

Ord. # 5394

ORDINANCE TO AMEND CHAPTER 16, ARTICLE V, OF THE CITY OF MEMPHIS, CODE OF ORDINANCES, SO AS TO ALLOW SELF-CONTAINED MOBILE FOOD PREPARATION VEHICLES TO OPERATE IN THE CITY OF MEMPHIS

WHEREAS, cities across the country have enjoyed the popularity of street food and that popularity has increased over the past few years; and

WHEREAS, citizens in this community have expressed an interest in the opportunity to establish a mobile food operation venture while others have expressed the desire to have these additional food and location choices; and

WHEREAS, the Council deems it in the best interest of the citizens of Memphis that such mobile food operations be locally regulated as a matter of health and public safety, and for the general welfare of the people.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that **Section 16-176. Definitions**, is hereby amended to include the following terms and definitions:

Commissary - means any State of Tennessee licensed stationary food establishment that serves mobile food dispensers, mobile food facilities, vending machines or other food dispensing operations where (i) food, containers or supplies are stored; (ii) food is prepared or prepackaged for sale or service at other locations; (iii) utensils are cleaned; or (iv) liquid and solid wastes are disposed of or potable water is obtained.

Mobile food preparation vehicle - A mobile food preparation vehicle is any motorized vehicle that includes a self-contained or attached trailer kitchen in which food is prepared, processed or stored and used to sell and dispense food to the ultimate consumer. Mobile units must be mobile at all times during operation. The unit must be on wheels (excluding boats) at all times. Any mobile food unit that removes such wheels or becomes stationary must meet Tennessee Department of Health Regulations 1200-23-1 *et. seq.* in their entirety. This definition does not include pushcarts as regulated by city codes and prohibited from selling potentially hazardous foods by the Tennessee Department of Health, nor vehicles from which only ice cream and other frozen non-hazardous food products are sold, nor vehicles operating under a special event permit.

Menu change - means a modification of a food establishment's menu that requires a change in the food establishment's food preparation equipment, storage equipment or storage capacity previously approved by the Health Department. The term "menu change" shall include, but is not limited to, the addition of potentially hazardous food to a

menu, installation of new food preparation or storage equipment, or increasing storage capacity.

Servicing Area – A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area, there shall be a location provided for the flushing and drainage of liquid wastes separate from the location provided for water servicing and for the loading and unloading of food and related supplies.

SECTION 2. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Section 16-187 is hereby amended to add “16-261” at the end of the section.

SECTION 3. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 16 Section 16-178 is hereby amended to add Mobile Food Preparation Vehicles to the list of Food Establishments with an annual local permit fee of \$150.00 per mobile food unit vehicle.

SECTION 4. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 16 Section 16-257 (a) is hereby amended and replaced to read as follows:

“This section shall not apply wherever huckstering or mobile food preparation vehicles are otherwise regulated in specific chapters or sections of this Code.”

SECTION 5. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 16 is hereby amended to add Section 16-261 which shall read as follows:

Section 16-261. Mobile food preparation vehicles.

Mobile food preparation vehicles shall meet all applicable requirements of this article in addition to the requirements outlined as follows:

- (1) No person shall engage in the business of a mobile food preparation vehicle within the municipal limits without first having obtained a permit required by section 16-178 of the City Code of Ordinances and the State of Tennessee.
- (2) A mobile food preparation vehicle license, as authorized by the State of the Tennessee and local ordinances, will not be issued to a person unless the following conditions are met:

- (a) The vehicle must be specially designed as defined as a mobile food preparation vehicle and be approved by the health authority in addition to meeting the standards as set forth in section 16-208 of the City Code of Ordinances.
 - (b) No person shall engage in the business of a mobile food preparation vehicle without first having obtained a commissary license or having a written commissary agreement, if required by the health authority.
 - (c) Each mobile food preparation vehicle must display number its business name and state and local permit numbers, with letters and numbers at least three (3) inches in height, in a prominent and visible location on the vehicle.
 - (d) The driver of the truck must have a current Tennessee Driver's License, current auto insurance (including liability insurance) and current vehicle registration as required by Tennessee law and enforced by law enforcement authorities.
 - (e) The vehicle can only operate in locations where the operation of motorized vehicles is permitted under local zoning ordinances and enforced by local Code Enforcement authorities
 - (f) All current permits must be posted in a conspicuous manner, in compliance with T.C.A. 68-14-305.
- (3) The health officer shall adopt written rules and regulations for mobile food preparation vehicles for the purpose of interpretations of this article.

SECTION 6. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, that Chapter 16 is hereby amended to add Section 16 -262 which shall read as follows:

Section 16-262. Operational requirements.

- (1) When legally parked on a city street, alley and other public thoroughfares in an allowed zoning district, mobile food preparation vehicles shall park for no less than 30 minutes and shall not exceed a total of six hours in any one block, with food service available for no more than four hours of that time. The mobile food vendor must then provide a minimum break from that location of one hour.
- (2) When parked on private property with the permission of the property owner, a mobile food preparation vehicle may operate at the times and for the duration provided in its permission by the property owner.
- (3) No mobile food preparation vehicle shall be equipped with any external electronic sound-amplifying device.
- (4) No operator of such vehicle shall park or stand such vehicle within 300 feet of a school or school playground in a residential district while school is in session, unless an agreement is established with such school.

(5) When legally parked on a city street, alley and other public thoroughfare in an allowed zoning district, no such vehicle shall park or stand within 300 feet of any principal customer entrance to a restaurant outside of the Central Business Improvement District (CBID) during its posted hours of operation, unless a signed waiver, with a stated duration, has been obtained from all restaurants which are within a 300 foot radius of that parking location. For any restaurant within the CBID, this distance shall be 50 feet, unless a similar waiver is obtained from all restaurants within that lesser distance. Restaurant, for purposes of this section, means any public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink are prepared and served to the public for consumption on or off the premises pursuant to the required licenses. Such establishments include, but are not limited to, restaurants, bars, lounges, coffee shops, cafeterias, dining rooms, eating houses, short order cafes, luncheonettes, grills, tearooms and sandwich shops. All measured distances and distance requirements addressed in this regulation shall be distances measured in a straight line from the nearest edge of the mobile vehicle or trailer to the nearest edge of the object from which the mobile vehicle or trailer is to be distant.\

When legally parked on private property, the distance requirements established above shall still be applicable if a restaurant is present on adjacent or abutting property, unless a signed waiver, with a stated duration, has been obtained from all restaurants on adjacent or abutting property which are within a 300 foot radius of that parking location on private property. For any restaurant within the CBID, this distance restriction shall be 50 feet, unless a similar waiver is obtained from all restaurants within that distance located on adjacent or abutting property.

(6) When legally parked on a city street, alley and other public thoroughfares in an allowed zoning district, no sale shall be made from such vehicle except from the curb side.

(7) Cooking must not be conducted while the vehicle is in motion.

(8) Mobile food preparation vehicle shall be parked only at its commissary or any other location approved by the Health Department that does not violate an applicable city ordinance.

(9) No detached signs are permitted. All signs used must be permanently affixed to, or painted on, the mobile food preparation vehicle and shall extend no more than six inches from the vehicle. No sign shall flash, cause interference with radio, telephone, television or other communication transmissions; produce or reflect motion pictures; emit visible smoke, vapor, particles, or odor; be animated or produce any rotation, motion or movement. A sign on which the message is changed electronically not more than one time per eight seconds shall not be considered to be an animated sign or a sign with movement, but is classified as a changeable copy sign. Changeable copy signs shall be permitted, but the total area of such signs on the vehicle, when parked and the vehicle is set up to operate, must not exceed 30 square feet. Any message on a changeable copy sign shall have an instantaneous change of message with no fading, fly-in, dissolve or

other feature used. The change of message rate on digital signs shall be limited to no more than once every 8 seconds. No sign shall utilize any exposed incandescent lamp with a wattage of more than forty (40) watts, any revolving beacon light; or a luminance in excess of three hundred fifty (350) foot lamberts measured at the sign face.

