

Chapter 22 BUSINESSES

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ARTICLE I. IN GENERAL

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Sec. 22-1. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Auction means the offering for sale or selling of personal property to the highest bidder or offering property for sale at a high price and then offering the property at successive lower prices until a buyer is secured.

Business means the operation, conduct or carrying on of any trade, profession, business or privilege to provide goods or services for compensation, operating either out of a storefront or as a Home Occupation, meeting the standards outlined in Section 3.280 of the Zoning Ordinance in this Code. Personally operated businesses which are not operating out of a storefront within the City and do not qualify as an official "Home Occupation" under the Zoning Act of this Code are not included in this definition.

Peddler includes any person traveling by foot, wagon, automotive vehicle or other conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing such items for sale or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer such items for sale from a wagon, automotive vehicle, or other vehicle of conveyance.

Solicitor includes any individual, whether a resident of the City or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, books or magazines, or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether he is collecting advance payments on such sales or not, and such definition shall include any person

who, for himself, or for another person, hires, leases, uses, or occupies any building, structure, tent, boat, hotel room, lodging house, apartment, shop, or other place within the City for the sole purpose of exhibiting samples and taking orders for future delivery. The word "solicitor" shall include the word "canvasser."

Vendor means a person operating either a stationary or mobile "food truck" or trailer in which food is prepared and sold. In addition, a vendor may operate a booth at an event such as the Farmers' Market, Artisan Market, Pumpkinfest, or other activity approved by the City, in which to sell goods in addition to food.

Sec. 22-2 Violations.

A violation of this Chapter is a municipal civil infraction.

Secs. 22-3—22-30. Reserved.

ARTICLE II. BUSINESS REGISTRATION

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Sec. 22-31. Registration required.

No person shall engage, or be engaged, in a business in the City without first registering and receiving a business certificate to operate in the manner provided for in this article.

Sec. 22-32. State-licensed businesses.

The fact that a license or permit has been granted to any person by the state to engage in the operation of any trade, profession, business or privilege shall not exempt such person from the necessity of registering the Business with the City under this article.

Sec. 22-33. Process.

The City shall provide Business owners with a form to complete and submit to register the Business. Said form shall include but not be limited to, the name of the Business owner, the Business name, the location address, the type of business and associated activities, the owner of the building where located and a local contact person with telephone number. No person shall make a false statement or representation in connection with any registration under this article.

New businesses established after October 1, 2018 shall be required to submit the registration through the Zoning Administrator. Registration review and approval may take up to thirty (30) days to process. The Zoning Administrator may require applicant to transmit one (1) copy of materials to other applicable City, state or local agencies for review. The Zoning Administrator will work with applicable entities and departments to ensure that the business complies with all applicable codes and an approved business certificate may be issued. No

certificate shall be issued to any person until all City fees, fines, and taxes are current and all applicable City ordinances are in compliance.

Sec. 22-34. Term.

The registration shall be effective and valid for two years. If any changes in ownership or other information provided on the registration application changes within the two year registration period, the business owner shall update that registration information at City Hall within 60 days of such changes.

Sec. 22-35. Fee.

The fee to be paid to the City for Business registration shall be as established by the annual fee resolution adopted by the City Council. The registration fees shall be waived for all Businesses until January 1, 2019.

Sec. 22-36. Transfer, Move and Termination.

(1) No registration under the provisions of this Code shall be transferable. Any change in ownership requires a new registration by the new owner.

(2) The business owner shall inform the City if the business is relocated and amend the registration accordingly.

(3) The business owner shall inform the City when they close the business and terminate the registration.

Charter reference— Licenses and business regulations authorized, § 9.07.

[Secs. 22-37—22-70. Reserved.](#)

ARTICLE III. AUCTIONS

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Sec. 22-71. Auction License Required.

Except as otherwise provided in this article, it shall be unlawful for any person to sell, dispose of or offer for sale at public auction within the City any personal property whatsoever, unless and until such person and the person acting or intending to act as auctioneer shall have first obtained a license from City hall.

Sec. 22-72. Application for Auction License.

Any person desiring to conduct an auction, at least ten days prior to any single proposed auction sale, or at least ten days prior to the opening and commencement of any auction business on a continuing basis, shall file with the City Clerk an application in writing duly verified by the applicant, which application shall state the following facts:

- (1) The application shall state the name, residence and legal address of the person making the application, and, if a firm or corporation, the name and legal addresses of the members of the firm or officers of the corporation, as the case may be.
- (2) The application shall state the address at which the auction sale or sales will be conducted.
- (3) The application shall state the name, residence and legal address of the auctioneer who will conduct such sale or sales.
- (4) The application shall contain a detailed inventory of all new merchandise to be offered for sale and a valuation thereof.
- (5) The application shall contain a detailed inventory of all other personal property to be offered for sale and a valuation thereof.
- (6) If it is proposed to conduct auction sales on any other basis than a single sale of property on hand at the time of application, then in such event the applicant shall submit a statement covering the kind and nature of property to be offered for sale and a fair estimate of the average value of property to remain on hand for sale from day to day.
- (7) If the license applied for covers only the sale of property then on hand, the statement shall disclose whether the sale will be with or without reservation.

