

Sec. 54-91. Right-of-way sales activities.

- (a) *Exemption from subsection 54-88(a).* Right-of-way sales activities done in compliance with this section are exempt from subsection 54-88(a), provided, however, that to qualify for this exemption, the only goods that may be offered for sale or sold are (i) food and (ii) newspapers and other material the sale of which is protected by the First Amendment to the U.S. Constitution through the application of the 14th Amendment to the U.S. Constitution. The provisions of this section apply to only persons claiming an exemption from subsection 54-88(a).
- (b) *Location on street right-of-way; use of parking and loading spaces.* No person shall allow sales gear to be placed on any street right-of-way other than paved sidewalk, core downtown park, or paved on-street parking space. No sales gear other than a motor vehicle shall be placed on an on-street parking space. Such vehicles shall comply with ordinances that apply to occupying such spaces, including parking ordinances limiting the time that a parking space may be occupied. The sales gear for one sales vehicle shall not be placed in more than one on-street parking space. No sales gear shall be placed in loading zones.
- (c) *Use of property of others.* No sales gear in the street right-of-way shall rest on or be attached directly or indirectly to public or private property unless the seller or salesperson has permission of the property's owner or other person who has authority to grant permission. This subsection does not prohibit resting sales gear on curbs that are less than eight inches high and on surfaces on which driving motor vehicles or walking (other than steps) is allowed.
- (d) *Seating, tables, etc.* Sales gear shall not include seating for customers. Tables are allowed as sales gear only when a wheeled cart or motor vehicle is also part of the sales gear. Sales gear shall not include tables or other surfaces that are used by customers to consume or use purchases from sellers. Sales gear may include a maximum of one seat for each salesperson. Sellers and salespersons shall not allow customers to use those seats, and customers shall not use those seats. No sales gear may be placed in a manner that prohibits a motor vehicle from safely using a public or private driveway to gain access to and from a street.
- (e) *Minimum distances.* No sales gear may be placed in a manner that prohibits a motor vehicle from safely using a public or private driveway to gain access to and from a street. All sales gear must be placed so as to allow at least four feet of unobstructed space for pedestrians on sidewalks, on pedestrian paths, and on other locations intended primarily for pedestrian travel. If applicable law, including Americans with Disability Act regulations, requires a greater distance, the greater distance applies. Without limiting the preceding two sentences, if within 200 feet of sales gear, there is no passing space for pedestrians that is at least five feet by five feet, sales gear must be placed so as to allow at least five feet of unobstructed space for pedestrians. All sales gear must be at least ten feet from street intersections, crosswalks, bus shelters, taxi stands, building entrances and exits, fire stations, police stations, and fire hydrants. All sales gear of one seller must be at least ten feet from all sales gear of all other sellers operating under this division, except that this sentence does not require a minimum distance between one motor vehicle parked in an on-street parking space and another motor vehicle parked in an on-space parking space. A street intersection is the point at which the edge of one street's roadway meets the edge of another street's roadway. All sales gear must be at least 20 feet from any automated teller machine and from all

entrance doors and exit doors of banks, credit unions, and savings and loan associations. All sales gear must be outside of each area that is described as follows:

Beginning at the post on which a bus stop sign is attached, and running against the direction of traffic, along the edge of pavement a distance of 40 feet to a point; from that point, on the line that is perpendicular to the roadway, a distance of ten feet from the roadway; from that point, running with the direction of traffic parallel with the edge of pavement a distance of 40 feet; from that point, on the line that is perpendicular to the roadway, a distance of ten feet to the post on which the bus stop sign is attached, the point of beginning.

(f) *Distance from restaurants.*

- (1) This subsection (1) applies to restaurants neither holding a permit issued pursuant to [section 54-110](#) nor lawfully providing one or more tables at which its customers may eat while seated outside on private property. Sellers that sell food must not, within 50 feet of the principal entrance for customers of a restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any right-of-way sales activity with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding.
- (2) This subsection (2) applies to a restaurant that (i) holds a permit issued pursuant to section 54-110, and pursuant to and in compliance with the permit the restaurant has placed one or more tables in an outdoor dining area, at which tables the restaurant's customers may be seated in order to dine; or (ii) lawfully provides one or more tables at which its customers may eat while seated outside on private property. Sellers that sell or offer to sell food must not, within the greater of 50 feet from any edge of any such table or 50 feet from the principal entrance for customers of the restaurant, without permission of the operator of the restaurant, (i) stop, stand, or park a sales vehicle, or (ii) engage in any right-of-way sales activity with a customer of the seller, such as selling goods or accepting payment. If there can be disagreement as to the location of the principal entrance of a restaurant, the city manager will determine which restaurant entrance is its principal one, and that determination is binding.
- (3) For restaurants to which subsection (1) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat while seated inside the restaurant, and (ii) the restaurant's kitchen is open and staffed for the purpose of preparing food for customers to eat while seated inside the restaurant. For restaurants to which subsection (2) applies, this subsection (f) applies to the restaurant only while (i) the restaurant is allowing additional customers to enter its principal entrance for the purpose of ordering food prepared by the restaurant to eat while seated inside the restaurant, while seated at a table in an outdoor dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property, and (ii) the restaurant's kitchen is open and staffed for the purpose of preparing food for customers to eat while seated inside the restaurant, while seated in an outdoor dining area permitted pursuant to section 54-110, or while seated at a table outdoors on private property.
- (4) For purposes of this subsection (f) but not for other portions of this article:
A building is a structure with walls and a roof. When it was erected, the building must have been designed and constructed to be usable for at least ten years, although it need not have been designed and constructed as a restaurant.