(10) Vendor must provide for the sanitary collection of all refuse, litter and garbage generated by the patrons using that service and remove all such waste materials from the location before the vehicle departs. This includes physically inspecting the general area for such items prior to the vehicle's departure.

SECTION 7. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Chapter 16 is hereby amended to add section 16-263 to read as follows:

Section 16-263 Food requirements

(1) All food shall be protected from contamination and the elements while being stored, prepared, displayed or sold at a mobile food preparation vehicle and during transportation to or between such establishments or vending machine locations, and so shall all food equipment, containers, utensils, food-contact surfaces and devices and vehicles, in accordance with the provisions of this chapter and the rules and regulations of the Health Department.

(2) All foods to be used, prepared, cooked, displayed, sold, served, offered for sale or stored in a food establishment, or during transportation to or between locations shall be from sources approved by the health authorities of the point of origin and must be clean, wholesome, free from spoilage, adulteration, contamination or misbranding and safe for human consumption. The standards for judging wholesomeness for human food shall be those promulgated and amended from time to time by the United States Food and Drug Administration, United States Department of Agriculture, the Tennessee Department of Health and the Tennessee Department of Agriculture and published in the United States Code of Federal Regulations and the Tennessee Code Annotated or the Tennessee Rules and Regulations. Such laws will be adopted by reference when approved and deemed effective as of the date designated by the above government agencies or the appropriate legislative body approving such changes.

(3) The only milk or milk products which may be used as food ingredients shall be pasteurized Grade A milk or milk products from sources approved by the Health Department. All pasteurized milk and fluid milk products shall be sold in the individual original containers in which they were received from distributor and shall be stored at a temperature of 41 degrees Fahrenheit or less until sold.

(4) Raw shellfish, including oysters, clams and mussels, with the exception of properly prepared fish for sushi, shall not be sold or distributed, unless such item has received specific authorization from the Tennessee Department of Agriculture and the Shelby County Health Department.

(5) All meats, meat food products, poultry and poultry products used in cooking, offered for sale, sold or prepared shall be from sources inspected and approved by the United States Department of Agriculture, the State of Tennessee Department of Agriculture or the state or local department of health and shall be plainly marked, tagged or stamped to indicate the source, and the inspection and approval.

(6) All hermetically sealed foods shall have been processed in approved food-processing establishments. The use, preparation, display, sale or storage of home-canned foods is prohibited and no other foods which have been processed in a private home or other than in an approved food-processing establishment shall be stored, used, kept for sale or served in a food establishment or automatic food-vending machine.

(7) The use of newspaper or any unclean paper for the purpose of wrapping food is forbidden.

(8) The Health Officer may augment such requirements when needed to assure the service of safe food and may prohibit the sale of certain potentially hazardous food.

SECTION 8. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Chapter 16 is hereby amended to add section 16-264 to read as follows:

Section 16-264 Food handler requirements

All food handlers shall meet the standards as set forth in T.C.A. § 53-8-108, Tennessee Department of Health Rules and Regulations, and City Code of Ordinance Chapter 16, Article 1, Division II, section 16-201 through section 16-203.

SECTION 9. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Chapter 16 is hereby amended to add section 16-265 to read as follows:

Section 16-265 Equipment standards.

All mobile food preparation vehicles shall meet the standards as set forth in Tennessee Department of Health Rules and Regulations, and City of Memphis Code of Ordinance Chapter 16, Article 1, Division II, section 16-213, 16-214, 16-215 and 16-216.

SECTION 10. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Chapter 16 is hereby amended to add section 16-266 to read as follows:

Section 16-266 Maintenance of premises.

