

ORDINANCE NO. 471

Vendor License

AN ORDINANCE OF THE CITY OF MACKAY, CUSTER COUNTY, STATE OF IDAHO; A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, STATING THE PURPOSE; PROVIDING DEFINITIONS; DEFINING EXCEPTIONS; REQUIRING A LICENSE; PROVIDING FOR LICENSE APPLICATION; PROVIDING FOR LICENSE FEES; REQUIRING ISSUANCE AND EXHIBITION OF LICENSE; LIMITING LOCATION OF OPERATION; REQUIRING REMOVAL OF TRASH; HOLD BLAMELESS CLAUSE; PROVIDING FOR PENALTIES; DEEMED SEVERABLE; DISPENSING WITH RULE TO PUBLISH; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MACKAY, CUSTER COUNTY, IDAHO:

SECTION 1: The City of Mackay finds that in order to protect the safety, health and welfare of the residents of the City of Mackay as well as to promote the continued success of established businesses and merchants in the City of Mackay while encouraging free enterprise and stable economic growth for the community hereby enact this Ordinance in accordance with Idaho Code §50-307, "Cities shall have authority to levy and collect a license fee on any occupation or business within the limits of the city and to regulate the same by ordinance. All such fees shall be uniform in respect to the classes upon which they are imposed."

SECTION 2: The City of Mackay hereby repeals Ordinances #465 – Vendor License in its entirety.

SECTION 3: This Ordinance does not alleviate anyone wishing to sell any goods or services within the City Limits of the City of Mackay from obtaining any and all permits or licenses required by laws of the State of Idaho. It is the responsibility of the retailer to identify and comply with these laws.

SECTION 4: DEFINITIONS:

Event Identification is a number issued by the Idaho State Tax Commission recognizing the activity as an Event and providing the Promoter-Sponsor with an Event Number, information, and instructions to help them conduct their specific type of event

Promoter-Sponsor is the individual, persons, organization, etc. who organizes and or promotes an Event.(see Promoter-Sponsored Events)

Promoter-Sponsored Events an event where two or more retailers sell or exchange their products and any related services. Some examples of promoter-sponsored events include bazaars, festivals, swap meets, flea/farmer's/summer markets, gun shows, fairs, or organized yard sales not held at the seller's residence.

Retailers can be businesses, individuals, or nonprofit organizations that sell, or make it known that they sell, a product or related service. A retailer is someone who does any of the following: (IC §63-6310)

- (a) Every seller who makes any retail sale or sales of tangible personal property
- (b) Every person engaged in the business of making sales for consumption
- (c) Every person making more than two (2) retail sales of tangible personal property during any twelve (12) month period
- (d) Persons conducting both contracting and retailing activities
- (e) Charges admission
- (f) Charges a fee for the use of tangible personal property or a facility for recreation

Vendors retailers engaged in temporary retail sales, festivals, events, and trade shows, food cart vendors etc.

SECTION 5: EXEMPTIONS:

The provisions of this Ordinance shall not apply to the following:

A. Sale of **farm or garden products** by the person(s) who grows or produces those products.

B. Sales of **household and personal products** including but not limited to Watkins, Mary Kay, Avon, Schwan's, etc. made by way of internet/phone solicitation, parties, or door-to-door sales.

C. **Garage, Yard**, or similar sales by individuals at their place of residents or place of business *not exceeding two (2) separate sales in one (1) calendar year*, not to exceed three (3) days each in duration. Sale items shall not include business inventory or items which have been purchased for resale at another similar sale.

D. Retailers selling at an **Event**, if the Event Promotor or Sponsor has obtained an Event Identification (ID) Number from the Idaho State Tax Commission provided that the individual *retailer/seller does not participate in selling at more than two (2) separate Identified Events in one (1) calendar year.*

Example: (1) The Mackay Summer Market obtains an Event ID# from the State Tax Commission. This Event is considered as one (1) Event.

(2) The Mackay Winter Fest Committee obtains an Event ID# from the State Tax Commission. This Event is considered as one (1) Event.

(3) The Mackay FFA obtains an Event ID# from the State Tax Commission for the Christmas Bazaar. This Event is considered as one (1) Event.

Any individual, person, group, organization, etc. can sell their items or products at any combination of the **TWO (2)** above identified Events (1), (2), (3) and **are not required** to purchase a City of Mackay Vendor License in accordance with the requirements of this Ordinance.

Any individual, person, group, organization, etc. desiring to sell their items or products at all **THREE (3)** of the above identified Events (1), (2), (3) **ARE REQUIRED** to purchase a City of Mackay Vendor License in accordance with the requirements of this Ordinance.

