

## ORDINANCE NO. 03-5254

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY ADDING SECTIONS TO BE NUMBERED 19-401 THROUGH 19-409 PROVIDING FOR VENDING BY PERMIT IN CERTAIN PARKS AND RECREATION FACILITIES; ESTABLISHING THE CONDITIONS FOR APPLICATION AND ISSUANCE OF PERMIT; AND REQUIRING A PERMIT FOR CERTAIN SPORTS CAMPS OR SERVICES.

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:**

*Section 1.* That the Billings, Montana City Code be amended by adding Article 19-400 with sections to be numbered 19-401 through 19-408, to read as follows:

### **“ARTICLE 19-400. VENDING IN PUBLIC PARKS AND RECREATION FACILITIES**

#### **Sec. 19-401. Definitions.**

For the purposes of this article, the following definitions shall apply:

*City Administrator* means the City Administrator or his designee.

*Stand* means any group of tables, showcase, bench, rack, pushcart, wagon, or any other wheeled-vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the state department of motor vehicles, used for the displaying, storing or transporting of articles offered for sale by a vendor.

*Vendor* means any person or business engaged in the selling, or offering for sale, of food, beverages, or other merchandise from his person or from a stand in allowed public parks and recreation facilities.

#### **Sec. 19-402. Concession Permit required.**

It is unlawful for any person or business to sell or offer for sale, any food, beverages or merchandise in any park or recreation facility within the City without first obtaining a permit for each vending location. Vending will only be allowed in certain public parks and recreation facilities as determined by the City Administrator. Permits shall be issued only after approval of a vendor's application by the City Administrator and after payment of a permit fee. The fee shall be sufficient to cover all direct and indirect costs and expenses of the City

and shall be established from time to time by the City Administrator and finally approved by City Council resolution.

### **Sec. 19-403. Exempt activities.**

The following activities require Park Use Permits and are exempt from the provisions of this article:

1. Youth sports organization.
2. Adult sports organizations.
3. Special events.

### **Sec. 19-404. Application for permit.**

The application for a Concession Permit to operate in a public park or recreation facility shall include, on a form prescribed by the City, the following information:

1. The name, home and business address of the applicant, and the name and address of the owner, if other than the applicant, of the vending business or stand to be used in the operation of the vending business.
2. A description of the type of food, beverage, or merchandise to be sold.
3. A description and sketch to scale of the proposed specific location of the vending business.
4. A description and photograph or drawing of any stand to be used in the operation of the business, and the number of persons who will be continually attending the stand.
5. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, in the amount of seven hundred and fifty thousand dollars (\$750,000.00) per claim and one and one-half million dollars (\$1,500,000.00) per occurrence as outlined in Section 2-9-108, MCA, conditioned to hold the City harmless from any damage or injury whatsoever to any person or property of any description, however owned, by reason of the vendor's failure or neglect to conform with any provision of this article or other ordinance of the City and further protecting the vendor and the City from all claims for damages to property and bodily injury, including death, which may arise from products liability and operations under or in connection with the permit. Such insurance policy shall name the City as an additional insured and shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days advance written notice to the City. In addition, the vendor shall indemnify the City against any and all liability, loss or damage that the City may suffer as a result of claims, demands, costs or judgments resulting from the vendor's vending in City parks or recreation facilities.

### **Sec. 19-405. Issuance of permit.**

Not later than fifteen (15) days after the filing of a completed application for a Concession Permit, the applicant shall be notified by the City Administrator of the decision on the issuance or denial of the permit. The City Administrator shall consider fire hazards, traffic and vision obstructions, pedestrian movement, and other safety hazards, and shall consider the standards set forth in this Article in determining whether to grant a permit. If the issuance of the permit is approved, the City Administrator shall issue the permit. If the permit is denied, the applicant shall be provided with a statement of the reasons therefore, which reasons shall be entered in writing on the application. The applicant shall be entitled to appeal the denial of the permit to the City council as provided in section 19-409. A permit issued pursuant to this section is valid for a period of six (6) months from the date of issuance. The permit shall specify the location from which vending is permitted and shall only be valid for vending at that location.

### **Sec. 19-406. Prohibited conduct.**

No vendor shall:

1. Leave any stand unattended;
2. Store, park or leave any stand overnight in any park, facility or public land;
3. Sell food or beverages for immediate consumption unless he or she has available for public use his or her own or a public litter receptacle which is available for his or her patrons' use;
4. Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the vendor;
5. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the stand;
6. Set up, maintain or permit the use of any table, crate, cart, rack, or any other device to increase the selling or display capacity of his or her stand, where such items have not been described in his or her application;
7. Sound or permit the sounding of any device which produces a loud and raucous noise, or use or operate any loud speaker, public address system, radio, sound amplifier or similar device to attract the attention of the public;
8. Vend without the insurance coverage specified in section 19-404(5) .

### **Sec. 19-407. Signs.**

No signs shall be permitted at any vending location except for non-illuminated signs that are attached to the stand and do not exceed nine (9) square feet in size. Only signs posting prices or identifying the name of the product or the name of the vendor are allowed.

**Sec. 19-408. Sales of a service, sports camp or instructional camp.**

No person shall sell a service or organize a sports camp or instructional clinic in a City park without first obtaining a Park Use Permit and Sale of Service Permit. All applications for permits must be received at least fifteen (15) calendar days before the start of the event. A damage deposit of \$500 per event is required. The damage deposit or a pro-rata share will be refunded within 10 business days after the event if no damage occurred.

**Sec. 19-409. Denial, suspension and revocation.**

- A. The City Administrator may deny any application for a permit and may suspend or revoke the permit of any vendor for any of the following causes:
  1. Fraud or misrepresentation contained in the application for the permit;
  2. Fraud or misrepresentation made in the course of carrying on the business of vending;
  3. Conduct of the licensed vendor in such manner as to create a public nuisance, or constitute a danger to the public welfare, morals, health and safety, including, but not limited to, fire hazards, safety hazards and obstructions to vision, traffic or pedestrian movement;
  4. Failure to comply with the provisions of this article.
  5. Failure to comply with all conditions of the permit.
- B. From the date of denial, suspension or revocation, the vendor shall have ten (10) days in which to submit a written notice appealing such denial, suspension or revocation to the City council. The City council shall hear and rule on the appeal no later than the second regularly scheduled meeting of the council following filing of the notice of appeal."

**Section 2. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 3. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 4. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 25th day of August, 2003.

PASSED, ADOPTED and APPROVED on second reading this 8th day of September, 2003.

**CITY OF BILLINGS**

By \_\_\_\_\_  
Mayor

ATTEST:

By \_\_\_\_\_  
City Clerk