

ORDINANCE #665

AN ORDINANCE TO AMEND, REPEAL AND ADOPT RELATED BUSINESS LICENSE SECTIONS:

CHAPTER 6-AMUSEMENTS AND ENTERTAINMENTS, ARTICLE I. – THEATER, SECTION 6-1(C) CIVIL INFRACTION IS HEREBY ADOPTED;
CHAPTER 6-AMUSEMENTS AND ENTERTAINMENTS, ARTICLE II. CIRCUSES, SHOWS AND CARNIVALS, SECTIONS 6-39 THROUGH 6-41 ARE HEREBY REPEALED;

CHAPTER 12-BUSINESSES, IS HEREBY REPEALED; NEW CHAPTER 12-BUSINESSES IS HEREBY ADOPTED;

CHAPTER 30-LAW ENFORCEMENT, ARTICLE II. – MUNICIPAL CIVIL INFRACTIONS, SECTION 30-25 – FINES IS HEREBY REPEALED; CHAPTER 30-LAW ENFORCEMENT, ARTICLE II. – MUNICIPAL CIVIL INFRACTIONS, SECTION 30-25 – FINES AND SANCTIONS IS HEREBY ADOPTED;

CHAPTER 34-PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS, ARTICLE II. – PEDDLERS AND SOLICITORS, SECTION 34-24 – CIVIL INFRACTION IS HEREBY ADOPTED; CHAPTER 34-PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS, ARTICLE III. – TRANSIENT MERCHANTS IS AMENDED TO CORRECT DESCRIPTIONS WITHIN SECTION 34-52 DEFINITIONS; SECTION 34-54, SAME-APPLICATION; SECTION 34-55, ISSUANCE; VOIDABILITY; SECTION 34-57, OPERATION OF BUSINESS; AND SECTION 34-59-WAIVER; AND TO ADOPT NEW SECTION 34-60 – CIVIL INFRACTION;

CHAPTER 35-MOBILE FOOD VENDING, IS HEREBY REPEALED; NEW CHAPTER 35-MOBILE FOOD VENDING IS HEREBY ADOPTED

The City of Marquette Ordains:

Section 1. Chapter 6-Amusements and Entertainments, Article I- Theater, New Section 6-1 – Theater, Section 6-1(c) Civil Infraction is hereby adopted:

***(c) Civil Infraction.* An individual who violates any portion of this article is responsible for a municipal civil infraction.**

Section 2. Chapter 6-Amusements and Entertainments, Article II-Circuses, Shows and Carnivals; Sections 6-39 through 6-41 are hereby repealed.

Section 3. Chapter 12-Businesses, is hereby repealed. New Chapter 12-Businesses is hereby adopted:

Chapter 12 – BUSINESSES

ARTICLE I. – IN GENERAL

Secs. 12-1—12-24. - Reserved

ARTICLE II. - LICENSES

Sec. 12-25 – 12-26 - Reserved

Sec. 12-27. - License required.

No person shall engage or be engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which any license is required by any provision of this Code without first obtaining a license from the city in the manner provided for in this article. An application for license shall be reviewed as follows:

- (1) The city police chief or designee shall investigate the applicant as necessary to satisfy himself that there are no outstanding criminal charges against the applicant and that the business to be conducted is not intended to cheat or defraud the public. Upon making such determination to his satisfaction, he shall indicate his approval in writing. A license shall not be issued unless such approval has been obtained. In all cases where the certification of the chief of police is required prior to the issuance of any license by the city clerk, such certification shall be based upon a finding that the person making application for such license has the propensity on the part of the person to serve the public in the licensed area in a fair, honest, and open manner.
- (2) The city treasurer or designee shall determine if the applicant owes to the city any taxes or other default, and if no such default exists, shall so indicate his findings in writing. A license shall not be issued where default is reported.
- (3) The city planner or zoning official shall determine if the property and structure to be used is appropriately zoned for such business and shall indicate his approval in writing. A license shall not be issued without such approval.
- (4) The city attorney, if required by this code, shall review the application and supporting materials as required in section 34-54 and shall indicate his approval in writing. A license may not be issued without such approval.
- (5) The fire chief or designee shall make a determination as to the habitability and safety of the structure and property to be used for such business, and shall verify the safety and legality of all fireworks sales. Such approval shall be indicated in writing. A license may not be issued without such approval. In all cases where the certification of the fire chief is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the premises in which the person making application for such license proposes to conduct or is conducting the trade, profession, business or privilege comply with all the fire regulations of the state and of the city.

Sec. 12-28. - Multiple businesses.

The granting of a license or permit to any person operating, conducting or carrying on any trade, profession, business or privilege which contains within itself, or is composed of, trades, professions, businesses or privileges which are required by this Code to be licensed, shall not relieve the person to whom such license or permit is granted from the necessity of securing individual licenses or permits for each such trade, profession, business or privilege.

Sec. 12-29. - State-licensed businesses.

The fact that a license or permit has been granted to any person by the state to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall not exempt such person from the necessity of securing a license or permit from the city if such license or permit is required by this Code.

Sec. 12-30. - License application.

Unless otherwise provided in this Code, every person required to obtain a license from the city to engage in the operation, conduct or carrying on of any trade, profession, business or privilege shall make application for said license to the city clerk upon forms provided by the city clerk and shall state under oath or affirmation such facts as may be required for, or applicable to, the granting of such license. However, each application shall include, at minimum: name, address, birth date and contact information for the business owner, as well as a photocopy of a current Government-issued identification.

