

DEFINITIONS

- A. Conveyance (Outdoor Vendors):** Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.
- B. Ice Cream\Snow Cone Truck:** A specific type of mobile food vehicle that sells only prepackaged, single-portion ice cream or frozen confections, and are allowed to operate within public right of ways of minor residential streets.
- C. Mobile Food Vehicle:** A food establishment preparing and/or serving foods from a self-contained vehicle, either motorized or within a trailer, that is readily movable without disassembling for transport to another location. Mobile food vehicles may serve as a conveyance for outdoor vending at a fixed location.
- D. Mobile Food Vendor:** Any person that owns or operates a mobile food vehicle for the purpose of mobile food vending, as defined herein.
- E. Outdoor Vending.** Exhibiting, displaying, selling or offering for sale any food, beverages, goods, wares or merchandise from a conveyance at a fixed location on public or private property.
- F. Outdoor Vending, Private Property:** The exhibit, display, or sale of any food, beverages, goods, wares, or merchandise from a conveyance at a fixed location on private property.
- G. Outdoor Vendor:** Any person that exhibits, displays, sells or offers for sale any food, beverages, goods, wares or merchandise from a conveyance at a fixed location. This definition does not include a door-to-door solicitor, mobile food vending, children's lemonade stands or homeowners having garage sales.
- H. Outdoor Vendor Park.** A site that contains more than one outdoor vendor on a regular basis as the principal use of the land.
- I. Primarily Residential Areas:** An area where 75% of the lots within a three hundred (300) foot radius of the proposed site have been developed as residential usage.
- J. Public Way:** All areas legally open to designated public use such as public streets, sidewalks, roadways, highways, parkways, alleys, parks, as well as the areas surrounding and immediately adjacent to public buildings.
- K. Pushcart or Handcart:** Any open-air wheeled device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise and for being pushed by a person without the assistance of a motor vehicle, and are allowed to operate within public right of ways of minor residential streets.
- L. Sidewalk:** All that area legally open to the public used as a pedestrian public way between the curb line and the legal property line of the abutting property.
- M. Vending Stand:** A non-motorized, open-air fixture or device, such as a showcase, table, bench, rack, handcart, pushcart, stall that is used for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise at a fixed location. This definition does not include vending trailers.
- N. Vending Trailer:** A device enclosed on at least three sides with a permanent roof, mounted on wheels, designed to be pulled by a motor vehicle for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

Purpose and Intent.

The regulations contained herein are not intended to prohibit or hamper economic activity, but merely to regulate specific activities that are commercial in nature. It is the intent of these regulations to:

1. Establish in accordance with the Comprehensive Plan for the purpose of promoting the health, safety, morals, and the general welfare of the general public;
2. Establish a uniform set of rules and regulations that are fair and equitable;
3. Provide economic development opportunities to small entrepreneurs; and
4. Mitigate the negative impact between adjacent uses and facilitating the transition from one type of use to another.

A. Permit Required

1. **Applicability.** It shall be unlawful for any person to engage in the business of outdoor vending or mobile business activity, as defined in Municipal Code 5.04.020 Definitions and herein, unless he/she has obtained a Mobile Vending permit from the City of Hobbs Clerk's Office, except as exempted in *B. Exemptions* below. All permits shall be issued according to the regulations herein.
2. **Application for Permit.** Applicants may request a Mobile Vending Permit for either (1) outdoor vending or (2) mobile food vending. The application for a Mobile vending permit shall contain all information relevant and necessary to determine whether a particular permit may be issued, including, but not limited to:
 - a. The applicant's full name, current address, telephone number and proof of identity, together with a photograph of the conveyance, not less than two inches square nor more than three inches square.
 - b. A brief description of the nature, character and quality of goods, wares or merchandise to be offered for sale.
 - c. Site plan showing proposed location and distances in compliance with the location requirements in Subsection D.1.
 - d. Written consent of the property owner, if applicable.
 - e. If the applicant is engaged in the sale of food or beverages, a copy of the State of New Mexico Health Department Inspection certificate shall be provided.
 - f. If the applicant is employed by another, the name and address of the person, firm, association, organization, company or corporation of employment.
 - g. If a motor vehicle is to be used, the motor vehicle make, year, model and license number.
 - h. Proof of vehicle registration.
 - i. Proof of current driver's license for all drivers.
3. **Fee.** The applicant shall pay the fee as adopted from time to time by City Commission.

