

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, AMENDING CHAPTER 5.52 PERMITTING AND REGULATING MOBILE FOOD VENDING VEHICLES, AMENDING CHAPTER 17.136 TEMPORARY USE PERMITS AND ADDING SECTION 17.12.390 MOBILE FOOD VENDING VEHICLE PARKS TO THE MUNICIPAL CODE.

WHEREAS, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

WHEREAS, California Vehicle Code Section 22455 states that local jurisdictions may, by ordinance or resolution, regulate the "type of vending and the time, place, and manner of vending from vehicles upon any street"; and

WHEREAS, Chapter 5.52 "Food Trucks," of the Desert Hot Springs Municipal Code ("DHSMC") currently prohibits all mobile food vending vehicles within the City unless otherwise permitted; and

WHEREAS, Chapter 17.136 "Temporary Use Permits" of the DHSMC regulates the issuance of temporary permits for short term activities; and

WHEREAS, the City Council seeks expand the use of mobile food vending vehicles within the City, including short term events requiring temporary use permits; and

WHEREAS, mobile food vendors provide a greater diversity of dining options within the City and encourages tourism and commercial activity; and

WHEREAS, the City Council finds that the adoption of this ordinance is categorically exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance in question may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS.

The Recitals are hereby incorporated by this reference.

Section 2. AMENDING CHAPTER 5.52 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

That Chapter 5.52 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

Chapter 5.52 **FOOD TRUCKS MOBILE FOOD VENDING VEHICLES**

5.52.005 Purpose.

The City Council expressly finds that vehicles in which produce, confections, and food products are prepared, cooked, and/or carried for purposes of retail sale on the public streets pose special dangers to the public health, safety, and welfare of children and residents in the City of Desert Hot Springs. It is the purpose and intent of the City Council, in enacting this, to provide responsible companies and individuals who engage in the operation of Mobile Food Vending Vehicles, as defined in this chapter, with clear and concise regulations to prevent safety, traffic, and health hazards, as well as to preserve the peace.

5.52.010 Definitions.

For the purposes of this chapter, the definitions in this section are adopted and made a part thereof:

A. "Food" or "food products" means any type of edible victuals or beverage.

~~B. "Mobile food vendor" means any person that operates or assists in the operation of a mobile food vehicle facility with kitchen equipment.~~

~~B C.~~ "Vend" or "vending" means to sell, offer for sale, display, barter, exchange, or otherwise give food, ~~or~~ food products, **merchandise, or prepackaged food** from a mobile food **vending vehicle facility**. **Cannabis products may not be vended.**

~~C D.~~ "Vendor" means a person **or entity** who vends, including an employee or agent of a vendor.

~~D.~~ **"Merchandise" means goods and wares containing a trademark associated with a person or entity operating a mobile food vending vehicle.**

E. "Mobile food **vending vehicle facility**" means any self-propelled or motorized device or vehicle by which any person or property may be propelled or moved upon a highway, or which may be drawn or towed by a self-propelled or motorized vehicle, from which food, ~~or~~ food products, **merchandise or prepackaged food** are **prepared, cooked,** sold, offered for sale, displayed, bartered, exchanged or otherwise given **by a vendor**.

F. "Special event" means an event or activity that is held or conducted pursuant to a special event permit approved by the City per the City's Special Event Application Review Process as adopted by resolution of the City Council or a temporary use permit approved pursuant to Chapter 17.136 Temporary Use Permits.

~~G.~~ **"Prepackaged food" means any properly labeled and processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.**

5.52.020 ~~General prohibition- Mobile Food Vending Vehicle Permit.~~

~~A. Except as otherwise expressly permitted in this chapter, mobile food facilities shall be prohibited from vending anywhere within the City.~~

~~B. Notwithstanding any other provision of this code, in no event shall a mobile food vendor be permitted or authorized to vend from a mobile food facility anywhere in the public right-of-way within the City, unless specifically authorized in connection with a special event approved pursuant to this chapter.~~

A. No Mobile Food Vending Vehicle or vendor may vend in the City without first obtaining and having in his or her possession an annual Mobile Food Vending Vehicle permit issued by the City in accordance with this chapter.

