

Received electronically 12/13/2022

ORDINANCE NO. 2022-24

AN ORDINANCE AMENDING PORTIONS AND RESTATING CHAPTER 112 OF THE AUBURN CITY CODE REGARDING ITINERANT VENDORS PROVISIONS REGULATING SOLICITORS, MOBILE VENDORS AND PUSHCARTS CITY OF AUBURN, INDIANA

SUMMARY

This ordinance shall amend in part and restate in part the Chapters 112.010 through 112.190 regarding ITINERANT VENDORS Provisions Regulating Solicitors, Mobile Vendors and Pushcarts.

_____ Recorder's Office	_____ x _____ Publish Public Hearing
_____ Auditor's Office	<u>1/3/2023 @6PM</u>
_____ Clerk's Office	_____ x _____ Publish O/R after adoption
_____ Other:	<u>1/6/2023</u>
_____	
_____	
_____	

**ORDINANCE NO. 2022-24**

**AN ORDINANCE**

**AMENDING PORTIONS AND RESTATING CHAPTER 112 OF THE AUBURN CITY CODE  
REGARDING ITINERANT VENDORS  
PROVISIONS REGULATING SOLICITORS, MOBILE VENDORS AND PUSHCARTS**

**CITY OF AUBURN, INDIANA**

***WHEREAS*, it has been determined that an amendment to Chapter 112 of the Auburn City Code will be beneficial for the downtown of Auburn, Indiana and will provide flexibility for food vendors and provide options for those wishing to utilize the downtown; and**

***WHEREAS*, the amendment to Chapter 112 is intended to provide more flexibility to vendors and to eliminate layers of procedures to approve a downtown food truck vendor among other things; and**

***WHEREAS*, it has been determined that the best interest of Auburn will be served by the amendments proposed herein; and**

***NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF AUBURN,  
INDIANA, AS FOLLOWS:***

**SECTION 1.**

*The Table of Contents is restated as follows:*

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## **SECTION 2.**

*Chapter 112 et al. is amended as follows with the following changes as lined, stricken through and restated herein.*

### **112.010 DEFINITIONS**

The following terms shall have the following meanings:

- **“Political”**  
Means on behalf of a political party or candidate or for the purpose of influencing legislation or personal belief.
- **“Religious”**  
Means on behalf of an established religion which means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination.
- **“Solicitation”**
  1. Means the act of any person traveling by foot, vehicle or any other type of conveyance who goes on private or public property to:
    - a. Request, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value;
    - b. Take or attempt to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future either in person or by distributing flyers and leaflets;
    - c. Does not include a realtor or auctioneer conducting private listings or auctions of real or personal property.
  2. Does not mean the following:
    - a. A person communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is of a political, religious or charitable nature;
    - b. A person seeking to influence the personal belief of the occupant of any residence regarding any political or religious matter;
    - c. A person seeking to obtain, from any occupant of any residence, an indication of the occupant’s belief regarding any political or religious matter;
    - d. A person conducting a poll, survey or petition drive in regard to any political matter;
    - e. A person carrying, conveying, delivering or transporting food or beverage products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods is entitled to receive the same;
    - f. A person whose business is to solicit dealers or permanent merchants in the usual course of business; or
    - g. Any person exempted from this Chapter’s requirement under Ind. Code 8-1-34-30.
    - ~~h. Mobile Food vendor~~ **Food truck** units invited on private property ~~selling to employees on said private property~~ require no City permits.
    - ~~i. Special events located on private property~~ **or special events approved by the Board of Public Works require no City Permits.** ~~selling to invited guests, regardless of the number of said invited guests and not the public at large who would not have received an invitation or be part of a special event open to individuals on said private property.~~

- “Solicitor”  
Means a person, whether a resident of the City or not, engaged in solicitation. In addition, a Solicitor may also be considered a Peddler or Transient Merchant as defined in Indiana Code 25-37-1 et al., which includes any method of selling goods, wares, or merchandise door to door or in open public on the streets, alleys, avenues, sidewalks or other common public places within the City limits of Auburn, Indiana.
- “Beverage”  
Means any nonalcoholic liquid, hot or cold, intended for use in whole or in part for human consumption.
- “Commissary”  
[Means any retail food establishment, registered catering establishment, or commercial kitchen, subject to inspection by the Health Department, for the purpose of storing supplies, cleaning, and servicing a food truck. No food, supplies, or equipment shall be stored or prepared in a private residence.](#)
- “~~Mobile food vendor unit~~ Food Truck”  
Means a person who sells, serves, offers for sale, or gives away food or beverage from any self-contained mobile unit, independent with respect to water, sewer and power utilities, capable of moving or being moved, is meant to be portable and is not permanently attached to the ground consisting of an enclosed truck, trailer, bus, or similar vehicle that contains equipment used for the sale and preparation of food or beverage merchandise and is closed up when not in operation. [Food trucks shall utilize a commissary.](#) An ice cream truck that does not park or locate in any one place for longer than ten minutes is not considered a food truck for purposes of this Chapter.
- “Mobile vendor unit”  
Means a person who sells, offers for sale or gives away any goods, wares, or merchandise from any self-contained mobile unit, independent with respect to water, sewer and power utilities, capable of moving or being moved, is meant to be portable and is not permanently attached to the ground consisting of a truck, trailer, bus, or other vehicle.
- “Pushcart”  
Means a non-motorized wheeled cart which may be moved by one or more persons, and which is designed and used for displaying, keeping or storing any food or beverage or products for sale by a vendor.
- “City property”  
Means all outdoor areas which are owned, or leased as lessee, by the City or one of the City’s departments, or upon which the City or one of its departments has an easement or right-of-way including, but not limited to, streets, sidewalks, plazas or other areas adjacent to building owned by the city or one of its departments.
- “Food”  
Means any raw, cooked, frozen or processed edible substance or beverage intended for use in whole or in part for human consumption.
- “Private property”  
Means all outdoor areas which are not owned or leased by any governmental agency or entity, including, but not limited to, streets, sidewalks, plazas, parking lots, or other areas adjacent to buildings not owned by a governmental agency or entity.
- “Special Event”  
Is any event so designated by the City of Auburn Board of Public Works and Safety.
- “Enforcement Officer”  
Is a person designated by the Department of Building, Planning and Development to enforce the provisions of this Ordinance.

### 112.020 OPERATIONS GENERALLY.

It is unlawful to locate as a solicitor, ~~mobile food vendor unit~~ [food truck](#), or pushcart in the City except in accordance with the provisions of this Chapter.

### 112.030 BUSINESS LICENSE—REQUIRED.

- A. No person shall carry on the business of soliciting, acting as a solicitor, peddling, acting as a peddler, operate a pushcart, or ~~mobile food unit~~ [food truck](#) within the corporate limits of the City, wholesale, or retail by carrying, exposing, or representing for sale, either on foot or in vehicle, within any street, avenue, alley, square, sidewalk or similarly situated open public place, or by going from house to house with the City, any item, article, merchandise, food, beverage, food items, or other similar products without obtaining a license as set forth in this Chapter.
- B. It is unlawful to locate as a solicitor, ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart in the City without first having secured a license to do if required by this Ordinance.
- C. A separate license shall be required for each ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart.
- D. This Chapter does not apply to any recognized participant of a Special Event authorized by the City Board of Works.

