

ORDINANCE 2020-OR-09

AN ORDINANCE AUTHORIZING REMOTE FOOD SALES

WHEREAS, pursuant to Indiana's *Home Rule Statute* (Indiana Code § 36-1-3-8), the Common Council (the "Common Council") of the City of Charlestown (the "City") has the ability to enact legislation that protects or promotes the health, safety, and welfare of the City's residents;

WHEREAS, the Common Council believes allowing remote food sales in certain areas of the City would promote economic development within the City while giving residents more food options; and,

WHEREAS, the Common Council wishes to regulate these remote food sales in order to protect the health, safety, and welfare of the City's residents.

NOW THEREFORE, the Common Council of the City of Charlestown, Indiana does hereby ordain as follows:

Section 1-Applicability

1.1 Authorization. Subject to the other provisions of this Ordinance, remote food sales are hereby allowed within the City on properties that are zoned residential and commercial, as well as on certain public property.

1.2 Remote Food Sales Definition. For the purposes of this Ordinance, "remote food sales" means the sale of food and/or non-alcoholic beverages each day by persons, firms, corporations, and entities ("Vendors") at a single temporary location from trucks, carts, trailers, and other mobile means (the "remote premises"). It does not authorize sales of food in the City on a single day in a vehicle moving throughout the City. It does not include caterers.

1.3 Single-Family Residence or Duplex. The provisions of this Ordinance are not intended to prohibit or restrict the ability of Vendors to sell their food or beverages on private property at the invitation of a resident, provided that the private property is either a single-family residence or duplex and the Vendor is only selling food or beverages to the resident and the resident's guests. A Vendor is required to obtain a permit prior to engaging in remote food sales at these properties, but is not required to obtain approval from the City or the City's Building Commissioner.

1.4 Other Residential Properties. Remote food sales are allowed on private properties besides single-family residences and duplexes that are zoned residential, subject to the other provisions of this Ordinance.

Section 2-Permit

2.1 Annual Permit. In order to engage in remote food sales within the City, a Vendor must first obtain and maintain a permit from the Office of the City Building Commissioner. The cost of a permit is one hundred dollars (\$100.00) for the Vendor's first vehicle and fifty dollars (\$50.00) for each subsequent vehicle used by the Vendor for remote food sales. This annual permit expires on December 31 of the year in which it is issued.

2.2 Application Form. Within one (1) month of the passage of this Ordinance the City's Building Commissioner or his/her designee (the "Building Commissioner") shall develop an application Vendors shall use to apply for the annual permit. Such applications shall be approved, provided the application is completed correctly, and the application fee is paid.

2.3 Application Process. Applications for an annual permit shall be turned in to the Building Commissioner. The Building Commissioner shall determine whether an application has been properly completed within seven (7) days of the application being turned in and any required criminal background checks coming back, whichever occurs later. An application is not considered complete unless all required fields in the application are completely filled out and signed, the permit fee has been paid, the consent to criminal background check form is completely filled out and signed, and proof of liability insurance is attached to the application.

2.4 Display of Permit. The original or a copy of the annual permit shall be displayed by a Vendor in a conspicuous place on the Vendor's equipment, in plain view of the public, at all times while open to the public.

2.5 Non-Transferability of Permits. Annual permits are non-transferable. It is unlawful to transfer, assign, sell, or loan such permit for the use of any other Vendor to enable such Vendor to engage in remote food sales without a proper permit from the City.

Section 3-Criteria for Remote Food Sales Permit

3.1 Health Department. In order to receive a remote food sales permit, a Vendor must provide proof to the Building Commissioner that the Vendor has obtained any required permits from the *Indiana State Department of Health* and the *Clark County Health Department*.

3.2 Liability Insurance. The Vendor shall provide proof that it has obtained commercial general liability insurance in an amount not less than one hundred thousand dollars (\$100,000.00) by an insurance company licensed to do business in the State of Indiana. Said insurance shall provide liability coverage for the Vendor against all claims that have a reasonable likelihood of occurrence for property damage, food-borne illness, personal injury, or death arising from the operation of the remote food sales operation. Proof of the Vendor's liability insurance shall be submitted to the Building Commissioner at the time the Vendor applies for an annual permit.

3.3 Criminal Background Check. All employees or representatives of the Vendor who work in the City must first undergo a criminal background check prior to working at the remote premises. Said employees or representatives may not begin working at remote food sales locations operated by a Vendor in the City until the criminal background check is completed and the results are submitted to the Building Commissioner. The cost of conducting a criminal background check is at the Vendor or employee's expense and is not included in the annual permit fee.

3.4 Sex Offenders and Convicted Felons. No person convicted of any felony or who has ever been required to register on any state’s sex offender registry may work at a remote food sales location authorized by this Ordinance.

3.5 Proof of Identification. Upon request by any Law Enforcement Officer or City official, employees or representatives of any Vendor working at the remote premises must provide proof of their identification.

Section 4-Remote Food Sales on Public Property

4.1 Public Property Definition. For purposes of this Ordinance, “public property” includes any real estate owned or leased by the City, including but not limited to streets, alleyways, sidewalks, walking trails, public parking lots, schools, the City Square, City Hall, and public parks.

4.2 Approval of Building Commissioner. A Vendor shall obtain the approval of the Building Commissioner no sooner than sixty (60) days and no later than two (2) business days prior to engaging in remote food sales on or at public property. Such approval may only be granted if the Vendor holds a current annual permit with the City. A Vendor may seek approval from the Building Commissioner to engage in remote food sales for multiple days and at multiple public property locations within the City. However, no one Vendor shall be allowed to monopolize any particular location.