Any individual, person, group, organization, etc. desiring to sell their items or products at any of the above identified Events and who have sold or are selling at other Events not located within the City Limits of the City of Mackay shall comply with the State of Idaho two (2) limit rule to receive this exemption.

E. Fundraising sales, Not EVENTS as identified in "D" above by the school or school groups, local service groups, or non-profit organizations, Boy Scouts and Girl Scouts, Fire Department, EMS, American Legion, Churches, etc. or any non-profit organization exempt from taxation as provided by 26 USC §501 and meeting all the requirements for exemptions provided by 26 USC §503.

Example 1: The Mackay BBQ is held each year as a City Activity. It is **not an Event** as defined by State Tax Law as **No Vendors are Allowed**. Only those identified in "E" above are allowed to sell at the BBQ. And are not required to have a Vendor License under State Tax Law.

Example 2: The City of Mackay Independence Day Celebration is **not an Event** as defined by State Tax Law as **No Vendors are Allowed as part of the celebration which is covered by City of Mackay insurance**. Only those identified in "E" above are allowed to sell as part of the celebration activity and are not required to have a Vendor License. The City recognizes the School and School groups only to sell at this activity.

However, this does not preclude another **Promoter-Sponsor** from obtaining permission from the City of Mackay, to use part of the Kid's Park not associated with the Independence Day Celebration for a **separate Event** .which must comply with the requirements of this Ordinance .

Example 3: Any of those identified in "E" above may hold a fundraising activity on their own to raise money for their group. These fundraisers would be limited to two (2) fundraisers in a one (1) year period. Including participating in a Promotor Sponsored Event.

SECTION 6: It shall be unlawful for any person, organization, or business, etc. to offer goods or services for rent or sale or offer for purchase goods from a stand or vehicle open to street access, which has a temporary or portable business located in a stand, vehicle, wagon, trailer, etc. within the incorporated limits of the City of Mackay whether located on public or private property without a license issued by the City of Mackay to engage in said business. A separate license is required for each Vendor Stand or space even if operated by the same owner or organization.

SECTION 7: Requestors for a City of Mackay Vendors License shall complete FORM COM-VL-1-12.22 and present it along with the required fee to the City Clerk. An annual Vendor License for sales within the incorporated limits of the City of Mackay is fifty dollars (\$50) and must be renewed annually. The form is available on line at www.mackayidaho-city.com or from the City Clerk during regular business hours.

SECTION 8: The license issued to the licensee shall be exhibited in a conspicuous place if the licensee is using a vehicle or structure in the business otherwise it must be displayed on the outside of the sales area during hours of operation.

SECTION 9: No licensee shall operate on any public street or sidewalk, or parking area of the City; nor shall he/she/they be permitted to operate in any congested area where the operations might impede or inconvenience the public unless authorized in the license to do so. This license does not preclude the issuance of special operation permits by the City or the granting of permission to sell and/or operate on private property. City license is required to operate on private property if within the City limits.

SECTION 10: All trash or debris accumulated within twenty (20) feet of any vending stand or vehicle shall be collected by the vendor and deposited in trash containers. All vendors selling food or beverages must provide trash receptacles adjacent to or as part of their stands. Vendors are responsible for trash removal. If vendor fails to remove trash, they will be subject to the fine stated in Section 12 and will not be issued a Vendor's License in the future.

SECTION 11: The Applicant agrees to abide by the stipulations set forth in this Ordinance and shall defend, indemnify, and hold the City of Mackay, its officers, officials, employees, and volunteers harmless for any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in conjunction with the performance of this license.

SECTION 12: Any person, business, firm, company, or corporation who shall violate any of the provisions of this Ordinance shall be guilty of an infraction and upon conviction shall be punished by a fine of one hundred dollars (\$100.00) plus court costs. Each day licensee is in violation shall be considered a separate violation.

SECTION 13: Provisions of this Ordinance shall be deemed severable and the invalidity of any provision of this Ordinance shall not affect the validity of the remaining provisions.

SECTION 14: This Ordinance shall be in full force and effect immediately upon its passage and publication according to law, the Council dispensing with the rule that ordinances must be read on three (3) different days as provided by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MACKAY,
CUSTER COUNTY, IDAHO, THIS 13TH DAY OF DECEMBER 2022.

CITY COUNCIL OF THE CITY OF MACKAY, CUSTER COUNTY, IDAHO A MUNICIPAL
CORPORATION OF IDAHO

By: Wayne Olsen
Wayne C. Olsen, Mayor

ATTEST: Michelle Teninty
Michelle Teninty, City Clerk