

City of Fayetteville Item Review Form

2013-0153
Legistar File Number

11/19/13

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Peter Nierengarten

Submitted By

Sustainability and Strategic Planning

Department

Action Required:

Staff recommends approval of an ordinance amending the Unified Development Code Chapter 178: Outdoor Vendors to clarify existing regulations, create a short and long term permit process and to allow for mobile food trucks to operate daily on private property.

Does this item have a cost? No

_____	_____	_____
Cost of this request	Category or Project Budget	Program or Project Name
_____	_____	_____
Account Number	Funds Used to Date	Program or Project Category
-	\$0.00	
_____	_____	_____
Project Number	Remaining Balance	Fund Name
<input type="checkbox"/>	<input type="checkbox"/>	
Budgeted Item?	Budget Adjustment Attached?	

V20130812

Previous Ordinance or Resolution # 5498

Original Contract Number: _____

Comments:

Paul a. Becher 11-3-2013

Don Man 11-4-13

Siobhán Jordan 11/4/13

11-01-13A11:42 RCVD

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THE CITY OF FAYETTEVILLE, ARKANSAS

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

CC: Jeremy Pate, Development Services Director

From: Peter Nierengarten, Sustainability & Strategic Planning Director *PN*

Date: October 30, 2013

Subject: ADM 13-4486 Outdoor Mobile Vendor Ordinance Amendments

RECOMMENDATION:

Staff recommends approval of an ordinance amending the Unified Development Code Chapter 178: Outdoor Vendors to clarify existing regulations, create a short and long term permit process and to allow for mobile food trucks to operate daily on private property.

BACKGROUND:

The City Council adopted the Outdoor Vendor Chapter in the Unified Development Code in 2008. Previously, the City administered vendor licensing through a Transient Merchant License. Since 2008 the section of this code that deals with outdoor mobile vendors operating on private property has been amended twice in order to expedite the process and to allow vendors to locate in the same place for time periods longer than the original 90 day limitation.

Recently Planning Staff and Alderman Petty have discussed a number of amendments to this code. The first would be to create an extended permitting process that would allow vendors to get a permit to set up and operate in the same location for a calendar year. Additionally, staff has extended the temporary permit from 90 days to 6 months. And finally, staff is proposing to rename the sidewalk vendor section and add a new section that would permit mobile food trucks to operate on private property on a daily basis. The following bullet points highlight the proposed amendments to the existing Outdoor Mobile Vendor code:

- Mobile vendors shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street of the proposed mobile vendor location.
- All permits would be granted to the property owner and the outdoor mobile vendor operator jointly. This will place the responsibility of compliance with the ordinance on both the mobile vendor operator and the property owner.
- A temporary permit would be extended from the current 90 days to six months. This will allow for a longer "season" for seasonal operators such as snow cone businesses which typically operate for five months. Staff also feels that six months allows a vendor to adequately test and evaluate their business model at a specific location.
- The temporary permit requirement to move locations after six months would allow for relocation within ¼ mile instead of the current ½ mile.

- The “Variance” section has been renamed as an “Annual Permit” and shall be limited to one year. Annual permits will be granted by the Planning Commission which may impose conditions and restrictions on the mobile vendor business or the property owner such as landscape improvements, parking lot improvements or permanent restroom facilities, etc. The mobile vendor may continue to request extended permits for the same location year after year. Mobile vendor courts will be able to form through the use of the annual permit process.
- Mobile vendors seeking a temporary (6 month) permit are approved administratively after meeting the requirements of the ordinance. Outdoor mobile vendors seeking an annual permit shall provide a list of nearby similar businesses that includes the name, products sold or services rendered and the distance from the proposed mobile vendor location.
- A number of existing business operations that are regulated by other codes would be exempted from this chapter including; special events, fireworks sales, etc.
- A list of prohibited conduct is included and a section outlining the process for suspending or revoking the permit is added.
- Outdoor mobile vendors shall comply with the Federal Americans with Disability Act (ADA) requirements if the public has access to the interior of any mobile vending unit.

