

Added at Agenda Session 4/24/12

ALDERMAN AGENDA REQUEST FORM

D. 5  
Repeal & Replace §178.04  
Outdoor Mobile Vendors  
Page 1 of 6

May 1, 2012

FOR: COUNCIL MEETING OF ~~April 24, 2012~~

FROM: Mark Kinion

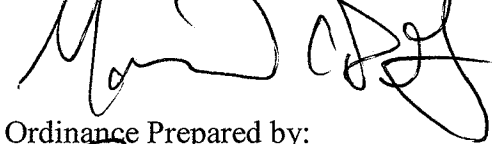
ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

ADM 12-4413: (Outdoor Mobile Vendor Ordinance):

An ordinance to amend Ch. 178 Outdoor Vendors

APPROVED FOR AGENDA:

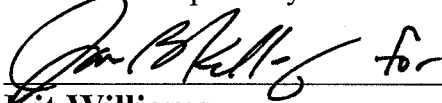
Council Member **Mark Kinion**



Date

4-24-2012

Ordinance Prepared by:

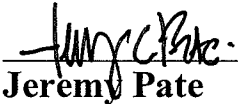
 for

**Kit Williams**  
City Attorney

4-24-12

Date

Packet Prepared by:

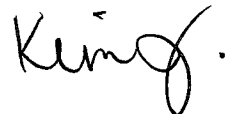
  
**Jeremy Pate**

Director of Development Services

04-24-2012

Date

04-23-12 P03:28 RCVD



## **CITY COUNCIL AGENDA MEMO**

**To:** Mayor Jordan, City Council

**Thru:** Don Marr, Chief of Staff  
Jeremy Pate, Development Services Director <sup>8</sup>

**From:** Leif Olson, Planner <sup>LO</sup>

**Date:** April 18, 2011

**Subject:** ADM 12-4413 Outdoor Mobile Vendor Ordinance Amendments

### **RECOMMENDATION**

Staff recommends approval of an ordinance amending Chapter <sup>178</sup> 168: Outdoor Vendors of the Unified Development Code by adopting a new section permitting outdoor mobile vendors on private property to request a variance from the Planning Commission to operate in the same location for up to one year.

### **BACKGROUND**

The Outdoor Mobile Vendor ordinance was first adopted by the City Council in 2008 to replace the transient merchant license ordinance that previously existed. Alderman Petty, City Staff and stakeholders in the mobile vendor community met in December of 2011 to discuss the limitations of the current ordinance that only permits vendors to stay in one location for a maximum of 90 days. The vendors discussed the difficulty they experience with attempting to plan for their business activity under such a limited time frame. Currently, after their 90 day permit expires they are required to get a new approval and move to a new location. Planning Staff has processed a few outdoor mobile vendors as temporary uses permitted under Use Unit 2: City-wide Uses by Conditional Use through a Conditional Use Permit process at the Planning Commission for a longer time period than 90 days, which was the intent of the ordinance amendment in 2010. However, the City Attorney recently recommended that this Conditional Use Permit process is not the appropriate process and that more specific language should be codified into the Outdoor Mobile Vendor chapter of the Unified Development Code.

### **BUDGET IMPACT**

None.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REPEALING AND REPLACING § 178.04 OUTDOOR  
MOBILE VENDORS LOCATED ON PRIVATE PROPERTY OF THE  
CODE OF FAYETTEVILLE TO PROVIDE FOR A VARIANCE PROCEDURE**

**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 §178.04 Outdoor Mobile Vendors Located on Private Property of the Code of Fayetteville, and enacts a replacement §178.04 Outdoor Mobile Vendors Located on Private Property, as presented in the attached Exhibit "A", which is incorporated herein as if set out word for word.

**PASSED and APPROVED** this 1<sup>st</sup> day of May, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

TITLE XV UNIFIED DEVELOPMENT CODE

**178.04 Outdoor Mobile Vendors  
Located On Private Property**

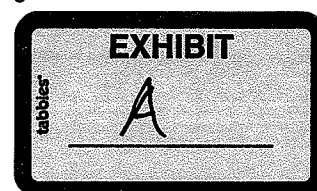
(A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor vendors to temporarily operate on private property while ensuring such use is compatible with and not detrimental to nearby properties, does not adversely affect nearby businesses, fosters an aesthetically appealing streetscape, and does not create or worsen a dangerous traffic condition.

(B) *Requirements.* Outdoor Mobile Vendors located on private property shall meet the following requirements and submittals prior to approval:

- (1) Permit Application. Each application for a permit to conduct an Outdoor Mobile Vendor business shall be accompanied by a \$50 permit review and processing fee.
- (2) Application for a permit to conduct an Outdoor Mobile Vendor 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 must be a permitted use-by-right within the underlying zoning district in order to be permitted.
- (6) An Outdoor Mobile Vendor business may be approved by the Planning Division after making the following determinations:
  - (a) All of the requirements of 178.04(B)(2) have been met.
  - (b) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
- (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 at least one half mile from the original 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



TITLE XV UNIFIED DEVELOPMENT CODE

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.

- (C) *Variances.* Outdoor Vendors may request a variance from the Planning Commission to operate for an extended period of time, not to exceed twelve consecutive months, in the same location subject to the following standards:
- (1) A vendor may request a variance from the 90 day location requirement to operate for an extended period of time. The maximum time period that the Planning Commission may grant this variance is limited to no more than twelve consecutive months.
  - (2) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.
  - (3) A variance may be granted by the Planning Commission when the following findings have been met:
    - (a) The applicant has established that the operation of the outdoor mobile vendor will be compatible with and not detrimental to nearby properties, will not adversely affect nearby businesses, will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
    - (b) That the outdoor mobile vendors' presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.
  - (4) In granting the variance, the Planning Commission may require appropriate conditions and safeguards, including semi-permanent or permanent improvements to the property to secure the substantial objectives of the ordinance.

