

ORDINANCE NO. 1950

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA AMENDING CHAPTER 28 OF THE BOZEMAN MUNICIPAL CODE, SALES TO ADD ARTICLE 3, MOBILE VENDING; ESTABLISHING LICENSE REQUIREMENTS AND FEES; ESTABLISHING OPERATING HOURS AND LOCATIONS; PROVIDING FOR ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 12 OF THE BOZEMAN MUNICIPAL CODE, BUSINESS LICENSING, TO REFERENCE THE NEW MOBILE VENDING REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City is authorized to regulate and prevent the use or obstruction of streets, sidewalks, and public grounds, and regulate and prohibit sales upon the streets, sidewalks and public grounds of the city pursuant to 7-14-4102, MCA; and

WHEREAS, mobile vending trucks contribute to the diversity of food and retail options within the city; and

WHEREAS, mobile vending trucks provide business opportunities for local entrepreneurs and encourage economic activity in the city; and

WHEREAS, it is in the interests of the city to establish guidelines for mobile vending operations to ensure the public health, safety and welfare of city residents and visitors.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

Legislative findings:

1. The primary purpose of the public streets and sidewalks is the use by vehicular and pedestrian traffic.
2. Mobile vending operations within the City provide economic opportunities to local entrepreneurs, add to a vibrant food and retail environment, and attract visitors and residents to engage in economic and social activities within the downtown and other commercial areas.
3. Reasonable, narrowly tailored regulation of street and sidewalk vending is necessary to protect the city’s interests in ensuring food safety, minimizing obstruction of sidewalks, and protecting against safety hazards on city rights of way to promote the health, safety and welfare of city residents and visitors.

Section 2

That the Bozeman Municipal Code be amended by adding a new definition to 1.01.030.A , as follows:

Health department. The term “health department” means the Gallatin City/County Health Department or any other health department created by the city commission pursuant to title 50, MCA.

Section 3

That 12.02.010 of the Bozeman Municipal Code be amended as follows:

Sec. 12.02.010. - Compliance required.

It shall be unlawful for any person, either directly or indirectly, to conduct any business or to use in connection therewith any vehicle, premises, machine, device, employee, or agent in whole or in part, for which a license, or permit, is required by any law or ordinance of this city, without a license, or permit being first procured and kept in effect at all such times as required by this chapter or other law or ordinance of this city; nor shall the issuance of a license entitle or authorize the applicant to open or maintain any business contrary to the provisions of this chapter or law.

In addition to the provisions of this chapter, “mobile vendors” as defined in 28.03.030 are subject to the provisions of chapter 28, article 3.

Section 4

That the Bozeman Municipal Code be amended by adding a new Article 3, Mobile Vending to Chapter 28, Sales, as follows:

ARTICLE 3. – MOBILE VENDING

28.03.010. – Purpose.

The purpose of this article is to provide for the regulation of street and sidewalk vending activities in downtown Bozeman and in certain zoning districts within the city in order to maintain safe and attractive rights of way while encouraging economic activity and diversity.

28.03.020. – Applicability.

The provisions of this article apply to mobile vendors as defined herein. This article does not apply to:

- A. Mobile vendors who dispense food from mobile vending units and that move from place to place and are stationary in the same location for no more than 15 minutes at a time, such as ice cream trucks. Such vendors must offer for sale only food and non-alcoholic beverages.
- B. Mobile caterers who are transporting and delivering, in motor vehicles, food and beverages to residential, business and industrial establishments pursuant to prearranged schedules and dispensing from the vehicles the items for the convenience of the personnel or occupants of such establishments.
- C. Mobile caterers who are hired for private catering purposes to serve guests of a catered event, so long as:
 - 1. The mobile caterer is parked entirely on private property;
 - 2. Service is limited to the guests of the catered event only; and
 - 3. No payment transaction shall occur for individual orders taken by the mobile caterer.

28.03.030. – Definitions.

- A. **Director** means the city’s director of community development.

- B. **Downtown business improvement district** means the Bozeman Downtown Business Improvement District created by Commission Resolution No. 4263 and Ordinance No. 1790.
- C. **Mobile** means the state of being in active, but not necessarily continuous, movement; capable of being moved and not permanently fixed or placed.
- D. **Mobile vending unit** includes:
1. A motorized vehicle from which a mobile vendor offers for sale or sells goods to the public; or
 2. A “sidewalk vending cart” as defined in 34.05.020; or
 3. A trailer that is pulled by a motorized vehicle and has no power to move on its own from which a mobile vendor offers for sale or sells goods to the public; or
 4. Any other mobile device or container from which a mobile vendor offers for sale or sells goods to the public.
- E. **Mobile vendor** means any person that sells or offers for sale goods from a mobile vending unit within the city. A transient merchant or itinerant vendor as defined in 12.01.010 is not a mobile vendor for purposes of this article.

