

ORDINANCE NO. 23-10

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE FOUNTAIN HILLS TOWN CODE BY AMENDING SECTION 8-3-5 D, AND BY ADDING A NEW ARTICLE 8-7 MOBILE FOOD VENDORS

ENACTMENTS:

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF FOUNTAIN HILLS, ARIZONA, as follows:

SECTION 1. That Chapter 8, Business Regulations, of the Fountain Hills Town Code, Section 8-3-5 D 8 is hereby amended as follows:

8. A description of the Special Event including activities, anticipated attendance, entertainment, and type of retail sales, if any.
- a. If there will be vendors, artists or concessionaires, supply a list including business names, owner names, booth numbers, addresses, Arizona state sales tax number (TPT number) and Fountain Hills business license numbers no later than 10 days prior to the Special Event. Any changes or additions shall be submitted to the Town prior to the end of the first day of the Special Event.

B. IF THE EVENT INCLUDES MOBILE FOOD VENDORS, VENDORS MUST PROVIDE THE PROMOTER WITH 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 ARS 36-1761, DOCUMENTATION OF A PASSED FIRE INSPECTION, AND PROOF OF INSURANCE. PROMOTER MUST SUPPLY THIS INFORMATION TO THE TOWN ALONG WITH THE TPT AND BUSINESS LICENCE NUMBERS.

SECTION 2. That Chapter 8, Business Regulations is hereby amended to add a new Article 8-7, Mobile Food Vendors, as contained in Exhibit A.

PASSED AND ADOPTED by the Mayor and Council of the Town of Fountain Hills, Maricopa County, Arizona, this 21st day of November 2023.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:

Ginny Dickey, Mayor

Linda Mendenhall, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

Rachael Goodwin, Interim Town Manager

Aaron D. Arnson, Town Attorney

Copies of Exhibit A, Article 8-7, Mobile Food Vendors, are on file with the Town Clerk and available for inspection.

EXHIBIT A

Article 8.7 - Mobile Food Vendors

Section 8-7-1 - 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.

Section 8-7-2 - 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, applicant, or any other legal means to receive notice(s) from the Town 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 the legal parking of a vehicle in the Town 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 Town.

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

(7) *“Mobile food unit”* means an establishment designed to be readily movable from which food is composed, compounded, processed, or prepared and from which food is vended, sold, or given away. This definition shall include but not be limited to food establishments in operation from a vehicle, enclosed

trailer, cart, or pushcart.

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

(9) *“Mobile conveyance unit”* means a subset of mobile food unit, and one, which moves quickly and readily from place to place, stopping only to complete a point-of-sale transaction. This definition shall include but not be limited to ice cream trucks or other food service trucks moving in a route type fashion, stopping for no longer than fifteen (15) minutes per stop.

(10) *“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.

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

(12) *“Special event”* means any event that will take place on Town property, including but not limited to parks, open space, streets, sidewalks or rights-of-way, or on private property, and which by its nature could cause a significant disruption of pedestrians or vehicular traffic in the area and/or that requires traffic safety measures. An event is not a “Special Event” for the purposes of this Article if all of the following are true: (1) the event takes place on private property, (2) the event does not require the closure of any Town street, sidewalk or right-of-way, and (3) the event does not require any municipal services beyond the currently existing, permanent, in-ground infrastructure.

Section 8-7-3 - 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.

Section 8-7-4 – Town Licensing Requirements.

- A. A Town license as required by this Article is not required for a mobile food unit that is operating solely as part of either a Town approved special event or an event that has been approved through an administrative temporary use permit. A business license, and proof of an approved fire inspection is still required.
- B. Except as provided in 8-7-4 A, it shall be unlawful for a person to operate a mobile food unit at any location within the Town without obtaining a license from the Town in accordance with this article and any other licenses required

for the lawful operation of a business.

- C. 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.
1. Application Requirements; Procedure. Any person desiring to obtain a new or renewal license must apply by presenting a complete application, the applicable fee, and proof of identity sufficient to conduct civil and criminal background checks to the Town.
 2. 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. Copies of a passed fire inspection, as applicable.
 - h. Proof of insurance.
- D. Complete renewal applications shall be submitted to the Town no later than thirty (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 proof of identity sufficient to conduct a background check;
 2. The applicant fails to pay the applicable license fee for a new or renewal license when the application is received;
 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 Town;
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 Town 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) calendar days after receiving a license application under this Article, the Town 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) calendar days after the Town notifies the applicant that the application is administratively complete, the Town will complete its substantive review of the license application.
3. Overall timeframe: Within ninety (90) calendar days after receiving an application under this Article, the Town will grant or deny a license.
4. An application is deemed withdrawn if, within thirty (30) calendar 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 for delay, the Town shall allow the applicant thirty (30) additional calendar days to provide the requested information before deeming the application withdrawn.
5. Except as otherwise provided, the timeframes in this section may be extended and suspended as provided by state law.

- G. Fees. Every application shall be accompanied by the appropriate application fees in the amounts set forth in the Town's fee schedule, as adopted by the Town Council as part of the Town's annual budget or by separate resolution. License fees are non-refundable.

Section 8-7-5 - Violations; Revocation.