4. **Issuance of Permit.**

- a. The applicant shall be notified in writing by the City Clerk or his/her designee of the City's decision to issue or deny the mobile vending permit not later than twenty one (21) days after the applicant has filed a completed application with the Clerks Department.
- b. Each permit shall show the name and address of the mobile vendor, the type of permit issued, the kind of goods to be sold, the amount of the permit, the date of issuance, the permit number, an identifying description of any motor vehicle or conveyance used by the vendor plus, where applicable, the motor vehicle registration number and a photograph of the conveyance unit not less than two inches square nor more than three inches square. Each permit shall also show the expiration date of the permit.
- c. All permits issued under this section shall be both non-assignable and non-transferable.

5. **Display of Permit.** Any permit issued by the City Clerk or his / her designee shall be carried with the vendor whenever he/she is engaged in vending and conspicuously displayed on the conveyance. Certificate of Health Inspection from the New Mexico Health Department shall also be properly and conspicuously displayed at all times during the operation of the vending business.

6. **Expiration and Renewal.**

- a. **Permanent Permit.** All permanent vending permits expire annually at midnight on December 31st. A vending permit may be renewed, provided an application for renewal and permit fees are received by the City no later than the expiration date of the current permit. Any application received after that date shall be processed as a new application. The City Clerk or his / her designee shall review each application for renewal, and upon determining that the applicant is in full compliance with the provision of these regulations, shall issue a new permit.
- b. **Temporary permit.** All temporary permits issued shall be valid only for the time period established on the permit.

7. **Notification of Name or Address Change.** All vendors shall assure that the current and correct name, residence address and mailing address are on file with the Clerk's Office. Whenever either the name or address provided by a permitted vendor on an application for a vending permit changes, the vendor shall notify the City Clerk in writing within 60 days of such change and provide the same with the name change or address change.

B. Exemptions.

1. **Exempt activities.** The provisions of the ordinance do not apply to:
 - a. Goods, wares, or merchandise temporarily deposited on the sidewalk in the ordinary course of delivery, shipment, or transfer.
 - b. The placing and maintenance of unattended stands or sales devices for the sale, display or offering for sale of newspapers, magazines, periodicals and paperbound books.
 - c. The distribution of free samples of goods, wares and merchandise by any individual from his person.
 - d. Temporary sales to benefit non-profit organizations and conducted on private property.

Such sales shall be conducted no longer than five consecutive days.

2. **Claims of exemption.** Any person claiming to be legally exempt from the regulations set forth herein, or from the payment of a permit fee, shall cite to the City Clerk or his/her designee, the statute or other legal authority under which exemption is claimed and shall present proof of qualification of such exemption.

C. Outdoor Vending. The following requirements shall apply to outdoor vending locations.

1. **Private Property.**

a. **Single Vendor.** (no on-site consumption allowed)

- a) **Locations.** Outdoor vendors shall be permitted on developed private property only in areas where 75% of the parcels within a three hundred (300) foot radius of the proposed site have been developed as commercial usage or are unoccupied. Outdoor vendors are prohibited in primarily residential areas.
- b) **Number of Vendors.** Only one (1) outdoor vendor shall be permitted per single owner parcel. However, if more than one vendor is proposed for a single owner parcel, it shall be considered an outdoor vendor park and shall meet the requirements for Outdoor Vendor Park below.
- c) **Permission required.** Outdoor vendors shall first obtain written permission from the property owner prior to submitting for an application.
- d) **Minimum Site Requirements.** A developed property proposed for a single vendor shall have 50 feet of minimum frontage adjacent to a dedicated thoroughfare, a developed ingress and egress and hard surface paving to a point that will contain the conveyance unit behind the building setback line of the thoroughfare and allow patrons to exit the property without backing into the right-of-way.

b. **Outdoor Vendor Park.**

- a) **Locations.** Outdoor vendor parks shall be permitted on private property as a conditional use only in areas where 75% of the adjacent sites have been developed as commercial usage. Outdoor Vendor Parks are prohibited in primarily residential areas.
- b) **Review Criteria.** The Planning Board shall review the Outdoor Vendor Park application based on the specific circumstances of the proposed vendor park including the location of the park, the size of the parcel where the park is located, the types of surrounding land uses and the proximity to the park, parking, and any other potential impacts on public health, safety and welfare. The Planning Board shall determine the number of outdoor vendors permitted within the outdoor vendor park.
- c) **Minimum Site Requirements.** The property owner proposing an outdoor vendor park shall be required to make necessary improvements to the property in order to meet the city development codes and be approved for this semi-permanent use:
 - i. Make any improvements necessary to the site to meet the requirements of Municipal Code 15.40 Landscaping, Resolution #5482 Screening and Buffering

Requirements.

