

*This new packet replaces the entire old packet.*

City of Fayetteville Item Review Form

2014-0120

Legistar File Number

03/18/14

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Peter Nierengarten

Submitted By

Sustainability & Resilience

Department

Action Required:

Staff has prepared the following ordinance changes at the request of the City Council Ordinance Review Committee. These changes amend the Unified Development Code Chapter 178: Outdoor Vendors to clarify existing regulations, create a short and long term permit process for mobile vendors, create a mobile vendor court conditional use process and allow food trucks to operate on public and 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
ADM 13-4486	\$0.00	
_____	_____	_____
Project Number	Remaining Balance	Fund Name
Budgeted Item? <input type="checkbox"/>	Budget Adjustment Attached? <input type="checkbox"/>	

V20130812

Previous Ordinance or Resolution # 5498

Original Contract Number: \_\_\_\_\_

Comments:

*Kash 3-4-14*

*Paul a. Beher*

*Donna 3/6/14*  
*Frank Jarch*

ENTERED  
3/4/14

ENTERED  
KJ 3/4/14



## CITY COUNCIL AGENDA MEMO

### MEETING OF MARCH 18, 2014

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Jeremy Pate, Development Services Director  
Kit Williams, City Attorney  
Andrew Garner, City Planning Director  
Sharon Water, Parking & Telecommunications Division Manager  
Allison Jumper, Park Planning Superintendent

**FROM:** Peter Nierengarten, Sustainability & Resilience Department Director

**DATE:** March 4, 2014

**SUBJECT:** ADM 13-4486 Outdoor Mobile Vendor Ordinance Amendments

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#### RECOMMENDATION:

Staff has prepared the following ordinance changes at the request of the City Council Ordinance Review Committee. These changes amend the Unified Development Code Chapter 178: Outdoor Vendors to clarify existing regulations, create a short and long term permit process for mobile vendors, create a mobile vendor court conditional use process and allow food trucks to operate on public and 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 the need to again amend this code has been discussed by City Council members and mobile vendor operators.

The Planning Commission heard this item at their October 15, 2013 meeting and proposed minor changes to originally drafted ordinances. 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 included their recommended language in the originally presented ordinance changes.

On November 19, 2013 the City Council first discussed the proposed ordinance changes and voted to send the item to the Ordinance Review Committee.

On December 19, 2013 the City Council Ordinance Review Committee discussed proposed changes to ordinances regulating mobile vendors. The primary focus of discussion during this meeting was a proposal by Alderman Petty (see attached) to allow mobile vendors to "bump"

(temporarily locate) on private and public property in on-street parking spaces and in City Parks. The committee voted to incorporate Alderman Petty's proposal into the mobile vendor ordinance with four additions/modifications:

- Public property permit holder would be selected by a lottery instead by sealed bid solicitation
- Mobile vendors shall submit a waste disposal plan
- Food trucks on public streets are restricted to vending from marked parallel on-street parking spaces
- City Council requests an annual staff report on food truck permits

On February 20, 2014 the City Council Ordinance Review Committee again discussed the proposed ordinance changes and made suggestions (see attached) for changes to the ordinances. Those changes have been incorporated into the proposed ordinances.

#### **DISCUSSION:**

Under section 178.03 – Sidewalk Vendors:

- No changes are currently proposed to this section.

Under section 178.04 – Mobile Vendors Located on Private Property:

- Add language that requires outdoor mobile vendors to comply with the Federal Americans with Disability Act (ADA) requirements if the public has access to the interior of any mobile vending unit.
- Extend temporary permits 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.
- Mobile vendors seeking a 6 month (temporary) permit are approved administratively after meeting the requirements of the ordinance.
- The temporary permit requirement to move locations after six months would allow for relocation within ¼ mile instead of the current ½ mile.
- Create an extended (annual) permitting process that would allow vendors to get a permit to set up and operate in the same location for one year.
- Annual permits may be granted by the Planning Commission. The mobile vendor may continue to request an annual permit for the same location year after year.
- Remove requirement that mobile vendors not adversely affect nearby businesses and replaces it with a requirement that mobile vendors 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.
- Create Mobile Vendor Court conditional use process. Mobile Vendor Court may be approved by the Planning Commission and are permitted to the property owner.
- Vendors in Mobile Vendor Courts are not required to obtain Six Month or Annual Permits.
- For Mobile Vendor Courts, the Planning Commission may require site improvements such as restrooms, utility connections and pedestrian and vehicular safety improvements.
- Remove the ability for Planning Commission to require other site improvements such as landscape and parking lot improvements.
- 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.