28.03.040. – License required.

- A. **General.** It is unlawful for any person to operate within the city a mobile vending unit, as defined in this article, without having first obtained a mobile vending license. A separate license shall be required for each mobile vending unit. In addition to the provisions set forth in this article, all provisions of chapter 12, Business Licensing, shall apply to mobile vending businesses unless specifically noted in this article.
- B. **Mobile vending licenses.** The city may issue a mobile vending license for:
1. Mobile vending in all lawful locations throughout the city including within the boundaries of the downtown business improvement district; or
 2. Mobile vending in all lawful locations throughout the city excluding the downtown business improvement district.
- C. **Application; inspections.** A mobile vendor must complete and submit an application including a signage plan for a mobile vending business license to the Department of Community Development. Prior to issuance of a license, all required inspections by the city fire marshal and, if a food vendor, the health department shall be completed. A mobile vendor serving food must present to the city an approved health department license prior to issuance of a city license under this chapter.

- D. **Insurance.** The mobile vendor must provide proof of commercial general liability insurance with the application for mobile vending business license.
- E. **Fees.** Mobile vending business license fees shall be established by resolution of the city commission.

28.03.050. – Permitted locations. Mobile vendors may operate a mobile vending unit only in the locations described in this section. Mobile vending is prohibited in alleys.

- A. **Zoning districts where operation is permitted.** Subject to the provisions of this article, mobile vendors are permitted to operate mobile vending units in the following zoning districts as defined in 38.07.010:
 - 1. Commercial (B-1, B-2, B-2M, B-3)
 - 2. Industrial (M-1, M-2, B-P)
 - 3. Public Land and Institutions (PLI)
 - 4. Residential Emphasis Mixed Use (REMU)
 - 5. Urban Mixed Use (UMU)
 - 6. Historic Mixed Use (HMU)
 - 7. Residential Office (R-O)
- B. **Right-of-way designations where operation is prohibited.** Within the permitted zoning districts, unless otherwise excepted in subsection C or approved by the director of public works, mobile vending is prohibited on streets designated in the most recently adopted long range transportation plan as:
 - 1. Interstate; or
 - 2. Principal Arterial; or
 - 3. Minor Arterial; or
 - 4. Collector.
- C. **Exception for portions of downtown and midtown.** Notwithstanding the foregoing prohibitions, subject to the remaining provisions of this article mobile vendors are permitted to operate mobile vending units on either side of the following streets: Main Street between North Broadway Avenue and North 7th Avenue; Mendenhall Street between Rouse Avenue and North 7th Avenue; Babcock Street between South Wallace Avenue and South 4th Avenue; Rouse Avenue between Babcock Street and Main Street; South Willson Avenue between Main Street and Babcock Street; and North 7th Avenue between Main Street and Peach Street/Durston Road.

Nothing herein authorizes use of a designated state highway in contravention of state law.

D. Location on private property.

1. A mobile vendor must not operate on any private property without written permission from the property owner to do so and must leave the property if asked to leave by the property owner. A copy of the owner's written and notarized permission to operate in a specific location signed by the property owner shall be kept within the mobile unit at all times.
2. A mobile vending unit located on private property is subject to the same land use standards applicable to the property as if the unit was a permanent structure and may require approval pursuant to chapter 38.
3. A mobile vending unit may not be located on a private parking area unless the area will continue to provide the required off-street parking spaces and circulation for existing uses on the property.
4. The wheels of a mobile vending vehicle must not be removed.
5. Temporary seating, sandwich board signs and other temporary appurtenances may be allowed with permission of the property owner.

E. Operating in city parks and city property. The director of parks and recreation may authorize mobile vending in a city park pursuant to 26.02.050 notwithstanding the prohibition in subsection A of this section. Subject to subsection F of this section:

1. The parking commission may authorize mobile vending on a city-owned parking lot which is subject to the parking commission's authority.
2. The city manager may authorize mobile vending on any other real property owned by the city not otherwise prohibited by this article.
3. The library board of trustees may authorize mobile vending on the grounds of the public library.

