

ORDINANCE O-21-18

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, AMENDING ZONING CODE ARTICLE 6, BY ESTABLISHING A NEW SECTION 6.16 ENTITLED “MOBILE FOOD VENDORS” FOR THE PURPOSE OF ALLOWING MOBILE FOOD VENDORS (FOOD TRUCKS) TO CONDUCT BUSINESS WITHIN THE CITY LIMITS OF BISBEE AND TO REASONABLY ACCOMMODATE NEW BUSINESSES, ENHANCE STREET VITALITY, AND SUPPORT ENTREPRENEURSHIP; DECLARING THE DOCUMENT ENTITLED “AMENDMENT TO ZONING CODE ARTICLE 6, BY ADDING SECTION 6.16, MOBILE FOOD VENDORS” AS A PUBLIC RECORD; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, the City of Bisbee (“City”) Zoning Code serves to secure the social, physical, and economic advantages of the citizens of Bisbee; and

WHEREAS, the City’s Planning and Zoning Commission develop and recommend ordinances to the City Council for carrying out plans, goals, and objectives related to growth, development, and redevelopment of the City; and

WHEREAS, in order to preserve the unique beauty of the City and encourage growth, the Planning and Zoning Commission approved the recommendation of a proposed amendment to Zoning Code, Article 6, by adding Section 6.16 which would establish to allow for mobile food vendors set forth in that certain document entitled “Amendment to Zoning Code Article 6, by Adding Section 6.16, Mobile Food Vendors,” three copies of which are on file with in the office of the City Clerk and are a public record; and

WHEREAS, it is in the best interests of the City and its citizens to adopt the amendment to Zoning Code, Article 6, by adding Section 6.16, Mobile Food Vendors.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE, COUNTY OF COCHISE, STATE OF ARIZONA, THAT:

Section 1. That certain document entitled “Amendment to Zoning Code Article 6, by Adding Section 6.16, Mobile Food Vendors,” three copies of which are to remain on file with in the office of the City Clerk, and attached hereto as Exhibit “A” is hereby declared to be a public record and said copies are to remain on file with the City Clerk.

Section 2. The amendment to Zoning Code Article 6, by adding Section 6.16, Mobile Food Vendors, as set forth in the attached Exhibit A, incorporated herein by reference, is hereby adopted.

Section 3. Providing For Repeal of Conflicting Ordinances. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Zoning Code adopted herein by reference, are hereby repealed.

Section 4. Providing For Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

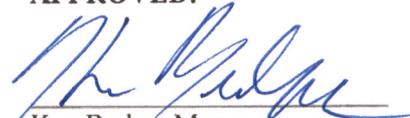
Section 5. Providing for Penalties.

1. The City of Bisbee shall give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license. The notice shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license, the notice shall be served on the licensee or designated agent by either personal service or registered/certified mail. Service of the notice shall be deemed complete upon mailing to, or personal service on, the licensee or designated agent.
2. The licensee or designated agent receiving a notice under this section may request a hearing. If the licensee fails to comply with the requirements of this article by the date provided in the notice, the City of Bisbee may suspend or revoke the license as provided in this section.
3. A licensee shall be suspended if, during the term of the license, the licensee or a controlling person has violated any of the provisions of this article. During the suspension period, the licensee shall not operate any mobile food unit associated with the suspended license. If a fine is associated with the violation that is the basis of suspension, the suspension may continue beyond the period set forth in this subsection until such time as the licensee pays the fine. The penalty for a suspension of a license shall be:
 - A. For the first suspension of a license during a six (6) month period, the license shall be suspended up to fourteen (14) calendar days.
 - B. For the second suspension of a license during a six (6) month period, the license shall be suspended to a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days.
 - C. For the third suspension of a license during a six (6) month period, the license shall be revoked.
4. In addition to a revocation for a third suspension as set forth above, the City of Bisbee may revoke a license issued pursuant to this article if the City of Bisbee determines that:
 - A. A Mobile food unit associated with the suspended license was operated in the City of Bisbee during the suspension period.

- B. The licensee or designated agent operated, or attempted to operate a mobile food unit without a license.
 - C. The City of Bisbee previously issued three (3) or more notices of suspension or violation within a six (6) month period.
 - D. 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.
 - E. The application fee, license fee, or any transaction privilege tax has not been paid.
 - F. The licensee fails to pay outstanding fines or resolve any violations.
5. 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.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Bisbee on this 4th day of January, 2022.

