



Legislation Text

File #: ID-44-18, Version: 1

Department of Community Development

Reference: Article 5-98 of the Municipal Code - Mobile Vendors Amendment

To: Mayor Kenneth J. Kreutzer and Members of City Council

Through: Holly Prather, AICP - Community Development Director

Marv Falconburg, AICP - Assistant City Manager

Philip Rodriguez, City Manager

Prepared By: Joshua M. Tetzlaff, AICP - Associate City Planner

Date Prepared: January 9, 2018

PURPOSE

City staff is requesting that the City Council amend the current mobile vending regulations found in Article 5-98 of the *Municipal Code*. This amendment would further align the Code with the changing environment of mobile vendors and would allow the City to be a leader in how mobile vendors are regulated. This amendment would also allow the City's residents further options when it comes to shopping and dining in Brighton.

BACKGROUND

The *Municipal Code* contains provisions for mobile vending that were written in 2004. Under those vending regulations, all mobile vendors are treated the same, regardless of what they are selling. This means that whether a person is selling appliances, selling insurance, or someone making and selling street tacos, they have to abide by the same regulations. While these regulations worked for Brighton at that time, the national trend has been for mobile vendors to become more accepted in communities. Not only is it a national trend, but staff has also heard from Brighton residents regarding the starting of potential food truck businesses and under our current regulations, operations would be very limited. With all these factors, in April 2017, staff brought a proposal before City Council to get direction on how to proceed. At that study session meeting, City Council directed staff to proceed with an amendment to the mobile vending code to bring it up to the trends of the industry.

Since that time, City staff has worked with various entities, both internal City departments and external agencies such as TriCounty Health, as well as holding a meeting with downtown business owners, to write a draft of the code that meets the direction from City Council. The new draft of the mobile vending code has been attached to this staff report and clearly defines what is allowed and is not allowed, creating a predictable environment for both vendors and the City staff who needs to regulate the vendors.

SUMMARY OF PROPOSED CODE AMENDMENT

Staff recommends Section 5-98 the "Brighton Municipal Code" is repealed in its entirety and readopted to read as follows:

Article 5-98 - Outdoor Vending

Sec. 5-98-10. - Definitions.

The following definitions as used in this Article:

Licensee/Permittee shall mean a person who has been issued an Outdoor Vending License or Outdoor Vending Permit under the provisions of this Article.

City Block shall mean the smallest area that is completely surrounded by public rights-of-way, or access easements that act as public rights-of-way, not to include alleys.

Commissary shall mean a commercial kitchen that is approved as such under the laws and regulations of the State and County that govern retail food establishments.

Commissary-prepared shall mean food that is prepared, cooked, or assembled, or any combination of these, in a Commissary, and is intended for consumption at another establishment or place.

Food shall mean any product sold for human consumption, the sale of which is not prohibited by law.

Outdoor Vendor (or Vendor) shall mean any person, whether as owner, agent, consignee, or employee who sells or attempts to sell, or who offers to the public free of charge any services, goods, wares, or merchandise, including, but not limited to, food or beverage, from any outdoor location, except that *Outdoor Vendor* shall not include a person who:

1. Vends from property owned by the City, if such vending is pursuant to a concession agreement or other agreement with the City.
2. Vends at a yard sale; provided, however, that this exception shall not apply to a person who has vended at four (4) or more previous yard sales in the current calendar year.

Public Right-of-way shall mean all streets, roadways, bikeways, sidewalks, and all other areas reserved for present or future use by the public, as matter of right, for the purpose of vehicular or pedestrian travel.

Vend (or vending) shall mean the sale, attempt to sell, or offering to the public of any services, goods, wares, or merchandise.

Vending Unit shall mean any motorized or non-motorized vehicle, trailer, kiosk, pushcart, or other nonpermanent structure or device from which outdoor vending occurs.

