

City of Ocean Springs

ORDINANCE NO. 2019 – 10

AN AMENDMENT TO THE CODE OF ORDINANCES FOR THE CITY OF OCEAN SPRINGS, MISSISSIPPI TO REGULATE MOBILE FOOD VENDORS

WHEREAS, mobile food vendors have become increasingly popular throughout the United States and in the City of Ocean Springs; and

WHEREAS, the City of Ocean Springs currently has no laws and regulations specifically related to the activities of mobile food vendors; and

WHEREAS, the City of Ocean Springs desires to regulate mobile food vendors to ensure public health, safety, and welfare, as well as to ensure the collection of tax revenue from said businesses.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the Board of Aldermen of the City of Ocean Springs as follows:

Section 1 - Applicability.

This article shall apply to all mobile food vendors licensed to sell food and/or beverages in the City of Ocean Springs where permitted to do so.

Section 2 - Definitions.

The following words and phrases, whenever used herein, shall be construed as defined in this section:

Mobile food vendor means any person who sells food and/or beverages from a mobile pushcart or motorized mobile food preparation vehicle.

Mobile food preparation vehicle means any moveable car, van, truck or trailer that includes a self-contained kitchen in which food is prepared, processed or stored and used to sell and dispense food to the consumer. The unit must be on wheels at all times. This definition does not include pushcarts, which is defined below.

Mobile pushcart means any portable vending device, pushcart or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Transportation, used for the displaying, storing or transporting of food offered for sale by a vendor. Said cart may be up to four feet in width, six feet in length, excluding auxiliary items such as handles or fenders, or otherwise the cart shall not occupy space greater than a total of 24 square feet.

Section 3 - Permits required for mobile food vending.

- (a) All mobile food vendors shall obtain and maintain a City of Ocean Springs Privilege License and a Mobile Food Vending Permit for each mobile pushcart or mobile food preparation vehicle in operation. All applications for permit renewal shall be filed annually with the City of Ocean Springs City Clerk.

The application may be reviewed by any department of the city as may be necessary or convenient to determine whether the application is complete or whether the permit should be granted. Permit applications shall contain the following information:

- (1) The name, mailing address, physical address, telephone number(s), and email address of the applicant(s). If any applicant is anything other than a natural person, then all documents related to the creation and maintenance of the entity such as articles of incorporation and any similar relevant documents shall be included.
 - (2) A food service permit from the Mississippi Department of Health.
 - (3) All mobile pushcarts and mobile food preparation vehicles shall provide proof of a State tax number by the Mississippi Department of Revenue.
 - (4) Approval from the City fire inspector.
 - (5) A list of all proposed locations of operation and City of Ocean Springs Property Owner Consent Form for each proposed location of operation.
 - (6) All permit applicants must operate under a central kitchen that is approved by the Mississippi Department of Health for food service. A mobile food vehicle may be certified by the Mississippi Department of Health as a central kitchen.
 - (7) A list of products to be sold.
 - (8) Proof of a valid business insurance policy that provides minimum liability coverage of \$500,000.00 per mobile food preparation vehicle and \$500,000.00 per mobile pushcart, with the city named as an additional insured.
 - a. If operating a mobile food preparation vehicle, proof of a valid vehicular insurance policy shall be provided to the city.
 - (9) Such other additional information required by law, rule, or ordinance, or that any department of the City or Board of Aldermen, or the permit applicant reasonably deems appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.
- (b) Mobile food vending permits cost Two Hundred Fifty Dollars (\$250.00) annually per vehicle or cart which covers the administrative cost of processing the application and regulating each mobile pushcart or mobile food preparation vehicle. Permits shall be renewed annually.
- (c) Permit holders may be required to remove private materials or accessories to allow utility access for emergency and maintenance operation or both.
- (d)
- (e) The permit shall be displayed on the mobile pushcart or mobile food preparation vehicle at all times.

- (f) Permits are transferable only upon approval of the City through application to the Board of Aldermen.
- (g) A mobile pushcart or mobile food preparation vehicle may be replaced if and only if approval for its replacement is obtained from the City Clerk's office. Such replacement may be disallowed if the original vendor permit would not have approved the use of the replacement pushcart or food preparation vehicle. The replacement vehicle shall be subject to inspection by all relevant City departments as a new application.
- (h) Any permit granted pursuant to this article shall be nonexclusive. The City may grant any number of such permits as the City deems appropriate. The granting of a permit shall not limit or abridge any power or authority of the City and shall not limit the authority of the City to commence appropriate civil, criminal, or other enforcement actions. The City retains full authority to amend the ordinances, rules and regulations that apply to any permit.
- (i) The City may revoke and terminate the permit in the event the vendor violates any term, condition, or provision of the permit, the City of Ocean Springs Code of Ordinances and/or zoning ordinances, state and/or federal law, or if the business license issued by the city for the permitted activity is revoked. Revocation and/or termination of a permit shall require action by the Board of Aldermen. The vendor may terminate or surrender the permit at will any time prior to the expiration of the permit by providing written notice to City Clerk. Termination of the permit shall not operate to relieve the vendor of the obligation to release, hold harmless, and indemnify the city and its officers, agents, and employees.

