

ORDINANCE OF THE CITY OF FARMINGTON, MISSISSIPPI
GOVERNING TRANSIENT VENDORS AND MOBILE FOOD
VENDORS

WHEREAS authority was granted unto the City of Farmington, Mississippi pursuant to and in accordance with §75-85-1, et. seq. and §21-19-1, et. seq. and other relevant sections of the Mississippi Code Annotated (1972, as amended), to pass regulations in order to protect and secure the general health, safety and welfare, and to otherwise promote the overall best interest of, the City and its citizenry.

WHEREAS the Board of Aldermen has determined that it is necessary to reasonably enact regulations, in order to protect and secure the general health, safety and welfare of the City and its citizenry, governing certain business aspects of transient vendors and mobile food vendors operating within the municipal limits. These regulations are hereby deemed fair, reasonable and necessary for their stated and intended purpose and these regulations are NOT enacted in order to unfairly or unreasonably restrict trade, commerce or competition.

WHEREAS the Board of Aldermen have maturely considered the aforesaid subject matter and this ordinance and have determined that the said ordinance is not zoning in nature and therefore no public hearing is otherwise required before passage of same and that this ordinance is necessary to promote the general health, safety and welfare of the City and its citizenry, and is permissible according to state law.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Aldermen of the City of Farmington, Mississippi as follows:

Article I: TRANSIENT VENDORS

Sec. 1-1. - Definitions.

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

Person means an individual, corporation, association, partnership or other entity.
Transient business means any business conducted for the sale of merchandise or services that is carried on at a particular location for a period of less than six months in each year, even though the owner of such business may conduct the business at another location for more than six months in each year.

Transient vendor means any person who transacts transient business in this state either in one locality or by traveling from place to place in this state. The term includes a vendor who, for the purposes of carrying on such business, hires, leases, uses or occupies any building, movable structure, motor vehicle, railroad car or real property.

Sec. 1-2. - Application for license.

(a) A transient vendor who desires to transact business in the city shall apply for and obtain a

license. The license application shall be filed with the City Clerk, and must include:

- (1) The name and permanent address of the transient vendor making the application;
 - (2) A statement describing the kind of business to be conducted, the length of time for which the applicant desires to transact the business, and the proposed location of the business;
 - (3) The name and permanent address of the applicant's registered agent or office; and
 - (4) Proof that the applicant has acquired all other required city, county and state permits and licenses. Such proof shall include a state sales tax number and, if the transient vendor desires to transact business in a municipality, such number shall include such municipality's sales diversion code.
- (b) If the applicant is an association or a corporation, the applicant must also include the names and addresses of the members of the association or the officers of the corporation. If the applicant is a corporation, the application must state the date of incorporation and the state in which it was incorporated. If the applicant is a corporation organized under the laws of another state, the applicant must state the date on which the corporation qualified to transact business as a foreign corporation in this state.
- (c) The following exceptions for obtaining a license to conduct transient business shall be made:
- E Solicitations, sales or distributions made by charitable, educational or religious organizations which have their principal place of activity in the City of Farmington. Home occupations approved by the Farmington Board of Aldermen. A business with a central, brick and mortar location within the corporate limits of the City of Farmington. Permitted holiday-related sales for vendors who solely sell fireworks, pumpkins, and Christmas trees at designated locations. Locally grown produce.
 - Civic and nonprofit organizations or wholesale sales to retail merchants by commercial travelers;
 - Wholesale trade shows or conventions;
 - Sales of goods, wares, services or merchandise by sample, catalogue or brochure for future delivery;
 - Fairs and convention center activities conducted primarily for amusement or entertainment;
 - Any general sale, fair, circus, auction or bazaar sponsored by a church or religious organization;
 - Garage sales held on premises devoted to residential use, as otherwise authorized by city regulation;
 - Sales or repairs of crafts or sales or repairs of items made by hand by the person making the crafts or items;
 - Duly licensed flea markets operating from a fixed location;
 - Sales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within Mississippi;
 - Sales of agricultural services.

(d) A transient vendor not otherwise exempted from this chapter is not exempted from this

chapter because of a temporary association with a local dealer, auctioneer, trader, contractor or merchant, or by conducting the transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

Sec. 1-3. - Registered agent for transient vendor; tax collector as agent for service of process.