The following bullet points highlight the proposed amendments to the existing sidewalk vendor ordinance adding a new section regulating food trucks located on private property:

- A food truck is a motorized and operational self contained vehicle equipped with facilities for cooking and selling food that is removed daily from the property on which it vends food. Food trucks may be permitted to locate on private property on an annual basis through and administrative process when all conditions of the ordinance have been met.
- Food truck permits would be granted to the property owner and the outdoor mobile vendor operator jointly.
- The food truck shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street of the proposed food truck location.
- Food truck permits are good for only one location, but food trucks may hold permits for multiple locations.

DISCUSSION

The Planning Commission heard this item at their October 15, 2013 meeting and proposed minor changes to the code. The Planning Commission forwarded this item to the City Council with a recommendation of approval for the amended version with a 7-2-0 vote. Staff supports Planning Commission’s amendments and has included their recommended language in the ordinance.

BUDGET IMPACT:

None

ORDINANCE NO. _____

AN ORDINANCE TO REPEAL § 178.03 SIDEWALK VENDORS AND ENACT A REPLACEMENT § 178.03 SIDEWALK VENDORS AND FOOD TRUCKS AND TO REPEAL § 178.04 OUTDOOR MOBILE VENDORS LOCATED ON PRIVATE PROPERTY AND ENACT A REPLACEMENT § 178.04 OUTDOOR MOBILE VENDORS LOCATED ON PRIVATE PROPERTY

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 § 178.03 Sidewalk Vendors and enacts a replacement § 178.03 Sidewalk Vendors and Food Trucks as shown on Exhibit A attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas repeals § 178.04 Outdoor Mobile Vendors Located on Private Property and enacts § 178.04 Outdoor Mobile Vendors Located on Private Property as shown on Exhibit B attached hereto.

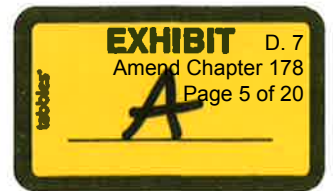
PASSED and APPROVED this 19th day of November, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



178.03 Sidewalk Vendors and Food Trucks

(A) Purpose.

(1) *Sidewalk Vendors.* 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.

(2) *Food Trucks.* The City of Fayetteville encourages a diversity of business opportunities and support entrepreneurship by establishing ordinances designed to allow mobile food trucks to flourish in the city. Food trucks may be permitted to locate on private property on an annual basis through an administrative approval process. Food trucks may also be permitted to operate on public property temporarily if approved through a special event permit process administered by the City. In all cases, food trucks shall be removed daily from the property on which they were vending.

(B) *Sidewalk Vendor and Food Truck Authorization.* The Zoning and Development Administrator may issue a permit for a sidewalk vendor or food truck to use a specific sidewalk, plaza location or private property 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.
- (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 sidewalk vendor or food truck permit shall be accompanied by a \$100 application and permit fee. Food truck permits shall be accompanied by the \$100 permit fee for each location requested for approval. All 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 or food truck permit shall include the following items in a format acceptable to the Zoning and Development Administrator:

(a) Name, address and contact information of the owner and operator of the mobile device as well as the contact information of the property owner if applicable.

(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 vehicle or pushcart.

(g) A detailed scale drawing, picture or diagram and material specifications of the vehicle or pushcart to be used.

(2) The permit issued shall not be transferable in any manner.

(3) The sidewalk vending or food truck permit is good for one location only.

Sidewalk vendors and food trucks may hold permits for multiple locations.

(D) *Permitted Vending Products and Goods.*

(1) *Sidewalk Vendors.* The City of Fayetteville permits the following types of goods for sidewalk 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 sidewalk vendors.

(2) *Food Trucks.* The City of Fayetteville permits only food and/or beverage items to be sold from food trucks.

