

**THIS ORDINANCE SHALL BECOME EFFECTIVE JANUARY 12, 2010**

BILL NO. 37 - 2009

ORDINANCE NO. 2009-39

AN ORDINANCE OF THE CITY OF BETHLEHEM,  
COUNTIES OF LEHIGH AND NORTHAMPTON,  
COMMONWEALTH OF PENNSYLVANIA, AMENDING  
ARTICLE 721 OF THE CODIFIED ORDINANCES  
ENTITLED STREETS AND SIDEWALKS.

THE COUNCIL OF THE CITY OF BETHLEHEM HEREBY ORDAINS AS FOLLOWS:

SECTION 1. That Article 721 of the Codified Ordinances of the City of Bethlehem, entitled Streets and Sidewalks, be deleted in its entirety and replaced with the following

**ARTICLE 721  
STREETS AND SIDEWALKS**

- 721.01 Definitions.
- 721.02 Obstructions, Projections or Activities.
- 721.03 Removal of Snow, Ice or Rubbish.
- 721.04 Projecting Gates or Doors.
- 721.05 Street and Sidewalk Vendors.
- 721.06 Sidewalk Sales / Outdoor Dining.
- 721.07 Municipal Events.
- 721.08 Non-Vending Activities.
- 721.99 Penalty

721.01 DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this Article:

**Director:** The Director of Public Works for the City of Bethlehem.

**Food:** Solid food and beverages allowed to be sold in accordance with this ordinance.

**Motor Vehicle:** Motor vehicle is defined as any vehicle used for the displaying, storing or transporting of articles offered for sale by a vendor, which is required to be licensed and registered by the Department of Motor Vehicles.

**Person:** Person is defined as any natural individual, firm, trust, partnership, association, or corporation, in his or its own capacity or an administrator, conservator, executor, trustee, receiver, or other representative appointed by a court. Whenever the word "person" is used in any section of this ordinance prescribing a penalty or fine as applied to partnerships or associations, the word shall include the partners (both general and limited) or members thereof and such word as applied to corporations shall include the officers, agents, or employees thereof who are responsible for any violation of said section.

**Pushcart:** Pushcart is defined as a wheeled vehicle propelled solely by a single human.

**Stand:** Stand is defined as any table, showcase, bench, booth, rack, pushcart, or any other wheeled vehicle or fixture which may be removed without the assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles, used for displaying, storing or transporting of articles offered for sale by a vendor.

**Vending:** Vending is defined as the act of selling, offering for sale, transferring, or offering to transfer to another for pecuniary gain.

**Vendor:** Vendor is defined as any person engaged in the selling or offering for sale of food, beverages, services or merchandise on the public streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way from a stand or motor vehicle.

#### 721.02 OBSTRUCTIONS, PROJECTIONS OR ACTIVITIES.

A. Except as hereinafter provided, no person shall permit to remain, or hereafter erect or place any stand, stall, booth or showcase, vending machine, trash receptacle, banner, awning, awning post, swinging sign, post, pole, board, frame, or any other device or thing occupying, or in any manner projecting over or upon any portion of any of the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way of the City, or stand or place or cause to be stood or placed any barrels, boxes, wares, goods, merchandise, brick, stone, lumber or any other thing of any kind or description, whether for sale or otherwise, in or upon the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way of the City. Nothing herein contained shall prevent the projection over and above any street, sidewalk, lane, alley, pavement, footway or right-of-way in the City of any temporary awning which is at least seven and one-half clear feet above the street, sidewalk, lane, alley, pavement, footway or right-of-way at its lowest point.

B. Except as hereinafter provided, no person shall obstruct the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way.

C. Except as hereinafter provided, no person shall sell or offer for sale any food, beverage, service or merchandise on any street, sidewalk, lane, alley, pavement, footway or right-of-way or public park within the City from any wagon, truck, auto push cart, stand or vehicle or in any other manner whatsoever upon streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way or parking lots of the City.

D. The Director of Public Works, as authorized by the Mayor, shall review, schedule and grant final approval to all activities on streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way except for block parties and parades which require temporary closing of the street and redirection of traffic. Such events shall be permitted and controlled by the Department of Police.