Sec. 12-31. - License year.

The license year shall begin May 1 of each year and shall terminate at 12:00 midnight on April 30 of the following year. In all cases where the provisions of this article permit the issuance of licenses for periods of less than one year, the effective date of such licenses shall commence with the dates as indicated on the license.

Sec. 12-32. - Conditions for issuance.

No license or permit required by this Code shall be issued to any person who is required to have a license or permit from the state until such person shall submit evidence of such state license or permit and proof that all fees appertaining thereto have been paid. No license shall be granted to any applicant therefor until such applicant has complied with all of the provisions of this Code applicable to the trade, profession, business or privilege for which application for license is made.

Sec. 12-33. - Where certification required.

No license shall be granted where the certification of any officer of the city is required prior to the issuance thereof, until such certification is made.

Sec. 12-34. - County health officer's certificate.

In all cases where the certification of the county health officer is required prior to the issuance of any license by the city clerk, such certification shall be based upon an actual inspection and a finding that the person making application and the premises in which he proposes to conduct or is conducting the trade, profession, business or privilege comply with all the sanitary requirements of the state and of the city.

Sec. 12-35. - Fees and bonds.

- (a) The fee and any bond required to be paid to obtain any license to engage in the operation, conduct, or carrying on of any trade, profession, business or privilege for which a license is required by the provisions of this Code shall be as currently established or as hereafter adopted by resolution of the city commission from time to time. No license shall be issued to any applicant unless he first pays to the city clerk the fee and posts a bond in the amount required for the type of license desired.
- (b) Where the provisions of this Code require that the applicant for any license or permit furnish a bond, such bond shall be furnished in an amount as currently established or as hereafter adopted by resolution of the city commission from time to time; and the form of such bond shall be acceptable to the city attorney. In lieu of a bond, an applicant for a license or permit may furnish one or more policies of insurance in the same amounts and providing the same protection as called for in any such bond; any such policies of insurance shall be approved as to substance by the city official issuing said license or permit and as to form by the city attorney.

Sec. 12-36. - License renewals.

Unless otherwise provided in this Code, an application for renewal of a license shall be considered in the same manner as an original application. However, complete applications, and associated fees, for license renewal shall be submitted to the office of the issuing authority prescribed in this code at least 10 business days prior to the start of the business license year. Any person seeking a license renewal who fails to submit a completed application and associated fees by this deadline shall be guilty of a municipal civil infraction.

Sec. 12-37. - Right to issuance.

If the application for any license is approved by the proper officers of the city, as provided in this Code, said license shall be granted and shall serve as a receipt for payment of the fee prescribed for such licenses.

Sec. 12-38. - Fees—Payment.

The fee required by this Code for any license or permit shall be paid at the office of the issuing authority prescribed in this Code upon or before the granting of said license or permit.

Sec. 12-39. - Same—Exempt persons.

No license fee shall be required from any person exempt from such fee by state or federal law. Such persons shall comply with all other provisions of this article. The city clerk shall, in all such cases, issue to such persons licenses which are clearly marked as to said exemption and the reason therefor.

Sec. 12-40. - Suspension or revocation.

Any license or permit issued by the city may be suspended or revoked by the city manager or by the issuing authority for cause. The licensee shall have the right to a hearing before the commission on any such action, provided a written request therefor is filed with the city clerk within five days after receipt of said notice of suspension or revocation. The commission may confirm such suspension or revocation or reinstate any such license. The action taken by the commission shall be final. Upon suspension or revocation of any license or permit, the fee therefor shall not be refunded.

Sec. 12-41. - "Cause" defined.

The term "cause," as used in this article, shall include the doing or omitting of any act or permitting any condition to exist in connection with any trade, profession, business or privilege for which a license or permit is granted under the provisions of this Code, or upon any premises or facilities used in connection therewith, which act, omission or condition is:

- (1) Contrary to health, morals, safety or welfare of the public;
- (2) Unlawful, irregular or fraudulent in nature;
- (3) Unauthorized or beyond the scope of the license or permit granted; or
- (4) Forbidden by the provisions of this Code or any duly established rule or regulation of the city applicable to the trade, profession, business or privilege for which the license or permit has been granted.

Sec. 12-42. - Reserved.

Sec. 12-43. - Exhibition of license.

No licensee shall fail to carry any license issued in accordance with the provisions of this article upon his person at all times when engaged in the operation, conduct or carrying on of any trade, profession, business or privilege for which the license was granted; except that where such trade, profession, business or privilege is operated, conducted or carried on at a fixed place or establishment, said license shall be exhibited at all times in some conspicuous place in his place of business. Every licensee shall produce his license for examination when requested to do so by any city law enforcement officer or by any person representing the issuing authority.

Sec. 12-44. - Reserved.

Sec. 12-45. - Displaying invalid license.

No person shall display any expired or otherwise invalid license.

Sec. 12-46. - Misuse—Transferability.

No license or permit issued under the provisions of this Code shall be transferable. No licensee or permittee shall transfer or attempt to transfer his license or permit to another nor shall he make any improper use of the same.

Sec. 12-47. - Same—Automatic revocation.

In addition to the penalty provision of section 1-13 for violation thereof, any attempt by a licensee or permittee to transfer his license or permit to another, or use the same improperly, shall be void and result in the automatic revocation of such license or permit.