### 112.040 BUSINESS LICENSE—APPLICATION.

Any person desiring a license under this Chapter shall submit a fully completed application to the Department of Building, Planning, and Development as a solicitor, as a ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or as a pushcart. The application must set forth or have attached the following information as specified:

- A. The applicant's name, current physical address, telephone number, email address and date of birth;
- B. The name, current physical address, tax identification number, and telephone number of the person, firm, limited liability company, corporation or organization which the applicant is employed by or represents;
- C. If the applicant is employed by or represents a firm, limited liability company or corporation, the applicant shall provide the name and current physical address of all members of the firm or limited liability company, or all officers of the corporation, as the case may be;
- D. If the applicant is employed by or represents a corporation or limited liability company then there shall be stated on the application the date of incorporation or organization, the state of incorporation or organization, and if the applicant is a corporation or limited liability company formed in a state other than the State of Indiana, the date on which such corporation or limited liability company qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana;
- E. The type of products or services to be sold and the hours of the day the applicant plans to conduct business;
- F. The place or places where said business may be conducted, and a written statement, if applicable, from the owner of any private property wherein the business may be conducted authorizing the applicant to use the property;
- G. The duration of the license being sought;
- H. ~~A statement as to whether or not a license, under the provisions of this Chapter, or any other similar ordinance of the City of Auburn, or any other county, town or municipality, or the State of Indiana has been revoked, together with the details thereof;~~ [The names of municipalities or governmental](#)

[units to which the applicant has applied for a license of similar character within the twelve \(12\) months prior to the date of application;](#) and

- I. The designation of a resident of the State of Indiana as a registered agent for purposes of receiving notices from the City of Auburn or other service of process, as a result of doing business in the City

#### 112.0505 BUSINESS LICENSE- PREREQUISITIES.

An application for a license under this Chapter for all forms of business regulated by this Chapter shall not be considered unless proof of the following is provided with the application:

- A. ~~A letter indicating all required permits have been approved by the DeKalb County Health Department, including but not limited to a Food Service Establishment License or a Certified Food Handler Certificate~~ [A copy of all required permits issued by the DeKalb County Health;](#)
- B. Proof of registration as a business with the Indiana Secretary of State;
- C. Proof of an Employer Identification Number;
- D. ~~If business is to be conducted on City property, a resolution or minutes approving the same from the City's Board of Public Works and Safety;~~
- E. If business is to be conducted on or in property owned or managed by the City of Auburn Parks Department, [approval from the Auburn Parks Board shall be obtained and Auburn Park Department policies shall be followed](#) ~~letter of approval from the Auburn Parks Board.;~~
- F. Proof of insurance in accordance with the amounts established in this Chapter;
- G. ~~If any type of spark, flame or fire will be produced, proof of an Open Burn Permit issued by the City of Auburn's Fire Department;~~
- H. A copy of the Indiana registration for the vehicle, food truck or mobile vendor unit;
- I. Copy of a valid driver's license, for a ~~mobile food vendor unit~~ [food truck](#) or mobile vendor unit;
- J. ~~Proof of an independent safety inspection of all vehicles to be used in the business in accordance with the provisions of this Chapter, for a mobile food vendor unit or mobile vendor unit;~~
- K. ~~For a mobile food vendor unit or a pushcart, a scaled site plan showing the location of the proposed mobile food vendor unit, mobile vendor unit, or pushcart and the properties: drives, parking access aisles, fire lanes, sidewalks and accessible routes; and~~
- L. Proof of payment for, or exemption from, the applicable fee.

#### 112.060 BUSINESS LICENSE—DURATION AND FEE.

- A. Each [itinerate vendor](#) applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a consecutive period of time):

1. One Day License: \$25.00;
2. Three Day License: \$35.00;
3. Seven Day License: \$50.00;
4. Thirty Day License: \$75.00;
5. Three Month License: \$150.00;
6. Six Month License: \$200.00;
7. One Year License: \$300.00.

[Each food truck vendor applicant shall pay a license fee in accordance with the schedule set forth below \(all licenses are for a calendar year and the renewal amount is for consecutive years only\)](#)

1. [Once Year License \\$100.00](#)

2. [Renewal \\$50.00](#)

- B. The following listed organization and/or entities while required to obtain a license under this Chapter are exempt from having to pay fees, so long as the proceeds thereof are to be used exclusively for religious, charitable, educational or scientific purposes:
1. Churches;
  2. Schools;
  3. Benevolent organizations;
  4. Fraternal organizations; and
  5. Other similarly situated organizations.
  6. The Farmer's Market or other similar ventures approved by the City of Auburn Board of Works and Public Safety.
- C. Pursuant to Ind. Code 25-25-2-1, while all honorably discharged veterans are required to obtain a license under this Chapter they are exempt from having to pay any fees.

~~112.070 APPLICATION FEE—REFUND ON DENIAL.~~

~~An applicant shall pay an application fee in the minimum amount of \$25.00, unless exempted under Section 112.060. In the event the license is granted, the application fee shall be retained by the City and applied toward the license fee. In the event that the license is denied, the application fee shall be retained to defray the administrative expense incurred in investigating and processing the application.~~

**112.080 EFFECT OF CESSATION OF BUSINESS.**

No deductions shall be allowed from the fee for a license issued pursuant to this Chapter for any part of the term of which the licensee does not engage in such business.

**112.090 BUSINESS LICENSE—INSURANCE AND INDEMNITY.**

- A. Each applicant for a license shall provide a certificate of liability insurance to the Department of Building, Planning, and Development upon a form approved by the Corporation Counsel of the City of Auburn, insuring the applicant, and naming the City of Auburn as co-insured, against the following liability and in the following amounts relative to such activity:
1. Personal Injury: \$100,000.00 per occurrence and \$300,000.00 in the aggregate; and
  2. Property Damage: \$25,000.00 per occurrence and \$50,000.00 in the aggregate.
- B. Each applicant shall provide a document approved by the Corporation Counsel for the City of Auburn, in which the applicant agrees to indemnify and hold harmless the City of Auburn for losses or expenses arising out of the operation of his/her business.
- C. All business operations conducted under this Chapter shall require the proof of Worker's Compensation Insurance on all employees or the submission of a State of Indiana affidavit of self-employment

**112.100 BUSINESS LICENSE—ISSUANCE.**

- A. The Department of Building, Planning, and Development shall within fourteen days of receipt of the completed application [and any necessary approvals](#) issue the business license to the applicant if the Department of Building, Planning, and Development finds the following:
1. Compliance with all provisions of this Chapter;
  2. The applicant has not had a prior license issued under this Chapter, or any other similar licensed authorized by a different governmental entity, suspended or revoked; and
  3. The applicant has not been previously found to be in violation of this Chapter, or any other similar law promulgated by a different governmental entity.

- B. The Department of Building, Planning, and Development may, upon a finding of appropriateness, issue a business license to the applicant who has been found to meet the terms of the above subsections 112.100.

#### 112.110 BUSINESS LICENSE—TRANSFERABILITY.

A license issued pursuant to this Chapter shall not be transferable to another licensee.

#### 112.120 BUSINESS LICENSE—IDENTIFICATION.

- A. All licenses issued by the Department of Building, Planning, and Development under this Chapter shall be displayed at all times on the unit or on the person operating the business.
- B. Failure to display or exhibit a license in accordance with this Section may be grounds for suspension or revocation of said license.