(3) All goods being sold from sidewalk vendors and food trucks 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 or vehicular traffic on the sidewalk or street.
- (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) *Sidewalk Vendor 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 sidewalk 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) *Sidewalk Vendor 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 sidewalk 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. An increase in cart size or operating area may be considered by the Planning Commission as a variance and does not require conditional use permit review. The determination of a larger cart size and/or operation area shall be subject to the variance criteria in Chapter 156.03(C).

(2) The number of permits issued for the sidewalk 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) *Sidewalk Vendor Operation 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 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 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) Sidewalk 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) *Food Truck Location and Operation Requirements.* Food trucks may be permitted administratively on an annual basis for multiple locations subject to the

following determinations made by the Zoning and Development Administrator:

- (1) The property is zoned to allow for food and beverage uses and the location meets all applicable zoning requirements of the underlying zoning district. The property owner for each location must provide a written statement giving the food truck operator permission to operate on the property. A site plan shall be provided by the applicant for each proposed site upon which the food truck would like to temporarily locate.
 - (2) The food truck shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street of the proposed food truck location, unless the food truck predates the aforementioned permanent businesses.
 - (3) The parking requirement for the food truck and any operating businesses on the property is met.
 - (4) The applicant has provided the City with documentation of approval from the Arkansas Department of Health and Human Services for food related establishments. A copy of this permit issued by the State, and inspected and approved by the Washington County Health Department, shall be supplied annually upon permit renewal.
 - (5) Food trucks may operate between the hours of 5 a.m. and 3 a.m. Food trucks shall be removed daily from the property on which they were vending and the applicant shall demonstrate that they have a permanent location to appropriately store their food truck when it is not in operation.
 - (6) Food trucks are required to provide a trash receptacle for public use located adjacent to their operation.
- (I) *Signage Requirements.* Sidewalk vendors and food trucks shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors and food trucks 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.
 - (J) *Revocation of the Sidewalk Vendor or Food Truck Permit.* The Zoning and Development Administrator is authorized to revoke a sidewalk vendor or food truck permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

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 mobile vendors to 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) *Outdoor Mobile Vendor Temporary Permit for a Single Location.* Outdoor mobile vendors are allowed on a temporary basis for a maximum of six months in one location during a calendar year. Outdoor mobile vendors utilizing a temporary permit may request to relocate to a different site at least one quarter mile (1,320 feet) from the original location after this six month period has expired. However, a new outdoor mobile vendor application shall be reviewed and approved by the Planning Division for every new location. All temporary permits shall expire a maximum of six months from the date issued and the mobile vending unit shall be removed from the property.

(1) A temporary permit for an outdoor mobile vendor business in a single location may be approved and issued administratively by the Planning Division after making the following determinations:

- (a) All of the requirements of 178.04(D) have been met.
- (b) The applicant has established that the operation of the outdoor mobile vendor will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
- (c) The outdoor mobile vendor business shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street as the proposed outdoor mobile vendor, unless the outdoor mobile vendor predates the aforementioned permanent business.

(C) *Outdoor Mobile Vendor Annual Permit for a Single Location.* Outdoor mobile vendors

may request an annual permit from the Planning Commission to operate for a one year time period in the same location subject to the following standards:

(1) The applicant shall comply with the notification requirements of section 157.05 of the Unified Development Code.

(2) All of the requirements of 178.04(D) have been met.

(3) In granting an annual permit, 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, such as; restroom facilities or shared use agreements, landscaping improvements, parking lot improvements, sidewalk improvements, etc.

(4) Annual permits shall expire on December 31st. A new permit request shall be submitted to the Planning Commission for each subsequent year that an outdoor mobile vendor wishes to locate on the same property.

(5) The applicant has established that the operation of the outdoor mobile vendor will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.

(6) Outdoor mobile vendors seeking an annual permit shall provide a list of nearby similar businesses that includes the name, products sold or services rendered and the distance from the proposed mobile vendor location.

(D) *Permit Requirements.* All outdoor mobile vendors located on private property shall meet the following requirements and submittals prior to approval:

(1) *Permit Application Fee.* Each application to conduct an outdoor mobile vendor business shall be accompanied by a \$100 permit review and processing fee. Outdoor mobile vendor permits shall be issued to the property owner and the outdoor mobile vendor operator jointly.