- (a) Each applicant for a transient vendor license shall designate a registered agent on the license application. The registered agent must be a resident of the municipality for which the license is sought and shall be the agent on whom any process, notice or demand required or permitted by law to be served on the licensee may be served. The registered agent must agree in writing to act as the agent. The license applicant shall file a copy of the agreement with the license application.
- (b) The City Clerk shall maintain an alphabetical list of all transient vendors in the municipality and the names and addresses of their registered agents.
- (c) If a transient vendor who does business in a municipality fails to have or to maintain a registered agent in that municipality or if the designated registered agent cannot be found at the stated permanent address, the City Clerk is the agent of the transient vendor for service of process, notices or demands. Service on the City Clerk is made by delivering to his office duplicate copies of the process, notice or demand. If such a process, notice or demand is served on the City Clerk, he/she shall immediately forward one copy by registered or certified mail to the permanent address of the transient vendor.
- (d) This section does not limit or otherwise affect the right of any person to serve a process, notice or demand in any other manner authorized by law.

Sec. 1-4. - License fee, bond requirements.

- (a) Each applicant for a transient vendor license shall include a license fee of \$250.00 with the application. The applicant shall also execute a cash bond or a surety bond issued by a corporate surety authorized to do business in the state in an amount that is the lesser of either of \$2,000.00 or five percent of the wholesale value of any merchandise or service to be offered for sale by the applicant. The surety bond shall be issued in favor of the state and shall be conditioned upon payment of
 - (1) All taxes due from the applicant to the state or to a political subdivision of the state;
 - (2) Any fines assessed against the applicant or the applicant's agents or employees for a violation of this chapter; and
 - (3) Any judgment rendered against the applicant or the applicant's agents or employees in a cause of action commenced by a purchaser of merchandise or services not later than one year after the date the merchandise or services were sold by the applicant.
- (b) The transient vendor shall maintain the bond during the period that the vendor conducts business in the municipality and for a period of one year after the termination of the business. After the transient vendor furnishes satisfactory proof to the City Clerk that the vendor has satisfied all claims of purchasers of merchandise from or services offered by the vendor and that all sales taxes and other applicable taxes have been paid, the bond shall be released.

Sec. 1-5. - Issuance of license; validity of license; renewal of license.

(a) The City Clerk shall issue a transient vendor license under this chapter only if all requirements of this chapter have been met. The license is not transferable and is valid only within the territorial limits of the issuing county or municipality. A license expires 90 days after the day of issuance.

(b) A license may be renewed on payment of a \$25.00 renewal fee and filing for renewal with the City Clerk before the expiration of the current license. A license may be renewed only one time after which a licensee must once again purchase a new license pursuant to the provisions of MCA § 75-85-13 (1972, as amended).

Sec. 1-6. - Posting of sales tax number, license number and statement concerning sales receipt; vendor to keep running total of sales.

While transacting their business, a transient vendor shall post in a prominent place, so that they may clearly be seen by purchasers of merchandise or services which they are offering, their state sales tax number, their transient vendor license number, and a statement that they are required to give purchasers, at the time of payment, receipts for purchases that include sales tax. The posting required in this section shall be written in bold, legible letters and numbers not less than one inch in height. The transient vendor shall keep a running total of they sales.

Sec. 1-7. - Location and operation.

(a) Due to concerns of public health, safety and welfare, transient business shall only be conducted in locations deemed appropriate by the Board of Aldermen:

- Transient vendors shall not operate on any publicly owned right-of-way or other public lands, except at the City Park or in a location otherwise expressly allowed by the Board of Aldermen, particularly during special events.

The sale of produce is limited to the Farmers Market or to a grocery store with direct affiliation.

- For Mobile Food Vendor Locations, see Article II.

(b) The following conditions of operation shall apply:

- No Transient Vendor shall conduct public solicitation in the City in such a manner that their conduct is contrary to the public interest. No solicitation tactics shall be employed which are coercive, abusive or misleading. No effort may be made by any transient vendor to defraud any individual through the solicitation process. Repeated contact with the same household shall be considered harassment unless invited to return by the homeowner, and such conduct shall be and is hereby prohibited.

Door to door solicitation shall be made only between the hours of 9:00 a.m. and 6:00 p.m. from November through April and 9:00 a.m. to 7:00 p.m. from May through October. Each transient vendor shall carry on his or her person a copy of the registration issued by the City at all times while selling or traveling about the City for purposes of selling or soliciting orders. Individuals may not solicit as a team using another person's registration. As transient vendor registration may be revoked by the Chief of Police for any of the following causes:

- Fraud, misrepresentation, or false statements contained in the registration application or in the course of carrying on sales solicitation;
- Any violation of any provisions of this Ordinance or applicable state law; and

E Conducting business in an unlawful manner, or in such a manner so as to constitute a menace to the health, safety or general welfare of the public.

