

ORDINANCE NO. _____

**AN ORDINANCE DEFINING MOBILE FOOD VENDORS AND RELATED TERMS;
REGULATING MOBILE FOOD VENDORS AND MOBILE FOOD VENDING
PRACTICES; PROHIBITING CERTAIN ACTIONS OF MOBILE FOOD VENDORS;
SETTING SAFETY REQUIRMENTS; CREATING VENDING DISTRICTS;
PRESCRIBING A PENALTY AND FOR OTHER PURPOSES**

WHEREAS, the primary purpose of the public streets and sidewalks is the use by vehicular and pedestrian traffic; and,

WHEREAS, vending in public accessible areas can promote the public interest by contributing to an active and attractive pedestrian environment; and,

WHEREAS, there are no current City ordinances which regulate mobile food vending from locations within the City of Russellville, Arkansas; and,

WHEREAS, Mobile Food Units and Mobile Food Vendors are a vibrant and growing part of the City's food culture; and,

WHEREAS, Mobile Food Units and Mobile Food Vendors present particular needs and concerns with regard to the public health, safety and welfare; and,

WHEREAS, reasonable regulation of mobile food vending is necessary to protect the public health, safety and welfare; and,

WHEREAS, regulations are also necessary in order to give guidance to Mobile Food Vendors, allow fair competition and provide for the safety and convenience of Customers; and,

WHEREAS, the regulations contained in this Ordinance do not prohibit free speech but merely regulate activities which are commercial in nature; and,

WHEREAS, the City Council desires to establish regulations to both allow Mobile Food Units and Mobile Food Vendors to operation and flourish with the City's corporate limits and also protect the health, safety and welfare of the citizens and residents of the City and Customers of Mobile Food Units and Mobile Food Vendors.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RUSSELLVILLE, ARKANSAS, THAT:

SECTION 1: Title. This Ordinance shall be referred as "The City of Russellville Mobile Food Vendor Ordinance."

SECTION 2: Purpose. The City Council, after reviewing the work, report and recommendations of the Planning Commission concerning the regulation of Mobile Food Units and Mobile Food Vendors, has determined that regulation of Mobile Food Units and Mobile Food Vendors is necessary in order to protect the health, safety and welfare of the public as well as promote the public interest by regulating the areas of operation and ensuring that the Mobile Food Units and Mobile Food Vendors are permitted with the Arkansas Department of Health. Therefore, this Ordinance is passed pursuant to these purposes and findings as well as those in the Preamble of this Ordinance.

SECTION 3: Incorporation of Recitals. The recitals and findings in the Preamble are hereby incorporated and made a part of this Ordinance.

SECTION 4: Authority. This Ordinance is passed by the City pursuant to the authority granted to it by the State of Arkansas under A.C.A. §§14-43-602, 14-54-103(1) & (10), 14-54-104, 14-55-101, and 14-55-102.

SECTION 5: Definitions. The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

(a) **“ARKANSAS DEPARTMENT OF HEALTH FOOD ESTABLISHMENT PERMIT”** is a permit issued by the Arkansas Department of Health which is required before any establishment can serve food to Customers or the general public and must meet the required Arkansas State Board of Health Rules and Regulations Pertaining to Food Establishments before the Arkansas Department of Health will issue a Food Establishment Permit.

(b) **“BEVERAGES”** means drinkable, nonalcoholic liquids prepared for immediate human consumption and may be served only in cups, cartons, glasses, bottles, mugs, containers or cans.

(c) **“CATERING TRUCK”** means a truck, van, or similar vehicle from which the vendor has contracted for services with the vendor with a private person to provide foods and beverages that are prepackaged or prepared to a group of people usually at a special event hosted inside or outside in the City.

(d) **“CITY”** means the City of Russellville, Arkansas.

(e) **“COFFEE KIOSK”** means:

- (1) An establishment limited to the preparation and service of coffee based products.
- (2) Items that are offered for sale that are not coffee based drinks must be offered in prepackaged form and not requiring refrigeration.

(f) **”CUSTOMER”** means any person purchasing or obtaining Edible Goods or a Beverage from a Mobile Food Unit or Mobile Food Vendor.

(g) **“EDIBLE GOODS”** shall include, but are not limited to:

- (1) Prepackaged food;
- (2) Prepared food;
- (3) On-site prepared food; and,

(h) **“FARMER’S MARKET”** means the selling of raw produce which is sold by the producer of the raw product, directly to the user of the raw product. The market is comprised of predominantly products produced on the farm such as: fruit, vegetables, meat, eggs, or flowers.

