

ORDINANCE NO. 92-19**AN ORDINANCE AMENDING THE 2019 UNIFIED DEVELOPMENT ORDINANCE
OF THE CITY OF FORT SMITH**

WHEREAS, the Board of Directors passed and approved Ordinance No. 87-19 which adopted the Unified Development Ordinance on October 15, 2019, and,

WHEREAS, is it necessary to amend the certain sections of the Unified Development Ordinance to provide clarity and remove conflict with other provisions of the municipal code; and,

WHEREAS, the Planning Commission held a public hearing regarding the amendments and recommended on October 8, 2019, that changes be made; and,

WHEREAS, three (3) copies of November 2019 Amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

WHEREAS, the November 2019 Amendments to the Unified Development Ordinance includes an amendment, which will allow *mobile food vending* in the Extraterritorial Jurisdiction (ETJ); and,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

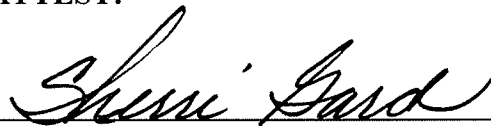
SECTION 1: The November 2019 Amendments to the Unified Development Ordinance are hereby adopted.

SECTION 2: The codifier shall codify the new sections and amend the existing sections of the Unified Development Ordinance.

SECTION 3: It is hereby found and determined that adoption of the amendments to the Unified Development Ordinance are necessary to alleviate an emergency created by the lack of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendments be effective, and the amendments are hereby made effective, as of date of approval of the Ordinance.

PASSED AND APPROVED THIS 5th DAY OF November, 2019.

ATTEST:



City Clerk

APPROVED:



Mayor

Approved as to form:



Publish One Time

27- 445-__ Outdoor Mobile Food Vending in the ETJ

The purpose of Section 27-445-__ is to promote and encourage open-air retail environments, while preserving and protecting the health, safety and welfare of citizens through regulations that promote opportunities and management of such enterprises in the ETJ..

A. Definitions.

Edible goods shall include, but are not limited to prepackaged and prepared foods, excluding the sales of alcoholic beverages.

Food service establishment shall mean businesses that sell edible goods and have been inspected and approved by the Sebastian County Health Department and the City of Fort Smith.

Mobile shall mean the state of being active, but not necessarily continuous, movement.

Mobile food court shall mean a site that contains more than one mobile food vendor on a regular basis as the principal use of the land.

Mobile food vendor shall mean any person(s) who owns or operates a mobile food vehicle for the purpose of mobile food vending.

Mobile food vendor, private property shall mean any person(s) who exhibits, displays, or sells any food or beverage from a mobile food vehicle at a designated location on private property.

Mobile food vehicle shall include, but not be limited to:

- (a) **Mobile food truck:** A motorized unit selling edible goods.
- (b) **Mobile food truck or concession trailer (self-contained):** A motorized unit selling edible goods. The unit shall be self-contained meaning all items such as water tanks, generators, etc. are affixed or contained within the mobile food truck.
- (c) **Concession trailers:** A vending unit which is pulled by a motorized unit and has no power to move on its own.

Parallel Parking Space shall mean a parking space that is adjacent to the curb the full length of the parking space.

Sell shall mean the act of exchanging a food for a profit or in return for a donation.

Stationary location shall mean the position of the mobile food vendor when not

in motion and addressing the public for the purpose of sales.

Temporary building shall mean a structure not exceeding 160 s.f. used to vend edible foods and that is not permanently affixed to the ground, or on blocks, etc.

Tow Vehicle – A motorized land vehicle.

B. Exemptions

1. An approved Farmers Market;
2. Temporary sales for non-profit entities that operate for less than five (5) consecutive days as part of a festival or special event shall be exempt from this Section.
3. Children's lemonade stands.

C. Outdoor Mobile Food Vendors Located on Private Property

The purpose of this section is to facilitate and control the ability of mobile food vendors and mobile food courts to operate on private property while ensuring such uses are compatible with nearby properties, fosters an aesthetically appealing streetscape, and does not create a dangerous traffic condition.

1. Single Vendor

- a. **Zoning Districts.** Outdoor mobile food vendors shall be permitted on private property in ETJ C-1, ETJ C-2, ETJ C-3, and ETJ I-1 zoning districts. Outdoor mobile food vendors shall be permitted on private property in ETJ O-1 zoning district provided the location is not on or adjacent to property developed residential and it is located on a street classified as major arterial or higher.
- b. **Number of Vendors.** Only one (1) mobile food vendor shall be permitted per lot. However, if a lot has multiple street frontages, vendors may operate on the lot provided there is only one mobile food vendor proposed per street frontage. Otherwise, all proposed multiple mobile food vendors on a single lot shall be considered a Mobile Food Court and shall comply with the requirements for Mobile Food Courts below.
- c. **Permission required.** Outdoor mobile food vendors shall first obtain written permission from the property owner prior to submitting an application.