Create a new section 178.05 – Food Trucks Limited Time Permit:

- Allow food trucks to locate on public property in on-street marked parallel parking spaces and in parks for up to 4 hours.
- Creates a lottery that would allow up to 3 (or 1/3 of the total number of applications received) available permits for food trucks on public property.
- Requires food trucks to not locate directly in front of a restaurant or parking pay stations.
- Allows food trucks to locate on private property for up to 4 hours.

Relocate section 178.06 – Transient Merchants:

- Language related to Transient Merchants is unchanged and is simply being relocated from 178.05 to 178.06.

Amend Parks section 97.086 Vending and Peddling:

- Allows food trucks in parks except in areas that are actively being served by contracted concessionaires (see attached maps).
- Allows food trucks to be permitted for special events in parks.

**BUDGET/STAFF IMPACT:**

If the overall number of permit applicants is similar to previous years then staff does not anticipate a significant change in the workload or staffing requirements related to these ordinance changes. Staff does not anticipate a budget impact.

**Attachments:**

- Alderman Petty's Proposal to allow mobile vendors to "bump" on private and public property
- Memo from Alderman Long RE: Ordinance Review Committee Meeting Suggested Changes to Outdoor Vendors & Mobile Food Trucks
- Exhibit A - Proposed section 178.04 – Mobile Vendors Located on Private Property
- Exhibit B - Proposed section 178.05 – Food Truck Limited Time Permit
- Exhibit C – Relocated section 178.06 – Transient Merchants
- Exhibit D - Proposed Parks section 97.086 – Vending And Peddling
- Existing UDC section 178.04 – Outdoor Mobile Vendors Located on Private Property and 178.05 – Transient Merchants
- Highlight of additions to Parks existing section 97.086 – Vending And Peddling

## Alderman Petty's Proposal to the December 19, 2013 - City Council Ordinance Review Committee

# Proposal to allow mobile vendors to “bump” on private and public property

### Temporary permits and mobile vendor courts

In general, I believe the current proposal addresses these scenarios well. Temporary permits allow individual food trucks to set up in one location regularly throughout the year. This is the behavior we are seeing now with vendors like Best Frickin' Chicken and Nomad's Natural Plate. The new portion of the ordinance deals with mobile vendor courts and allows for more efficient permitting for sites like the Yacht Club which have spaces for multiple vendors.

I would like to add a new section to the proposal to address the model where vendors set up for a limited time at construction sites, office towers, parks, and streets like Dickson St. I have spoken with Development Services, Parks, and Parking staff about this idea and this framework is a result of those conversations.

### Private property

- Allow licensed vendors to “bump” on private property with permission of the property/business owner.
- Time limit: 2 hours, not including setup or breakdown.

### Public property

- Allow vendors to “bump” in parks and on-street parking spaces with a special permit.
- Time limit: 2 hours, not including setup or breakdown.
- Vendors shall not return to the same street or park within a 10 hour period.
- Vendors must purchase annual parking pass (~\$600).
- Permit holders must pay annual renewal/processing fee.
- Permits awarded by auction (city solicits sealed bids, awards permits to the highest bids).
  - Limit to four permits the first year so any unforeseen problems can be managed quickly and with minimal staff burden.
  - Allow staff to increase the number of permits each year.
    - Ex: if there are 10 new applications, allow staff to issue 3 permits. (1/3rd of the number of the new applications)
  - Vendors who already have a permit just have to match the winning bid price to keep the permit. They don't have to participate in the auction again, but their permits may be revoked if they have health code violations, etc.
- Vendors would be prohibited from vending on League Nights at the baseball stadium in Walker Park, where we have a contracted concessionaire. Vendors would still be allowed to bump elsewhere in the park for other parks patrons.

