

## **City of Salem**

### **Outdoor Merchandise Facility Regulations**

**Purpose:** The purpose of these regulations is:

1. To provide safe, adequate access along the public right-of-way for persons of all abilities;
2. To ensure that there is safe, adequate passage along the entirety of the public right-of-way for public safety and emergency response vehicles and personnel;
3. To control for the sale and display of merchandise outside, but in close proximity, to a business with a traditional storefront within the downtown;
4. To optimize the growth and income of retail businesses by allowing and encouraging the use of portions of the public right-of-way through an equitable review and permitting process; and
5. To enhance the visual appeal of the right-of-way through thoughtful consideration of materials, placement, and overall appearance of the outdoor vending facility.

**Definitions:**

1. **Accessible Passage:** A path along the pedestrian way that shall measure at least four feet (4') in width and be clear of all obstructions, including but not limited to, cobble stones, bollards, street trees, light posts, signs, display/vending facilities, planters, and mailboxes.
2. **Business Frontage:** The length of the façade of the business facing a public right-of-way. When there are multiple businesses along a shared façade, the business frontage shall be measured by the linear length of façade that is dedicated to the business that is applying for the outdoor merchandise facility. The frontage shall not include multiple businesses for the purpose of increasing the size allotment of the facility.
3. **Directly Adjacent:** For the purpose of these regulations, this term shall mean the public land that runs along the business frontage and that is immediately outside the business' façade without crossing a vehicular travel path (pedestrian mall) or street/road.
4. **Eligible Owner:** An owner of a business that is located in the Central Business (B5) Zoning District and has ground floor frontage on a public way.
5. **Merchandise:** The goods, wares, and services sold, and/or offered on an outdoor vending facility. Merchandise offered on the outdoor vending facility must be that which is primarily sold inside the business. The Licensing Board shall make the determination as to whether or not the merchandise offered on the outdoor vending facility is that which is primarily sold inside the store.
6. **Outdoor Vendor:** any eligible owner who sells or attempts to sell or offers merchandise to the public from an outdoor location.
7. **Outdoor Vending Facility:** The structure on which an eligible owner presents merchandise for display and sale not within an enclosed building and on the public way. An outdoor vending facility may include, but is not limited to, a stand, table, non-motorized stationary or non-stationary cart or pushcart, a clothing rack, or tent not within an enclosed building.

**Regulations:**

1. **Effective Date:** These regulations shall come into full force and effect on August 1, 2019.
2. **Compliance with City Regulations and Ordinances:** The Licensing Board shall not issue a permit for an outdoor vending facility if a business is not compliant with all other municipal regulations and ordinances.
3. **Signage on Outdoor Vending Facility:** The eligible owner may place signage identifying the business' name on the outdoor vending facility. The signage shall not exceed three (3) square feet in area and shall be accessory or subordinate to the primary purpose of the facility, which is the vending of merchandise.

