

City of Fayetteville Staff Review Form

2017-0192

Legistar File ID

4/18/2017

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

Andrew Garner

3/31/2017

City Planning /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

ADM 17-5705: Administrative Item (UDC Chapter 178/UDC Amendment Outdoor Mobile Vendors): Submitted by CITY PLANNING STAFF and ALDERMAN MATTHEW PETTY for revisions to UDC Chapter 178 to modify the requirements for mobile vendors.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>No</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20140710

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Approval Date: _____

Comments:



CITY COUNCIL AGENDA MEMO

MEETING OF APRIL 18, 2017

TO: Fayetteville City Council

FROM: Andrew Garner, City Planning Director
Matthew Petty, Alderman

DATE: March 31, 2017

SUBJECT: **ADM 17-5705: Administrative Item (UDC Chapter 178/UDC Amendment Outdoor Mobile Vendors):** Submitted by CITY PLANNING STAFF and ALDERMAN MATTHEW PETTY for revisions to UDC Chapter 178 to modify the requirements for mobile vendors.

RECOMMENDATION:

The City Planning staff and Planning Commission recommend approval of an ordinance to amend UDC Chapter 178 to modify the requirements for mobile vendors.

The Outdoor Mobile Vendor code (UDC Chapter 178) was amended in 2014 to allow vending on public property such as streets and parks. At the time of the proposed code change, concerns were expressed that there would be a large number of vendors that might have a negative impact on the availability of public parking. To offset that potential issue, permits for mobile vendors on public property were to be issued by a lottery drawing for a maximum of three permits annually. The total number of permits could be increased slightly depending on the number of applications. Although there were a few applications for the first lottery, to staff's knowledge there have not been any mobile vendors that have operated on public property such as in the parallel parking spaces on Dickson Street or in parking lots in parks since the code's change. *Because mobile vending on public property has not proven to be a problem and a lottery drawing seems unnecessary, staff proposes to remove the lottery drawing requirement from the code.*

A conditional use permit process is required for mobile vendor courts and sidewalk cafes. There has only been one conditional use permit application for a mobile vendor court. The permit was for the Shulertown Food Court on Dickson Street which was in May of 2014. There have been no applications for sidewalk cafes. *Staff proposes to modify the requirements for mobile vendor courts and sidewalk cafes, and allow them to be approved administratively by staff.*

Section 178.04 allows two types of mobile vending permits: a six month permit that is approved by staff and a one-year (annual) permit that may be approved by the Planning Commission. There have been 19 annual permits submitted to the Planning Commission over the past three years and all have been approved, usually on the consent agenda. *Because the Planning Commission and City Council have been supportive of these types of permits and no complaints have been received by staff, staff proposes to remove the time limitation for mobile vendors. Instead, staff proposes that mobile vendors simply renew their permit on an annual basis similar to a business license.*

These changes are an effort to encourage more vacant property to be utilized for mobile vending, provide economic opportunities for start-up businesses, and create a more lively streetscape and increased urban amenities for citizens.

Proposal: Staff proposes the following code changes as outlined below and shown in the attached document in **highlight and strikeout**:

- 178.01 Purpose. Change the word “retail” to “commercial”.
- 178.02 Sidewalk Cafes. Change the requirement for sidewalk cafes to be able to be approved by staff instead of a conditional use permit.
- 178.04 Outdoor Mobile Vendors
 - B. Added definitions for various types of vendors for clarification.
 - C. Combined the “Mobile Vendor Six Month Permit” and “Mobile Vendor Annual Permit” into one permit that is approved by staff and applicants are required to renew their permits on an annual basis like a business license.
 - D. Allow “Mobile Vendor Courts” to be approved administratively by staff instead of as a conditional use permit. Modified the requirements for mobile vendor courts to clarify site improvements especially in a greenfield site.
 - E. Change “Limited Time Permits” for all vendors to automatically be allowed “Limited Time Permits”. This allows all permitted vendors to operate on public property such as Dickson Street and in city parks; also expanded the timeframe to 12 hours.
- 178.05 Food Truck and Food Trailer Limited Time Permits. Removed this section as it was condensed and combined into subsection “E”.