E. Nothing herein shall prevent the necessary loading and unloading of vehicles, and the delivery of goods and material to residences and business houses, or for building operations. The foregoing activities are subject to the rules and regulations promulgated by the Director of Public Works and/or the Police Commissioner.

F. Activities which may be conducted upon the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way are those which would: enhance its appearance; generate citizen interest, community spirit and vitality. Subject activities will in no way interfere with the health, safety or welfare of the community, and may include the right without the necessity of a permit to the peaceful, orderly exercise of freedom of speech as granted by the First Amendment of the United States Constitution.

#### 721.03 REMOVAL OF SNOW, ICE OR RUBBISH.

No person owning, controlling or occupying any lot adjoining or fronting upon any of the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way in the City shall allow or permit any mud, sand, gravel, leaves, snow, ice or rubbish of any sort or description to be or remain upon the pavements, sidewalks, footways or rights-of-way in front of or adjoining such lot for a period longer than twenty-four hours after the rain, snow, sleet or hail which is the cause thereof has ceased to fall or after the same has been deposited thereon in any manner.

Any person owning, controlling or occupying such lot who neglects to remove the mud, sand, gravel, leaves, snow, ice or rubbish of any sort or description from the pavement, sidewalks, footways or rights-of-way in front of or adjoining his lot within the time specified in this section, shall be guilty of maintaining a nuisance, and upon conviction shall be punished as provided in Section 721.99.

Any person owning, controlling and/or plowing an off street parking lot area, a sidewalk and/or any other property adjoining or fronting upon any street, sidewalk, lane, alley, pavement, footway or right-of-way in the City who plows or causes to place snow, mud, sand, gravel, leaves or rubbish of any sort or description into the street, sidewalk, lane, alley, pavement, footway or right-of-way or repositions such materials from the parking lane to the traffic lane of a street or cartway which causes an obstruction to the normal flow of vehicular traffic shall be guilty of maintaining a nuisance and upon conviction therefor shall be punished as provided in Section 721.99.

#### 721.04 PROJECTING GATES OR DOORS.

No person shall construct any gate, door or other movable structure used for the purpose of egress or ingress to private property which, when opened or closed, projects over the building line and into or over the street, sidewalk, lane, alley, pavement, footway or right-of-way of the City.

#### 721.05 SIDEWALK VENDORS.

A. For any vending activity in excess of twenty-one (21) days in any given calendar year, it shall be unlawful to sell or offer for sale any food, beverage, service or merchandise on any City street, sidewalk, lane, alley, pavement, footway or right-of-way from any wagon, truck, auto, push cart, stand or vehicle or in any other manner whatsoever if not duly licensed pursuant to this section to operate in any area designated by the Committee as an area for vending.

#### B. Standards and Requirements

##### (1) License Requirements

The application for a vendor's license shall be filed with the Committee and include the following:

- (a) The name, home and business address of the applicant and the name and address of the owner and/or operator, if other than the applicant, of the vending business.
- (b) A description of the type of food, beverage or fresh flowers to be sold. Only applications for sales of food, beverage or fresh flowers will be accepted.
- (c) The place or places where applicant proposes to operate, which shall be limited to a commercial zoning district within the City of Bethlehem.
- (d) A description and photograph of any stand, cart, vehicle or equipment to be used in the operation of the business, including the license and registration number of any motor vehicle used in the operation of the business. Photograph shall be of stand, cart, vehicle, or equipment in operational mode.
- (e) Three (3) two-inch (2") by two-inch (2") prints of a full-face photograph, taken not more than thirty (30) days prior to the date of the application, of any person who will sell, or offer for sale, any food, service, or merchandise on any street or sidewalk within the City.
- (f) Applicant must provide a criminal record check and child abuse check for himself and any employee.

##### (2) Stand Design Standards / Vending Cart Design Standards

All stands and carts must be clean, sanitary, attractive and be designed consistent with guidelines promulgated by the Committee.

