

AN ORDINANCE TO AMEND APEX TOWN CODE CHAPTER 13, ARTICLE IV
RELATED TO TRANSIENT AND MOBILE FOOD VENDORS

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX AS FOLLOWS:

Section 1. That Article IV of Chapter 13 of the Town of Apex Code of Ordinances is hereby amended to read as follows:

Sec. 13-60. - Definitions.

For the purposes of this article, the following terms are defined as follows:

Food means any raw, cooked, or processed edible substance or beverage prepared for human consumption, including condiments and prepackaged foods.

Mobile Food Unit means any stationary cart; Pushcart; trailer mounted on a chassis but without an engine; or vehicle mounted food establishment designed to be readily moved and vend food.

Mobile Food Vendor means any person who operates a Mobile Food Unit.

Person means natural persons, corporations and all business or other entities of any kind.

Pushcart means a mobile piece of equipment or vehicle which serves foods which have been prepared, pre-portioned, and individually pre-wrapped at a restaurant or commissary.

Temporary Business means a business that vacates the vending site outside of the hours allowed for sales in this article.

Transient Vending means engaging in a Temporary Business of selling and delivering goods, and for this purpose, using or occupying any building or premises; provided that merely associating a transient business with a permanently established business does not exclude it from this definition.

Sec. 13-61. - Permit required.

It shall be unlawful for any person to engage in Transient or Mobile Food Vending in the town without first obtaining a permit issued by the town police department unless an exemption applies under section 13-69.3 of this article.

Mobile Food Vendors shall maintain permits required by the applicable county health, environmental services, or food and sanitation departments and comply with all state department of health and human services, division of health services regulations.

Sec. 13-62. - Location standards.

Transient and Mobile Food Vendors are allowed to operate only at locations that are in accordance with the following standards:

- (a) On private property with written permission from the property owner to operate on the owner's property;

- (b) On town-owned, public property as designated in this article with the prior written approval of the town manager or designee. Persons vending in town parks must also comply with sections 13-52(13) and 13-53(b) of the Town Code of Ordinances;
- (c) Except as otherwise provided herein, Mobile Food Vendors are prohibited from vending in any residentially zoned area;
- (d) No Transient or Mobile Food Vendor shall operate from, or leave a Mobile Food Unit unattended on, any public right-of-way, required buffer, paved or traveled portion of a street, handicapped space, or fire lane;
- (e) No Transient or Mobile Food Vendor shall locate within any area in such a way as to impede or interfere with pedestrian or vehicular traffic and shall not obstruct or block the entrance or exit of any building. Vendors shall observe all regulations established by the Americans with Disabilities Act.

Sec. 13-63. - General operating standards.

- (a) Transient and Mobile Food Vendors may only operate between the hours of 6:00 a.m. to midnight.
- (b) Mobile Food Vendors shall have approval from the health department of the county in which the food vendor's associated commissary restaurant is located.
- (c) Mobile Food Vendors shall provide and maintain at least one adequate trash receptacle with lid for their customers' use which is located no more than ten feet from the Mobile Food Unit and shall remove and dispose of any trash within ten feet of the Mobile Food Unit prior to leaving the location.
- (d) Mobile Food Vendors shall have the following fire extinguishers readily available during hours of operation: minimum Class 2A, 10B or C rated extinguisher. If food preparation involves deep frying, a Class K fire extinguisher must also be readily available. Fire extinguishers must be maintained pursuant to NFPA Standard for portable fire extinguishers and any other applicable standards.
- (e) Mobile food vendors shall maintain a minimum of 10 feet of clearance from buildings, structures, vehicles, and any combustible materials on all sides of the Mobile Food Unit when in service.
- (f) Mobile Food Vendors shall not permit the Mobile Food Unit's Liquid propane (LP) gas to exceed 200 gallon individual or aggregate capacity.
- (g) Use of Mobile Food Unit's LP gas containers shall be within 12 years of the date of manufacture and must be requalified for service every five years thereafter. Expired LP gas containers shall be removed from service.
- (h) Mobile Food Vendors whose units utilize LP gas shall contain carbon monoxide and propane leak detectors.

- (i) Generators or other sources of ignition shall be at least five feet from LP gas tanks. Where minimal distance cannot be met, a metal partition between the tank and generator must be installed to satisfy this requirement.
- (j) Mobile Food Vendor's must submit the Mobile Food Unit to a fire inspection to be conducted by a Town of Apex Fire Marshal.
- (k) No Mobile Food Vendor shall erect an outdoor seating area for dining, including, but not limited to, tents, tables, chairs, booths, bar stools, benches, and stand-up counters.
- (l) Any continuous amplified sound or music is prohibited. Any other amplified sound or music must comply with section 14-31 of the Town Code of Ordinances.
- (m) All signage must comply with the town Unified Development Ordinance ("UDO").
- (n) No Transient or Mobile Food Vendor shall operate a drive-through window.
- (o) No Transient or Mobile Food Vendor shall sell anything other than what the vendor received a permit to sell.
- (p) No Transient or Mobile Food Vendor shall violate any federal, state, or local law, rule, or regulation while operating.
- (q) Transient and Mobile Food Vendors shall display in clear view of customers, and present upon demand of a police officer or town employee, the permit issued as part of this application process while engaged in transient or mobile food vending in the town.

Sec. 13-64. - Vendor permit application.

Prior to engaging in transient or mobile food vending in the town, the Mobile Food Vendor ("Applicant") shall submit to the police department (the "Department") a permit application on a form to be made available by the Department, which shall provide all of the following information and documentation:

- (a) The name, permanent address, and phone number of the Applicant;
- (b) Proof of date of birth, address and identification of the Applicant, to be provided through a driver's license or other legally recognized form of photo identification;
- (c) The name, permanent address and phone number of the business;
- (d) A brief description of the activity to be conducted and a description of the goods, wares, merchandise, food, beverages, periodicals, items, or services to be sold or offered for sale;
- (e) The proposed dates, hours, and location for the proposed transient or mobile food vending;
- (f) A description of, and a copy of current registration and insurance for, any vehicle, pushcart, and/or trailer to be used in connection with the proposed transient or mobile food vending, including the size, year, make, model, color, and license number;

- (g) Written permission to use the proposed location signed by the property owner and containing contact information for the property owner, and if applicable, written permission to park any vehicle(s) involved in the transient or mobile food vending on the property overnight, if the property is not owned by the Applicant;
- (h) Proof of possession of any license or permit which, under federal, state or local laws or regulations, the Applicant is required to have in order to conduct the proposed business, or which, under any such law or regulation, would exempt the Applicant from the licensing requirements of this article;
- (i) A copy of all other licenses or permits, including but not limited to, a privilege license and county health or environmental services permit, obtained by the Applicant in connection with the proposed transient or mobile food vending;
- (j) The signature of and sworn verification of the application's contents by the Applicant; and
- (k) Mobile Food Units must successfully pass a fire inspection completed by a Town of Apex Fire Marshal conducted no more than 30 days prior to the permit application date.

The Department shall make copies of all IDs or other credentials relied upon by the Applicant.

Sec. 13-65. - Fees.

For each permit, the Applicant shall pay a nonrefundable fee to cover the cost of the town's processing the application and investigating the facts stated therein. The fee shall be payable to the Town of Apex and shall be paid at the town finance department and the Applicant must submit the receipt to the Department at the time of submittal of the application. The application fee shall be the amount specified in the annual budget ordinance each year for each proposed Transient and Mobile Food Vendor.

Sec. 13-66. - Application review and permit issuance.

- (a) Upon receipt of an application, the chief of police or designee (hereinafter "chief of police") shall review the application and conduct an investigation to determine whether the standards of sections 13-64 and 13-67 are met.
- (b) If the chief of police finds the application meets the standards of sections 13-64 and 13-67, the chief of police shall endorse his approval on the application and shall, upon payment of the prescribed fee, issue the permit and make it available for the Applicant to pick up. The chief of police shall make his determination within five business days of submission of the application.
- (c) The permit shall show the name of the Applicant, the name and address of the business, the class of permit issued, the kind of goods and services to be sold, the date issued, and the expiration date. The permit shall also show the permit number and identifying description of any vehicle to be used in carrying on the business for which the permit is issued.

Sec. 13-67. - Standards for issuance or denial of permit.

- (a) If the application meets all of the following standards, it shall be approved and a permit shall be issued, if not the application shall be denied:
- (1) The application is complete and does not contain false, misleading, or inaccurate information;
 - (2) The Applicant proposing to engage in the transient or mobile food vending may lawfully do so;
 - (3) The location and time of the proposed transient or mobile food vending would not endanger the safety and welfare of the vendors or their customers;
 - (4) There is proof as to the authority of the Applicant to serve as an agent to the principal; and
 - (5) The Applicant shall not have been denied a permit under this article within the immediate past year, unless the Applicant can and does show to the satisfaction of the chief of police that the reasons for such earlier denial no longer exist.
- (b) In the case of denial, the chief of police's denial and the reasons for denial shall be noted on the application, and the Applicant shall be notified that his application is denied and that no permit will be issued. Notice shall be mailed to the Applicant at the address shown on the application form, or at the Applicant's last known address.

Sec. 13-68. - Permit expiration.

All permits shall expire one year following the date issued. Applicants can apply for a new permit to run consecutively with an active permit no more than ten business days prior to the expiration of an active permit.

Sec. 13-69. - Transfer prohibited.

It shall be unlawful for any person to transfer use of a Transient or Mobile Food Vendor permit to another Applicant or business name.

Sec. 13-69.1. - Permit revocation.

- (a) Any permit issued under this article may be revoked by the chief of police for any of the following reasons:
- (1) Fraud, misrepresentation or false statement contained in the permit application;
 - (2) Fraud, misrepresentation or false statement made by the permittee in the course of transient or mobile food vending;
 - (3) Transient or mobile food vending contrary to the provisions contained in the permit;
 - (4) Conducting transient or mobile food vending in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public; or
 - (5) The existence of any circumstance that would have been grounds for denial of the application when it was first submitted.

- (b) A permit that has been revoked and any associated therewith shall be immediately surrendered to the Department.

Sec. 13-69.2. - Appeals.

An Applicant may appeal the denial or revocation of a permit by submitting a written notice of appeal to the town manager, specifying with particularity the grounds upon which the appeal is based. An appeal shall be submitted no later than ten business days from the date of the denial or revocation of the permit in question. The town manager or designee shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties, and shall render a decision within a reasonable time. The town manager's decision shall be the town's final decision.

Sec. 13-69.3. - Exceptions to provisions.

All Transient and Mobile Food Vendors are required to adhere section 13-63 *General Operating Standards* of this Ordinance. However, Transient or Mobile Food Vendors are exempt from applying for and obtaining a permit if they meet one of the following:

- (a) The sale of farm or dairy products by the producer of said products;
- (b) Organizations or representatives of organizations organized and operated exclusively for educational, benevolent, religious, fraternal, charitable or civic purposes which have been granted 501(c)(3) tax exemption by the Internal Revenue Service and not operating for profit, and where such sales are made without remuneration compensation of any kind to the seller, and such sale or offering by children under the age of 18 years who are students in a public or private school for school activities;
- (c) Actions undertaken at the prior request or invitation of the resident or occupant of the premises visited with the sole purpose of providing services to the resident or occupant and not open to the public;
- (d) Actions undertaken at the prior request or invitation of an appointed member of an incorporated Home Owner's Association (HOA) on the premises under the jurisdiction of the HOA with the sole purpose of providing services to the members of the HOA and not open to the public;
- (e) Transient or Mobile Food Vendors who have been approved by an organizing body to participate in a one-time, town council approved, special event;
- (f) Transient or Mobile Food Vendors who have been approved by the organizing body of a town approved farmer's market;
- (g) Applicants who have applied for and been issued a temporary use permit by the town to perform the vending operations addressed by this article and who would otherwise meet the definition of Transient or Mobile Food Vendor under this article.

Sec. 13-69.4. - Violations.

- (a) It shall be unlawful for any person to violate any provision of this article or to violate any term or condition of a permit issued pursuant to this article.

- (b) In addition to any criminal enforcement, the town or any individual may pursue any available civil remedies deemed appropriate and necessary.

Sec. 13-69.5. - Severability.

The provisions of this article are declared to be severable. If any section, sentence, clause or phrase shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses or phrases of this article, and they shall remain in effect, it being the legislative intent that this article shall remain in effect notwithstanding the validity of any part.

Section 2. The Town Clerk and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the terms of this Ordinance.

Section 3. Effective Date. This ordinance shall be effective upon adoption.

Introduced by Council Member: _____

Seconded by Council Member: _____

This the _____ day of _____, 2019

Lance Olive
Mayor

ATTEST:

Donna B. Hosch, MMC, Town Clerk

APPROVED AS TO FORM:

Laurie L. Hohe
Town Attorney