(2) *Temporary and Annual Permit Application Requirements.* Application for a permit to conduct an outdoor mobile vendor business shall include the

TITLE XV UNIFIED DEVELOPMENT CODE

following items in a format acceptable to the Zoning and Development Administrator:

- (a) Name, address, contact information and signature of both the property owner and the outdoor mobile vendor requesting to locate on private property.
 - (b) A valid copy of all necessary permits required by State and County health authorities which shall be conspicuously displayed at all times during the operation of the business.
 - (c) Proof of application for remittance of HMR tax to the City of Fayetteville, when applicable.
 - (d) A written description of the vehicle or structure to be used in conducting business and a list of nearby similar businesses that includes the name, products sold or services rendered and the distance from the proposed mobile vendor location.
 - (e) A detailed site plan drawn to scale showing the location of the property lines, each outdoor mobile vendor location, building setback lines, vehicle parking spaces, the sidewalk location and any proposed outdoor dining or sitting areas.
 - (f) Written authorization, signed by the property owner or legal representative of record, stating that the outdoor mobile vendor is permitted to operate on the subject property for a specified period of time.
- (3) The permit issued shall not be transferable in any manner.
 - (4) The permit shall be conspicuously displayed at all times during the operation of the outdoor mobile vending business.
 - (5) The proposed use must be a permitted use-by-right within the underlying zoning district.
 - (6) Outdoor mobile vendors shall maintain compliance with parking lot requirements for the existing business and the proposed outdoor mobile

vendor business. The number of required parking spaces is determined by the use and size of the proposed outdoor mobile vendor business and by the use and size of the existing business. The property where the outdoor mobile vendor is located should be paved in order to be utilized. The use of parking for an outdoor mobile vendor may not reduce the number of spaces below the minimum required for other uses occurring on the property. 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.

- (7) Outdoor mobile vendors shall comply with the Federal Americans with Disability Act (ADA) requirements if the public has access to the interior of any mobile vending unit.
 - (8) The outdoor mobile vendor business shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street as the proposed outdoor mobile vendor, unless the outdoor mobile vendor predates the aforementioned permanent businesses.
- (E) *Exemptions.* The provisions of the ordinance do not apply to:
- (1) The placing and maintenance of unattended stands or sales devices for the sale or display of newspapers, magazines, periodicals and paperbound books.
 - (2) The distribution of free samples of goods, wares and merchandise by any individual from his person.
 - (3) Special events authorized by a Special Event Permit from the City of Fayetteville Parking Management Division.
 - (4) Fireworks sales.
 - (5) Children's lemonade stands.
 - (6) Temporary tent sales that operate for less than 3 days. A tent permit from the Planning Division and Fire Marshal inspection is required.

TITLE XV UNIFIED DEVELOPMENT CODE

- (7) Temporary sales for non-profit entities that operate for less than 5 consecutive days.
 - (8) Non-profit organizations that prepare and donate or give away food for free.
- (F) *Prohibited Conduct.* The following conduct is prohibited for outdoor mobile vendors:
- (1) Obstruct pedestrian or vehicular traffic flow.
 - (2) Obstruct traffic signals or regulatory signs.
 - (3) Use of any device that produces a loud and raucous noise or operate any loudspeaker, light or light system, public address system, radio, sound amplifier, or similar device to attract public attention.
 - (7) Conduct business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.
 - (8) Use or display any signage that is not in compliance with the Unified Development Code Chapter 174: Signs.
- (G) *Suspension and Revocation of Permit.* Any permit issued under these regulations may be suspended or revoked by the Development Services Director for any of the following reasons:
- (1) Fraud, misrepresentation or knowingly false statement contained in the application for the permit or during presentations to the Planning Commission.
 - (2) Conducting the business of vending in a manner contrary to the conditions of the permit.
 - (3) Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or interfere with the rights of abutting property owners.
- (4) Cancellation of health department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations, or;
 - (5) Failure of the property owner to implement improvements required by the Planning Commission as conditions of an annual permit approval.
- (H) *Notification of Suspension or Revocation.* The Development Services Director shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation and notifying the vendor of his/her right to appeal. Such notice shall be personally delivered, posted upon the outdoor mobile vendors' premises or mailed to both the address of the property owner and the address of the outdoor mobile vendor shown on the permit holder's application by certified mail, return receipt requested.