## (3) Operation Standards

- (a) Days and hours of operation. All vendor activities involving arrival on site, unloading, setup, sales, breakdown and departure must be confined to the hours established by the Committee.
- (b) Daily removal. Vending stands and all related equipment, supplies and packaging materials used or resulting from the vending activities shall be removed daily.
- (c) Safe and sanitary condition. Vending stands shall be maintained in a safe, clean and sanitary condition at all times. Vending stands licensed hereunder to sell food products shall:
  - (1) Be subject to inspection at any time by the Health Officer and/or his inspectors and shall at all times be licensed under and be in compliance with the Health Code of the city.
  - (2) If using portable heating or cooking facilities, be subject to inspection at all times by the Fire Marshal and shall comply with all applicable requirements of the Fire Code of the city.
- (d) Quiet operations. Vending shall be conducted in a quiet and peaceable manner, and there shall be no hawking of merchandise or solicitation of pedestrians or motorists.
- (e) Sign. No sign shall be permitted except an identification of the vendor's business name.
- (f) Use and maintenance of sidewalk. All sales and related activity shall be conducted from the vending stand during which times the vending stand shall not be moved from the assigned vending location. No products shall be stored or displayed nor trash receptacles placed on the sidewalk, street, or any adjacent outside area by the vendor. The sidewalk and street in the immediate vicinity of the vending stand shall be kept and maintained free of trash, recyclables, litter, debris or spillage by the stand vendor. Vendor shall supply a recycling container approved by the Recycling Bureau.
- (g) Vendor shall provide a Certificate of Insurance from a company acceptable to the Law Bureau providing liability coverage to the vendor and naming of the City as an additional insured. The amount of the insurance coverage shall be One Million Dollars (\$1,000,000);
- (h) Sidewalk vendors will be required to obtain a Business License prior to opening and will be required to pay Occupational Privilege Tax for all employees. Those selling food will be required to obtain a Health License.
- (i) No person not a legal title owner or lessee to the premises utilized shall be permitted to conduct any activities as permitted by this Section.

## (4) License Selection.

- (a) Notice of license availability. At such time as a vending license shall become available either through failure to renew, creation of a new location, expiration or early voluntary or involuntary termination, the Committee shall give public notice thereof by advertising such availability two times in a newspaper of general circulation in the City and on the City website not less than 45 nor more than 60 days prior to the date of license selection. The

advertisement shall specify the number and type (food or natural products) of vending license(s) available, the vending location, that

the license(s) shall be awarded to selected qualified applicants and where and by when applications for a license shall be filed. Not less than 30 days shall be allowed for the filing of applications.

- (b) Review of applications. Not less than 15 days prior the selection of qualified applicants, the Committee shall complete the review of all applications filed and notify the applicants of the results thereof, in writing.
  - (1) An application shall be denied and the applicant ineligible to participate in the vending selection if:
    - (i) The application proposes the sale of anything other than food, non-alcoholic beverages, or fresh flowers.
    - (ii) The proposed vending stand does not comply with the applicable design criteria, standards or specifications and/or applicable health codes;
    - (iii) The applicant, or any natural person having not less than a thirty-three-percent interest in the entity making application has:
      - (1) An interest in another vending license;
      - (2) Within the past five years held or had an interest in a vending license that had been revoked;
      - (3) Any city tax liability being more than 10 days overdue; or
      - (4) Within the past 10 years been convicted of selling, offering to sell or possession with intent to sell a controlled substance.
    - (iv) Non-compliance with regulations.
  - (2) If an application is denied, the applicant shall be notified, in writing, of the reason therefor.
- (c) Award of license.
  - (1) The carts should be designed of quality materials that enhance the integrity of Bethlehem and the activities, location, and appearance of the carts shall be subject to the review of a committee comprised of the Historic Review Officer, the members of the HARB or the members of the Historic Conservation Commission – South Bethlehem and Mount Airy depending upon the applicant’s location. All applications in City Wards 1, 2, 3, 4, 5, 10, 11, 12, 13, 16, and 17 shall be reviewed by the committee comprised of members of the Historic Conservation Commission – South Bethlehem and Mount Airy and City Wards 6, 7, 8, 9, 14, and 15 shall be reviewed by the committee and members of HARB.
  - (2) The Committee shall notify Council which shall place the item on the next upcoming agenda for a vote. The Committee shall award licenses to any of those approved by Council after the vendor pays his/her first annual fee of \$250.00.

