

ORDINANCE 2013-10

AN ORDINANCE AMENDING CORVALLIS MUNICIPAL CODE CHAPTER 8.13, "MOBILE FOOD UNITS", AND CHAPTER 8.03, "FEES CHAPTER", AS AMENDED

THE CITY OF CORVALLIS ORDAINS AS FOLLOWS:

Section 1. Municipal Code Chapter 8.13 is hereby amended as follows:

Chapter 8.13 Mobile Food Unit Siting Policy.

Sections:

- 8.13.010 Purpose.**
- 8.13.020 Permit required.**
- 8.13.030 Definitions.**
- 8.13.040 Permit fee.**
- 8.13.050 Permit application.**
- 8.13.060 Location rules and review criteria.**
- 8.13.070 Forms and conditions of permit.**
- 8.13.080 Denial, revocation or suspension of permit.**
- 8.13.090 Penalties.**

Section 8.13.010 Purpose.

The purpose hereof is to permit mobile food units to be sited on private property in the Central Business Zone and Riverfront Zone on a year-round basis, notwithstanding any local regulation to the contrary. The City finds that mobile food units encourage a pedestrian-oriented environment, help to create a visually attractive atmosphere and streetscape, and promote overall commerce.

Section 8.13.020 Permit required.

Use of a private property to accommodate one or more mobile food units on a year-round basis in the City is prohibited unless a permit is obtained from the Building Official as provided herein. Permits may only be issued to mobile food unit operators or agents for private properties in the Central Business Zone or Riverfront Zone that are not required parking.

Section 8.13.030 Definitions.

- 1) Abutting property owners and occupants – Any owner or occupant of property which abuts the subject site, excluding public right-of-way.
- 2) Accessible Route – A continuous unobstructed path of travel connecting all publicly accessible elements and spaces of a building or facility.
- 3) Adjacent sidewalk area – That portion of the public sidewalk between the curb line and the property line demarcated by extending the side building lines of the premises until they intersect the curb.
- 4) Clearances – Clearances as referenced in this section are measured horizontally from the outside edge of the subject property line to any obstruction on the ground greater than one-half inch in height, or to an adjacent projection. Accessible route clearances shall be no less than four (4) feet in

width and no less than seven (7) feet in height for the entire length of the accessible route. Radiuses along an accessible route shall be no less than four (4) feet in width.

5) Mobile food unit – A vehicle that is propelled, or can be pulled or pushed down a sidewalk, street, or highway, on which food is prepared, processed, or converted, or is used in selling and dispensing food to the customer. Mobile food units are limited in size to sixteen (16) feet in length and/or 128 square feet. Towing arms, tow hitch and tongue are exempted from this calculation.

6) Operator of mobile food unit– Any person, partnership, corporation, association, or other business entity operating a mobile food unit.

7) Property owner - Owner or agent of a private property in the Central Business Zone or Riverfront Zone where mobile food units are proposed to be located.

8) Substantiated – Witnessed and recorded by City staff.

Section 8.13.040 Permit fee.

1) Applicants for a permit to allow operation of one or more mobile food units on private property shall pay an administrative site plan review fee and an infrastructure impact fee.

2) The fee for the permit as described in Section 8.13.020 shall be as specified in Chapter 8.03. Infrastructure Impact fees are annual and shall be payable at time of permit issuance.

Section 8.13.050 Permit application.

1) Application for a permit to allow siting of one or more mobile food units on a private property shall be made at the Development Services Division on a form provided by the Building Official. Application for a permit will minimally contain:

a) A completed application;

b) A scaled plan of the proposed area for mobile food units to be located, with dimensions shown to include at a minimum:

- total square foot area of area proposed for mobile food unit use and circulation,
- total number and locations of mobile food units on the site,
- consistency with all setback and separation requirements as specified in Section

8.13.060, below,

- ADA clearances into and throughout affected areas of the property,
- size, location, and clearances of customer seating areas, if proposed,
- number and location of waste receptacles,

2) Information shall be provided as required by the Building Official to carry out the purpose hereof.