Sec. 12-48. - Civil infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

Sec. 12-49. - Applicability.

All processes and penalties detailed in this article apply to business licenses issued under any section of this code, including but not limited to those licenses required by Chapters 6, 12, 34 and 35.

Secs. 12-50—12-74. - Reserved.

ARTICLE III. – AUCTIONEERS

Sec. 12-75. - License required.

No person shall engage in the trade or business of auctioneer without first obtaining a license therefor.

Sec. 12-76. - Prohibited activity.

- (a) No auctioneer shall knowingly misrepresent the quality of any goods sold by him. No auctioneer shall accept any goods from any minor for sale at auction.
- (b) No auctioneer shall conduct the auction at any other place other than that stated in the application for license as herein provided, and it shall be unlawful for either the auctioneer or owner to do, either themselves or through their agents or servants, any act or thing contrary to the statements made in such application, and any false statement therein, or any act done contrary to such statements, shall be deemed a violation of this Code.
- (c) No bell, musical instrument, buzzer, ballyhoo, or other mechanical or excessive vocal sound shall be used in any street, public place, or doorway to attract attention to sell at auction.
- (d) No new goods, wares, merchandise, or personal property shall be offered for sale at public auction when and where secondhand goods, wares, merchandise, or personal property are being sold at public auction.

Sec. 12-77. - Auction accounts.

Every auctioneer shall keep a full and accurate account of all goods sold by him, indicating the prior owner, the price at which sold, and to whom sold. Such account shall be open for inspection by any city law enforcement officer at any reasonable time. No auctioneer shall fail to make such account accessible to any law enforcement officer upon demand.

Sec. 12-78. - Sale restrictions.

No person shall sell, dispose of, advertise for sale, or offer for sale at public auction in the city any property of any kind except under the following conditions:

- (1) That such sale shall be conducted by an auctioneer duly licensed as herein provided.
- (2) That all taxes, plus penalties, which have become a lien under any law or ordinance, whether or not such taxes have been actually assessed, shall have first been paid.
- (3) That no property of any kind will be added to the stock sought to be sold after the inventory is filed, nor shall any property have been added within 60 days prior to the commencement of such sale in anticipation thereof.
- (4) That no property which has been struck off to the highest bidder during the course of such sale shall be again offered for sale during such auction.
- (5) That no auction sale of platinum, gold, silver, plated ware, precious or semiprecious stones, watches, or other jewelry shall be permitted, unless it is a closing-out auction and application therefor has been on file with the city clerk for a period of 60 days prior to the first day of such sale, and every such article sold shall have securely attached to it a tag or label upon which shall be plainly written or printed in English a true and correct statement of the kind and quality of the metal of which the article is made or with which it is plated, and the true names, weight, quality, and color of any precious or semiprecious stone or stones, together with the names of the manufacturer of such articles.
- (6) That a sales book shall be kept, showing every sale and each sale shall be signed by the purchaser of such article at the time of the purchase, opposite a description of the article, and, if no purchaser comes forward to sign such book, then the next highest bidder shall have the right to sign such sales book and to demand and receive such article at the amount of his highest bid.

Sec. 12-79. - Statement of sale.

At least five full days before commencing any sale by auction, except as noted in section 12-78(5), the owner of the property sought to be sold shall file a sworn application with the city clerk which shall state the following:

- (1) Whether or not the auction sought to be conducted is a closing-out auction;
- (2) If it is a closing-out auction, that the application is made in good faith for the purpose of retiring from business and that all statutes governing closing-out sales have been complied with;
- (3) That the stock of goods, or other property sought to be sold, is a bona fide part of applicant's stock or has been on the tax rolls of the city for one year;
- (4) A complete description of the property sought to be sold, in duplicate, including, if it is personal property, a completely itemized inventory with identifying numbers, or other means of readily determining the identity of each and every article;
- (5) The place where the auction is to be conducted;
- (6) The name of the auctioneer who is to conduct the sale;
- (7) The name of the owner of the property for the preceding year;
- (8) The length of time the applicant has been in business in the city and the location of such business;
- (9) That all taxes on such property have been paid;

- (10) That no property other than that listed shall be sold or offered for sale on the premises where the auction is being conducted during the course of such auction sale;
- (11) That all of the property listed is actually on the premises where the auction is to be conducted.

Sec. 12-80. - Household goods.

Sections 12-78 and 12-79 shall not apply to the selling by auction of secondhand household goods. The term "secondhand household goods," as used in this section, shall mean household furniture and household goods actually used by the owner.

Sec. 12-81. - Excepted sales.

The provisions of this article shall not apply to sheriffs, constables, or other public or court officers or to any person acting under the license, direction or authority of any state or federal court, selling goods, wares or merchandise in the course of their official duties, or to any person selling goods under and by virtue of any state or federal statutes.

Sec. 12-82. - Civil infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

Secs. 12-83—12-107. - Reserved.

ARTICLE IV. - FARMER'S MARKETS AND FARM PRODUCE VENDORS

Sec. 12-108. - 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:

Farm produce means fresh produce, fresh or frozen meat, seafood, or poultry, or prepared food products produced by a licensed farm produce vendor or the members of his immediate family.

Farm produce vendor means a person licensed to sell farm produce by the city.

Farmer's market means an area designated by resolution of the city commission where farm produce vendors may sell their produce.

Farmer's market organization means an organization officially authorized by action of the city commission to operate a farmer's market.

