

Order 146-04/05

Given first reading on 1/19/05 Public Hearing, Amended & Postponed on
2/7/05 Amended & Passed: 2;/23/05 7-1 (Geraghty opposed, Cohen absent)

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CITY OF PORTLAND
IN THE CITY COUNCIL

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 19 (PEDDLERS AND SOLICITORS)
ARTICLE II (STREET VENDORS)
SECTIONS 19-16 thru 19-25**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Sections 19-16 thru 19-25 of the Portland City Code is hereby amended to read as follows:*

Sec. 19-16. Definitions.

For purposes of this article, the following special definitions shall apply, unless the context clearly implies otherwise:

Street artist means a person who is engaged in the creation of a work of art or who offers for sale a work of art created by the artist who is offering it for sale.

Street goods vendor means a person who sells, demonstrates, distributes samples of or solicits or takes orders for goods other than food or beverages.

Street vending means selling or offering to sell, displaying for sale, demonstrating, distributing samples of, or soliciting or taking orders for, any food, beverages, goods or services in any street, way or public place.

Street vendor means a person who sells, demonstrates, distributes samples of or solicits or takes order for food or beverages.

Street, way or public place means any street, sidewalk, alley or path, and any park, playground or other city-owned property, or any portion thereof, which is open for use by the public as a matter of right.

(Ord. No. 609-82, § 908.2, 5-19-82; Ord. No. 277-94, § 1, 4-4-94; Ord. No. 109-94, 10-17-94; Ord. NO. 130-98, § 1, 10-19-98; Ord. No. 223-01/02, § 2, 5-6-02; ORd. No. 291-02/03, 7-7-03)

Cross reference(s) - Definitions and rules of construction generally, §1-2.

Sec. 19-17. License required.

(a) All street vendors conducting business on any street, way or public place must have a license issued by the City Clerk as provided in this Article.

(b) A street vendor's license may be issued under this division only for the sale of food, and shall be in addition to any other license, permit or authority required by law. In addition, a licensed street vendor may obtain a separate license for the use of up to a maximum of seven (7) square feet of sidewalk space, to be used solely for the storage of up to two coolers which shall be in contact with the pushcart at all times of operation.

(c) A street goods vendor or a street artist shall only be permitted on a street, way or public place during festivals or special events declared by the City Council pursuant to Section 19-22, with the approval of the sponsoring business or organization or the Parks and Recreation Department. All street goods vendors shall be required to obtain a license issued by the City Clerk and pay the fee prescribed by Section 25-27(e) of this Code.

(Ord. No. 609-82, § 908.4, 5-19-82; Ord. No. 155-82, 9-8-82; Ord. No. 211-85, § 1, 10-21-85; Ord. No. 257-90, 2-21-90; Ord. No. 277-94, § 1, 4-4-94; Ord. No. 111-94, 4-20-94; Ord. No. 109-94, 10-17-94; Ord. No. 130-98, § 2, 10-19-98; Ord. No. 223-01/02, § 2, 5-6-02; Ord. No. 291-02/03, 7-7-03)

Sec. 19-18. Application.

(a) In addition to the information required by section 15-5, each application for a street vendor's or street goods vendor's license shall include a specific description of the business, the goods or services to be sold, and the equipment, if any, to be used, including a reasonable estimate of the value thereof.

(b) No street vendor's license shall be issued without the applicant first filing with the clerk a certificate, in a form satisfactory to the corporation counsel, evidencing public liability insurance coverage in an amount not less than the maximum liability under applicable law and naming the city as an

additional insured. The certificate shall also provide for notice to the clerk not less than thirty (30) days prior to any cancellation of insurance, which insurance the licensee shall maintain at all times while engaged in street vending.

(Ord. No. 609-92, § 908.3, 5-19-82; Ord. No. 223-01/02, § 2, 5-6-02)

Sec. 19-19. Special conditions of operation.