B. To obtain a Mobile Food Vending Vehicle permit, a vendor must complete a permit application on the form approved by the City and file it with the City. The application form shall require the following information:

1. Applicant's full name and address.
2. Proof of applicant's identity.
3. Proof of insurance coverage satisfactory to City.
4. A brief description of the type of food products and any merchandise to be sold. This shall include the nature, character and quality of the product.
5. The location and/or streets where the applicant plans to vend.
6. If applicant is employed by another to vend, the name and business address of the employer.
7. A description of the vending vehicle, including logo and color scheme, its registration number, and its license number.
8. A copy of a Riverside County Department of Health permit.
9. A copy of the applicant's City business license.
10. A certification that the vendor will comply with all local, State and Federal laws regarding food product vending, including all applicable sales tax requirements and this chapter.
11. Any other information deemed appropriate by the City.

C. No application for a new or renewed Mobile Food Vending Vehicle permit shall be accepted unless the application is accompanied by a fee in an amount set by a City Council resolution.

D. Upon receipt of a written application for a Mobile Food Vending Vehicle permit, the Community Development Director shall conduct an investigation as he or she deems appropriate to determine whether a Mobile Food Vending Vehicle permit should be approved. A permit shall be approved, conditionally approved, or denied within thirty (30) calendar days of the filing of an application. The Mobile Food Vending Vehicle permit shall be denied if one or more of the following findings is made:

1. The applicant has made a false, misleading or fraudulent statement of fact, or made a material omission of fact, to the City in the application process.

2. The application does not contain the information required by this Chapter.

3. The applicant has not satisfied the requirements of this Chapter.

4. The applicant has violated any provisions of this Code within the past year. This finding may be excused at the discretion of the Community Development Director if, after an investigation into the facts and circumstances of the prior violations, the Community Development Director determines that issuance of a Mobile Food Vending Permit would not compromise public safety.

E. The City may condition the approval of any Mobile Food Vending Vehicle permit to ensure compliance with this Chapter and other applicable laws.

F. Any Mobile Food Vending Vehicle permit shall be valid for the term of one (1) year. Upon the expiration of the Mobile Food Vending Vehicle permit, an application for renewal shall be filed in a like manner as an application for an original Mobile Food Vending Vehicle permit, and such renewal permit shall be approved or conditionally approved only when the requirements for the issuance are met.

G. Any Mobile Food Vending Vehicle permit may be suspended or revoked by the Community Development Director for failure to comply with the terms and conditions of this chapter. Such suspension or revocation shall be made with written notice to the permit holder, stating the grounds for the revocation and the procedures for appealing the same. The permit holder may appeal this decision by filing a written request for appeal with the City Clerk within fifteen (15) days of the date of the notice. Any revocation or suspension shall be stayed during the pendency of the appeal unless the immediate public health or safety requires otherwise. Failure to timely file a written request for an appeal hearing constitutes a waiver of the right to an appeal hearing. Selection of a Hearing Officer and the hearing shall be conducted pursuant to Sections 4.36.060 through 4.36.230 of the Desert Hot Springs Municipal Code, or successor sections. The decision of the Hearing Officer shall be final.

H. A Mobile Food Vending Vehicle permit shall not be assignable or transferable.

5.52.03040 Food truck General regulations.

A. All mobile food vendors are required to obtain a valid business license from the City prior to commencing vending.

B. All mobile food vendors are required to obtain a valid permit and/or certificate of other required approval from the Riverside County Department of Health prior to commencing vending.

C. All food products sold or provided from a mobile food facility shall comply with all applicable food labeling requirements established by the State of California and the mobile food vendor must obtain all required permits, including, without limitation, health permits, to sell or provide such items.

