

ORDINANCE NO. 3547

AN ORDINANCE AMENDING CHAPTER 7- BUSINESS REGULATIONS AND LICENSES, ARTICLE 1-INGENERAL, SECTION 7-12, MOBILE FOOD VENDORS; REPEALING ALL ORDINANCES TO THE CONTRARY; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROKEN ARROW:

SECTION I. That Chapter 7-Business Regulations and Licenses, Article 1 - In General, Section 7-12- Mobile food vendors shall read as follows:

Sec. 7-12. - Mobile food vendors.

The purpose of this section is to regulate the actions of mobile vendors. It has been determined that the public health, safety, good order and general welfare of the residents of the city require the regulation and management of such enterprises. The receipt of a mobile vendor license is a privilege which may be suspended, limited or revoked for violating the intent and letter of this section.

- (a) *Definitions.* Use of words and phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

Commissary. An approved facility that provides support services for specific required functions of a mobile vendor. Any food establishment permitted or licensed by a regulatory agency, such as a catering operation, restaurant, grocery store or similar establishment or any otherwise approved facility in which food, containers or supplies are kept, handled, prepared, packaged or stored. When not required at the mobile vendor, commissaries may provide a three compartment sink for washing, rinsing and sanitization of equipment/utensils in addition to hand wash and rest room facilities. Services required of the commissary will be based on the food sold and the mobile vendor type and capabilities this may require the installation of a grease interceptor. A private residence may not be used as a commissary.

Concessionaire. A person engaged in the sale of food or other goods or services in a city park or on city property, including without limitation those who operate or maintain a concession stand, in accordance with a written agreement or franchise therefore as lawfully approved in writing by the city.

Director shall mean the director of development services or such other person designated by the city manager to enforce the provisions of this chapter or that person's designee.

Farmers markets. Farmers market means a designated area in which farmers, growers or producers from a defined region gather on a regularly scheduled basis to sell at retail non-potentially hazardous farm food products and whole shell eggs to the public. A portion of the raw food ingredients used by the individual vendor to produce a product must have been grown or raised by the vendor. A farmers' market must have written operational

guidelines and a minimum of six vendors along with a designated market manager or advisory board who will be responsible for distribution of a copy of the guidelines to the vendors. Farmers markets must be registered by the state department of agriculture, food and forestry. This definition does not include individual farmers who grow and sell unprocessed fruit and/or vegetables from the farm, roadside or truck.

Food has its usual and ordinary meaning, and includes all items designed for human consumption, including but not limited to ice cream, candy, gum, popcorn, hotdogs, sandwiches, peanuts, soft drinks, coffee and dairy products.

Mobile vendor. An outdoor seller, as defined herein, and any business operator or vendor who conducts business from or through use of a vehicle as defined herein.

Outdoor seller. Any person offering for retail sale, or making retail sales of, any goods, products, wares or merchandise of any type, other than food as defined here in at any permitted location; provided, however, that this definition shall not include merchants who ordinarily and regularly offer such items for retail sale within permanent structures located on the same premises; provided further that this definition shall not include those sales commonly known as a garage sale, porch sale, backyard sale, patio sale, lawn sale, yard sale, attic sale, estate sale, moving sale or any similar sale of tangible personal property held out for sale to the public and conducted from or on any lot in a residential zoning district conducted by an individual who owns, leases or has the permission of the owner of the structure located on the same premises.

Special events. A special event is an event whether indoors or outdoors, that can reasonably be expected to cause a public gathering not part of the normal course of business at the location. It may also be defined as any event where a large number of people are brought together to watch or participate.

Vehicle shall mean a push cart, a trailer, a three-wheeled pedal carrier or like device or a motorized vehicle that is registered and licensed by the state department of motor vehicles.

(b) *Types of mobile vendors.* The following mobile vendor operations shall be licensed as set forth in this chapter:

(1) *Seasonal food service establishment.* These are seasonal food services described by the city health code as type 45 class S operations.

The seasonal food service establishment is limited to serving coffee, and snow cones with use of liquid milk, raw fruits, raw vegetables, nuts in the shell, and commercially bottled syrup, sorghum, honey, sweet cider, and other non-time/temperature control for safety foods.

These operations shall be restricted to a maximum annual operation of 180 consecutive days.

These operations are restricted to commercial, industrial, business districts.

The business license shall specify the approval date and the expiration date. No license may be issued for any length of time longer than 180 days from the date of approval.

- (2) *Mobile food service establishment.* Mobile food service establishment is a facility that prepares food and is vehicle-mounted (is department of transportation road approved, including wheels and axles), is readily moveable and remains at one physical address for no more than 12 hours at one time.

