

ORDINANCE _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, CREATING A NEW MESA CITY CODE TITLE 5, CHAPTER 4 ENTITLED “MOBILE FOOD VENDORS” REQUIRING THE LICENSE AND REGULATION OF MOBILE FOOD VENDORS.

WHEREAS, the City Council is authorized to enact and enforce laws and regulations on mobile food units and mobile food vendors unless otherwise prohibited by law, including as allowed pursuant to Arizona Revised Statutes §§ 9-485, 9-485.01, 9-485.02, and 36-1761.

WHEREAS, the City Council recognizes that mobile food vendors create opportunities for economic development and can provide a variety of food at various locations and events which may not otherwise be available to the public.

WHEREAS, the City Council seeks to protect the public health, safety, and welfare through reasonable regulations intended to minimize potential traffic safety threats caused by mobile food vendors who may impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view and access of pedestrians and vehicle operators, and encourage pedestrians to cross or enter the street in an unsafe or illegal manner.

WHEREAS, the City Council seeks to protect the public health, safety, and welfare by enacting reasonable regulations on mobile food vendors and mobile food units that operate throughout Mesa at a variety of events and locations and interact with a large cross section of citizens, including safety standards, parking regulations, and compliance with health and sanitation rules.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1. Mesa City Code Title 5, Chapter 4, entitled “Mobile Food Vendors” is created as follows:

CHAPTER 4 MOBILE FOOD VENDORS

SECTION:

- 5-4-1: PURPOSE AND ADMINISTRATION**
- 5-4-2: DEFINITIONS**
- 5-4-3: COMPLIANCE WITH STATE LICENSING REQUIREMENTS**
- 5-4-4: LICENSING REQUIREMENTS**
- 5-4-5: OPERATIONAL REQUIREMENTS**
- 5-4-6: FEES**
- 5-4-7: VIOLATIONS; SUSPENSION; REVOCATION**
- 5-4-8: PENALTIES**

5-4-9: APPEALS

5-4-1: PURPOSE AND ADMINISTRATION

- (A) The purpose of this Chapter is to protect the public health, safety, and welfare by establishing reasonable regulations of mobile food units and mobile food vendors and their employees, agents, and independent contractors, requiring compliance with minimum safety and security standards as well as health and sanitation rules, and to promote the safe and orderly operations of mobile food vendors in the City.
- (B) It is the duty and responsibility of the Licensing Administrator to administer the provisions of this Chapter. The Licensing Administrator will issue, deny, suspend, and revoke licenses as required by this Chapter as well as issue notices in accordance with Section 5-4-7(D) and enforce civil violations in accordance Section 5-4-8(B). An application for a license will be granted or denied within the timeframes established by the Licensing Administrator. Pursuant to these duties, the Licensing Administrator has the authority to create rules, regulations, and policies related to mobile food vendors, mobile food units, and licenses consistent with the purpose of this Chapter.

5-4-2: DEFINITIONS

The terms of this Chapter have the below meanings, whether or not the term is capitalized, unless the context requires otherwise. Words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. Definitions set forth in this Section 5-4-2 apply only to this Chapter and do not affect and are not to be applied to any other Mesa City Code.

APPLICANT: A person who applies for a license pursuant to this Chapter and who, upon approval of the application, will be the licensee.

A.R.S.: Arizona Revised Statutes.

CONTROLLING PERSON: A natural person who either (1) has a ten percent (10%) or greater interest in the ownership or earnings of the business, or (2) is any of the following:

- (A) An officer, director, or any stockholder who owns ten percent (10%) or more of a corporation licensee/applicant;
- (B) A general partner of a limited partnership licensee/applicant or partner of a non-limited partnership licensee/applicant;
- (C) A member of a limited liability company/corporation licensee/applicant; or
- (D) The sole proprietor of a sole proprietorship licensee/applicant.

CITY: The City of Mesa, Arizona.

DESIGNATED AGENT: The person designated by the licensee/applicant to receive notices from the City pursuant to this Chapter.

DIRECTOR: The City’s Business Services Director or designee.

HEARING OFFICER: The City staff person responsible for hearing appeals under this Chapter, or other such individual contracted with the City to hear appeals under this Chapter.

LEGAL PARKING SPACE: An area in the City right-of-way that is designated or permitted by law for vehicle parking, whether paved or unpaved and whether or not delineated by road surface markings. Legal parking space does not include a parking space in a parking lot on property owned by the City.

LICENSE: A mobile food vendor license issued to a person in accordance with the provisions of this Chapter.

LICENSEE: The person who applied for a license pursuant to this Chapter and in whose name such license was issued by the City pursuant to this Chapter.

LICENSING ADMINISTRATOR: The City’s Business Licensing and Revenue Collections Administrator, or such City employee who supervises the Licensing Office.

MOBILE FOOD UNIT: A food establishment that is licensed by this state, that is readily movable, and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any “vehicle” as that term is defined by A.R.S. § 28-101(77).

MOBILE FOOD VENDOR: A person who owns, controls, manages, or leases a mobile food unit or a person who contracts with another person to prepare food from, vend from, drive, or operate a mobile food unit.

OPERATIONAL ITEM: Any item or equipment used or associated with the operation of a mobile food unit including, but not limited to, trash receptacle, queue, lighting, shade structure, display, signage, and any dining area including, but not limited to, table, chair, booth, bar stool, bench, and standup counter.

PERSON: An individual, firm, partnership, joint venture, association, corporation, any other group or combination acting as a unit, or any other entity of whatever kind or nature.

RESIDENCE: A dwelling unit, facility, building, or any other improvement identified in the residential use classifications in Mesa City Code 11-86-2.

RIGHT-OF-WAY: As defined by Mesa City Code 9-1-1.

SCHEDULE OF FEES AND CHARGES: The City’s then current schedule of fees and charges approved by the City Council.

5-4-3: COMPLIANCE WITH STATE LICENSING REQUIREMENTS

It is unlawful for a person to operate a mobile food unit or act as a mobile food vendor without a valid license from the Arizona Department of Health Services pursuant to A.R.S. § 36-1761.

5-4-4: LICENSING REQUIREMENTS

- (A) It is unlawful for a person to operate a mobile food unit or act as a mobile food vendor at any location within the City without a valid license issued pursuant to this Chapter and all other licenses and permits required for the lawful operation of such business.
- (B) A separate license is required for each mobile food unit; however only one (1) license is required for multiple mobile food units, provided that: (1) the controlling persons for all of those mobile food units are the same, and (2) all of those mobile food units operate under the same business entity and conduct the same business activity.
- (C) A license is valid for a period of one (1) year from the date of issuance/renewal so long as the licensee and every applicable mobile food unit are in compliance with this Chapter. A license is non-transferable and non-assignable. Any attempted transfer or assignment will void the license and all fees paid will be forfeited.
- (D) A person desiring to obtain a new or renewal license must apply to the City by presenting a complete application on the forms prescribed by the Licensing Administrator and accompanied by the applicable fees prescribed in the schedule of fees and charges to the Licensing Administrator. The application must include, but not be limited to:
 - (1) The names, addresses, and contact information for the applicant and for each controlling person and designated agent;
 - (2) A general description of the goods to be sold;
 - (3) A description, license plate number, and photograph of each mobile food unit;
 - (4) A valid driver's license issued to the applicant;
 - (5) The transaction privilege tax license numbers issued to the applicant by the City and the State of Arizona;
 - (6) A copy of the commercial vehicle registration required by the Arizona Department of Transportation for each mobile food unit; and
 - (7) A copy of all permits required by the Maricopa County Environmental Services Department.
- (E) Following receipt of the required documents and fees, all applications will be submitted to the City Police Department for investigation and criminal record review on behalf of the City Licensing Office. The Police Department will receive and review the criminal history record information resulting from the criminal records check, including conviction and non-conviction data, of each applicant and controlling person for the purpose of evaluating the fitness of licensees and controlling persons in connection with the issuance, renewal, suspension, and revocation of a license. The Police Department evaluation and the criminal information obtained must be used only for the purpose of supporting or defending a denial,

non-renewal, suspension, or revocation of a license.

- (F) Complete renewal applications must be submitted to the Licensing Administrator no later than forty-five (45) calendar days prior to the expiration of a license; otherwise, the license will be deemed expired and non-renewable. If the renewal application is not received as stated above, the licensee must submit an application for a new license and provide all information and fees required for a new license application.
- (G) A licensee must update the Licensing Administrator in writing of any change to any information provided in an application including, but not limited to, the information listed in Subsection (D) above, within ten (10) calendar days of occurrence of the change. If a controlling person is added, an investigation and criminal record review will be performed pursuant to Subsection (E) above.
- (H) The Licensing Administrator may refuse to issue a new or renewal license for any of the following reasons:
 - (1) The application was incomplete, the application was not timely submitted, the applicant made false or misleading statements to City staff during the application process, the application contains false or misleading statements, or a fee required by the schedule of fees and charges was not paid;
 - (2) The applicant or a controlling person, within the one (1) year period immediately preceding the submission of the application, failed to update application information pursuant to Subsection (G) above;
 - (3) The applicant or a controlling person is currently in violation of this Chapter;
 - (4) The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City;
 - (5) The applicant or a controlling person failed to comply with any federal or state law or regulation applicable to the operation of a mobile food vendor or mobile food unit including, but not limited to, those promulgated by the Arizona Department of Health Services, Maricopa County, or the Mesa City Code; or
 - (6) The applicant or a controlling person, within the ten (10) year period immediately preceding the submission of the application, was convicted of any of the following:
 - (a) Felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, or any preparatory offenses of the aforementioned crimes;
 - (b) Felony involving a fraudulent or dishonest act;
 - (c) Felony involving the sale, manufacture, or transportation of any dangerous drug as defined in A.R.S. § 13-3401, a “violent crime” under A.R.S. Title 13, Chapters 11, 12, or 13, a “sexual offense” under A.R.S. Title 13, Chapter

14, or for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this Subsection; or

- (d) Felony or misdemeanor involving moral turpitude.

5-4-5: OPERATIONAL REQUIREMENTS

- (A) It is unlawful for a person to operate a mobile food unit or act as a mobile food vendor at any location within the City in violation of this Section 5-4-5 or the City Zoning Ordinance set forth in Mesa City Code Title 11.
- (B) Fire Safety. A licensee must operate all its mobile food units in compliance with the Mesa Fire Code set forth in Mesa City Code Title 7 and state law relating to fire and explosion safety standards.
- (C) Annual Inspection. A mobile food unit equipped with cooking equipment or an appliance that produces smoke or grease-laden vapors, consistent with Section 319 of the International Fire Code, must be inspected annually by the City Fire Department for compliance with the Mesa Fire Code, or the licensee must provide evidence the mobile food unit passed such a fire inspection by a fire department of another municipality in this state within the preceding twelve (12) months.
- (D) Location.
 - (1) A person must operate a mobile food unit and any operational item a minimum distance of twenty-five (25) feet from a lot or parcel containing a residence, distance to be measured in a straight line from all points along the property line of the subject property to the nearest point of the mobile food unit and operational item, unless:
 - (a) The mobile food unit is vending solely ice cream products or similar frozen food novelties, is operating in a right-of-way in compliance with Subsection (E) below or on a private street in a manner that does not impede the flow of traffic, and is not parked within three hundred (300) feet of the same location for more than one (1) hour at a time during an eight (8) hour period;
 - (b) The mobile food unit is operating on private property with the express permission of that private property owner; or
 - (c) The mobile food unit is parked directly adjacent to a private property, either in a right-of-way in compliance with Subsection (E) below or on a private street in a manner that does not impede the flow of traffic, with the express permission of that private property owner.
 - (2) Private Property. A mobile food vendor must obtain the express permission of the private property owner to operate a mobile food unit on that private property.

- (3) City Property. A person must operate a mobile food unit in a legal parking space in a right-of-way, unless:
 - (a) The mobile food vendor has a separate licensing for use, services contract, or similar agreement, which will be entered into at the City's sole discretion and in accordance with applicable law; or
 - (b) The mobile food vendor has a special event permit or similar permission in accordance with the Mesa City Code.
- (4) Airports and Public Transit. A person must not operate a mobile food unit at any City airport or public transit facility unless the mobile food vendor has entered into separate licensing for use agreement or similar services agreement with the City, which will be entered into at the City's sole discretion and in accordance with applicable law.
- (E) Parking. This Subsection applies to a mobile food unit operating in the right-of-way.
 - (1) A mobile food unit must operate and park in a legal parking space in a location that allows for parking.
 - (2) A mobile food unit and any operational item collectively must not use more than one (1) marked legal parking space when such lines are drawn unless the mobile food vendor has a separate agreement with the City to use additional marked legal parking spaces.
 - (3) A mobile food unit exceeding twenty-four (24) feet in length must not park diagonally in a diagonal parking space and must not park in any manner that occupies more than one (1) diagonal parking space.
 - (4) A mobile food unit must not operate with the serving window facing street traffic.
 - (5) A mobile food unit must abide by all parking regulations, including posted time limits. If there are no time restrictions on the use of a marked legal parking space, a mobile food unit must not occupy a legal parking space for more than six (6) hours in a twenty-four (24) hour period. "Occupy" within this Subsection means within one thousand (1,000) feet of the place in which the mobile food unit was initially parked.
 - (6) A mobile food unit must not occupy a legal parking space at a site with insufficient parking capacity as prescribed by applicable law and in compliance with A.R.S. Title 9, Chapter 4, Article 7.2 and includes that a mobile food unit must not occupy a legal parking space at a site when the occupation reduces the number of available parking spaces required for the principal use or uses of the site.

- (7) A mobile food vendor must not claim or attempt to establish any exclusive right to park at a particular location unless the parking space is part of a City permitted event.
- (F) Refuse, Trash, and Litter Maintenance. A mobile food vendor must:
 - (1) Provide a minimum of one (1) fifteen (15) gallon trash receptacle within fifteen (15) feet of each individual mobile food unit for customers and employees;
 - (2) Ensure the area around the mobile food unit is clear of litter, garbage, rubble, and debris; and
 - (3) Transport the trash from the area of operation of the mobile food unit to an authorized waste disposal location.
- (G) Noise Restrictions. A mobile food vendor and each mobile food unit must comply with the noise regulations set forth in Mesa City Code Title 6, Chapter 12.
- (H) Security.
 - (1) A mobile food unit, all operational items, and the surrounding vending area must be maintained in a safe and clean manner at all times.
 - (2) A mobile food unit must have adequate lighting to ensure customer safety in the surrounding vending area. Lighting must be directed downwards and away from the street, right-of-way, and adjacent property.
 - (3) A mobile food unit, all operational items, and its customers must not obstruct the movement of pedestrians or other vehicles using the sidewalk, street, alley, or right-of-way.
- (I) Signs. A mobile food vendor and each mobile food unit must comply with the sign ordinance in Mesa City Code Title 11, Article 5.
- (J) Insurance.
 - (1) If a mobile food unit operates at an event sponsored by the City or operates on public property, including right-of-way or property owned by the City, the mobile food vendor must obtain insurance naming the City as an additional insured in amounts required by the City and in compliance with A.R.S. Title 9, Chapter 4, Article 7.2.
 - (2) The insurance company issuing the policy required under Subsection (1) must be authorized to issue commercial liability policies in Arizona by the Arizona Department of Insurance.

- (3) The policy must designate, by manufacturer's serial or identification number, all mobile food units for which coverage is granted.
- (4) The policy must insure the person named in the policy and any other person using the mobile food unit with the express or implied permission of the named insured against any liability arising out of the ownership, maintenance, or use of the mobile food unit in Arizona.

5-4-6: FEES

The following new and renewal licensing and application fees must be paid for each mobile food unit in the amounts prescribed in the schedule of fees and charges: (1) application fee and (2) annual license fee.

5-4-7: VIOLATIONS; SUSPENSION; REVOCATION

- (A) It is a violation of this Chapter for any person to provide false information on any license application.
- (B) It is a violation of this Chapter for a person to operate a mobile food unit that fails to meet all the requirements of this Chapter.
- (C) It is a violation of this Chapter for a mobile food vendor to fail to display the license or any other required document, including proof of insurance, fire inspection, permit from Maricopa County Environmental Services Department, and license from Arizona Department of Health Services, to a police officer or other City official on demand.
- (D) The Licensing Administrator must give written notice of a violation to the licensee or designated agent that may result in the suspension or revocation of the license and/or a civil penalty. The notice must include a description of the violation, the statutory or code reference, how the licensee can comply with the requirements, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the license. The notice must be served on the licensee or designated agent by either personal service or registered/certified mail. Service of the notice will be deemed complete upon mailing to, or personal service on, the licensee or designated agent.
- (E) The licensee or designated agent receiving a notice under this Section may request a hearing pursuant to Section 5-4-9 below. If the licensee fails to comply with the requirements of this Chapter by the date provided in the notice and does not request a hearing, then the Licensing Administrator may suspend or revoke the license as provided in this Section.
- (F) In addition to any penalties set forth in this Chapter, a license will be suspended if, during the term of the license, the licensee or a controlling person has violated any of the provisions of this Chapter. During the suspension period, the licensee must not operate any mobile food unit associated with the suspended license. If a fine is associated with the

violation that is the basis for suspension, the suspension may continue beyond the period set forth in this Subsection until the fine is paid. The penalty for a suspension of a license will be:

- (1) For the first suspension of a license during a twenty-four (24) month period, the license will be suspended up to fourteen (14) calendar days and a fine will be imposed in the amount prescribed in the schedule of fees and charges.
 - (2) For the second suspension of a license during a twenty-four (24) month period, the license will be suspended a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days and a fine will be imposed in the amount prescribed in the schedule of fees and charges.
 - (3) For the third suspension of a license during a twenty-four (24) month period, the license will be revoked.
- (G) In addition to a revocation for a third suspension as set forth in Subsection (F) above, the Licensing Administrator may revoke a license if the Licensing Administrator or other City official determines that:
- (1) A mobile food unit associated with a suspended license was operated in the City during the suspension period;
 - (2) A licensee, designated agent, or controlling person, following the issuance of a license, is convicted of any offense listed in Section 5-4-4(H)(6);
 - (3) A licensee, designated agent, or controlling person operated or attempted to operate a mobile food unit without a valid license;
 - (4) A licensee or designated agent was previously issued three (3) or more notices of suspension or violation within a twenty-four (24) month period;
 - (5) A licensee, designated agent, or controlling person has not complied with a provision of this Chapter or has failed to provide information as required by this Chapter;
 - (6) The application fee or license fee prescribed in the schedule of fees and charges or any transaction privilege tax has not been paid; or
 - (7) A licensee failed to pay outstanding fines or resolve any violations.
- (H) If a license is revoked pursuant to this Section, the licensee and each controlling person must not apply for a license for a period of one (1) year from the date of revocation.

5-4-8: PENALTIES

- (A) Each calendar day any violation of any provision of this Chapter continues will constitute a separate offense.
- (B) Civil Penalty. Among other penalties that may apply, including revocation or suspension of a license (when applicable), a violation of any provision of this Chapter that is not designated in this Chapter as unlawful will be a civil code offense which may be adjudicated and enforced by the City civil hearing process set forth in Section 5-4-9.
- (C) Criminal Penalty. Among other penalties that may apply, including revocation or suspension of a license (when applicable), any person who violates any provision of this Chapter that is designated as unlawful will be charged with a Class One Misdemeanor. If found guilty, such person may be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed six (6) months, or by both such fine and imprisonment.

5-4-9: APPEALS

- (A) Any party aggrieved by a decision of the Licensing Administrator may appeal the decision by requesting a hearing within ten (10) calendar days of issuance of the decision. The appeal must be in writing, state the grounds for the appeal, and be sent to the Director. The failure of an appeal to meet the requirements of this Subsection will entitle the Director to deny the appeal without further review.
- (B) If an appeal meets the requirements of Subsection (A), the Director will schedule a hearing with a Hearing Officer. The hearing will be held within thirty (30) calendar days of receipt of the appeal and the Hearing Officer will render a decision within sixty (60) calendar days of the hearing. The filing of an appeal meeting the requirements of Subsection (A) will suspend the decision of the Licensing Administrator until the Hearing Officer has rendered their decision. Any suspended decision of the Licensing Administrator, if upheld by the Hearing Officer, will be reinstituted and dated as of the original date the decision was issued by the Licensing Administrator; however, if the decision pertained to a period of suspension and such period of time has already passed, in whole or in part, the Hearing Officer may designate the period of suspension in accordance with this Chapter.
- (C) All proceedings before a Hearing Officer will be informal and without a jury, except that testimony must be given under oath or affirmation. The technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. Prehearing discovery will not be permitted, unless the Hearing Officer determines good cause exists otherwise. The Hearing Officer is authorized to make such orders as may be necessary or appropriate to fairly and efficiently determine the truth and decide the appeal at hand.
- (D) If either party to the appeal is aggrieved by the decision of the Hearing Officer, the aggrieved party may file a complaint of special action in an Arizona Superior Court with the proper jurisdiction to review the Hearing Officer's decision within thirty (30) calendar days after a final decision of the Hearing Officer has been rendered. Failure to bring the

action within thirty (30) calendar days will constitute a waiver of any right to judicial review of the Hearing Officer's decision.

- (E) A decision of the Licensing Administrator, if not appealed, will be the City's final decision on a matter pursuant to this Chapter. If the decision of the Licensing Administrator is properly appealed to a Hearing Officer, the decision of the Hearing Officer will be the City's final decision on the matter pursuant to this Chapter.

SECTION 2. RECITALS. The recitals above are fully incorporated in this Ordinance by reference.

SECTION 3. EFFECTIVE DATE. The effective date of this Ordinance shall be thirty (30) days following adoption by the City Council.

SECTION 4. PRESERVATION OF RIGHTS AND DUTIES. This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

SECTION 5. SEVERABILITY. If any section, Subsection, sentence, clause, phrase, or portion of this Ordinance or any part of the material adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, this 17th day of May, 2021.

APPROVED:

Mayor

ATTEST:

City Clerk