(a) Area of operation: A licensed street vendor may operate:

- (1) In any zone of the city where such use is* a permitted or conditional use as defined in chapter 14 of the City Code;
- (2) At Hadlock Field subject to the following conditions:

Within the vicinity of Hadlock Field, as defined by separate council order, four (4) pushcart licensed street vendors may operate upon the following terms:

- a. One (1) at each of the four (4) sites to be designated by the city clerk, said sites to be located approximately as follows:
 - i. Deering Avenue sidewalk at the entrance to Fitzpatrick Stadium parking lot, or at the vendor's choice, at a site in said parking lot which is approved by the city clerk;
 - ii. Park Avenue sidewalk in front of the Ice Arena;
 - iii. Park Avenue sidewalk near the entrance to the parking lot separating the Ice Arena and the Exposition Building, with an alternate location to be designated in or near the Fitzpatrick Stadium parking lot and behind the Horse Barn and Ice Arena on days when there is an event taking place in the Exposition Building; and
 - iv. Park Avenue sidewalk at the northwest corner of Park Avenue and St. John Street.
- b. Selection of street vendors shall be made on the basis of an annual lottery and a site selected by

the street vendor for the season based upon the order of selection;

- c. Approved street vendors shall be allowed to operate only on days of Portland Sea Dogs home games; they shall set up no earlier than ninety (90) minutes before the scheduled time of the game; they shall close their sales within thirty (30) minutes of the close of their sales;
- d. Any approved street vendor shall comply with all of the applicable provisions of this Code, including without limitation the provision of this subsection, and of city rules promulgated for such street vendors by the city clerk; and
- e. The city clerk is hereby authorized to promulgate rules consistent with this Code for the form of the Hadlock Field street vendor license and application; advertisement and conduct of the lottery and approved street vending operations, including without limitation, selection of replacement vendors if needed; vendor sales practices; vendor litter control; and cleanup both during and after close of sales. Said rules shall be subject to the approval of the city manager and shall be posted in the city clerk's office.

(b) *Conduct of operations:*

- (1) Every licensed street vendor shall wear a numbered badge issued by the clerk.
- (2) Every licensed street vendor, shall operate only from a pushcart which conforms to all applicable rules or regulations promulgated under this article and to all requirements of this chapter.
- (3) Every licensed street vendor which is also a licensed mobile food service establishment shall provide waste paper receptacles for use by customers, and shall maintain the immediate area free of litter generated by them.
- (4) No licensed street vendor shall sell any goods or services, or use any equipment not specifically authorized by the license; operate in any manner

which would constitute an unfair or deceptive trade practice under state law, or make any noise in violation of section 17-17.

- (5) No street vendor shall engage in street vending between the hours of 10:00 p.m. and 12:00 midnight without a separate and additional night vendor's license. All provisions of this article shall apply to the night street vendor licenses.

(Ord. No. 223-01/02, § 2, 5-6-02)

Editor's note--Ord. No. 130-98, § 3, adopted Oct. 19, 1998, repealed § 19-19, regulations for backpack drink dispensers, which derived from Ord. No. 277-94, § 3, adopted Apr. 4, 1994.

* Original in Ord. No. 223-10/02, §2, 5-6-02 contained the word "not" in error.

Sec. 19-20. Exceptions for license required.

(a) No street vendor's license shall be required for:

- (1) Maintaining an installation authorized by a street and sidewalk occupancy permit issued pursuant to section 25-26;
- (2) Conducting business on city-owned property pursuant to a lease, contract, or other agreement with the City;
- (3) Operating a licensed public market stall;
- (4) Transporting goods or passengers for hire;
- (5) Providing emergency medical or motor vehicle services; or

(6) Advertising only, on a motor vehicle.

(Ord. No. 223-01/02, § 2, 5-6-02)

Sec. 19-21. Prohibited operations.

(a) No street vendor shall operate on any street, way or public place without a license.

(b) No street goods vendor shall operate on any street, way or public place except during a festival or event declared pursuant to Section 19-22.

(c) No vendor other than a licensed street vendor or a street artist as defined in this Article shall operate on any street, way or public place.