Yard sale shall mean the offering of goods for sale from an informal stand or display on an individual lot whose primary land use is residential in nature by or with consent of the owner or resident of the lot, provided that such owner or resident is not in the business of selling at retail or wholesale the goods offered at the yard sale. *Yard sale* shall include, but is not be limited to, yard sales, garage sales, lemonade stands, and bake sales. Any additional sales of food items prepared in a private home are prohibited by law with the exception of those allowed under the Colorado Cottage Food Act.

Sec. 5-98-20. - License and/or Permit Required.

1. It is unlawful for any person to engage in the business of an Outdoor Vendor, as defined in this Article, within the corporate limits of the City, without first obtaining a license as provided in this Article.
2. In addition to a license, all outdoor vending on property not considered Public Right-of-Way, including but not limited to private property, public parks, and schools, is required to obtain a location specific permit as provided in this Article, except for outdoor vending within a City park or other City facility as a concessionaire approved by the City pursuant to a facility-specific permit issued by the City; or at a special event for which a vendor license and special event permit have been issued.
3. Any person who arranges for, or allows, one (1) or more Outdoor Vendors to operate at a special event must obtain an Outdoor Vendor license and permit under this Article. Upon issuance of such license and permit, the Outdoor Vendor(s) vending at said special event shall be relieved of the obligation to obtain individual licenses under this Article in order to operate as part of said event.
4. Each Licensee or Permittee shall prominently display the license and/or permit issued hereunder in a location readily visible to the public on each Vending Unit or at the special event.

5. For the vending of food, documentation of regulatory approval as a retail food establishment by the Tri County Health Department is required. The Community Development Director may request and require such additional information or documentation as he/she deems necessary in order to consider the application and make the required determinations as set forth in this Article. The timeframe for review of any application shall be extended during the pendency of any such request for additional information.

Sec. 5-98-30. - Application for License and/or Permit; License and/or Permit Modifications.

1. An application for a license and/or permit under this Article shall be submitted to the Community Development Department no less than twelve (12) business days prior to the first day of the proposed operation.
2. A license issued under this Article is valid for the calendar year in which it is issued.
3. A permit issued under this Article is valid for a time period not to exceed thirty (30) days. Any extensions to this maximum time period shall be reviewed by the Community Development Director based on the specific circumstances of the proposed vending permit application.
4. Applications for an Outdoor Vendor license or special event permit will not be accepted or thereafter processed unless all required supporting documents and submissions have been received by the Community Development Director. The Director, in the Director's sole discretion, may waive the submission of any document upon the prior request of the applicant.
5. A completed application, the form of which shall be furnished by the Community Development Department (as may be updated from time to time), shall include the following and such other information as required:
 - (a) Name, address, and telephone number of the applicant and, if other than the applicant, name, address and telephone number of the person managing or supervising the applicant's business during the proposed period of operation;
 - (b) Type of operation to be conducted, including the particular type of service, goods, ware or merchandise to be sold;
 - (c) A description of the design of any Vending Unit, vehicle, pushcart, kiosk, table, chair, stand, box, container or other structure or display device to be used in the operation by the applicant, including the size and color, together with any logo, printing or sign which will be utilized by the applicant, and the license plate and registration information for any vehicle to be used;
 - (d) The proposed period of operation, if less than the entire calendar year license period, or less than the thirty (30) day permit period;
 - (e) The proposed hours and days of operation;
 - (f) An address or legal description for each location on private property where the Vending Unit will be operated, acceptable to the Community Development Director;
 - (g) Written consent of the property owner if the location for which the application is made is on property that is not Public Right of Way;
 - (h) Proof of liability insurance as required by the Community Development Director, based on established City requirements published by the City's Procurement Department;
 - (i) Such fees as shall be set forth in the City's Annual Fee Resolution in effect at the time of application. No fees shall be refunded in whole or in part should the application be denied or withdrawn;
 - (j) Documentation of a current sales and use tax license in good standing issued by the City;
6. The fees to be paid to the City under Section 5(i) above for the issuance, modification, or renewal of any license or permit pursuant to this Article shall be set by the resolution of the City Council and shall remain in effect until such resolution is amended by action of the City Council.
7. The transfer of a license to a new or different licensee, or the modification of a location, shall not be allowed under an approved application. A new application will be required.
8. A request for a modification of a license and/or permit to add vehicles, individuals, operations, or locations, or to modify other license restrictions or conditions, as applicable, shall be submitted to the Community Development Department and shall meet all of the requirements and be reviewed in the same manner as an application for a new license and/or permit.

Sec. 5-98-40. - Specific Procedures.

Applications shall be considered individually and in chronological order as established by the date of receipt of a properly completed application.

An application for a license and/or permit for Outdoor Vending has the following specific procedures:

1. *Application Review.* Upon receipt of a formal application, the Community Development Director or designee will conduct an internal review and may forward copies of the application to any pertinent internal and external agencies for review and comment.
 - (a) *Complete Application.* Within two (2) business days of the filing of an application, a determination shall be made whether the application is complete according to the application requirements. The applicant shall be notified of any deficiencies in incomplete applications, and shall be granted a reasonable time in which to cure said deficiencies.
 - (b) *Review by Applicable Departments and Agencies.* Upon determination of a complete application, the application shall be dispersed for review to the applicable departments and agencies. Any comments from the City shall be returned to the applicant within ten (10) business days of a complete application determination.
 - (c) *Decision.* If no revisions to the application are required by the reviewing departments or agencies, the Community Development Director or designee shall grant approval or denial of the application within ten (10) business days after a complete application determination. A delay in decision, for any reason, shall not be deemed grounds for approval of the application.

Sec. 5-98-50. - Restrictions for Operation within the Public Right-of-Way.

All Outdoor Vendors operating within the Public Right-of-Way within the City of Brighton shall adhere to the following restrictions:

1. All posted parking requirements or restrictions shall be adhered to.
2. No Licensee or Permittee shall operate for more than five (5) hours in one (1) location within a twenty-four (24) hour time period, unless otherwise granted approval by the Community Development Director.
3. Each Licensee or Permittee shall provide for waste collection and shall pick up and dispose of any paper, cardboard, wood or plastic containers, wrappers, or any litter that is deposited within twenty-five (25) feet of the Vending Unit, permitted location, or within twenty-five (25) feet of the point of any sale or transaction, including litter that is not a direct result of the outdoor vending. The Licensee / Permittee shall carry a suitable container for the placement of such litter by customers or other persons.
4. Other than a suitable container for placement of litter, no Licensee or Permittee shall set up any structures, canopies, tables, chairs, or other equipment that is not attached to the Vending Unit.
5. Each Licensee / Permittee shall maintain in safe condition any Vending Unit, vehicle, structure, device, or any other similar item described in the license, so as not to create an unreasonable risk of harm to the person or property of others.
6. No Licensee or Permittee shall leave unattended any Vending Unit while in the Public Right of Way.
7. A Vending Unit shall not obstruct the movement of pedestrians or other vehicles and shall not be:
 - (a) Parked or placed within fifty (50) feet of any intersection;
 - (b) Parked or placed within twenty (20) feet of any marked crosswalk.
8. Each Licensee or Permittee may only operate in areas where parallel parking is allowed and must serve the public from the sidewalk and not from the street or adjacent parking spaces.
9. No Licensee or Permittee shall operate within two hundred (200) feet of a City Park without first obtaining written approval from the Parks and Recreation Department Director. Said written approval must be available for inspection at any time during vending operations.
10. In the Downtown zone district, the following additional restrictions shall apply:
 - (a) Vendors must be associated with an existing business in the Downtown zone district, and must be able to present written proof of that association at any time.
 - (b) Vendors must be located on the same city block as the business with which they are associated.
 - (c) Vending Units cannot operate within the extension of any building entranceway, doorway, or driveway.
11. In Residential zone districts, the following additional restrictions shall apply:

- (a) Vendors are only allowed to operate where parallel parking is allowed.
- (b) Vendors of food may only serve commissary-prepared, packaged and ready-to-eat, or commercially pre-packaged food in individual servings. Food is not allowed to be cooked from the vending unit.
- (c) Vendors cannot stop to vend for more than fifteen (15) minutes in any particular cul-de-sac or on any particular City Block.
- (d) Vendors may only operate between the hours of 10:00 a.m. and 8:00 p.m.

Sec. 5-98-60. - Restrictions for Operations outside the Public Right-of-Way.

All Outdoor Vendors operating on land that is not considered Public Right-of-Way, including but not limited to private property, public parks, and school district property, shall adhere to the following restrictions:

- 1. All Licensees / Permittees must have written permission from the property owner for the parcel on which the vending will take place. Said written permission must be submitted with the application and be available for inspection at any time while vending operations are taking place.
- 2. All Vending Units shall be required to apply for and be approved for a license and permit for vending.
 - (a) All permits will define the location and allowed operating time for vending.
- 3. All vendors operating in Public Parks must receive written permission from the Parks and Recreation Director, to be submitted with the corresponding permit application and be available for inspection at any time while vending operations are taking place.
- 4. All vendors operating on school district land must receive written permission from the School District, to be submitted with the corresponding permit application and available for inspection at any time while vending operations are taking place.
- 5. In Residential zone districts:
 - (a) No property may host a Vending Unit more than one (1) day per calendar month.
 - (b) Vendors may only operate between the hours of 10:00 a.m. and 8:00 p.m.
 - (c) Yard sales shall not operate for a period longer than three (3) consecutive days.

Sec. 5-98-70. - Suspension or Revocation.

Licenses and permits issued pursuant to the provisions of this Article may be revoked or suspended by the City Council after notice for any of the following causes:

- 1. Fraud, misrepresentation, or false statement(s) contained in the application for license or permit;
- 2. Fraud, misrepresentation, or false statement(s) made in the course of carrying on the business for which the license or permit is issued;
- 3. Any violation of a City ordinance or state statute; and
- 4. Conduct of the business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace or danger to the health, safety or general welfare of the public.

To not create any inconsistencies in the code, it would also be necessary to make a few minor changes to other sections of code. Because of this, staff recommends Article 5-48-10(1) of the "Brighton Municipal Code" is repealed in its entirety and readopted to read as follows to ensure all references to this section are updated:

- (1) Excluding *Outdoor Vendors*, as defined in Section 5-98-10, *canvasser* or *solicitor* means an individual, whether a resident of the City or not, traveling either by foot, wagon, automobile, motor truck, or any other type of conveyance from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property, or any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has carried or exposed for sale a sample of the subject of such sale or whether he or she is collecting advanced payments on such sales or not; provided that such definition includes any person who, for himself or herself, or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, hotel room, lodge house, apartment, shop, or any other place within the City of the sole purpose of exhibiting any samples and taking orders for future delivery.

Staff also recommends Section 17-24-40 of the "Brighton Municipal Code" is repealed in its entirety. This section of code speaks to temporary sales stands not being allowed except by a special permit. Staff is recommending removing this

section of Code so that all code pertaining to vending outdoors is found in the same area of the Code. These two minor changes will assure the code is consistent across its entirety regarding outdoor vendors.

PLANNING COMMISSION RECOMMENDATION

On December 12, 2017, the Planning Commission reviewed the proposed code amendment. After discussion to ensure they understood what the changes would and would not allow, the Planning Commission voted to recommend approval of the code amendment as it was presented. That recommended version is the one included in this packet.

STAFF RECOMMENDATION

As mobile vendors become more common across the Front Range, it is important the City has regulations that are able to meet both citizen needs and industry needs. Staff believes the proposed Code amendment does that and recommends approval of the amendment.

OPTIONS FOR COUNCIL CONSIDERATION

- Approve the Ordinance on first reading as drafted;
- Approve the Ordinance on first reading with changes;
- Continue the item to a date certain if more information is needed; or
- Deny the Ordinance as drafted.

ATTACHMENTS

- Ordinance (Draft)
- Planning Commission Resolution (Signed)
- Newspaper Notification of Public Hearing