(i) **"FROZEN FOODS"** means any article used for food or drink by consumers: (a) which is processed; (b) which is packaged and preserved by freezing in accordance with good commercial practices at a temperature at which all moisture therein is in a solid state; and (c) which is intended for sale in the frozen state.

(j) **“FROZEN FOODS SALES TRUCK”** means a motor vehicle containing frozen foods within a commercial freezer from which a vendor sells or delivers frozen foods to residential areas within the City

(k) **“ICE CREAM TRUCK”** means a motor vehicle containing a commercial freezer from which a vendor sells frozen prepackaged food products such as ice cream, frozen yogurt, frozen custard, flavored frozen water and similar desserts.

(l) **“LAW”** means applicable local, state, and federal statutes, regulations, and ordinances.

(m) **“MOBILE”** means having the ability to move from one Stationary Location to another Stationary Location and be in the state of being in active, but not necessarily continuous, movement.

(n) **“MOBILE FOOD UNIT”** means any business which sells Edible Goods to Customers from a Stationary Location within the City of Russellville, Arkansas. The term shall include, but not be limited to:

(1) **“MOBILE FOOD TRUCKS”** means any self-contained motorized unit selling items defined as Edible Goods in the City.

(2) **“MOBILE FOOD TRAILERS”** means any enclosed attached or detached trailer which is pulled by a motorized unit, has no power to move on its own and sells items defined as Edible Goods in the City.

(3) **“CONCESSIONS PUSHCARTS”** means any portable vending device, cart or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Motor Vehicles, used for the displaying, storing or transporting of Edible Goods for sale to Customers in the City, and which when set up does not exceed four feet in depth, ten feet in length, and five feet in height, excluding canopy or cover, and is completely self-contained for plumbing and electrical purposes that sells items defined as Edible Goods for sale to Customers in the City.

Any Mobile Food Unit which also engages in activities listed in this Ordinance as General Exceptions or Exclusions shall still be considered a Mobile Food Unit and be subject to the provisions of this Ordinance. Likewise, if a business listed under this Ordinance as a General Exception or Exclusion also engages in activity defined as a Mobile Food Unit, then the business shall be subject to the provisions of this Ordinance.

(o) **“MOBILE FOOD VENDOR”** means any person who works at or within one of the defined Mobile Food Unit terms of this Ordinance who sells Edible Goods to Customers or prepares food on-site from a Mobile Food Unit to sell to Customers within the City for consumption on or off-premise.

(p) **“NONPROFIT ON PREMISE MOBILE FOOD VENDOR”** means a nonprofit organization organized under the applicable nonprofits laws which conducts or permits Mobile Food Vendors to sale items defined as Edible Goods from a Mobile Food Unit within the real estate owned by their not-for-profit organization or conducts or permits sales or donations of

items defined as Edible Goods within the principal place of business of their nonprofit organization.

(q) **“NONPROFIT OFF PREMISE MOBILE FOOD VENDOR”** means a nonprofit organization organized under the applicable nonprofit laws which conducts or permits Mobile Food Vendors to sale items defined as Edible Goods from a Mobile Food Unit outside the real estate owned by their not-for-profit organization or conducts or permits sales or donations of items defined as Edible Goods outside the principal place of business of their nonprofit organization.

(r) **“ON-SITE PREPARED FOOD”** means any food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared on-site within the Mobile Food Unit by a Mobile Food Vendor or other persons that may be purchased by the Customer within the City to be consumed on or off-premises.

(s) **“PERSON”** means an association, a corporation, individual, partnership, or other legal entity, government, or governmental subdivision or agency.

(t) **“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 that may be purchased by the Customer from the Mobile Food Unit to be consumed on or off-premises.

(u) **“PREPARED FOOD”** means any food or beverages which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared by persons off-site from a Mobile Food Unit that may be purchased by the Customer within the City at the Mobile Food Unit from the Mobile Food Vendor to be consumed on or off-premises.

(v) **“PRIVATE PROPERTY”** means any property held by private persons which is used primarily for business, commercial, retail, office space, business park, religious, multifamily or recreational purposes. This shall also include the sidewalks contained within the private property, parking lots, alleys and parking facilities for these Private Property areas.