#### 112.130 BUSINESS LICENSE—SAFETY INSPECTION REQUIRED.

- ~~A. No license shall be issued to locate a mobile food vendor unit or mobile vendor unit unless each vehicle to be used by the business has undergone an independent safety inspection within the last two years; a copy of the safety inspection report shall be included with the application.~~
- ~~B. It is unlawful to locate a mobile food vendor unit or mobile vendor unit which has not undergone and passed an independent safety inspection in accordance with this Section.~~
- C. If, at any time, the City of Auburn has probable cause to believe that ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart is unsafe or in mechanically unsound condition, the Chief of Police, Chief of the Fire Department or a designee of either person may order a ~~mobile food vendor unit~~ food truck, mobile vendor unit or pushcart licensed under this Chapter to undergo an immediate safety inspection. If the safety inspection reveals deficiencies with the ~~mobile food vendor unit~~ food truck, mobile vendor unit or pushcart, the ~~mobile food vendor unit~~ food truck, mobile vendor unit or pushcart cannot be used until such time as the deficiencies have been remedied.

#### 112.140 LOCATION RESTRICTIONS.

- A. No solicitor, ~~mobile food vendor unit~~ food trucks, mobile vendor unit, or pushcart shall locate in any parking lot, parking space, or parking facility owned, leased or managed by the City of Auburn unless approval has been given by the City's Board of Public Works and Safety. Only food trucks may park at pre-established designated locations in accordance with the terms set forth in this chapter. Parking at pre-established designated locations is as available and will not be reserved. The Building, Planning and Development Department will retain official and current pre-established designated locations within the City.
- B. No solicitor, ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart shall locate in the street, street median strip or alleyway outside of special events or pre-established designated locations for food trucks without approval from the Board of Public Works. that is adjacent to any other property without having the specific written consent of all adjacent property owners. Pre-established designated locations for food trucks are reviewed annually by the Board of Public Works. Adjacent property owners have the right to notify the Building, Planning and Development Department with objection to food trucks locating on or adjacent to said property via forms furnished by the Building, Planning and Development Department. Notice of objection will be presented to the Board of Public Works upon review of pre-established designated locations for food trucks.
- C. No solicitor, ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart shall locate on the street of a Special Event authorized by the Board of Works and Safety unless prior approval has been granted by ~~both~~ the operator of the Special Event. ~~and the City's Board of Public Works and Safety.~~
- D. No solicitor, ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart shall be located in a

manner which would significantly impede or prevent the use of any City of Auburn property, or which would endanger the safety or property of the public.

- E. No solicitor, ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall locate in a neighborhood or on property wherein a sign reading “No Solicitation”, or something of a similar nature, has been duly erected and displayed.
- F. No solicitor, ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall locate within one hundred (100) feet- of any façade of a ground level establishment that also sells food, beverages, or similar products or locate within fifty (50) feet of the perimeter of such an establishment’s outdoor seating area. The distance restriction only applies from an hour before the opening time to an hour after the closing time posted by a ground level establishment on the façade of its building [and to locations outside of pre-established designated locations for food trucks.](#)
- G. Solicitors, ~~mobile food vendor units~~ [food trucks](#), mobile vendor units, and pushcarts shall be located a reasonable distance from all posted crosswalks, driveways, alleyways, right-of-way lines or two or more intersecting streets and building entrances or walk-up windows.
- H. Solicitors, ~~mobile food vendor units~~ [food trucks](#), mobile vendor units, and pushcarts shall only be located on or in front of private property if the private property owner has provided the business operator ~~written~~ permission for the mobile food vendor unit, mobile vendor unit, or pushcart to locate on ~~or in front of~~ said property.
- I. No solicitor, ~~mobile food vendor units~~ [food trucks](#) or mobile vendor unit shall park on City property in violation of any City parking regulation, restriction, or ordinance.
- J. No solicitor, ~~mobile food vendor units~~ [food trucks](#), mobile vendor unit, or pushcart shall be located within fifteen feet of any fire hydrant.
- K. Solicitors, ~~mobile food vendor units~~ [food trucks](#), mobile vendor units, and pushcarts shall locate within any zoning district, excepting therefrom any residential zone [outside of pre-established designated locations for food trucks.](#)
- L. No solicitor, ~~mobile food vendor units~~ [food trucks](#), mobile vendor unit, or pushcart operating on private property shall displace required parking or landscaping nor block any drives, parking access aisles, fire lanes, sidewalks, or accessible routes required for the private parking by the City’s zoning code.
- M. No solicitor, ~~mobile food vendor units~~ [food trucks](#) or mobile vendor unit shall be located more than one foot away from the curb of the street on which it is parked. [The food service window shall face away from the street.](#)
- N. No solicitor, ~~mobile food vendor units~~ [food trucks](#), mobile vendor unit, or pushcart shall park near an intersection and in a manner that blocks the line-of-sight of drivers using adjacent roadways.

**112.150 PROHIBITED HOURS FOR THE OPERATION OF SOLICITORS/PEDDLERS, [FOOD TRUCKS](#), MOBILE VENDORS, AND PUSHCARTS.**

No solicitor, [food truck](#), mobile vendor, pushcart, or peddler shall locate on the public streets or sidewalks in the City of Auburn, Indiana between the hours of ~~8:00 p.m.~~ [11:00 p.m.](#) and 7:00 a.m. Special events may receive extended hours, with ~~specific~~ approval of the Auburn Board of Works and Public Safety. Solicitors, Peddlers, and/ or Transient Merchants shall be restricted from operating earlier than 10.00 am and later than 5.00 p.m. in any and all districts and zones in the City of Auburn, Indiana.

**112.160 STANDARDS OF CONDUCT FOR SOLICITORS OR PEDDLERS OF MERCHANDISE.**

All solicitors shall conform to the following standards of conduct:

- A. Solicitors shall conduct themselves at all times in an orderly and lawful manner, and shall not make,

or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Auburn's Noise Ordinance as stated in Title 13 of the Auburn Municipal Code;

- B. A device may not be used which would amplify sounds nor may attention be drawn to the solicitor by an aural means or a light-producing device (examples of such devices may include, but are not meant to be limited to the following: bull horns and strobe lights);
- C. No solicitor shall expose any person to any undue safety or health hazards nor create a public nuisance;
- D. Solicitors shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City's jurisdiction;
- E. No person shall engage in abusive solicitation. Such abusive activity shall mean to do one or more of the following while soliciting or immediately thereafter:
  - 1. Coming closer than three feet to the person solicited unless and until the person solicited indicates that the person wishes to make a purchase or otherwise receive the solicitation;
  - 2. Blocking or impeding the passage of the person solicited;
  - 3. Repeating the solicitation after the person solicited has indicated an objection to the solicitation;
  - 4. Following the person solicited by proceeding behind, ahead or alongside such person after the person has indicated an objection to the solicitation;
  - 5. Threatening the person solicited with physical harm by word or gesture;
  - 6. Abusing the person solicited with words which are offensive and inherently likely to provide an immediate violent reaction; or
  - 7. Intentionally touching the solicited person without the solicited person's consent.
- F. No solicitor shall approach any vehicle driving upon, stopped upon, or parked upon any public or private street or alley; and
- G. No solicitor shall conduct his/her business from a street, alley, traffic island, or median.

