

ORDINANCE NO. 4525

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, ADDING ARTICLE XXII AND SECTIONS 16-650 TO 16-656 TO CHAPTER 16 OF THE SCOTTSDALE REVISED CODE

BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. Article XXII and Sections 16-650 to 16-656 are added to Chapter 16 of the Scottsdale Revised Code as follows:

Article XXII. - Mobile Food Vendors

Sec. 16-650. - Purpose.

This Article is adopted to protect the health, safety and welfare of the public by enacting reasonable regulation for mobile food vendors, their employees, agents, lessees or independent contractors by requiring compliance with minimum standards for safety and security.

Sec. 16-651. - Definitions.

A. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Article, except where the context clearly indicates a different meaning:

(1) "*Applicant*" means the person who applies for a license pursuant to this Article.

(2) "*Controlling person*" means a natural person who either has a ten percent (10%) or greater interest in the ownership or earnings of the business, or is any of the following:

- a. An officer, director, or any stockholder who owns ten percent (10%) or more, of a corporation licensee/applicant;
- b. A general partner of a limited partnership licensee or applicant or partner of a non-limited partnership licensee or applicant;
- c. An officer, president, or secretary of a limited liability company/corporation licensee or applicant; or
- d. The sole proprietor of a sole proprietorship licensee or applicant.

(3) "*Designated agent*" means the person designated by the licensee or applicant to receive notices from the City pursuant to this Article.

(4) "*Intersection*" has the same meaning as in A.R.S. § 28-601.

(5) *“Legal parking space”* means an area designated for vehicle parking in the City right-of-way that may be paved or unpaved and may be delineated by road surface markings. It does not include a parking space in a parking lot on property owned by the City.

(6) *“Licensee”* means the person who applied for a license pursuant to this Article and in whose name such license was issued.

(7) *“Mobile food unit”* means a food establishment that is licensed by this state, that is readily movable and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any vehicle as defined in A.R.S. § 28-101.

(8) *“Mobile food vendor”* means any person who owns, controls, manages or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive or operate a mobile food unit.

(9) *“Right-of-way”* means land which by deed, conveyance, agreement, easement, dedication, patent, reservation, usage or process of law is reserved for or dedicated to the general public for use as a street or highway.

(10) *“Semi-permanent structure”* means equipment, or any dining area, including, but not limited to, tables, chairs, booths, bar stools, benches, and standup counters.

Sec. 16-652. - Compliance with State Licensing Requirements.

- A. It shall be unlawful for any person to operate a mobile food unit or act as a mobile food vendor without having first obtained a valid license from the State of Arizona Department of Health Services or from a county delegated authority from the state to issue such licenses pursuant to A.R.S. § 36-1761.
- B. It shall be unlawful for any person operating a mobile food unit to fail to display in a conspicuous location for public view the mobile food unit’s state license.
- C. It shall be a class one misdemeanor to violate this section.

Sec. 16-653. – Licensing Requirements.

- A. It shall be unlawful for a person to operate a mobile food unit at any location within the City without obtaining a license from the City in accordance with this Article and any other licenses required for the lawful operation of a business.
- B. A license issued or renewed pursuant to this Article is valid for a period of one (1) year from the date of issuance so long as the mobile food unit is in compliance with this Article. The license is nontransferable.
- C. Application Requirements; Procedure. Any person desiring to obtain a new or renewal license must apply by presenting a complete application, the applicable fee, and fingerprint records to the City.

1. The application shall include, but not be limited to, the following information:
 - a. The names, addresses, and contact information for the applicant, including all controlling persons and designated agents;
 - b. A general description of the goods to be sold by the mobile food vendor;
 - c. A description, license plate number and photograph of the mobile food unit;
 - d. A valid driver's license;
 - e. Proof required by A.R.S. § 41-1080 that the applicant is a citizen of the United States or a non-citizen authorized to work in the United States; and
 - f. Copies of required certificate(s) from the health services department in Maricopa County.
 - g. Proof of insurance, if operating on public property.
 2. Fingerprint records are required:
 - a. On all new applications, for all applicants and controlling persons; and
 - b. On all renewal applications, for any new controlling persons and for the licensee.
 3. Fingerprints shall be submitted in a form approved by the City. The fingerprints shall be submitted to the Arizona Department of Public Safety to be used to obtain a state and federal criminal records check in accordance with A.R.S. § 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the United States Federal Bureau of Investigation.
- D. Complete renewal applications shall be submitted to the City no later than 30 calendar days prior to the expiration of a license; otherwise the license shall be deemed expired and non-renewable. If the renewal application is not received as stated above, the licensee shall submit an application for a new license and provide all information and fees required for a new license application.
- E. A new or renewal license shall be issued to an applicant pursuant to this Article unless:
1. The applicant fails to provide a completed application, the required application fee, or the fingerprint records;
 2. The applicant fails to pay the applicable license fee for a new or renewal license when the application is approved;

3. The applicant or a controlling person is currently in violation of this Article;
4. The application contains false or misleading information;
5. The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City;
6. The applicant or controlling person failed to comply with any federal and state laws, regulations promulgated by the Arizona Department of Health Services, the County that issued the food truck permit, or the City Code; or
7. The applicant or controlling person, within the five-year period immediately preceding the submission of the application, was convicted of any of the following:
 - a. A felony;
 - b. Misdemeanor involving fraud, theft, dishonesty, assault or moral turpitude.
8. Within five (5) years preceding the application date, have voluntarily surrendered a mobile food vendor or similar license as a result of or while under investigation or have had a mobile food vendor or similar license revoked.