(w) **“PUBLIC PROPERTY”** means any property owned or maintained by the City or any other public entity or public utility within the police power jurisdictional boundaries of the City.

(x) **“SEASONAL OPERATION”** means an establishment operating on a seasonal basis not to exceed a 150 day period of time per calendar year, limited to the serving of dispensed drinks, coffee, snow cones, shaved ice, and other similar ice based products.

(y) **“SCHOOL PROPERTY”** means any public or private school buildings, public or private school campus, grounds, recreational area, athletic field or other real property owned, used or operated by the Russellville School District or Arkansas Tech University for the administration of any public or private education institution. School Property, for the purposes of this Ordinance shall not include any public or private junior college, college or university or any sixteenth section school land or lieu land on which there is not located a school building, school campus, recreational area or athletic field.

(z) **“SCHOOL SPONSORED ACTIVITIES”** means any school sponsored event for athletic, academic, musical, social or entertainment purpose, attended by students, including

any transportation to and from provided by the school, regardless of whether such activity is held on school property.

(aa) **“SELL”** or **“VEND”** means the act of exchanging, hawking or offering an Edible Good for a profit, in return for a donation or any type of consideration.

(bb) **“SPECIAL EVENTS”** shall mean an activity, festivals, community projects, public events or series of activities, specific to an identifiable time and place or which occur on a periodic basis, most often produced in conjunction with community organizations, or which are specifically approved, endorsed or operated in part by the City or a City independent contractor and held on public or private property.

(cc) **“STATIONARY LOCATION”** means the position of the Mobile Food Unit and a 1000 foot radius from the Mobile Food Unit when not in motion and addressing the public for the purpose of sales.

(dd) **“VENDING DISTRICT”** means the zone or area specifically designated for Mobile Food Units and Mobile Food Vendors.

(ee) **“VENDING MACHINES”** means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of Prepackaged Foods in bulk or in packages without the necessity of replenishing the device between each vending operation.

(ff) **“WHOLESALE DELIVERIES”** means the transportation of Prepackaged or Prepared Foods or Beverages from a producer or distributor to a store, market, retailer or wholesaler, pursuant to orders previously obtained; “Wholesale Deliveries ” does not include selling is done directly by a driver, salesman, vendor or other persons to a Customer.

SECTION 6: Prohibited Acts. It shall be unlawful for Mobile Food Vendor to:

(a) Sell any Edible Goods or Beverages within the City from a Mobile Food Unit without first obtaining a City business permit and registering the Mobile Food Vendor’s Arkansas Department of Health Food Establishment Permit, its Arkansas Department of Finance Sales Tax Permit and sales tax number, photo of the Mobile Food Unit and the Mobile Food Unit’s vehicle identification number, if applicable, with the City business permit clerk when applying for a City business permit.

(b) Sell any Edible Goods or Beverages within the City from a Mobile Food Unit without posting a bond in the sum of not less than One Thousand and No/100 (\$1,000.00) Dollars executed by the Mobile Food Vendor with two or more good and sufficient sureties satisfactory to the Finance Director which bond shall be payable to the City for the use and benefit of any person or persons entitled thereto and conditioned that the principal and sureties will pay all damages to persons caused by or arising from or growing out of any action of the Mobile Food Vendor while conducting business in the City. The bond shall remain in full force and effect for the entire duration of the City business permit and any renewals and for two full years after such permit expires and is not renewed. The bond shall not be required for the sale of goods in interstate commerce.

(c) Sell or vend at a Stationary Location for more than 120 days.