F. Special event food vending. Mobile food vendors may vend from a location including public rights of way except as prohibited in subsection B of this section in a zone which is not otherwise approved for mobile food vending, including residential zones, under the following conditions:

1. In addition to the requirements of subsection D of this section, the owner of the property where such event will occur has invited the mobile food vendor to participate in a special event such as a community event, neighborhood block party, wedding, or birthday party, and mobile food vending is part of the approved special event activities.
2. In addition to the requirements of 28.03.060, the mobile food vending unit may not remain at the location for longer than the duration of the special event and while there must be located so as to avoid creating conflicts with pedestrian or motor vehicle traffic or creating other public safety problems.

3. Mobile vending from the public right-of-way in conjunction with a special event within a public park may be approved as part of the park reservation permit application for such event pursuant to 26.02.050.
4. A mobile vendor may operate on a public right-of-way prohibited in subsection B of this section if the mobile vending occurs pursuant to an approved public assembly permit.
5. Mobile food vendors operating pursuant to this exception to the location provisions of this article must comply with all other provisions of this chapter.

28.03.060. – Hours of operation.

- A. Mobile vendors are permitted to operate during the hours of 6:00 a.m. to 11:00 p.m., unless otherwise noted in this section.
- B. In B2 and B3 zoning districts, mobile vendors may operate from 6:00 a.m. to 2:30 a.m., except that on Main Street between Church Avenue and Grand Avenue mobile vendors may only operate from 6:00 a.m. to 10:00 a.m. and 9:00 p.m. to 2:30 a.m. Mobile vending for non-food retail is authorized between the hours of 2:00pm and 9:00pm on Main Street and Rouse Avenue immediately adjacent to Soroptimist Park.
- C. Notwithstanding subsections A and B, mobile vendors must comply with all posted parking time restrictions and the time restrictions in chapter 16, art. 6 (noise).

28.03.070. – Mobile vendor requirements.

The following regulations apply to all mobile vending operations whether on public or private property, unless otherwise stated in 28.03.050.D:

- A. **Compliance with laws.** In addition to the provisions of this chapter, the mobile vendor must comply with all other applicable local, state and federal laws, including but not limited to state motor vehicle licensing laws, motor vehicle maximum dimension standards established pursuant to state law, health department permitting requirements, and city requirements for use of public right-of-way. Loss of any required state or county permit or license will result in revocation of the mobile vending license in accordance with 28.03.080.
- B. **Safety hazards.** The mobile vendor acknowledges that the police and fire departments, or any authorized representative thereof, have the right to suspend operations or request the mobile vendor to relocate when the vendor is causing or contributing to an imminent public safety hazard.

- C. **Parking.** Mobile vending units are subject to and must comply with all applicable city parking regulations, including time limitations and ADA parking restrictions. Mobile vending units parked in the public right-of-way must be no more than 36 feet in length.
- D. **Vehicular traffic.** The mobile vendor may not operate the mobile vending unit in a manner that impedes vehicular traffic.
- E. **Pedestrian access.** The mobile vendor may not operate the mobile vending unit in a manner than impedes pedestrian access along the sidewalk or public right-of-way. The mobile vendor must set up and operate the mobile vending unit so as to maintain a clear pedestrian pathway along the public sidewalk at all times.
 - 1. Mobile vending units designed to be located on the sidewalk, such as carts, must first obtain an encroachment permit issued by the Department of Public Works pursuant to 34.05.130.
 - 2. A mobile vendor operating a mobile vending unit may not place any item, including chairs, tables, or signage on the sidewalk.
 - 3. A mobile vending unit may not be located such that its serving window or customer access door is adjacent to a tree, light pole, sculpture, bike rack, trash can affixed to the sidewalk, newspaper dispenser, publication rack, or any other permanently-mounted fixture on the sidewalk.
 - 4. Any obstructions of the public right-of-way deemed unsafe by the city or placed without proper approval will be promptly removed.
 - 5. A mobile vending unit may not be located on or adjacent to that portion of the sidewalk for which an exclusive use permit pursuant to 34.05.080 or a non-substantial encroachment permit for a sidewalk café pursuant to 34.05.050 has been issued and is actively being used.
- F. **Awnings.** Any canopies, awnings or any other attachments must be supported entirely by the mobile vending unit and may not touch the ground.
- G. **Trash.** Each mobile vending unit must be equipped with a portable trash receptacle attached to the mobile vending unit and available for use by the mobile vendor's customers. The mobile vendor is responsible for proper disposal of solid waste and waste water in the sanitation facility pursuant to local and state rules, regulations and laws. The mobile vendor must remove and dispose of all trash and refuse within 25 feet of the mobile vending of unit which were originally dispensed from the truck.
- H. **Lighting.** The mobile vendor may not use any flashing or blinking lights or strobe lights. The mobile vendor must comply with all requirements of 38.23.150.D.7. The mobile vendor may provide localized lighting on or in the mobile vending unit for the purpose of

illuminating the customer ordering area to ensure customer safety, for the purpose of food preparation, and for the purpose of menu illumination.

