

ORDINANCE NO. 2021-003

An Ordinance To Amend Certain Portions Of Chapter 10 Of The City Code to Redefine Mobile Food Vehicles and Pushcarts and Set Associated License and Permits Fees

BE IT ORDAINED by the City Council of the City of Gardendale, Alabama, while in a regular session on the 2nd Day of March 2021 at 6:00 pm as follows:

SECTION 1. Section 10-263 of the Code is hereby amended by the addition of said section and substitution of the following, so that hereafter said Section 10-263 shall include, as follows:

| NAICS Code | TITLE | Fee Schedule Under Section 10-264 |
|------------|--------------------------------|--------------------------------------|
| 722330 | Food Truck, Mobile Food Vendor | (4)a* |
| 722332 | Food Truck, Pushcart only | (4)a* |

SECTION 2. Section 10-264 of the Code is amended to substitute said section (4) Merchants license classification fee in its entirety, as follows:

(4) *Merchants.*

a. Merchants license fees.

*If food service related business, must provide copy of Jefferson County Health Permit

| Gross Receipts | License Fee |
|--------------------------------|--|
| \$0.00.00—\$100,000.00 | \$100.00 |
| \$100,001.00—\$200,000.00 | \$100.00 on the first \$100,000.00, plus 1/10 of one percent of receipts in excess of \$100,000.00 |
| \$200,001.00—\$500,000.00 | \$200.00 on the first \$200,000.00, plus 1/8 of one percent of receipts in excess of \$200,000.00 |
| \$500,001.00—\$5,000,000.00 | \$575.00 on the first \$500,000.00, plus 8/40 of one percent of receipts in excess of \$500,000.00 |
| \$5,000,001.00—\$10,000,000.00 | \$9,575.00 on the first \$5,000,000.00, plus 9/40 of one percent of receipts in excess of \$5,000,000.00 |

| | |
|---------------------------|--|
| \$10,000,001.00 and above | \$20,825.00 on the first \$10,000,000.00, plus 10/40 of one percent of receipts in excess of \$10,000,000.00 |
|---------------------------|--|

- b. Manufacturers' representatives, salespersons, merchandise brokers maintaining an office within the city corporate limits shall pay a license fee under subsection (4)a of this section, except that licenses for such businesses shall be limited to a maximum as follows:

| Number of Employees Employed in City | License Fee |
|---|-------------|
| 1—2 | \$100.00 |
| 3—5 | \$200.00 |
| 6—10 | \$500.00 |
| 11 and above | \$800.00 |

- c. Peddlers and itinerant dealers.

| | |
|--|---------|
| Per day | \$10.00 |
| Per calendar week (Sunday - Saturday) | \$30.00 |

1. Licensees under this subsection (4)c must provide the city with a signed letter from the owner or operator of the property where the sales site will be located granting permission to the licensee to use his property for said peddling activities. In addition, licensees under this subsection (4)c who peddle goods from a parked vehicle or from a temporary or portable stand, station, table, booth, tent, or similar structure shall be required to remove said vehicle or structure and all goods from the sales site at the end of each day and at any other time when it would otherwise be unattended.
2. A deposit of \$200.00 shall be required prior to issuing a license to sell Christmas trees and shall be returned only when the sales site has been cleared to the satisfaction of the public works department of the city.
3. Any license issued under this subsection (4)c is issued subject to the approval and regulations of the city police department and is subject to revocation for cause without recourse.

d. Merchants: vending machines.

1. Each business placing vending machines within the city shall pay a license under subsection (4)a of this section. Gross receipts from vending machines owned or operated by the business where the machines are located shall be included in the gross receipts of said business. An additional vending machine license shall be required per machine as follows:

| | | |
|-------|--|---------|
| (i) | Candy, chips, crackers, sandwiches, other snacks | \$5.00 |
| (ii) | Drinks, juice, coffee, etc. | \$2.00 |
| (iii) | Video machines and game machines | \$25.00 |
| (iv) | Machines that play music | \$15.00 |
| (v) | Packaged cigarettes | \$5.00 |
| (vi) | Toys, prizes, trinkets, games, etc. | \$5.00 |
| (vii) | All others not listed in this table | \$5.00 |

2. Coin-operated laundry equipment shall be licensed as a service under subsection (5)a of this section.

e. Merchants: automobile sales, new and used.