DISCUSSION:

This code change was discussed at the March 13, 2017 Planning Commission meeting where it was tabled to address comments related to the amount of time mobile vendors may park on public property during a 24-hour period, and to evaluate public improvements for mobile vendor courts. The code change was discussed again at the March 27, 2017 Planning Commission meeting where staff and the commission made further minor changes, and the proposal was forwarded with a recommendation for approval by a vote of 8-0-0 (Commissioner Quinlan was absent).

BUDGET/STAFF IMPACT:

None

Attachments:

- Proposed code changes shown in **highlight and strikeout**
- Proposed code changes (full clean version of UDC 178)
- Planning Commission packet

CHAPTER 178: OUTDOOR VENDORS

178.01 Purpose

It is the purpose of this chapter to promote and encourage open air **retail commercial** environments, while preserving and protecting the health, safety and welfare of citizens by promoting opportunities and regulations for the creation of said exceptions within the City.

(Ord. 5185, 10-7-08)

178.02 Sidewalk Cafes

(A) Public rights-of-way are designed for free and unobstructed travel. However, the City of Fayetteville recognizes that certain developed and developing areas in a traditional town form 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 encourage pedestrian activity and make the urban environment more attractive.

(B) Sidewalk Café Authorization. ~~The Planning Commission~~ **City Planning Division** may issue a ~~conditional use~~ permit allowing a sidewalk café on part of a specified sidewalk after the applicant has notified adjoining property owners. ~~In addition to the general conditional use requirements, the Planning Commission~~ **The City Planning Division** shall ensure that no ~~conditional use~~ permit is granted, unless:

- (1) The proposed sidewalk café will not unduly impact or impede the public's ability to travel upon or use the sidewalk and any other affected public right-of-way, including public utility easements.
- (2) Any necessary costs to relocate a utility or widen the existing sidewalk to accommodate the proposed sidewalk café must be paid by the sidewalk café applicant.
- (3) The sidewalk café applicant may be required to post a surety bond or letter of credit sufficient to cover the cost of removing the sidewalk café if necessary for the city or utility company to access pipes, lines, or other facilities.
- (4) The sidewalk café applicant must consent that the city or utility company may remove, without liability or compensation, part or all of the sidewalk café, if necessary, to get access to a utility facility or improvement.

(C) Requirements: Sidewalk cafés shall meet the following requirements in order to be approved:

- (1) Applicants requesting a license must provide a detailed site plan and written description illustrating the type, location and dimensions of all furniture to be placed in the public right-of-way. Sidewalk cafes may not be enclosed by fixed walls or other permanent structures.
- (2) Sidewalk cafes must be open to the air, except that an awning or canopy conforming to requirements established by the Unified Development Code and Building Code may be constructed over the sidewalk café. In order to provide sufficient pedestrian clearance, umbrellas must have 7 feet of free and clear space from the sidewalk surface to the lower edge of the umbrella.
- (3) Property shall be kept clean and free of refuse with no permanent trash containers placed on the premises.
- (4) All furnishings and fixtures must be of a temporary nature and shall be removed from the public right-of-way and stored inside during non-operational times.
- (5) For sidewalk cafes using City right-of-way for operation, there shall be a minimum of five feet or 50% of the total sidewalk width for clearance, whichever is greater, to provide adequate and unobstructed pedestrian movement.
- (6) If at any time the sidewalk café is determined to impede travel or interfere with the public safety, as determined by the Planning Division, the sidewalk cafe shall be removed.
- (7) One A-frame sandwich/menu board is permitted within the sidewalk cafes' border during hours of operation, subject to the applicable regulations in Ch. 174: Signs for the same.

(Ord. 5185, 10-7-08)

178.03 Sidewalk Vendors

(A) *Purpose.* 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.

