

*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? ☐

Budget Adjustment Attached? ☐

V20130812

Previous Ordinance or Resolution # 5498

Original Contract Number:

Comments:

Kash 3-4-14

Paul a. Becker

Donna 3/6/14
Frank Jarch





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

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

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 18th 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 1st and will extend until December 31st. 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 31st.
 - (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.

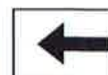
(C) Food trucks permitted pursuant to §178.05 may operate in City Parks as described below:

(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.

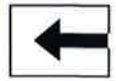


Legend



Vendors prohibited in highlighted areas when contracted concessionaires are present.

Lewis Soccer Complex
1515 N. Lewis Avenue



Legend
Park

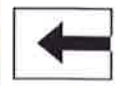
Vendors prohibited in highlighted areas during times
when contracted concessionaires are present.

Lake Fayetteville Park
1330 E. Lake Fayetteville Road



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

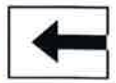
Walker Park
10 W. 15th Street



Legend
[Red dashed line] Park

Vendors prohibited in highlighted areas when
contracted concessionaires are present.

White River Park
2080 S. Armstrong Avenue



0 0.0125 0.025 0.05 Miles

Legend
Park

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

Wilson Park
675 N. Park Avenue