(c) A registration which is revoked may be appealed before the City of Farmington Board of Aldermen and the operator shall not conduct business until said appeal has been heard. E It shall be unlawful for any person, whether registered or unregistered, while conducting the business of a transient vendor, canvasser, or any other business solicitation, to enter upon any residential premises in the City where the owner, or person legally in charge of the premises has posted, at the entry to the premises, or at the entry to the principal building on the premises, a sign bearing the words "No Solicitors" or words of similar import.

Sec. 1-8. - Penalties for violation of chapter.

Any person who knowingly or intentionally operates a transient business without a valid license as provided by this chapter or who knowingly or intentionally advertises, offers for sale, or sells any merchandise or services in violation of this chapter shall, upon conviction, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500.00 or be imprisoned in the county jail not more than six months, or be both fined and imprisoned. Such person may also be proceeded against by suit, and the tax collector may seize and sell any property of the person liable for the tax and penalty in the same manner as property of taxpayers delinquent for the payment of ad valorem taxes due on personal property may be distrained and sold.

ARTICLE II: MOBILE FOOD VENDORS

Sec. 2-1. - Applicability.

This article shall apply to all mobile food vendors selling food and/or beverages in the City of Farmington.

Sec. 2-2. - Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this section:

Mobile food vendor means any person who sells food and/or beverages from a mobile pushcart or motorized or non-motorized mobile food preparation vehicle on a consistent basis and for a period of more than three (3) days each calendar year.

Mobile food preparation vehicle means any moveable car, van, truck or trailer that includes a self-contained kitchen in which food is prepared, processed or stored and used to sell and dispense food to the consumer. The unit must be on wheels at all times. This definition does not include pushcarts, which is defined below.

Mobile pushcart means any portable vending device, pushcart 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 Transportation, used for the displaying, storing or transporting of food offered for sale by a vendor. Said cart may be up to four feet in width, six feet in length, excluding auxiliary items such as handles or fenders, or otherwise the cart shall not occupy space greater than a total of 24 square feet.

Sec. 2-3. - Permits required for mobile food vending.

(a) All mobile food vendors shall obtain and maintain a City of Farmington Privilege License and a Mobile Food Vending Permit for each mobile pushcart or mobile food preparation vehicle in operation. All applications for permit renewal shall be filed annually with the City of Farmington City Clerk.

The application may be reviewed by any department of the city as may be necessary or convenient to determine whether the application is complete or whether the permit should be granted. Permit applications shall contain the following information:

(1) The name, mailing address, physical address, telephone number(s), and email address of the applicant(s). If any applicant is anything other than a natural person, then all documents related to the creation and maintenance of the entity such as articles of incorporation and any similar relevant documents shall be included.

(2) A valid City of Farmington Privilege license.

(3) A food service permit from the Mississippi Department of Health.

(4) All mobile pushcarts and mobile food preparation vehicles shall be issued a State tax number by the Mississippi Department of Revenue designating them as a City of Farmington business.

(5) An approval from the city fire inspector.

(6) A City of Farmington Property Owner Consent Form for each proposed location of operation.

(7) All permit applicants must operate under a central kitchen within the City of Farmington that is approved by the Mississippi Department of Health for food service. A mobile food vehicle may serve as a central kitchen if approved by the Mississippi Department of Health.

(8) A list of products to be sold.

(9) Proof of a valid insurance policy that provides minimum liability coverage of \$500,000.00 per mobile food preparation vehicle and \$500,000.00 per mobile pushcart, with the city named as an additional insured.

a. If operating a mobile food preparation vehicle, proof of a valid vehicular insurance policy shall be provided to the city.

(10) A written indemnity agreement that will hold harmless the city, its officers, and employees, for any loss or liability or damage, including costs, for bodily injury or property damage sustained by a person as a result of the negligent installation, use, or maintenance of a permitted space.

(11) Copies of all letters and other notices from any governmental, quasi-governmental, professional, or business association or entity, related directly or indirectly to alleged or actual improper conduct in the food service business, issued to applicant or any person who will have responsibility for operations of the mobile pushcart or mobile food preparation vehicle for which a permit is requested. This shall include all related response and follow up documents showing any results, findings or actions.

(12) The dates, jurisdiction, court, and disposition of the following:

- a. All felony charges related to the applicant or any principal of the applicant; and
- b. All misdemeanors and violations directly or indirectly related to food, food preparation, permit operations, and/or business operations, related to the applicant or any principal of the applicant.