Section 8.13.060 Location rules and review criteria.

1) The Building Official shall review the application for its compliance with the following criteria:

a) The siting of one or more mobile food units year round is limited to private properties which are located in the Central Business (CB) Zone or Riverfront (RF) Zone.

b) Mobile food units that orient the service window toward the public right-of-way shall maintain a minimum 2 foot setback from the public right-of-way. For mobile food units that orient the service window away from the public right-of-way there is no minimum setback requirement. Mobile food units must maintain a minimum separation of 10 feet between units on a property. A minimum 10 foot separation is required between mobile food units and permanent common outdoor eating areas.

Individual temporary seating areas, such as a table and chairs, may be placed near a mobile food unit, but must maintain a minimum four foot accessible clearance area between the seating area and the mobile food unit, and must be oriented so that the relief valves on any propane tanks associated with mobile food

units are facing away from the seating area. Tables and chairs or benches used for individual seating areas must be constructed of non-flammable materials. The location of each mobile food unit on the site shall be approved by the Building Official, and a site plan showing the approved location of each unit and/or common seating area, if proposed, shall be posted at a prominent location on the property.

c) The mobile food unit operator shall secure written permission from an adjacent business or property owner within 1/4 mile of the subject site allowing mobile food unit operators and patrons to access restroom facilities. Alternatively, where a mobile food unit operator can show that there is a public restroom facility located within 1/4 mile of the subject site, the requirement for written permission shall be waived. The mobile food unit operator shall provide information as to the location of approved restroom access in the same location as the posted approved site plan.

d) Trash receptacles shall be provided on site, and must be emptied and maintained. Trash receptacles shall be provided at a rate of one (1) receptacle for every two (2) mobile food units, or a minimum of one (1) per lot. Where the mobile food unit operator proposes to provide a common seating area a minimum of one (1) trash receptacle shall be provided in the common seating area. All trash receptacles shall be located a minimum of ten (10) feet from combustible fuel tanks on mobile food units.

e) Accessible routes into, throughout, and adjacent to a property with one or more mobile food units shall be maintained in accordance with Chapter 11 of the Oregon Structural Specialty Code.

f) Each mobile food unit may provide awnings for shelter to customers. The awnings must be fully attached to the unit, have a minimum of seven (7) feet of vertical clearance, and be able to be closed or removed. Awnings shall not be subject to setback requirements, but in no case shall awnings extend over the adjacent sidewalk or public right-of-way. All awnings must be flame resistant per Oregon Fire Code.

g) Decks, patios, and similar structures are not permitted to be located within ten (10) feet of a mobile food unit. Where mobile food unit operators propose a common seating area, any structures that require building permits shall be subject to such permitting and applicable sections of Chapter 11 of the Oregon Structural Specialty Code. Park or picnic benches are permitted but must be maintained at least ten (10) feet from mobile food units. Common seating areas shall be maintained on the subject property and shall not obstruct the adjacent public sidewalk or public right-of-way.

h) Signage permanently affixed to a mobile food unit is permitted and is exempt from sign standards in Land Development Code (LDC) Chapter 4.7 – Sign Regulations. Notwithstanding provisions in LDC Section 4.7.80.04, one (1) temporary sign per mobile food unit is permitted to be placed on the subject site. Temporary signs may be no larger than six (6) square feet, may only be placed on private property, and must not obstruct pedestrian pathways. Notwithstanding LDC Chapter 4.7 or Municipal Code, no temporary sign advertising a vendor may be placed on public right of way. Temporary signs authored under this Section may only be present on the property during the mobile food unit operating hours. Permanent signs assigned to the subject property (not temporary signage) must conform to all applicable standards in LDC Chapter 4.7.

i) Mobile food units that are fully contained; i.e., units that provide their own water, power, and waste disposal, are permitted with no additional utility considerations beyond the permitting process and site plan approval described herein. Units that require a water source, power source, or waste disposal location are permitted only where the Building Official has approved site plans that show safe access and location of the aforementioned provisions. Such provisions are subject to all applicable building permits and SDC requirements.

