past five (5) years; or~~
  - ~~(4) Such other information as the Chief of Police shall deem necessary for the protection of the public health, safety and welfare.~~~~
- ~~(d) In addition to the grounds set forth in the above Subsection (c), the Chief of Police may refuse to approve an ice cream vending license for any applicant whose record shows one (1) or more~~

~~convictions for an alcohol or drug related driving offense or a pattern of convictions for traffic violations.~~

- ~~(e) If, as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the City Clerk shall endorse on such application his or her disapproval and his or her reasons therefor, and shall notify the applicant that the application has been disapproved and that no license will be issued for the reasons stated.~~
- ~~(f) If, as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, the City Clerk shall endorse on the application his or her approval.~~
- ~~(g) Upon completion of the required documentation set forth in Subsection (a) hereof, the City Clerk shall issue the license applied for.~~

~~Sec. 8 40 70. Suspension or revocation of license.~~

~~Licenses issued pursuant to the provisions of this Article may be revoked or suspended by the City Council after notice and hearing for any of the following causes:~~

- ~~(1) Fraud, misrepresentation or false statement contained in the application for license;~~
- ~~(2) Fraud, misrepresentation or false statement made in the course of carrying on the business for which the license is issued;~~
- ~~(3) Any violation of a City ordinance or State statute; or~~
- ~~(4) Conduct of the business in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.~~

~~Sec. 8 40 80. Hours of operation.~~

~~No sale or offer for sale shall be made by any ice cream vendor between sunset and 10:00 a.m.~~

~~Sec. 8 40 90. Amplified sound.~~

~~Ice cream vehicles may use amplified sound only in accordance with the provisions of Section 8 32 40(a)(2) of this Code.~~

~~Sec. 8 40 100. Restricted and prohibited operations.~~

~~Ice cream vendors shall be limited to serving prepackaged ice cream, Popsicles or frozen desserts. Only single serve items for the use of the consumer may be sold. The City reserves the right to prohibit the sale of certain food items in order to protect the health or safety of its citizens.~~

~~Sec. 8 40 110. Display of license.~~

~~The license under which an ice cream vehicle or pusheart is operating must be firmly attached and visible on the ice cream vehicle or pusheart at all times.~~

~~Sec. 8 40 120. Inspection and enforcement.~~

~~The City reserves the right to inspect any ice cream vending operation at any time. The provisions of this Article shall be enforced by any police officer or code enforcement officer of the City by issuance of a summons.~~

~~Sec. 8 40 130. No assumption of liability.~~

~~Nothing in this Article shall create any duty to any person with regard to the enforcement or nonenforcement of the provisions herein. No person shall have any civil liability remedy against the City, its officers, employees or agents for any damages arising out of or in any way connected with the adoption, enforcement or nonenforcement of this Article, and nothing in this Article shall be construed to create any liability or to waive any immunities, limitations on liability or other provisions of the Governmental~~



~~Immunity Act, Section 24-10-101, et seq., C.R.S., or to waive any immunities or limitations on liability otherwise available.~~

~~Sec. 8-40-140. Exceptions.~~

~~Operators of vehicles delivering milk, bread or other food: (1) upon prior order or request by the occupants of establishments or dwellings within the City, (2) in conjunction with a parade or (3) on a street legally closed to traffic are specifically exempt from the provisions of this Article.~~

Section 10. The purpose of this Ordinance is to provide for the health, safety, and welfare of the people.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED this 7<sup>th</sup> day of September, 2021.

PASSED ON SECOND READING AND ORDERED PUBLISHED BY TITLE ONLY this 21<sup>st</sup> day of September, 2021.

CITY OF BRIGHTON, COLORADO

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GREGORY MILLS, Mayor

ATTEST:

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NATALIE HOEL, City Clerk

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APPROVED AS TO FORM:

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ALICIA CALDERÓN, City Attorney