Market master means the person designated by a farmer's market organization who has authority to enforce the rules of the farmer's market and to perform such other functions as the organization shall determine, or, if there is no organization, the individual designated by the commission as having responsibility for that farmer's market.

Outdoor sale means any retail sale not taking place in a permanent building.

Sec. 12-109. - Locations.

The city commission may, by resolution, designate one or more specific locations as farmer's markets for the sale of farm produce in the city. In establishing such locations, the commission shall give consideration of the character of the neighborhood, the effect of the farmer's market on the neighborhood, the zoning of the area, especially the site for the farmer's market, other businesses located on the same site, the need for farmer's markets in the city, and the proposed organization which will be responsible for operation of the farmer's market.

Sec. 12-110. - Responsible parties.

In designating a farmer's market location, the city commission shall also designate the person or organization responsible for operation of said farmer's market. Said person or organization shall, at the time designation of the farmer's market is requested, present the commission with the proposed operating rules for the farmer's market, and the bylaws of the organization if there is one. Said rules shall, at a minimum, demonstrate that the proposed farmer's market will comply with all pertinent portions of the city Code and shall indicate what specific actions will be taken to protect the interests of the consumer.

Sec. 12-111. - Outdoor sales prohibited; exceptions.

No person, group, business, or other organization shall engage in the outdoor sale of farm produce in the city with the following exceptions:

- (1) Grocery stores or other retail businesses which operate out of permanent buildings and which normally sell farm produce on a daily basis may hold temporary outdoor sales of farm produce as regulated by this Code.

- (2) Licensed farm produce vendors or a recognized farmer's market organization may sell outdoors in a designated farmer's market.

Sec. 12-112. - Farm produce vendor license.

- (a) To become licensed as a farm produce vendor, a person shall make application at the office of the city clerk. Upon receipt of approval, the clerk shall issue the license as requested.
- (b) A farm produce vendor's license may also be issued to a farmer's market organization. Each person who may serve as market master for the organization shall be reviewed as specified.

Sec. 12-113. - Market master.

Each designated farmer's market shall at all times of operation have a market master on duty. The market master may be a person designated by the farmer's market organization, or, if the market is operated by an individual, either that individual or his designee. The market master shall be responsible for overseeing the operation of the farmer's market in such a manner that all governmental regulations are complied with, and the rules of the farmer's market are enforced.

Sec. 12-114. - Consignment sales.

No person other than the market master may take farm produce on consignment for sale at a farmer's market. If a market master takes such farm produce on consignment, said market master shall be either a licensed farm produce vendor or listed on the license for a farmer's market organization. In no case shall large amounts of farm produce be taken on consignment.

Sec. 12-115. - Civil infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

Secs. 12-116—12-140. - Reserved.

ARTICLE V. – HOTELS

Sec. 12-141. - 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:

Bed and breakfast means an owner-occupied dwelling where no more than five guestrooms are made available for the temporary accommodation of the traveling or vacationing public. Such an establishment may offer meals only to those persons temporarily residing at the establishment.

Bed and breakfast inn means a structure primarily used for lodging purposes where the use as a residence is clearly secondary. A structure where more than five but not more than 30 guestrooms are made available for the temporary accommodation of the traveling or vacationing public. Such an establishment may offer meals to the public and persons temporarily residing at the establishment.

Family means any group of individuals living together as a single housekeeping unit or the functional equivalent of a family, where the residents are a close group with social, economic, and psychological commitments to each other; b) Not more than four unrelated persons living together as a single housekeeping unit; c) the tenants of a short-term rental property for which a valid permit has been issued by the Fire Department; d) The "functional equivalent of a family" shall not include any organization such as a club, fraternity, lodge, monastery, or intentional community, nor any individuals whose association is seasonal or for limited durations defined by their occupation/jobs or educational pursuits, nor shall it include a group who share a dwelling unit explicitly for financial or philosophical reasons, or include any state-licensed facility except to the extent permitted by law.

Fraternity house and *sorority house* shall not be deemed a hotel, or rooming house.

Hotel means a building or structure kept, used, maintained as, or held out to the public to be an inn or hotel. The term "hotel" does not include a bed and breakfast as defined in section 4b of the state construction code, Public Act No. 230 of 1972 (MCL 125.1504b).

Motor court means any group of attached or detached buildings containing individual sleeping or living units, designed for or used temporarily by automobile tourists or transients, with garage attached or parking space conveniently located to each unit, including auto courts, tourist courts, motels or motor lodges.

Rooming House means a building where sleeping accommodations are available for remuneration for periods of one week or longer. Board may or may not be included with the accommodations.

Sec. 12-142. - License requirement.

No person shall operate or maintain any hotel, rooming house, motor court or bed and breakfast establishment (bed and breakfast, bed and breakfast inn) within the city without first obtaining a license therefor. No such license shall be granted except upon certification of the fire chief.

Sec. 12-143. - Registration.

Every licensee shall provide and maintain a register or record in which shall be entered, in ink:

- (1) The name of any person who is charged or pays for lodging or the rent of a room;
- (2) The home address of such person or his last place of residence;
- (3) The number of the room to which such person has been assigned; and
- (4) Make and license plate number of each vehicle used by each such person.

Such registration shall be completed at the time of the arrival of any such guests. No person shall enter any false information in such register, nor give any false information to any licensee or his employees, for the purpose of having the same entered in such register. Such register shall be maintained in said premises in plain view, and in a convenient place and shall be submitted upon the demand of any law enforcement officer of the city.

