

Consolidated Land Development Regulations – Article V. Sec.5.6

4. Itinerant merchant activities. Definitions.
 - a. *Itinerant merchant (IM)* - Any person, organization, or other entity selling, displaying, promotion, or giving away merchandise, products, or services at a location external to a regularly licensed structure, on either a temporary or permanent basis. Each such person must obtain his own itinerant merchant license (IML) from the community development department of the city; no two or more such persons may share or operate under the same itinerant merchant license. Any person who claims to be an employee of an itinerant merchant but appears to community development staff to be operating as an independent merchant must be able to demonstrate to the satisfaction of the community development director that he meets the legal definition of employee, otherwise he will be classified as a separate IM. The term "itinerant merchant" covers a business operator on his own property when he engages there in outside sales/ display of goods/services that are not part of the normal business activities covered by his local business tax receipt.
 - b. *Sales or display or activity area* - The area used for the sales, display, or activities of special event, itinerant merchant, or other products, materials, services, etc. This area is to be measured from the outer-most item, display, edge of structure, or edge of business activity. The community development director or his designee shall measure and determine the boundaries and size of this area.
 - c. *Open area* - The area of a property that is not occupied by a structure or other physical phenomena which would make impractical the use of such area for an itinerant merchant set-up, activities, or related parking. The community development director or his designee shall measure and determine the boundaries and size of this area.
 - d. *Non-profit vendor* - A vendor who has obtained and presents from the United States Internal Revenue Service a currently valid certification that it has been awarded for at least two years charitable tax-exempt status under Section 501(c)(4) or comparable (as respects charitable status) Section of the IRS Code. Even if a for-profit enterprise proposes to donate the proceeds of its sales to a non-profit or charitable cause, such a procedure shall not qualify it as a nonprofit vendor. For purposes of the itinerant merchant provisions of this Code, the only qualified nonprofit vendors are those charitable vendors either domiciled in the City of South Daytona or elsewhere in Volusia County provided that these latter organizations ordinarily offer their services to residents of South Daytona.
 - e. *Motorhome* - For purposes of the itinerant merchant section of this Code, the term "motorhome" includes any vehicle, recreational vehicle, truck, van, or trailer, etc. whether motorized or not, which contains sleeping facilities.
5. *Itinerant merchant activities. Other provisions.* With the exception of certain events specially approved by the city council, itinerant merchant activities shall be limited to the major sanctioned racing event period at the Daytona International Speedway commonly known as "Spring Bike Week." For that event the following regulations shall apply and shall supersede all other regulations and/or ordinances pertaining to activities regulated under this section:

- a. An itinerant merchant, with proof of authorization from the person or entity that has legal control of the property for a business use (generally the owner or the lessee), which the itinerant merchant selects for location, may apply for an itinerant merchant license (IML) except that no such merchant may engage in an activity which is not a permitted use in the zoning district (e.g. tattooing). Each itinerant merchant must obtain his own IML separate from any other itinerant merchant because there shall be no more than one itinerant merchant permitted for each IML--i.e. no two or more itinerant merchants may operate under the same IML. The city may hold the license-holder and the property-owner or lessee responsible for the itinerant merchant's compliance with the requirements of this section. However, in order for a business to be allowed to have itinerant merchants on its property the following conditions must be met: (1) The business must have a current city local business tax receipt issued at least six months prior to the special event, (2) The business must have been in operation for at least six consecutive months prior to the special event, (3) The business must have been operating for at least 130 days during the aforementioned six-month period. (4) In order for a "day" to qualify, the business must operate at least four hours during that day.
- b. An owner of a business domiciled at a business general commercial zoned property along Ridgewood Avenue may obtain a "fee-free" itinerant merchant license enabling him to sell or provide for free his own goods and services at outside locations on his property provided that he is ordinarily allowed to sell same indoors under his regular local business tax receipt, with the condition that in order for a business to do so the following requirements must be met: (1) The business must have a current city local business tax receipt issued at least six months prior to the special event. (2) The business must have been in operation for at least six consecutive months prior to the special event. (3) The business must have been operating for at least 130 days during the aforementioned six-month period. (4) In order for a "day" to qualify, the business must operate at least four hours during that day. There is one exception to this rule: No such business shall be allowed to sell food/beverages outdoors unless it is ordinarily allowed to sell same under its regular local business tax receipt.
- c. An owner of a business domiciled at a business general commercial zoned property along Ridgewood Avenue may obtain an IML enabling him to sell outdoors goods and services not ordinarily covered for indoor sale under his regular local business tax receipt. In this case, the usual itinerant merchant license fee shall be payable except that no such fee is payable if the goods or services are provided free of charge. However, in order for a business to do so the following requirements must be met: (1) The business must have a current city local business tax receipt issued at least six months prior to the special event. (2) The business must have been in operation for at least six consecutive months prior to the special event. (3) The business must have been operating for at least 130 days during the aforementioned six-month period. (4) In order for a "day" to qualify, the business must operate at least four hours during that day.
- d. The application shall be submitted to the community development department of the city on forms supplied by that department. The completed application must be approved by the department and the associated fee(s) paid before issuance of an IML by the department.