1. Each business engaged in the business of selling new or used automobiles shall pay a license fee under subsection (4)a of this section, in addition to any other licenses assessed under this article.
2. Any person, firm, or business exhibiting more than three automobiles for sale at any one time shall be deemed to be engaged in the business of selling automobiles and shall be subject to the license as required herein.

f. Merchants: gasoline and other motor fuels.

1. *Retail.* Each business engaged in selling gasoline at retail shall pay a license fee of \$300.00 per year, plus \$50.00 for each nozzle set up whether in operation or not. In addition, gross receipts from all retail sales, including gasoline sales, shall be subject to the merchant license schedule under subsection (4)a of this section, and gross receipts from any services provided shall be subject to the services license schedule under subsection (5)a of this section.
2. *Wholesale.* Each business engaged in selling gasoline at wholesale shall pay a license fee in the amount of 3/20 of one percent of gross receipts, less returns, with a minimum license fee of \$125.00.

g. Merchants located outside the city: delivery license. Merchants located outside the city shall pay a license fee under section 10-262 if said businesses qualify for a delivery license as set forth in said section.

- h. Special events, functions, activities license: \$10.00 per event.

Each person, firm, company or corporation engaged in the management business of conducting a special event shall be responsible for documenting vendors attending each event and for assuring each vendor is properly licensed by the state, county, city, and the health department as necessary, and that sales taxes are collected and remitted on merchandise sold. List of vendors scheduled to participate should be provided to the city upon application for license. Event shall be contained within the confines of a building or lot and appropriate measures employed to accommodate parking for the event with documentation provided to the city. All tents, awnings, tables, signs or other items removed and stored out of sight at the end of each such event.

SECTION 3. Article XIII. Mobile Food Vehicles and Vendors shall be amended and substituted in its entirety as follows:

ARTICLE XIII. - MOBILE FOOD VEHICLES, PUSHCARTS, AND VENDORS

Sec. 10-360. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Business license shall mean the license or licenses required of any business to operate within the city pursuant to license code.

Mobile food vehicle shall mean, except for pushcarts, but including lunch wagons, a unit mounted on or pulled by a self-propelled vehicle where food, including prepackaged foods, for individual portion service is prepared, or dispensed; is self-contained with its own drinking water tank and waste water tank; is designed to be readily movable; and is moved daily to return to its commissary. ~~a food establishment that is motorized or non-motorized and located upon a vehicle, pulled by a vehicle, or which may be pushed or pulled by an individual, where food or beverage is cooked, prepared and/or served for individual portion service, such as a mobile food kitchen. This includes a truck, cart, wagon and the like.~~ This regulation shall not apply to ice cream trucks that move from place to place and are stationary in the same location for no more than 30 minutes at a time.

Mobile food vendor shall mean the owner or operator of a mobile food vehicle or pushcart.

Permit shall mean the permit for a mobile food vehicle which is required for the operation of a mobile food vehicle pursuant to this article.

Pushcart shall mean a non-self propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person. A pushcart shall be used to prepare and serve only (i.) potentially non hazardous foods such as popcorn, lemonade, hot dogs or flavored ice; or (ii.) foods pre-wrapped at the commissary and maintained at the required temperatures per the County Health Department regulations.

Restaurant shall mean a brick and mortar establishment where meals are generally served and eaten on premises or which prepares and serves food and/or drink to customers for consumption on or off the premises.

Special event shall mean any city-sanctioned event (whether by proclamation or otherwise) or any pre-approved church event, school event, parade, privately-owned business event open to the general public for the purpose of entertainment, education or celebration and that benefits the citizens of the City of Gardendale and any event the mayor and/or city council may deem a special event.

Sec. 10-361. - License required; license fees; compliance with laws.

- (a) No person shall operate a mobile food vehicle or pushcart without first having obtained a business license from the city in accordance with the city Code of Ordinances. A separate license shall be required for each special event as described below, when an annual license is not purchased.
- (b) All mobile food vehicles, pushcarts, and vendors must be approved by the Jefferson County Health Department. Proof of the health department approval must be displayed on the mobile food vehicle or pushcart.
- (c) All mobile food vehicles and push carts must be inspected initially by the city's fire marshal and the vendor must provide proof of same. Annual inspections are required for the term of the license and each vehicle is subject to reinspection at any time.
- (d) Each License for a mobile food truck or pushcart is non-transferable and may be revoked in accordance with the city Code of Ordinances.
- (e) For special events, a one-time per event permit fee of \$20.00 shall apply for each mobile food vehicle or pushcart and is calculated in accordance with the City of Gardendale license fee schedule. Mobile food vehicles or pushcarts only operating during special events and not purchasing an annual permit and license shall be required to purchase a separate event permit license for each special event. A separate business license is not required of mobile food vehicles or pushcarts IF the organizer/promoter of the event is licensed under section 4(h), NAICS 454395. All other provisions of this section apply to the license and permit for special events.
- (f) All mobile food vehicles, pushcarts, and vendors are responsible for obtaining and following all procedures for the remittance of any and all applicable sales tax.
- (g) All mobile food vehicles, and pushcarts and mobile food vendors shall comply in all respects with all applicable federal, state and local laws, ordinances, 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 of licensing of mobile food vehicles in general.
- (h) All mobile food and pushcarts vehicles must comply with any setback regulations of the city.