Sec. 12-144. - Employee's health.

No person who has any contagious disease shall be employed in or about any hotel, rooming house or motor court. Any employee who is directed by the health officer to furnish the certificate of a licensed physician, that such person is free from contagious disease, shall be deemed to have a contagious disease until he shall furnish such certificate.

Sec. 12-145. - Sanitary requirements.

Each establishment licensed under the terms of this article shall be kept in a clean and sanitary condition and well-ventilated.

Sec. 12-146. - Reserved.

Sec. 12-147. - Civil infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

Secs. 12-148—12-170. – Reserved.

ARTICLE VI. - SIDEWALK CAFE PERMITS

Sec. 12-171. - Sidewalk cafe permit without alcohol.

(a) *Permit conditions.* The city clerk may issue to an adjacent food service establishment a revocable sidewalk cafe permit to occupy a portion of adjacent city right-of-way to place tables and chairs, planters and windscreens adjacent to the tables and chairs in conjunction with selling and consuming food and beverages under the following terms and regulations:

(1) *Regulations:*

- a. Sidewalk cafes shall not unreasonably interfere with the view, access to, or use of property adjacent to said street.
- b. Sidewalk cafes shall not be permitted in or directly adjacent to property zoned exclusively for residential purposes.
- c. Sidewalk cafes shall not unduly obstruct pedestrian movement nor diminish the safety of the general public.
- d. Sidewalk cafes shall not be attached to or cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way.
- e. In compliance with chapter 42 of this code, a clear path shall be maintained along the full length of the sidewalk for general pedestrian use. The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.
- f. All signs must conform to the City of Marquette's sign requirements.
- g. The immediate area of the cafe; shall be maintained free of litter and debris.
- h. Tables, chairs, portable signs and other equipment used in the operation of the cafe shall be removed daily at the close of business.
- i. Hours of operation of the sidewalk cafe shall not be later than 11:00 p.m.
- j. The sidewalk cafe permit issued in accordance with this article shall be prominently displayed.

- (2) *Notice.* Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit. Proof of this notice shall be provided to the city by the applicant prior to the issuance of a permit.
- (3) *Fee.* Prior to the issuance of a permit, a fee in an amount established by resolution of the city commission shall be paid to the city clerk.
- (4) *Insurance.* The permittee shall show proof of and maintain comprehensive general liability insurance acceptable to the city, including naming the city as an additional named insured.
- (5) *Food service establishment.* Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended, MCL 289.1101.
- (6) *Duration.* Permits shall be for the period of May 1 to October 31 for the year in which granted, and cafes shall not operate outside of this period.
- (7) *Display.* A permit shall only be valid if displayed in a manner visible to the public.
- (8) *Permit revocation.* Any permit may be revoked by the city clerk upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. Upon such revocation, the fee paid for any period after termination of the street occupancy shall be refunded.
- (9) *Appeal.* Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the city manager or designee. The decision of the manager may be appealed to the city commission. Requests for a hearing or an appeal must be made within five days of the questioned decision.
- (10) *Violations.* Any person who operates a sidewalk cafe without a permit or who shall violate any of the provisions of this section shall be responsible for a municipal civil infraction.

Sec. 12-172. - Sidewalk cafe permit with alcohol.

- (a) *Permit conditions.* The city clerk may issue to an adjacent food service establishment a revocable sidewalk cafe with alcohol permit to occupy a portion of adjacent city right-of-way to place tables and chairs, planters and windscreens adjacent to the tables and chairs in conjunction with selling and consuming food and alcoholic beverages, provided the following terms and regulations are met:
 - (1) *Regulations:*
 - a. Sidewalk cafes shall not unreasonably interfere with the view, access to, or use of property adjacent to said street.
 - b. Sidewalk cafes shall not be permitted in or directly adjacent to property zoned exclusively for residential purposes.
 - c. Sidewalk cafes shall not unduly obstruct pedestrian movement nor diminish the safety of the general public.
 - d. Sidewalk cafes shall not be attached to or cause damage to the street or sidewalk or to trees, benches, landscaping, or other objects lawfully located in the right-of-way.
 - e. In compliance with chapter 42 of this code, a clear path shall be maintained along the full length of the sidewalk for general pedestrian use. The pedestrian travel area shall not include trees, bushes, walls, parking meters, fire hydrants, tree grates or any other fixtures permanently located in the right-of-way.
 - f. All signs must conform to the City of Marquette's sign requirements.
 - g. The immediate area of the cafe shall be maintained free of litter and debris.
 - h. Tables, chairs, portable signs and other equipment used in the operation of the cafe shall be removed daily at the close of business.
 - i. Hours of operation of the sidewalk cafe shall not be later than 11:00 p.m.
 - j. The sidewalk cafe permit issued in accordance with this article shall be prominently displayed.
 - k. The operator of the sidewalk cafe shall take whatever steps are necessary to procure the appropriate license from the Michigan Liquor Control Commission if he or she intends to serve alcoholic beverages in the sidewalk cafe area and shall comply with all other laws and regulations concerning the serving of alcoholic beverages in the State of Michigan.
 - l. The sidewalk cafe area shall be separated from pedestrian traffic by an approved barrier, which can consist of planters, railings and other similar materials. The barrier shall be removed daily at the close of business. All barriers used for sidewalk cafes serving alcoholic beverages shall also conform to Michigan Liquor Control Commission Regulations.
 - m. A sign reading "No Food or Beverage Allowed Beyond Railing" shall be posted at a conspicuous location within the sidewalk cafe.
 - n. All alcoholic beverages to be served at sidewalk cafes shall be prepared within the adjacent indoor establishment that serves food and/or alcoholic beverages, and alcoholic beverages shall only be served to patrons seated at tables. The drinking of alcoholic beverages by a

member of the public while a patron at a sidewalk cafe within the confines of the sidewalk cafe area shall not be construed as a violation of any ordinance controlling open containers in a public area.