- e. Each itinerant merchant license issued must be posted at the business location so that it is readily visible to the passing public.
- f. Merchandise displayed and sold by itinerant merchants shall be of a special event nature, which generally means retail goods and services for special event patrons. Merchants dispensing food and beverages outdoors must be qualified by the city as non-profit unless said dispensing is conducted on a property where the property-owner or tenant has a local business tax receipt which allows the regular sale of food and beverages, and must meet requirements as set forth in (a) and (b) of these regulations, in which case the vendor may be either a for-profit vendor or a non-profit vendor. Where fences are required to delineate outdoor alcohol serving areas, as well as parking areas for automobiles, motorcycles and the handicapped, a four- (4) foot high orange construction fence shall be erected to enclose the event area. All fencing must be in place prior to the site inspection for the event. No non-profit food/beverage vendor may dispense alcoholic beverages.
- g. Such temporary displays and sales may be conducted only during the major sanctioned racing event periods at the Daytona International Speedway known as Spring Bike Week and Biketoberfest. The term "racing event period" is defined as the scheduled racing activity plus registration and practice; but in no case shall any one event period exceed ten consecutive days. In addition to the event period itself, the period of pre-event on-site setup, including any parking or storage, of vendor paraphernalia shall be limited to a maximum of 48 hours, and the period of post-event take-down or demobilization, including any parking or storage, of vendor paraphernalia shall be limited to a like maximum of 48 hours. If there is any question as to what constitutes the "major sanctioned racing event" or the dates thereof, that determination shall be made by the City Council of the City of South Daytona.
- h. Such temporary displays and sales may only be permitted in a business general commercial zoning district located adjacent to U.S.1 (Ridgewood Avenue). The special event activities may not extend beyond the business general commercial zone on the sponsoring property, with the exception that customer parking may be located on adjacent property in a different zoning district if permitted by city ordinance.
- i. No activity area shall be located within a public street; except that if the street has been officially closed, a city affiliated non-profit organization may locate an activity on the closed street. No activity area shall encroach upon space needed for customer parking or pedestrian or vehicular traffic flow.
- j. Each itinerant merchant shall be permitted to have no more than one sign, which may be a pennant or banner not exceeding the approximate dimensions of five feet in length and three feet in width.
- k. Up to 50 percent of the open area of a property may be used for special event displays, tents, structures, sales, activity areas, etc. At least a significant portion of the remaining open area must be made available for customer parking. In the case of strip shopping centers, the term "property" shall mean the entire strip shopping center; shopping center management must agree to the itinerant merchant proposal of any individual business in the shopping center; once 50 percent of the open area of the shopping center is obligated for itinerant merchant activities, no other business in the shopping center may arrange for

an itinerant merchant license. The boundaries and size of the activity areas and parking areas shall be determined by the community development director or his designee. Properties may be either owned, rented, or leased by the permittee. Where contiguous properties for itinerant merchant use are under the control of the same party, for purposes of determining open area, activity area, and parking area, the community development department may consider them to be a single property. The term "contiguous" in this context does not include the meaning "across the street from."

