

**DRAFT TASK FORCE RECOMMENDATION
(06-26-12)**

ORDINANCE NO. ____-2012

AN ORDINANCE CREATING SECTIONS 15-12, 15-13, AND 15-14 OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT PERTAINING TO THE REGULATION OF ITINERANT MERCHANTS, PEDDLERS, AND DOOR-TO-DOOR SALES AND PROVIDING FOR THE FOLLOWING: ORDERLY CONDUCT; COMPLIANCE WITH LAWS AND REGULATIONS; NECESSARY LICENSURE; COMPLIANCE WITH KRS 365.650; NO CREATION OF TRAFFIC HAZARD AND SUFFICIENT PARKING; MAINTENANCE OF STRUCTURES OR VEHICLES; GARBAGE RECEPTACLES FOR CUSTOMERS; FIRE EXTINGUISHERS; NO NOISE VIOLATIONS; NO LIGHTING WHICH WOULD CAUSE PUBLIC SAFETY HAZARD; SIGN ORDINANCE COMPLIANCE; MERCHANDISE IN LAWFULLY PERMITTED AREA; GENERAL HOURS OF OPERATION FROM 7 A.M. TO 11 P.M.; ON . . .; ALL EFFECTIVE THIRTY (30) DAYS FROM PASSAGE.

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 this Code 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) Conduct himself or herself in an orderly and lawful fashion at all times while operating in Fayette County and comply with all applicable federal, state, or local laws or regulations pertaining to their operations.
 - (2) Possess the necessary permits, licenses, and/or authority to operate, and if he or she 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.

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- (3) Comply with all traffic laws or ordinances and operate in a manner which will not result in the creation of a traffic hazard, including ensuring that sufficient parking exists for its customers.
 - (4) Ensure that any vehicle, other conveyance, structure, or stand used in the operation of the business is maintained and kept in good operating order.
 - (5) Provide or make available garbage receptacle(s) sufficient for customer use. At the conclusion of business activities at a given location he or she shall clean all the property and public way surrounding the area of all debris, trash, garbage or litter generated by his or her activities.
 - (6) Ensure that all vehicles, conveyances, structures or stands are equipped with at least one 2A-40 BC fire extinguisher if the operation of the business involves warming, heating, or cooking food, or otherwise involves heat or flame.
 - (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) Ensure that any and all lighting is located within the area lawfully permitted for conducting the business and that such lighting does not cause glare or a distraction which creates a public safety hazard or nuisance. No flashing or strobe lights 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, wares or food are only displayed or offered for sale within the area lawfully permitted for conducting the business.
- (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.

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- (1) 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.
- (2) Notwithstanding the above, the lawful hours of operation in the following areas of Fayette County shall be 7:00 a.m. to 4:00 a.m.:
 - (a) The area of downtown located within the following boundaries: West Vine Street and East Vine Street between Midland Avenue and Algonquin Street; Midland Avenue to East Main Street; East Main Street to Elm Tree Lane; Elm Tree Lane to Olde Hurst Place; Barr Street; Church Street to Saunier Street; Saunier Street to West Short Street; West Short Street to Algonquin Street. A map of this area, which shall also be know as the "Downtown Vending Area" is attached hereto and incorporated herein by reference and shall be made available for public review and inspection at the office of the council clerk.
 - (b) Any area designated for "Adaptive Reuse" through zoning if any permanent business located within that designated area is also open for business.
- (3) Door-to-door sales are limited to the hours of 9 a.m. to 9 p.m. Door-to door sales means going from dwelling unit to dwelling unit (i.e., house, apartment, condominium, etc.) or from business to business in Fayette County selling or taking orders for, or offering to sell or take orders for, goods, wares and merchandise for present or future delivery or for services to be performed immediately or in the future whether such person has, carries or exposes a sample of such goods, wares and merchandise or not and whether he/she is collecting advance payments on such sales or not.

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- (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 he or she also has the necessary permission of the urban county government 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 (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).
- (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:

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- (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. This restriction shall not apply within the Downtown Vending Area or within an area designated as Adaptive Reuse through zoning.

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 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 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 shall not apply to the following:
 - (1) 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;

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or to vendors' products distributed or sold to regular customers on established routes.

- (2) 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.
 - (3) 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.
 - (4) 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 shall be subject to a fine of not more than two hundred

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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:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

00352079