- o. Sidewalk cafes serving alcohol shall be continuously supervised by employees of the establishment.
 - p. To be eligible to apply for a sidewalk cafe, the adjoining restaurant or food service business from which the sidewalk cafe extends must provide a full-service menu for the on-site consumption of food.
- (2) *Notice.* Notice to the adjacent property owners or occupants on both sides of the applicant's property shall be required before issuing a permit. Proof of this notice shall be provided to the city by the applicant prior to the issuance of a permit.
 - (3) *Fee.* Prior to the issuance of a permit, a fee in an amount established by resolution of the city commission shall be paid to the city clerk.
 - (4) *Insurance.* The permittee shall show proof of and maintain comprehensive general liability insurance acceptable to the city, including naming the city as an additional named insured.
 - (5) *Food service establishment.* Food service establishment shall be defined in accordance with its meaning in the Food Law of 2000, as amended, MCL 289.1101.
 - (6) *Duration.* Permits shall be for the period of May 1 to October 31 for the year in which granted, and cafes shall not operate outside of this period.
 - (7) *Display.* A permit shall only be valid if displayed in a manner visible to the public.
 - (8) *Permit revocation.* Any permit may be revoked by the city clerk upon a finding that the occupancy does not meet the standards of this Code, any other provisions of this Code, or other applicable law or regulation, or that the right-of-way is needed for other street or utility purposes. Upon such revocation, the fee paid for any period after termination of street occupancy fee shall be refunded.
 - (9) *Appeal.* Persons who are refused a permit or have had their permit revoked may request in writing a hearing on that determination before the city manager or designee. The decision of the manager may be appealed to the city commission. Requests for a hearing or an appeal must be made within five days of the questioned decision.
 - (10) *Violations.* Any person who operates a sidewalk cafe without a permit or who shall violate any of the provisions of this section shall be responsible for a municipal civil infraction.

Section 4. Chapter 30-Law Enforcement, Article II, Municipal Civil Infractions, Section 30-25; Fines is hereby repealed.

New Section 30-25; Fines and Sanctions is hereby adopted:

Sec. 30-25. – Fines and Sanctions.

The sanction for a violation which is a municipal civil infraction shall be a civil fine in the amount as provided by this Code, plus any costs, damages, expenses and other sanctions, as authorized under PA 236 of 1961, as amended, and other applicable laws.

- (1) Unless otherwise specifically provided by this Code, the civil fine for a violation shall be \$50.00, plus costs and other sanctions, for each infraction.
- (2) Increased civil fines may be imposed for repeated violations by a person of any requirement or provision of this Code. As used in this section "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision (i) committed by a person within any 6-month period (unless some other period is specifically provided by this Code) and (ii) for which the person admits responsibility or is determined to be responsible. Unless otherwise specifically provided by this Code, the increased fine for a repeat offense shall be as follows:
 - a. The fine for any offense which is a first repeat offense shall be \$100.00, plus costs.
 - b. The fine for any offense which is a second repeat offense or any subsequent repeat offense shall be \$500.00, plus costs.

Section 5. Chapter 34-Peddlers, Solicitors and Transient Merchants, Article II- Peddlers, Solicitors, is Hereby Amended by Adding New Section 34-24 - Civil Infraction:

Sec. 34-24. – Civil Infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

Section 6. Chapter 34-Peddlers, Solicitors and Transient Merchants, Article III, Transient Merchant: Amend Descriptions in Section 34-52, Definitions; Section 34-54, Same-Application; 34-55, Issuance; voidability; 34-57, Operation of business; and 34-59-Waiver; And Add New Section 34-60, Civil Infraction:

Sec. 34-52. – 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:

Transient merchant means any person engaging temporarily in a retail sale of goods, wares, or merchandise in any place in the city and who, for the purpose of conducting such business, occupies any land, building, room or structure of any kind including trucks, railroad cars, and other transportation equipment. Any person who has engaged in such business for a period of less than six months shall be deemed to be a transient merchant.

Sec. 34-54. – Same – Application.

Any person desiring to engage in business in the city as a transient merchant shall apply in writing to the office of the city clerk to be licensed as a transient merchant.

- (1) Such application shall include as a minimum the applicant's name, birth date, driver's license or state ID card photocopy, residence address, written permission from the owner of where he intends to do business, the kind of business, a federal employer's ID number, if any, and a state sales tax license number, if any.
- (2) Included with such application shall be certificates showing proof of the following kinds of insurance, where applicable, in the amounts as currently established or as hereafter adopted by resolution of the city commission from time to time:
 - a. Product liability insurance.
 - b. Worker's compensation.
 - c. Premises liability insurance.
- (3) Such application shall be accompanied by a license fee in an amount as currently established or as hereafter adopted by resolution of the city commission from time to time.

Sec. 34-55. - Issuance; voidability.