Section 8.13.070 Forms and conditions of permit.

The permit issued shall be in a form deemed suitable by the Building Official. In addition to

naming the mobile food unit owner as permittee and other information deemed appropriate, the permit shall contain the following minimum conditions.

- 1) Permit requirements:
 - a) Each permit issued shall terminate December 31st of the year in which issued
 - b) The permit issued shall be personal to the permittee only and is not transferable in any manner. The permittee will be responsible for compliance with all conditions of approval.
 - c) The permit is specifically limited to the area approved or as modified by the Building Official, and will include a site plan as required by Section 8.13.050 indicating the area approved for the operation of one or more mobile food units and the location of common seating areas, if provided.
- 2) Requirements for properties containing one or more mobile food units:
 - a) The property containing one or more mobile food units and all things placed thereon shall at all times be maintained in a clean and orderly condition. Only those things authorized by the permit and shown on the site plan may be stored in the affected areas on the subject property.
 - b) The permittee shall notify the Building Official in writing when operation of one or more mobile food units on the subject property commences.
 - c) No use of City fixtures will be allowed.
 - d) Council has the right to repeal or amend this Chapter and thereby terminate or modify all year-round mobile food unit operations on private property.
 - e) Hours of operation of mobile food units will discontinue by 3:30 am, daily.
- 3) Additional licensing requirements: All mobile food units shall be appropriately licensed and approved for operation in Benton County as a Class 1 – 4 mobile food unit. Additionally, each mobile food unit shall be inspected by the Corvallis Fire Department once per calendar year, as enforced by Corvallis Fire Department. All mobile food units are subject to any and all applicable city, county, and state regulations.

Section 8.13.080 Denial, revocation or suspension of permit.

- 1) The Building Official may deny, revoke, or suspend the permit upon finding that any provision herein or condition of approval will be or has been violated.
- 2) Upon denial, revocation, or suspension the Building Official shall give notice of such action to the applicant or permittee in writing stating the action which has been taken and the reason therefore. The action shall be effective immediately.

Section 8.13.090 Penalties.

In addition to the remedies set out below, violations of the provisions of this section may be subject to other appropriate legal or equitable actions to restrain, correct, or abate the violations. These remedies are intended to be cumulative and not exclusive. The following violations are infractions punishable by a penalty in accordance with this section. Any violation of this section may be prosecuted as a Class A infraction under the procedures of ORS Chapter 153 and Corvallis Municipal Code Section 1.01.120. The City Manager or person designated by the City Manager is authorized to issue a citation or written notice of violation to any person violating the provisions herein. In addition:

- 1) Any mobile food unit found to be operating without a valid permit for the year shall be notified by the City that it is in violation of Section 8.13.020, and will be allowed up to ten (10) business days to file an application.
 - a) If no application is filed within ten (10) days, the mobile food unit operator shall be notified of continued operation in violation and a civil penalty of \$500 per day shall be levied on the mobile food unit operator.

b) If, after making application, the mobile food unit operator fails to complete all application requirements necessary to obtain a permit, including, without limitation, payment of all application fees within thirty (30) days of the noticed application submittal deadline, the City shall issue a removal notice notifying the mobile food unit operator that the unapproved operation must cease within five (5) business days unless the mobile food unit operator complies with the provisions of this section. If the mobile food unit operator fails to comply with the removal notice a civil penalty of \$500 per day shall be levied on the mobile food unit operator, in addition to any and all other remedies available to the City.