- l. Prior to the actual start of the major sanctioned racing event period, each party desiring to sponsor itinerant merchant activities on property he controls must reach agreement with the city as to the overall sizes and locations of activity and parking areas on that property.
- m. The number of itinerant merchants per property is only limited by whatever number may be comfortably accommodated on 50 percent of the open area of that property without jeopardizing the health, safety, or welfare of the public and allowing for adequate customer parking and pedestrian and vehicular access and circulation. The calculation of 50 percent of the open area of the property will be made by the community development director or his designee, but there is no specific minimum or maximum square footage allowed per itinerant merchant.
- n. Where more than one itinerant merchant set-up is located on a property, the itinerant merchant set-ups must be located in a "clustered" manner such that they are no more than ten feet apart. A single cluster shall consist of two or more itinerant merchant set-ups separated from one another by no more than ten feet, but separated from any other cluster by a minimum distance of approximately 15 feet. By prearrangement with the community development department, and depending upon the number of itinerant merchants and the size of the open area available, properties may be permitted more than one cluster.
- o. No semi-trailers used exclusively for storage of merchandise may be parked on a property used for itinerant merchant activity except to the rear of a principal building so that said vehicle is not readily visible from U.S.1 (Ridgewood Ave.).
- p. If a business ordinarily serves food and beverages at a specific outdoor location on the subject property, the business may continue to do so under its regular local business tax receipt without the need for an IML.
- q. The licensee's operating hours for itinerant merchant activities shall be limited to between 8:00 a.m. and 12:00 midnight, inclusive, with the exception that food and beverage vendors may open for business at 7:00 a.m.
- r. A motor home used in his business by an itinerant merchant may be temporarily parked on the licensed premises during the special event period under the following conditions:
 1. No such vehicle shall be parked on the front (Ridgewood Ave.) side of the property, unless it can be parked at a setback of 250 feet or more from the street right-of-way.
 2. All such vehicles shall be parked in designated activity areas so as to avoid occupying space set aside to customer parking, unless the community development department determines, in any specific case, that such an arrangement is not practical.

3. No related generators or engines shall be operating after 9:00 p.m. The only exception to engine operation being when the vehicle is being driven from one location to another.
 4. There shall be no "dumping" from such vehicles. The term "dumping" shall mean the on-site disposal, removal or discharge to the ground of waste or other material from vehicle holding tanks, etc.
 5. Such vehicles shall only be occupied by persons responsible for guarding and protecting merchandise and displays and their traveling companions. No more than four occupants per motor home shall be allowed. An updated list of these persons shall be maintained by the property-owner and made available to city officials upon request.
 6. No more than one such motor home per itinerant merchant per property shall be allowed.
 7. At the time of issuance of the itinerant merchant license, the applicant shall indicate whether or not a motor home is to be parked on the property---if affirmative, the city shall issue a sticker or tag showing that said motor home has been authorized, and the sticker/tag is to be posted on the motor home; the city shall charge a sticker/tag fee of \$100.00 for Bikeweek (10 day event) and \$40.00 for Biketoberfest (4 day event) that is in addition to the fee for the IML.
 8. Any violation of provisions "R.1 through R.7" above shall be grounds for the city to require removal of the motor home.
- s. Each applicant for an itinerant merchant license shall submit an application which includes:
- i. Name and address of itinerant merchant and property owner.
 - ii. Signature of itinerant merchant and property-owner.
 - iii. A legible sketch of the site, including the location of activity areas. Any significant on-site deviations from the locations shown on the sketch must be approved by the community development department, otherwise such deviations will constitute sufficient cause for revocation of the IML.
 - iv. Type, size, and location of proposed signage.
 - v. The type of motor home, if any, to be parked on s site, including license tag number.
 - vi. Evidence of registration for sales tax collection for the itinerant merchant covered by the IML.
 - vii. Other information as may be required by the community development director to ensure compliance with this section.
- t. The permit fee per itinerant merchant license shall be a fixed fee of \$400.00, with the city council having the option to adjust that fee in future years. Only non-profit vendors and local businesses selling ordinarily allowed goods/services per the business tax receipt on their own property are exempt from the fee.