Sec. 10-362. - Permit required.

- (a) All mobile food vehicles and pushcarts must obtain a permit from the city in order to operate within the city limits.
- (b) Permits shall include the applicant's name and address and, where applicable, its trade name, the address of any location used for storage of mobile food vehicles, carts, supplies, equipment, or inventory and proof of insurance adequate to indemnify the city. The application for the permit shall include a photo ID of the vendor and picture of the mobile food vehicle and tag number, if applicable. The city shall be notified within ten days of any address change.
- (c) Permits shall be renewed annually (for those vehicles applying for a one-year license) or on a per-event basis. This is done by filing a renewal application at business license renewal time. Permits are not transferrable.
- (d) The city reserves the right at any time and from time to time to suspend a permit issued hereunder in order to accommodate a city-sanctioned special event, parade, marathon or run, city project or public works activity.
- (e) The fee for a permit is \$275.00 for a one-year permit of a mobile food vehicle. The fee for a permit is \$50.00 for a one-year permit of a pushcart.
- (f) The number of mobile food vehicles and/or pushcarts allowed at an event will be dependent upon the space available where the event is held.
- (g) The city reserves the right to eliminate "same type" vendors when issuing permits where space limitations are involved.

- (h) Notwithstanding the above, when limited space is available, permits will be issued on a "first come" basis.

Sec. 10-363. - Rules and regulations.

- (a) All ~~vendors food vehicles~~ shall offer a waste container for public use that the operator shall empty at his/her expense. Said container must be within three feet of the mobile food vehicle or pushcart. The ~~mobile food~~ vendor shall keep the permitted premises and adjacent public property clean and free from all trash, litter, debris, or waste generated from the operation of the business.
- (b) Any auxiliary power, water or sewer utilities required for the operation of the mobile food vehicle shall be self-contained, unless property owner specifically approves use of existing utilities on property in writing. Use of on-site utilities must be inspected and approved by the appropriate city department.
- (c) Mobile food vehicles must have the following fire extinguisher on board during operation: minimum Class 2A, 10B and C rated extinguisher. If food preparation involves deep-frying, a Class K fire extinguisher must also be on the mobile food vehicle. Fire extinguishers shall be maintained pursuant to National Fire Protection Association (NFPA) standard 10.
- (d) No mobile food ~~vendor vehicle~~ shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches and stand-up counters.
- (e) No mobile food vehicle or pushcart shall make or cause to be made any unreasonable or excessive noise and shall not use lights or noisemakers, such as bells, horns or whistles to attract customers.
- (f) No mobile food vehicle, or pushcart, or mobile food vendor shall (i) create or maintain a public nuisance, (ii) damage or alter public property or infrastructure, and/or (iii) erect or utilize any permanent or fixed structures in any public place pursuant to the license issued hereunder.
- (g) No signs shall be used to advertise the conduct of the mobile food vehicle at the premises other than that which is physically attached to the vehicle or pushcart. Menu boards or other signs indicating pricing, etc. may be used.
- (h) Hours of operation for any mobile food vehicle or pushcart shall be 6:00 a.m. to 9:00 p.m. A maximum set up and break down time of 30 minutes before and after these allotted hours will be allowed. The hours of operation may be altered by the permit issued hereunder and the city reserves this right.

Sec. 10-364. - Location of mobile food vehicles.

