

ORDINANCE NO. \_\_\_\_-2013

AN ORDINANCE CREATING SECTION 15-12 OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT PERTAINING TO THE GENERAL REGULATION OF ITINERANT MERCHANTS AND PEDDLERS AND PROVIDING FOR GENERAL CONDUCT, PUBLIC SAFETY, TRANSIENT MERCHANT REGISTRATION, PARKING RESTRICTIONS, MAINTENANCE, GARBAGE AND RECYCLING REQUIREMENTS, NOISE AND LIGHTING RESTRICTIONS; HOURS OF OPERATION FROM 7 A.M. TO 11 P.M. OR LATER; LOCATION RESTRICTIONS FOR PEDDLERS AND ITINERANT MERCHANTS WITH ADDITIONAL RESTRICTIONS FOR ITINERANT MERCHANTS; NO SALES BY ITINERANT MERCHANTS ON PUBLIC PROPERTY; CREATING SECTION 15-13 OF THE CODE OF ORDINANCES PROVIDING FOR EXCEPTIONS FOR MOBILE FOOD UNIT VENDORS, WHOLESALERS, BAZAARS, MALLS, YARD AND GARAGE SALES, AND NOT-FOR-PROFITS; AND CREATING SECTION 15-14 OF THE CODE OF ORDINANCES PROVIDING FOR A PENALTY IN AN AMOUNT NOT TO EXCEED \$250.00; ALL EFFECTIVE THIRTY (30) DAYS FROM PASSAGE.

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BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Section 15-12 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 15-12. *Requirements – peddlers and itinerant merchants.*

- (a) *General Requirements.* In addition to the licensing and other general requirements contained in the code of ordinances relating to peddlers and itinerant merchants, each such business shall also comply with the following requirements at all times while conducting business in Fayette County:
- (1) All applicable federal, state, or local laws or regulations pertaining to their conduct and operations.
  - (2) Operate in a manner that ensures the safety of patrons, pedestrians and the public.
  - (3) If the business is a “transient” merchant, as defined in KRS 365.650, have filed a completed transient merchant application as required by KRS 365.665 with the division of revenue at least ten (10) days prior to conducting business.
  - (4) Shall not park or operate in a manner which prohibits others from parking in otherwise available spaces or areas or which creates a traffic hazard.
  - (5) Ensure that any vehicle, other conveyance, structure, or stand used in the operation of the business is maintained and kept in good operating order.
  - (6) Shall provide, in a prominent location, trash and recycling container(s) sufficient in size to collect all waste and recyclables generated by customers and staff of the vendor. All trash and debris related to the operation shall be

collected by the vendor throughout the duration of their vending and deposited in their own trash or recycling container(s) and removed from the site by the vendor. Such waste shall not be placed in urban county government trash receptacles. The vendor shall be responsible for any litter or debris located within a five feet (5') radius of their unit, including sidewalks in the immediate vicinity. Provide or make available garbage receptacle(s) sufficient for customer use.

- (7) Ensure that its operations do not violate, or contribute to a violation of the noise ordinance (section 14-70 through 14-80 of the code, as may be amended).
  - (8) Shall only use lighting which is located within the area lawfully permitted for conducting the business and which does not cause any glare that could be considered a public hazard, nuisance or distraction to vehicular movement, neighboring business operations or residential uses. No flashing or strobe lighting shall be permitted.
  - (9) Ensure that any and all signs are compliant with any ordinances or regulations pertaining to signage and located only within the area lawfully permitted for conducting the business.
  - (10) Ensure that all merchandise, goods, or wares are only displayed or offered for sale within the area lawfully permitted for conducting the business.
  - (11) Shall not use any electrical outlet located within the public right-of-way or on public property, unless specifically authorized by the urban county government or, if required, the utility company. A vendor shall not create any tripping or other hazard related to its use of electricity.
  - (12) Shall not block access to or use of, any public bench or any public utility pole or set up any chairs or tables on the public right-of-way.
  - (13) Shall not in any manner damage public property or the public right-of-way. Examples, include, but are not necessarily limited to, using stakes, rods or any method of support that is required to be drilled, driven or otherwise fixed in asphalt pavement, curbs, sidewalks or buildings. The vendor shall be solely responsible for any such damage.
  - (14) Shall not locate or operate within an area closed for an emergency.
- (b) *Hours of operation.* No peddler or itinerant merchant shall engage or attempt to engage in business except during the hours of operation provided herein. Unless otherwise authorized by the urban county government, the general lawful hours of operation shall be limited to the hours of 7:00 a.m. to 11 p.m. However, the hours of operation shall be allowed to continue after 11 p.m. if a permanent business also located on that parcel of property is open to the general public. In those instances, the peddler's or itinerant

merchant's operation may lawfully continue to conduct business until the time at which such a permanent business is closed to the general public.