2) Any property containing mobile food units operating year round with a valid license, but found by the City to have a substantiated instance of failing to be in compliance with any other provision of this section of the Corvallis Municipal Code shall be given up to two (2) written notices per year, warning that it is operating out of compliance and in violation of this section. On the third investigated and substantiated instance of non-compliance, notice of the non-compliance may be delivered and penalties may be levied as follows:

- a) first levy (third substantiated violation) \$500;
- b) second levy (fourth substantiated violation) \$1,000;
- c) third levy (fifth substantiated violation) \$1,500.
- d) Penalties shall continue to accrue in \$500 increments for each additional

substantiated violation.

3) In accordance with Section 8.13.080, the Building Official may deny, revoke, or suspend the permit upon finding more than three (3) separate instances of substantiated violations that result in fines.

4) Levies of civil penalties and revocations of permits may be appealed to the municipal court judge within ten (10) days of date written notice of the levy of penalty or revocation is deposited in the United States Mail with first class postage addressed to the mobile food unit operator or posted on the property. If no appeal is filed within ten (10) days of the notice, the levy of penalty shall be final and failure to pay the levy shall be a separate violation of this section.

5) Any appeal must be in writing, signed by the mobile food unit operator, and must state the grounds for the appeal. The appeal must be accompanied by a deposit in the amount of the levy and an appeal fee of \$50. The appeal must be filed with the municipal court. The appeal must be served upon the City Attorney. Failure to comply with any of these requirements within ten (10) days of the date of notice shall result in a dismissal of the appeal, a forfeiture of the appeal fee, and entry of judgment in the amount of the levy by the municipal court in its register.

6) Rules of conduct for hearing and final order. The Municipal Judge shall develop any rules, procedures or regulations that may be necessary for the proper conduct of the appeal. The only issue to be decided by the Municipal Judge is a determination of whether or not the mobile food unit operator was in violation of CMC 8.13.090(1) or (2) as alleged in the notice of penalty. If the Municipal Judge finds that it is more likely than not that the mobile food unit operator was in violation as specified in the notice of penalty, the Municipal Judge shall issue an order affirming the levy of penalty and enter a judgment for the amount of the levy of penalty into the register of the Municipal Court. The order and judgment shall contain a provision for court costs to be paid by the violator in the amount of \$250. If the Judge finds that it is more likely than not that the mobile food unit operator was in compliance and not in violation as specified in the notice of penalty, the Judge shall void the notice of penalty. The Judge's order is final and is not subject to appeal. It shall not be a defense that the mobile food unit operator did not receive notice of the penalty if mailed to the address of the mobile food unit operator, as obtain from Benton County Assessor's records or an application for permit. It shall not be a defense that the mobile food unit operator was not aware of the permit requirements. The Judge may not reduce or suspend any portion of the amount of the levy of penalty if the Judge finds that it is more likely than not that the mobile food unit operator was in violation as specified in the notice of penalty.

7) Failure to pay levy of penalty. Unless the full amount of the levy of penalty is paid within ten (10) days after notice of penalty or the order becomes final by operation of law, or after appeal, each day that the penalty is not paid shall constitute a further violation.

Section 2. Municipal Code Section 8.03 is hereby amended as follows:

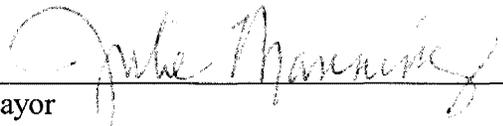
Section 8.03.300.070

- 12) Mobile Food Unit Permit [Section 8.13.020]
 - a) Site Review Fee (assessed as a one time fee for review of a Mobile Food Unit Site) - \$200
 - b) Annual Infrastructure Impact Fee - \$100.00 (per Mobile Food Unit)

PASSED by the City Council this 3rd day of June, 2013.

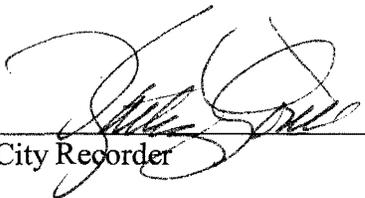
APPROVED by the Mayor this 3rd day of June, 2013.

EFFECTIVE this 13th day of June, 2013.



Mayor

ATTEST:



City Recorder