All Mobile food preparation vehicles shall meet the standards as set forth in T.C.A. § 53-8-102, T.C.A. § 53-8-103, Tennessee Department of Health Rules and Regulations, and

City of Memphis Code of Ordinance, Article 1, Division II, section 16-205, 16-206, 16-207, 16-209, 16-210, 16-211 and 16-212.

SECTION 11. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Chapter 16 is hereby amended to add section 16-267 to read as follows:

Section 16-267 Vehicle sanitation requirements.

- (1) Each vehicle shall be constructed so that the portions of the vehicle containing food shall be covered so that no dust or dirt will settle on the food; and such portions of the vehicles which are designed to contain food shall be at least 18 inches above the surface of the public way while the vehicle is being used for the conveyance of food.
- (2) The food storage areas of each vehicle shall be kept free from rats, mice, flies and other insects and vermin. No living animals, birds, fowl, reptiles or amphibians shall be permitted in any area where food is stored and
- (3) Hazardous non-food items such as detergents, insecticides, rodenticides, plants, paint and paint products that are poisonous or toxic in nature shall not be stored in the food area of the vehicle.
- (4) The vehicle shall be enclosed with tops and sides.
- (5) The vehicle shall not be used for any purpose other than for the purpose described in this chapter.

SECTION 12. BE IT FURTHER ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS that Chapter 16 is hereby amended to add section 16-268 to read as follows:

Section 16-268 Zoning Districts

- (1) Mobile food preparation vehicles are allowed to operate on sites and city streets, alleys and other public thoroughfares within the Office General (OG); Commercial Mixed Use 1, 2 and 3 (CMU-1, CMU-2 and CMU-3); Central Business (CBD); Campus Master Plan – 1 and -2 (CMP-1 and CMP-2); Employment (EMP); Warehouse and Distribution (WD) and Heavy Industrial (IH) zoning districts; the South Central Business Improvement Special Purpose District (SCBID) and the Mixed Use (MU), Neighborhood Center Overlay (NC), Uptown Hospital (UH) and Uptown Light Industrial (ULI) districts of the Uptown Special Purpose District. In addition, mobile food preparation vehicles are allowed to operate on public and private school sites within residential zoning districts with written authorization from the school.
- (2) Mobile food preparation vehicles must operate at least 1,000 feet from permitted special events locations and permitted Farmer's Market locations and the mobile food

preparation vehicle shall not operate within 2 hours before or after a scheduled, permitted event or Farmer's Market, unless the vendor has received specific authority to operate from the event or Farmer's Market officials. Mobile food preparation vehicles may not operate within 300 feet of FedEx Forum or Autozone Park when events are being conducted or within two (2) hours before or after such event.

(3) Approval to operate a mobile food preparation vehicle within all residential and residential work districts, or parks, except as provided below, shall require approval of a special use permit from the Land Use Control Board and the legislative body, subject to the provisions of Chapter 9.6 of the Memphis and Shelby County Unified Development Code.

a. Mobile Food Vendors shall be authorized to operate in any park under a management agreement with the City or County Government under terms and conditions established by those entities authorized by the City or County for such park management activities as to the times and locations within the park and additional fees charged for such vendors.

b. Written authorization for activities within such parks by the management group shall be provided by the food vendor upon request by local or state authorities.

(4) Regulation of this section shall be performed by law enforcement and Shelby County Code Enforcement

SECTION 13. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 14. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the office of the Mayor in writing by the Comptroller, and become effective as otherwise provided by law.

THE FOREGOING ORDINANCE
5394 PASSED
1st Reading 3-15-11
2nd Reading 4-5-11
3rd Reading 4-19-11
Approved Bill Moore
Chairman of Council
Date Signed: _____
Approved: [Signature]
Mayor, City of Memphis
Date Signed: 05-06-2011
I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.
Valerie C. Sipes
Comptroller