**Alderman Petty's Proposal to the December 19, 2013 - City Council Ordinance Review Committee**

**Note on events**

Event permits always trump other vendor permits. For example, permitted sidewalk vendors do not have the right to vend at the Farmers' Market or BBQ because these are events governed by a Special Events Permit through the Mayor's office. The same rules apply to the new permits I am proposing.

Finally, the Parks Department has requested we piggyback an ordinance to allow them to bring vendors into the parks for special events.

ORDINANCE REVIEW COMMITTEE

**MEMO**

**FEBRUARY 21<sup>st</sup>, 2014**

TO: MAYOR, CITY COUNCIL MEMBERS, CITY ATTORNEY, CITY STAFF & CITY CLERK

From: Alderman, Alan T. Long, Ordinance Review Committee Chair

RE: Ordinance Review Committee Meeting Suggested Changes to  
Outdoor Vendors & Mobile Food Trucks

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Below you will find the suggested changes to the ordinance as suggested by the ordinance review committee. Please reference the documents submitted by the staff for comprehensive understanding. It is the committee's desire that the staff make the below suggested changes.

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**SECTION 178.03**

Please amend this back to the original language. Due to the addition of section 178.05 (Food Truck Limited Time Permit), "Bumping", it would be redundant to amend this section of the code.

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**SECTION 178.04**

C) The committee requests that staff replace section "c" with the document labeled section "E" (Mobile Vendor Courts). However, from section E, the committee suggests to remove sections 2, A&B and keep sections C, D & E. On section 2)D (from the new document labeled section E, Mobile Vendor Courts), the committee suggests removing the last sentence that states, "This may include sidewalk and curb cut improvements."

D)6: Remove the requirements for the lots to be paved.

D)8: Add the word, "court", after mobile vendor.

\* The committee would like to discuss at the full council meeting exactly what the planning commission can require of the mobile vendor court owners and when requirements may be placed on the owners.

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**SECTION 178.05**

B)1: The committee did not come to a consensus on whether or not we should set a maximum number of permits. The committee requests that the full council make this decision.

B)2)D: Change to "must move at least 325 feet and out of sight".

C)5: Change from, "applicant" to "applicant or property owner".

ORDINANCE REVIEW COMMITTEE

C)7: REMOVE SECTION 7. This is the requirement that they must locate on paved surfaces.

**Questions for section 178.05**

\*In section 178.05, there was not a consensus on whether or not Food Trucks or Mobile Vendors should be forced to provide a restroom while "bumping". The committee requests that this be discussed at the full council.

\*The committee also requests that parking staff give suggestions regarding the following question. Can the applicant occupy two parking spaces if they pay for two parking spaces?

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**SECTION 97.086**

C)1: Change the first sentence to read, "Food trucks may not locate in the same area that is actively being served by a contracted concessionaire as shown on Exhibit C."

C)1: Change the second sentence to read, "Food trucks may locate at special events sponsored by Parks & Recreation with a permit & permission from the Parks & Recreation Director."

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Regards,



Alan T. Long

City of Fayetteville

Alderman, Ward 4, position 2



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

AN ORDINANCE TO REPEAL § 178.04 **OUTDOOR MOBILE VENDORS LOCATED ON PRIVATE PROPERTY** AND ENACT A REPLACEMENT § 178.04 **OUTDOOR MOBILE VENDORS LOCATED ON PRIVATE PROPERTY**, TO ENACT § 178.05 **FOOD TRUCK LIMITED TIME PERMIT**, TO CHANGE THE SECTION NUMBER OF **TRANSIENT MERCHANTS** FROM § 178.05 TO § 178.06 AND TO AMEND § 97.086 **VENDING AND PEDDLING**

**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 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 A attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby changes the section number of **Transient Merchants** from § 178.05 to § 178.06.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby enacts a new § 178.05 **Food Trucks Limited Time Permit** as shown on Exhibit B.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby amends § 97.086 **Vending and Peddling** by enacting subsections (C) and (D) as shown on Exhibit D.

