

City of Fayetteville Staff Review Form

City Council Agenda Items
 and
 Contracts, Leases or Agreements

11/15/2011

City Council Meeting Date
 Agenda Items Only

Leif Olson
 Submitted By

Sustainability and Strategic Planning
 Department

Action Required:

ADM 11-3932: (UDC Chapter 178: Outdoor Vendors): Submitted by CITY PLANNING STAFF. The proposal is to amend Chapter 178: Outdoor Vendors to clarify and modify language regarding sidewalk and mobile vendors.

_____	\$ _____	_____
Cost of this request	Category / Project Budget	Program Category / Project Name
_____	\$ _____	_____
Account Number	Funds Used to Date	Program / Project Category Name
_____	\$ _____	_____
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature] 10/28/11
 Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 10/31/11
 City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Bisher 10-31-2011
 Finance and Internal Services Director Date

10-27-11 P01:44 RCVD
 Received in City Clerk's Office
[Signature]

[Signature] 10-31-11
 Chief of Staff Date

Received in Mayor's Office
 ENTERED
 10/31/11
[Signature]

[Signature] 11/1/11
 Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
John Coleman, Sustainability and Strategic Planning Director

From: Leif Olson, Planner

Date: October 18, 2011

Subject: ADM 11-3932 Outdoor Vendors Ordinance Amendments

RECOMMENDATION

Staff and the Planning Commission recommends approval of an ordinance amending Chapter 178: Outdoor Vendors.

BACKGROUND

In 2008 the City adopted Chapter 178: Outdoor Vendors and in the subsequent years has approved numerous sidewalk and mobile truck vendors to operate in the City. In 2010 the ordinance was amended to include a process for an applicant to request a conditional use permit to operate in locations not pre-approved by the City, for carts that do not meet the size requirements, or to vend arts and crafts products. Staff believes that the outdoor vendor ordinance has been very successful. Staff has observed some recurrent issues regarding the language of the ordinance as it pertains to the permitted size and measurements of the cart. In order to better administer the ordinance staff proposes amendments related to cart size and inspections and the approval process for increases in cart size. Additionally, the Fire Marshall requests adding language to section 178.04 Outdoor Mobile Vendors Located on Private Property that requires commercial kitchen exhaust hoods for outdoor mobile vendors that cook foods that produce grease vapors

DISCUSSION

On September 12, 2011 the Planning Commission voted 6-1-0 in favor of a recommendation of approval for ADM 11-3932 Outdoor Vendor Ordinance Amendments.

BUDGET IMPACT

None.

ORDINANCE NO. _____

**AN ORDINANCE TO AMEND §178.03 SIDEWALK VENDORS OF THE
UNIFIED DEVELOPMENT CODE TO CLARIFY CART REQUIREMENTS**

WHEREAS, Planning Staff and the Fire Marshall's office have recommended modifications to §178.03 **Sidewalk Vendors** to clarify food cart requirements and to require exhaust hoods for enclosed carts; and

WHEREAS, the Planning Commission has unanimously recommended these amendments.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals all of §178.03 **Sidewalk Vendors** and enacts a replacement §178.03 **Sidewalk Vendors** with the recommended amendments as attached as Exhibit A.

PASSED and APPROVED this 15th day of November, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