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- (B) *Sidewalk Vendor Authorization.* The **City Planning Division** may issue a permit for a sidewalk vendor to use a specific sidewalk or plaza location for specified hours to sell specified goods for up to a one year period. ~~In addition to the general use requirements, the~~ **The City Planning Division** 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 shall be accompanied by a \$100 application and permit fee. 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 permit shall include the following items in a format acceptable to the **City Planning Division**:
 - (a) Name, address and contact information.
 - (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.
- (g) A detailed scale drawing, picture or diagram and material specifications of the device or pushcart to be used.
 - (2) The permit issued shall not be transferable in any manner.
 - (3) The permit is valid for one sidewalk vending location only.
- (D) *Permitted Vending Products and Goods.*
- (1) The City of Fayetteville permits the following types of goods for street 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 vendors.
 - (2) All goods being sold from sidewalk vendors 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 traffic on the sidewalk.
 - (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) *Pre-Approved Locations.* 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 vending is allowed as a permitted use are:

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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) *Alternative Locations.* If an applicant wishes to operate as a sidewalk vendor in a location other than those specifically approved by the City Council, a permit must be obtained. Upon receipt of a permit application, the Planning Division shall review the proposed permit operating area to determine if the said area is suitable for street vending in accordance with this chapter. In making this determination, the Planning Division 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 City Planning Division Planning Commission as a variance. 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 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, with a minimum 48" pedestrian access route that is free and clear of obstructions. The Planning Division 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, other sidewalk vendors or taxi stands to determine whether the proposed use would result in pedestrian or street congestion.

(G) *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 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.

appealing streetscape and does not create a dangerous traffic condition.

(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) *Signage.* Sidewalk vendors shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors 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.

(I) *Revocation of the Sidewalk Vendor Permit.* The City Planning Division is authorized to revoke a sidewalk vendor's permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

(Ord. 5185, 10-7-08; Ord. 5321, 5-18-10; Ord. 5459, 11-15-11; Ord. 5768, 5-5-15)

178.04 Outdoor 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

(B) Definitions.

(1) Food trucks. A type of mobile vendor which is a motorized and operationally self-contained single vehicle equipped with facilities for cooking and selling food.

(2) Food trailers. A type of mobile vendor which is designed to be towed on public roads and having an enclosed area for storage, handling or preparation of food.

(3) Other vendors. Mobile vendors are not limited to operating out of a food truck or trailer.

(4) Mobile Vendor Court. An outdoor commercial center with 5 or more mobile vendors in a shared location.

(C) Mobile Vendor Permit Requirements. All mobile vendors shall meet the following requirements and submittals prior to approval:

(1) Each application for a permit to conduct a mobile vendor business shall be accompanied by a \$100.00 permit review and processing fee. Mobile vendor permits shall be issued to the owner of the mobile vendor vehicle. This application will also serve as the vendor's business license that will be processed as such.

(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 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) For each location other than those permitted as part of a Mobile Vendor Court, a detailed site plan roughly drawn to scale showing the location of the property lines, each mobile vendor location, building setback lines, vehicle

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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 comply with the Federal Americans with Disabilities Act (ADA) requirements if the public has access to the interior of any mobile vending unit.

(8) Mobile vendors shall be required to renew their permit on an annual basis following the same timeframe as a standard business license renewal. As part of the renewal process, vendors shall submit an updated copy of the health department permit, HMR tax forms, and a re-inspection by the City Fire Department where applicable. Failure to renew a permit will be cause for revocation by the City Planning Division.

(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:

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- ~~(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 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)(D) Mobile Vendor Courts. Mobile vendor courts may be permitted through a conditional use permit administratively in appropriate zoning districts. A property owner may request a conditional use permit from the Planning Division 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) Site Improvement Requirements.~~

- ~~(a) Site Design. Sites shall be improved with a barrier between vehicular and customer service areas, including ordering and dining areas. The barrier may be implied or physical and constructed with landscaping elements; gated fencing; changes in ground surface texture, material or color; or similar treatments. Sites which are not already paved with gravel or another hard surface shall improve their parking areas with gravel or other pavement designed in accordance with the Parking Lot Design Standards. With respect to landscaping requirements, the entire Mobile Vendor Court shall be considered a parking lot and perimeter landscaping will be required in accordance with Parking Lot Landscape Standards.~~

- ~~(b) Sanitation. Adequate restroom facilities shall be provided either on-site or through a shared use agreement with a neighboring business. Portable toilets, if used, must be screened from view of the public.~~

