

Chapter 11 Licenses and Miscellaneous Business Regulations

ARTICLE I. IN GENERAL

§ 11-101 Auctions

A. License Required.

No personal property, goods, and wares or merchandise shall be sold at auction in the city unless a license to do so is received from the City Clerk.

B. Issuance.

The City Clerk shall grant a license for such auction upon the completion of application and payment of such sum as shall be fixed therefor by the Common Council.

C. Form.

The application for an auction license shall require the following information:

1. The name, address and phone number of the applicant.
2. If the applicant is an agent, the name, address, and phone number of the person, firm, corporation or legal entity that he or she represents, and the names, addresses and phone numbers of all vendors participating in the application.
3. A description of the goods, wares or merchandise that the applicant will sell or trade in, along with a description of any vehicles or devices to be used by the applicant.
4. Address as to where the applicant proposes to conduct his or her auction.
5. The hours of the day and length of time that the applicant proposes to conduct business as described within the application.
6. Any other information as may be required by the city to properly and adequately review the application.
7. Name and address of auctioneer, and whether auctioneer holds an auctioneer license.
8. License Fee as defined in Section 11-102.

§ 11-102 License Fees.

BUSINESS TYPE	FEES					
	DAY	WEEK	MONTH	QUARTER	6 MONTHS	YEAR
AUCTION	\$10.00	\$25.00	\$75.00	\$150.00	\$350.00	\$650.00

§ 11-103 Prohibited Locations

It shall be unlawful to conduct an auction sale of personal property, good, wares or merchandise on any city street, sidewalk, or other public property.

§ 11-104 Exceptions.

The provisions of this chapter shall not be applicable to auction sales conducted by trustees or referees in bankruptcy, executors, administrators, receivers or other public officers acting under judicial process; nor to sales conducted for charitable purposes, to sale of real property at auction.

§ 11-105 Garage Sales.

A. Definitions; purpose.

A sale of goods of every name and nature belonging to the seller conducting the sale and which were acquired by said seller for its own use, whether or not such goods were actually used by such seller constitutes a garage sale, which type of sale is also commonly known as “house sale”, “lawn sale”, “porch sale”, “attic sale”, “barn sale”, etc. Such sales may not include goods, new or used, specifically acquired by the seller for resale.

B. Permit; fee.

There is no charge to conduct a garage sale in the City of Johnstown. Although, any person conducting a garage sale must first obtain a garage sale permit from the City Clerk.

C. Restriction on number of sale permits.

No more than two (2) such sales permits shall be issued at the same premises or to the same person in any one twelve (12) month period and only one (1) within a six (6) month period. Each sales permit shall be for the duration of but not longer than three (3) consecutive days.

D. Hours of sales; advertising.

All such sales shall be conducted between the hours of 8:00 am. to 8:00 pm. No sign or other display advertising the sale shall be attached, placed, painted or posted upon public lampposts, electric, telegraph or telephone poles, shade trees, fire hydrants or any sidewalk, curbstone, flagstone or crosswalk.

E. Condition of premises; storage of sale items.

No goods for sale shall be allowed or kept outside of the seller’s building or structure at times other than those designated in Section 11-105(d) for the conducting of a garage sale. Goods for sale shall not be displayed or stored in such a way as to create a fire hazard, other health hazard or danger or hindrance to passersby.

F. Maintenance of good order.

The person or persons conducting such sales, under the provisions of this article, will be responsible for the maintenance of good order during the hours of sale.

G. Revocation.

Any such permit to conduct a garage sale may be revoked by the City Clerk at any time by causing a written notice of such revocation signed by the City Clerk, to be served upon the person to whom such permit was granted. Violation of any of the provision of the chapter will subject the permit holder to a suspension by the City Clerk, of the right to obtain further permits for a period of up to one (1) year. (Ord. No. 1986-14, § 1, 3-24-86)

§ 11-106 Penalty.

Any person who willfully engages in any business activity enumerated under this article without the proper license or permit shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Each offense shall be a separate and distinct offense, and in the case of a continuing offense, each day’s continuance thereof shall be deemed a separate and distinct offense. Upon arrest for operation without a license or permit, the accused shall be required to post bail in the amount of one hundred dollars (\$100.00). (Ord. No. 1986-14, § 1, 3-24-86).

ARTICLE II. VENDORS

§ 11-201 Definitions.

For the purpose of this article the following shall have the meanings respectively described herein:

Barrel Drive / Tag Day - soliciting of funds by charitable or non-charitable organizations, societies, corporations, associations or individuals.

Business District – The term “business district” shall be described as bounded on the north by Green Street; on the east by State Street; on the south by Clinton Street; on the west by Melcher Street, excepting there from Hoosac Street from East State Street to South Perry Street.

City Clerk - The City Clerk of the City of Johnstown.

Established place of business – The term “established place of business” shall mean and include a building or store in which or where the person transacts business and deals in the goods, wares and merchandise for which he hawks, peddles or solicits during regular business hours.

Farm And Food Product – Any agricultural, horticultural, forest, or other product of the soil or water, including but not limited to craft brews, farm or micro produced wines or hard ciders, fruits, vegetables, eggs, dairy products, meat and meat products, poultry and poultry products, fish and fish products, grain and grain products, honey, nuts, preserves, maple sap products, apple cider, fruit juice, wine, ornamental or vegetable plants, nursery products, flowers, firewood and Christmas trees.

Farmer's Market – Any building, structure or place, the property of a municipal corporation or under lease to or in possession of a public or private agency, individual or business used or intended to be used by two or more producers for the direct sale of a diversity of farm and food products (defined above), from producers to consumers and food buyers.

Food Truck – A registered motor vehicle designed to be mobile, portable and not permanently attached to the ground from which food (either prepackaged or prepared on site) is sold or given away.

Ice Cream And Other Frozen Confections – Vendors allowed in residential neighborhoods that are given permission to utilize a specific route approved by the City, but that may not stop or idle for more than 15 minutes at any time, that sell ice cream and other frozen confections. All noise ordinances and traffic and parking laws must be followed.

License – A license issued pursuant to this chapter.

Licensee – Any person holding a license.

Minor – Any person under the age of 18.

Person – Includes individuals, corporations, partnerships, associations, and all other legal entities, whether acting as principal or agent.

Private Site – Any privately owned or leased property.

Producer – Any person or persons who grow, produce, or cause to be grown or produced any farm or food products in New York State.

Public or Private Agency – Any agency of federal, state or local government, regional market authority, public benefit corporation, not-for-profit corporation, cooperative corporation or educational institution.

Public Place – All publicly owned and/or managed land that includes, but shall not be limited to, streets, sidewalks, parking, outdoor passive and active recreation areas (whether paved or unpaved), and bike paths.

Refreshment – Any food, fruit, or other edible commodity or soft drink or carbonated beverage or water that is bottled.

Special Event – Any festival, parade, race, fundraiser, or other event taking place on public property and that is open to the public.

Vendor

Any person engaged in the selling or offering for sale of, or engaged in purchasing or offering to purchase for commercial purposes, refreshments or merchandise, in a public place or private site. Vendor shall include:

1. Hawkers, Peddler – Any person whether principal or agent, who from any boat or car on a railroad track or in any public street or public place, going from house to house, or place of business to place of business, on foot or on or from any animal or vehicle, sells or barter, offers for sale or barter, carries or exposes for sale, barter any goods, wares or merchandise, except milk, newspapers and periodicals.
2. Huckster – Any person whether principal or agent, who sells from any street, alley, sidewalk or other public place in the city, erect or maintain any booth, stall, stand, building, shed, hut or awning.
3. Solicitor – Any person who goes from place to place or house to house or who stands in any street or public place taking or offering to take orders for goods, wares, merchandise, or services except newspapers or milk, or for services to be performed in the future, or for making, manufacturing, or repairing any article or thing whatsoever for future delivery.
4. Transient Merchant – Any person, firm or corporation, whether as owner, agent, consignee or employee, whether a resident of the city or not who engages in a temporary business of selling and delivering goods, wares and merchandise, except milk, newspapers and periodicals, from a fixed location within said city and who in furtherance of such purposes, hires, leases, uses or occupies any building, structure, parking lot, tent, public room in hotels, lodging in houses, apartments, shops, lot or other private property with the city for the exhibition and sale of such goods, wares, merchandise, either privately, at a public auction or who sells such. The person, firm or corporations so engaged shall not be relieved from complying with the provisions of this Ordinance merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conduction such transient business in connection with, as a part of or in the name of any local dealer, trader, merchant or auctioneer.

§ 11-202 Scope of License Requirements.

No Vendor shall sell goods, wares or other merchandise or services except milk, newspapers and periodicals within the corporate limits of the City of Johnstown or by telephone within the city without obtaining the appropriate license to do so from the City Clerk.

§ 11-203 Exception from Article Provisions.

Nothing in this chapter shall apply to any of the following:

- A. Sales conducted pursuant to any statute or by order of any court.
- B. Any person selling merchandise at wholesale to dealers in such articles.
- C. Any person selling his or her own personal property at a garage sale held at his or her private residence, provided that no such garage sale may be conducted for more than two times in any given year, excluding the city-wide garage sale.
- D. Persons who sell newspapers.
- E. There shall be an exemption for persons operating a sale on behalf of any charitable organization or not-for-profit corporation, as that term is defined in the Not-For-Profit Corporation Law, except that such persons shall be required to obtain a vendor license, at no cost, and shall be subject to all other requirements and restrictions set forth.
- F. Section 11-202 shall not apply to a person who has obtained a valid license to vend merchandise under the provisions of section 32 of the General Business Law, providing for the licensing of Armed Forces Veteran. A license to hawk, peddle or vend merchandise granted to an honorably discharged veteran is purely personal to the holder thereof and has no application to any associate, partner, or employee of the licensee. Said licensed veteran must display a copy of said Fulton County Veteran's License and a Fulton County Sheriff Photo Identification Card of the Licensee on the exterior of the vehicle, cart, or wagon utilized in the conduct of such selling activity, or if no such device is utilized, must carry same on his person when engaging in the aforesaid selling activity.
- G. Farmers Markets. Farmers Markets are defined and governed by the New York State Department of Agriculture and Markets (NYSDAM) and shall be permitted to sell farm and farm-produced foods as defined within this chapter. The participants of farmers markets operating within the corporate boundaries of the city shall abide by and prominently display as required by law the following New York State Agency requirements in addition to the licensing requirements previously stipulated herein. The aforementioned regulatory list is subject to regulatory changes and is not meant to be all-inclusive:
 1. Fresh produce: No permits, licenses or certificates are required per New York State regulation if the produce is raw, cut and unprocessed.
 2. New York State Tax Department: A valid New York State sales tax certificate is required to be prominently displayed at each farmer's market booth.
 3. New York State Department of Health:
 - a. Food service permits are required if the majority of the products sold are a food service item that is made for immediate consumption.
 - b. All processed foods sold must be from an approved source that is produced under a New York State Department of Agriculture and Markets 20-C license or New York State DOH permit.
 - c. Individual vending licenses shall be required if the New York State DOH requires a food service permit. Food demonstrations that include hot prepared foods shall require a permit from the New York State Department of Health per their regulations. The permit shall be prominently posted for view.
 - d. Proof of this licensure must be submitted for each participant as part of the vendor's licensure.
 - e. A vending license shall be required of any vendor required to obtain a New York State DOH food preparation certificate.

4. New York State Agriculture and Markets Law Article 20-C governs the manufacture and bottling of nonalcoholic cider and fruit juice. Apple cider and related products sold must meet the criteria of New York State Agriculture and Markets Law § 214-n.
5. The New York State Department of Agriculture and Markets, Division of Milk Control and Dairy Services, Part II permits govern milk, milk products, cheese and other dairy products. Permits issued by NYSDAM should be prominently displayed as required by regulation.
6. USDA (meats): All meats sold are governed under the USDA and must be marked with the USDA legend or as "Processed at an NYSDAM Facility."
7. New York State Department of Environmental Conservation (freshwater fish):
 - a. No permit, license or certificate is required if a freshwater fisherman is selling whole or non-protected species.
 - b. An Article 20C license from the NYSDAM is required if fish is pan-ready.
 - c. A New York State Department of Environmental Conservation food fish and crustacean dealers and shippers license is required to resell marine fish purchased from a licensed fisherman if reselling the fish at the farmers market.
8. All pet foods and treats sold must be registered with the New York State Department of Agriculture and Markets. Proof of registration must be posted at the farmers market. All products sold must be the New York State criteria for minimum labeling requirements.
9. Animals shall be restricted within a farmers market per the NYSDAM regulations. All live animals for display should be kept segregated and located downwind from foods being sold in the market.

H. Barrel Drive / Tag Day. The legislative purpose of this article is to increase the safety of pedestrians, motor vehicle operators and of all persons using the public ways.

1. Applicant must complete and provide information as defined in Section 11-205;
2. No one under the age of 18 shall be involved in the soliciting or collection of monies in or on any city street or roadway or state highway;
3. Police Department, Department of Public Works and Fire Department must approve as to the location of such activity;
4. Any equipment used for event must be signed for and returned in the manner to which it was received.

§ 11-204 License prerequisite to Engaging in Business.

It shall be unlawful for any person, within the corporate limits of the city, to act as a Vendor as herein defined without first having obtained, paid for, and having in force and effect, a license therefore.

§ 11-205 Application for License.

Any person desiring to procure a license as herein provided shall file with the City Clerk a written application upon a blank form furnished by the City and shall file at the same time satisfactory proof of good character. Application shall be made in writing not less than 30 (thirty) days prior to date of event. Applicant must complete and provide all supporting information. Failure to provide required information or adhere to timelines will result in a delay of approval and / or denial of your Permit.

The Applicant shall include:

1. The name, address and phone number of the applicant.
2. If the applicant is an agent, the name, address, and phone number of the person, firm, corporation or legal entity that he or she represents, and the names, addresses and phone numbers of all vendors participating in the application.

3. A description of the goods, wares or merchandise that the applicant will sell or trade in, along with a description of any vehicles or devices to be used by the applicant.
 4. A detailed map of the area or areas within the city where the applicant proposes to conduct his or her activities.
 5. The hours of the day and length of time that the applicant proposes to conduct business as described within the application.
 6. Any other information as may be required by the city to properly and adequately review the application.
 7. A New York State Department of Health Department certificate.
 8. A description of the vehicles to be used.
 9. Whether applicant has ever been convicted of a crime.
 10. License Fee as defined in Section 11-211
- A. Insurance Requirements – No person conducting business covered under this Section in the streets, alleys, sidewalks, public park or other public places in the City shall be issued a license hereunder until such person shall have furnished to the City Clerk, a liability policy of insurance, having the following policy limits:
- | | |
|------------------------------|--------------|
| Bodily injury per person | \$ 50,000.00 |
| Bodily injury per occurrence | \$100,000.00 |
| Property Damage | \$ 25,000.00 |
1. The insurance company issuing the policy shall be licensed and admitted to do business in New York State.
 2. The policy shall designate, by manufacturer, year, make, model and vehicle or serial identification number, all commercial vehicles for which coverage is granted.
 3. The policy shall insure the person named in the policy and any other person using any equipment and/or vehicle with the express or implied permission of the named insured against any liability arising out of the ownership, maintenance or use of the applicant's activities in New York.
 4. The policies shall name the City as an additional insured on a primary and noncontributory basis
- B. Private Property – Licenses may be issued to individuals who seek a license to vend on private property.
1. The license shall include written authorization from the property owner to conduct the vending activity.
 2. Licenses shall be issued only in areas permitted by the City's Zoning Ordinance.
 3. This subsection shall not apply to outdoor food vending for residential properties in connection with catering activities at private events not open to the public.
- C. Additional Provisions
1. A certified check or cash in the amount of One Hundred Dollars (\$100.00) shall be required to be posted and filed as and for a security deposit in addition to said insurance policy and not in lieu thereof, to insure the payment of the cost and expense of the clean and/or repair to the street, alleys, sidewalks, public park, or other public place. The said sum of money shall be refunded at the conclusion of the activity for which the license was obtained provided that the public premises upon which the licensed activity was conducted is, at the conclusion of such activity, left in the same condition as it existed at the commencement of such activity.
 2. Alcohol shall not be permitted on any public right-of-way or City-owned property during any special event unless a special permit is issued by the City prior to the event. A special permit application is available at the office of the City Clerk. An applicant must submit the special permit application at least 30 (thirty) days prior to the scheduled event. At the time that the application is submitted, the applicant must be in compliance with all other provisions of this chapter. The Police Chief shall have final discretion in granting or denying any special permit authorized by this section.

§ 11-206 Qualification, Disqualification of Applicant for License.

- A. Age – No License to act as a Vendor as herein defined shall be granted to a person under eighteen (18) years of age.
- B. The City Clerk shall have authority to refer any application to the City of Johnstown Police Department for the making of such investigation of the applicant as the Department deems necessary for the protection of the public good. The City of Johnstown Police Department shall inform the City Clerk of any information that would legally prohibit the approval of such application.
- C. Revocation, Refusal – No applicant to whom a license has been refused or who has had a license which has been revoked shall make further application until a period of at least six (6) months have elapsed since the last previous rejection or revocation, unless he can show that the reason for such rejection no longer exists.

§ 11-207 Issuance, Refusal of License.

- A. Upon the filing of the application and certificate as provided in section 11-206, the City Clerk shall, upon approval of such application, issue to the applicant a license as provided in section 11-205 signed by the City Clerk. Except as hereinafter provided no license shall be refused, except for a specific reason for the protection of public safety, health, morals, or general welfare.
- B. The Common Council, in accordance with the laws of the City, may impose conditions upon the use of any license, including but not limited to the times of day, days of the week, and geographical limits within which the licensee may perform the activities permitted by the license.
- C. A license shall not be assignable. Any holder of a license who permits it to be used by any other person and any person who uses a license granted to any other person shall each be guilty of a violation of this chapter.
- D. Whenever a license shall be lost or destroyed on the part of the licensee or his or her agent or employee, a duplicate license, subject to all the terms and conditions of the original, may be issued by the City Clerk upon the filing by the licensee of an affidavit setting forth the circumstances of the loss.
- E. Each license shall be assigned a number and shall indicate the licensee's name and address, the date of issue, the expiration date, the goods, wares or merchandise to be sold or traded in, the amount of the fee paid, and the vehicles or other devices used by the licensee.
- F. No license shall be issued to a person under 18 years of age, except that a license holder shall be permitted to employ persons under 18 years of age.
- G. No licensee who has had his or her license revoked shall make another application until a period of at least 12 (twelve) months shall have elapsed since the revocation, unless he or she can demonstrate to the satisfaction of the City Clerk good cause for the earlier submittal of an application.

§ 11-208 Location Requirements.

- A. The applicant must state the exact location at which he intends to do business.
- B. An applicant must obtain prior written consent of a private property owner on whose premises the Vendor desires to conduct business.
- C. The location for such business activity cannot block a driveway or entrances or exits to the premises so occupied, its buildings or other structures, sidewalks, fire lanes or handicapped parking.
- D. The location for such business shall not inhibit the view of passing traffic nor shall it create such a distraction that it causes a hazard.
- E. No such business activity may be conducted within twelve (12) feet of the City or State right of way.

- F. The Vendor shall be responsible to clean up the area where business has been conducted and to otherwise restore said business location to the condition in which it existed at the commencement of the aforesaid business activity.
- G. The location for such business shall in all other respects comply with the provisions of the City Code of Ordinances and the provision of applicable State and Federal Law, 11-211(b).
- H. The location for such business activity shall be in a non-residential zone.

§ 11-209 Duration, Expiration of Licenses.

- A. License shall automatically expire on the 31st day of December following the date of issuance thereof, but such license may specifically state and provide for an earlier expiration date.
- B. Vendor vending Christmas trees, wreaths, and other Christmas decorations may obtain a license to do so from the City Clerk for a maximum of the eight (8) weeks immediately prior to Christmas day.

§ 11-210 Payment of Fee Prerequisite to Licensing.

A license for the purpose as are in this article permitted to be licensed shall be granted by the City Clerk upon the payment of the license fees prescribed in Section 11-211.

§ 11-211 License Fees.

BUSINESS TYPE	FEES					
	DAY	WEEK	MONTH	QUARTER	6 MONTHS	YEAR
VENDOR – Includes Hawker, Huckster, Peddler, Solicitor and Transient Merchant	\$10.00	\$25.00	\$75.00	\$150.00	\$350.00	\$650.00
CHRISTMAS TREE SALES	8 weeks - \$45					
BLANKET *	\$50.00					

*In the event a public park or some other public place is hired from the city by a recognized civic, merchant, charitable or not-for-profit corporation or association for use as a craft fair, exhibition, carnival or commercial promotion event, the insurance and security deposit provisions of this section shall be met by said corporation or association obtaining one policy for said activity and permitting several individual hucksters and other petty businesses to operate thereunder. The license requirements shall be met by said corporation or association obtaining a blanket license at a cost of fifty dollars (\$50.00).

§ 11-212 License to Include Right to use Vehicle.

A license as a Vendor as herein defined shall include the right to use only one vehicle in carrying on the business for which the person is licensed.

§ 11-213 Possession, Display of License.

Every person licensed as a Vendor as defined herein, while engaging in such activity, shall carry the license with him and shall exhibit said license in a conspicuous place in the area where the licensed business activity is being conducted.

§ 11-214 Use of License by One Not Licensed.

Any holder of a license to act as a Vendor as herein defined, who permits it to be used by any other person and any person who uses

such license granted to any other person shall be guilty of a violation of this article.

§ 11-215 Use of Motor Vehicle.

Any licensee hereunder using a motor vehicle may employ two (2) persons, and no more, to assist in selling and delivering the wares, but such person shall act only while accompanying a licensed Vendor.

§ 11-216 Restriction upon Activities of License.

- A. Conduct of Sales – Not falsely or fraudulently misrepresented the quantity, character, or quality of any article offered for sale or offer for sale, any unwholesome, tainted or diseased provisions or merchandise.
- B. Sanitary Conditions – Keep the vehicles and receptacles, used by them, in a clean and sanitary condition and the foodstuffs and edibles offered for sale well covered and protected from dirt, dust, and insects.
- C. Standing of Vehicle – Not stand or permit the vehicle used by him to stand in one place in any public place or street for more than thirty (30) minutes or in front of any premises for any time if the owner or lessee of the ground floor thereof objects.
- D. Sales Near Schools – Not sell any confectionary or ice cream within two hundred fifty (250) feet of any school between the hours of 8:00 am and 4:00 pm on school days.
- E. Stopping in Crosswalks – Not permit any vehicle used by him to stop or remain on any crosswalk.
- F. Booths, Stands, and Other Obstructions – Not create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street or public place for the purpose of selling or exposing for sale any good, wares, or merchandise.
- G. Motorized vehicles and motorized vehicles with Trailers-Shall be prohibited from conducting business within the boundaries of the business district as described in section 11-201.

§ 11-217 Soliciting Orders for Future Delivery.

All orders taken by Vendors who demand, accept, or receive payment or deposit of money in advance of final delivery shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance and one copy shall be given to the purchaser at the time the deposit of money is paid to the solicitor or Vendor.

§ 11-218 Noise to Attract Attention Prohibited.

The advertising or notification of the public of any business transaction or the selling or attempting to sell any goods, wares, or merchandise by crying same or by the loud ringing of bells, beating of gongs or by any other loud or unseemly noise in the streets or public places in the City is hereby forbidden.

§ 11-219 Records of Licenses, Applications, or Revocations.

It shall be the duty of the City Clerk to keep a record of all applications and of all licenses granted under the provisions of this article giving the number and date of each license, the name and residence of the person licensed, the amount of the license fee paid, and the dates of revocations of all licenses revoked.

§ 11-220 Revocation of License.

The Mayor may, at any time, for a violation of this article, any other Ordinance, or any Law revoke any license. When a license shall be revoked, no refund of any unearned portion of the license fee shall be made. Notice of such revocation and the reason therefore, in writing, shall be served by the Mayor upon the person named in the application or by mailing same to the address given on the application and upon filing a copy of such notice with the City Clerk.

§ 11-221 Appeal process for revocation of license.

The vendor shall have a right to an appeal hearing on the proposed revocation or suspension before the Department of Accounts or its designee no later than 10 days after requesting such a hearing in writing.

§ 11-222 Penalties.

Any person who willfully engages in any business activity enumerated under this article without the proper license or permit shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (500.00). Each offense shall be a separate and distinct offense and in the case of continuing offenses, each day continuance thereof shall be deemed a separate and distinct offense.