APPROVED:


Ken Budge, Mayor

ATTEST:


Ashlee Coronado, City Clerk

APPROVED AS TO FORM:


Joseph Estes, City Attorney

I, ASHLEE CORONADO, CITY CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF ORDINANCE NO. O-21-18, ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BISBEE ON THE 4th DAY OF January 2022, WAS POSTED IN THREE PLACES ON THE 10th DAY OF January 2022.


Ashlee Coronado, City Clerk

EXHIBIT A
AMENDMENT TO ZONING CODE ARTICLE 6, BY ADDING SECTION 6.16, MOBILE
FOOD VENDORS

6.16 Mobile Food Vendors

The purpose of this Code section is to allow for mobile food vendors (food trucks) to conduct business within the city limits of Bisbee and to reasonably accommodate new businesses, enhance street vitality, and support entrepreneurship.

A. Definitions:

1. **Cart** shall mean a mobile, non-motorized vehicle or conveyance which is intended to be pushed, pulled or otherwise used by a mobile food vendor for the transport of food of any name, nature or description.
2. **Mobile Food Vendor** shall mean a seller of food from a mobile food preparation van, truck, cart or other vehicle or conveyance, whether upon the public street, alleys or public property or on private property.
3. **Vending Unit** shall mean a mobile food preparation van, truck, cart or other vehicle or conveyance or any facility that is not on a permanent foundation that complies with the International Building Code, and which is used for the sale or delivery of food or beverages for immediate service and consumption.

B. Mobile Food Vendor Business- License Required- Exceptions

Reference: City Code Chapter 8 Section 8.2.2 License Required
City Code Chapter 8 Section 8.2.12 Exemptions

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.

It shall be unlawful for a person, firm or corporation to engage in a mobile food vendor business without having first obtained a business license from the City of Bisbee, provided, however, that no license shall be required of the following:

1. Persons, firms or corporations who conduct a casual or isolated sale and who are not engaged in the business of selling the type of food involved.
2. Associations, corporations or organizations for non-profit, and any community fund or foundation organized and operated exclusively for religious, scientific, public or charitable purposes, no part of the earnings of which ensures to the benefit of any private shareholder, owner, member or individual, and the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.

3. Persons, firms or corporations who conduct the sale of seasonal fresh fruits and vegetables that are unprepared and similar agricultural products are exempted.
4. Any mobile food vendor operating at a special event approved by the city of an event sponsored by or held in conjunction with the city.

D. Mobile Food Vendor License- Application

Reference: City Code Chapter 8 Section 8.2.3 Issuance of License

City Code Chapter 8 Section 8.2.4 Time and Place of Payment

City Code Chapter 8 Section 8.2.11 Permit from Health Department

The submittal requirements for business license review shall include the following:

1. A simple sketch of the site layout, depicting ingress and egress and location of the vending unit on the property on which food will be offered for sale.
2. Written permission from the property owner to use the parcel of private property on which the mobile vending operation is to be located.
3. Written evidence by the Cochise County Health Department that the food preparation and service comply with health regulations.
4. Inspection to be completed by the City of Bisbee Fire Marshal for compliance with International Fire Code including, but not limited to fire extinguishers and ventilation hoods.
5. Evidence of a current Arizona vehicle registration, if applicable.
6. A written plan documenting appropriate disposal of wastewater generated by the vending unit. Grease shall be properly disposed of per adopted health regulations.
7. A separate license is required for each mobile vending unit.

E. Mobile Food Vendor License Fee

1. See the City of Bisbee Fee Schedule.

F. Display of License

Reference: City Code Chapter 8 Section 8.2.8 License to be Displayed or Exhibited

All mobile food vendor license shall be prominently displayed, in public view, upon all carts, vehicles or locations from which a mobile food vendor sells products.

G. Restrictions Applicable to all Mobile Food Vendors

1. Mobile food vending on public streets and public rights-of-way within the limits of the city shall not be permitted unless approved as an authorized participant in a city approved special event, including a festival, sports tournament or similar activity.

2. Mobile food vending to serve local businesses' employees at the local businesses location shall be permitted when authorized by the business or businesses for the time that it takes to set-up, serve, and close up the food service.
3. A mobile food vendor shall not obstruct or cause to be obstructed the passage of any pedestrian or vehicle on any public sidewalk, street, fire lane, or any other traffic right-of-way.
4. If a mobile food vendor will be utilizing an external propane tank (not mounted on the mobile food preparation vehicle), external power connections and/or tent structures, the mobile food vendor will be subject to additional review by the Bisbee Fire Department.
5. The use of a portable generator or connection to a source of electricity must comply with the City's Nuisance Ordinance, City Code, Section 10.1.8 and be approved by the Building Inspector.
6. The use of any portion of the vending unit as living or sleeping quarter is prohibited.
7. Mobile food vendors shall not use amplification or noise-making devices and shall otherwise comply with all aspects of the City's Nuisance Ordinance, City Code, Section 10.1.8.
8. Mobile food vendors may not serve alcoholic beverages.