- ii. Make any improvements necessary to the site to meet the requirements of Municipal Code 15.20.030 Off-Street Parking. This may include paving, striping and the construction or designation of handicapped parking spaces.
- iii. Make any necessary improvements to provide permanent utility connections for each outdoor vending unit in the outdoor vendor court. This shall include appropriate permanent water, sanitary sewer and electricity connections. Make any improvements necessary to ensure safe pedestrian and vehicular access to the site. This may include sidewalk and curb-cut improvements.
- iv. Individual outdoor vendor units operating in an outdoor vendor park shall obtain an outdoor vendor permit and shall meet all of the applicable requirements including state and local codes as adopted.

2. **Public Property.** Outdoor vending on public property shall only be permitted in special outdoor vendor districts as identified herein or otherwise established by City Commission.

- a) **Locations.** Vending locations within the City of Hobbs Public Parks or Municipal Property shall be approved by the Parks Department. A mobile vendor shall be permitted no more than one vending permit within the public parks. Vendors with a valid permit for a specific location shall be permitted to continue at that location for so long as the permit under this section is continuously issued and does not expire or is not revoked pursuant to this section.
- b) **Special Events.** Temporary mobile vendor permits may be issued during special events based on the location restrictions below.

D. **Location Restrictions.** No outdoor vendor shall be permitted to operate in the following areas:

- a. Within a primarily Residential Area.
- b. Within the required set-backs as required by the Hobbs Major Thoroughfare Plan.
- c. Within 10 feet of any street intersection or pedestrian crosswalk.
- d. Within 10 feet of any driveway, loading zone or bus stop.
- e. In any area within 15 feet of a building entrance.
- f. On the median strip of a divided roadway unless the strip is intended for use as a pedestrian mall or plaza.
- g. Any area within 100 feet of a hospital building, college building, university building, elementary school building, middle school building or high school building.
- h. Within 10 feet of any fire hydrant or fire escape.
- i. Within 10 feet of any parking space or access ramp designated for persons with disabilities.
- j. In a public owned parking space or public owned parking lot.
- k. Within 25 feet of any bus stop sign.
- l. Within 50 feet of driveway to police or fire station.
- m. Within 50 feet of principal public entrance to food service business not owned by vendor.
- n. Any area that obstructs pedestrian traffic.
- o. Vacant or undeveloped property.

E. **Mobile Food Vending.** The following requirements apply to mobile food vendors:

1) **Equipment Requirements.** All mobile food vendor conveyances shall have the following features:

- a) Convex mirror mounted on the front of the vehicle such that the driver in his normal seating position can see the area in front of the truck obscured by the hood.
- b) Passenger side mirror.
- c) Business name, address and phone number printed in 2" letters on each side of the vehicle.
- d) Trash receptacle.
- e) The vehicle shall be lawfully parked or stopped before vending can take place.

2) **General Requirements**

- a) The vehicle shall not be stopped for vending purposes other than at an approved location.
- b) Vending shall not occur with any part of the conveyance vehicle occupying the prescribed setback of its location.

3) **Location Restrictions**

- a) Mobile food vending shall only take place on approved locations.
- b) No vending shall be permitted within 100 feet of a school while school is in session and one hour before and after school is in session.

F. Littering and Trash Removal.

- a) Vendors shall keep the sidewalks, roadways and other spaces adjacent to their vending sites or locations clean and free of paper, peelings and refuse of any kind generated from the operation of their business. All trash or debris accumulating within 25 feet of any vending stand shall be collected by the vendor and deposited in a trash container.
- b) Persons engaged in food vending shall provide a receptacle for litter that shall be maintained and emptied regularly and marked as being for litter.

G. Prohibited Conduct.

No person authorized to engage in the business of vending under these regulations shall do any of the following:

- a) Unduly obstruct pedestrian or motor vehicle traffic flow, except for up to 20 minutes to load and unload vending conveyance and/or vending merchandise.
- b) Obstruct traffic signals or regulatory signs.
- c) Stop, stand or park any motor vehicle or any other conveyance upon any street for the

purpose of selling.

- d) Leave any conveyance unattended at any time or store, park, or leave such conveyance in a public way overnight.
- e) Use any conveyance that when fully loaded with merchandise cannot be easily moved and maintained under control by the permittee, his employee or an attendant.
- f) Sound any device that produces a loud and raucous noise or operate any loudspeaker, public address system, radio, sound amplifier, or similar device to attract public attention. However, mobile food vendors are permitted to play music within the regulations of the City of Hobbs noise ordinance, but shall not do so within 100 feet of hospitals, schools or churches.
- g) Conduct his/her 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.
- h) Use, install or display any signage that is not in compliance with Municipal Code 15.32 or lighting that is not in compliance with Resolution #5482 establishing Buffering, Screening and lighting Standards.
- i) Altering vehicle to allow for additional signage.
- j) No vending conveyance or other item related to the operation of a vending business shall be located on any city sidewalk or other public way. Nor shall any mobile food vehicle be parked, stored or left overnight other than in a lawful parking place.
- k) Run hoses, cords or other apparatus to the mobile vending unit.