- u. No signs shall be displayed on utility poles or public right-of-way.
 - v. The permittee must comply with all applicable City Codes, including the Sign Code, except that no separate sign permit or sign fee shall be charged.
 - w. Itinerant merchant activities shall only be permitted on properties where an existing retail business facility is in operation under a regular city local business tax receipt.
 - x. Vendor installations shall be set back from the U.S. 1 right-of-way line (generally back edge of public street sidewalk) a minimum distance of five feet, except that in instances where the community development director determines that the vendor location is too narrow for a typical vendor setup, a minimum three-foot setback may be allowed.
 - y. Outside amplification of sound: Notwithstanding the provisions of Ordinance No. 94-23 (The "Noise Ordinance"), no sources of amplified sound (for example, speakers or live musicians) shall be allowed to emit "loud sound" outdoors at the following locations on properties adjacent to U.S. Highway #1 (Ridgewood Avenue) without prior authorization by the city council; either (whichever is farther away from the street right-of-way), (A) In the streetside yard between the U.S.-1 Highway right-of-way and any building, or (B) within 50 feet of the U.S.-1 Highway right-of-way. For purposes of this paragraph, the term "loud sound" means any amplified sound which can be heard by an average person located in or on a vehicle in the U.S.-1 Highway right-of-way in the vicinity of the subject property.
6. *Biketoberfest.* Itinerant merchant activities shall be permitted in the fall of each year during a four consecutive day period, as designated by the city council, for the special area-wide event commonly known as Biketoberfest. The same city regulations which apply to Bikeweek as set forth in subparts 4 and 5 of Part P shall also apply to Biketoberfest, except that the Biketoberfest event period shall be limited to four (4) consecutive days and the itinerant merchant license fee charged by the city shall be set at \$200.00, with the city council having the option to adjust that fee in future years.
7. #7 & #8 are not applicable to Bikeweek and Biketoberfest events.
9. *Outside amplification of sound.* The outside amplification of sound, produced in conjunction with the activities permitted under this article, is regulated by the applicable "noise regulations" found elsewhere in the City Code, with the exception of live outside amplified sound, which shall be regulated as follows:
- a. Prior permission must be obtained from the city council. Beforehand, the applicant shall provide the community development department with detailed information concerning the proposal in order that staff may assess it and provide a background report to the city manager and city council.
 - b. No such sound shall be made after 10:00 p.m.
 - c. The word "outside" in phrases such as "live outside amplified sound" shall include in its meaning a location that is not completely enclosed by such typical elements as walls, windows, roofs, and doors.

- d. If a noise complaint is filed with the city, the enforcement official shall promptly visit both the location of the complainant and the source of the sound to determine the validity of the complaint.
- e. If the complaint is determined to be legitimate, the enforcement official shall direct that the sound volume be promptly lowered to a level acceptable to the official; this notification shall be considered a "first warning". One such warning will be tolerated per day--if a second notification is required, it shall be in the form of a notice to "shut down" ("stop the music") for the remainder of the day.
- f. Only two "shut downs" will be tolerated per event (Bikeweek or Biketoberfest)--an instance constituting a "third shut down" will mean shutting down the amplified sound for the remainder of the event period.
- g. Five "warning notices" or three "shut-downs" during either any single event, or (cumulatively) any two consecutive events, shall result in city denial of an outside live amplified sound permit for the next following two special events (either Bikeweek or Biketoberfest), applicable to both the location and the sponsor.

10. *Enforcement.*

- a. *Agency responsible for enforcement.* The provisions of this article shall be primarily enforced by the community development department of the City of South Daytona, particularly by means of its code enforcement mechanism and personnel. The police department of the city shall assist the community development department as needed, particularly on matters that are not strictly of a zoning nature -- e.g. the police department shall issue citations for revocation of an itinerant merchant license.
- b. *Penalty provisions.* The penalties for violations processed through the city code enforcement mechanism and considered by the city code enforcement board shall be as specified in Chapter 162 F.S.

11. *Right to revoke or deny license.* The city manager or his designee shall have the power to revoke the itinerant merchant license and to prohibit the further conduct of any business within the City of South Daytona which violates the provisions of this section. The city manager or his designee shall give both the violator and the owner of the property where the violation took place at least 24 hours advance verbal or written notice of the date, time, place, and reason for the revocation hearing before the city manager or his designee. The city manager or his designee shall also have the power to deny the future issuance of an itinerant merchant license to any violator or for any property where there has been committed a violation of any provision of the Itinerant Merchant Regulations.