(13) Such other additional information required by law, rule, or ordinance, or that any department of the city or board of alderman, or the permit applicant reasonably deems

appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.

- (b) Mobile food vending permits cost \$250.00 annually per vehicle or cart which covers the administrative cost of processing the application and regulating each mobile pushcart or mobile food preparation vehicle.
- (c) Permit holders may be required to remove private materials or accessories to allow utility access for emergency and maintenance operation or both.
- (d) This permit does not allow permit holders to operate during city appointed special events without proper authorization from the special event organizers.
- (e) The permit shall be displayed on the mobile pushcart or mobile food preparation vehicle at all times.
- (f) Permits are non-transferable.
- (g) A damaged or destroyed mobile pushcart or mobile food preparation vehicle may be replaced if and only if approval for its replacement is obtained from the city clerk's office. Any such replacement pushcart or vehicle shall be of substantially the same type, size, and dimension and with the same general characteristics as the original. Such replacement may be disallowed if the original vendor permit would not have approved the use of the replacement pushcart or food preparation vehicle.
- (h) Any permit granted pursuant to this article shall be nonexclusive. The city may grant any number of such permits as the city deems appropriate. The granting of a permit shall not limit or abridge any power or authority of the city and shall not limit the authority of the city to commence appropriate civil, criminal, or other enforcement actions. The city retains full authority to amend the ordinances, rules and regulations that apply to any permit.
- (i) The city may revoke and terminate the permit in the event the vendor violates any term, condition, or provision of the permit, the City of Farmington Code of Ordinances and/or zoning ordinances, state and/or federal law, or if the business license issued by the city for the permitted activity is revoked. The procedures for revoking or terminating a permit shall be the same as revoking or terminating a business license. The revocation may be sought as a remedy in a civil action. The vendor may terminate or surrender the permit at will any time prior to the expiration of the permit by providing written notice to city clerk. Termination of the permit shall not operate to relieve the vendor of the obligation to release, hold harmless, and indemnify the city and its officers, agents, and employees.

Sec. 2-4. - Location and operation.

- (a) Due to concerns of public health, safety and welfare, mobile food business shall only be conducted in locations deemed appropriate by the Board of Aldermen:
 - E Mobile Food Vendors shall not operate on any publicly owned right-of-way or other public lands, except at the City Park or in a location otherwise expressly allowed by the Board of Aldermen, particularly during special events.
 - Mobile pushcarts and mobile food preparation vehicles shall only conduct business on private property, in designated areas approved by the Mayor, Board of Aldermen and Chief of Police.
- (b) Mobile pushcarts and mobile food preparation vehicles shall conform to the following regulations regarding location and operation: (1) Mobile pushcarts and mobile food preparation vehicles must be located on private property

at all times during operation.

a. Proof of said permission must be filed with the city clerk's office.

E (2) A mobile food vendor shall operate Saturday-Wednesday between the hours of 6:00 a.m. and 7 p.m. and Thursday-Friday between the hours of 6:00 a.m. and 9:00 p.m. Cleanup and removal of the pushcart or vehicle shall be completed within 30 minutes of closing. Upon approval, mobile food vendors may operate at fairs, festivals, flea markets, art or craft shows, or concerts during the hours of operation of such an event.

(3) Mobile pushcarts and mobile food preparation vehicles must not be locked or attached to trees, garbage receptacles, or street furniture.

(4) Mobile pushcarts and mobile food preparation vehicles may not locate within 20 feet of any bus stop.

(5) Mobile pushcarts and mobile food preparation vehicles may not locate within any area which would block the view of traffic or traffic signals or traffic signs.

(6) Mobile pushcarts and mobile food preparation vehicles may not locate within ten feet of any fire hydrant.

(7) The operators must be present at all times.

(8) Sales of goods are limited to food and beverage.

a. The sale of alcoholic beverages is prohibited.

(9) In no event shall any mobile pushcart or mobile food preparation vehicle display device, or accessory container be located inside any public building or structure or at any place the general public is prohibited.

(10) Mobile food vendors are responsible for all waste and trash removal. The containment area must be kept clear of grease, trash, paper, cups or cans associated with the operation. No liquid waste or grease is to be disposed of in tree pits or onto sidewalks, streets, or other public places; nor shall it be disposed of in drains or sanitary sewers.

(11) The mobile food vendor shall not provide stands, shelves, bins, equipment, signs, covers, or any kind of accessory or feature unless the same was accurately described and included in the application, and was fairly included in the picture or other graphics required as part of the application.