- a) Upon receipt of the license fee, but in no case sooner than seven days nor more than 15 days after the filing of the application, the city clerk shall issue the applicant a license as herein provided.
- b) Such license shall be voided at any time by written notice to the city clerk by a duly authorized law enforcement officer observing a violation of this article during the operation of the transient merchant's business.

Sec. 34-57. - Operation of business.

At all times during the business operation of a transient merchant, there shall be prominently displayed any warranties covering any of the goods, wares, or merchandise being offered for sale. If there are no such warranties, a sign to that effect shall be prominently displayed.

Sec. 34-59. – Waiver.

The city commission may, at its discretion and upon written request, waive any or all of the requirements of this article.

Sec. 34-60. – Civil Infraction.

An individual who violates any portion of this article is responsible for a municipal civil infraction.

Section 7. Chapter 35-Mobile Food Vending, is Hereby Repealed.
New Chapter 35-Mobile Food Vending, is hereby adopted:

Chapter 35 - MOBILE FOOD VENDING

Sec. 35-1. - Reserved.

Sec. 35-2. - Definitions.

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

Brick and mortar restaurant shall mean a business which is on the city's tax rolls and which provides a public seating area, and whose normal business includes the preparation and sale of food and/or beverages.

Food cart shall mean a mobile food vending unit propelled by human power alone, which has been specifically designed or used for mobile food vending and in which food or drink is not prepared on the premises.

Food trailer shall mean any vehicle without motive power that is designed to be drawn by a motor vehicle and is specifically designed or used for food vending operations.

Food truck shall mean a vehicle propelled by an engine which has been specifically designed or used for mobile food vending.

Mobile food vending shall mean vending, serving, or offering for sale food and/or beverages from a mobile food vending unit; or vending, serving, or offering for sale food and/or beverages prepared for consumption in a mobile food vending unit; may include the ancillary sales of branded items consistent with the food, such as a tee shirt that bears the name of the organization engaged in mobile food vending.

Mobile food vending unit shall mean any motorized or non-motorized vehicle, trailer, or other device designed to be portable and not permanently attached to the ground and in which food or drink is prepared for direct consumption through service on the premises or elsewhere.

Operate shall mean all activities associated with the conduct of business, including set up and take down and/or actual hours where the mobile food vending unit is open for business.

Prepackaged and non-perishable food means any food or beverage which is not capable of supporting rapid and progressive growth of microorganisms which may cause food infections; and which is packaged in a hermetically sealed container designed to keep the contents free of contamination by microorganisms and maintain the commercial sterility of its contents after thermal processing. The term shall include packaged candy, gum and confections and bottled or canned water or soft drinks, if the package, bottle or can includes a manufacturer's quality assurance date. In no case shall the term include fresh or processed meats, poultry, seafood, dairy products, eggs, or fresh fruit and vegetables.

Vendor shall mean any individual engaged in the business of mobile food vending; if more than one individual is operating a single mobile food vending unit then vendor shall mean all individuals operating such mobile food vending unit.

Sec. 35-3. - License required.

No vendor shall engage in mobile food vending without a license from the city clerk authorizing such vending. The city clerk shall prescribe the form of such license and application for such license. All licenses shall be prominently displayed on the mobile food vending unit. No vending through a mobile food vending unit of food and other human consumables shall be permitted unless it meets the definition of mobile food vending as defined by this chapter.

Sec. 35-4. - Exceptions to permit.

Mobile food vendors that are only operating in association with a special event licensed under a City of Marquette Special Events Permit will be addressed through that licensing process.

Sec. 35-5. - Duration; nontransferability.

Licenses or permits may be issued by the city clerk for the city business license year. Any license issued under this chapter is nontransferable.

Sec. 35-6. - Application.

Every vendor desiring to engage in mobile food vending shall make a written application to the city clerk for a license or permit under this chapter. The applicant shall truthfully state, in full, all information requested by the city clerk. The application for a license shall be on forms provided by the city clerk and shall include the following information:

- (1) Name, signature, phone number, email contact, driver's license copy, and address of the applicant.
- (2) A list of the food products offered for sale and a description of preparation methods.
- (3) A description of and information on the mobile food vending unit including size.

- (4) Information setting forth the proposed hours of operation, intended areas of operations, plans for electrical access, wastewater disposal, and trash disposal.
- (5) Copies of all applicable licenses and/or permits issued by the Marquette County Health Department.
- (6) Proof of all insurances required by the city including a proof of comprehensive liability with limits of no less than \$1,000,000.00 combined single coverage which names the city as additional insured.

Prior to a license being issued for a mobile vending unit, the unit must be approved by the Marquette Fire Department. If applicable, applicants will be required to provide satisfactory proof of a propane inspection, conducted by a certified inspector.

Sec. 35-7. - Fees.

An application for a license under this chapter shall be accompanied by a fee in the amount established by resolution of the city commission. There shall be no proration of fees. Fees are non-refundable. No one shall hire or subcontract such vendors in an attempt to evade the provisions of this chapter.

Sec. 35-8. - Residential vending by permission.

In residential areas not identified by city commission resolution as vending locations, mobile food vending is permitted on a case-by-case basis. Following a review of proposed vending times and activities, approval may be given by the chief of police.

Sec. 35-9. - Requirements.