4. Use of Outdoor Vending Facility: Facilities shall only be used to display and vend merchandise and items from the business to which it is associated. Vending facilities may not be used as signage; large A-Frame signs may not be placed on top of an outdoor vending facility and used to direct pedestrians to the business. Businesses may seek permission for an A-Frame sign through the City's Design Review Board. A-Frame regulations may be found in [Section 4-60](#) of the Sign Ordinance.
5. Allowable Merchandise: The merchandise that is displayed and/or sold on an outdoor vending facility shall be limited to the primary merchandise sold by the business in the store. The facility shall not be used for additional storage space for merchandise that does not fit in the store nor shall it be used for merchandise that is not regularly sold in the store year-round. If the store operates seasonally, i.e. it is not open year-round, the facility shall only be used for merchandise regularly sold in the store when it is in operation as determined by the Salem Licensing Board.
6. Maximum Size Exemption: If the footprint of the Outdoor Vending Facility is less than or equal to two (2) square feet of area and is placed directly adjacent to a business' entrance thereby not impeding upon the public way and safe, accessible passage (i.e. at least four feet (4') of unobstructed path, see definition above) of same, then these regulations do not apply.
7. Permit Required: Outdoor vending facilities are allowed by permit only. Permits are issued by the Salem Licensing Board upon approval of a submitted application that is accompanied by a payment of a \$25.00 application fee. Each permit issued under these regulations shall continue in force from the date of issue until the 31<sup>st</sup> day of December of the year in which the license is issued.
8. Permit Renewal: An eligible business owner who is seeking to renew his/her/their permit may submit a letter stating that the outdoor vending facility has not been altered or changed in terms of type, size, and/or location from the previous year's approval and will continue to adhere to all the requirements pertaining to outdoor merchandise facilities in lieu of the full application package. The fee for a permit renewal shall be \$25.00. If the eligible business owner is making any changes to the previously-permitted facility, he/she/they shall submit a full application package with \$25.00 fee to the Board.
9. Proof of Liability Insurance: Proof of adequate liability insurance must be submitted with the application. The certificate of liability insurance must indicate:
  - a. A minimum limit of \$1,000,000 for each occurrence;
  - b. The outdoor vending facility is included in the liability coverage; and
  - c. The City and the Salem Licensing Board are additional insureds.
10. Permitted Locations: An outdoor vending facility shall be allowed as follows:
  - a. Downtown: An outdoor vending facility shall only be permitted in the Central Development (B5) Zoning District – see [zoning map](#).
  - b. Proximity to 'brick and mortar' business: The facility must be located directly adjacent to the business to which it is an accessory use and shall be placed within ten (10) feet of a main entrance.
11. Number of Outdoor Vending Facilities: A business may request a permit for one outdoor facility per frontage on a public way.
12. Ticket Booths: There shall be no sales booths on public property unless (1) the entity who is operating said booth is an eligible business owner as defined herein and (2) the Licensing Board has authorized such a sales booth.
13. Permitted Size: The dimensions of business frontage, width of sidewalk, location of impediments (i.e. trees, light posts, bollards, etc.) will dictate the type of outdoor facility for which a business may seek a permit. In recognition of the varying properties, sites, and conditions in the B5 zoning district, the following size limitations are presented to provide outdoor vending facility options for businesses:
  - a. Table: A table shall be limited to a maximum size of four (4) feet by eight (8) feet and a maximum height of 36-inches.

- b. Cart: A non-motorized facility with two or four wheels that shall be limited to a maximum size as follows:

Height	84-inches	Height shall be measured from ground to top of cart. Merchandise and ancillary signage, including any structural elements needed to display and/or secure merchandise or signage, placed on top of the cart shall not exceed a maximum height of 36-inches beyond the height of the flat table portion of the cart.
Width	52-inches	Width shall be measured at the widest point of the cart and shall include the wheels/spokes and similar that protrude beyond the main structure of the cart itself.
Length	84-inches	Length shall be measured at the longest part of the cart and shall include handles and any other functional or design elements that extend beyond the main structure of the cart itself.

- c. Tent: A tent shall not exceed 100 square feet of area (i.e. 10' by 10') and shall not exceed 11-feet in height as measured from grade to the peak of the tent. The vertical clearance from grade to the lowest part of the tent shall be no less than 6-feet, 8-inches (80-inches). The eligible owner may only utilize the space under the tent for vending of merchandise. Merchandise shall not extend beyond the boundaries of the tent.
- d. Clothing Racks: If a business is seeking a permit for a clothing rack(s) only, the length of the racks shall not exceed 12 linear feet and shall not encroach upon a neighboring business' frontage. The rack(s) shall be limited to a maximum height of five (5) feet and width of 18-inches.
- e. Multiple Business Façades: A business with multiple façades (i.e. a business that has frontage on two or more public rights-of-ways) shall not combine their allotment of space to create a larger space for displays than normally allowed.
14. Impermanence of Outdoor Display or Vending Facility: The facility may not be bolted into the ground or sidewalk or fastened to streetlights, trees, bollards, or any other street furniture. The business owner shall be responsible to ensure adequate measures are in place to prevent facilities from moving during inclement weather. All facilities shall be removed from the public right-of-way during non-business hours.
15. Compliance with Accessibility Regulations and Codes: An outdoor vending facility shall comply with the regulations of the Americans with Disabilities Act (ADA), including but not limited to the allowance of a minimum 48-inch unobstructed path of travel from the exterior border of the facility to the interior edge of the curb of the adjacent street, or to any curb, ramp, or crosswalk, or to any fixed obstruction (i.e. streetlight pole, street tree, planting area, planter pot, parking meter, newspaper rack, mailbox, etc.) at all times. The facility shall not obstruct access to parking areas or driveways or encroach on landscape areas including lawn areas. The applicant/owner of the outdoor vending facility shall be responsible for compliance with applicable local and state codes regarding accessibility and egress and shall demonstrate said compliance via the required site plan diagram, which is page 2 of the application form.
16. Compatibility with Character of Downtown: An outdoor vending facility shall be compatible with the character of the adjacent buildings and areas as follows:
- a. Materials: The facility shall be well-constructed of good quality, durable materials and shall be maintained in such a manner as to enhance the downtown area. It shall be organized and maintained in an orderly and attractive manner at all times. Utilizing uncovered card tables, cardboard cartons, plastic milk crates, plywood boxes, and/or pallets is not permitted. Freestanding, clothed mannequins, dress forms, and similar, in good condition, are permitted – see 'Maximum Size Exemption'.