(12) During the hours of operation, the permit holder shall provide a trash receptacle for use by customers located adjacent to the mobile pushcart or mobile food preparation vehicle in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic.

a. The mobile food vendor shall contain all refuse, trash and litter within the mobile food preparation vehicle.

b. The vendor shall be responsible for the proper disposal of such refuse, trash, and litter, and shall place it in the public trash container, or in any private container with proper permission.

c. The vendor is responsible for all litter and trash within 15 feet of the mobile pushcart or mobile food preparation vehicle at any time the vendor is selling or offering to sell any merchandise or service.

(13) The mobile pushcart or mobile food preparation vehicle must have self-contained utilities and shall not use the city's utilities or private utilities that are not self-contained and integral to the vendor unit.

a. If the mobile food preparation vehicle utilizes a generator, it shall be in compliance with the City of Farmington noise ordinance.

(14) No speakers or other noise production devices are allowed.

- (15) No mobile food vendor shall sell or attempt to sell any item to the occupant of any motor vehicle, unless it is parked in a lawful parking space.
- (16) Mobile pushcarts and mobile food preparation vehicles must comply with all local, state, and federal rules regarding sanitation and protection of food from airborne contamination.
- (17) Every mobile food vendor shall keep records utilizing generally accepted accounting practices for the purposes of compliance with all federal, state and local tax laws.
- (18) All approved mobile pushcarts and mobile food preparation vehicles must pay the two percent sales tax required by all food providers in the City of Farmington, if passed in the future and applicable, along with all other tax and licensing fees required by the State of Mississippi presently or in the future.
- (19) All approved mobile pushcarts and mobile food preparation vehicles must be licensed businesses within the City of Farmington with all operations pertinent to the mobile pushcart or vehicle operated within the City of Farmington.
- (20) All mobile pushcarts and mobile food preparation vehicles must be issued a State tax number by the Mississippi Department of Revenue designating them as a City business.

Sec. 2-5. - Design standards.

- (a) All mobile pushcarts and mobile food preparation vehicles must meet the following design standards:
 - (1) All mobile pushcarts and mobile food preparation vehicles must be capable of independently providing all necessary utilities for operation in order to maintain compliance with all Mississippi Department of Health Codes.
 - (2) Umbrellas or canopies must be attached to the pushcart or vehicle and must not exceed eight feet in height above grade. Maximum diameter of canopies and umbrellas shall not exceed six feet and shall not interfere with pedestrian movement. No mobile pushcart or mobile food preparation vehicle shall have more than two umbrellas.
 - (3) All signage on mobile pushcarts and mobile food preparation vehicles shall comply with the City of Farmington Sign Ordinance.
 - (4) Exterior lighting must be hooded or shielded so that the light source is not directly visible to a residential use.
 - (5) Mobile food vendors may place a maximum of three coolers within their containment area so long as the coolers are neatly stacked to avoid visual clutter.
 - (6) No accessory container shall be more than three feet from the unit.
 - (7) Accessory containers must be made of hard substances such as hard plastic or a metal and may not be made by expanded polystyrene plastic, paper, paperboard, or cardboard.
 - (8) Mobile pushcarts and mobile food preparation vehicles may not be stored, parked or left overnight on city property.

Sec. 2-6. - Violations and penalties.

All mobile food vending must be performed in compliance with said article. Failure to abide by said article shall result in the following:

- (1) A fine not exceeding \$150.00 for a first violation.
- (2) A fine not exceeding \$250.00 for a second violation within one year of any prior violation.
- (3) A fine not exceeding \$500.00 for a third or more violation within one year of the first.

Any offense shall be considered a misdemeanor and is subject to being cited by any authorized law enforcement official in the City of Farmington or with authority to do so in the City of Farmington. Violation of this article may result in the suspension or revocation of any city permit or license issued to the owner or operator of the mobile pushcart or mobile food preparation vehicle. Each day on which an infraction of the article occurs shall be considered a separate and distinct violation. All fines collected shall go to the city's general fund.

REPEALER. That the prior ordinance of the City of Farmington specifically addressing transient vendors and all other prior ordinances or parts thereof in conflict herewith, unless otherwise specifically addressed herein, are hereby repealed. **SEVERABILITY.** That if any article, section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Aldermen hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

CONFLICT. That nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

PUBLICATION. That the Farmington City Clerk is hereby ordered and directed to cause this ordinance, or portion thereof as allowed by law, to be published in a newspaper in general circulation and enrolled in the Ordinance Book of the City, as required by state law.

APPLICABILITY. That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall be in full force and effect from and after thirty (30) days from the date of passage hereof.