I. Signage.

1. Mobile vendors must submit a sign plan with the application for a mobile vending business license. Mobile vending units do not require a separate sign permit pursuant to chapter 38, article 28.
2. Mobile vendors may not use a sign that is prohibited by 38.28.030.
3. Signs may not block pedestrian facilities of the right-of-way and must be flush with the mobile vending unit.
4. Signs may not extend above the mobile vending unit.
5. Mobile food vending units may only display their menu on the side of the mobile vending unit designed to face the customers.
6. Mobile vendors may not hang or display merchandise or any item on trees, umbrellas, walls, or vend from other temporary structures located upon any public street, sidewalk, right-of-way or other public property.
7. No third party advertising is permitted on the mobile vending unit.

J. Public utilities. The mobile vending unit must be self-contained and may not connect to city water or power during operation while located on public right-of-way.

K. Fire abatement. At least one operational, tagged fire extinguisher shall be kept available and accessible as directed by the city fire marshal or designee.

L. Noise and nuisance; exhaust.

1. The mobile vendor must comply with the noise provisions of chapter 16, article 6 and all nuisance provisions of the Bozeman Municipal Code.
2. Portable generators must be securely affixed to the unit during operation.
3. Generators may not exceed a rating of 60 dBA pursuant to industry standard measurements.
4. Idling of a mobile vending vehicle is prohibited while preparing or serving food. Exhaust from a generator and all mobile vending operations including food preparation must be directed away from the service window and adjacent sidewalk.

M. Display of mobile vending business license. Mobile vendors must display visibly their current mobile vending business license from the city at all times. The licenses will be made available for inspection upon request by the city.

- N. **Sales only to pedestrians on the sidewalk.** Vendors are not permitted to sell, offer for sale, solicit or attempt to solicit or sell to occupants of any vehicle or to any person on a public street. A mobile vendor may only sell to persons on a sidewalk and may not sell directly or allow customers to access the mobile vending unit from a public street.

28.03.080. – Violations; enforcement.

- A. **License suspension or revocation.** The city manager may suspend or revoke a license when the licensee commits one or more of the following acts or omissions:
1. Failure to comply with any provision of this article or of chapters 12 or 38;
 2. Conducting the licensed activity in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or morals, or interfere with the rights of abutting property owners;
 3. Cancellation of the health department’s authorization for a mobile vending unit; or
 4. The securing of any license by fraud or misrepresentation, to specifically include false or incorrect information on the license application.
- B. **Procedure.** Should the city manager decide to suspend or revoke a license, the licensee will be given notice and an opportunity to respond following the procedures in 12.02.180, except that should the city manager determine the mobile vending unit or the mobile vendor’s operations present a safety hazard or require immediate remedy, the city manager may order the mobile vending unit removed immediately by local law enforcement or the code compliance officer.
- C. **Appeal.** Licensee will have the right to appeal the decision of the city manager by following the provisions of 12.02.190.
- D. **Violation constitutes a misdemeanor.** In addition to suspension or revocation under subsection A of this section, a knowing violation of this article constitutes a misdemeanor punishable as described in 1.01.210.

Section 5

Reporting.

By March 1, 2018, the City Manager must report to the City Commission on the efficacy of the regulations adopted pursuant to this Ordinance.

Section 6

Repealer.

All provisions of the ordinances of the City of Bozeman in conflict with the provisions of this ordinance are, and the same are hereby, repealed and all other provisions of the ordinances of the City of Bozeman not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 7

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this ordinance shall remain in full force and effect.

Section 8

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 9

Codification.

This ordinance shall be codified as indicated in Sections 2-4.


Section 10

Effective Date/Licensing.

This ordinance shall be in full force and effect thirty (30) days after final adoption. Any mobile vendor currently holding a city business license and wishing to conduct activities within


the area of the downtown business improvement district as such area is defined in this Ordinance after the Effective Date of this Ordinance must submit an application for a business license that authorizes vending in the downtown business improvement district and pay the fee for such as established by Resolution of the Commission for such license no later than thirty (30) days after the Effective Date.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 27th day of February, 2017.



CARSON TAYLOR
Mayor

ATTEST:



ROBIN CROUGH
City Clerk

FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 20th of March, 2017. The effective date of this ordinance is April 19, 2017.