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- (c) Utilities. Above ground utility connections shall not interfere with pedestrian or vehicular safety and shall not be located in customer service areas or customer parking areas.
 - (d) Mobile vendor courts shall not have continuous curb cuts or exacerbate a dangerous pedestrian condition. New courts may close continuous curb cuts or improve pedestrian conditions with temporary materials subject to approval of the City Planning Division. Acceptable materials include planters, plinths, benches, pavers, and other furniture. Temporary improvements installed by mobile vendor courts shall not reduce access for pedestrians with disabilities.
- (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 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.
- (E) Limited Time Permits. Permitted food trucks and trailers may operate in the following locations for up to twelve hours each day, after which they must move to a new location which is out-of-view of the original location.
- (1) Marked parallel parking spaces, which are not reserved for residential use and provided the parking space is not in front of a business selling similar food. Service to customers shall be only on the sidewalk side of the vehicle to maintain public safety. Vendors are not exempt from paying the standard rate for the parking space.
 - (2) Marked parking spaces within parks pursuant to City Code §97.086.
 - (3) Private property zoned for food and beverage sales and with the owner's permission.
- (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

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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 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.

(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11; Ord. 5498 05-01-12; Ord. 5666, 3-18-14)

178.05 Food Truck and Food Trailer Limited Time Permits

~~(A) Purpose. This section's purpose is to create a process that allows food trucks and food trailers 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. Food trailers are defined as a mobile food unit designed to be towed on public roads and having an enclosed area for storage, handling or preparation of food.~~

~~(B) Limited Time Permit for Parallel Parking Spaces. 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.~~

~~(1) The Planning Division will conduct a lottery in November each year for a total of three (3) Limited Time Permits for locating in parallel parking spaces on public roads. 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 Limited Time Permit for Parallel Parking Spaces 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~~

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located in public parking spaces. The food truck shall fit entirely within one marked parallel on street parking space.

- (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) Limited Time Permit on Public Property. Food trucks and food trailers may apply for a permit

determined through a lottery drawing by the Planning Division to locate for a limited time on public property excluding on street marked parallel or angled parking spaces. Food trucks and food trailers with this permit 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) 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 and food trailers may apply and participate in this lottery every year.
- (2) A 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 and food trailers shall fit entirely within no more than two parking spaces on public property or in a City Park and shall pay the appropriate fee for the time they are located in public parking spaces.
 - (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 and food trailers 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 locate on public property such that they will not cause an unsafe traffic or pedestrian situation.

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~~(f) The applicant agrees not to set up in a parking space adjacent to a parking pay station kiosk.~~

~~(g) Food trucks and food trailers are prohibited from parking or vending from on street marked parallel or angled parking spaces and from gated public parking lots in the Entertainment District or the Downtown Business District. Food trucks and food trailers are also prohibited from parking in marked parking spaces that are posted reserved for residential use.~~

~~(h) The City reserves the right to limit food trucks and food trailers from utilizing public parking spaces during special events such as; parades, Bikes, Blues and BBQ, etc. Special event permits may be available to food trailers for certain events. Contact the City's Parking Division for special event permits.~~

~~(D) Limited Time Permit on Private Property. Food trucks and food trailers may be approved administratively by the Planning Division for a 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.~~

~~(3) The applicant has the responsibility to dispose of all wastes in accordance with all applicable laws. Food trucks and food trailers 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 or food trailer 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 or food trailer would like to temporarily locate. The 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.~~

CHAPTER 178: OUTDOOR VENDORS

178.01 Purpose

It is the purpose of this chapter to promote and encourage open air commercial environments, while preserving and protecting the health, safety and welfare of citizens by promoting opportunities and regulations for the creation of said exceptions within the City.

(Ord. 5185, 10-7-08)

178.02 Sidewalk Cafes

(A) Public rights-of-way are designed for free and unobstructed travel. However, the City of Fayetteville recognizes that certain developed and developing areas in a traditional town form 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 encourage pedestrian activity and make the urban environment more attractive.