Sec. 22-73. Auction License Fee.

The fees and term for licenses issued under the provisions of this article shall be as established by the annual fee resolution adopted by the City Council.

Sec. 22-74. Exemptions.

The provisions of this article shall not extend or apply to the following sales:

- (1) Sales under mortgage foreclosure, or sales under direction of a court or court officers.
- (2) Sales by or on behalf or under authority of the City, the United States, the state, or any political subdivision, branch, board, agency or commission of such governmental bodies.
- (3) Sales by receivers appointed by law or by a general assignment for the benefit of creditors.

Sec. 22-75. Fraudulent practices.

At any auction, no person shall act as a bidder commonly known as a capper, booster or shiller, or offer to make any false bid, or falsely offer or pretend to buy any article sold or offered for sale by auction.

Sec. 22-76. False representations.

It shall be unlawful for any person to sell or attempt to sell by auction, or to advertise for sale any personal property, by falsely representing the whole or a part thereof to be bankrupt or insolvent stock, or damaged goods, or goods saved from fire, or to make any false statements as to the previous history or character of such property.

Sec. 22-77. Conducting sale on street or sidewalk.

It shall be unlawful for any person to conduct an auction on any street, alley, or sidewalk. The City Council may approve an auction within a public building.

Charter reference— Licenses and business regulations authorized, § 9.07.

State Law reference— Auctioneers, MCL 446.26 et seq.

Secs. 22-78—22-130. Reserved.

ARTICLE IV. PEDDLERS AND SOLICITORS

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Sec. 22-131. Peddlers/Solicitors License Required.

No person shall engage in the business of peddler or solicitor without first obtaining a license therefor. No such license shall be granted except upon certification of the chief of police or designee.

Sec. 22-132. Application.

Applicants for a license under this article must file with the City Clerk a sworn application in writing (in duplicate) on a form to be furnished by the City Clerk, which shall give the following information:

- (1) The name and description of the applicant.
- (2) Address (legal and local).
- (3) A brief description of the nature of the business and the goods to be sold and, in the case of products of farm or orchard, whether produced or grown by the applicant.
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship.
- (5) The length of time for which the right to do business is desired.

- (6) If a vehicle is to be used, a description of the vehicle, together with license number or other means of identification.
- (7) A driver's license or other government-issued identification card with a photograph.
- (8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.

Sec. 22-133. Investigation and issuance.

- (a) Upon receipt of an application for a license, the original shall be referred to the chief of police, who shall cause such investigation of the applicant's business and "moral character," as defined by and pursuant to MCL Section 338.41, in an effort to ensure the licensee will serve the public in a fair, honest and open manner.
- (b) If, as a result of such investigation, the applicant is found **not** to be a person who will serve the public in a fair, honest and open manner, the chief of police shall endorse on such application his disapproval and his reasons for his disapproval, and return the application to the City Clerk, who shall notify the applicant that his application is disapproved and that no permit and license will be issued. The applicant shall be given the opportunity to rebut any evidence used to deny the application, pursuant to MCL Sec. 338.42.
- (c) If, as a result of such investigation, the applicant is found to be a person a person who will serve the public in a fair, honest and open manner, the chief of police shall endorse on the application his approval and return the application to the City Clerk, who shall, upon payment of the license fee, deliver to the applicant his license. Such license shall show the name, address and photograph of the licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the license shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling. The Clerk shall keep a permanent record of all licenses issued.

Sec. 22-134. Basis of fees.

Licenses fees and terms shall be set forth in the annual fee resolution adopted by the City Council. Fees for peddlers and solicitors licenses shall be established pursuant to resolution by Council. Fees may vary based on the length of time for which the license is valid. For the purpose of this article, any period of seven calendar days or less shall be considered one week, any period of more than seven calendar days and not more than 30 calendar days shall be considered one month, and any period of more than 30 calendar days and not more than one calendar year shall be treated as a year.

Sec. 22-135. Exemptions.

The following shall be exempt from the licensing requirements of this article but shall be subject to the other provisions of this article:

- (1) Farmers or truck gardeners selling or offering for sale any products grown, raised or produced by them, the sale of which is not otherwise prohibited or regulated.
- (2) Any person under 18 years of age, when engaged in peddling or soliciting on foot in the neighborhood of his residence under the direct supervision of any school or recognized non-profit organization.

Sec. 22-136. Loud noises and speaking devices.