D. No mobile food vendor shall engage in vending unless he or she maintains a clearly designated trash receptacle and recycling receptacle in the immediate vicinity of the mobile food facility, marked with a sign requesting use by patrons. Prior to leaving the location, the mobile food vendor shall pick up, remove and dispose of all trash generated by the mobile food vendor's operation located within a 25-foot radius of the mobile food vendor's location. This does not include picking up trash in the street in an unsafe manner.

E. Mobile food vendors shall comply with all applicable State and local laws, rules and regulations and all conditions of approval imposed on the special event permit or temporary use permit approved by the City.

A. General Regulations pertaining to all Mobile Food Vending Vehicles.

1. The vendor has a valid Mobile Food Vending Vehicle permit and business license from the City, including insurance as defined in subsection (A)(9).

2. All food, food products, merchandise, and prepackaged foods that are prepared, stored, cooked, or displayed must be fully enclosed and contained within the Mobile Food Vending Vehicle. No open air preparation of food or food products is permitted.

3. The Mobile Food Vending Vehicle is in full compliance with all parking and Vehicle Code provisions which apply to the location at which it is parked.

4. The Mobile Food Vending Vehicle shall remain parked and immobile while vending.

5. The vendor shall not encroach onto a public sidewalk with any part of its Mobile Food Vending Vehicle or any other equipment or furniture related to the operation of its business.

6. The Mobile Food Vending Vehicle has a valid permit, certificate or other required approval from the Riverside County Department of Health.

7. All food products sold or provided from the Mobile Food Vending Vehicle shall comply with all applicable food labeling requirements established by the State of California and the vendor must obtain all required permits, including without limitation, health permits, to sell or provide such items.

8. No alcohol beverage, general merchandise or commercial sales other than food are permitted, other than company merchandise.

9. The vendor shall maintain insurance, as deemed acceptable in the reasonable discretion of the City, and provide to the City written certification thereof, against liability for death or injury to any person and damage to property as a result of ownership, operation, or use of its mobile food facilities. In addition, the vendor shall indemnify, defend and hold the City harmless from any claims arising out of or related to the vendor's ownership, operation, or use of its mobile food facilities, except as otherwise permitted by applicable law.

10. The vendor shall not discharge any liquid (e.g., water, grease, oil, etc.) onto or into any streets, storm drains, catch basins, or sewer facilities. All discharges shall be contained and properly disposed of by the vendor.

11. No person shall operate, or cause to be operated, any Mobile Food Vending Vehicle with sound-amplifying or noise-making equipment.

12. Vending of cannabis products of any kind is prohibited.

13. Vendors and Mobile Food Vending Vehicles shall comply with all applicable Federal, State and local laws.

14. A vendor may locate its Mobile Food Vending Vehicle on a street as long as the vendor adheres to the following standards and conditions: The Mobile Food Vending Vehicle does not obstruct pedestrian or vehicular traffic.

15. Vending is prohibited on the exposed street and/or vehicular traffic side of the Mobile Food Vending Vehicle. The vendor shall not distribute any item from the Mobile Food Vending Vehicle in a manner that causes any person to stand in that portion of the street that is between the vehicle and the center of the street. A Mobile Food Vending Vehicle is limited to two (2) signs excluding exterior graphics. The exterior sign shall be secured at all times that the Mobile Food Vending Vehicle is moving. No sandwich board or other signs are permitted on the ground in the area or on the Mobile Food Vending Vehicle.

16. A Mobile Food Vending Vehicle may only stand or park in the public right-of-way between the hours of 7:00 a.m. and dusk.

17. No vendor shall engage in vending unless he or she maintains a clearly designated litter receptacle in the immediate vicinity of the Mobile Food Vending Vehicle, marked with a sign requesting use by patrons. Prior to leaving the location, the vendor shall pick up, remove and dispose of all trash generated by the vendor's operation located within a twenty-five-foot (25') radius of the Mobile Food Vending Vehicle's location. This does not include picking up trash in the street in an unsafe manner.