All ~~mobile food vendor unit~~ food truck operators, mobile vendor unit operators, and pushcart operators shall conform to the following standards of conduct:

- A. ~~Mobile food vendor unit~~ Food truck operators, mobile vendor unit operators, and pushcart operators shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Auburn's Offenses related to Public Peace as stated in Title 13, Chapter 130 of the Auburn Code of Ordinances;
- B. A device may not be used which would amplify sounds nor may attention be drawn to the ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart by an aural means or a light-producing device (examples of such devices include, but are not meant to be limited to the following: bull horns and strobe lights);
- C. No ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart may be permanently or temporarily affixed to any object, including but not limited to buildings, trees, telephone poles, streetlight poles, traffic signal poles or fire hydrants;
- D. No ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart may be used to advertise any product which is not authorized to be sold from that unit;
- E. No ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart shall be permitted to use any on-street signage;
- F. No ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart may make use of any public electrical outlet without permission from the Board of Works
- G. Each ~~mobile food vendor unit~~ food truck, mobile vendor unit, or pushcart shall protect against

littering and shall have an adequate trash receptacle for trash:

1. The trash and recyclable receptacles shall be emptied sufficiently often to allow disposal of litter and waste by the public at any time;
  2. The trash and recyclable receptacles on the ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall not be emptied into trash or recyclable receptacles owned by the City of Auburn;
  3. Liquid from the ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall not be discharged on or in a City sewer or drain or elsewhere on City property, nor on private property without the express written consent of the owner thereof;
- H. Before leaving any location each ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall first pick up, remove and dispose of all trash and/or recyclable materials, including products spilled on the ground within twenty feet of the mobile food vendor unit, mobile vendor unit, or pushcart;
- I. No ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall expose any pedestrian to any undue safety or health hazards not shall it be maintained so as to create a public nuisance;
- J. Each ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, and pushcart shall be maintained free and clear of dirt and finishes shall not be chipped, faded or unduly marred;
- K. Foods or beverages which present a substantial likelihood that liquid matter or particles will drop to the street or sidewalk during the process of carrying or consuming the food or beverage shall be sold in proper containers to avoid falling to the street or sidewalk;
- L. ~~Mobile food vendor unit~~ [Food trucks](#) and pushcarts which utilize a grill or device that may result in a spark, flame or fire shall adhere to the following additional standards:
1. Be placed approximately six feet away from a building or structure;
  2. Provide a barrier between the grill or device and the general public;
  3. The spark, flame or fire shall not exceed twelve inches in height;
  4. A fire extinguisher shall be within reaching distance of the mobile food vendor unit operator or pushcart operator at all times.
- M. ~~Mobile food vendor unit~~ [Food truck operators](#), mobile vendor unit operators, and pushcart operators shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City's jurisdictional limits, including, where possible, the removal of the ~~mobile food vendor unit~~ [food truck](#) unit or pushcart and cessation of such sales;
- N. No ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit, or pushcart shall ever be left unattended while in use;
- O. ~~Mobile food vendor unit~~ [Food truck](#), mobile vendor units, or pushcarts shall not be stored, parked or left overnight on any City property;
- P. All ~~mobile food vendor unit~~ [food truck](#) and pushcarts which are food service establishments shall install an approved grease interceptor or grease trap. Foods, oils and greases shall never be discharged into the City's sewer or storm drains;
- Q. All ~~mobile food vendor unit~~ [food truck](#) operators, mobile vendor unit operators, and pushcart operators are required to collect and pay all applicable and appropriate sales taxes;
- R. No ~~mobile food vendor unit~~ [food truck](#), mobile vendor unit operator, or pushcart operator shall provide customer seating unless approval has been provided by the City's Board of Public Works and Safety and the City's Planning and Transportation Department;
- S. No detached generators or loose cords on the ground shall be allowed [and inverter generator shall be used](#).

**112.170 SAFETY REQUIREMENTS—SOLICITORS, ~~MOBILE FOOD VENDOR UNITS~~ FOOD TRUCKS, MOBILE VENDOR UNITS, AND PUSHCARTS.**

All ~~mobile food vendor unit~~ food trucks, mobile vendor units, and pushcarts shall comply with the following safety requirements:

- A. All equipment installed shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- B. All utensils shall be stored in a manner to prevent their being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided by the vendor to avoid loose storage of knives and other sharp or bladed instruments.
- C. All foods and beverages to be used, prepared, cooked, displayed, sold, served, offered for sale or stored in a mobile food vendor unit, or during transportation to or between locations shall be from sources approved by the health authorities of the point of origin and must be clean, wholesome, free from spillage, adulteration, contamination or misbranding and safe for human consumption. The standards for judging wholesomeness for human food shall be those promulgated and amended from time to time by the United State Food and Drug Administration, United State Department of Agriculture, the State Department of Health, the State Department of Agriculture, and the DeKalb County Health Department and published in the United States Code of Federal Regulations, the Indiana Code Annotated or the Indiana Administrative Code, and the DeKalb County Code.
- D. Each ~~mobile food vendor unit~~ food truck unit shall be constructed so that the portions of the unit containing food shall be covered so that no dust or dirt will settle on the food; and such portions of the unit which are designed to contain food shall be at least eighteen inches above the surface of the public way while the unit is being used for the conveyance of food.
- E. The food storage areas of each ~~mobile food vendor unit~~ food truck unit shall be kept free from rats, mice, flies and other insects and vermin. No living animals, birds, fowl, reptiles or amphibians shall be permitted in any area where food is stored.
- F. Hazardous non-food items such as detergents, insecticides, rodenticides, plants, paint and paint products that are poisonous or toxic in nature shall not be stored in the food area of the ~~mobile food vendor unit~~ food truck unit.
- G. If a cooking operation involves grease-laden (grills, fryers), a class K rated portable extinguisher shall be required to be maintained on site.

The Department of Building, Planning and Development or an agent of said department may enforce this section by ordering operations to suspend until corrective action is taken. In addition, penalties may be enforced for violations in accordance with 112.180.

**112.180 PENALTIES—REVOCAION OF LICENSE.**

- A. Any person, partnership, limited liability company or corporation which violated any provision of this Chapter, shall be subject to the following penalties:
  - 1. Soliciting or operating without a license:
    - First offense - \$250.00
    - Second offense within any 12-month period - \$1,000.00
    - Third offense, or each thereafter, within any 12-month period - \$3,000.00
  - 2. Failure to comply with any other provisions of this Chapter:
    - First offense - \$250.00;
    - Second offense within any 12-month period - \$500.00;
    - Third offense, or each thereafter, within any 12-mo. Period - \$1,000.00.

- B. In addition, the Department of Building, Planning, and Development shall, after notice and hearing before the City's Board of Public Works and Safety, suspend or revoke, by written order, any license issued hereunder if the Board of Public Works and Safety finds:
  1. The licensee has violated any provision of this Chapter, or any rule or regulation lawfully made under and within the authority of this Chapter;
  2. The licensee is operating the solicitor license under this Chapter in a manner contrary to the State of local code; or
  3. Any fact of condition exists which, if it had existed at the time of the original application for such license, would have permitted the Department of Building, Planning, and Development to refuse originally to issue such license.
- C. Any person charged with violating the provisions of this Chapter may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this Chapter's provisions.

**112.190 RESTRICTION ON USE AND LICENSES.**

The City of Auburn has exclusive authority to restrict the use of ~~mobile food vendor unit~~ food trucks, mobile vendor units, or pushcarts and the issuance of business licenses for ~~mobile food vendor unit~~ food trucks or pushcarts under the following conditions:

- A. The City may restrict the use of ~~mobile food vendor unit~~ food trucks, mobile vendor units, pushcarts, or solicitors in certain designated areas of the City in the event of an emergency declared by the Mayor, the Chief of Police, the Fire Chief, the Director of Public Works, the Director of Utilities, and/or any of the aforementioned duly appointed designees.
- B. Absent an emergency as described above, the City may restrict the use of ~~mobile food vendor unit~~ food trucks, mobile vendor units, pushcarts or solicitors in certain designated areas of the City provided the City has given each ~~mobile food vendor unit~~ food truck, mobile vendor, pushcart or solicitor licensee written notice of the restriction at least seventy-two hours in advance of the restriction going into effect.
- C. All persons who meet the definition of "Transient Merchant(s)" (this shall include "Solicitors" and / or "Peddlers") under Indiana Code shall comply with all provisions under Indiana Code Section 25-37-1. This shall include if applicable proof from the County Auditor, that all applicable provisions of Indiana Code Section 25-37-1 et al. have been complied with.

(Ordinance 2015-07 Passed 01.05.2016 - Amended and Passed 01-03-2023)

**SECTION 3.**

**BE IT FURTHER ORDAINED** that this Ordinance shall be in full force and effect from and after its passage and publication of the contents of the Ordinance in a paper of general circulation within the County of DeKalb, State of Indiana. This Ordinance shall be retained by the Office of the Clerk-Treasurer in booklet form and further replaced in a booklet form with the Auburn City Code for availability to the public upon request. By maintaining a booklet form of said ordinance available to the general public, said ordinance is herein validly adopted in accordance with Indiana Code and herein made of record.

**SECTION 4.**

**BE IT FURTHER ORDAINED** that for purposes of codification on the City of Auburn website at [www.ci.auburn.in.us](http://www.ci.auburn.in.us) shall restate and set forth as amended herein the Codified version of this Ordinance as attached in Exhibit “A” which is attached hereto and incorporated herein.

**PASSED AND ADOPTED** by the Common Council of the City of Auburn, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**DAVE BUNDY**  
Council Member

ATTEST:

\_\_\_\_\_  
**PATRICIA M. MILLER**  
Clerk-Treasurer

Presented by me to the Mayor of the City of Auburn, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**PATRICIA M. MILLER**  
Clerk-Treasurer

**APPROVED AND SIGNED** by me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**MICHAEL D. LEY**, Mayor

**VOTING:**

**AYE**

**NAY**

Dennis K. Kruse II

Kevin Webb

James Finchum

Natalie DeWitt

Dave Bundy

Dennis Ketzenberger

Michael Walter

Attached is Exhibit “A” Clean Draft for placement in the Code of Ordinances.

# Itinerant Vendors

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## 112.010 DEFINITIONS.

The following terms shall have the following meanings:

- “Political”  
Means on behalf of a political party or candidate or for the purpose of influencing legislation or personal belief.
- “Religious”  
Means on behalf of an established religion which means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination.
- “Solicitation”
  1. Means the act of any person traveling by foot, vehicle or any other type of conveyance who goes on private or public property to:
    - a. Request, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value;
    - b. Take or attempt to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future either in person or by distributing flyers and leaflets;
    - c. Does not include a realtor or auctioneer conducting private listings or auctions of real or personal property.
  2. Does not mean the following:
    - a. A person communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is of a political, religious or charitable nature;
    - b. A person seeking to influence the personal belief of the occupant of any residence regarding any political or religious matter;
    - c. A person seeking to obtain, from any occupant of any residence, an indication of the occupant’s belief regarding any political or religious matter;
    - d. A person conducting a poll, survey or petition drive in regard to any political matter;
    - e. A person carrying, conveying, delivering or transporting food or beverage products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods is entitled to receive the same;
    - f. A person whose business is to solicit dealers or permanent merchants in the usual course of business;
    - g. Any person exempted from this Chapter’s requirement under Ind. Code 8-1-34-30.
    - h. Food Truck units invited on private property require no City permits.
    - i. Special events located on private property or special events approved by the Board of Public Works require no City Permits.
- “Solicitor”  
Means a person, whether a resident of the City or not, engaged in solicitation. In addition, a Solicitor may also be considered a Peddler or Transient Merchant as defined in Indiana Code 25-37-1 et al., which includes any method of selling goods, wares, or merchandise door to door or in open public on the streets, alleys, avenues, sidewalks or other common public places within the City limits of Auburn, Indiana
- “Beverage”  
Means any nonalcoholic liquid, hot or cold, intended for use in whole or in part for human consumption.
- “Commissary”  
Means any retail food establishment, registered catering establishment, or commercial kitchen, subject to inspection by the Health Department, for the purpose of storing supplies, cleaning, and servicing a food truck. No food, supplies, or equipment shall be stored or prepared in a private residence.
- “Food Truck”  
Means a person who sells, serves, offers for sale, or gives away food or beverage from any self-contained mobile

unit, independent with respect to water, sewer and power utilities, capable of moving or being moved, is meant to be portable and is not permanently attached to the ground consisting of an enclosed truck, trailer, bus, or similar vehicle that contains equipment used for the sale and preparation of food or beverage merchandise and is closed up when not in operation. Food trucks shall utilize a commissary. An ice cream truck that does not park or locate in any one place for longer than ten minutes is not considered a food truck for purposes of this Chapter.

- “Mobile vendor unit”  
Means a person who sells, offers for sale or gives away any goods, wares, or merchandise from any self-contained mobile unit, independent with respect to water, sewer and power utilities, capable of moving or being moved, is meant to be portable and is not permanently attached to the ground consisting of a truck, trailer, bus, or other vehicle.
- “Pushcart”  
Means a non-motorized wheeled cart which may be moved by one or more persons, and which is designed and used for displaying, keeping or storing any food or beverage or products for sale by a vendor.
- “City property”  
Means all outdoor areas which are owned, or leased as lessee, by the City or one of the City’s departments, or upon which the City or one of its departments has an easement or right-of-way including, but not limited to, streets, sidewalks, plazas or other areas adjacent to building owned by the city or one of its departments.
- “Food”  
Means any raw, cooked, frozen or processed edible substance or beverage intended for use in whole or in part for human consumption.
- “Private property”  
Means all outdoor areas which are not owned or leased by any governmental agency or entity, including, but not limited to, streets, sidewalks, plazas, parking lots, or other areas adjacent to buildings not owned by a governmental agency or entity.
- “Special Event”  
Is any event so designated by the City of Auburn Board of Public Works and Safety.
- “Enforcement Officer”  
Is a person designated by the Department of Building, Planning and Development to enforce the provisions of this Ordinance.

#### **112.020 OPERATIONS GENERALLY.**

It is unlawful to locate as a solicitor, food truck, or pushcart in the City except in accordance with the provisions of this Chapter.

#### **112.030 BUSINESS LICENSE—REQUIRED.**

- A. No person shall carry on the business of soliciting, acting as a solicitor, peddling, acting as a peddler, operate a pushcart, or food truck within the corporate limits of the City, wholesale, or retail by carrying, exposing, or representing for sale, either on foot or in vehicle, within any street, avenue, alley, square, sidewalk or similarly situated open public place, or by going from house to house with the City, any item, article, merchandise, food, beverage, food items, or other similar products without obtaining a license as set forth in this Chapter.
- B. It is unlawful to locate as a solicitor, food truck, mobile vendor unit, or pushcart in the City without first having secured a license to do if required by this Ordinance.
- C. A separate license shall be required for each food truck, mobile vendor unit, or pushcart.
  - D. This Chapter does not apply to any recognized participant of a Special Event authorized by the City Board of Public Works and Safety.

**112.040 BUSINESS LICENSE—APPLICATION.**

Any person desiring a license under this Chapter shall submit a fully completed application to the Department of Building, Planning, and Development as a solicitor, food truck, mobile vendor unit, or pushcart. The application must set forth or have attached the following information as specified:

- A. The applicant's name, current physical address, telephone number, email address and date of birth;
- B. The name, current physical address, tax identification number, and telephone number of the person, firm, limited liability company, corporation or organization which the applicant is employed by or represents;
- C. If the applicant is employed by or represents a firm, limited liability company or corporation, the applicant shall provide the name and current physical address of all members of the firm or limited liability company, or all officers of the corporation, as the case may be;
- D. If the applicant is employed by or represents a corporation or limited liability company, then the date and state of incorporation or organization shall be stated on the application. If the applicant is a corporation or limited liability company formed in a state other than the State of Indiana, the date the corporation or limited liability company is qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana;
- E. The type of products or services to be sold and the hours of the day the applicant plans to conduct business;
- F. The place or places where said business may be conducted, and a written statement, if applicable, from the owner of any private property wherein the business may be conducted authorizing the applicant to use the property;
- G. The duration of the license being sought;
- H. The names of municipalities or governmental units to which the applicant has applied for a license of similar character within the twelve (12) months prior to the date of application;
- I. The designation of a resident of the State of Indiana as a registered agent for purposes of receiving notices from the City of Auburn or other service of process, as a result of doing business in the City of Auburn.

**112.0505 BUSINESS LICENSE- PREREQUISITIES.**

An application for a license under this Chapter for all forms of business regulated by this Chapter shall not be considered unless proof of the following is provided with the application:

- A. A copy of all required permits issued by the DeKalb County Health Department;
- B. Proof of registration as a business with the Indiana Secretary of State;
- C. Proof of an Employer Identification Number;
- D. If business is to be conducted on or in property owned or managed by the City of Auburn Parks Department, approval from the Auburn Parks Board shall be obtained and Auburn Parks Department policies shall be followed;
- E. Proof of insurance in accordance with the amounts established in this Chapter;
- F. A copy of the Indiana registration for the vehicle, food truck or mobile vendor unit;
- G. Copy of a valid driver's license, for food truck owner or mobile vendor unit owner; and
- H. Proof of payment for, or exemption from, the applicable fee.

**112.060 BUSINESS LICENSE—DURATION AND FEE.**

- A. Each itinerate vendor applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a consecutive period of time):
  - 1. One Day License: \$25.00
  - 2. Three Day License: \$35.00
  - 3. Seven Day License: \$50.00

4. Thirty Day License: \$75.00
  5. Three Month License: \$150.00
  6. Six Month License: \$200.00
  7. One Year License: \$300.00
- B. Each food truck vendor applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a calendar year and the renewal amount is for consecutive years only):
1. One Year License: \$100.00
  2. Renewal: \$50.00
- C. The following listed organization and/or entities while required to obtain a license under this Chapter are exempt from having to pay fees, so long as the proceeds thereof are to be used exclusively for religious, charitable, educational or scientific purposes:
1. Churches;
  2. Schools;
  3. Benevolent organizations;
  4. Fraternal organizations;
  5. Other similarly situated organization; and
  6. The Farmer's Market or other similar ventures approved by the City of Auburn Board of Works and Public Safety.
- D. Pursuant to Ind. Code 25-25-2-1, while all honorably discharged veterans are required to obtain a license under this Chapter, they are exempt from having to pay any fees.

**112.070 APPLICATION FEE—REPEALED.**

**112.080 EFFECT OF CESSATION OF BUSINESS.**

No deductions shall be allowed from the fee for a license issued pursuant to this Chapter for any part of the term of which the licensee does not engage in such business.

**112.090 BUSINESS LICENSE—INSURANCE AND INDEMNITY.**

- A. Each applicant for a license shall provide a certificate of liability insurance to the Department of Building, Planning, and Development upon a form approved by the Corporation Counsel of the City of Auburn, insuring the applicant, and naming the City of Auburn as co-insured, against the following liability and in the following amounts relative to such activity:
1. Personal Injury: \$100,000.00 per occurrence and \$300,000.00 in the aggregate; and
  2. Property Damage: \$25,000.00 per occurrence and \$50,000.00 in the aggregate.
- B. Each applicant shall provide a document approved by the Corporation Counsel for the City of Auburn, in which the applicant agrees to indemnify and hold harmless the City of Auburn for losses or expenses arising out of the operation of the business.
- C. All business operations conducted under this Chapter shall require proof of Worker's Compensation Insurance on all employees or the submission of a State of Indiana affidavit of self-employment.

#### **112.100 BUSINESS LICENSE—ISSUANCE.**

- A. The Department of Building, Planning, and Development shall within fourteen days of receipt of the completed application and any necessary approvals issue the business license to the applicant if the Department of Building, Planning, and Development finds the following:
  - 1. Compliance with all provisions of this Chapter;
  - 2. The applicant has not had a prior license issued under this Chapter, or any other similar licensed authorized by a different governmental entity, suspended or revoked; and
  - 3. The applicant has not been previously found to be in violation of this Chapter, or any other similar law promulgated by a different governmental entity.
- B. The Department of Building, Planning, and Development may, upon a finding of appropriateness, issue a business license to the applicant who has been found to meet the terms of the above subsections 112.100.

#### **112.110 BUSINESS LICENSE—TRANSFERABILITY.**

A license issued pursuant to this Chapter shall not be transferable to another licensee.

#### **112.120 BUSINESS LICENSE—IDENTIFICATION.**

- A. All licenses issued by the Department of Building, Planning, and Development under this Chapter shall be displayed at all times on the unit or on the person operating the business.
- B. Failure to display or exhibit a license in accordance with this Section may be grounds for suspension or revocation of said license.

#### **112.130 BUSINESS LICENSE—SAFETY INSPECTION REQUIRED, AS NECESSARY.**

If, at any time, the City of Auburn has probable cause to believe a food truck, mobile vendor unit, or pushcart is unsafe or in mechanically unsound condition, the Chief of Police, Chief of the Fire Department or a designee of either Chief may order a food truck, mobile vendor unit, or pushcart licensed under this Chapter to undergo an immediate safety inspection. If the safety inspection reveals deficiencies with the food truck, mobile vendor unit, or pushcart; the food truck, mobile vendor unit or pushcart cannot be used until the deficiencies have been remedied.

#### **112.140 LOCATION RESTRICTIONS.**

- A. No solicitor, food truck, mobile vendor unit, or pushcart shall locate in any parking lot, parking space, or parking facility owned, leased or managed by the City of Auburn unless approval has been given by the City's Board of Public Works and Safety. Only food trucks may park at pre-established designated locations in accordance with the terms set forth in this chapter. Parking at pre-established designated locations is as available and will not be reserved. The Department of Building, Planning, and Development will retain the official and current pre-established designated locations within the City of Auburn.
- B. No solicitor, food truck, mobile vendor unit, or pushcart shall locate in the street, street median strip or alleyway outside of special events or pre-established designated locations for food trucks without approval from the Board of Public Works and Safety. Pre-established designated locations for food trucks are reviewed annually by the Board of Public Works and Safety. Adjacent property owners have the right to notify the Department of Building, Planning and Development with objections to food trucks locating on or adjacent to said property via forms furnished by the department. Notice of objections will be presented to the Board of Public Works and Safety upon annual review of pre-established designated locations for food trucks.
- C. No solicitor, food truck, mobile vendor unit, or pushcart shall locate on the street of a Special Event authorized by the Board of Works and Safety unless prior approval has been granted by the operator of the Special Event.
- D. No solicitor, food truck, mobile vendor unit, or pushcart shall be located in a manner which would significantly impede or prevent the use of any City of Auburn property, or which would endanger the safety or property of the

public.

- E. No solicitor, food truck, mobile vendor unit, or pushcart shall locate in a neighborhood or on property wherein a sign reading "No Solicitation", or something of a similar nature, has been duly erected and displayed.
- F. No solicitor, food truck, mobile vendor unit, or pushcart shall locate within one hundred (100) feet- of any façade of a ground level establishment that also sells food, beverages, or similar products or locate within fifty (50) feet of the perimeter of such an establishment's outdoor seating area. The distance restriction only applies from an hour before the opening time to an hour after the closing time posted by a ground level establishment on the façade of its building and to locations outside of pre-established designated locations for food trucks.
- G. Solicitors, food trucks, mobile vendor units, and pushcarts shall be located a reasonable distance from all posted crosswalks, driveways, alleyways, right-of-way lines or two or more intersecting streets and building entrances or walk-up windows.
- H. Solicitors, food trucks, mobile vendor units, and pushcarts shall only be located on private property if the private property owner has provided the business operator permission for the food truck, mobile vendor unit, or pushcart to locate on said property.
- I. Solicitors, food trucks, mobile vendor units, and pushcarts may operate at events on public property if they have a vendor agreement with the event coordinator.
- J. The City of Auburn Parks and Recreation Department will permit food trucks to participate in Department hosted programs and events, upon meeting all requirements of the Park Department food truck policy.
- K. Solicitors, food trucks, mobile vendor units, and pushcarts should be aware the space available to food trucks at some events may be limited. It shall be up to the individual event organizers to make those determinations and set their own selection criteria.
- L. No solicitor, food truck or mobile vendor unit shall park on City property in violation of any City parking regulation, restriction, or ordinance.
- M. No solicitor, food truck, mobile vendor unit, or pushcart shall be located within fifteen feet of any fire hydrant.
- N. Solicitors, food trucks, mobile vendor units, and pushcarts shall locate within any zoning district, excepting therefrom any residential zone outside of pre-established designated locations for food trucks.
- O. No solicitor, food truck, mobile vendor unit, or pushcart operating on private property shall displace required parking or landscaping nor block any drives, parking access aisles, fire lanes, sidewalks, or accessible routes required for the private parking by the City's zoning code.
- P. No solicitor, food truck or mobile vendor unit shall be located more than one foot away from the curb of the street on which it is parked. The food service window shall face away from the street.
- Q. No solicitor, food truck, mobile vendor unit, or pushcart shall park near an intersection and in a manner that blocks the line-of-sight of drivers using adjacent roadways.

**112.150 PROHIBITED HOURS FOR THE OPERATION OF SOLICITORS/PEDDLERS, FOOD TRUCKS, MOBILE VENDORS, AND PUSHCARTS.**

No solicitor, food truck, mobile vendor, pushcart, or peddler shall locate on the public streets or sidewalks in the City of Auburn, Indiana between the hours of 11:00 p.m. and 7:00 a.m. Special events may receive extended hours, with approval of the Auburn Board of Public Works and Safety. Solicitors, Peddlers, and/ or Transient Merchants shall be restricted from operating earlier than 10:00 am and later than 5:00 p.m. in any and all districts and zones in the City of Auburn, Indiana.

## 112.160 STANDARDS OF CONDUCT FOR SOLICITORS OR PEDDLERS OF MERCHANDISE.

All solicitors shall conform to the following standards of conduct:

- A. Solicitors shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Auburn's Noise Ordinance as stated in Title 13, Chapter 130 of the Auburn Code of Ordinances;
- B. A device may not be used which would amplify sounds nor may attention be drawn to the solicitor by an aural means or a light-producing device (examples of such devices may include, but are not meant to be limited to the following: bull horns and strobe lights);
- C. No solicitor shall expose any person to any undue safety or health hazards nor create a public nuisance;
- D. Solicitors shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City's jurisdiction;
- E. No person shall engage in abusive solicitation. Such abusive activity shall mean to do one or more of the following while soliciting or immediately thereafter:
  - 1. Coming closer than three feet to the person solicited unless and until the person solicited indicates that the person wishes to make a purchase or otherwise receive the solicitation;
  - 2. Blocking or impeding the passage of the person solicited;
  - 3. Repeating the solicitation after the person solicited has indicated an objection to the solicitation;
  - 4. Following the person solicited by proceeding behind, ahead or alongside such person after the person has indicated an objection to the solicitation;
  - 5. Threatening the person solicited with physical harm by word or gesture;
  - 6. Abusing the person solicited with words which are offensive and inherently likely to provide an immediate violent reaction; or
  - 7. Intentionally touching the solicited person without the solicited person's consent.
- F. No solicitor shall approach any vehicle driving upon, stopped upon, or parked upon any public or private street or alley; and
- G. No solicitor shall conduct business from a street, alley, traffic island, or median.

All food truck operators, mobile vendor unit operators, and pushcart operators shall conform to the following standards of conduct:

- A. Food truck operators, mobile vendor unit operators, and pushcart operators shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Auburn's Offenses related to Public Peace as stated in Title 13, Chapter 130 of the Auburn Code of Ordinances;
- B. A device may not be used which would amplify sounds nor may attention be drawn to the food truck, mobile vendor unit, or pushcart by an aural means or a light-producing device (examples of such devices include, but are not meant to be limited to the following: bull horns and strobe lights);
- C. No food truck, mobile vendor unit, or pushcart may be permanently or temporarily affixed to any object, including but not limited to buildings, trees, telephone poles, streetlight poles, traffic signal poles or fire hydrants;
- D. No food truck, mobile vendor unit, or pushcart may be used to advertise any product which is not authorized to be sold from that unit;
- E. No food truck, mobile vendor unit, or pushcart shall be permitted to use any on-street signage;
- F. No food truck, mobile vendor unit, or pushcart may make use of any public electrical outlet without permission from the Board of Public Works and Safety;
- G. Each food truck, mobile vendor unit, or pushcart shall protect against littering and shall have an adequate trash receptacle for trash:
  - 1. The trash and recyclable receptacles shall be emptied sufficiently often to allow disposal of litter and waste by the public at any time;
  - 2. The trash and recyclable receptacles on the food truck, mobile vendor unit, or pushcart shall not be

emptied into trash or recyclable receptacles owned by the City of Auburn;