178.03 Sidewalk Vendors and Food Trucks

(A) Purpose.

(1) **Sidewalk Vendors.** 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.

(2) **Food Trucks.** The City of Fayetteville encourages a diversity of business opportunities and support entrepreneurship by establishing ordinances designed to allow mobile food trucks to flourish in the city. Food trucks may be permitted to locate on private property on an annual basis through an administrative approval process. Food trucks may also be permitted to operate on public property temporarily if approved through a special event permit process administered by the City. In all cases, food trucks shall be removed daily from the property on which they were vending.

(B) **Sidewalk Vendor and Food Truck Authorization.** The Zoning and Development Administrator may issue a permit for a sidewalk vendor or food truck to use a specific sidewalk, or plaza location or private property 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 vendor or food truck permit shall be accompanied by a \$100 application and permit fee. **Food truck permits shall be accompanied by the \$100 permit fee for each location requested for approval. All** ~~Permits~~ 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 or food truck permit shall include the following items in a format acceptable to the Zoning and Development Administrator:

(a) Name, address and contact information of the owner and operator of the mobile device as well as the contact information of the property owner if applicable.

(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.~~ **vehicle or pushcart.**

(g) A detailed scale drawing, picture or diagram and material specifications of the ~~device~~ **vehicle** 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.~~

(3) The sidewalk vending or food truck permit is good for one location only. Sidewalk vendors and food trucks may hold permits for multiple locations.

(D) *Permitted Vending Products and Goods.*

(1) **Sidewalk Vendors.** The City of Fayetteville permits the following types of goods for **street sidewalk** 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 sidewalk** vendors.

(2) Food Trucks. The City of Fayetteville permits only food and/or beverage items to be sold from food trucks.

(3) All goods being sold from sidewalk vendors **and food trucks** 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 **or vehicular** traffic on the sidewalk **or street**.
- (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) **Sidewalk Vendor 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 sidewalk** 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) **Sidewalk Vendor 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 sidewalk** 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. An increase in cart size or operating area may be considered by the Planning Commission as a variance and does not require conditional use permit review. The determination of a larger cart size and/or operation area shall be subject to the variance criteria in Chapter 156.03(C).
- (2) The number of permits issued for the **street sidewalk** 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) Sidewalk Vendor Operation 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 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 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 Sidewalk** 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) Food Truck Location and Operation Requirements. Food trucks may be permitted administratively on an annual basis for multiple locations subject to the following determinations made by the Zoning and Development Administrator:

- (1) The property is zoned to allow for food and beverage uses and the location meets all applicable zoning requirements of the underlying zoning district. The property owner for each location must provide a written statement giving the food truck operator permission to operate on the property. A site plan shall be provided by the applicant for each proposed site upon which the food truck would like to temporarily locate.
- (2) The food truck shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street of the proposed food truck location, unless the food truck predates the aforementioned permanent businesses.
- (3) The parking requirement for the food truck and any operating businesses on the property is met.
- (4) The applicant has provided the City with documentation of approval from the Arkansas Department of

Health and Human Services for food related establishments. A copy of this permit issued by the State, and inspected and approved by the Washington County Health Department, shall be supplied annually upon permit renewal.