**PASSED** and **APPROVED** this 18<sup>th</sup> day of March, 2013.

APPROVED:

ATTEST:

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

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

Exhibit A

**178.04 Mobile Vendors Located On Private Property**

- (A) *Purpose.* The purpose of this section is to facilitate and control the ability of mobile vendors and mobile vendor courts to operate on private property while ensuring such use is compatible with nearby properties, fosters an aesthetically appealing streetscape and does not create a dangerous traffic condition.
- (B) *Mobile Vendor Six Month Permit.* Mobile vendors are allowed to operate on a temporary basis for a maximum of six months in one location during a calendar year with administrative approval of the Planning Division. Mobile vendors utilizing a six month 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 mobile vendor application shall be reviewed and approved by the Planning Division for every new location. This permit will expire six months from the date issued and the mobile vending unit shall be removed from the property. The mobile vendor owner also has the option of requesting an annual permit from the Planning Commission at or before the end of their initial six month permit time period.
- (1) A six month permit for a mobile vendor business shall 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 mobile vendor will foster an aesthetically appealing streetscape and will not create or worsen a dangerous traffic condition.
  - (c) The 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 mobile vendor, unless the mobile vendor predates the aforementioned permanent businesses.
- (C) *Mobile Vendor Annual Permit.* Mobile vendors are allowed to locate for one year in the same location with approval of the Planning Commission as an administrative item. After the one year period has expired the mobile vendor may move to another location or may request a one year renewal from the Planning Commission.
- (1) An annual mobile vendor permit may be issued by the Planning Commission 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 mobile vendor will foster an aesthetically appealing streetscape and will not create a dangerous traffic condition.
  - (c) The 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 mobile vendor, unless the mobile vendor predates the aforementioned permanent businesses.
- (D) *Mobile Vendor Permit Requirements.* All mobile vendors located on private property with Six Month or Annual Mobile Vendor Permits shall meet the following requirements and submittals prior to approval:
- (1) Each application for a permit to conduct a mobile vendor business on private property shall be accompanied by a \$100 permit review and processing fee. Mobile vendor permits shall be issued to the owner of the mobile vendor vehicle.
  - (2) Application for a permit to conduct a mobile vendor business shall include the following items in a format acceptable to the Planning Division:
    - (a) Name, address, contact information and signature of both the property owner and the 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

Exhibit A

- 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 detailed site plan roughly drawn to scale showing the location of the property lines, each mobile vendor location, building setback lines, vehicle parking spaces, the sidewalk location and any proposed dining or sitting areas.
- (e) Written authorization, signed by the property owner or legal representative of record, stating that the mobile vendor is permitted to operate on the subject property for a specified period of time.
- (3) The mobile vendor has the responsibility to dispose of all wastes in accordance with all applicable laws. Mobile vendors are not permitted to dispose of their trash in public trash receptacles.
- (4) The mobile vendor permit issued shall not be transferable in any manner.
- (5) The mobile vendor permit issued shall be conspicuously displayed at all times during the operation of the mobile vending business.
- (6) The proposed use must be a permitted use-by-right within the underlying zoning district.
- (7) Mobile vendors shall maintain compliance with parking lot requirements for the existing business and the proposed mobile vendor business. The number of required parking spaces is determined by the use and size of the proposed mobile vendor business and by the use and size of the existing business. The use of parking for a mobile vendor may not reduce the number of spaces below the minimum required for other uses occurring on the property. The location of the mobile vendor shall not impede traffic flow or create a dangerous traffic condition, as determined by Planning Division upon review of the site plan.
- (8) Mobile vendors shall comply with the Federal Americans with Disabilities Act (ADA) requirements if the public has access to the interior of any mobile vending unit.
- (E) *Mobile Vendor Courts.* Mobile vendor courts may be permitted through a Conditional Use Permit process in appropriate zoning districts. A property owner may request a Conditional Use Permit from the Planning Commission to develop a mobile vendor court subject to the following standards:
- (1) The property owner has provided the Planning Division with a detailed site plan of the mobile vendor court showing the location and dimensional relationships of the property lines, all proposed mobile vendors locations, building setbacks, vehicle parking, sidewalk location and proposed dining or sitting areas.
- (2) The property owner proposing a mobile vendor court may be required to make any of the following improvements to the property in order to meet City development codes and be approved for this semi-permanent use. Required improvements may include:
- (a) Improvements necessary to provide permanent utility connections for each mobile vending unit location in the mobile vendor court. This may include permanent water, sanitary sewer and electricity connections.
- (b) Improvements necessary to ensure safe pedestrian and vehicular access to the site.
- (c) Providing adequate restroom facilities on site or through the provision of a shared use agreement with a neighboring business for access to restroom facilities.
- (3) Mobile vendors operating in a mobile vendor court are not required to obtain an individual permit but shall provide the Planning Division with the following information:
- (a) Name, address, contact information and signature of both the property owner and the mobile vendor operator locating in the mobile vendor court.
- (b) A valid copy of all necessary permits required by State and County health authorities which