- b. Sound Amplification: No sound amplification device, musical instrument, or sound reproduction device shall be operated or used in conjunction with an outdoor vending facility within the permitted area.
  - c. Lighting: Any outdoor lighting associated with the outdoor vending facility shall be reviewed and approved by the Licensing Board.
  - d. No Open Flame: There shall be no use of an open flame for display, illumination, or other purpose on the outdoor facility.
  - e. Solid Waste and Recycling: There shall be suitable containers for the collection of trash and recycling if the outdoor vending facility is utilized for the sale of merchandise and/or food items. If the facility is solely for merchandise display purposes, then such accommodation is not mandatory.
17. Electricity: All electrical needs of the outdoor vending facility shall be supplied by the eligible business owner. City resources shall not be used to provide electrical service to the facility and/or the merchandise thereon. The business owner shall ensure that any electrical cords that are on the public way are secure and do not present hazards to pedestrians and vehicles.
18. Existing Businesses in the Witch City Mall: Businesses in the Witch City Mall (the ‘Mall’) that
- a. Do not have exterior business frontage on a public way; and
  - b. Have been in operation inside the Mall with no exterior business frontage on a public way since January 1, 2016; and
  - c. Have been continuously (i.e. year-round or seasonally) placing an outdoor vending facility on the public way since at least January 1, 2016, may place one (1) outdoor vending facility around the East India Fountain. The Clerk of the Licensing Board shall designate the space the business may use. If at any time the business ceases to operate, is sold, and/or moves to a location that has exterior business frontage on a public way or outside of the Mall, the business shall no longer be allowed to place an outdoor vending facility in its designated space around the fountain. However, the owner of an existing business in the Witch City Mall that is benefiting from this provision may pass the business to an immediate family member (i.e. a spouse or child/children) upon death. In such an instance, the family member who inherits the business may retain the grandfathering benefits provided in this provision until such time the business ceases to operate, is sold, and/or moves to a location that has exterior business frontage on a public way or outside the Mall.

A business that meet the requirements in this regulation shall submit information documenting compliance with 18 a, b, and c to the Clerk of the Licensing Board with the \$25.00 fee. Upon confirmation of compliance by the Clerk, he/she/they shall issue the permit and designate the business’ outdoor vending location around the fountain. Each permit issued shall continue in force from the date of issue until the 31<sup>st</sup> day of December of the year in which the license is issued.

19. October 2019 Dispensation for Existing Businesses: Existing businesses that place an outdoor vending facility that is non-conforming to these regulations in regard to size of the facility on the public way during the month of October 2019 may continue to do so in the same manner that they have historically sold merchandise during this month, provided that they continue to meet all of the other requirements of this regulation, including the following:
- a. Continue to provide the minimum accessible pathway of four (4) feet as defined here in under ‘Definitions’;
  - b. Vend or sell items from the outdoor facility, not simply using the facility for signage purposes;
  - c. Comply with the maximum signage allowance of three (3) square feet on the outdoor vending facility as required herein; and

- d. Maintain the facility completely within the bounds of the business' frontage, i.e. does not encroach upon abutting business' frontage.
- 20. Enforcement: If the Licensing Board makes the determination that a business is violating these regulations, the Board and/or its designee, shall provide notice to the business that there is a violation and the nature thereof. Within 48-hours of notification the business owner may choose (1) to modify the outdoor vending facility to meet these standards or (2) to remove the facility entirely. If the business owner does not rectify the violation within a stated period of time, the outdoor vending facility shall be removed by the Board's designee.
- 21. Violations and Fines: Violations of these regulations may be punishable by a fine of \$100.00 per day, revocation of the permit, and/or denial of future outdoor vending permit applications.