178.03 Sidewalk Vendors

- (A) *Purpose.* Public rights-of-way are designed for free and unobstructed travel. However, the City of Fayetteville recognizes that certain development patterns with wide sidewalks are unique and that certain public amenities are not inconsistent with the underlying dedication for the public right-of-way, as long as they do not impede travel or interfere with the public safety. This ordinance is designed to regulate open air vending of goods on public rights-of-way.
- (B) *Sidewalk Vendor Authorization.* The Zoning and Development Administrator may issue a permit for a sidewalk vendor to use a specific sidewalk or plaza location for specified hours to sell specified goods for up to a one year period. In addition to the general use requirements, the Zoning and Development Administrator shall ensure that no permit is granted unless:
- (1) The applicant has obtained all necessary permits from State or County authorities, including any Transient Merchant permit requirements.
 - (2) The applicant has submitted a sales and use tax number, sales tax remittance forms and an affidavit that the applicant has fully paid all sales and use taxes during the previous twelve months, if applicable.
 - (3) The applicant has filed a HMR tax remittance form with the City of Fayetteville, when applicable.
 - (4) The applicant has notified all adjacent property owners, by certified mail, of the application.
- (C) *Permit Application.* Each application for a permit to conduct business on a sidewalk shall be accompanied by a \$100 application and permit fee. Permits issued after July 1st shall be accompanied by a \$50 application and permit fee. Each permit will expire at 3 a.m. on January 1st following the year issued. The permit fee shall be collected prior to issuance of the permit
- (1) Application for a sidewalk vendor permit shall include the following items in a format acceptable to the Zoning and Development Administrator:
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered.
 - (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business, including but not limited to, a description of any mobile container or device to be used for transport or to display approved items or services.
 - (f) A site plan indicating the location and dimensions of the proposed use and device or pushcart.
 - (g) A detailed scale drawing, picture or diagram and material specifications of the device or pushcart to be used.
 - (2) The permit issued shall not be transferable in any manner.
 - (3) The permit is valid for one sidewalk vending location only.
- (D) *Permitted Vending Products and Goods.*
- (1) The City of Fayetteville permits the following types of goods for street vending in approved locations:
 - (a) Cut Flowers
 - (b) Food and Beverage
 - (c) Arts and Crafts: Only objects of art or craft produced and sold by a local artist or craft person may be sold by street vendors.
 - (2) All goods being sold from sidewalk vendors shall:
 - (a) Be located within the permitted area and be attended at all times. Sidewalk vendors shall not conduct transactions with vehicular traffic located in the right-of-way.
 - (b) Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk.

- (c) Involve a short transaction period to complete the sale or render the service.
 - (d) Not cause undue noise or offensive odors.
 - (e) Be easily carried by pedestrians.
- (E) *Location Requirements.* Sidewalk vendors are permitted in specific locations in Fayetteville as a use by right. These locations have been determined by the City Council to have adequate sidewalk width, pedestrian traffic flow, and they minimize potential conflicts with existing businesses. Sidewalk vendors are not permitted to operate on days / times associated with special events, unless they have been approved and granted a Special Events Permit from the organization coordinating the special event. Maps of approved locations are available in the Planning Division. The locations where street vending is allowed as a permitted use are:
- (1) North and West sidewalks in front of the Walton Arts Center. Sidewalk vendors may locate along West Avenue and Dickson St. in front of the Walton Arts Center
 - (2) Inside of the Fayetteville Square. Sidewalk vendors may locate along sidewalks on all sides of the interior of the downtown Fayetteville Square. On days / times that the Farmers' Market or other special events operate, sidewalk vendors shall only be permitted if approved through the Farmers' Market or Special Event Permit process.
- (F) *Conditional Use Permit.* If an applicant wishes to operate as a sidewalk vendor in a location other than those specifically approved by the City Council, a conditional use permit must be obtained. Upon receipt of a conditional use permit application, the Planning Commission shall review the proposed permit operating area to determine if the said area is suitable for street vending in accordance with this chapter. In making this determination, the Planning Commission shall consider the following criteria:
- (1) The application meets all other criteria established herein for a sidewalk vendor, with the exception that the applicant may request that the cart, and/or operating area, may be larger than the dimension required in this chapter.
- (2) The number of permits issued for the street vending location shall not exceed the capacity of the area in terms of maintaining the use of the sidewalk as a public right-of-way. The Planning Commission shall consider the width of sidewalk, the proximity and location of existing street furniture, including, but not limited to: signposts, lamp posts, parking meters, bus shelters, benches, phone booths, street trees and newsstands, as well as the presence of bus stops, truck loading zones, or taxi stands to determine whether the proposed use would result in pedestrian or street congestion.
- (G) *Requirements.* Sidewalk vendors conducting business on the sidewalks of the City of Fayetteville with a valid permit issued under this Chapter may transport and/or display approved goods upon the approved mobile device or pushcart, under or subject to the following conditions:
- (1) The operating area shall not exceed 40 square feet of sidewalk, which shall include the area of the mobile device, operator and trash receptacle. The Planning Division will provide a map of approved vendor locations.
 - (2) The length of the mobile device or cart shall not exceed 6 7 feet, **including the cart's trailer tongue or hitch that is not removed or collapsible, and any propane tanks or other attachments to the mobile device.** The width shall not exceed 3 4 feet, including the carts wheel wells or tires, **and any accessory components of the cart such as retractable or collapsible sinks or shelves.**
 - (3) The height of the mobile device or pushcart, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 5 feet.
 - (4) No permanent hardware shall be affixed to the sidewalk or adjacent buildings.
 - (5) Mobile generators are prohibited.
 - (6) No sidewalk vendor may conduct business on a sidewalk in any of the following places:
 - (a) Within 10 feet of the intersection of the sidewalk with any other sidewalk. Sidewalk intersections