H. Suspension and Revocation of Permit.

- 1) Conditions for Suspension / Revocation.** In addition to the penalties punishable as set forth in Municipal Code Section 5.04 and 5.20, any permit issued under these regulations may be suspended or revoked for any of the following reasons:
- a) Fraud, misrepresentation or knowingly false statement contained in the application for the permit.
 - b) Fraud, misrepresentation or knowingly false statement in the course of carrying on the business of vending.
 - c) Conducting the business of vending in any manner contrary to the conditions of the permit.
 - d) 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 morals, or interfere with the rights of abutting property owners; or

- e) Cancellation of health department authorization for a food or beverage vending unit due to uncorrected health or sanitation violations.

- 2) **Notification of Suspension or Revocation.** The City Clerk or his/her designee shall provide written notice of the proposed suspension or revocation in a brief statement setting forth the complaint and the grounds for suspension or revocation. Such notice shall be mailed to the address shown on the permit holder's application by certified mail, return receipt requested.
- 3) **Forfeiture of Fee.** If the City revokes a vending permit, the fee already paid for the permit shall be forfeited. A person whose permit has been revoked under this Section may not apply for a new permit for a period of one (1) year from the date that the revocation took effect.

I. Vending Location Variance Requests and Procedures.

A. Variance.

- 1. Variances are authorized deviations from the vending location development requirements in this Chapter. A variance may be appropriate when strict enforcement would represent a unique, undue and unnecessary hardship on a particular property.
- 2. A complete application for a variance shall be submitted by a property owner, or an agent acting on behalf of the property owner, to the Planning Department, on a form prescribed by the City, along with a nonrefundable fee, which may be established from time to time by the City Commission. Under no circumstances shall a variance be proposed or considered that would authorize a use of property for a vendor site that is not otherwise permitted in accordance with this Chapter. The property owner must sign the variance request.

B. Planning Department Action on Minor Variations.

The Planning Department shall have the authority to find that a variance application involves a minor variation, which shall include any proposed variation from a property development standard in this Ordinance that would be a deviation of a minor nature from such adopted standard. In any such case, the Planning Department may grant an administrative approval that does not require any further review or action by the Planning Board. Any such approval must meet the conditions for considering variances herein. If the Planning Department determines that an application does not meet these conditions and does not merit approval, then the matter may be referred to the Planning Board for review and action if requested by the applicant. The record of Planning Department review and approval of minor variations shall be available for public inspection, upon reasonable request, during normal business hours. In no case shall the Planning Department consider a variance for any substantive variance from this Chapter.

C. Planning Board Public Hearings on Variances.

For all variance applications not deemed minor by the Planning Department, the Planning Board, after due notice, shall hold a public hearing on an application for a variance. At the public hearing, the Planning Board shall consider the application, the report of the Planning Department, the relevant supporting materials and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall vote to approve, approve with conditions, or disapprove the application for a variance.

D. Mailed Notices.

Whenever a vending location variance is proposed for a property, the Planning Division shall mail notice of the public hearing by certified mail, to the owners, as shown by the records of the county assessor, of lots of land within an area of three hundred (300) feet of the boundaries of the subject property. The mailing shall be posted on or before the fifteenth (15th) day before the date of the public hearing.

E. Conditions for Considering Vending Location Variances.

To approve a Vending Location Variance, the Planning Board shall make an affirmative finding that each of the following criteria, without exception, is considered:

- ** Such variance will not alter the essential character of the neighborhood in which the property is located.
- ** Granting the variance will not adversely affect the health, safety or welfare of the public.
- ** Special circumstances must exist that are peculiar to the land and the special circumstances are not self-imposed or the result of the actions of the applicant.
- ** Literal interpretation and strict enforcement of the terms and provisions of this Chapter would cause an unnecessary and undue hardship outside of an increased monetary investment by the property owner.
- ** The variance, if granted, will not be contrary to the public interest as implemented in this Chapter.
- ** The variance, if granted, will not result in a violation of any other applicable ordinance, regulation or statute enforceable by the city.
- ** Granting the variance is the minimum action that will make possible reasonable use of the property and which would carry out the spirit of this Chapter and would result in substantial justice.

F. The Planning Board may impose such conditions on a vending location variance as are necessary to accomplish the purposes of this Chapter, to prevent or minimize adverse impacts upon the public and neighborhoods and to ensure compatibility. All conditions imposed upon any variance shall be expressly set forth in writing with the granting of such variance.