Any vendor engaging in mobile food vending shall comply with the following requirements:

- (1) May only operate during hours established by city commission resolution.
- (2) If operating on city-owned or controlled property, may only locate on property identified under city commission resolution.
- (3) Mobile food vending unit shall not exceed 36 feet in length or nine feet in width.
- (4) Provide appropriate waste receptacles at the site of the unit and remove all litter, debris and other waste attributable to the vendor on a daily basis.
- (5) The customer service area for mobile food vending unit shall be on the side of the street that faces a curb, lawn, or sidewalk when parked. No food service shall be provided on the driving lane side of the truck or vehicle.
- (6) Mobile food vending units utilizing public parking spaces or parked on public streets shall conform to all applicable parking regulations, including depositing an appropriate sum of money into parking meters as required, and shall not hinder the lawful parking or operation of other vehicles.
- (7) No food shall be displayed outside of a mobile food vending unit.
- (8) While operating on city-owned or controlled property, shall not provide or allow any dining area within ten feet of mobile food vending unit, including but not limited to tables and chairs, booths, stools, benches, and stand up counters.
- (9) When extended, awnings for mobile food vending units shall have a minimum clearance of seven feet between the ground level and the lowest point of the awning or support structure.
- (10) Shall not operate on city-owned or controlled property within one block of a city-sanctioned or authorized street fair, public festival, farmers market or event being conducted without authorization from the event sponsor.
- (11) Shall not use external signage, bollards, seating or other equipment that is not contained in the vehicles. Signage is only permitted when physically part of the mobile food vending units. No separate freestanding signs are permitted.
- (12) Shall not use any flashing or blinking lights or strobe lights; all exterior lights over 60 watts shall contain opaque, hood shields to direct the illumination downward.
- (13) Shall comply with all other city ordinances; specifically, all operations related to vending must comply with and are subject to enforcement of section 22-30 (noises) of the Marquette City Code of Ordinances.
- (14) Shall comply with all applicable federal, state and county regulations.
- (15) A mobile food vending unit may not be left unattended.
- (16) A mobile food vending unit on city-owned or controlled property shall be removed during the hours stipulated under city commission resolution.
- (17) Any power required for the mobile food vehicle located on city-owned or controlled property shall be self-contained and shall not use utilities drawn from the city-owned or controlled property.
- (18) Mobile food vending units on private property may use electrical power from the property being utilized with prior written authorization of the power customer.

- (19) Power cables or similar devices shall not be run across any city street or alley, and shall not be run on the ground across or within pedestrian walkways or areas.
- (20) Mobile food vending units parked on city-owned or controlled property shall not be parked within 150 feet of any entrance to an existing, brick and mortar restaurant during the hours when such restaurant is open for business to the public, unless written permission, a copy of which must be provided to the city, is first given by the restaurant owner.
- (21) Vendors may not represent the granting of a license under this chapter as an endorsement by the city.
- (22) At any time, such mobile food vending unit shall be at least 25 feet from all intersections and driveways.

Sec. 35-10. -- Reserved

Sec. 35-11. - Impoundment.

Any equipment associated with food vending that is not in compliance with this chapter and left on public property may be impounded at the owner's expense.

Sec. 35-12. - Other licenses or permits.

A license or permit obtained under this chapter shall not relieve any vendor of the responsibility for obtaining any other permit, or authorization required by any other ordinance, statute or administrative rule.

Sec. 35-13. - Revocation.

The license or permit may be voided at any time by written notice to the city clerk. By a duly authorized law enforcement officer observing a violation of this chapter, a violation of any federal, state or local regulation, or a situation that is adverse to the protection of the public health, safety, and welfare. A license may also be revoked if it is discovered that an applicant has made a false statement on their application. Immediately upon such revocation, the license shall become null and void.

Sec. 35-14. - Complaints; appeals.

If a written complaint is filed with the city clerk alleging a mobile food vendor has violated the provisions of this chapter, the city clerk shall promptly send a copy of the written complaint to the vendor together with a notice that an investigation will be made as to the truth of the complaint. The vendor shall be invited to respond to the complaint and present evidence and respond to evidence produced by the investigation. If the city clerk or designee, after reviewing all relevant material, finds the complaint to be supported by a preponderance of the evidence, the complaint shall be certified. A Mobile Food Vending License can be revoked or suspended in compliance with Sec. 12-40 and 12-41 of this code.

Sec. 35-15. - Appearance tickets.

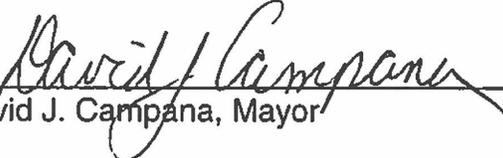
The fire chief, fire inspector, police chief and sworn officers of the police department, or such other officials as designated by the city manager are authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Michigan law. Appearance tickets shall be in such form as determined by the city attorney and shall be in conformity with all statutory requirements.

Sec. 35-16. - Civil infraction.

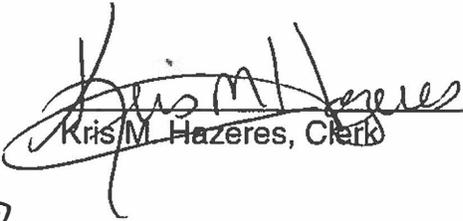
A vendor who violates this chapter is responsible for a civil infraction and subject to a fine of \$500.00 per day.

Section 8. Publication

This Ordinance shall take effect ten days after adoption, but not before publication.



David J. Campana, Mayor



Kris M. Hazeres, Clerk

Adopted: May 14, 2018

Published: May 17, 2018