No peddler, or any person on his behalf, shall shout, make any cry out, blow a horn, ring a bell or use any sound device, including any loud-speaking radio or sound-amplifying system, upon any of the streets, alleys, parks or other public places of the City or upon any private premises in the City where sound of sufficient volume is cast upon the public streets, alleys, parks, or other public places.

Sec. 22-137. Use of streets.

No peddler shall have any exclusive right to any location in the public streets, nor shall any peddler be permitted a stationary location, nor shall any peddler be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

Charter reference— Licenses and business regulations authorized, § 9.07.

Cross reference— Streets, sidewalks and other public places, ch. 62.

State Law reference— Home solicitations, MCL 445.111 et seq.; transient merchants, MCL 445.371 et seq.; veteran's license for peddlers, MCL 35.441.

Secs. 22-138-179 Reserved.

ARTICLE V. VENDORS

[Sec. 22-180. License](#)

Sec. 22-180 License.

Vendors in vehicles, trailers, mobile booths, and established public event booths who wish to sell food, beverages, or goods within the City of Montague, just first obtain a license by filing an application with the City. All licenses are subject to approval by the Chief of Police and City staff in the same manner as outlined in Article IV Peddler/Solicitors, within this Chapter. The City may waive approval via the City if another civic organization has an approved public event within the City (e.g., Pumpkinfest) and that organization establishes registration rules and requirements.

To obtain a license, all vendors must provide proof of the following:

- (1) Health Department Permit for Sale of Food
- (2) State of Michigan Sales Tax License
- (3) General liability insurance, naming the City as an additional insured with \$1,000,000 per occurrence coverage when operating on City property or streets.

License fees and terms shall be set by City Council pursuant to resolution.

Secs. 22-181—22-200. Reserved.

ARTICLE VI. PRECIOUS METALS AND GEM DEALERS

[Sec. 22-201. Registration fee.](#)

Sec. 22-201. Registration fee.

The fee for processing and issuing a certificate of registration to a precious item dealer under Public Act No. 95 of 1981 (MCL 445.481 et seq.) shall be as established by the annual fee resolution adopted by the City Council. The fee shall be paid to the City Clerk before such certificate of registration is issued.

State Law reference— The Precious Metal and Gem Dealer Act, MCL 445.481 et seq.

Secs. 22-202—22-219. Reserved.

ARTICLE VII. SEXUALLY ORIENTED BUSINESSES

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Sec. 22-220. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Public nudity means the knowing or intentional display of any individual's genitals or anus, or of a female's breast, in a public place, or at any other place for payment (including admission) or promise of payment by any person. A female's breast shall be considered to be displayed if the nipple or areola is visible. Public nudity shall not include any of the following:

- (1) The exposure of a woman's breast while breast feeding a child, whether or not the nipple or areola is visible or incidental to the feeding.
- (2) Any material which meets or satisfies the definition contained in section 2 of Public Act No. 343 of 1984 (MCL 752.362).
- (3) Any sexually explicit visual material, as defined in section 3 of Public Act No. 33 of 1978 (MCL 722.673).
- (4) Any display of an individual's genitals or anus, or of a female breast, which occurs as part of the regular curriculum of an educational institution that is funded, chartered, or recognized by the state.

Public place means any real property, or appurtenance to real property, which is owned by the state, by any municipality of the state, by a public agency, or by a college or university of the state. The term includes, but is not limited to, a structure, enclosure, and facility or complex such as a court, mall, park, or other area, feature or element which is owned or operated by the state, or any subordinate unit of the government, agency, commission, or instrumentality of the state. Public place shall also mean a business or an educational, refreshment, entertainment, recreation, health, or transportation facility, or institution of any kind, whether licensed or not,

whose goods, services, facilities, privileges, advantages, or accommodations are extended, offered, sold, or otherwise made available to the public.

Sexually oriented business means a business or commercial enterprise that conducts or engages in any of the following activities:

Adult arcade means any place to which the public is permitted or invited wherein coin-operated, slug-operated, electronically controlled, or mechanically controlled still or motion picture machines, projectors, or image-producing or image-projecting devices are maintained to show images to five or fewer persons per machine or device at any time, and where the images so projected, produced, or displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult bookstore and *adult video store* mean a commercial establishment that, as one of its business purposes or services, offers for sale or rental, for any form of consideration, any one or more of the following:

- i. Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, or other visual representations or media which depict or describe specified sexual activities or specified anatomical areas; or
- ii. Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

A commercial establishment may have other business purposes or services that do not involve the offering for sale or rental of the material identified in subsection a. or b. of this definition, and still be categorized as an adult bookstore or adult video store. The sale or rental of such material shall be deemed to constitute a business purpose or service of an establishment if it comprises 40 percent or more of the establishment's gross revenues, or if such materials occupy 40 percent or more of the floor area of visible inventory within the establishment.