## Exhibit A

- shall be conspicuously displayed at all times during the operation of the vending business.
- (c) Proof of application for remittance of HMR tax to the City of Fayetteville, when applicable.
  - (d) Written description of any additional structures to be used in conducting business, including but not limited to stairs, decks, tents or enclosures.
  - (e) A detailed site plan of the mobile vendor court showing the location of the applicant's proposed mobile vendor unit location within the mobile vendor court.
  - (f) Written authorization, signed by the property owner or legal representative of record, stating that the mobile vendor business is permitted to operate on the subject property.
- (F) *Exemptions.* The provisions of the Mobile Vendor 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.
- (G) *Prohibited Conduct.* The following conduct is prohibited for 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.
  - (4) 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.
  - (5) Use or display any signage that is not in compliance with the Unified Development Code Chapter 174: Signs.
- (H) *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 mobile 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;
- (I) *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

## Exhibit A

revocation and notifying the vendor or the property owner of his/her right to appeal to the Planning Commission. Such notice shall be personally delivered, posted upon the mobile vendors' premises or mailed to both the address of the property owner and the address of the mobile vendor shown on the permit holder's application by certified mail, return receipt requested.

## Exhibit B

### 178.05 Food Truck Limited Time Permit

- (A) *Purpose.* This section's purpose is to create a process that allows food trucks to locate for a limited time on public and private property. Food trucks are defined as a motorized and operationally self-contained single vehicle equipped with facilities for cooking and selling food.
- (B) *Food Truck Limited Time Permit on Public Property.* Food trucks may apply for a permit determined through a lottery drawing by the Planning Division to locate for a limited time in a marked or delineated parallel public parking space. Food Trucks may also vend in City Parks with approval by the Parks and Recreation Director.
- (1) The Planning Division will conduct a lottery in November each year for a total of three (3) Food Truck Limited Time Permits for locating on public property. If more than nine (9) lottery applications are made Planning Staff may increase the number of permits issued not to exceed one third (1/3) of the total number of applications. Instances in which 1/3 the total number of applications results in a fraction of 0.5 or higher, the number of permits available shall be rounded up to the next whole number. These permits shall be issued on January 1<sup>st</sup> and will extend until December 31<sup>st</sup>. Food trucks may apply and participate in this lottery every year.
  - (2) A Food Truck Limited Time Permit on Public Property may be approved administratively by the Planning Division after making the following determinations:
    - (a) The applicant has paid an annual \$100 permit fee. Food trucks shall pay the appropriate fee for the time they are located in public parking spaces. The food truck shall fit entirely within one marked parallel on-street parking space or within one marked parking space in a City Park.
    - (b) The applicant has provided a valid copy of the County Health Department permit and proof of remittance of HMR tax to the City of Fayetteville.
    - (c) The applicant has the responsibility to dispose of all wastes in accordance with all applicable laws. Food trucks are not permitted to dispose of their trash in public trash receptacles.
    - (d) The applicant agrees to move to a different location after a four (4) hour time period. This time period includes onsite set-up and break-down time. The applicant agrees to move at least 325 feet away or out of sight/view of their previous location once their initial 4 hour time period has expired.
    - (e) The applicant agrees to not locate on the same side of the street directly in front of an existing restaurant.
    - (f) The applicant agrees to only vend towards the sidewalk side of the street and to keep the sidewalk unobstructed to allow for free flow pedestrian movement along the street.
    - (g) The applicant agrees to locate on public property such that they will not cause an unsafe traffic or pedestrian situation.
    - (h) The applicant agrees not to set up in a parking space adjacent to a parking pay station kiosk.
    - (i) Food trucks are prohibited from parking or vending from angled on-street parking spaces and from public parking lots in the Entertainment District or the Downtown Business District. Food trucks are prohibited from parking in marked parallel parking spaces that are posted reserved for residential use.
    - (j) The City reserves the right to limit food trucks from utilizing public parking spaces during special events such as; parades, Bikes, Blues and BBQ, etc. Special event permits may be available to food trucks for certain events. Contact the City's Parking Division for special event permits.
- (C) *Food Truck Limited Time Permit on Private Property.* Food trucks may be approved administratively by the Planning Division for a Food Truck Limited Time Permit to locate on private property after meeting the following conditions:
- (1) The applicant has paid an annual \$100 permit fee, unless they are also the holder of a public property lottery permit and they have already paid a \$100 permit fee. Permits expire December 31<sup>st</sup>.
  - (2) The applicant has provided a valid copy of the County Health Department permit and proof of remittance of HMR tax to the City of Fayetteville.

