

ORDINANCE 7-2018

AN ORDINANCE AMENDING CHAPTER 16, ARTICLE I, SECTION 16-4, SUBSECTION V., PARAGRAPH (N) TO DELETE THE PROHIBITION OF A MOBILE FOOD UNIT VENDOR FROM LOCATING OR OPERATING WITHIN ONE HUNDRED (100) FEET OF THE PROPERTY LINE OF THE REAL PROPERTY OF BUSINESSES SELLING FOOD TO THE GENERAL PUBLIC; AND FURTHER DELETING THE PROHIBITION OF LOCATING OR OPERATING ON AVENUES, STREETS, ROADS, DRIVES, OR SIDEWALKS ADJACENT TO THE BOUNDARIES OF A PUBLIC PARK; AND FURTHER PROVIDING THAT MOBILE FOOD VENDORS SHALL BE SUBJECT TO THE SAME PARKING RESTRICTIONS AS ALL OTHER LICENSED VEHICLES.

WHEREAS, the operation of mobile food units, commonly called “food trucks,” has become a national trend and has proven to stimulate social and economic activity and enhance local commerce; and

WHEREAS, many Cities in which food trucks have been licensed have enacted minimum distances from which food trucks may locate or operate from a traditional “brick and mortar” restaurant or café; and

WHEREAS, legal challenges across the United States have resulted in court decisions that these minimum distance prohibitions bear no rational relation to a legitimate state or city interest and are unconstitutional.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That Chapter 16, Article I, Section 16-4 of the Owensboro Municipal Code be, and hereby is, amended to read as follows:

- I. Definitions.
 - (a) Mobile *food* unit: *Food* establishment which is on wheels, mobile and which is self propelled as a licensed vehicle including the sale

- of both prepared and pre-packaged *foods* (examples are a *food truck* and ice cream *truck*).
- (b) Mobile *food* unit vendor: An itinerant merchant who conducts business from a mobile *food* unit.
- II. Subject to Applicable Ordinances and Regulations. The operation of a mobile *food* unit and a mobile *food* unit vendor shall be subject to all applicable ordinances and regulations unless expressly provided otherwise herein. These include, but are not necessarily limited to, those matters pertaining to zoning, public safety, pedestrian and state traffic laws, restricted sales or vending areas, parking and licensing.
- III. Exceptions to Licensing and Regulatory Requirements. A mobile *food* unit vendor shall be subject to the licensing and regulatory requirements under this chapter and all other applicable ordinances except as follows:
- (a) The licensing of the vendor shall be on a per unit (*food truck/vehicle*) basis with each different mobile *food* unit vendor requiring a separate license for each mobile *food* unit.
 - (1) All applications for permits/licenses shall be accompanied with the required certificate of insurance, proof of health department approval, and required fee(s) as specified in the following schedule of fees:
Mobile *food* vending permit: Two hundred fifty dollars (\$250.00)
Downtown entertainment district permit: Four hundred dollars (\$400.00) (this fee is in addition to the city wide mobile *food* vending permit and shall allow the permittee to operate within the entertainment district as created under Ordinance 28-2013)
 - (2) Licenses are valid for twelve (12) months unless otherwise invalidated, revoked or terminated prior to the end of the twelve (12) month term. Mobile *food* unit vendors must reapply (including payment of all applicable fees) each year.
 - (b) As an alternative to the requirements imposed herein under this subsection III, the owner of the real property to be used for mobile *food* unit vending operations or his or her designee may, in advance of such a business operating on that property, submit for approval to all applicable agencies to have the property used on a regular basis by one (1) or more mobile *food* unit vendors, in compliance with the following:
 - (1) The location of mobile *food* unit vendors shall be subject to all applicable zoning ordinances and restrictions.
 - (2) That the site is zoned in a category that permits restaurants as a principal permitted use, or that site restrictions are in place that make the mobile vending use compliant with applicable zoning restrictions related to the serving of *food* within the zone.
 - (3) Notwithstanding the above, a mobile *food* unit vendor(s) must make available to the government a duly executed

statement of permission from the property owner or his or her agent for use of the property upon request.

- (4) Nothing contained in this section shall relieve a mobile *food* unit vendor from obtaining its applicable merchant license(s) and any other permits required by state agencies or the local health department.