(d) No street vendor shall operate:

- (1) Within any area designated by the city council for a sidewalk sale, street festival, or other special event, except as authorized by a street and sidewalk occupancy permit issued pursuant to section 25-26 and as provided by section 19-22;
- (2) On any city-owned property without a lease, contract, or other agreement with the city;
- (3) On the grounds of any public school unless a school authorized function;
- (4) Within sixty-five (65) feet of any other licensed street vendor, except for festivals approved pursuant to section 19-22;
- (5) Within sixty-five feet of any fixed-base retail establishment offering the same or substantially similar goods or services, except during festivals approved pursuant to section 19-22 and except as provided in subsection (e) below;
- (6) On any sidewalk less than eight (8) feet in width or in any other location so as to impede the free passage of vehicles or pedestrians, obstruct the entrance to or exit from private property, jeopardize the public safety, or otherwise inconvenience the public; or
- (7) Between the hours of 12:00 midnight and 6:00 a.m. of the succeeding day.

(e) Notwithstanding paragraph (d)(5) above, a licensed street vendor may operate one mobile food service establishment within sixty-five (65) feet of a fixed-based retail establishment offering the same or substantially similar goods or services, upon the following conditions:

- (1) The owner of the fixed-base retail establishment and the owner of the mobile food service establishment are the same and each entity is licensed under the same ownership; and

- (2) Both the fixed-base retail establishment and the mobile food service establishment are located outside of the boundaries of the Portland Downtown District.

All other laws and regulations applicable to such licensed street vendor shall apply.

(Ord. No. 223-01/02, § 2, 5-6-02; Ord. No. 266-02/03, 6-2-03)

Sec. 19-22. Declaration of festivals.

(a) The city council may designate an area for a street festival or other special event. In the event of such festival designation, street vendors, street artists and street goods vendors shall be required to obtain necessary licenses. Street artists and all other street and goods vendors must obtain permission of the festival organizer to conduct business within the festival area.

(b) The festival organizer shall be required to defend, indemnify and hold the city harmless from any claims resulting from festival activities.

(c) The festival organizer shall be required to provide proof of general liability insurance, naming the City of Portland as additional insured thereon in the minimum amount of not less than the maximum liability of the city under applicable law.

(d) The festival organizer shall obtain a license from the city, pursuant to section 25-26, and any other applicable building code provisions for all installations, structures, or objects placed within the public way for all street vendors and street artists conducting business within the festival zone.

(Ord. No. 223-01/02, § 2, 5-6-02)

Sec. 19-23. Rules promulgated by city manager.

The city manager is authorized to make reasonable rules and regulations, not inconsistent with this article, governing the design, construction and location of pushcarts.

The city manager is authorized to make reasonable rules and regulations related to the number and duration of events permitted on public property requiring a permit under the provisions of this article.

The city manager is also authorized to make reasonable rules and regulations, not inconsistent with this article, governing street artists. Such regulations may include the identification of areas within which street artists may work, limitations on the number of locations available to street artists within designated areas, a method of assigning locations to street artists and a procedure to identify suitable locations.

(Ord. No. 609-82, § 908,.5, 5-19-92; Ord. No. 109-94, 10-17-94; Ord. No. 223-01/02, § 2, 5-6-02)

Sec. 19-24. Street artists.

(a) No street artist shall operate:

- (1) Within any area designated by the city council for a sidewalk sale, street festival, or other special event, except as authorized by a street and sidewalk occupancy permit issued pursuant to section 25-26 and as provided by section 19-22;
- (2) On the grounds of any public school unless a school authorized function;
- ~~(3) Within sixty-five (65) feet of any other licensed street artist, except for festivals approved pursuant to section 19-22;~~
- ~~(4) Within sixty-five (65) feet of any fixed-based retail establishment offering the same or substantially similar goods or services, except during festivals approved pursuant to section 19-22 and except as provided in subsection (c) below;~~
- ~~(5)~~(3) On any sidewalk or in any other location so as to impede the free passage of vehicles or pedestrians, obstruct the entrance to or exit from private property, jeopardize the public safety, or otherwise inconvenience the public; or
- ~~(6) Between the hours of 12:00 midnight and 6:00 a.m. of the succeeding day.~~
- ~~(7)~~(4) On the street or use public benches, monuments or structures to display artwork.
- ~~(8)~~(5) In a manner that uses private property adjacent to the sidewalk to display art work without the permission of the property owner.

Sec. 19-25. General provisions to apply.

Except as otherwise provided by this division, the provisions of chapter 15 relating to licenses in general shall apply to the subject matter of this division.

(Ord. No. 609-82, § 908.6, 5-19-82; Ord. No. 223-01/02, § 2, 5-6-02)