F. Timeframes for Issuance of Licenses.

1. Administrative timeframe: Unless the license has already been issued, within fifteen (15) days after receiving a license application under this Article, the City shall determine whether the application is administratively complete, and notify the applicant as set forth in this Article.
2. Substantive timeframe: Within forty-five (45) days after the City notifies the applicant that the application is administratively complete, the City will complete its substantive review of the license application.
3. Overall timeframe: Within ninety (90) days after receiving an application under this Article, the City will grant or deny a license.
4. An application is deemed withdrawn if, within thirty (30) days after the date of a request for additional information during the substantive timeframe, the applicant does not supply the requested information or provide justification for delay. On receipt of justification, the City shall allow the applicant thirty (30) additional days to provide the requested information before deeming the application withdrawn.
5. Except as otherwise provided, the timeframes in this section shall be extended and suspended as provided by state law.

G. Fees. The following licensing fees shall be paid for each mobile food unit

that is designated on the license:

1. Initial application fee or late renewal: \$350
2. Annual license renewal fee: \$50
3. City fingerprint fee: \$10
4. State fingerprint processing fee: As set by the Arizona Department of Public Safety.
5. Duplicate license: \$10 for print. Electronic: No charge

Sec. 16-654. - Violations; Revocation.

- A. The City may revoke a license issued pursuant to this Article if the City determines that:
 1. A licensee or designated agent or controlling person, following the issuance of a license, is convicted of any offense listed in Section 16-653(E)(7).
 2. The licensee or designated agent operated or attempted to operate a mobile food unit without a license;
 3. The licensee or controlling person has not complied with a provision of this Article or has failed to provide information as required by this Article;
 4. The licensee or applicant has provided false information on a license application;
 5. The application fee, license fee, or any transaction privilege tax has not been paid;
 6. The licensee has received three or more violations within a one-year period for illegally parking a food truck within the City;
 7. The licensee fails to pay outstanding fines or resolve any violations; or
 8. A mobile food vendor fails to display the license or other required documents, including proof of insurance or fire inspection, to a peace officer or City inspector on demand.
- B. The City shall give written notice of a violation to the licensee or designated agent that may result in the revocation of the license. The notice shall include a description of the violation, the statutory or code reference, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a statement that failure to timely request a hearing may result in revocation of the license.
- C. The licensee or designated agent receiving a notice under this section may request a hearing pursuant to Sections 16-6.1 et seq.

- D. If a license is revoked pursuant to this section, the license and its controlling person(s) may not apply for a license under this Article for a period of one (1) year from the date of revocation.

Sec. 16-655. - Operational Requirements.

- A. It is unlawful for any person to operate a mobile food unit or act as a mobile food vendor that does not meet the requirements in this section.
- B. A mobile food vendor must ensure that all mobile food units comply at all times with the version of the International Fire Code in effect at the time when the state license issued by either the state or a county delegated authority from the state to issue such licenses pursuant to A.R.S. § 36-1761 for the mobile food unit was issued.
- C. A mobile food unit shall be inspected by the City Fire Department, or the mobile food vendor shall provide evidence that the mobile food unit passed a fire inspection by another municipal fire department in this state within the preceding twelve (12) months. It is unlawful for a mobile food vendor to fail to provide proof of the required fire inspection to a law enforcement officer or fire official on demand.
- D. Refuse, Trash and Litter Maintenance. A mobile food unit shall:
 - 1. Provide a minimum of one fifteen (15) gallon trash receptacle within fifteen (15) feet of each individual mobile food unit for customers and employees;
 - 2. Maintain an area around the mobile unit clear of litter, garbage, rubble and debris; and
 - 3. Transport the trash from the area of operation to an authorized waste disposal location.
- E. Noise. A mobile food vendor shall not use, play, or cause to be used or played any amplifier, loudspeaker, microphone, amplified music, or any other amplified instrument or device used for the production of sound in a vending area when the motor vehicle or mobile food unit from which mobile food vendor is vending is stationary or mobile upon any right-of-way or other public place.
- F. Security. A mobile food vendor shall ensure that:
 - 1. The mobile food unit and the surrounding vending area be maintained in a safe and clean manner at all times;
 - 2. A mobile food unit shall have adequate lighting to ensure customer safety in the vending area. Non-decorative lighting shall be directed downwards and away from street traffic and adjacent properties; and
 - 3. The mobile food unit and its customers shall not obstruct the movement of pedestrians or other vehicles using the sidewalk, street, alley, or other public right-of-way. A mobile food unit shall

ensure that there is a minimum four-foot clearance in any direction on sidewalks in order to provide pedestrian and accessible movement.