- (5) Suspension or Revocation of License.
- (a) Grounds. A vending license shall be subject to suspension or revocation by the Committee for any of the following causes:
- (1) The violation of any provision of this article, the regulations promulgated hereunder or the orders of the Committee issued pursuant thereto;
  - (2) Where the license holder has knowingly made a false, misleading or fraudulent statement of material fact in the application for a license;
  - (3) When the license holder fails to renew or pay the annual fee within 10 days of the anniversary date of license issuance; or
  - (4) If the vending license is for sale of food products, when the vendor violates the provisions of or fails to maintain any license or permit required by any applicable city or state health codes;
  - (5) When the license holder violates any conditions of the license; or
  - (6) Abandonment, neglect, or such lack of regular occupancy and use of the license as is inconsistent with the purposes of this section.
  - (7) Fees shall be non-refundable.
- (b) Procedure, notice and hearing.
- (1) Prior to the suspension or revocation of a vending license becoming effective, the Committee shall notify the licensee, in writing, of the suspension or revocation, the reasons therefor, his right to a hearing before the Committee if desired and that unless a request for a hearing is filed in writing within 15 days of the date of the notice of suspension or revocation, the suspension or revocation shall then become effective without further action. Such notice shall be served upon the licensee by delivering the same personally or by registered mail, postage fully prepaid, addressed to the licensee at his or her place of business or residence as shown on the license application.
  - (2) If a hearing is requested before the Committee, it shall be conducted by the Committee within 20 days of the request and shall be conducted in accordance with the Local Agency Law (2 Pa.C.S.A. § 105). If following the hearing the suspension or revocation is upheld, the reasons therefor shall be set forth in writing and delivered to the licensee by ordinary mail. A decision upholding or sustaining the suspension or revocation shall result in such suspension or revocation becoming effective and not subject to further stay except upon order of court.

(6) Renewal.

A license issued under this section shall be valid for a period of one (1) year from the date of issuance of the license. Each licensee is eligible to renew his license an indefinite number of times, but annual fee will increase to \$400, upon the application of vendor's second and subsequent years, and is subject to review by City Council at any time. Vendor's fees may not change except upon the date of their re-application. If no substantial changes are made to the application and revocation is not under consideration, the Committee may approve the re-application. If any substantial changes are made in the application, as assessed by the Committee, the application shall be submitted before the Committee.

(7) Regulations.

- (a) The Committee may promulgate such regulations as are necessary for the proper administration and enforcement of this Article.

E. Ice Cream Trucks and non-stationary vendors that need only to stop their vehicles from time to time to sell goods shall be required to obtain a permit, pay a One Hundred Dollar (\$100.00) fee, and provide a Certificate of Insurance from a company acceptable to the Law Bureau providing liability coverage to the applicant and naming of the City as an additional insured. The amount of the insurance coverage shall be One Million Dollars (\$1,000,000).

F. No person shall conduct any vending activity unless first having obtained a license or permit provided for by this section. Each day that anyone continues to operate without a license after having received notice of a violation either in person or by posting at the site of the violation shall be a separate violation punishable in accordance with Section 721.99.

721.06 SIDEWALK SALES / OUTDOOR DINING.

A. Retail Merchants may have a sidewalk sale from time to time that occupies the public right-of-way which is an extension of the primary business of the adjoining property. For all sidewalk sales that occupy the public right-of-way a permit must be obtained for \$10.00 from the Department of Public Works subject to the rules and regulations issued with the permit. A minimum of 5 feet of clear walkway must be maintained at all times on the sidewalk. There can be no sidewalk sales during Municipal Sponsored or Sanctioned Events unless the Department of Public Works permits said activity.

B. Restaurateurs may have outdoor dining that occupy the public right-of-way adjoining its property. For all outdoor dining that occupies the public right-of-way a permit must be obtained for \$10.00 from the Department of Public Works subject to the rules and regulations issued by the Department. A minimum of five (5) feet of clear walkway must be maintained at all times on the sidewalk. There can be no outdoor dining during Municipal Sponsored or Sanctioned Events, unless the Department of Public Works permits said activity. For locations of outdoor dining within any historic district as established by the City of Bethlehem, the furnishings and equipment, if any, for outdoor dining shall be subject to review by the Committee and City Council as set forth in Section 721.05.

C. No person shall dispense alcoholic beverages unless they have been issued a Restaurant or Liquor License by the Pennsylvania Liquor Control Board and have received Pennsylvania Liquor Control Board approval for sales outside their premises.

