

ORDINANCE NO. 160

**AN ORDINANCE TO REGULATE THE SALE OF
OUTDOOR MERCHANDISE WITHIN
THE CITY AND FOR OTHER PURPOSES**

WHEREAS, the City of Goshen has no regulations concerning the sale of outdoor merchandise;

WHEREAS, the anticipated growth of the City warrants that regulations for outdoor sales of merchandise be implemented at this time; and

WHEREAS, the City Council of the City of Goshen deems it advisable to establish regulations regarding outdoor sales of merchandise within the City of Goshen.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GOSHEN:

SECTION 1. OUTDOOR SALES RESTRICTED. It shall be unlawful for the occupant of a building within a commercial zone to sell, store or display merchandise outdoors on the lot or tract occupied by such building except as permitted by this ordinance.

SECTION 2. DEFINITION OF DISPLAY. For purposes of this ordinance, a display is defined as an area set up to sell, store or display outdoor merchandise, which may consist of a rack or racks; a vending machine; a storage container, such as a freezer for ice or a cage to store propane tanks.

SECTION 3. RESTRICTIONS. An occupant of a building within a commercial zone may establish a non-temporary display to sell outdoor merchandise subject to the following restrictions:

- A. Outdoor displays may only be established on one side of the building.
- B. If located in the front of the building:
 - 1. The length of the display cannot occupy more than ten percent (10%) of the horizontal measurement of the front elevation;
 - 2. The depth of the display shall not exceed four (4) feet;
 - 3. No more than two types of merchandise may be included in the display (for example, a vending machine for drinks and a cage for propane tanks); and,
 - 4. The display must not interfere with public passage or the otherwise normal flow of pedestrian or vehicular traffic.
- C. If located somewhere other than in the front of the building:
 - 1. The length of the display cannot occupy more than fifteen percent

- (15%) of the horizontal measurement of that side of the building;
2. The depth of the display shall not exceed four (4) feet;
 3. No more than four types of merchandise may be included in the display (for example, a vending machine for drinks, a cage for propane tanks, ice machine and DVD rental); and,
 4. The display must not interfere with public passage or the otherwise normal flow of pedestrian or vehicular traffic.

SECTION 4. TEMPORARY OUTDOOR SALES, STORAGE OR DISPLAY OF MERCHANDISE. It shall be unlawful for the occupant of a building to sell, store or display merchandise outdoors temporarily in any manner other than as permitted in the previous section without first obtaining a permit therefor in compliance with the provisions of this ordinance.

A. Any signage proposed to be displayed by the applicant must comply with the Sign Ordinance. [See Sign Ordinance No. 156 as well as any amendments thereto.]

B. An application for a permit will be filed with the office of Recorder. The following shall be included in such application:

1. A sketch of the area to be occupied in sufficient detail to indicate the following:

- i. Size of the display;
- ii. Proposed access;
- iii. Parking;
- iv. Location of any vending cart, truck, other temporary structure or proposed display area;
- v. Location of any proposed utility or sanitation connection;
- vi. Location of any flammable or other hazardous materials;
- vii. Location of any proposed sign; and
- viii. Location of all existing or proposed structures.

2. The applicant must demonstrate adequate facilities to dispose of all trash or other waste generated by the temporary outdoor sale, storage or display.

3. The applicant shall document ownership of, a leasehold interest in, or the consent of the owner or lessee of the property to be occupied.

4. Each application shall be submitted with the fee established by the Goshen Fee Ordinance.

5. The applicant is required to post the permit prior to displaying such

merchandise outdoors

C. In each calendar year, the aggregate total number of days for which a temporary outdoor sales, storage or display permit is granted shall not exceed thirty (30) days per lot or tract.

D. The applicant must demonstrate there will be adequate parking for the existing uses as well as the proposed temporary outdoor sales, storage or display.

E. All trucks, tents or other structures, including associated parking, must be located on asphalt, concrete or equivalent surface unless the applicant can demonstrate no adverse effect on drainage, access, or the intent of this ordinance as determined by the planning commission.

F. The outdoor location must not interfere with public passage or the otherwise normal flow of pedestrian or vehicular traffic.

G. The Recorder may require an applicant to obtain written approval from the appropriate city official, including, but without limitation, the building inspector or fire marshal, whenever, in the opinion of the Recorder, the proposed outdoor location presents potential risks to persons or property sufficient to warrant such additional review.

H. The outdoor location may not be on an adjacent public sidewalk.

I. A person other than the occupant of a building may not engage in the temporary outdoor sale, storage or display of general merchandise on the lot or tract occupied by a building.

J. If an applicant seeks to have a Farmers' Market, which shall be defined as a group of three or more persons seeking to sell fresh, locally grown produce, such application shall comply with all the requirements stated herein but may be allowed for up to six months out of each year.

SECTION 5. GARAGE SALES. An occupant of a residence in any zone may hold a garage sale or yard sale which may only last two consecutive days and may be held no more frequently than once a quarter.

SECTION 6. EXISTING DISPLAYS. Any display existing as of the adoption of this ordinance that is not in compliance with these regulations shall be considered non-conforming, but shall be permitted to remain until there is a new occupant, the occupant shall remove the display for a period of thirty (30) days or the occupant shall undertake to make revisions to it, such as changing the container or the merchandise offered.

SECTION 7. ENFORCEMENT. Failure to comply with any section of this ordinance shall be punishable by the penalties prescribed herein, per day that said violation exists. Each day shall constitute a separate and punishable offense. After notice to the offending party and a hearing before the City Council, a business violating this ordinance may lose its business by majority vote of the Council. A person convicted of a violation of this ordinance shall be punished by a fine not exceeding \$1,000.00, or double such sum for each repetition thereof. If the violation is, in its nature, continuous in respect to time, the penalty for allowing the continuance thereof is a fine not to exceed \$500.00 for each day that the violation is unlawfully continued. If a violation of this ordinance is also a misdemeanor under state law, the penalty for the violation shall be as prescribed by state law for the state offense. Violations of this ordinance that are continuous with respect to time, are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

SECTION 8. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivision, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

PASSED AND APPROVED this 9th day of October, 2018



Max Poye, Mayor

ATTEST:



Sharon Baggett, City Recorder

APPROVED AS TO FORM:



Charles L. Harwell, City Attorney

ROLL CALL

Names Of Those Voting YEA

Paula Anderson
Brian Buell
Cathy Oliver
Dick Seddon

Absent

Andy Bethell
Lanny Samuels

Names Of Those Voting NAY