- (5) Food trucks may operate between the hours of 5 a.m. and 3 a.m. Food trucks shall be removed daily from the property on which they were vending and the applicant shall demonstrate that they have a permanent location to appropriately store their food truck when it is not in operation.
 - (6) Food trucks are required to provide a trash receptacle for public use located adjacent to their operation.
- (I) **Signage Requirements.** Sidewalk vendors and food trucks shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors and food trucks 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.
- (J) **Revocation of the Sidewalk Vendor or Food Truck Permit.** The Zoning and Development Administrator is authorized to revoke a sidewalk vendor or food truck permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

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

(A) *Purpose.* This section's purpose is to facilitate and control the ability of outdoor mobile 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 Vendor Temporary Permit for a Single Location.* Outdoor mobile vendors are allowed on a temporary basis (90 days) for a maximum of six months by nature of their temporary occupancy in one location over a one-year (twelve month) timeframe during a calendar year. Outdoor mobile vendors utilizing a temporary permit may request to move relocate to a different location site at least one half quarter mile (1,320 feet) from the original location after this 90- six month day period has expired. However, a new outdoor mobile vendor application will have to shall be reviewed and approved by the Planning Division for a every new location. All temporary permits shall expire a maximum of six months from the date issued and the mobile vending unit shall be removed from the property.

(1) A temporary permit for an outdoor mobile vendor business in a single location may be approved and issued administratively by the Planning Division after making the following determinations:

(a) All of the requirements of 178.04(D) 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.

(c) The outdoor mobile vendor business shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street as the proposed

outdoor mobile vendor, unless the outdoor mobile vendor predates the aforementioned permanent businesses.

(C) *Variances. Outdoor Mobile Vendor Annual Permit for a Single Location.* Outdoor mobile vendors may request a variance an annual permit from the Planning Commission to operate for a one year time period 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.

(1) 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 if 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.

b) That the outdoor mobile vendor's presence for an extended period of time at one location will not create an unfair advantage over similar and nearby permanent businesses.

(2) All of the requirements of 178.04(D) have been met.

(3) In granting the variance an annual permit, 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, such as; restroom facilities or shared use agreements, landscaping improvements, parking lot improvements, sidewalk improvements, etc.

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- (4) Annual permits shall expire on December 31st. A new permit request shall be submitted to the Planning Commission for each subsequent year that an outdoor mobile vendor wishes to locate on the same property.
 - (5) The applicant has established that the operation of the outdoor mobile vendor will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
 - (6) Outdoor mobile vendors seeking an annual permit shall provide a list of nearby similar businesses that includes the name, products sold or services rendered and the distance from the proposed mobile vendor location.
- (D) **Permit Requirements.** All outdoor mobile vendors located on private property shall meet the following requirements and submittals prior to approval:
- (1) **Permit Application Fee.** Each application for a permit to conduct an outdoor mobile vendor business shall be accompanied by a ~~\$50~~ \$100 permit review and processing fee. **Outdoor mobile vendor permits shall be issued to the property owner and the outdoor mobile vendor operator jointly.**
 - (2) **Temporary and Annual Permit Application Requirements.** 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, contact information and signature of both the property owner and the outdoor mobile vendor requesting to locate on private property.
 - (b) A valid copy of all necessary permits required by State and County health authorities which shall be conspicuously displayed at all times during the operation of the business.
 - (c) Proof of application for remittance of HMR tax to the City of Fayetteville, when applicable.
- (d) ~~Means~~ A written description of the vehicle or structure to be used in conducting business and a list of nearby similar businesses that includes the name, products sold or services rendered and the distance from the proposed mobile vendor location, including but not limited to a description of any mobile device to be used for transport or to display approved items or services.
 - (e) ~~A detailed site plan and written description illustrating the type, location, and dimensions of the mobile vendor business including parking.~~
 - (e) A detailed site plan drawn to scale showing the location of the property lines, each outdoor mobile vendor location, building setback lines, vehicle parking spaces, the sidewalk location and any proposed outdoor dining or sitting areas.
 - (f) Written authorization, signed by the property owner or legal representative of record, stating that the ~~transient merchant business~~ outdoor mobile vendor is permitted to operate on the subject property for a specified period of time.
- (3) The permit issued shall not be transferable in any manner.
 - (4) The permit ~~is valid for one mobile vendor location only~~ shall be conspicuously displayed at all times during the operation of the outdoor mobile vending business.
 - (5) The proposed use must be a permitted use-by-right within the underlying zoning district. ~~in order to be permitted.~~
 - (6) Outdoor mobile vendors ~~be in~~ shall maintain compliance with parking lot requirements for ~~any~~ the existing business and the proposed outdoor mobile vendor business. The number of required parking spaces is determined by the use and size of the proposed ~~transient merchant~~ outdoor mobile vendor business and by the use and size of the existing business. ~~Parking spaces on~~ The property where