D. No person shall conduct any sidewalk sales or maintain any outdoor dining in the public right-of-way unless first having obtained a permit provided for by this Section. Each day that anyone continues to operate without a permit required by this section after having received notice of a violation either in person or by posting at the site of the violation shall be a separate violation punishable in accordance with Section 721.99.

721.07 MUNICIPAL EVENTS.

For all Municipal Sponsored or Sanctioned Events that occupy the right-of-way a permit to operate within the portion of the right-of-way occupied by the event must be obtained at no cost from the Department of Public Works, subject to conditions, rules, and regulations, if any, attached by the Department of Public Works.

721.08 NON-VENDING ACTIVITIES.

A. Except as otherwise provided in this Article, all persons wishing to conduct non-vending activities or place temporary structures upon the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way shall make application to the Director of Public Works for a permit to conduct activities which shall be issued upon the payment of a One Hundred Dollar (\$100.00) fee, where applicable, and compliance with the regulations established by the Director.

B. The application for permit shall:

- (I) describe the activity which is contemplated;

- (II) describe in detail the location, dimensions, and type of construction of any structure to be used;
- (III) provide a Certificate of Insurance from a company acceptable to the Director providing liability coverage to the applicant and naming of the City as an additional insured. The amount of the insurance coverage shall be One Million Dollars (\$1,000,000);
- (IV) be filed with the Director no later than Five (5) days nor more than Sixty (60) days prior to the commencement of the activity;
- (V) be granted only to those persons who have legal title to the land directly abutting the area of the street, sidewalk, lane, alley, pavement, footway or right-of-way to be utilized or are lessees of such abutting land under a lease entered into at least Sixty (60) days prior to the day of application.

C. The issuance of a permit by the Director of Public Works to occupy a location in the street, sidewalk, lane, alley, pavement, footway or right-of-way shall not in itself supersede other applicable City Ordinances, such as those of Health and Fire.

D. For permits applicable to containers/dumpsters, building supplies, construction equipment, etc, which are temporarily placed upon the streets, sidewalks, lanes, alleys, pavements, footways or rights-of-way:

- (I) The fee shall be \$10.00.
- (II) Application for the permit shall be filed with the Director or his designee not less than twenty-four (24) hours nor more than Thirty (30) days prior to the placement of the item;
- (III) The applicant must be the legal title property owner, or the contractor who is under the contract with the legal title property owner;
- (IV) All such permits shall be approved by the Traffic Bureau, Police Department prior to the issuance of the permit.

E. Prohibited Acts

Except as otherwise provided in this Article:

- (I) No person not a legal title owner, lessee or license or permit holder shall be permitted to conduct any activities set forth in this Section.
- (II) No person shall conduct any covered activity unless first having obtained the permit provided for by this section.
- (III) Each day that anyone continues to operate without a permit after having received notice of a violation either in person or by posting at the site of the violation shall be a separate violation punishable in accordance with Section 721.99.
- (IV) No person shall dispense alcoholic beverages unless they have been issued a Restaurant or Liquor License by the Pennsylvania Liquor Control Board and have received Pennsylvania Liquor Control Board approval for sales outside their premises.
- (V) No person shall place any container for construction waste materials or for any other reason in the public right-of-way without obtaining a Right-of-Way Permit from the Director or his designee.
- (VI) No person shall place a sign in the street, sidewalk, lane, alley, pavement, footway or right-of-way without securing a permit from the Director.

721.99 PENALTY.

Any person violating the provisions of this article shall be fined not more than three hundred dollars (\$300.00) for each separate violation, together with costs, or imprisoned not more than ninety days if the amount of said fine and costs should not be paid.

SECTION 2. All Ordinances and parts of Ordinances inconsistent herewith be, and the same are hereby repealed.

Sponsored by /s/ J. William Reynolds

/s/ Joseph F. Leeson, Jr.

PASSED finally in Council on the 22nd day of December, 2009.

/s/ Robert J. Donchez  
President of Council

ATTEST:

/s/ Cynthia H. Biedenkopf  
City Clerk

This Ordinance approved this 23rd day of December, 2009.

/s/ John B. Callahan  
Mayor