(c) *Locations.* Unless otherwise permitted or authorized by the urban county government, no peddler or itinerant merchant shall locate, conduct business, or solicit in the following manner or within the following specified areas or locations:

- (1) Within an urban county government park unless permission of the urban county government is obtained pursuant to section 14-62 of the code of ordinances;
- (2) In a location which causes a violation of section 17-5 of the code of ordinances (congregating so as to obstruct sidewalk), or which causes people to congregate in any street, avenue, or alley which is open to vehicular traffic;
- (3) In a location or manner that restricts pedestrian access to any other business or building;
- (4) In or upon any public right-of-way or public property within one hundred (100) feet of the defined boundary for a Lexington-Fayette Urban County Government permitted special event, or any other event sponsored by the urban county government, without the written permission of the event organizers or the department or division sponsoring said event or unless otherwise authorized by the urban county government.

All distances shall be measured at the shortest distance between the nearest point of the vending operation's location to the closest property line or district.

- (5) Within any other area or location in which such activity is otherwise prohibited or restricted unless all necessary permission or approval is otherwise obtained, including but not limited to the "Lexington Center Area" (section 15-1.1 of the code of ordinances).

(d) *Additional location restrictions on itinerant merchants.* In addition to the restrictions listed in subsection 15-12(c), above, no itinerant merchant shall locate, conduct business, or solicit in the following manner, or within the following specified areas or locations:

- (1) Within a Residential Zone, or within a land use zone where the underlying business activity would otherwise be prohibited under the zoning ordinance.
- (2) Within one hundred (100) feet of the property line of a dwelling unit located in an area zoned as a Residential District under the Lexington-Fayette County Zoning Ordinance.

All distances shall be measured at the shortest distance between the nearest point of the vending operation's location to the closest property line, district, or other merchant or vendor.

- (3) These restrictions shall not apply to locations owned or operated by religious, charitable, health, welfare, educational, political, or youth service organizations or neighborhood or homeowner's associations as long as the vending activities are expressly permitted in writing by the organization or association.
- (e) No itinerant merchant shall locate, conduct business, or solicit on public property, including but not limited to the public right-of-way, unless the merchant has obtained any additional appropriate licensure and such property has been designated for such use by the urban county government through a resolution, ordinance, or the adoption of a pilot program, or the government has otherwise provided express permission for such conduct.

Section 2 - That Section 15-13 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 15-13. *Exceptions.*

- (a) The provisions of section 15-12 of the code of ordinances shall not apply to the following:
  - (1) Properly licensed Mobile Food Unit Vendors, as defined in section 15-11.1 of the code of ordinances.
  - (2) The selling of personal property at wholesale to dealers in such articles; to newspaper carriers or newspaper vendors; to merchants or their employees in delivering goods in the regular course of business; or to vendors' products distributed or sold to regular customers on established routes.
  - (3) The selling or soliciting for the sale of goods or services at a properly licensed bazaar or sales exhibition, or on property owned or operated by the Commonwealth of Kentucky.
  - (4) The selling or offering for sale or distribution from interior private pedestrian circulation areas of shopping centers or malls of products to pedestrians which are traversing such areas or patrons of retail stores. Such merchants or vendors are required to obtain a temporary mall merchant license pursuant to chapter 13 of the code of ordinances unless otherwise exempt.
  - (5) Yard sales, garage sales, bake sales or other similar types of activities. These activities must be temporary in nature and must comply with all local ordinance and zoning ordinance provisions and must not be located on public property or public right-of-way unless expressly authorized by the urban county government.
- (b) The provisions of sections 15-12(b), (c), and (d) of the code shall not apply to vending activities by appropriately permitted merchants at a Lexington Fayette Urban County Government Special Event.

- (c) No license shall be required for any member or members of a religious, charitable, health, welfare, educational, political or youth service organization selling or offering to sell goods or services to raise funds for the work of such organization and for no other purpose.

Section 3 - That Section 15-14 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 15-14. *Penalty.*

Any person convicted of violating any provision of section 15-12 of the code of ordinances shall be subject to a fine of not more than two hundred fifty dollars (\$250.00). Each day a violation occurs shall constitute a separate offense.

Section 4 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 5 -That this Ordinance shall become effective thirty (30) days from passage.

PASSED URBAN COUNTY COUNCIL:

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MAYOR

ATTEST:

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CLERK OF URBAN COUNTY COUNCIL

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