- (d) Return to sell or vend at the same Stationary Location within 120 days of vacating the same site.
- (e) Vend on any City right-of-way, street or sidewalk where vending is otherwise prohibited.
- (f) Vend on private property unless the Mobile Food Vendor has written permission to vend at the Stationary Location the Mobile Food Unit is currently located.
- (g) Vend between 11:30 p.m. through 6:00 a.m. of the following day.
- (h) Leave any Mobile Food Unit unattended on a City right-of-way, sidewalk, street or public property.
- (i) Store, park or leave any Mobile Food Unit overnight on any street, sidewalk, right-of-way or public property.
- (j) Sell Edible Goods or beverages for immediate consumption unless the Mobile Food Vendor has available for public use a litter receptacle which is adequate and available for the vendor's Customer's use and being no more than ten (10) feet distant from Mobile Food Unit.
- (k) Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales made by the Mobile Food Vendor, including but not limited to products spilled on the sidewalk within twenty (20) feet of the Mobile Food Unit location.
- (l) Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the Mobile Food Unit, except that Concession Pushcart Mobile Food Vendors may place sales on the top surface of a single cooler.
- (m) Set up, maintain or permit the use of any table, crate, carton, rack or other device to increase the selling or display capacity of their Mobile Food Unit.
- (n) Solicit or conduct business with persons in motor vehicles on or in the City streets or right-of-ways.
- (o) Sell anything other than that for which a business permit to vend have been issued.
- (p) Sound or permit the sounding of any device which produces a loud and raucous noise or use or operate any loudspeaker, public address system, radio, sound amplifier or similar device to attract the attention of the public. All Mobile Food Vendors shall be subject to and comply with the standards of the City of Russellville Noise Ordinance.
- (q) Violate any law or regulation that pertains to Edible Goods, Beverages or the preparation or selling thereof.
- (r) Vend within fifty (50) feet from a business during the business's hours open to the public, unless the business has given written permission to the Mobile Food Vendor.
- (s) Vend within fifty (50) feet of any driveway entrance to a police or fire station.

- (t) Vend within ten (10) feet of the crosswalk at any intersection, fire hydrant, fire escape, driveway, alley, sidewalk, utility box or vault, disabled ramp, emergency call box, building or business entrance or exit.
- (u) Use temporary lighting on the site where the Mobile Food Unit is operating, except that localized lighting may be used on or in the Mobile Food Unit for the purpose of inside food preparation and menu illumination.
- (v) Allow the Mobile Food Unit or any other item to rest upon, against or hang from any building or structure lawfully placed on public property, without the owner's written permission.
- (w) Vend within one hundred (100) feet of any other Mobile Food Unit.
- (x) Pour waste products (including hot water and drainage from coolers) down a storm drain, ground or stream of water within the City.
- (y) Comply with any enforcement officer of the City who may direct Mobile Food Vendors to move their Mobile Food Unit to another location because of vehicular or pedestrian traffic safety concerns. No Mobile Food Vendor may refuse to comply with a lawful order of a City enforcement officer when the order is given under the authority of this Section.

SECTION 7: Safety Requirements. All Mobile Food Vendors shall comply with the following requirements:

- (a) All equipment installed in any part of the pushcart shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- (b) All utensils shall be stored in a manner to prevent their being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided by the vendor to avoid loose storage of knives and other sharp or bladed instruments.
- (c) Compressors, engines, generators, batteries, battery chargers, gas-fueled water heaters, and similar equipment installed on a pushcart and used in the storage, preparation or vending of food shall be installed so as to be accessible from outside the pushcart.
- (d) All Vendors shall be in compliance with all health rules and regulations, or as otherwise required by law.
- (e) All applicable regulations pursuant to the Americans with Disabilities Act must be met.
- (f) Advertising shall be permitted on the cart only to identify the name of the product or the name of the vendor, and the posting of prices. No signage other than that exhibited on the Mobile Food Unit may be displayed at the site where the Mobile Food Unit is operating. The prohibition shall include any hand-held signage, handbills and temporary signs.
- (g) Equip grease traps in Mobile Food Units which use grease to prepare Edible Goods and properly dispose of used grease compliant with the Arkansas Department of

Environmental Quality and the Arkansas Department of Health Rules and Regulations.

- (h) Equip backflow preventers to any water or sewer connections a Mobile Food Unit has to any type of water or sewer line.
- (i) Dispose of grey water properly and compliant with the Arkansas Department of Environmental Quality and the Arkansas Department of Health Rules and Regulations.
- (j) Register with the City business permit clerk any new Stationary Location a Mobile Food Vendor has moved their Mobile Food Unit. The new registration of the new Stationary Location shall not cost a Mobile Food Vendor a new business permit fee unless the Mobile Food Vendor's current business permit is expired and the business permit is due to be renewed.

SECTION 8: Denial, Suspension or Revocation of Mobile Food Vendor Business Permit. Any business permit of a Mobile Food Vendor for a Mobile Food Unit may be denied, suspended or revoked by the City for any of the following reasons:

- (a) Fraud or misrepresentation made in the course of carrying on the business of the vending operations.
- (b) Conduct of the vendor in such manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
- (c) Conduct which is contrary to the provisions of this Ordinance.
- (d) Failure to display the Arkansas Department of Health Food Establishment Permit conspicuously on the Mobile Food Unit for Customers to see.
- (e) Revocation or Suspension of the Mobile Food Vendor's or Unit's Arkansas Department of Health Food Establishment Permit by the Arkansas Department of Health.