2. Mobile Food Courts

- a. **Zoning Districts.** Mobile food courts shall be permitted as a conditional use in ETJ C-1, ETJ C-2, ETJ C-3, and ETJ I-1 zoning districts. Mobile food courts shall be permitted as a conditional use in ETJ O-1 zoning district as long as the location is not adjacent to property developed residential and it is located on a classified street.
- b. **Review Criteria.** A property owner, or agent, proposing a mobile food court shall submit an application for a Conditional Use Permit to the Planning Department. The Planning Commission will review the overall compatibility of the planned semi-permanent use with the surrounding property as well as such specific items as screening, parking and landscaping to make sure that no harmful effects occur to nearby property. The property owner, or agent, proposing a mobile food court may also be required to provide any of the following improvements to the property:
 - i. Improvements necessary to provide permanent utility connections for each mobile vending unit location in the mobile food court. This may include permanent water, sanitary sewer and electricity connections.
 - ii. Improvements necessary to ensure safe pedestrian and vehicular access to the site.
 - iii. A minimum of 1 ½ spaces off-street parking spaces provided for each vending unit in the mobile food court. The number of parking spaces shall be rounded to the next higher whole number when the fraction is 0.5 or higher.
 - iv. Provide adequate restrooms facilities on site or through the provision of a shared use agreement with a neighboring business for access to restroom facilities.
- c. **Permit Requirements.** Individual mobile food vendors within a mobile food court shall comply with the permitting requirements in Section E – Mobile Food Vendor Permit Requirements – Private Property. The mobile food court owner/operator shall not pay an annual permit fee, but shall maintain a current business license. The owner/operator shall also provide the following information:

- i. Name, address, and contact information of the individual mobile food vendors operating in the mobile food court.
- ii. Name, address, and contact information of the mobile food court operator and/or owner.

D. Mobile Food Permit and Permit Requirements – Private Property

- 1. Mobile Food Vendor Annual Permit.** Mobile food vendors are allowed to operate on a temporary basis for one year in one location with administrative approval of the Planning Department. After the one-year period has expired, the mobile food vendor shall move to another location or may request a one-year renewal from the Planning Department. Mobile food vendor permits shall be issued to the owner of the mobile food vendor vehicle. All permits shall expire December 31.
- 2. Mobile Food Vendor Permit Requirements.** Each application for a permit to conduct a mobile food vendor business on a private property shall contain the following:
 - a. A permit and processing fee of \$150.00. For Permits issued after June 30th the permit and processing fee shall be \$75.00.
 - b. The name, address, contact information and signature of both the property owner and the mobile food vendor requesting to locate on private property.
 - c. Written permission, signed by the property owner or legal representative of record, stating that the mobile food vendor is permitted to operate on the subject property for a specified period of time.
 - d. Written verification that the applicant is registered with the Arkansas Department of Finance and Administration.
 - e. A statement on how and where solid and liquid wastes will be disposed, if applicable.
- 3. Permit Transfer.** The permit issued to a mobile food vendor shall not be transferrable to another owner or operator without a new application submitted and approved by the city.
- 4. Permit Displayed.** The mobile food vendor permit issued shall be conspicuously displayed at all times during the operation of the mobile vending business.

5. **Waste Disposal.** The mobile food vendor has the responsibility to dispose of all wastes in accordance with all applicable laws. Mobile food vendors are not permitted to dispose of their trash in public trash receptacles.
6. **Parking Space Requirements.** Mobile food vendors shall maintain parking for the existing businesses. The use of parking for a mobile food vendor may not reduce the number of spaces below the minimum required for other uses occurring on the property.
7. **Temporary Buildings – Private Property.** A temporary building can be used on private property to vend edible foods. Permits for temporary buildings are limited to 180 days unless a time extension is granted by the City Building Official. A temporary building must also comply with the requirements of this Chapter.
8. **Mobile Food Vendor Transfer Option – Private Property.** Within the permit period, mobile food vendors on private property may transfer to another location that allows mobile food vending. Each transfer request shall be accompanied with an application to the Planning Department and a permit and processing fee of \$40.00.
9. **Mobile Food Vendor on Multiple Locations – Private Property.** Mobile food vendors are allowed to operate on a temporary basis on multiple locations after meeting the following conditions:
 - a. The applicant has submitted an application to the Planning Department accompanied with permit and processing fee of \$200.00.
 - b. The property owner for each location must provide a written statement giving the mobile food vendor permission to operate on the property.
 - c. The mobile food vendor has the responsibility to dispose of all wastes in accordance with all applicable laws. Mobile food vendors are not permitted to dispose of their trash in public trash receptacles.
10. **Renewal Requirements – Private Property.** Mobile vendors requesting a one-year renewal to stay in the same location shall comply with the following:
 - a. Applicant shall submit a renewal request on a form provided by the Planning Department.
 - b. Applicant shall provide verification that the mobile food vendor has a valid sales tax permit registered with the Arkansas Department of Finance and Administration.