Section 4. - Location and operation.

- (a) Mobile pushcarts and mobile food preparation vehicles shall only conduct business on private property in areas zoned for commercial activity of this nature, or on areas of public property as specifically designated by the City, subject to further regulation as set forth in this Section 4.
- (b) All locations of operation shall be approved prior to operations beginning. The City Clerk's office, Planning Department, Building Department, Public Works, and the code enforcement officer shall have continuing authority to approve and enforce locations, grant conditions for approval, revoke prior approval of locations, make conditional revocations of approved locations, require adjustments by the mobile food vendor in setup or location to accommodate public safety and convenience, and to otherwise maintain full lawful control over all public ways of the city. The City of Ocean Springs Police and Fire departments shall have concurrent authority to oversee locations and setup of mobile pushcarts and mobile food preparation vehicles to ensure all applicable laws under their jurisdictions are followed. If an application is denied, or if a permit is temporarily suspended or revoked, or if operations are stopped by a City official, and the vendor wishes to make a grievance, he may request an order approving his application or otherwise overturning the action(s) of the City officials to the board of aldermen.
- (c) Mobile pushcarts and mobile food preparation vehicles shall conform to the following regulations regarding location and operation:
 - (1) Mobile pushcarts and mobile food preparation vehicles must be located on private property or on areas of public property specifically designated by the City at all times during operation.

- a. An Owner Consent Form must be on file with the City Clerk's office for each location.
- (2) Mobile pushcarts and mobile food preparation vehicles must not be locked or attached to trees, garbage receptacles, or street furniture.
- (3) Mobile pushcarts and mobile food preparation vehicles may not locate within twenty (20) feet of any bus stop.
- (4) Mobile pushcarts and mobile food preparation vehicles may not locate within any area nor operate in any manner that would block the view of traffic or traffic signals or traffic signs, impede pedestrian or vehicular traffic on sidewalks and rights of way, or in any way inhibit lines of sight for vehicular traffic.
- (5) Mobile pushcarts and mobile food preparation vehicles may not locate within ten (10) feet of any fire hydrant.
- (6) The operators must be present at all times.
- (7) Sales of goods are limited to food and non-alcoholic beverages.
 - a. The sale of beer, wine, and alcoholic beverages is prohibited.
- (8) In no event shall any mobile pushcart or mobile food preparation vehicle display device, or accessory container be located inside any public building or structure or at any place the general public is prohibited.
- (9) Mobile food vendors are responsible for all waste and trash removal. The containment area must be kept clear of grease, trash, paper, cups or cans associated with the operation. No liquid waste or grease is to be disposed of in tree pits or onto sidewalks, streets, or other public places; nor shall it be disposed of in drains or sanitary sewers.
- (10) The mobile food vendor shall not provide stands, shelves, bins, equipment, signs, covers, or any kind of accessory or feature unless the same was accurately described and included in the application, and was fairly included in the picture or other graphics required as party of the application.
- (11) During the hours of operation, the permit holder shall provide a trash receptacle for use by customers located adjacent to the mobile pushcart or mobile food preparation vehicle in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic.
 - a. The mobile food vendor shall contain all refuse, trash and litter within the mobile food preparation vehicle.
 - b. The vendor shall be responsible for the proper disposal of such refuse, trash, and litter, and shall place it in the public trash container, or in any private container with proper permission.
 - c. The vendor is responsible for all litter and trash within fifteen (15) feet of the mobile pushcart or mobile food preparation vehicle at any time the vendor is selling or offering to sell any merchandise or service.
- (12) The mobile pushcart or mobile food preparation vehicle must have self-contained utilities and shall not use the city's utilities or private utilities that are not self-contained and integral to the vendor unit.