3. Liquid from the food truck, mobile vendor unit, or pushcart shall not be discharged on or in a City sewer or drain or elsewhere on City property, nor on private property without the express written consent of the owner thereof;
- H. Before leaving any location each food truck, mobile vendor unit, or pushcart shall first pick up, remove and dispose of all trash and/or recyclable materials, including products spilled on the ground within twenty feet of the food truck, mobile vendor unit, or pushcart;
- I. No food truck, mobile vendor unit, or pushcart shall expose any pedestrian to any undue safety or health hazards. The site shall be maintained to not create a public nuisance.
- J. Each food truck, mobile vendor unit, and pushcart shall be maintained free and clear of dirt and finishes shall not be chipped, faded or unduly marred;
- K. Foods or beverages which present a substantial likelihood that liquid matter or particles will drop to the street or sidewalk during the process of carrying or consuming the food or beverage shall be sold in proper containers so as to avoid falling to the street or sidewalk;
- L. Food trucks and pushcarts which utilize a grill or device that may result in a spark, flame or fire shall adhere to the following additional standards:
  1. Be placed approximately six feet away from a building or structure;
  2. Provide a barrier between the grill or device and the general public;
  3. The spark, flame or fire shall not exceed twelve inches in height;
  4. A fire extinguisher shall be within reaching distance of the food truck operator or pushcart operator at all times;
- M. Food truck operators, mobile vendor unit operators, and pushcart operators shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City's jurisdictional limits, including, where possible, the removal of the food truck or pushcart and cessation of such sales;
- N. No food truck, mobile vendor unit, or pushcart shall ever be left unattended while in use;
- O. Food trucks, mobile vendor units, or pushcarts shall not be stored, parked or left overnight on any City property;
- P. All food trucks and pushcarts which are food service establishments shall install an approved grease interceptor or grease trap. Foods, oils and greases shall never be discharged into the City's sewer or storm drains;
- Q. All food truck operators, mobile vendor unit operators, and pushcart operators are required to collect and pay all applicable and appropriate sales taxes;
- R. No food truck operator, mobile vendor unit operator, or pushcart operator shall provide customer seating unless approval has been provided by the City's Board of Public Works and Safety and the Department of Building, Planning, and Development and the Street Department;
- S. No detached generators or loose cords on the ground shall be allowed and inverter generators shall be used.

**112.170 SAFETY REQUIREMENTS—SOLICITORS, FOOD TRUCKS, MOBILE VENDOR UNITS, AND PUSHCARTS.**

All food trucks, mobile vendor units, and pushcarts shall comply with the following safety requirements:

- A. All equipment installed shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- B. All utensils shall be stored in a manner to prevent the utensils from being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided by the vendor to avoid loose storage of knives and other sharp or bladed instruments.
- C. All foods and beverages to be used, prepared, cooked, displayed, sold, served, offered for sale or stored in a food truck, or during transportation to or between locations shall be from sources approved by the health authorities of the point of origin and must be clean, wholesome, free from spillage, adulteration, contamination or misbranding and safe for human consumption. The standards for judging wholesomeness for human food shall be those promulgated and amended from time to time by the United State Food and Drug Administration, United State Department of Agriculture, the State Department of Health, the State Department of Agriculture, and the DeKalb County Health Department and published in the United States Code of Federal Regulations, the Indiana Code Annotated or the

Indiana Administrative Code, and the DeKalb County Code.

- D. Each food truck shall be constructed so that the portions of the unit containing food shall be covered so that no dust or dirt will settle on the food; and such portions of the unit which are designed to contain food shall be at least eighteen inches above the surface of the public way while the unit is being used for the conveyance of food.
- E. The food storage areas of each food truck shall be kept free from rats, mice, flies and other insects and vermin. No living animals, birds, fowl, reptiles or amphibians shall be permitted in any area where food is stored.
- F. Hazardous non-food items such as detergents, insecticides, rodenticides, plants, paint and paint products that are poisonous or toxic in nature shall not be stored in the food area of the food truck.
- G. If a cooking operation involves grease-laden (grills, fryers), a class K rated portable extinguisher shall be required to be maintained on site.

The Department of Building, Planning, and Development or an agent of said department may enforce this section by ordering operations to suspend until corrective action is taken. In addition, penalties may be enforced for violations in accordance with 112.180.

#### **112.180 PENALTIES—REVOCAION OF LICENSE.**

- A. Any person, partnership, limited liability company or corporation which violated any provision of this Chapter, shall be subject to the following penalties:
  - 1. Soliciting or operating without a license:
    - First offense - \$250.00
    - Second offense within any 12-month period - \$1,000.00
    - Third offense, or each thereafter, within any 12-month period - \$3,000.00
  - 2. Failure to comply with any other provisions of this Chapter:
    - First offense - \$250.00
    - Second offense within any 12-month period - \$500.00
    - Third offense, or each thereafter, within any 12-mo. Period - \$1,000.00
- B. In addition, the Department of Building, Planning, and Development shall, after notice and hearing before the City's Board of Public Works and Safety, suspend or revoke, by written order, any license issued hereunder if the Board of Public Works and Safety finds:
  - 1. The licensee has violated any provision of this Chapter, or any rule or regulation lawfully made under and within the authority of this Chapter;
  - 2. The licensee is operating the solicitor license under this Chapter in a manner contrary to the State of local code; or
  - 3. Any fact of condition exists which, if it had existed at the time of the original application for such license, would have permitted the Department of Building, Planning, and Development to refuse originally to issue such license.
- C. Any person charged with violating the provisions of this Chapter may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this Chapter's provisions.

#### **112.190 RESTRICTION ON USE AND LICENSES.**

The City of Auburn has exclusive authority to restrict the use of food trucks, mobile vendor units, pushcarts, or solicitors and the issuance of business licenses for food trucks, mobile vendor units, pushcarts, or solicitors under the following conditions:

- A. The City may restrict the use of food trucks, mobile vendor units, pushcarts, or solicitors in certain designated areas of the City in the event of an emergency declared by the Mayor, the Chief of Police, the Fire Chief, the Director of Public Works, the Director of Utilities, and/or any of the duly appointed designees.
- B. Absent an emergency as described above, the City may restrict the use of food trucks, mobile vendor units, pushcarts or solicitors in certain designated areas of the City provided the City has given each mobile food vendor, mobile vendor, pushcart or solicitor licensee written notice of the restriction at least seventy-two hours in advance of the restriction going into effect.

C. All persons who meet the definition of "Transient Merchant(s)" (this shall include "Solicitors" and / or "Peddlers") under Indiana Code shall comply with all provisions under Indiana Code Section 25-37-1 This shall include if applicable proof from the County Auditor, that all applicable provisions of Indiana Code Section 25-37-1 et al. have been complied with.

(Ordinance 2015-07 Passed 01.05.2016) (Ordinance 2022-24-Passed on 01-03-2023 ) Codified at [www.ci.auburn.in.us](http://www.ci.auburn.in.us)