B. No vendor may engage in vending or otherwise operate a Mobile Food Vending Vehicle:

1. On any street within a residential zone.

2. On any street designated as part of a Safety Enhancement Zone pursuant to Chapter 12.28 of this Code.

3. Within fifty (50') feet from the outer edge of any entrance of any business which serves food on private property during the hours such business is open to the public. This prohibition may be waived with the written consent of such business.

4. Within thirty (30') feet of any street intersection controlled by a traffic light, crosswalk, or stop sign.

5. Within thirty (30') feet of a bus stop.

6. No Mobile Food Vending Vehicle may be located within three hundred (300') feet of the nearest property line of any property on which a public or private school building is located, between the hours of 7:00 a.m. and 5:00 p.m. of any school day.

7. Within five hundred (500') feet of the nearest property line of any school serving students 18 years of age or younger unless that school is a college, university, or vocational school that primarily serves students older than eighteen years of age, unless the Mobile Food Vending Vehicle is associated with a certified farmers' market that is open at the time that the food vending truck is conducting business

8. When the posted speed limit on the public street, alley or highway is greater than thirty-five miles per hour.

5.52.040 Mobile Food Vending Vehicle on public or private property (Temporary Uses).

A. No Mobile Food Vending Vehicle may vend or locate on any private property or City-owned property except as permitted in this section. All permitted operations on private property or City-owned property shall otherwise comply with applicable operational standards set forth in this Chapter.

B. Mobile food vending vehicles may vend or locate on non-residential private property with written permission from the property owner pursuant to a Temporary Use Permit (TUP) or a special event permit. In addition, any Mobile Food Vending Vehicle participating in a City sponsored event shall not be required to obtain a TUP and may vend as part of the City sponsored event.

C. Vendors wishing to obtain a TUP pursuant to this section shall file a written request to do so at least ten (10) business days prior to the requested date of vending. Such request may be made on a form prescribed by the Community Development Director and shall include, at a minimum, the location, date, and time of the requested vending.

1. The TUP shall limit vending and locating on an applicable private or City-owned property for three (3) consecutive days at a time, and thereafter restrict the vendor from vending at the same location for three consecutive days. Vendors may alternate between vending on and off an applicable property for the duration of a TUP.

2. The maximum days for all TUP approvals for Mobile Food Vending Vehicles shall be limited to thirty (30) calendar days per year for all commercial zones and shall be limited to ninety (90) calendar days per year for all industrial zones. No application for a TUP shall be accepted unless the application is accompanied by a fee in an amount set by City Council resolution.

3. Notwithstanding any other provisions of this Chapter, vendors may seek a TUP to vend at construction sites that are operating with all required permits under this Code, and located within industrial zones. A TUP issued for construction sites shall be valid for a maximum duration of six (6) months.

D. Vending from public parks. A TUP may be granted to vendors to vend in public parks. Notwithstanding obtaining a TUP, a vendor shall not operate at a public park if a separate organization is currently renting such park, unless the organization grants written permission to the vendor.

1. A TUP issued under this subsection shall be valid for a maximum of thirty (30) calendar days. Vending shall be limited to Fridays, Saturdays, and Sundays.

E. Mobile food vending vehicles wishing to vend on City-owned property outside of the public right-of-way must apply for a special event permit or as an approved accessory use as part of a Facility Use Permit from the Public Works Department.

F. Violation of any permit issued under this section shall be grounds for suspension or revocation of a Mobile Food Vending Vehicle permit. All permits issued under this Chapter may be suspended or revoked in accordance to the procedures of Section 5.52.020.

G. The Community Development Director shall evaluate and consider any request for a TUP. The Community Development Director may approve, conditionally approve or deny the request consistent with the requirements of this chapter and the public health, safety, and welfare. The Community Development Director's decision may be appealed in the same manner as a Mobile Food Vending Vehicle permit.

5.52.050 Regulations for Prepackaged Foods

A. The regulations of this section shall apply only to a vendor exclusively selling prepackaged foods. A vendor exclusively selling prepackaged foods shall otherwise comply with the provisions of this Chapter.