4.3 Public Property Request Form. The Building Commissioner is hereby authorized to develop an application form for Vendors to request engaging in remote food sales on public property locations.

4.4 Maximum Number of Vendors. The Building Commissioner has the authority to establish, in writing, the number of Vendors that may engage in remote food sales at a publicly owned property venue on any given day, provided that said minimum number must be at least one (1) Vendor per venue location. The Building Commissioner may deny public property requests by Vendors if said maximum number is exceeded. If the Building Commissioner establishes a maximum number of Vendors for a public property venue, the Building Commissioner shall provide those written determinations to the Common Council and to the general public upon request.

4.5 Sales on Public Streets. A Vendor that has been approved to engage in remote food sales on a public street shall serve any food and beverages to the public on the side of the remote premises facing the sidewalk or grass. At no time shall a Vendor sell their food and beverages to the public on the side of the remote premises facing a thoroughfare for vehicles, unless the thoroughfare is closed.

4.6 Sales at Public Parks. If a Vendor is authorized to engage in sales at a public park on a certain day and fails to show up for a good reason other than inclement weather or serious illness, the Vendor’s annual permit may be revoked at the Building Commissioner’s discretion. A Vendor may only engage in remote food sales at a public park while the park is open to the public.

4.7 Hours of Operation. No remote food sales on properties owned by the City may occur before 8 AM or after 9 PM. Remote food sales on commercial or residential properties may occur at other times as well.

4.8 Overnight Parking. A Vendor shall not park or store their vehicle overnight on public property without written approval of the City of Charlestown Board of Public Works and Safety (“BPW”). This provision applies even if the Vendor is scheduled to engage in remote food sales on that public property venue on the next day.

Section 5-Enforcement and Penalties

5.1 Revocation or Suspension of Annual Permit. The Building Commissioner may suspend or revoke a Vendor’s annual permit for the following causes:

- a) Providing false information or making material misrepresentations in connection with the permit application;
- b) Violating any provision of this Ordinance, or allowing any other representative of the Vendor to violate any provision of this Ordinance;
- c) Ceasing to maintain liability insurance for the remote food sales operation, as required by Section 3.2 of this Ordinance.

5.2 Notice of Revocation or Suspension. Prior to any revocation or suspension of a Vendor’s permit, the Vendor must be notified, in writing, of the reason for and duration of the revocation or suspension. Any official decision on revocation or suspension shall be served in writing to the permit holder per §6.1 below.

5.3 Fines. In addition to having a permit suspended or revoked, any person, firm, corporation, or other entity that violates any provision of this Ordinance may be fined. The minimum fine for a violation is fifty dollars (\$50) and the maximum fine for each violation is fifteen hundred dollars (\$1,500). Failure to comply with any provision of this Ordinance constitutes a separate offense. Every day any violation continues is also considered a separate offense.

5.4 Appeal of Fines and Enforcement Actions. Any person or entity subject to fines or other enforcement actions taken under this Ordinance (an “Aggrieved Party”) may appeal any sanction imposed, determination, or action to the BPW, the “hearing authority” for the purposes of this Ordinance. The procedures and grounds for appealing fines or enforcement actions under this Ordinance to the BPW are also set forth in Ordinance 2018-OR-24.

Section 6-Miscellaneous Provisions

6.1 Notice. Notices under this Ordinance shall be deemed properly served if a copy is either:

- a) Delivered personally to the permit holder or a representative working for the Vendor at a remote food location operated by the Vendor;
- b) Sent by certified or first-class mail addressed to the last known address of the permit holder’s designated representative; or,
- c) Sent by certified or first-class mail addressed to the address that the permit

holder provided in its most recent annual permit application.

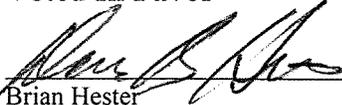
6.2 Effective Date. This Ordinance shall become effective immediately after its passage, approval, and any publication required by law.

6.3 Conflict of Laws. Whenever any existing City ordinance conflicts with the provisions of this Ordinance, the provisions of this Ordinance shall control and supersede the provisions of other ordinances.

6.4 Severability. Each section of this Ordinance is adopted separately. If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance. The remaining portions of this Ordinance shall remain in full force and effect.

ALL OF WHICH IS ORDAINED BY THE COMMON COUNCIL OF THE CITY OF CHARLESTOWN ON THIS 4th DAY OF May, 2020.

Voted In Favor



Brian Hester



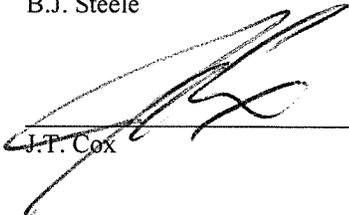
Bo Bertram



Ruth Jackson



B.J. Steele



J.T. Cox

Voted Against

Brian Hester

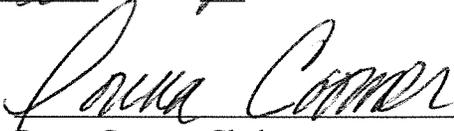
Bo Bertram

Ruthie Jackson

B.J. Steele

J.T. Cox

The foregoing Ordinance was presented to the Mayor of the City of Charlestown, Indiana on this 4th day of May, 2020 at 6:30 o'clock P.M.



Donna Coomer, Clerk

This Ordinance Authorizing Remote Food Sales is approved by me on this 4th day of May, 2020 at 6:30 o'clock P. M.

Treva E. Hodges
Treva Hodges, Mayor
City of Charlestown, Indiana

ATTEST:

5-4-2020
Date

Donna S. Coomer
Donna Coomer, City Clerk/Treasurer