CARSON TAYLOR
Mayor

ATTEST:



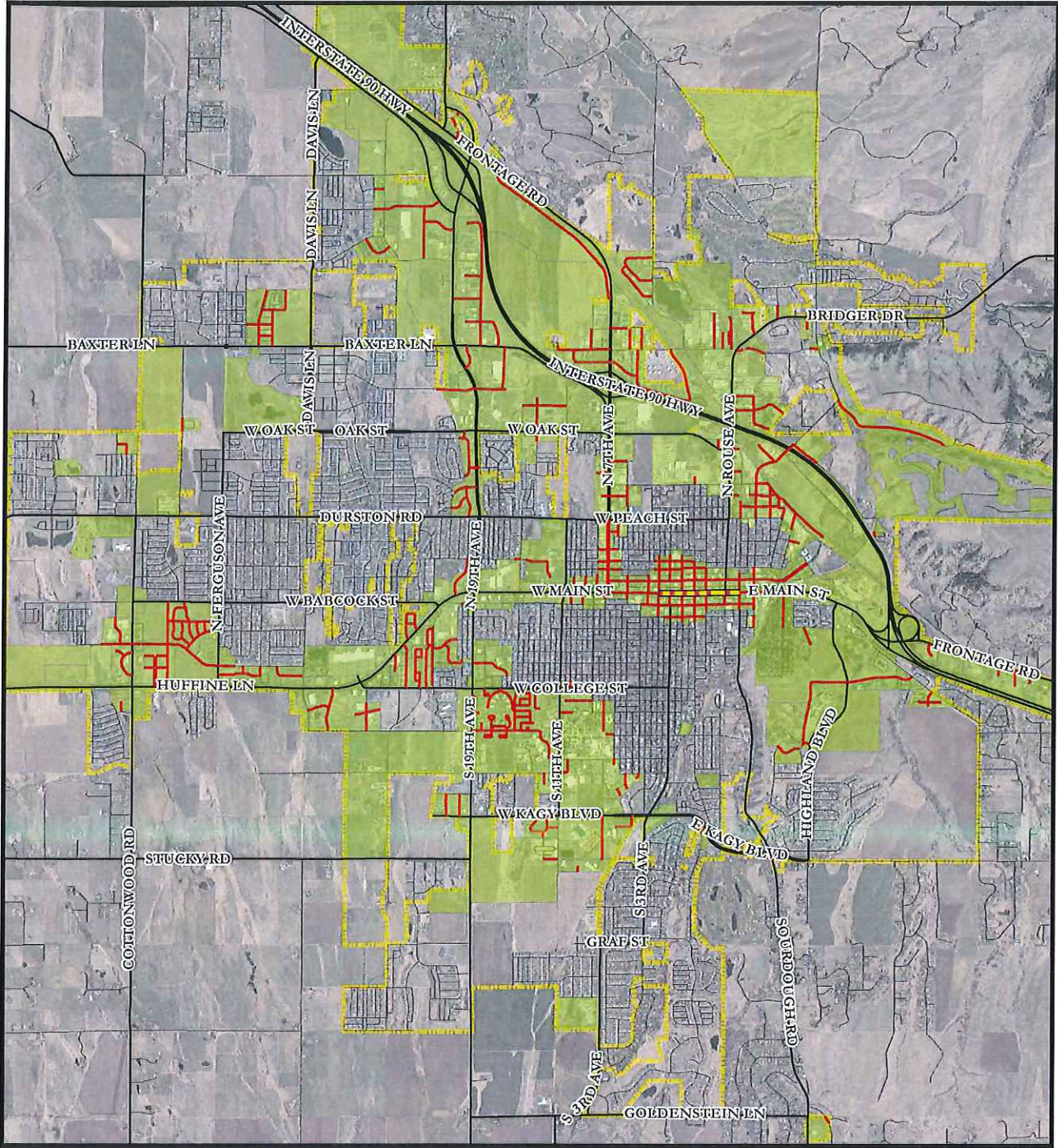
ROBIN CROUGH
City Clerk





APPROVED AS TO FORM:



GREG SULLIVAN
City Attorney

Bozeman Citywide Mobile Vending



-  Vending Prohibited b/w 10 A.M. and 9 P.M.
-  Available for Mobile Vending
-  Non-Residential Zoning Districts
-  City Limits








Map and Data Created by the
City of Bozeman
GIS Department

Intended for Planning purposes only.
Revised: 2/6/2017



Bozeman Downtown & Midtown Mobile Vending

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-  Mobile Vending Roads
-  Downtown/Midtown Commercial Districts
-  Zoning Districts
-  City Limits

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