- a. If the mobile food preparation vehicle utilizes a generator, it shall be in compliance with the City of Ocean Springs noise ordinance Section 15-13.
- (13) No speakers or other noise production devices are allowed.
- (14) No mobile food vendor shall sell or attempt to sell any item to the occupant of any motor vehicle, unless it is parked in a lawful parking space.
- (15) Mobile pushcarts and mobile food preparation vehicles must comply with all local, state, and federal rules regarding sanitation and protection of food from airborne contamination.
- (16) Every mobile food vendor shall keep records utilizing generally accepted accounting practices for the purposes of compliance with all federal, state and local tax laws.
- (17) All approved mobile pushcarts and mobile food preparation vehicles must pay the two percent sales tax required by all food providers in the City of Ocean Springs, along with all other tax and licensing fees required by the State of Mississippi.
- (18) All approved mobile pushcarts and mobile food preparation vehicles must be licensed businesses within the City of Ocean Springs with all operations pertinent to the mobile pushcart or vehicle operated within the City of Ocean Springs.
- (19) All mobile pushcarts and mobile food preparation vehicles must be issued a State tax number by the Mississippi Department of Revenue and shall provide proof of same to the City.
- (20) The operation of a mobile pushcarts or mobile food preparation may not result in the violation of minimum parking space requirements as prescribed by ordinance.

Section 5. - Design standards.

- (a) All mobile pushcarts and mobile food preparation vehicles must meet the following design standards:
 - (1) All mobile pushcarts and mobile food preparation vehicles must be capable of independently providing all necessary utilities for operation in order to maintain compliance with all Mississippi Department of Health Codes.
 - (2) Umbrellas or canopies must be attached to the pushcart or vehicle. Maximum diameter of canopies and umbrellas shall not exceed six feet and shall not interfere with pedestrian or vehicular movement and/or line of sight. No mobile pushcart or mobile food preparation vehicle shall have more than two umbrellas.
 - (3) All signage on mobile pushcarts and mobile food preparation vehicles is limited to the following:
 - a. Each mobile pushcart and mobile food preparation vehicle may have one temporary menu board style sign not to exceed six (6) square feet in size. Said signs shall be removed from the site at the close of business each day.
 - b. Signs on mobile pushcarts and mobile food preparation vehicles shall not exceed the size of the pushcart or vehicle.

- (4) Exterior lighting must be hooded or shielded so that the light source is not directly visible to a residential use.
- (5) Mobile food vendors may place a maximum of three coolers within their containment area so long as the coolers are neatly stacked to avoid visual clutter.
- (6) No accessory container shall be more than three feet from the unit.
- (7) Accessory containers must be made of hard substances such as hard plastic or a metal and may not be made by expanded polystyrene plastic, paper, paperboard, or cardboard.
- (8) Mobile pushcarts and mobile food preparation vehicles may not be stored, parked or left overnight on city property or right of way.

Section 6. - Violations and penalties.

All mobile food vending must be performed in compliance with said article. Failure to abide by said article shall result in the following:

- (1) A fine not exceeding \$150.00 for a first violation.
- (2) A fine not exceeding \$250.00 for a second violation within one year of any prior violation.
- (3) A fine not exceeding \$500.00 for a third or more violations within one year of the first.

Any offense shall be considered a misdemeanor and is subject to being cited by any authorized law enforcement official in the City of Ocean Springs or with authority to do so in the City of Ocean Springs.

Violation of this article may result in the suspension or revocation of any City permit or license issued to the owner or operator of the mobile pushcart or mobile food preparation vehicle.

Each day on which an infraction of the article occurs shall be considered a separate and distinct violation.

All fines collected shall go to the city's general fund.

SECTION 7. – Appeals.

Any mobile food vendor aggrieved by a decision of a City official pursuant to this ordinance, other than those citations issued pursuant to Section 6, shall be entitled to make written appeal thereof not later than ten (10) days following the decision to be appealed. The written notice of appeal shall be made to the City Clerk. The Board of Aldermen shall hear the appeal and render a decision within thirty (30) days of when the appeal is filed with the Clerk unless the vendor and City mutually agree to an extension.

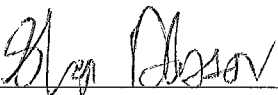
SECTION 8. That this Ordinance shall become effective thirty (30) days from the date of its adoption.

SECTION 9. That upon adoption, the City Clerk shall cause this Ordinance to be recorded in the Book of Ordinances of the City of Ocean Springs, Mississippi, and published in the manner prescribed by law.

SECTION 10. The above Ordinance having been first reduced to writing, the vote was as follows:

Alderman Cox	<u>Absent</u>
Alderman Gill	<u>Aye</u>
Alderman Authement	<u>Aye</u>
Alderman Bellman	<u>Aye</u>
Alderman Papania	<u>Aye</u>
Alderman Blackman	<u>Aye</u>
Alderman Impey	<u>Aye</u>

BY ORDER OF THE MAYOR AND BOARD OF ALDERMEN of the City of Ocean Springs, Mississippi, on this the 4th day of June, 2019.



MAYOR



DEPUTY CITY CLERK