(B) Sidewalk Café Authorization. The City Planning Division may issue permit allowing a sidewalk café on part of a specified sidewalk after the applicant has notified adjoining property owners. The City Planning Division shall ensure that no permit is granted, unless:

- (1) The proposed sidewalk café will not unduly impact or impede the public's ability to travel upon or use the sidewalk and any other affected public right-of-way, including public utility easements.
- (2) Any necessary costs to relocate a utility or widen the existing sidewalk to accommodate the proposed sidewalk café must be paid by the sidewalk café applicant.
- (3) The sidewalk café applicant may be required to post a surety bond or letter of credit sufficient to cover the cost of removing the sidewalk café if necessary for the city or utility company to access pipes, lines, or other facilities.
- (4) The sidewalk café applicant must consent that the city or utility company may remove, without liability or compensation, part or all of the sidewalk café, if necessary, to get access to a utility facility or improvement.

(C) Requirements: Sidewalk cafés shall meet the following requirements in order to be approved:

- (1) Applicants requesting a license must provide a detailed site plan and written description

illustrating the type, location and dimensions of all furniture to be placed in the public right-of-way. Sidewalk cafes may not be enclosed by fixed walls or other permanent structures.

- (2) Sidewalk cafes must be open to the air, except that an awning or canopy conforming to requirements established by the Unified Development Code and Building Code may be constructed over the sidewalk café. In order to provide sufficient pedestrian clearance, umbrellas must have 7 feet of free and clear space from the sidewalk surface to the lower edge of the umbrella.
- (3) Property shall be kept clean and free of refuse with no permanent trash containers placed on the premises.
- (4) All furnishings and fixtures must be of a temporary nature and shall be removed from the public right-of-way and stored inside during non-operational times.
- (5) For sidewalk cafes using City right-of-way for operation, there shall be a minimum of five feet or 50% of the total sidewalk width for clearance, whichever is greater, to provide adequate and unobstructed pedestrian movement.
- (6) If at any time the sidewalk café is determined to impede travel or interfere with the public safety, as determined by the Planning Division, the sidewalk cafe shall be removed.
- (7) One A-frame sandwich/menu board is permitted within the sidewalk cafes' border during hours of operation, subject to the applicable regulations in Ch. 174: Signs for the same.

(Ord. 5185, 10-7-08)

178.03 Sidewalk Vendors

(A) *Purpose.* 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.

(B) *Sidewalk Vendor Authorization.* The City Planning Division may issue a permit for a sidewalk vendor to use a specific sidewalk or

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plaza location for specified hours to sell specified goods for up to a one year period. The City Planning Division 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 shall be accompanied by a \$100 application and permit fee. 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 permit shall include the following items in a format acceptable to the City Planning Division:
 - (a) Name, address and contact information.
 - (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.
 - (g) A detailed scale drawing, picture or diagram and material specifications of the device or pushcart to be used.

- (2) The permit issued shall not be transferable in any manner.
- (3) The permit is valid for one sidewalk vending location only.

(D) *Permitted Vending Products and Goods.*

- (1) The City of Fayetteville permits the following types of goods for street 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 vendors.

(2) All goods being sold from sidewalk vendors 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 traffic on the sidewalk.
- (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) *Pre-Approved Locations.* 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 vending is allowed as a permitted use are:

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

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operate, sidewalk vendors shall only be permitted if approved through the Farmers' Market or Special Event Permit process.

(F) *Alternative Locations.* If an applicant wishes to operate as a sidewalk vendor in a location other than those specifically approved by the City Council, a permit must be obtained. Upon receipt of a permit application, the Planning Division shall review the proposed permit operating area to determine if the said area is suitable for street vending in accordance with this chapter. In making this determination, the Planning Division 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 City Planning Division as a variance. 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 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, with a minimum 48" pedestrian access route that is free and clear of obstructions. The Planning Division 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, other sidewalk vendors or taxi stands to determine whether the proposed use would result in pedestrian or street congestion.

(G) *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 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

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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) *Signage.* Sidewalk vendors shall obtain a sign permit from the Planning Division prior to the issuance of a permit to operate. Sidewalk vendors 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.

(I) *Revocation of the Sidewalk Vendor Permit.* The City Planning Division is authorized to revoke a sidewalk vendor's permit if it is determined that a violation of the requirements of the Unified Development Code has occurred.