H. General Regulations

1. Mobile food vendors located on public property shall leave the site clean and vacant each day, including picking up trash and litter generated by the mobile food vendor's customers.
2. All attachments to the vending unit, including but not limited to signs, lights, overhangs, and awnings, shall be maintained in such a manner as to not create a hazard to pedestrians, customers or vehicles flashing lights and similar displays are prohibited.
3. It is unlawful for any person to operate a food truck that does not meet the requirements in this section.
4. Fire Safety and Inspection. A mobile food vendor must ensure that all mobile food units comply with the version of the International Fire Code in effect at the time when the license is issued, state law and the City of Bisbee code relating to fire and explosion safety standards.
5. A mobile food unit(s) shall be inspected by the City of Bisbee Fire Department, or the mobile food vendor shall provide evidence that the mobile food unit passed a fire inspection by another city or town fire department in this state within the preceding twelve (12) months.

6. Refuse, Trash and Litter Maintenance. A mobile food unit shall:

- A. Provide a minimum of one fifteen (15) gallon trash receptacle within fifteen (150 feet of each individual mobile food unit for customers and employees.
- B. Maintain an area around the mobile unit clear of liter, garbage, rubble and debris.
- C. Transport the trash from the area of operation to an authorized waste disposal location.

7. Security:

- A. The mobile food unit and the surrounding vending area shall be maintained in a safe and clean manner at all times.
- B. A mobile food unit shall have adequate lighting to ensure customer safety in the vending area. Lighting shall be directed downwards and away from rights-of-way and adjacent properties.
- C. 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.

8. All exterior trash receptacles not intended for customer use shall be screened from public view and securely covered.

9. The mobile food vendor shall install an appropriate grease trap in the vending unit and shall maintain the grease trap. Grease shall be properly disposed of per county and state health regulations. Wastewater generated by the vending unit shall be disposed of in a proper manner.

10. Temporary structures such as portable tables, chairs, tents, awnings and umbrellas may be used in the conduct of operations in a safe and approved manner.

11. Sanitary toilet facilities for use by employees shall be readily available within 200 feet of all mobile food establishments that are operated at the same site for more than a two-hour period. Mobile food vendors who provide tables and chairs for the public must have a sanitary toilet facility. Employee toilet facilities shall be either separate or combined employee and public toilet facilities. Temporary toilet facilities shall not be located within 25 feet of any mobile food establishment. (2018 International Building Code (P) 2902.3 Employee and Public Toilet Facilities).

12. The owner of private property on which a mobile food vendor is located shall be responsible for overall site maintenance. The property owner shall be responsible for the mobile food vendor's compliance with the provisions of this article with respect to the mobile food vendor's operation on the owner's property.

13. Signs- **Reference Zoning Code Article 7 Sign Regulations**

14. All mobile food vendors shall comply with all laws, rules and regulations regarding food handling, and all mobile food preparation vehicles used by mobile food vendors shall comply with all applicable laws, rules and regulations respecting such vehicles as established by the Cochise County Health Department, the City of Bisbee Fire Marshal, the Arizona state Mobile Food Vendors statutes, health and safety licensing standards, the Arizona State Motor Vehicles Code, and any applicable sections of the city code regarding the operation of the business.

15. Any cart, Mobile Food Vendor or Vending Unit, as defined in this document, doing business in Bisbee prior to the passage of these regulations will have a period of 60 days in which to come into compliance with said document.

I. Violations; Suspension; Revocation

1. The City of Bisbee shall give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license. The notice shall include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license, the notice shall be served on the licensee or designated agent by either personal service or registered/certified mail. Service of the notice shall be deemed complete upon mailing to, or personal service on, the licensee or designated agent.
2. The licensee or designated agent receiving a notice under this section may request a hearing. If the licensee fails to comply with the requirements of this article by the date provided in the notice, the City of Bisbee may suspend or revoke the license as provided in this section.
3. A licensee shall be suspended if, during the term of the license, the licensee or a controlling person has violated any of the provisions of this article. During the suspension period, the licensee shall not operate any mobile food unit associated with the suspended license. If a fine is associated with the violation that is the basis of suspension, the suspension may continue beyond the period set forth in this subsection until such time as the licensee pays the fine. The penalty for a suspension of a license shall be:
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