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the outdoor mobile vendor is located shall ~~should~~ 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 below the minimum required 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.

- (7) Outdoor mobile vendors shall comply with the Federal Americans with Disability Act (ADA) requirements if the public has access to the interior of any mobile vending unit.
 - (8) The outdoor mobile vendor business shall not match or duplicate the primary food or beverage offerings sold by permanent businesses located upon property immediately adjacent to and on the same side of the street as the proposed outdoor mobile vendor, unless the outdoor mobile vendor predates the aforementioned permanent businesses.
- (F) *Exemptions.* The provisions of the ordinance do not apply to:
- (1) The placing and maintenance of unattended stands or sales devices for the sale or display of newspapers, magazines, periodicals and paperbound books.
 - (2) The distribution of free samples of goods, wares and merchandise by any individual from his person.
 - (3) Special events authorized by a Special Event Permit from the City of Fayetteville Parking Management Division.
 - (4) Fireworks sales.
 - (5) Children's lemonade stands.
 - (6) Temporary tent sales that operate for less than 3 days. A tent permit from the Planning Division and Fire Marshal inspection is required.

- (7) Temporary sales for non-profit entities that operate for less than 5 consecutive days.
 - (8) Non-profit organizations that prepare and donate or give away food for free.
- (F) *Prohibited Conduct.* The following conduct is prohibited for outdoor mobile vendors:
- (1) Obstruct pedestrian or vehicular traffic flow.
 - (2) Obstruct traffic signals or regulatory signs.
 - (3) Use of any device that produces a loud and raucous noise or operate any loudspeaker, light or light system, public address system, radio, sound amplifier, or similar device to attract public attention.
 - (7) Conduct business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create a nuisance, increase traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.
 - (8) Use or display any signage that is not in compliance with the Unified Development Code Chapter 174: Signs.
- (G) *Suspension and Revocation of Permit.* Any permit issued under these regulations may be suspended or revoked by the Development Services Director for any of the following reasons:
- (1) Fraud, misrepresentation or knowingly false statement contained in the application for the permit or during presentations to the Planning Commission.
 - (2) Conducting the business of vending in a manner contrary to the conditions of the permit.
 - (3) Conducting the business of vending in such a manner as to create a public nuisance, cause a breach of the peace, constitute a danger to the public health, safety, welfare or

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interfere with the rights of abutting property owners.

- (4) Cancellation of health department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations, or;
- (5) Failure of the property owner to implement improvements required by the Planning Commission as conditions of an annual permit approval.

(H) Notification of Suspension or Revocation.
The Development Services Director shall provide written notice of the suspension or revocation in a brief statement setting forth the complaint, the grounds for suspension or revocation and notifying the vendor of his/her right to appeal. Such notice shall be personally delivered, posted upon the outdoor mobile vendors' premises or mailed to both the address of the property owner and the address of the outdoor mobile vendor shown on the permit holder's application by certified mail, return receipt requested.

~~178.05 Transient Merchants~~

~~All transient merchants are subject to regulations and registration under Arkansas state statutes. Any criteria established herein shall not relieve the applicant from meeting applicable criteria relative to transient merchants. "Transient merchant" means any person, firm, corporation, partnership, or other entity that engages in, does, or transacts any temporary or transient business in the state, either in one (1) locality or in traveling from place to place in the state, offering for sale or selling goods, wares, merchandise, or services~~

(Ord. 5185, 10-7-08)