These operations include the sale of packaged foods from a stationary display and all other types of food preparation operations as identified and approved by the county health department prior to the issuance of a license by the city as provided herein.

These vehicles must physically return to their commissaries daily for health department compliance, including but not limited to wastewater disposal, maintenance, cleaning, etc.

These operations must notify the city, in writing, as part of the application for license process, the following information:

- a. A schedule of times and locations for their operations;
- b. Location, street address, of their commissary;

These operations are restricted to commercial, industrial, and business zoning districts.

If this service is to be located on private property for any time, prior written approval of the operation from the private property owner must be immediately provided to the City upon request.

- (3) *Mobile push cart food services.* "Mobile push cart" means a non-self-propelled food unit that can be manually moved.

These operations shall relocate at intervals not to exceed every four hours if located in public right-of-way.

These services may operate in permitted locations, including, city right-of-way.

If this service is to be located on private property for any time, prior written approval of the operation from the private property owner must be immediately provided to the City upon request.

These operations are restricted to commercial, industrial, business zoning districts and the downtown Farmers Market or pursuant to a special events permit.

These operations performed inside commercial businesses such as hospitals, mall shopping centers, etc. are exempt.

- (c) *Exemptions.* The following activities, businesses and/or persons, as such are commonly known, shall be exempt from coverage of this chapter, but this exemption shall not be construed to limit or restrict the application of other laws and regulations pertaining to such activities, businesses and/or persons:

- (1) Newspaper couriers;
- (2) Traditional neighborhood lemonade stands;

- (3) Stands used to sell or distribute flowers, fruit, vegetables, produce or plants grown on the property where the stand is located;
 - (4) Delivery or distribution of food, goods or products ordered or purchased by customers from a source or point of sale other than a mobile vehicle operated for the purpose of soliciting customers while traveling or while located on city streets or property;
 - (5) Delivery or distribution of food by or for any not-for-profit organization, governmental agency or other charitable organization, including without limitation Meals on Wheels and the Food Bank; and
 - (6) Concessionaires as defined in this chapter, except that concession agreements with the city shall include health, sanitation and insurance requirements generally conforming to those established for similar businesses and vendors covered by this chapter.
 - (7) Special events that have been permitted and approved by the council.
- (d) *License—Required.* It is unlawful for a mobile vendor to engage in sales business within the city except when licensed as a mobile vendor in compliance with the provisions of this chapter. A separate mobile vendor site permit may be required for each location as provided hereinafter.
- (e) *License application process—Application.* Applicants for a license pursuant to this chapter, shall file an application on a form to be furnished by the city, which shall contain the following information:
- (1) The name or names, birth date, and address (street and mailing, if different) of the applicant;
 - (2) Vehicle license number and description of all vehicles from which the applicant proposes to conduct business;
 - (3) The identity of the commissary, if applicable, its proprietor, its street and mailing address and phone number;
 - (4) A document from the county health department, certifying that the mobile vending business has complied with all applicable state and local health department regulations;
 - (5) A verification that the applicant or the applicant's employer is a vendor register with the state tax commission, or other proof that sales tax has been or is being paid on the items sold or to be sold; or proof that the applicant or the applicant's employer is exempt from the payment of sales tax;
 - (6) Such other information as the city may require and as requested in said application form.
- (f) *Review and investigation—Issuance or denial.* Upon receipt of an application for a license pursuant to this chapter, the director shall make or cause to be made any inquiry or investigation that may be necessary to determine whether the applicant is in compliance with the provisions of all applicable laws and ordinances as well as other applicable provisions of this Code. An annual inspection by the fire department and code

enforcement must be completed before an application is approved. An applicant shall permit representatives of the police department, health department, fire department, code enforcement or other applicable agencies to inspect the premises for the purpose of insuring compliance with City, State and Federal Laws at any time it is occupied or open for business.

Upon completion of any investigation as provided for by this chapter, the application shall be reviewed to ensure compliance with all requirements.

That the applicant or the applicant's employer is a vendor registered with the state tax commission for the payment of sales tax, or that he or she has otherwise demonstrated that sales tax has been or is being paid on the items sold, or that the applicant or the applicant's employer is exempt from payment of such tax;

That the applicant or the applicant's employer is aware of the responsibility to collect and pay sales tax, unless tax exempt;

That the business operation described shall not endanger property, public or private; shall not obstruct pedestrian or vehicular traffic and shall not increase risks to public safety;

Applications for a license shall be accompanied by a nonrefundable processing fee (refer to the Manual of Fees).

