

Ordinance

City of Portland, Tennessee

No. 21-12

Second Reading

AN ORDINANCE TO AMEND TITLE 9 OF THE PORTLAND MUNICIPAL CODE BY ADDING A PROVISION FOR MOBILE FOOD VENDORS

WHEREAS, The City of Portland acknowledges the need for a provision for mobile food vendors; and

WHEREAS, Title 9 **Businesses, Peddlers, Solicitors, Etc.** shall be amended by adding Chapter 10, Mobile Food Vendors as follows:

10-101. Purpose. The City has determined that regulation of Mobile Food Vendors (MFVs) is necessary in order to protect the health, safety, and welfare of the public, as well as to promote the public interest by regulating the areas and methods of operation. To meet these ends, the City has determined that all persons or entities that desire to vend from MFVs within the City must be issued a permit pursuant to the requirements of this Article.

10-102. Definitions. The following words, terms and phrases, when used in this Article, shall have the following meanings ascribed to them in this section:

- a. **Edible Food Products.** Edible Food Products are those products that are ready for immediate consumption, including Prepackaged Food, Prepared Food, and On-site Prepared Food. The term "Edible Food Products" does not include fresh produce so long as the produce has not been packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared for consumption.
- b. **Outside Preparation.** Any External Preparation of food or drink using external appliances, grills, or smokers that can safely be operated outside the MFV unit.
- c. **Ice Cream Vending Unit.** A motor vehicle containing a commercial freezer from which a Vendor sells or gives away frozen food products such as ice cream, frozen yogurt, frozen custard, flavored frozen water, and similar desserts, whether prepackaged, prepared, or prepared on-site typically known as an ice cream truck. Such frozen food products are typically sold on City streets at intermittent locations. A Pedestrian Vendor selling frozen desserts shall not be considered an Ice Cream Vending Unit.
- d. **Mobile Food Vendor.** Generally, a Mobile Food Vendor ("MFV") is an enclosed unit, truck, or trailer, or similar vehicle-mounted unit that:
 - 1) Is mobile or capable of being moved by a licensed motor vehicle;
 - 2) Any unit such as hotdog, ice cream, or food cart that is unloaded or delivered to an area for the purpose of vending to walk up customers, and is not easily moved from location to location without motorized help;

- 3) May or may not be independent with respect to water, waste water, and power utilities;
 - 4) Is used for the preparation and/or sale of food;
 - 5) Does not exceed thirty-five (35) feet in length and nine (9) feet in width;
- e. **Operate.** To “operate” or “operation” shall mean all activities associated with the conduct of business, including, but not limited to, set up, take down, and actual hours where the MFV is open for business.
 - f. **Prepackaged Food.** Any properly labeled and processed food or beverage, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an off-site approved source, and that may be purchased at the MFV for immediate or later consumption.
 - g. **Prepared Food.** Any food or beverage that is served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed, or otherwise prepared by persons off-site from a MFV that may be purchased at the MFV for immediate or later consumption.
 - h. **Public Property.** Any property owned or maintained by the City.
 - i. **Right-of-Way.** For the purposes of this Article, right-of-way shall mean streets where public parking is allowed and includes marked or unmarked parking spaces thereon.

10-103. Applicability of Article. The provisions of this Article shall apply to Mobile Food Vendors engaged in the business of preparing, cooking, and distributing food with or without charge on or in public or private property within the City limits. This Article shall also apply to vendors selling prepared or prepackaged food if the vendor desires to exceed the exemption provided for the vendor herein.

10-104. Limited Exemptions.

- a. **Ice Cream Vending Units.** This Article shall not apply to an Ice Cream Vending Unit so long as the unit is stationary in the same location for no more than fifteen (15) minutes at a time. An Ice Cream Vending Unit may sell or attempt to sell items that are frozen only on local streets where the speed limit is thirty (30) miles per hour or less. An Ice Cream Vending Unit shall not stop within twenty (20) feet of an intersection when attempting a sale or making a sale; and must have lights that are visible to oncoming traffic.
- b. **Food Donations.** Public food donations are exempted, as long as no product is being sold in conjunction with a food give-a-way. All Edible Food Products must still follow safe food handling guidelines as directed by the TN State Health Department. Food donation vendors must still receive permission to set up and distribute, and must not hinder pedestrian, vehicular, or public safety traffic or access.
- c. **Compliance with Article.** Any vendor who is granted an exemption under this Section and who desires to operate beyond the terms of the Limited Exemption described in this Section shall comply with the provisions of this Article that are applicable to MFVs.
- d. **Community Events.** Certain City and Chamber events may be exempt.