B. Vendors exclusively selling prepackaged foods may operate as follows.

1. Vend in a residential zone. However, the vendor may not stop on a residential street for longer than necessary to complete a transaction.

5.52.060050 Violations.

Violations of this chapter are infractions and a public nuisance subject to all remedies available to the City, including, without limitation, all remedies provided pursuant to Title 4 of this code.

Section 3. AMENDING CHAPTER 17.136 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

That Chapter 17.136 of the Desert Hot Springs Municipal Code shall be amended to read as follows:

17.136.020 Permitted uses.

The following temporary uses may be permitted, subject to the issuance of a Temporary Use Permit:

- A. Real estate offices within approved development projects;
- B. Outdoor display and sales of merchandise within commercial land use districts, limited to 2 events per calendar year, not exceeding 4 consecutive days each, including only merchandise customarily sold on the premises by a permanently established business;
- C. On- and off-site contractors' construction yards in conjunction with an approved development project;
- D. Trailer, coach or mobile home as a temporary residence of the property owner when a valid residential building permit is in force. The permit may be granted for up to 180 days, or upon expiration of the building permit, whichever first occurs;
- E. Christmas tree sale lots; however, a permit shall not be required when such sales are in conjunction with an established commercial business holding a valid business license, provided such activity shall be only held from November 1st through December 31st, subject to all applicable provisions of the municipal code;
- F. Circuses, rodeos and carnivals, subject to compliance with Chapter 17.156;
- G. Fairs, festivals and concerts, when not held within premises designed to accommodate such events, such as auditoriums, stadiums, or other public assembly facilities;
- H. Emergency public health and safety needs;
- I. Similar temporary uses which, in the opinion of the Director are compatible with the land use district and surrounding land uses, pursuant to Section 17.04.070(C) (Similar Uses Permitted); and
- J. City-sponsored uses and activities, not occupying a structure and occurring at regular periodic intervals (weekly, monthly, yearly, etc.).

K. Mobile food vending at private and public properties pursuant to Chapter 5.52.

Section 4. ADDING SECTION 17.12.390 OF THE DESERT HOT SPRINGS MUNICIPAL CODE

That Section 17.12.390 of the Desert Hot Springs Municipal Code shall be added to read as follows:

17.12.390 Mobile Food Vending Vehicle Parks

A. For purposes of this section, "Mobile Food Vending Vehicle Park" means a commercial private property, excluding existing shopping centers, allowing vendors to vend on its premises on an ongoing basis with approval of a Development Permit. "An ongoing basis" means longer than three consecutive days.

B. Mobile Food Vending Vehicle Parks may be established within the City and shall comply with the following additional requirements:

1. All Mobile Food Vendors shall obtain a Mobile Food Vending Vehicle permit and abide by all regulations in Desert Hot Springs Municipal Code section 5.52.

2. Maintain permanent restroom facilities.

3. Provide at least three paved parking spaces per Mobile Food Vending Vehicle.

4. Maintain sufficient trash receptacles and trash removal services.

5. Tables, chairs, carts, shade structures, or other vending-related installations may be erected.

6. Sufficient lighting shall be required if the vendor remains open for business after dusk.

7. Shall comply with all requirements of Chapter 17 of the Desert Hot Springs Municipal Code.

Section 5. SEVERABILITY

That the City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EXECUTION AND CERTIFICATION

That the City Clerk is directed to do all things necessary to cause the execution of this ordinance immediately upon its adoption and shall thereafter certify to the passage of this ordinance and cause the same to be published according to law.

Section 8.

AMENDMENT

That this ordinance may be amended from time to time by the City Council and that in the event the State of California passes an adult use marijuana initiative, that the City Council can amend this Ordinance to address said use in the City of Desert Hot Springs.

Section 9.

EFFECTIVE DATE

That this ordinance shall take effect thirty (30) days after its second reading by the City Council.

That the foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

By: