

ORDINANCE OF THE CITY COUNCIL OF HATTIESBURG, MISSISSIPPI ESTABLISHING AND REGULATING MOBILE FOOD VENDING UNITS IN HATTIESBURG

WHEREAS, mobile food vendors enliven the pedestrian environment by providing convenience and diversity of products; and

WHEREAS, mobile food vendors enhance diversity, promote a variety of cuisines, and bring vitality to an active urban environment; and

WHEREAS, the intent of the mobile food vendor ordinance is to allow for a variety for food related businesses yet not circumvent environmental and infrastructure requirements applicable to non-mobile developments; and

WHEREAS, the City Council of Hattiesburg, Mississippi finds that it would be advantageous, beneficial, and in the best interest of City of Hattiesburg residents and businesses to enable mobile food vendors in approved Hattiesburg locations.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HATTIESBURG, MISSISSIPPI THAT:

SECTION 1. APPLICABILITY.

This Ordinance shall apply to all mobile food vendors desiring to become permitted to sell food and/or beverages in the City of Hattiesburg where authorized to do so. In order to promote creativity and not stifle ideas of potential vendors, the City encourages all potential vendors to submit a full plan to be reviewed on a case by case basis. The plan will be approved, disapproved or more information will be requested in order to verify the plan does not jeopardizes public health, welfare, and safety of the City of Hattiesburg residents.

SECTION 2. DEFINITIONS.

For purposes of this Ordinance, the following words and phrases shall be construed as defined in this section:

Containment area is defined as the area within fifteen (15) feet of any part of the mobile vending unit.

Mobile food vendor is defined as any person or persons who sell food and/or beverages from a permitted vehicle or mobile push cart/stand (hereinafter "mobile vending unit") on a consistent basis for a period of more than 15 consecutive or non-consecutive days each calendar year.

Mobile food preparation vehicle means a moveable car, van, truck, or trailer that includes any part of a self-contained kitchen in which food is prepared, processed or

stored and used to sell and dispense food to the consumer. The unit must be on wheels at all times. This definition does not include pushcarts, which is defined below.

Mobile pushcart means any portable vending device, pushcart, or 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 Department of Transportation, used for the displaying, storing, or transporting of food offered for sale by a vendor. Said cart may be up to four feet in width, six feet in length, excluding auxiliary items such as handles or fender, or otherwise the cart shall not occupy space greater than a total of 24 square feet.

SECTION 3. PERMIT REQUIRED FOR MOBILE FOOD VENDING.

(a) All mobile food vendors must obtain and maintain a permit that includes all locations where the owner of the mobile vending unit intends to operate. All applications for permit renewal must be filed yearly. The application shall be made with Planning Division of the Department of Urban Development. The application may be reviewed by any department of the City as may be necessary or convenient to determine whether the application is complete or whether the permit should be granted. Permit applications shall contain the following information:

- 1) The name, mailing address, physical address, telephone number(s), and email address of the applicants (s). If any applicant is anything other than a natural person, then all documents related to the creation and maintenance of the entity such as articles of incorporation and any similar relevant documents shall be included.
- 2) A valid privilege tax license (PTL) or equal from a City or County within the State of Mississippi.
- 3) A food service permit from the Mississippi Department of Health.
- 4) All mobile pushcarts and mobile food preparation vehicles shall provide a State tax number issued by the Mississippi Department of Revenue.
- 5) Approval from the City Fire Inspector
- 6) A City of Hattiesburg Property Owner Consent Form for each proposed location of operation.
- 7) All permit applicants must operate under a central kitchen within Forrest or Lamar County that is approved by the Mississippi Department of Health for food service. A mobile food preparation vehicle may be certified by the Mississippi Department of Health as a central kitchen. The City of Hattiesburg must approve the location where the applicant will dispose of grease and wastewater.
- 8) A list of products to be sold.

- 9) A site plan showing the proposed location of the mobile vending unit for each private parcel. Additional locations may be added at any time after initial permit approval, provided the locations meet the requirements of this ordinance.
- 10) Proof of a valid business insurance policy that provides minimum liability coverage of \$500,000 per mobile vending unit, with the City named as an additional insured.
- 11) A written indemnity agreement that will hold harmless the City, its officers, and employees, for any loss or liability or damage, including costs, for bodily injury or property damage sustained by a person as a result of the negligent installation, use, or maintenance of a permitted space.
- 12) Copies of all letters and other notices from any governmental, quasi-governmental, professional, or business association or entity, related directly or indirectly to alleged or actual improper conduct in the food service business, issued to applicant or any person who will have responsibility for operations of the mobile vending unit for which a permit is requested. Include all related response and follow up documents showing any result, finding or action.
- 13) The dates, jurisdiction, court, and disposition of the following:
 - a. All felony charges related to the applicant or any principal of the applicant; and
 - b. All misdemeanors and violations directly or indirectly related to food, food preparation, permit operations, and/or business operations, related to the applicant or any principal of the applicant.
- 14) A police background screen for the City of Hattiesburg and from the jurisdiction of the applicant's residence, if different from Hattiesburg.
- 15) Such other additional information required by law, rule, or ordinance, or that any department of the City or City Council, or the permit applicant reasonably deems appropriate to assist the City in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application. The City reserves the right to deny any permit request it deems to be a danger to public health, welfare, and safety based on the information provided in the application.

(b) Permits cost \$250 per year. Permit fees for applications received on or after July 1 will be \$125. Subsequent annual renewals are due on January 1st of each year.

(c) Permit holders may be required to remove private materials or accessories to allow utility access for emergency and maintenance operation or both.

(d) This permit does not allow permit holders to operate in affiliation with City appointed special events without the authorization from the special event organizers.

(f) The permit must be displayed on the mobile vending unit at all times.

(g) Permits are non-transferable, unless Article 3 (h), below, applies.

(h) A damaged or destroyed unit may be replaced if and only if approval for its replacement is obtained from the Department of Urban Development. Any such replacement unit must be of substantially the same type, size, and dimension and with the same general characteristics as the original. Such replacement may be disallowed if the original vendor permit would not have approved the use of the replacement unit.

(i) Any permit granted pursuant to this ordinance shall be nonexclusive. The City may grant any number of such permits as the City deems appropriate. The granting of a permit shall not limit or abridge any power or authority of the City and shall not limit the authority of the City to commence appropriate civil, criminal, or other enforcement actions. The City retains full authority to amend the ordinances, rules and regulations that apply to any permit.

(j) The City may revoke and terminate the permit in the event the vendor violates any term, condition, or provision of the permit, the Hattiesburg Code of Ordinances and/or Zoning Ordinances, state and/or federal law, or if the permit/license issued by the City for the permitted activity is revoked. The procedures for revoking or terminating a permit shall be the same as revoking or terminating a permit/license. The revocation may be sought as a remedy in a civil action. The vendor may terminate or surrender the permit at will any time prior to the expiration of the permit by providing written notice to the Planning Division of the Department of Urban Development. Termination of the permit shall not operate to relieve the vendor of the obligation to release, hold harmless, and indemnify the City and its officers, agents, and employees.

SECTION 4. LOCATION AND OPERATION.

(a) Mobile vending units shall only conduct business on private property, in designated areas approved by the Department of Urban Development. Designated areas must be properly zoned for Business or Industrial use. Multi-family locations, under the R-3 classification may be permitted, subject to the approval of the Director of Urban Development. The vendor is responsible for initiating a request to utilize any locations. The Department of Urban Development shall have complete discretion as to which locations to approve considering the needs of traffic, pedestrians, public safety, public works, public convenience, the general uses of adjacent private property, and any other factor that is proper and lawful for the City to consider in approving or disapproving such locations. The Department of Urban Development shall have continuing authority to approve locations, grant conditions for approval, revoke prior approval of locations, make conditional revocations of approved locations, require adjustments by the vendor in setup or location to accommodate public safety and convenience, ensure appropriate function of the private parcel for existing primary use(s), and to otherwise maintain full lawful control over all public ways of the city. The City of Hattiesburg Police and Fire Departments shall

have concurrent authority to oversee locations and setup of mobile food service vendor units. If an applicant is denied and wishes to appeal his grievance, he may request an order approving his application to the City Council at a regular scheduled meeting and said item will be considered "approved or disapproved".

(b) Mobile vending units shall conform to the following regulations regarding location and operation:

1. Mobile vending units must NOT be locked or attached to trees, garbage receptacles, or street furniture.
2. Mobile vending units may NOT locate within twenty (20) feet of any bus stop.
3. Mobile vending units may NOT locate within ten (10) feet of a building or any combustibles. Additionally, mobile vending units must be parked where vehicle exhaust is directed away from the doors, windows, and air intakes for any buildings.
4. Mobile vending units may NOT locate within any area which would block the view of traffic or traffic signals or traffic signs.
5. Mobile vending units may NOT locate within ten (10) feet of any fire hydrant or block a Fire Department Connection (FDC).
6. Mobile vending units must park on a hard surface (concrete or asphalt) and may not park on unpaved, gravel, grassy, or other undeveloped areas of the parcel.

(c) In no event shall any mobile vending unit, display device, or accessory container be located inside any building or structure or at any place the general public is prohibited.

(d) Mobile vending units may only be operated between the hours of 6:00 a.m. and 2:00 a.m. Cleanup and removal of the mobile vending unit must be completed by 2:30 a.m. Units must operate four days per week if units are to remain overnight at any location for more than one week. Mobile vending units remaining in any location for more than one month must have a City of Hattiesburg Privilege Tax License.

(e) The operators must be present at all times. Mobile vending unit cannot be left unattended while in operation.

(f) Sales of goods are limited to food and beverage.

(g) The sale of alcoholic beverages is prohibited except within designated Entertainment Districts, as defined by the City of Hattiesburg Code of Ordinances and provided that the vendor has obtained proper legal permits from the Alcoholic Beverage Control Division of the State of Mississippi.

(h) Mobile food vendors are responsible for all waste and trash removal. The containment area must be kept clear of grease, trash, paper, cups or cans associated with the operation. No liquid waste or grease is to be disposed of directly on to ground, into landscaping, or onto sidewalks, streets, stormwater drains or other public places.

(i) The mobile food vendors shall not provide public seating or tables at which food may be consumed. Other tables, stands, shelves, bins, equipment, signs,

covers, or any kind of accessory or feature shall be prohibited unless the same was accurately described and included in the application, and was fairly included in the picture or other graphics required as part of the application.

(j) The vendor shall contain all refuse, trash and litter within the mobile vending unit or within a small moveable trash can maintained by the vendor, and located adjacent to the mobile food service unit in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The vendor shall be responsible for the proper disposal of such refuse, trash, and litter, and approved container, or in any private container with proper permission. The vendor is responsible for all litter and trash within fifteen (15) feet of the mobile vending unit at any time the vendor is selling or offering to sell any merchandise or service. Liquid waste, including greywater and grease, must be disposed of at a location approved by the City of Hattiesburg.

(k) The mobile food service unit must have self-contained utilities and shall not use the City's utilities or private utilities that are not self-contained and integral to the vendor unit. The operator may utilize existing private electrical utilities on approved sites with landlord permission. Utilization of existing electrical tie-in will require review and permitting by the Building Official.

(l) No mobile food service vendor shall sell or attempt to sell any item to the occupant of any motor vehicle, unless it is parked in a lawful parking space.

(m) Mobile vending units must comply with all local, state, and federal rules regarding sanitation and protection of food from airborne contamination.

(n) Every vendor shall keep records utilizing generally accepted accounting practices for the purposes of compliance with all federal, state and local tax laws.

(o) All approved mobile vending units must pay the sales tax required by other food providers along with all other required tax and license fees required by other food providers.