10-105. Mobile Food Vendor Permit.

- a. **Application and Permit Required.** Unless exempted, every vendor desiring to engage in Mobile Food Vending shall submit an application, along with all necessary information and inspections, to the Business Office along with the appropriate fees before a permit shall be issued. The permit application shall not be considered complete until a safety inspection is completed and the Business Office receives full payment for the type of permit desired. Permits are only valid during the calendar year in which they were issued; and each year the permitting process must be followed. Permits are non-transferrable.
- b. **Applicable MFV Permits.** As with all MFV permits, if the MFV does not meet the requirements of the City, the MFV shall not receive a permit and it shall not be permitted to operate. The following MFV permit types are available:
- 1) **Special Event Permit** - Vendors that wish to operate within the City during a single event may apply for a permit that is valid up to 3 consecutive days; and this permit can only be issued 3 times in a calendar year for the same MFV. City and Chamber sponsored events may require additional fees and conditions.
 - 2) **Test Market Permit** - Vendors wishing to better understand the potential profitability of the area may apply. This permit can only be issued once in a calendar year and the permit has a duration of 21 days; but it can be upgraded to either a Limited Access Permit or a Full Access Permit within the same calendar year by paying only the difference between the Test Market Fee and the desired permit upgrade.
 - 3) **Limited Access Permit** - Vendors that wish to operate more frequently within the City may apply for the authorization to open their MFV business up to 3 days per week during the year.
 - 4) **Full Access Permit** - Vendors wishing to maintain a constant presence in the City with their MFV business may apply for daily operation.
- c. **Fees.** A non-refundable application fee in the amount of \$25.00 is required to receive an application for a MFV permit. There shall be no proration of fees; and fees are non-refundable once a permit has been issued. The following fees apply:
- 1) Special Event MFV Permit Fee - \$25.00
 - 2) Test Market MFV Permit Fee - \$50.00
 - 3) Limited Access MFV Permit Fee - \$275.00
 - 4) Full Access MFV Permit Fee - \$675.00
- e. **Inspections after Permitting.** Permitted operations may be inspected periodically and without notice by representatives of various City departments to ensure compliance with this Article.
- f. **Operation without Permit.** Any MFV operating without a valid Permit shall be deemed a public safety hazard and may be ticketed and impounded.
- g. **Revocation of Permit.** The City may revoke a Permit if it discovers that:
- 1) An applicant obtained the Permit by knowingly providing false information on the application;
 - 2) The continuation of the Vendor's use of the Permit presents a threat to public health or safety, or if the Vendor otherwise presents a threat to public health or safety; or
 - 3) The Vendor violates regulations of this Article or any other City ordinance.

- h. **Revocation.** Following the revocation of a Permit, a Vendor must wait six (6) months before reapplying for a new Permit. Upon reapplication, the Vendor must pay the full Permit fee.

10-106. Operation of Mobile Food Vendors. The following requirements apply to all MFVs and Vendors operating at any location, whether on City property, the right-of-way, or on private property within the City. Private property owners may seek additional requirements for MFVs operating on their property.

