

**AN ORDINANCE TO
FOOD TRUCK REQUIREMENTS AND REGULATIONS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
FAIRFIELD AS FOLLOWS:**

**SECTION 1. Mobile food service vendor on public ways; franchise
required.**

It shall be unlawful for any person to engage in the business of operating a mobile food service business on any street, avenue, alley, or public places of the city, as they now exist or may hereafter be laid out or extended, including without limitation any property which is owned or controlled by the city or in which the city has a right-of-way, unless the person has a valid, effective franchise approved by the city council in accordance with law. Notwithstanding any other ordinance, resolution, representation, agreement, or regulation to the contrary, the city council retains and reserves all powers and authority granted by the Constitution and laws of state to grant or deny any franchise.

SECTION 2. Application for franchise.

(a) *Generally.* An application for a mobile food vendor service business franchise shall be made in writing to the office of the city clerk. The city may promulgate forms for such application but in the absence of such forms the application shall be in writing and signed by the applicant. The application may be reviewed by any departments of the city as may be convenient or necessary to determine whether the application is complete or whether the franchise should be granted.

(b) *Application contents.* The application shall contain all of the following:

- (1) The name, mailing address, physical address, telephone number(s), and e-mail address of the applicant or applicants. If any applicant is anything other than a natural person, then all documents related to the creation and maintenance of the entity such as articles

of incorporation and any similar relevant documents shall be included.

(2) Such information to allow a determination to be made whether the applicant does or will meet all franchise requirements and whether grant of the franchise would be consistent with public safety and in the best interests of the city and public. The office of the city clerk, the Fairfield Police department, and/or the revenue department may by rule or practice include specific information requests and documentation either to be included on the application form or to be required to be provided by supplementation after application is made.

(3) Photographs or other accurate graphic depictions of the mobile food service unit or cart along with its size, dimensions, and other full description, all as it is to be setup for business, shall be included in the application. If the franchise is granted it shall apply only to the mobile food service unit or cart so depicted and described.

(4) All insurance, release, indemnity, and hold harmless documents, certificates, and/or assurances to meet such requirements of the city and requirements of law.

(5) Copies of all applicable certificates from food preparation associations or other business organizations to which applicant belongs; all permits, licenses, and/or other approvals from the health department, state, Jefferson County, and any other municipality which has franchised the applicant for mobile food service.

(6) Copies of all letters and other notices from any governmental, quasi-governmental, professional, or business association or entity, related directly or indirectly to alleged or actual improper conduct in the food service business, issued to applicant or any person who will have responsibility for operations of the franchised mobile food service. Include all related response and follow-up documents showing any result, finding, or action.

(7) The dates, jurisdiction, court, and disposition of:

a. All felony charges related to the applicant or any principal of applicant; and

b. All misdemeanors and violations directly or indirectly related to food, food preparation, franchise operations, and/or business operations, related to the applicant or any principal of applicant.

(8) Such other additional information required by law, rule, or ordinance, or that any department of the city, city council, or franchise applicant reasonably deems appropriate to assist the city in determining whether the franchise should be granted. The applicant shall be provided reasonable time to supplement the application.

SECTION 2. Regulations applicable to mobile food service franchisees.

(a) *Compliance with law generally.* Except as otherwise provided in this article, all ordinances, rules, and regulations applicable to streets, sidewalks, and other places to which the franchise is applicable, shall apply to the franchisee.

(b) *Location of service unit.* The mobile food service unit or cart may be located only at specific locations approved by the Fairfield Police department. Franchisee shall have the responsibility to initiate a request to utilize such locations. The Fairfield Police department shall have complete discretion as to which locations to approve considering the needs of traffic, pedestrians, public safety, public works, public convenience, the general uses of adjacent private property, and any other factor that is proper and lawful for the city to consider in approving or disapproving such locations. The Fairfield Police department shall have continuing authority to approve locations, grant conditional approvals, revoke prior approval of locations, make conditional revocations of approved locations, require adjustments by franchisee in setup or locations to accommodate public safety and convenience, and to otherwise maintain full lawful control over all public ways of the city. Franchisee shall acquire no property interest or privilege of any kind in any location approved by the Fairfield Police department. The Fairfield Police Department and Fairfield Fire Rescue Service shall have the same authority as to locations and setup of the mobile food service, but such authority shall not become applicable unless actively invoked by the Fairfield Police Department, Fairfield Fire

Rescue Service; the franchisee shall not be required to actively seek prior approval of locations from both departments; and in the event of a conflict between the actions any of the city departments, the latter action shall prevail. In the event the franchisee disagrees with any determination as to a location approved or disapproved by the city, franchisee may appeal within thirty (30) days to the Fairfield City Council which shall hold a public hearing and determine whether the location should be allowed, disallowed, or allowed or disallowed with certain conditions.

- (c) *Size of service unit.* The service unit shall not be of such a size as to interfere with the city or public's use of any public ways.

- (d) *Business license required.* The requirement to obtain a business license from the city is independent of the grant of any franchise. Franchisee shall pay and maintain a current and proper business license for all business activity conducted as part of the franchised activity and shall comply with all ordinances, rules, and regulations applicable to the business license.

- (e) *Location near restaurants.* The franchisee shall not locate the mobile food service unit or cart within one hundred twenty (120) feet of any premises upon which is located a licensed restaurant or other seller of prepared food, unless it is the franchisee's restaurant, or unless the unrevoked written consent of the owner or manager of all such restaurants is obtained in advance and is available for inspection upon request. If the owner or manager of all such restaurants grant such permission to franchisee, the consent may contain reasonable conditions such as allowing franchisee to locate at a specific distance less than one hundred twenty (120) feet from the restaurant, to not serve certain types of food, or other reasonable conditions.

- (f) *Insurance, release, and indemnity.* The franchisee shall, for the duration of the franchise, maintain liability insurance in the form of a comprehensive general policy. This insurance shall be in sufficient amounts to reasonably assure the franchisee's financial responsibility in the event of a claim, with the following minimum limits:
 - (1) One million dollars (\$1,000,000.00) for bodily injury for each person injured;

- (2) One million dollars (\$1,000,000.00) for bodily injury for each occurrence;
- (3) One million dollars (\$1,000,000.00) for property damage for each occurrence.

Certificates of insurance shall name and endorse as an additional insured the city and all of the city's officer, agents, and employees; and shall be filed with and kept on file with the city. The insurance policy or policies herein required shall contain a clause obligating the insurer to give to the city clerk, by registered or certified mail, no less than thirty (30) days' written notice before any material change, cancellation, lapse or termination shall take place. The franchisee shall also by reason of applying for and receiving a franchise release, hold the city harmless, and indemnify the city and its officers, agents and employees, for any damage or claim of injury arising out of or resulting from franchisee's operation, and a separate release and indemnity agreement may be required but the effectiveness of franchisee's release and indemnity obligations shall not depend thereon. No such insurance, hold harmless, release, or indemnity provision or requirement shall operate as a waiver or limitation of any defense, limitation of liability, indemnity, or insurance coverage otherwise applicable to the city.

- (g) *Private property.* Although the grant of the franchise applies generally only to public ways, as a condition of the franchise the franchisee shall not locate upon private property unless permission is obtained from the person in charge or control of such private property, such property is zoned (if inside the corporate limits) so as to allow such use, and franchisee complies with all other applicable laws.
- (h) *Compliance with food service laws.* Franchisee shall in all respects comply with all ordinances, laws, statutes, rules, and regulations of any kind as they exist or are hereafter adopted or amended, including, without limitation, those pertaining to the manufacture, preparation, display and service of foods, confections, and beverages, and/or pertaining to the operation and licensing of a mobile food service business or franchises in general. Except as

otherwise may be provided by law, franchisee shall not acquire any grandfather rights in current law, rule, or practice.

- (i) *Public nuisance and permanent structures prohibited.* Franchisee shall not create or maintain a public nuisance; shall not damage or alter public property or infrastructure; and shall not erect or utilize any permanent or fixed structures in any public place pursuant to the franchise.
- (j) *Other permits and licenses.* Franchisee shall obtain and keep current and active all required permits, licenses, and other approvals and grants of permission from all public agencies that regulate this type of business. Any suspension, revocation, or other negative action related to any permits, licenses, and other grant of permission from any public agencies in regard to the operation of this business shall be a basis for revocation of the franchise. The franchise shall not operate to grant permission to continue in business if any such suspension, revocation, or other action would thereby make such continuation unlawful.
- (k) *Single franchised unit; replacement units.* Each franchise shall apply to only one mobile food service unit or cart, and a separate franchise shall be required for each additional mobile food service unit or cart. A damaged or destroyed mobile food unit or cart may be replaced if and only if approval therefor is obtained from the Fairfield Police department and revenue department. Any such replacement unit must be of substantially the same type, size, and dimension and with the same general characteristics as the original. Such a replacement unit may be disallowed if the original franchise would not have approved the use of the replacement unit.
- (l) *Hours of operation.* The hours of operation of the mobile food service in areas subject to the franchise shall be limited to the hours of 6:00 a.m. to 5:00 p.m., except that during Daylight Saving Time the hours of operation may be extended from 6:00 a.m. to 8:00 p.m.; provided, however, that these time limitations shall not apply if the mobile food unit is properly and lawfully lighted for use at night including compliance with any ordinance, law, rule, or regulation adopted after the franchise becomes effective. Any deviation from these times may be granted only by Fairfield City Council by

resolution, and any such action may contain specified terms and conditions.

- (m) *Limitations on franchised activity.* The mobile food service shall not provide public seating, tables at which food may be consumed, other tables, stands, shelves, bins, equipment, signs, covers, or any other kind of accessory or feature unless the same was accurately described and included in the application, and was fairly included in the picture or other graphic depiction required as part of the application.
- (n) *Trash and refuse.* Franchisee shall contain all refuse, trash, and litter within the mobile food service unit or a small moveable trash can maintained by the franchisee, and located adjacent to the mobile food service unit in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. Franchisee shall be responsible for properly disposing of such refuse, trash, and litter as would any business, and shall not place it in any public trash container, or in any private container without proper permission.
- (o) *Utilities.* The franchisee must provide its own utilities and shall not use the city's utilities
- (p) *Obstruction of public ways prohibited.* Franchisee shall not operate the mobile food service in such a way as to block or otherwise obstruct any motor vehicle or pedestrian traffic on any street, sidewalk, public way, or public place.
- (q) *Franchise nontransferable.* The franchise shall not be transferred or assigned, in whole or in part, to another owner or operator, unless the consent of the city is first given by formal action of the city council. A sale or [of] stock, in such volume that a majority of franchisee's stock is acquired by an owner or owners other than the present owner or owners, shall be considered a sale to another owner or operator and the franchise herein granted shall not be transferred to such other owner without the consent of the City Council of Fairfield as herein required.
- (r) *Nonexclusive franchise; police powers reserved; amendments to regulations.* Any franchise granted pursuant to this article shall be

non-exclusive. The city may grant any number of such franchises as the city council deems appropriate. The grant of a franchise shall not limit or abridge any power or authority of the city and shall not limit or abridge the authority of the city to commence appropriate civil, criminal, or other enforcement actions. The city retains full authority under law to amend the ordinances, rules, and regulations that apply to any franchise.

SECTION 3. Publication of the franchise; effective date.

As required by state law, after adoption by the city council of any franchise ordinance [said ordinance] shall be published in full once a week for three (3) consecutive weeks in a newspaper of general circulation regularly published in the city. The cost of such advertisement shall be paid by the franchisee by paying in advance a deposit of the estimated costs of the advertisement in accordance with instructions from the city clerk, and then paying any additional amounts if the cost of publication exceeds the deposit, and with any excess deposit returned to franchisee. Franchise will not be valid until the franchisee pays all costs associated with the publication of the franchise ordinance and the city has been fully reimbursed for any costs that exceed the initial deposit.

SECTION 4. Revocation and cancellation of the franchise.

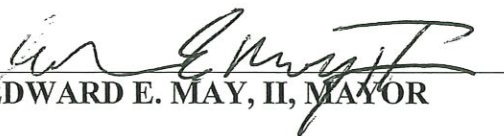
The city may revoke and terminate the franchise in the event the franchisee violates any term, condition, or provision of the franchise, the Code of Fairfield, state or federal law; or if the business license issued by the city for the franchised activity is revoked as provided by this Code. The procedures for revoking or terminating a franchise shall be the same as for revoking or terminating a business license; alternatively or in supplementation thereto, at the city's option and discretion, the revocation or its equivalent may be sought as a remedy in an appropriate civil action. Franchisee may surrender and terminate the franchise, at will, at any time before the expiration of the franchise by written notice to the Fairfield Police department and the city clerk. Termination of the franchise, for any reason, shall not operate to relieve the franchisee of the obligation to release, hold harmless, and indemnify the city and its officers, agents, and employees as provided in this ordinance.

SECTION 5. That the provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts are held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 6. That this Ordinance shall become effective upon publication as required by law.

DONE and ADOPTED on this 17th Day of July, 2017


EDDIE PENNY, CITY COUNCIL PRESIDENT


EDWARD E. MAY, II, MAYOR

ATTEST:


MARY ROBERSON, CITY CLERK