- A. The Town may revoke a license issued pursuant to this article if the Town 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 8-7-4 D 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;
 7. The licensee fails to pay outstanding fines or resolve any violations; or,
 8. A mobile food vendor fails to display the current, valid license or other required documents, including proof of insurance or fire inspection, to a law enforcement officer, fire official, or Town official on demand.
- B. Licenses issued under the provision of this Chapter may be restricted, suspended or revoked by the Finance Director, after notice and hearing as set forth in Sections 8-1-11 (B) and (C).
- C. The licensee or designated agent receiving a notice under this section may request a hearing pursuant to Section 8-1-12.
- 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.

Section 8-7-6 - 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. A business desiring to operate a mobile food unit on Town-owned public property shall have evidence of passing a fire inspection and a copy of the Certificate of

Insurance listed below on their possession.

- 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 Town 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 available for immediate use 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. Disposing of grease in a dumpster is prohibited.
- 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 any 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. Generators used in conjunction with the mobile food unit must be maintained in good repair and placed so as to minimize impact on adjacent uses. Ancillary screening and/or sound-absorbing devices may be required to deflect or absorb generator noise away from adjacent uses or activities.
- 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. Lighting shall be in conformance with the Town's Outdoor Lighting Control Ordinance. Non-decorative lighting shall be directed downwards and away from street traffic and adjacent properties. At no time shall lighting exceed the height of eight (8) feet; 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, or drive aisle. 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 Town or operates on public property, including rights-of-way or property owned by the Town, the mobile food vendor shall obtain insurance naming the Town 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 regardless of size of the mobile food unit.
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 Town official on demand.

H. Location. A mobile food vendor shall operate a mobile food unit subject to the following limitations and conditions:

1. Within Town Right-of-Way
 - a. Residential Area. Only mobile conveyance units are permitted to operate in the right-of-way in residentially zoned areas.
 - b. Commercial and Industrial Area. A mobile food vendor may operate in a legal parking space within the right-of-way in areas with commercial or industrial zoning.
2. Locations not on Town Right-of -Way
 - a. If the mobile food vendor desires to operate on Town property other than a legal parking space in the right-of-way, the mobile food vendor shall:
 1. Obtain from the Town a separate licensing for use, services contract, or similar agreement, which will be entered into at the Town's sole discretion and applicable law; or
 2. Be part of a special event approved in accordance with Article 8-3 of this code.

- b. Private Property. A mobile food vendor may operate on commercially or industrially zoned private property if the vendor obtains an administrative temporary use permit and written permission to use the private property where the mobile food unit will operate. Any such permission shall be in writing and the vendor shall provide it to Town officials or law enforcement officers on demand.
 - c. 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 Town 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.
- I. Parking and Other Operational Regulations. A mobile food unit shall comply with this subsection and all other applicable law as it pertains to parking and operations.
- 1. Except as provided for in subsection 8-7-6 K 1, a mobile food unit shall only operate in a legal parking space.
 - 2. 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.
 - 3. 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 parallel or 2 (two) legal angled parking space(s), unless the mobile food vendor has a separate agreement with the Town to use additional legal parking spaces or parking spaces on Town property other than right-of-way.
 - 4. A mobile food unit shall not utilize a legal parking space in a parking lot 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.
 - 5. Except for mobile conveyance units for periods of not more than 30 minutes, a mobile food unit shall not conduct business in any Town public park.
 - 6. Except as provided for in subsection 8-7-6 K 2, a mobile food unit shall not conduct business from a street or sidewalk adjacent to a Town public park as set forth in Section 12-3-3 B,.
 - 7. As set forth in Section 12-3-3 C, mobile food vendor shall not conduct

business within three hundred (300) feet of a special event boundary or an event that has been approved through an administrative temporary use permit, unless registered as part of the event.

8. 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.
 9. A mobile food unit shall not operate within fifty (50) feet of an intersection.
 10. No mobile food unit shall operate with the serving window immediately adjacent to and facing a street or driveway open to vehicular traffic.
 11. A mobile food unit shall comply with all requirements of the Americans with Disabilities Act during operations.
 12. A mobile food unit shall comply with all Town Code sections relating to noise, parking, fire restrictions, late night operations, or any other Code sections restricting specific activities.
- J. Signage. A mobile food vendor shall not place any signage in or around the space where the mobile food unit is parked. A menu board near the order window is allowed.
- K. Street, sidewalk, building storefront vending:
1. No street vending by a mobile food unit shall be allowed unless it is a mobile conveyance unit that operates by moving quickly with the flow of traffic and readily from place to place stopping only to complete a point-of-sale transaction for no longer than fifteen (15) minutes per stop.
 2. No mobile food units, other than a mobile conveyance unit that is non-motorized may operate on the Town's sidewalks. The mobile conveyance unit shall operate by, moving quickly and readily from place to place stopping only to complete a point-of-sale transaction for no longer than fifteen (15) minutes per stop.
 3. No mobile food units, other than non-motorized ones may operate at a building front. Mobile food units operating at a building's front must be located immediately adjacent to an occupied commercial building, whether freestanding or within a commercial retail center, and only within the building envelope extending from one end of the building front to the other end, with such depth to still allow a minimum five-foot unobstructed walkway parallel to the building front wherein neither the mobile conveyance unit operator nor the customers occupy or obstruct any portion of a driving aisle, landscaped area, fire lane, or doorway entrance/exit.
 4. No building front vending shall be allowed by more than two (2) non-motorized mobile food units at a time per parcel.

Section 8-7-7 - Penalties.

Enforcement of violations of this section shall be made through the use of the civil citation process as set forth in Section 1-8-3 of the Town Code.