## Exhibit B

- (3) The applicant has the responsibility to dispose of all wastes in accordance with all applicable laws. Food trucks are not permitted to dispose of their trash in public trash receptacles.
- (4) The applicant has agreed to move to a different property after a four (4) hour time period. This time period includes any onsite set-up or break-down time.
- (5) 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 or property owner for each proposed site upon which the food truck would like to temporarily locate. The food truck vendor shall keep these records up to date with the Planning Division.
- (6) The applicant agrees to locate on private property such that they will not cause an unsafe traffic or pedestrian situation.

## Exhibit C

### **178.06 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

### **178.07-178.99 Reserved**



## Exhibit D

### 97.086 Vending And Peddling

(A) *General prohibition of selling or offering to sell items in city parks.* No person or business shall, within a city park, display, offer for sale, or sell any article, thing or service, nor place any stand, cart or vehicle for the display, sale or transportation of any such article.

(B) Exemptions. The City's regularly licensed concessionaires acting pursuant to the authority and regulation of the City are exempt from subsection (A). The Farmers' Market and its members may sell items allowed pursuant to §114.02 (C) of the Fayetteville Code on Sundays, Saturdays and one weekday within a portion of the Lake Fayetteville Park that is licensed to the Botanical Garden Society of the Ozarks (if approved by the Society) as shown on Exhibit A.

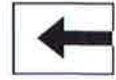
(C) Food trucks permitted pursuant to §178.05 may operate in City Parks as described below:

(1) Food trucks may not locate in the same area that is actively being served by a contracted concessionaire as shown on Exhibit C during regular season Fayetteville Parks and Recreation leagues and tournaments.

(2) Food trucks may locate at Gulley Park during a Gulley Park Concert or special event in other parks such as tournaments, reserved park gatherings, etc. if approved by the Parks and Recreation Director.

(D) For special events, food trucks and sales of items other than food may be approved by the Parks and Recreation Director through a special event permit..

(Code 1965, '17A-29; Ord. No. 1594, 4-1-68; Code 1991, §97.086, Ord. 5310, 4-6-10; Ord. No. 5531, 10-02-12) **Cross reference(s)**--Penalty, '97.999.



Legend  
Park

Vendors prohibited in highlighted areas when contracted concessionaires are present.

Gary Hampton Softball Complex  
2790 N. Salem Rd.



**Legend**  
Park

Vendors prohibited in highlighted areas when contracted concessionaires are present.

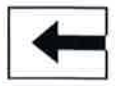
Lewis Soccer Complex  
1515 N. Lewis Avenue



**Legend**  
Park

Vendors prohibited in highlighted areas during times when contracted concessionaires are present.

Lake Fayetteville Park  
1330 E. Lake Fayetteville Road

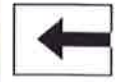


0 0.0375 0.075 0.15  
Miles

**Legend**  
Park

Vendors prohibited in highlighted areas during times  
when contracted concessionaires are present.