- (a) Mobile food vehicles or pushcarts must maintain a 15-foot clearance from fire hydrants, driveway entrances, and handicap parking spaces/ramps.
- (b) Mobile food vehicles or pushcarts must maintain a five-foot clearance from any fire lane, sidewalk, utility box or building entrance.
- (c) Mobile food vehicles or pushcart shall only be operated in areas or districts zoned non-residential or on public property as approved by the city for special events.
- (1) A homeowner's association (HOA) may apply for a special event license/permit for neighborhood events that would allow for a licensed mobile food vehicle or pushcart to operate in a designated common area. A homeowner's association may allow a licensed and permitted food truck or pushcart to operate in a privately owned common space located or maintained by the homeowner association or neighborhood association or an individual property owner may allow the food truck or pushcart to operate from their private property in accordance with all other provisions of this ordinance.
- (d) Mobile food vehicles or pushcarts shall not occupy parking spaces required to fulfill the minimum requirements of a principal use, unless the hours of operation of the principal use do not coincide with those of the mobile food vehicle or pushcart.
- (e) No mobile food vehicle, or pushcart, or vendor may obstruct the use of any public right-of-way, street intersection or pedestrian crosswalk and may not obstruct pedestrian space.

- (f) If the mobile food truck or pushcart is operating within a parallel parking space, the service of food must be done on the side away from vehicular traffic.
- (g) No mobile food vehicle or pushcart shall operate within 200 feet of the nearest public entrance of any restaurant in current operation unless it is the mobile food or pushcart vendor's principal place of business or unless there has been unrevoked written consent of the owner or manager of such restaurant obtained in advance and available for inspection upon request of any city official at any time during the operation of the mobile food unit. If the owner or manager of such restaurant grants permission to the mobile food vendor for the operation of a mobile food vehicle to operate within 200 feet as stated herein, the permission may contain such reasonable conditions and restrictions upon which the parties agree.
- (h) No mobile food vehicle or pushcart shall operate within 200 feet of a school unless at a special event sponsored by that school or approved by the city.
- (i) Access to neighboring buildings or uses shall not be impeded.
- (j) Mobile food vehicles or pushcart shall not be located on public property without prior written approval from the city. This shall include property owned or leased by the City of Gardendale, city parks property, and city rights-of-way.
- (k) Mobile food vehicles or pushcarts may not be operated in such a way as to block or otherwise obstruct any motor vehicle, bicycle, or pedestrian traffic on any street, bicycle lane, sidewalk, public way, or public place, nor shall any mobile food vehicle obstruct sight distance at any roadway intersection.
- (l) Mobile food vehicles or pushcart must provide sufficient artificial lighting during non-daylight hours.
- (m) All on-site food preparation shall be performed inside the primary vehicle only. Grills or other cooking facilities are not allowed outside the vehicle.

Sec. 10-365. - Operation of mobile food vehicles or pushcart.

- (a) Any mobile food vehicle or pushcart being operated without a valid City of Gardendale business license shall be deemed a public safety hazard and may be ticketed and impounded.
- (b) No mobile food vehicle or pushcart shall be parked on the street overnight, or left unattended and unsecured at any time food is kept in the mobile food vehicle or pushcart. Any mobile food vehicle or pushcart found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.
- (c) A mobile food vehicle or pushcart operating outside of an approved location shall be deemed in violation of this ordinance and may be subject to enforcement as provided for herein.
- (d) No mobile food vehicle or pushcart shall be allowed to operate in excess of three consecutive days in any one location.
- (e) No mobile food vehicle shall operate on more than two individual sites within the city per day.
- (f) No more than one mobile food vehicle or pushcart shall operate on the same site per day unless specifically approved for city events and the like, and upon approval by the city.

SECTION 4. That all other provisions of the Code of Ordinances shall remain in full force and effect and shall not be affected by this amendment.

SECTION 5. All other Ordinances or parts of Ordinances heretofore adopted by the City Council of the City of Gardendale, Alabama that are inconsistent with the provisions of this Ordinance are hereby expressly repealed.

SECTION 6. That if any part, provision, or section of this ordinance is declared to be unconstitutional or invalid by any court of competent jurisdiction, all other parts, provisions or sections of this ordinance not thereby affected shall remain in full force and effect.

SECTION 7. This Ordinance is adopted on this 2nd day of March 2021 and shall become effective immediately upon its posting or otherwise becoming law.

Alvin Currington, Council President

Approved on this 2nd day of March 2021

Stan Hogeland, Mayor

CERTIFICATION

I, Melissa Honeycutt, City Clerk of the City of Gardendale, Alabama, do hereby certify that the foregoing is a true and correct copy of an Ordinance that was duly and legally adopted on the 2nd day of March 2021 by the City Council of the City of Gardendale, Alabama while in a regular session and was posted in its entirety at City Hall, 925 Main St; Library, 995 Rocket Way; and Civic Center, 857 Main Street as required by law on _____ and will become effective five days after posting.

Melissa Honeycutt