(p) If the mobile vending unit utilizes a generator, it shall be in compliance with the City of Hattiesburg noise ordinance.

(q) No speakers or other noise production devices are allowed.

(r) Units that remain in any single location for six (6) or more months will be considered a permanent rather than mobile structure and will be required to come into full compliance with the Land Development Code and adopted ICC Codes.

SECTION 5. DESIGN STANDARDS.

All mobile vending units must meet the following design standards:

1. All mobile vending units must be capable of independently providing all necessary utilities for operation in order to maintain compliance with all Mississippi Department of Health codes. This requires that the unit is not connected or attached to any building or structure, and does not receive power from any building by means of wires or other connections.

2. Where used, umbrellas or canopies must be attached to the cart and must not exceed eight (8) feet in height above grade. Maximum diameter of canopies and umbrellas shall not exceed six (6) feet and shall not interfere with pedestrian movement. No mobile vending unit shall have more than two (2) umbrellas.
3. All signage affiliated with units shall comply with the City of Hattiesburg Sign Ordinance, as it pertains to temporary free-standing signage. One sign is permitted, provided that it does not exceed five (5) feet in height, provided that it does not impede reasonable pedestrian access, and provided that the sign is removed from the site each day at the close of business.
4. Food vendors may place a maximum of three accessory containers, including coolers, within their containment area so long as they are neatly arranged or stacked to avoid visual clutter.
5. No accessory container shall be more than three (3) feet from the unit.
6. Accessory containers must be made of hard substances such as hard plastic or a metal and may not be made by expanded polystyrene plastic, paper, paperboard, or cardboard.
7. One (1) chair is permitted, per employee, for the vendor's use. No public seating is allowed.
8. Mobile vending units may NOT be stored, parked or left overnight on City property.

SECTION 6. VIOLATIONS AND PENALTIES.

(a) All mobile food vending must be performed in compliance with said ordinance. Failure to abide by said ordinance shall result in the following:

1. A fine not exceeding \$150 for a first violation.
2. A fine not exceeding \$250 for a second violation within one year of any prior violation.
3. A fine not exceeding \$500 for a third or more violation within one (1) year of the first.

(b) Any offense shall be considered a misdemeanor and is subject to being cited by any authorized individual or any authorized law enforcement official in the City of Hattiesburg or with authority to do so in the City of Hattiesburg.

(c) Violation of this article may result in the suspension or revocation of any City permit or license issued to the owner or operator of the mobile vending unit.

(d) Each day on which an infraction of the article continues may be considered a separate and distinct violation.

(e) Each instance of the infraction of the article may be considered a separate and distinct violation.

SECTION 7. SEVERABILITY.

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 Code of Ordinances of the City of Hattiesburg, Mississippi, as a whole.

SECTION 8. REVIEW

The City of Hattiesburg shall, within one year of the effective date, and at reasonable time periods as warranted, review the impact of the ordinance on overall quality of life and on the general effectiveness of the ordinance and shall consider amendments as and where warranted.

SECTION 9. EFFECTIVE DATE.

This ordinance shall be effective thirty days (30) days after its adoption by the City of Hattiesburg with applications to be accepted beginning immediately. Legal existing mobile food vendors may continue to conduct business as permitted until annual renewal of their existing license, at which time the mobile food vendor must come into full compliance with this ordinance.

The foregoing Ordinance having been reduced to writing, the same was introduced by Councilmember _____, seconded by Councilmember _____, and was adopted by the following vote to-wit:

YEAS:

NAYS:

THE President thereby declared the motion carried and the foregoing Ordinance adopted and approved, this the _____ day of _____ A.D., 2021.

(S E A L)

ATTEST:

ADOPTED:

CLERK OF COUNCIL

PRESIDENT

THE above foregoing Ordinance having been submitted to and approved by the Mayor, this the _____ day of _____ A.D., 2021.

ATTEST:

APPROVED:

CITY CLERK

MAYOR