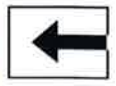
Walker Park  
10 W. 15th Street



**Legend**  
■ Park

Vendors prohibited in highlighted areas when contracted concessionaires are present.

White River Park  
2080 S. Armstrong Avenue



**Legend**  
Park

Vendors prohibited in highlighted areas during times when contracted concessionaires are present.

**Wilson Park**  
**675 N. Park Avenue**

## Existing UDC Chapters 178.04 & 178.05

### 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 out door 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.
- (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.

(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11; Ord. 5498 05-01-12)

### **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)

### **178.06-178.99 Reserved**

(Ord. 5185, 10-7-08)

## Highlight of additions to existing Parks section 97.086

### 97.086 Vending And Peddling

(A) *General prohibition of selling or offering to sell items in city parks.* No person or business shall, within a city park, display, offer for sale, or sell any article, thing or service, nor place any stand, cart or vehicle for the display, sale or transportation of any such article.

(B) Exemptions. The City's regularly licensed concessionaires acting pursuant to the authority and regulation of the City are exempt from subsection (A). The Farmers' Market and its members may sell items allowed pursuant to §114.02 (C) of the Fayetteville Code on Sundays, Saturdays and one weekday within a portion of the Lake Fayetteville Park that is licensed to the Botanical Garden Society of the Ozarks (if approved by the Society) as shown on Exhibit A.

(C) Food trucks permitted pursuant to §178.05 may operate in City Parks as described below:

(1) Food trucks may not locate in the same area that is actively being served by a contracted concessionaire as shown on Exhibit C during regular season Fayetteville Parks and Recreation leagues and tournaments.

(2) Food trucks may locate at Gulley Park during a Gulley Park Concert or special event in other parks such as tournaments, reserved park gatherings, etc. if approved by the Parks and Recreation Director.

(D) For special events, food trucks and sales of items other than food may be approved by the Parks and Recreation Director through a special event permit.

(Code 1965, '17A-29; Ord. No. 1594, 4-1-68; Code 1991, §97.086, Ord. 5310, 4-6-10; Ord. No. 5531, 10-02-12) **Cross reference(s)**--Penalty, '97.999.

City of Fayetteville Item Review Form

**VOID**

new packet will be submitted Wed. 3/15/14 to replace old packet. WJ

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
Project Number	Remaining Balance	Fund Name
Budgeted Item? <input type="checkbox"/>	Budget Adjustment Attached? <input type="checkbox"/>	

V20130812

Previous Ordinance or Resolution # 5498

Original Contract Number: \_\_\_\_\_

Comments:

11-01-13 11:42 RCVD

Paul a. Buder 11-3-2013

Don Mar 11-4-13

Scott Jordan 11/4/13

Tabled to the 2/18/14 City Council mtg at the 2/18/14 City Council mtg.

Tabled to the February 18, 2014 City Council mtg at the January 21, 2014 City Council meeting.

This ordinance was tabled to the January 21, 2014 city Council mtg at the 12/17/13 City Council meeting.

this ordinance was left on the first Reading and tabled to the December 17, 2013 City Council meeting at the November 19, 2013 City Council meeting.

ENTERED 11/1/13

## 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 an 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

**VOID**

**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 19<sup>th</sup> 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.

**VOID**

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.



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be removed from the public right-of-way during non-operational hours.

- (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
- (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

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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

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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 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 31<sup>st</sup>. 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

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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.

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- (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.

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### 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 ~~P~~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.

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- (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

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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



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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) *Variations. 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 31<sup>st</sup>. 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

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)

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**Amend Chapter 151: Definitions by adding the following definitions.**

***Food Truck.* 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.**

***Mobile Vending Unit.* A commercial establishment designed to be readily moveable.**

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### 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.

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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

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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 31<sup>st</sup>. 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



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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.

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- (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.

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### 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 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.

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(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



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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**

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

(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.

(C) *Variationes. 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:

(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 ever 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 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) 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:

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

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

(3) A variance may be granted by the Planning Commission if the following findings 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.

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.

(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

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 31<sup>st</sup>. 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)