- shall be kept clear for pedestrian safety.
- (b) Within 10 feet of any handicapped parking space, or access ramp.
 - (c) Within 15 feet of a fire hydrant.
 - (d) Within 15 ft. of an entrance to a building.
- (7) Street vending facilities shall be removed from the public right-of-way when not in use. Sidewalk vendors are only allowed to operate between the hours of 5 a.m. and 3 a.m. All carts shall be removed from the public right-of-way during non-operational hours.
- (8) **Prior to final approval, Planning Staff shall inspect the sidewalk vendor set up in the proposed location. The applicant shall make an appointment between the hours of 8 a.m. to 5 p.m. in which Planning Staff will inspect the cart and all proposed accessories such as coolers, trash receptacle, chairs, etc. that the applicant is proposing for the site. Upon approval, sidewalk vendors shall display in a prominent and visible manner the permit issued by the Planning Division.**
- (9) The Fire Marshal shall inspect and approve any food and beverage pushcart to assure the conformance of all cooking or heating apparatus with the provisions of the City Fire Code.
- (10) Sidewalk vendors who sell food and beverage are required to be permitted, and receive approval, through the Arkansas Department of Health and Human Services for food related establishments. A copy of the permit issued by the State, and inspected and approved by the Washington County Health Department, shall be supplied to the Planning Division prior to Planning Division approval.
- (11) **Sidewalk vendors are required to provide a trash receptacle for public use located within their permitted operating space. All sidewalk vendors must pick up and properly dispose of all paper, cardboard, metal, plastic or other litter in any form (including cigarette butts) within the sidewalk area assigned to the vendor within thirty minutes of the end of daily operations. Failure to**
- completely remove all such litter from the authorized sidewalk location shall constitute a violation of the permit approval.
- (12) No sidewalk vendor shall solicit, berate or make any noise of any kind by vocalization or otherwise, for the purpose of advertising or attracting attention to his wares. No audible amplified music shall be permitted.
- (H) *Signage.* Sidewalk vendors shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors are permitted a total of one (1) A-frame sandwich/menu board subject to Ch. 174 Signs regulating these types of signs. The menu board shall list the products and prices for the items being vended. Only products or services available at the vending location shall be displayed.
- (I) *Revocation of the Sidewalk Vendor Permit.* The Zoning and Development Administrator is authorized to revoke a sidewalk vendor's permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

(Ord. 5185, 10-7-08; Ord. 5321, 5-18-10)

178.04 Outdoor Mobile Vendors Located On Private Property

- (A) *Purpose.* To permit outdoor mobile vendors, also known as transient merchants, to operate on private property while preserving and protecting the health, safety and welfare of citizens.
- (B) *Requirements.* Transient merchants located on private property shall meet the following requirements and submittals prior to approval:
- (1) **Permit Application.** Each application for a permit to conduct a transient merchant business shall be accompanied by a \$50 permit review and processing fee.
 - (2) **Application for a permit to conduct a transient merchant business shall include the following items in a format acceptable to the Zoning and Development Administrator:**
 - (a) Name, address and contact information.
 - (b) Type of items sold or services rendered. A change in product or

service will require a new permit to be issued.