Adult cabaret means a nightclub, bar, restaurant, lounge, or similar commercial establishment that regularly features:

- i. Persons who appear in a state of nudity;
- ii. Live performances that are characterized by the exposure of specified sexual activities or specified anatomical areas;
- iii. Films, motion pictures, other photographic reproductions or visual media that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
- iv. Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or patron.

Escort agency means a person or business establishment who furnishes, offers to furnish, or advertises to furnish escorts as one of its business purposes or services, for a fee, tip, or other consideration; and *escort* means a person who, for consideration, agrees or offers to act as a companion, guide, or date of another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female's breast.

- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified sexual activities means and includes any of the following:

- (1) The fondling or other erotic touching of specified anatomical areas.
- (2) Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or

Sec. 22-221. Purpose and intent of article.

The purpose and intent of this article is to regulate sexually oriented businesses and related activities to promote the health, safety, and welfare of patrons and employees of such businesses, and to promote the health, safety, and welfare of the citizens of the City. The provisions of this article are not intended to impose, nor shall they have the effect of imposing, a limitation or restriction on the content of any communicative materials, including but not limited to sexually oriented materials, that are protected by the First Amendment to the United States Constitution or by article I, section 5 of the Michigan Constitution of 1963. Additionally, it is not the intent of the provisions of this article to restrict or deny, nor shall it have the effect of restricting or denying, access by adults to sexually oriented materials that are protected by the federal and state constitutions. Further, it is not the intent of the provisions of this article to deny, nor shall it have the effect of denying, access by the distributors and exhibitors of sexually oriented entertainment to their target market. This article shall not be interpreted as intending to legitimize any activities which are prohibited by federal or state law, or by any other ordinance of the City.

Sec. 22-222. Penalty.

Any person who violates a provision of this article shall be responsible for a municipal civil infraction, and upon an admission or determination of responsibility thereof shall be subject to a fine of not more than \$500.00 plus court costs. Each day that a violation occurs shall be considered a separate violation. The issuance of a citation for a municipal infraction shall not in any way limit the City in seeking enforcement of the provisions of this article, including, but not limited to, requesting a civil restraining order from any court of competent jurisdiction.

State Law reference— Municipal civil infractions, MCL 117.4l, 600.8701 et seq.

Sec. 22-223. Violations declared nuisance.

Any act which is a violation of this article is deemed to be a nuisance. Nothing in this article shall prohibit the City or any other interested party from seeking such other relief as may be permitted by law or equity regarding the existence of a nuisance.

Sec. 22-224. Operational requirements; prohibited acts.

- (A) No business operations of a sexually oriented business shall be conducted except between the hours of 8:00 a.m. and 1:00 a.m.
- (B) No person younger than 18 years of age shall enter into or be permitted to remain on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

- (C) A sexually oriented business shall meet all local, state, and federal building code requirements; and shall only be located in the City as provided for by the City zoning ordinance.
- (D) An operator of a sexually oriented business shall permit any City law enforcement official or any authorized agent of the City, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the requirements of this article, of any other City ordinances, or of any other law or regulation.
- (E) A sexually oriented business which offers live entertainment shall:
 - (1) Not allow an employee, owner, independent contractor, or performer of a sexually oriented business to engage in any act of public nudity unless that person is in or on the performance area or stage area; and shall not allow any patron to engage in any act of public nudity on the premises.
 - (2) Provide a dressing area for performers which has direct access to and from the dressing area and the performance area or stage so that the performer may enter the performance area or stage without entering the area from which the patrons view the performance. The dressing area must be separate from, and not freely accessible to, areas of the business to which patrons or customers have ready access, and must contain hot and cold running water and toilet facilities, and must also be handicap accessible to the extent required by the Americans with Disabilities Act, as amended.
 - (3) Provide for the performance area or stage area to be at least 30 inches above and 60 inches away from the area from which patrons view the performance.
 - (4) Conspicuously post signs which notify patrons of the sexually oriented business that contact between the patrons and any employee, owner, independent contractor, or performer who displays specified anatomical areas or who performs specified sexual activities is prohibited. At a minimum, four such signs must be displayed on the premises of the sexually oriented business. The required signs must be situated in the area of the sexually oriented business in which patrons are admitted to the sexually oriented business and in which patrons are served beverages, if any. The signs must be at least 24 inches by 36 inches in size, be printed in boldface type which is at least 24-point in lettering size, and contain the following notice:

NOTICE—Physical contact between patrons and performers who display specified anatomical areas or who perform specified sexual activities is prohibited by Ordinance of the City of Montague. Violators will be prosecuted.
 - (5) Not allow an employee, owner, independent contractor, or performer of any kind who displays specified anatomical areas or performs specified sexual activities to have any physical contact with a patron of the sexually oriented business. Physical contact shall also include utilization of something in a person's direct control to touch any part of another person's body.

Secs. 22-225—22-249. Reserved.