G. Insurance.

1. If the mobile food unit operates at an event sponsored by the City or operates on public property, including rights-of-way or property owned by the City, the mobile food vendor shall obtain insurance naming the City as an additional insured and shall maintain at all times a commercial general liability insurance policy in the amount of at least one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate and commercial auto insurance in the amount of \$1,000,000 combined single limit.
2. The insurance company issuing the policy shall be authorized to issue commercial liability policies in Arizona by the Arizona Department of Insurance.
3. The policy shall designate by manufacturer's serial or identification number all mobile food units for which coverage is granted.
4. The policy shall insure the person named in the policy and any other person using the mobile food unit with the express or implied permission of the named insured against any liability arising out of the ownership, maintenance or use of the mobile food unit in Arizona.
5. It is unlawful for a mobile food vendor to fail to provide proof of insurance to a law enforcement officer or other City official on demand.

H. Location. A mobile food vendor shall operate a mobile food unit only in those zoning districts that permit a mobile food vendor use pursuant to the City's zoning ordinance subject to the following limitations and conditions:

1. Residential Area. A mobile food vendor shall not operate in an area zoned for residential use or within two hundred fifty (250) feet of an area zoned for residential use, except that a mobile food vendor licensed as a neighborhood street vendor pursuant to this chapter may operate on public rights-of-way in areas zoned for residential use.
2. City-Owned Property. A mobile food vendor shall only operate in a legal parking space within a zoning district that permits a mobile food vendor use. If the mobile food vendor desires to operate on City property other than a legal parking space in the right-of-way, the mobile food vendor shall obtain from the City:
 - a. A separate licensing for use, services contract, or similar agreement, which will be entered into at the City's sole discretion and applicable law; or

- b. A special event permit or similar permission in accordance with Chapter 22 of this code.
 3. Private Property. A mobile food vendor may only operate on private property as authorized by the City's zoning ordinance and shall obtain written permission to use any private property where a mobile food unit is operating and shall provide proof of such written permission on demand by City officials or law enforcement officers.
 4. Notwithstanding the permission of a person owning or having lawful control of private real property, a mobile food unit shall not be in one location on private property for longer than four (4) consecutive days, unless the City grants permission for a permitted event greater than four (4) days. For purposes of this subsection, *one location* means a location within a parcel of land and includes movements from different parked positions within the same parcel.
 5. Airports/Public Transit. Mobile food vendors shall not operate at the City airport or a public transit facility unless the mobile food vendor has entered into a separate licensing for use agreement or similar services agreement with the City which the City will enter in its sole discretion and applicable law.
- I. Parking. A mobile food unit shall comply with this subsection and all other applicable law as it pertains to parking:
 1. A mobile food unit shall only operate in a legal parking space.
 2. A mobile food unit, including any semi-permanent structure used or associated with the mobile food unit, may use no more than one (1) legal parking space, unless the mobile food vendor has a separate agreement with the City to use additional legal parking spaces or parking spaces on City property other than right-of-way.
 3. No mobile food unit shall operate with the serving window facing street traffic.
 4. A mobile food unit shall not operate within fifty (50) feet of an intersection.
 5. A mobile food unit shall abide by all parking regulations, including posted time limits. If there are no other time restrictions on the use of a legal parking space, a mobile food unit shall not occupy a legal parking space for more than six (6) hours in a twenty-four (24) hour period. For purposes of this subsection, *occupy* means within one hundred (100) feet of the place in which the mobile food unit was initially parked.
 6. A mobile food unit shall not utilize a legal parking space with insufficient parking capacity, which includes occupying a legal parking space that reduces the number of available parking spaces surrounding the area which is required for the principal use or uses of the property associated with the parking spaces.

- 7. A mobile food vendor shall not claim or attempt to establish any exclusive right to park at a particular street location, unless the parking space is part of a permitted event.
- J. Signage. A mobile food vendor shall not place any signage in or around the space where the mobile food unit is parked.

Sec. 16-656. - Penalties.

(a) Unless otherwise stated, a first violation of this Article is a petty offense and shall be punished by a fine of not less than one hundred fifty dollars (\$150) nor more than three hundred dollars (\$300) per violation.

(b) A second or subsequent violation of this Article within one (1) year of conviction of a first violation is a class two misdemeanor and shall be punished, in addition to any other penalties authorized by law, by a fine of not less than three hundred dollars (\$300) per violation.

PASSED AND ADOPTED by the City Council of the City of Scottsdale this ____ day of _____, 2021.

CITY OF SCOTTSDALE, an Arizona
municipal corporation

ATTEST:

Ben Lane, City Clerk

David D. Ortega, Mayor

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: William Hylan
Senior Assistant City Attorney