IV. Issuance of Permit or License.

- (a) It shall be unlawful for any person to intentionally provide false information or to intentionally omit requested information on an application for any license or permit pertaining to mobile *food* unit vendors.
- (b) As a condition of issuance of any license or permit, the mobile *food* unit vendor agrees to indemnify, hold harmless, and defend the city and its officials, officers, employees, representatives, and agents against liability and/or loss arising from activities connected with and/or undertaken pursuant to the permit or license. The city is not liable for any business loss, property loss, or other damage that may result from use of the permit or license, or suspension or revocation of the permit or license, or the discontinuance of the practice of permitting such activity, and no such vendor shall maintain any claim or action against the city and/or its officials, officers, employees, or agents on account of any suspension or revocation or discontinuance.
- (c) Any permit or license issued to a mobile *food* unit vendor shall be valid for the time period specified thereon. Re-application shall be required upon expiration of said permit or license if the person wishes to continue such activity.
- (d) Every mobile *food* unit vendor to whom a license or permit is issued shall, at all times while engaged in that business, have the applicable license or permit in his or her possession, prominently displayed for public viewing, and shall produce the same at the request of any city official or at the request of any individual to whom the vendor is exhibiting his or her *food* or attempting to sell same.
- (e) Permits, via contractual services, for vending activities which occur solely on or within the city park lands [~~or on avenues, streets, roads, drives, or sidewalks adjacent to the boundaries of a public park~~] must be obtained from the parks and recreation department prior to performing such activities. The parks and recreation department may impose conditions on any issued permit as it deems necessary for the deferment of costs of operating the parks system, health and safety, and/or to mitigate the impact of vending on an area and may restrict or prohibit vending in certain locations. The parks and recreation manager may limit the number of vendors at any one (1) location or within an area, or limit the number of

operators, sales persons, or others engaged in the act of vending at the requested or approved location.

- (f) Each mobile *food* unit vendor must obtain all necessary licenses and permissions and comply with all requirements imposed by the health department and/or other regulatory agencies.

V. Regulation of Mobile *Food* Unit Vendors. All mobile *food* unit vendors must comply with the following:

- (a) The requirements of all applicable ordinances and regulations.
- (b) Shall at all times operate in a manner that ensures the safety of patrons, pedestrians and the public.
- (c) Shall not park or operate in a manner which prohibits others from parking in otherwise available spaces or areas.
- (d) Shall obtain any necessary permits and comply with the requirements of any applicable rules and regulations of the health department.
- (e) Shall not locate or operate within fifteen (15) feet of any driveway or other main entrance to a building without the express written permission of the affected property owner or her or his authorized agent.
- (f) Shall provide, in a prominent location, trash and recycling container(s) sufficient in size to collect all waste and recyclables generated by customers and staff of the vendor. All trash and debris related to the operation shall be collected by the vendor throughout the duration of their vending and deposited in their own trash or recycling container(s) and removed from the site by the vendor. Such waste shall not be placed in public trash receptacles. The vendor shall be responsible for any litter or debris located within a ten (10) feet radius of their unit, including sidewalks in the immediate vicinity.
- (g) Shall not, during any city recognized special event, locate, operate or vend inside the event footprint without the express written permission of the event organizer.
- (h) Shall only use lighting which is permanently or semi-permanently affixed to its unit and which does not cause any glare that could be considered a public hazard, nuisance or distraction to vehicular movement, neighboring business operations or residential uses. No flashing or strobe lighting shall be permitted.
- (i) Shall not use any electrical outlet located within the public right-of-way or on public property, unless specifically authorized by the city or, if required, the utility company. A vendor shall not create any tripping or other hazard related to its use of electricity.
- (j) Shall not block access to or use of, any public bench or any public utility pole or set up any chairs or tables on the public right-of-way.
- (k) Shall not in any manner damage public property or the public right-of-way. Examples, include, but are not necessarily limited to, using stakes, rods or any method of support that is required to be drilled,

driven or otherwise fixed in asphalt pavement, curbs, sidewalks or buildings. The vendor shall be solely responsible for any such damage.