- (c) A valid copy of all necessary permits required by State and County health authorities.
 - (d) Proof of application for remittance of HMR tax to the City of Fayetteville.
 - (e) Means to be used in conducting business including but not limited to a description of any mobile device to be used for transport or to display approved items or services.
 - (f) A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.
 - (g) Written authorization, signed by the property owner or legal representative of record, stating that the transient merchant business is permitted to operate on the subject property.
- (3) The permit issued shall not be transferable in any manner.
 - (4) The permit is valid for one mobile vendor location only.
 - (5) The proposed use shall be a permitted use-by-right within the underlying zoning district in order to be permitted.
 - (6) A Temporary Certificate of Zoning Compliance (90 days) shall be approved by the Planning Division.
 - (7) Outdoor mobile vendors are allowed on a temporary basis (90 days), by nature of their temporary occupancy, in one location over a one-year (twelve month) timeframe. Outdoor mobile vendors may move to a different location after

this 90-day period has expired. However, a new Outdoor Mobile Vendor Application will have to be reviewed and approved by the Planning Division for a new location.

- (8) Outdoor mobile vendors shall be in compliance with parking lot requirements for any existing and the proposed business. The number of required parking spaces is determined by the use and size of the proposed transient merchant business, and by the use and size of the existing business. Parking spaces on the property where the outdoor mobile vendor is located shall be paved and striped in order to be utilized. The use of parking for an outdoor mobile vendor may not reduce the number of spaces necessary for other uses occurring on the property. An adequate number of parking spaces for the existing businesses and the outdoor mobile vendor must be provided onsite. The location of the outdoor mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.
- (9) **The Fayetteville Fire Marshall shall inspect and approve all permitted outdoor mobile vendors that are set up to cook food and shall require a Type I hood at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease vapors. Commercial kitchen exhaust hoods shall comply with the requirements of the International Mechanical Code.**

Commercial cooking appliances required to have a Type I hood shall be provided with an approved automatic fire suppression system complying with the Arkansas Fire Prevention Code, Volumes I and II.

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Old Business:

ADM 11-3932 Administrative Item (AMENDMENTS TO CHAPTER 178: Outdoor Vendors) Submitted by THE CITY OF FAYETTEVILLE PLANNING DIVISION to clarify Sidewalk Vendor requirements and to add hood vent requirements for Outdoor Mobile Vendors that serve food.

Andrew Garner, Senior Planner, gave the staff report indicating that this item was tabled at the previous meeting and that the City Fire Marshal was present to answer questions regarding the proposed changes to the vent hood regulations for mobile vendors.

Terry Lawson, Fire Marshal, discussed the background of the request.

No public comment was presented.

Commissioner Chesser asked when vent hoods would be required.

Lawson explained that the vent hoods and fire suppression system would be required when cooking items that generate grease or smoke such as deep friers or a flat-top grill.

Commissioner Hoskins asked for details about the vent system.

Lawson explained the hood system and options for mobile situations.

Hoskins asked about vendors for the BBQ festival.

Lawson explained the difference between the standard 90-day outdoor mobile vendor permit that is inspected by the fire department and the BBQ festival vendors that are not inspected by the fire department.

Commissioner Hoskins asked about monitoring and inspecting these types of vendors.

Lawson explained that the fire department inspects sidewalk vendors and other food vendors such as the food trucks and vans.

Commissioner Hoskins discussed that he agrees with the concerns about vapors and smoke discussed by the fire marshal. He discussed that ceiling fans and exhaust fans should be adequate for these types of small applications such as in a food van. Ventilation makes sense, but requiring a hood and Ansul fire suppression system is very expensive and not necessary.

Commissioner Chesser agreed with Commissioner Hoskins. Do other municipalities require this?

Lawson stated that he was not sure.

Commissioner Cabe discussed that in these small applications such as a food van he could picture an inexperienced high school or college student cooking food and a grease fire that could be made worse without the suppression system. He fully agrees with the proposed code changes.

Motion:

Commissioner Chesser made a motion to forward ADM 11-3932 as recommended by staff. **Commissioner**

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Cook seconded the motion. Upon roll call the motion passed with a vote of 6-1-0 (Commissioner Hoskins voted 'no').