The annual license fee (refer to the Manual of Fees) shall be due and payable by the applicant at the time the license is issued and may be prorated quarterly.

Within 15 business days after receipt of the application, the application shall either be approved or disapproved. Grounds for disapproval shall be the following:

- (1) A finding that the application is incomplete;
 - (2) Nonpayment of all applicable fees;
 - (3) Failure of the applicant to verify that he, she or it, is a vendor registered with the state tax commission for the payment of sales tax; or that sales tax has been or is being paid on the items sold; or that he, she, or it, is otherwise exempt from payment of sales tax;
 - (4) A finding that the application is not in conformance with any other applicable provisions of this section;
 - (5) The applicant is a person required to be registered pursuant to the state Sex Offenders Registration Act (57 O.S. § 581 et seq.), as amended; and
 - (6) The applicant shall not be subject to any outstanding warrants for arrest.
 - (7) Failed inspections as required by subsection (f).
- (g) *Expiration of license.* A license issued under this chapter shall expire June 30 each year, except for seasonal food service establishment and seasonal outdoor sellers, which shall expire 180 days from the date of issuance.

Each licensee shall reapply for a license annually. Upon the submission of an updated application and the payment of the annual license fee, the license shall be renewed, provided that he continues to meet the requirements of this chapter.

In the event that the licensee shall cease operation, either voluntarily or involuntarily, before the end of the period for which a license is issued, no part of the license fee shall be refunded.

- (h) *Renewal of license.* The holder of any expiring license, issued under this chapter, who desires a new license, shall file a written application for renewal. The application for renewal shall contain the information required.
- (i) *Exhibition of license—Transfer.* A license issued under this chapter shall be posted conspicuously at the place of business. Licenses issued under this chapter are not transferable.
- (j) *Health regulations.* All mobile vendors shall comply with all laws, rules and regulations regarding food handling, and all vehicles, equipment and devices used for the handling, storage, transportation and/or sale of food shall comply with all applicable laws, rules and regulations, as presently worded and as may be amended by law, in addition to any other rules and regulations as may be established by the county health department.
- (k) *Mobile vendor standards.* All mobile vendors licensed under this chapter shall conform to the following standards unless otherwise approved by the council:

Geographical restrictions. No mobile vendor shall sell or vend from his or her vehicle or conveyance when:

- (1) Within 300 feet of a public or private school grounds during the hours of regular school session, classes or school-related events in said public or private school, except when authorized in writing by said school; or
- (2) Within 300 feet of the entrance to a business establishment which is open for business and is offering for sale the same or similar product as an item offered for sale by the mobile vendor unless authorized in writing by the stationary business establishment; or
- (3) Within 300 feet of a restaurant, cafe or eating establishment which is open for business unless authorized in writing by the stationary business establishment; or
- (4) Within 300 feet of a public park of the city where a city authorized concession stand is located during times other than during the course of a public celebration except as approved by the city; or
- (5) Within 300 feet of city property where a city authorized concession stand is located during the course of a public celebration when nonprofit organizations are permitted to engage in the sale of merchandise and food at such property; or
- (6) Within 300 feet of the location for which a special event permit has been issued during the time specified from the start through completion of the special event;
- (7) No mobile vendor shall conduct business so as to violate any ordinances of the city regulating traffic and rights-of-way, as now in effect or hereafter amended;

- (8) No mobile vendor shall obstruct or cause to be obstructed the passage of a sidewalk, street, avenue, alley or any other public place by causing people to congregate at or near the place where food or other items are being sold or offered for sale;
 - (9) No customer shall be served on the street side of the mobile unit. All service must be on the curb side when the mobile unit is on or abutting a public street;
 - (10) Absolutely no seating shall be provided or permitted as part of a mobile vendor business as contemplated in this chapter;
 - (11) No drive thru or drive by customer service shall be provided or permitted as part of a mobile vendor business as contemplated in this chapter;
 - (12) All mobile vendors shall provide garbage receptacles for customer use;
 - (13) No mobile vendor shall locate his or her vehicle or other conveyance in such a manner as to cause a traffic hazard;
 - (14) At the conclusion of business activities at a given location the mobile vendor shall remove the vehicle, all table and chairs, and shall clean all the public way surrounding his or her vehicle of all debris, trash and litter generated by the vendor's business activities;
 - (15) All mobile vendors preparing food by cooking, frying or other means shall be equipped with one 20-pound type K fire extinguisher and a 10-pound minimum rating of 2A-40-BC;
 - (16) Applicants for licenses issued pursuant to this chapter should be prepared to meet all additional requirements and conditions to operate in certain public areas of the city such as the Rose District of Main Street, Central Park, Special Events Park, property under the jurisdiction of the city parks department;
 - (17) All electrical connections by mobile vendors shall fully comply with requirements of the national electrical code (NEC).
 - (18) All mobile vendors shall operate in compliance with all City, State and Federal Laws.
- (l) *Revocation of license.* A license issued pursuant to this chapter may be revoked, in writing, by the director or his designee for any of the following reasons:
- (1) Any fraud, misrepresentation or false statement contained in the application for license;
 - (2) Any fraud, misrepresentation or false statement made in connection with the selling of products;
 - (3) Any violation of this chapter;
 - (4) Conducting the business licensed under this chapter in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