- (l) Must not locate or operate within an area zoned residential district except so long as necessary to temporarily stop and service a customer (such as when a mobile *food* unit like an ice cream *truck* would be signaled to stop by a customer), and are only permitted to operate within the residential zone area between the hours of 10:00 a.m. and 8:30 p.m. A limited exception is provided if permission is obtained from the legally recognized homeowner's association for the affected property, or if the property at issue is used by the neighborhood as a community property, such as a swimming pool, and permission is obtained from the entity responsible for managing that property.
- (m) Shall not locate or operate within an area closed or not accessible due to an emergency.
- (n) Shall not locate or operate within ~~operate:~~
 - (i) ~~Within one hundred (100) feet of the property line of the real property where there is any business lawfully operating that is primarily engaged in the retail sale of prepared or packaged food to the general public or, where such business occupies less than half of the platted real property, within one hundred (100) feet of that portion of the building occupied by the business primarily engaged in the sale of prepared or packaged food to the general public;~~
 - (ii) ~~Within] one thousand (1,000) feet of a school, or within any public park lands, [or on avenues, streets, roads, drives or sidewalks adjacent to the boundaries of a public park except upon written permission of the school or city's parks and recreation manager or where otherwise permitted under this section.~~
- (o) Shall only be permitted to locate and operate within the permitted areas between the hours of 10:00 am and 11:00 pm daily. ~~[No mobile food unit may be at any one (1) location for more than five (5) consecutive hours and may not relocate within one thousand (1,000) feet of the location in which the mobile food unit was previously operating. For the purpose of this section, a "location" is defined as the physical location of the mobile food unit while in operation and an area of one thousand (1,000) feet radius from that site.]~~
- (p) Mobile food vendors shall be subject to the same parking enforcement restrictions as all licensed vehicles.
- (q) Shall only be permitted to serve customers or otherwise sell from the passenger side of the unit.

VI. Insurance. A mobile *food* unit vendor operating under this chapter shall have in full force and effect an approved liability insurance policy naming

the city as an additional named insured. The types and minimum amounts of insurance to be carried on each vehicle shall be as follows:

- (1) Death or injury to any one (1) person: Twenty-five thousand dollars (\$25,000.00);
- (2) Total liability for death or injury to persons: Fifty thousand dollars (\$50,000.00); and
- (3) Property damage: Ten thousand dollars (\$10,000.00).

VII. Receipts. A mobile *food* unit vendor shall, on request by the customer, render to the customer, a receipt for the amount charged, either by a mechanically printed receipt or by a specially prepared receipt on which shall be the name of the permit holder of the mobile *food* vending unit, all charges, and the date of transaction.

VIII. Clean and Safe Conditions.

- (a) Every mobile *food* unit shall ensure that the interior, including the windows, shall be maintained in a clean and safe condition, free of grease, dirt, debris, or other trash.
- (b) The exterior of the vehicle shall also be maintained in a clean, undamaged condition and present a favorable appearance, including:
 - (1) The body of the vehicle;
 - (2) The paint;
 - (3) All glass;
 - (4) Hubcaps (if installed);
 - (5) Head and tail lights; and
 - (6) Grill and bumpers.
- (c) No person shall smoke within a mobile *food* unit.

IX. Records; Reports.

- (a) Every mobile *food* unit vendor shall keep accurate records of receipts from operations, and other expenses, capital expenditures, and other such operating information as may be required to comply with reporting income and expenses under the applicable provisions of this Code and/or [city] ordinance. Every mobile *food* unit vendor shall maintain the records containing such information and other dates required by this chapter at a place readily accessible for examination by the city manager or his or her designee.
- (b) All accidents arising from or in connection with the operation of mobile *food* unit vendor which result in death or injury to any person, or in damage to any vehicle, or to any property in an amount exceeding the sum of three hundred dollars (\$300.00) shall be reported by the permit holder or driver within five (5) days from the time of occurrence to the Chief of Police or his or her designee.

X. Penalty.

- (a) Any person convicted of violating any provision of this article shall be subject to a fine of not less than two hundred fifty dollars

- (\$250.00), nor more than five hundred dollars (\$500.00). Each day a violation occurs shall constitute a separate offense, and;
- (b) In addition to a fine imposed under this subsection, the city manager or his or her designee is authorized to suspend or revoke a mobile *food* unit vendor permit after a finding that such permittee has violated any applicable provision of this Code, regulations promulgated pursuant to this section, violation of any federal, state, or local law which would constitute grounds for denial of a permit, or refusal to cooperate with reasonable requests made by a police officer, employee of the city, or an official investigating complaints or conducting periodic random inspections.

Section 2. This Ordinance shall become effective upon its adoption and publication according to law.

INTRODUCED AND PUBLICLY READ ON FIRST READING, this the 1st day of May, 2018.

PUBLICLY READ AND FINALLY APPROVED ON SECOND READING, this the 5th day of June, 2018.

Thomas H. Watson, Mayor

ATTEST:

Beth Cecil, City Clerk