(Ord. 5185, 10-7-08; Ord. 5321, 5-18-10; Ord. 5459, 11-15-11; Ord. 5768, 5-5-15)

178.04 Outdoor Mobile Vendors

(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) Definitions.

(1) Food trucks. A type of mobile vendor which is a motorized and operationally self-contained single vehicle equipped with facilities for cooking and selling food.

(2) Food trailers. A type of mobile vendor which is designed to be towed on public roads and having an enclosed area for storage, handling or preparation of food.

(3) Other vendors. Mobile vendors are not limited to operating out of a food truck or trailer.

(4) Mobile Vendor Court. An outdoor commercial center with 5 or more mobile vendors in a shared location.

(C) Mobile Vendor Permit Requirements. All mobile vendors shall meet the following requirements and submittals prior to approval:

(1) Each application for a permit to conduct a mobile vendor business shall be accompanied by a \$100.00 permit review and processing fee. Mobile vendor permits shall be issued to the owner of the mobile vendor vehicle. This application will also serve as the vendor's business license that will be processed as such.

(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 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) For each location other than those permitted as part of a Mobile Vendor Court, 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.

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- (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 comply with the Federal Americans with Disabilities Act (ADA) requirements if the public has access to the interior of any mobile vending unit.
 - (8) Mobile vendors shall be required to renew their permit on an annual basis following the same timeframe as a standard business license renewal. As part of the renewal process, vendors shall submit an updated copy of the health department permit, HMR tax forms, and a re-inspection by the City Fire Department where applicable. Failure to renew a permit will be cause for revocation by the City Planning Division.
- (D) *Mobile Vendor Courts.* Mobile vendor courts may be permitted administratively in appropriate zoning districts. A property owner may request a permit from the Planning Division 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) Site Improvement Requirements.
 - (a) Site Design. Sites shall be improved with a barrier between vehicular and customer service areas, including ordering and dining areas. The barrier may be implied or physical and constructed with landscaping elements; gated fencing; changes in ground surface texture, material or color; or similar treatments. Sites which are not already paved with gravel or another hard surface shall improve their parking areas with gravel or other pavement designed in accordance with the Parking Lot Design Standards. With respect to landscaping requirements, the entire Mobile Vendor Court shall be considered a parking lot and perimeter landscaping will be required in accordance with Parking Lot Landscape Standards.
 - (b) Sanitation. Adequate restroom facilities shall be provided either on-site or through a shared use agreement with a neighboring business. Portable toilets, if used, must be screened from view of the public.
 - (c) Utilities. Above ground utility connections shall not interfere with pedestrian or vehicular safety and shall not be located in customer service areas or customer parking areas.
 - (d) Mobile vendor courts shall not have continuous curb cuts or exacerbate a dangerous pedestrian condition. New courts may close continuous curb cuts or improve pedestrian conditions with temporary materials subject to approval of the City Planning Division. Acceptable materials include planters, plinths, benches, pavers, and other furniture. Temporary improvements installed by mobile vendor courts shall not reduce access for pedestrians with disabilities.
- (E) Limited Time Permits. Permitted food trucks and trailers may operate in the following locations for up to twelve hours each day, after which they must move to a new location which is out-of-view of the original location.
- (1) Marked parallel parking spaces, which are not reserved for residential use and provided the parking space is not in front of a business selling similar food. Service to customers shall be only on the sidewalk side of the vehicle to maintain public safety. Vendors are not exempt from paying the standard rate for the parking space.
 - (2) Marked parking spaces within parks pursuant to City Code §97.086.
 - (3) Private property zoned for food and beverage sales and with the owner's permission.
- (F) *Exemptions.* The provisions of the Mobile Vendor ordinance do not apply to:

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- (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 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.

(Ord. 5185, 10-7-08; Ord. 5425, 8-2-11; Ord. 5498 05-01-12; Ord. 5666, 3-18-14)

PLANNING COMMISSION MEMO

TO: Fayetteville Planning Commission

FROM: Andrew Garner, City Planning Director
Matthew Petty, Alderman

MEETING DATE: March 27, 2017 (**Updated with Planning Commission results**)

SUBJECT: **ADM 17-5705: Administrative Item (UDC Chapter 178/UDC Amendment Outdoor Mobile Vendors):** Submitted by CITY PLANNING STAFF and ALDERMAN MATTHEW PETTY for revisions to UDC Chapter 178 to modify the requirements for mobile vendors.

RECOMMENDATION:

Staff recommends that the Planning Commission forward **ADM 17-5705** to the City Council with a recommendation for approval.

DISCUSSION:

March 13, 2017 Planning Commission: This item was discussed and tabled at the March 13, 2017 Planning Commission meeting. The primary reason for tabling the item was for continued evaluation of improvements to public safety that may be required with mobile vendor courts. Based on the commission's input, a new subsection has been proposed to require any continuous curb cuts be closed and pedestrian safety maintained. Due to the small size of new impact and semi-permanent nature of this use, the safety improvements may be completed with temporary measures. This new subsection is 178.04 (D)(2)(d) as indicated on the attachments to this report. Additionally, the limited time permits have been expanded to 12 hours as requested by the commission.

The Outdoor Mobile Vendor code (UDC Chapter 178) was amended in 2014 to allow vending on public property such as streets and parks. At the time of the proposed code change, concerns were expressed that there would be a large number of vendors that might have a negative impact on the availability of public parking. To offset that potential issue, permits for mobile vendors on public property were to be issued by a lottery drawing for a maximum of three permits annually. The total number of permits could be increased slightly depending on the number of applications. Although there were a few application for the first lottery, to staff's knowledge there have not been any mobile vendors that have operated on public property such as in the parallel parking spaces on Dickson Street or in parking lots in parks since the code's change. *Because mobile vending on public property has not proven to be a problem and a lottery drawing seems unnecessary, staff proposes to remove the lottery drawing requirement from the code.*

A conditional use permit process is required for mobile vendor courts and sidewalk cafes. There has only been one conditional use permit application for a mobile vendor court. The permit was for the Shulertown Food Court on Dickson Street which was in May of 2014. There have been no

applications for sidewalk cafes. *Staff proposes to modify the requirements for mobile vendor courts and sidewalk cafes, and allow them to be approved administratively by staff.*

Section 178.04 allows two types of mobile vending permits: a six month permit that is approved by staff and a one-year (annual) permit that may be approved by the Planning Commission. There have been 19 annual permits submitted to the Planning Commission over the past three years and all have been approved, usually on the consent agenda. *Because the Planning Commission and City Council have been supportive of these types of permits and no complaints have been received by staff, staff proposes to remove the time limitation for mobile vendors. Instead, staff proposes that mobile vendors simply renew their permit on an annual basis similar to a business license.*

These changes are an effort to encourage more vacant property to be utilized for mobile vending, provide economic opportunities for start-up businesses, and create a more lively streetscape and increased urban amenities for citizens.

Proposal: Staff proposes the following code changes as outlined below and shown in the attached document in highlight and ~~strikeout~~:

- 178.01 Purpose. Change the word “retail” to “commercial”.
- 178.02 Sidewalk Cafes. Change the requirement for sidewalk cafes to be able to be approved by staff instead of a conditional use permit.
- 178.04 Outdoor Mobile Vendors
 - B. Added definitions for various types of vendors for clarification.
 - C. Combined the “Mobile Vendor Six Month Permit” and “Mobile Vendor Annual Permit” into one permit that is approved by staff and applicants are required to renew their permits on an annual basis like a business license.
 - D. Allow “Mobile Vendor Courts” to be approved administratively by staff instead of as a conditional use permit. Modified the requirements for mobile vendor courts to clarify site improvements especially in a greenfield site.
 - E. Change “Limited Time Permits” for all vendors to automatically be allowed “Limited Time Permits”. This allows all permitted vendors to operate on public property such as Dickson Street and in city parks; also expanded the timeframe to 12 hours.
- 178.05 Food Truck and Food Trailer Limited Time Permits. Removed this section as it was condensed and combined into subsection “E”.