- (m) *Surrender upon expiration or revocation.* When a license issued pursuant to the provisions of this chapter expires, or is revoked, its holder shall surrender it to the director and the license shall become the property of the city.
- (n) *Appeal. Notice of Adverse Action.* If the director or his authorized representative proposes to take any action adverse to an applicant, licensee or permittee, he shall establish a time, date and place for an administrative hearing and shall notify such person (hereinafter "respondent") of the pending action at the respondent's address contained on his most recent application. The notice shall be served on the respondent personally or by United States Mail, certified, return receipt requested. The notice shall be served or postmarked no more than ten days preceding the date of the administrative hearing and shall:
- (1) Set forth in detail the proposed action and the reasons therefor;
 - (2) Designate any section of this chapter, any statute, ordinance or other authority which requires or supports the proposed action;
 - (3) Set forth the date, time and place of the administrative hearing;
 - (4) Advise the respondent that he may be present at such hearing to provide reasons why the proposed action should not be taken; and
 - (5) Advise the respondent that if he fails to appear at the administrative hearing, action may be taken in his absence.
 - (6) Copies of such notice shall also be sent to the complaining party, if applicable.
 - (7) Administrative hearing. An administrative hearing shall be held on the date and time and at the place contained in the notice described above.
 - (8) If the respondent appears, he shall be afforded an opportunity to be heard. Following the hearing, the director may take or refrain from taking the proposed action or may modify the same by placing reasonable conditions on the respondent, or otherwise, according to the provisions of this chapter.
 - (9) If the respondent fails to appear, notice of the decision made or action taken shall be given to the respondent and unless appealed to the city council as hereinafter provided, such decision shall be final and binding ten working days from and after the date of the decision.
 - (10) Notice of the action taken or decision made shall be given by certified mail, return receipt requested or by personal delivery to the respondent, at the address given in the respondent's most recent application.
 - (11) The respondent shall be advised of his right to appeal the action or decision to the city council.
 - (12) Appeals to the council. Any person aggrieved by a decision of the director may file an appeal to the council by filing a written notice of appeal with the council secretary and the director within ten working days of the date of the decision complained of. Such notice shall specify the grounds for the appeal. A hearing on the appeal shall be heard by the council not later than 30 days from the date of

filing the notice of appeal unless further delay is reasonable. If an appeal is filed, the director shall notify the complaining party, if applicable.

(13) Enforcement stayed. If an appeal of the director's decision is made to the council, enforcement of such decision shall be stayed until the council has rendered its decision, unless the director certifies to the council that a stay would cause imminent danger to life or property.

(14) Administrative costs. Any determination by the director regarding whether or not an applicant, licensee or permittee has failed to comply with any of the provisions of this chapter may also include the requirement that the applicant, licensee or permittee pay a sum not to exceed \$500.00 to defray administrative costs associated with the investigative and administrative hearing process.

(o) *Violations—Penalties.* It shall be unlawful and a misdemeanor offense for any person, firm, corporation, limited liability company or other entity to violate any of the provisions of this chapter. Any such entity convicted of a violation of this chapter shall be guilty of a misdemeanor offense and shall be punished by a fine of not more than \$500.00, excluding costs, fees and assessments, or by imprisonment in the city jail for a period not exceeding six months, or by both such fine and imprisonment. Each day, or portion thereof, during which a violation is committed, continued or permitted shall be deemed a separate offense.

SECTION II. Any ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

SECTION III. An emergency exists for the preservation of the public health, peace, and safety and therefore this ordinance shall become effective from and after the time of its passage and approval.

PASSED AND APPROVED and the emergency clause ruled upon separately this _____ day of _____, 2018.

ATTEST:

MAYOR

(Seal) CITY CLERK

APPROVED:

ASSISTANT CITY ATTORNEY