- a. **Additional Structures.** When vending on public property or right-of-way outside of a special event authorized by the City or Chamber, Vendors shall not provide any dining area. The term “additional structures” does not include the waste containers required by this Section. When vending on private property or within a special event authorized by the City or Chamber, permission from the property owner is required before the Vendor provides or allows any dining area, including but not limited to tables, chairs, booths, bar stools, benches and standup counters. Under no circumstances shall these dining areas encroach into the public right-of-way. The Vendor shall remove all additional structures when the Vendor ends its operations for the day.
- b. **Compliance with Laws.** Except as provided herein, MFV placement and operation must adhere to federal, state, and local laws, regulations, and policies. Local laws, regulations, and policies include, but are not limited to the City’s zoning ordinances, noise ordinances, stormwater regulations, and fire code. The vendor must comply with all safe food handling rules as described by the TN Department of Health.
- c. **Distance between MFVs.** While operating, MFVs shall be at least ten (10) feet from other MFVs; except for approved events.
- d. **District Restrictions.**
 - 1) **Residential Districts.** MFVs are generally restricted in all areas zoned residential. MFVs in residential zones are allowed only as part of an event that is sponsored or hosted by a neighborhood association, by a homeowners’ association, a non-profit corporation, by the City, the Chamber, or another governmental entity; and each event is limited to one day per calendar year for that particular neighborhood.
 - 2) **Commercial Districts.** Generally, Mobile Vending on private property is permitted only in Commercially zoned districts with improved lots except for City and Chamber approved events.
 - 3) **City Property.** Use of City property is generally not available except for City and Chamber events. Certain City parking lots may allow MFVs, but that permission will be granted by the Parks Department at their discretion according to policies dealing with the use of City property.
 - 4) **Unimproved Lots.** MFVs are not allowed to operate on unimproved lots.
- e. **Electrical Requirements.** Any MFV under this Article shall comply with the requirements of the National Electrical Code, and any other rules and regulations which may apply.
- f. **Electrical Service.** Any power required for a MFV on a public right-of-way or public property should be self-contained. MFVs operating on private property may use electrical power from the property being occupied or an adjacent property only when permission has been given by an operator of the property to hook-up to electricity from the property. No power cord, cable, or equipment shall be extended at or across any public right-of-way,

alley, sidewalk, or other public property. For the purposes of this section, "operator" refers to either the property owner or tenant where there is one occupant of the parcel, or refers to the property owner where there are multiple occupants or tenants on a parcel. The owner/operator of the MFV may be responsible for any damage caused to the electrical system.

- g. Fire Safety and Inspection.** Any Vendor operating a MFV under this Article shall comply with requirements of the International Fire Code as adopted, along with any other regulatory fire code as adopted. An inspection by the Fire Department must be passed before any permit is issued; and random inspections by City staff may be made any time after a permit is issued. All MFV operators are to adhere to the following:
- 1) Vendors must have the appropriate fire suppression and/or fire extinguishers available at all times for their type of combustibles; such as described in NFPA 10.
 - 2) All gasoline and propane must be properly stored and secured according to acceptable best practices, standards, and codes; such as that of the NFPA.
 - 3) Each mobile unit must contain a fire/carbon monoxide alarm.
 - 4) No trash or combustible material shall accumulate or be located within 3 feet of an open flame or fuel supply.
 - 5) Gasoline generators shall only be filled when the generator is cool to the touch and not in operation.
- h. Hours of Operation.** Generally, MFVs are allowed to operate between the hours of 7am and 10pm; but may be shortened by the property owner. Certain approved events may dictate longer or shorter hours of operation as well.
- i. Items for Sale.** Generally, only food and beverage items may be sold from MFVs; a Vendor may sell or distribute merchandise from the MFV only if the merchandise bears the logo of the Vendor or the MFV; all other merchandise sales are prohibited. The sale or distribution of alcoholic beverages is prohibited specifically.
- j. Letter of Permission.** Vendors operating on private property shall obtain a letter from an operator of the property stating that the Vendor has permission to vend on the property and, if applicable, has permission to serve the operator's employees and/or customers. The Vendor shall keep a copy of the permission letter on the MFV at all times and while operating, the Vendor shall produce the letter upon the request of any City official acting in an enforcement capacity. For the purposes of this section, "operator" refers to either the property owner or tenant where there is one occupant of the parcel, or refers to the property owner where there are multiple occupants or tenants on a parcel.
- k. Maximum Number of Units per Parcel.** While operating on private property, except for approved events by the City or Chamber, the number of MFVs allowed is limited by the size of the parcel as follows: For a lot that is one-half (.5) acre or smaller, a maximum of one (1) MFVs is allowed; for a lot that is one-half to one (.5-1.0) acre, a maximum of two (2) MFVs is allowed; for a lot that is larger than one (1.0) acre in size, a maximum of three (3) MFVs is allowed.
- l. Methods of Support.** MFVs shall be free-standing and shall not use stakes, rods, or any method of support that must be drilled, driven, or otherwise fixed, into or onto asphalt, pavement, curbs, sidewalks, or buildings.
- m. Mobile Vending on City Property.** MFVs wishing to operate on City property must schedule places and times through the Park Department. A minimum notice of 14 business days must be given to allow for scheduling; and schedules cannot be made for those who do not have an active permit. Scheduling times and places are limited, and are on a first