SECTION 9: Vending Districts. The designated vending districts for Mobile Food Vendors and Units shall be based on the zoning classifications of the current City Zoning Code. The approved zones for Mobile Food Vendors and Units to operate are as follows:

- (a) C-1 Central Business District
- (b) C-2 Highway Commercial District
- (c) C-3 Large Scale and Shopping Center Commercial District
- (d) M-1 Light Industrial District
- (e) M-2 Heavy Industrial District
- (f) A-1 Agricultural District

SECTION 10: General Exceptions – Exclusions. The provisions of this Ordinance shall not apply to:

- (a) Special Events.
- (b) Wholesale Deliveries.

- (c) Nonprofit On Premise Mobile Food Vendors and Nonprofit Off Premise Mobile Food Vendors.
- (d) Catering Trucks.
- (e) Seasonal Operations.
- (f) Ice Cream Trucks.
- (g) Vending Machines.
- (h) Coffee Kiosks.
- (i) Farmer's Markets.
- (j) Frozen Foods Sales Trucks.
- (k) School Sponsored Activities on School Property

SECTION 11: Penalties and Enforcement.

- (a) The City shall have the authority to administer and enforce provisions of this Ordinance as may be required by governing law. A Mobile Food Vendor or any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for a violation of this Ordinance.
- (b) Any person violating any provision of this Ordinance shall be declared to have committed a violation and, upon conviction, be fined a sum not exceeding one thousand dollars (\$1,000.00), or double the sum for each repetition of such offense or violation plus court costs and applicable fees. Each day that a provision of this Ordinance is violated shall constitute a separate offense. If it is found that the violation of this Ordinance is continuous in nature with respect to time, the fine or penalty for allowing the continuance thereof shall not exceed five hundred dollars (\$500.00) for each day that it is unlawfully continued plus court costs and applicable fees.
- (c) Nothing in this Ordinance shall be construed as a waiver of the City's right to file a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including but not limited to the following:
 - (i) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
 - (ii) Other available relief.
- (d) All law enforcement officers, code enforcement officers and fire marshals of the City of Russellville are hereby granted the authority to enforce this Ordinance by issuing a citation to the Mobile Food Vendor or any person who violates the provisions of this Ordinance.
- (e) Citations issued by law enforcement officers, code enforcement officers or fire marshals shall be filed with and heard in Pope County District Court, City of Russellville Criminal Division.

(f) A violation may be sentenced as either a criminal violation or a civil violation.

SECTION 12: Severability. It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable and the invalidity of any section, clause or provision or part or portion of any section, clause, or provision of this Ordinance shall not affect the validity of any other portion of this Ordinance.

SECTION 13: Repealer. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed only to the extent of the inconsistency or conflict.

ORDAINED, this 19th day of March, 2015.

RANDY HORTON, MAYOR

ATTEST:

APPROVED AS TO LEGAL FORM:

KATHY COLLINS, CITY CLERK

WILLIAM F. SMITH III, CITY ATTORNEY

I, Kathy Collins, City Clerk of Russellville, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. _____ passed by the City Council of the City of Russellville, Pope County, Arkansas, on the 19th day of March, 2015.

Prepared by:
William F. Smith III
City Attorney
203 South Commerce Street
Russellville, AR 72801
Sponsor: Planning Commission
NB#

SECTION 14: Emergency. Due to the need to regulate Mobile Food Vendors within the city limits of the City of Russellville which shall protect the health, safety, and welfare of the residents and City of Russellville, an emergency is hereby declared and this Ordinance shall be effective immediately upon and after passage.

ORDAINED, this 19th day of March, 2015.

RANDY HORTON, MAYOR

ATTEST:

APPROVED AS TO LEGAL FORM:

KATHY COLLINS, CITY CLERK

WILLIAM F. SMITH III, CITY ATTORNEY

I, Kathy Collins, City Clerk of Russellville, Arkansas, hereby certify that the above and foregoing is a true and correct copy of Ordinance No. _____ passed by the City Council of the City of Russellville, Pope County, Arkansas, on the 19th day of March, 2015.