Inside and *outside* refer to locations inside or outside a building.

Outdoor dining area is defined in section 54-26, if a definition is provided there. If no definition is provided there, the expression means an area on a public sidewalk, public alley or pedestrian way whereon tables, chairs, benches, and other furnishings are placed for dining purposes.

Pedestrian way is defined in section 54-26, if a definition is provided there. If no definition is provided there, the expression means an improved walk or passageway on public property or right-of-way intended for use by pedestrians, but not adjacent to any city street.

Private property is land that is not a public sidewalk, public alley, or a pedestrian way.

A *restaurant* is an establishment engaged in the business of preparing and serving meals at retail for pay. It must have a kitchen and inside seating for at least ten individuals to eat food provided by the restaurant. The following are not included in determining seating capacity: (1) seats in a bar or lounge area; (2) seats in a separate room or section used exclusively for private functions; and (3) outside seats. This definition of restaurant applies to this subsection instead of any other definition of the word elsewhere in the City Code.

- (g) *Garbage and recycling; litter.* Sellers and salespersons shall provide, on or within 15 feet of all sales vehicles, containers of sufficient size and number for the disposal of garbage and recyclables resulting from the sales. They shall be conspicuously identified as being available for the disposal of garbage or recyclables. At least once per hour of operation, and between ten and 30 minutes after the last sale, excluding mere offers to sell, of the day, sellers and salespersons shall remove all litter (that is not in an appropriate container) resulting from the sales that has accumulated on, or within 15 feet of, sales vehicles. In complying with the preceding sentences of this subsection, city-provided containers shall not be used. Nothing herein is intended to limit the effect of City Code chapter 10 (garbage, other solid waste).
- (h) *Fire extinguishers.* No deep fat fryer, flat top grill, or any other equipment that can produce grease vapors shall be used unless it is on a wheeled cart or motor vehicle. When sellers and salespersons use a deep fat fryer, a flat top grill, or any other equipment that can produce grease vapors, they must have on the wheeled cart or motor vehicle a minimum of ten pounds-ABC type fire extinguisher. Sellers and salespersons shall immediately prove compliance with this subsection upon the request of the city manager or any sworn law enforcement officer.
- (i) *Reserved.*
- (j) *Signs.* The only signs used as sales gear are signs allowed by this subsection. Two types of signs are allowed as sales gear, moveable and non-moveable signs. Both types of signs shall promote, advertise, or facilitate the sale of goods sold by direct use of that sales vehicle. Both types of signs shall have no other content. In this subsection, "sign" is defined as in [article 11](#) of the Unified Development Ordinance (UDO). Nothing in the UDO, including [article 11](#) (sign standards), shall reduce the requirements established by this article.
 - (1) A moveable sign is a freestanding sign placed on a paved sidewalk and not attached directly or indirectly to any public or private property. It shall not exceed two and one-half feet in width or four feet in height. As a further limitation, no dimension of a moveable sign as placed in use on a sidewalk shall exceed four feet. The entire moveable sign must be placed within 30 feet of the sales vehicle to which it is associated. A seller is allowed to place one moveable sign per sales vehicle, but if one salesperson uses more than one sales vehicle, no more than one moveable sign

is allowed for all the sales vehicles used by that salesperson. Moveable signs shall comply with the requirements of sales gear. Moveable signs must be kept in good condition.

- (2) All non-moveable signs must be securely attached to a sales vehicle.
- (k) *Location of customer.* When a customer is within 50 feet of a salesperson, the salesperson shall not engage in any right-of-way sales activity with the customer, such as selling goods or accepting payment, while the customer is in an on-street parking space, on a roadway, or in a motor vehicle regardless of the motor vehicle's location.
- (l) *Reserved.*
- (m) *Unattended sales gear.* Sellers and salespersons shall remove all sales gear from street right-of-way when the sales gear is not attended by a responsible individual for longer than ten minutes.
- (n) *Registration.* Each seller selling food shall register and pay the registration fee in an amount set by the city council. Registration expires at the end of each June 30. Each seller shall promptly notify the city manager of changes to the seller's mailing address. While engaged in selling food pursuant to this section, all sellers and salespersons shall immediately show the registration receipt issued by the city upon request of any city employee or any sworn law enforcement officer.

(Ord. No. 14355, § 6, 11-5-2012)