come first serve basis. All City functions take precedence over MFVs; and MFVs may be asked at any time to move to another location on City property, or off of City property all together. The use, marking, or designation of spaces for Mobile Food Vending does not grant Vendors a vested right, property interest, or privilege in any specific space. City space for MFVs may be adjusted, modified, or removed if such adjustment, modification, or removal is determined to be in the interest of the public health, safety, welfare, and operation of the City.

- n. Obstruction of Vehicular and Pedestrian Traffic.** Placement of MFVs and any devices related to the MFV shall not obstruct or impede pedestrian or vehicular traffic, access to driveways or any egress or ingress, alley way, sight distance for drivers, loading bays, handicap parking spaces or access, or block fire hydrants or fire lanes.
- o. Operation on Unimproved Lots.** MFVs shall not operate on unimproved non-commercial lots. For the purposes of this Article, an unimproved lot is a lot without the following: Paved surface for the MFV and its customers, paved driveway access to a City street, and adequate lighting for the paved area. This prohibition regarding unimproved lots shall not be applicable to properties owned by the City or to events coordinated by the City and the Chamber.
- p. Outside Preparation.** Any food and beverage preparation outside of the MFV shall not obstruct vehicular or pedestrian traffic, and such preparation shall not create safety hazards for the public. Vendors shall not serve food to customers directly from any outside preparation unit. Any barbecue, smoker, or cooking device that is external to the MFV shall be blocked by sufficient barriers so as to protect, and alert, pedestrians from possible injury.
- q. Parking Direction.** When allowed, MFVs operating on public streets shall park in the same direction as traffic, with no more than eighteen inches (18") between the curb face or edge of pavement and with the service window, and the service window of the MFV must be facing the curb.
- r. Service to Pedestrians.** MFVs shall serve pedestrians only; a drive-thru or drive-in service for vehicular customers is prohibited. MFVs should use traffic cones to prevent vehicles from driving through the area where pedestrians would line up for service.
- s. Signs and Flashing Lights.** A MFV is limited to signs mounted to the exterior of the mobile food vendor's unit and one (1) detached sandwich board sign. Sandwich board signs shall not obstruct or impede pedestrian or vehicular traffic. MFVs signs shall not contain flashing lights or flashing light-emitting diodes (LED), nor shall the MFV use flashing lights or flashing LED as an embellishment on the MFV to attract attention.
- t. Sound Amplification.** MFVs or Vendors shall not use sound amplification equipment in a way that may create a nuisance to others.
- u. Spills.** To prevent discharges into the storm drain system, each MFV shall comply with the stormwater regulations of the City. In addition, each MFV should have a spill response plan and kit onboard to contain and remediate any discharge from the MFV.
- v. Waste Storage and Disposal.** Vendors shall supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the MFV. The Vendor shall keep the area around the MFV clear of litter and debris at all times. All trash and debris generated by customers and staff shall be collected by the Vendor and deposited in their trash or recycling container and removed from the site by the Vendor. Vendors shall not pour waste water or grease on the ground. Vendors shall not place food waste or grease into City owned trash receptacles. Vendors shall not place food, waste, or grease into any part of City's sewer system.

10-107. Indemnity for Benefit of the City and Insurance. Any Vendor operating under this Article shall comply with all requirements of the City with regard to risk management, including the provision of insurance in accordance with the standards set by the City and the execution of an indemnity agreement in favor of the City when operating on City property.

BE IT ORDAINED, The City of Portland hereby amends Title 9 with the addition of Chapter 10, 101-107 and the monies from these fees shall be applied to the upkeep of the Veterans Park located at Richland Park; and

BE IT FURTHER ORDAINED, That all ordinances or parts of ordinances in conflict herewith are hereby repealed; and

NOW THEREFORE, BE IT ORDAINED, That this Ordinance shall become effective thirty days (30 days) after its passage, the public welfare requiring it.



Mike Callis, Mayor



Patricia Keen, City Recorder

Passed First Reading: March 15, 2021

Passed Second Reading: April 19, 2021