BUDGET/STAFF IMPACT:

None

Attachments:

- Proposed code changes shown in highlight and ~~strikeout~~

PLANNING COMMISSION ACTION

March 13, 2017 Tabled (until next PC meeting)

Motion: Hoffman

Second: Hoskins

Vote: 6-3-0 (Commissioners Quinlan, Autry, Belden voted 'no' as they were ready to forward the item)

March 23, 2017 Forwarded (recommend approval)

Motion: Selby

Second: Autry

Vote: 8-0-0

Note: Recommend approval, including the change discussed on the wording for mobile vendor courts to be able to make pedestrian improvements using temporary public space improvements, as stated by staff.

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Exhibit A

178.04 Outdoor Mobile Vendors

(B) Definitions.

- (1) Food trucks. A type of mobile vendor which is a motorized and operationally self-contained single vehicle equipped with facilities for cooking and selling food.
- (2) Food trailers. A type of mobile vendor which is designed to be towed on public roads and having an enclosed area for storage, handling or preparation of food.
- (3) Other vendors. Mobile vendors are not limited to operating out of a food truck or trailer.
- (4) Mobile Vendor Court. An outdoor commercial center with 5 or more mobile vendors in a shared location.

(C) Mobile Vendor Permit Requirements. All mobile vendors shall meet the following requirements and submittals prior to approval:

- (1) Each application for a permit to conduct a mobile vendor business shall be accompanied by a \$100.00 permit review and processing fee. Mobile vendor permits shall be issued to the owner of the mobile vendor vehicle. This application will also serve as the vendor's business license that will be processed as such.
- (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 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) For each location other than those permitted as part of a Mobile Vendor Court, 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 comply with the Federal Americans with Disabilities Act (ADA) requirements if the public has access to the interior of any mobile vending unit.
- (8) Mobile vendors shall be required to renew their permit on an annual basis following the same timeframe as a standards business license renewal. As part of the renewal process, vendors shall submit an updated copy of the health department permit, HMR tax forms, and a re-inspection by the City Fire Department where applicable. Failure to renew a permit will be cause for revocation by the City Planning Division.

(D) Mobile Vendor Courts. Mobile vendor courts may be permitted administratively in appropriate zoning districts. A property owner may request a permit from the Planning Division to develop a mobile 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 vendor locations, building setbacks, vehicle parking, sidewalk location and proposed dining or sitting areas.
 - (2) Site Improvement requirements.
 - (a) Site Design. Sites shall be improved with a barrier between vehicular and customer service areas, including ordering and dining areas. The barrier may be implied or physical and constructed with landscaping elements; gated fencing; changes in ground surface texture, material or color; or similar treatments. Sites which are not already paved with gravel or another hard surface shall improve their parking areas with gravel or other pavement designed in accordance with the Parking Lot Design Standards. With respect to landscaping requirements, the entire Mobile Vendor Court shall be considered a parking lot and perimeter landscaping will be required in accordance with Parking Lot Landscape Standards.
 - (b) Sanitation. Adequate restroom facilities shall be provided either on-site or through a shared use agreement with a neighboring business. Portable toilets, if used, must be screened from view of the public.
 - (c) Utilities. Above ground utility connections shall not interfere with pedestrian or vehicular safety and shall not be located in customer service areas or customer parking areas.
 - (d) Mobile vendor courts shall not have continuous curb cuts or exacerbate a dangerous pedestrian condition. New courts may close continuous curb cuts or improve pedestrian conditions with temporary materials subject to approval of the City Planning Division. Acceptable materials include planters, plinths, benches, pavers, and other furniture. Temporary improvements installed by mobile vendor courts shall not reduce access for pedestrians with disabilities.
- (E) Limited Time Permits. Permitted food trucks and trailers may operate in the following locations for up to twelve hours each day, after which they must move to a new location which is out-of-view of the original location.
- (1) Marked parallel parking spaces, which are not reserved for residential use and provided the parking space is not in front of a business selling similar food. Service to customers shall be only on the sidewalk side of the vehicle to maintain public safety. Vendors are not exempt from paying the standard rate for the parking space.
 - (2) Marked parking spaces within parks pursuant to City Code §97.086.
 - (3) Private property zoned for food and beverage sales and with the owner's permission.