- c. The Director or his designee shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of these regulations, shall issue a new permit.
- d. Planning Commission approval shall be required for all mobile food vendors who have received formal enforcement actions from the city.
- e. Payment of a \$150.00 permit fee.

E. Littering and Trash Removal.

- 1. Mobile food vendors shall keep the sidewalks, roadways, property where the vendor is located and other locations adjacent to their vending site clean and free of debris and refuse generated from the operation of their business.
- 2. Mobile food vendors shall provide a receptacle for litter that shall be maintained and emptied regularly.

F. Prohibited Conduct.

No person authorized to engage in the business of mobile food vending under these regulations shall do any of the following:

- 1. Locate within a site triangle described as the area delineated by a distance of twenty-five (25) feet along the intersecting property lines, beginning at a property corner point and extending twenty-five (25) feet in both directions away from the corner point of an intersection and then connecting the terminus points by a line to form the triangular area.
- 2. No mobile food vendor shall sell or vend from his/her vehicle within 300 feet of a public or private school property while school is in session and one hour before and after school is in session; classes or school related events, except when authorized in writing by the school.
- 3. Unduly obstruct pedestrian or motor vehicle traffic flow, except a reasonable time to load and unload the mobile food vendor vehicle.
- 4. Obstruct traffic signals or regulatory signs.
- 5. Stop, stand or park any mobile food vendor upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings.
- 6. Leave any mobile food vehicle in a public street right-of-way overnight.

7. Sounds projecting from the mobile food vendor that violate Article II – Noise regulations of the Fort Smith Code of Ordinances.
8. Conducting the business in such a way that would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.
9. Use or install any lighting that does not comply with Section 27-602-5 Commercial and Outdoor Lighting requirements of the Unified Development Ordinance.
10. Run hoses, cords, or other apparatus across a pedestrian pathway or sidewalk.
11. Utilize any portion of a public sidewalk or public right-of-way where mobile food vending is not allowed or authorized.
12. Remove the wheels from a mobile food vehicle. The mobile food vehicle shall not otherwise be rendered immobile such as being placed on blocks, railroad, ties, etc.

G. Revocation of Permit.

A license issued pursuant to Section 27-445-__ may be revoked, in writing, by the Director or his designee for any of the following reasons:

1. Any fraud, misrepresentation or false statement contained in the application for license;
2. Any fraud, misrepresentation or false statement made in connection with selling of products;
3. Any violation of this Section.
4. Conducting the business license under this Section in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

H. Appeal.

Appeals to the Director's decision relating to this Section shall be made to the Planning Commission concerning the issuance of a license or revocation of a license pertaining to this Section.

I. Appeals of Administrative Determinations.

The Planning Commission shall hear appeals from the Director's decision in respect to the enforcement and application of this Section, and may affirm or reserve in whole or in part the decision of the Director.

1. **Process.** Any person, officer of the City, or other governmental agency not in agreement with a decision made by the director may appeal the decision within 10 (ten) days of the decision by filing with the Director a notice of appeal along with payment of the required appeal fee. The filing shall specify the reason for the appeal. The Director shall then transmit to the Planning Commission all the information on the details of the decision and reason for the appeal. This shall be done in advance of the next regularly scheduled meeting.
 3. **Stay.** An appeal puts all processing of applications on hold until the appeal process is completed.
 4. **Hearing.** The Planning Commission shall schedule a reasonable time for the hearing of the appeal or any other matter referred to it. Notice shall be published one (1) time in a local newspaper fifteen (15) days before the public hearing.
 5. **Action.** In exercising its powers, the Planning Commission, in conformity with the provisions of law, may reserve or affirm, wholly or in part, or may modify the order, requirement, decision, or determination.
 6. **Appeals.** Appeals from the decision of the Planning Commission shall be made to the Board of Directors within ten (10) days of the Planning Commission's decision.
- J. Forfeiture of Fee.** If the City revokes a mobile vending permit, the fee already paid for the permit shall be forfeited.