

ORDINANCE NO. 2021-15

AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT
ORDINANCE CHAPTER 3 – ADDITIONAL USE STANDARDS TO
AMEND REQUIREMENTS FOR MOBILE FOOD VENDORS

WHEREAS, the City of Brevard Planning Board has recommended that Brevard City Code, Unified Development Ordinance, Chapter 3 – Additional Use Standards be amended; and,

WHEREAS, the City Council of the City of Brevard finds that the proposed amendment is neither consistent nor inconsistent with any adopted City of Brevard plans or policies; and,

WHEREAS, a public hearing was conducted on Monday, March 15, 2021, by the Brevard City Council, and, after hearing all persons wishing to comment, and upon review and consideration of the proposed amendments, it is the desire of the City Council of the City of Brevard that Brevard City Code, Unified Development Ordinance be amended as outlined below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

SECTION 01. Brevard City Code, Unified Development Ordinance Chapter 3 is hereby amended as depicted in Exhibit A, which is attached hereto and incorporated herein by reference.

SECTION 02. As to any conflict between this Ordinance and any parts of existing ordinances, the provisions of this Ordinance shall control.

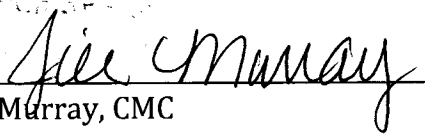
SECTION 03. If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.


SECTION 04. This Ordinance shall be in full force and in effect from and after the date of its adoption and approval.

Adopted and approved this the 19th day of April, 2021.




ATTEST:


Jill Murray, CMC
City Clerk


Jimmy Harris
Mayor

APPROVED AS TO FORM:


Michael K. Pratt
City Attorney

3.23. - Temporary uses permitted with standards.**A. General requirements.**

4. In addition to the standards contained in the following sections, applicants for operation of a temporary use, structure or special event shall demonstrate compliance with each of the following requirements:
 - k. Site layout:
 - i. Temporary uses, structures and special events shall be arranged so as to maximize public safety, to minimize conflicts among vehicles and pedestrians, to minimize conflicts with existing, permanent uses.
 - ii. Temporary uses, structures and special events shall be situated at least ten feet from all property lines and any road right-of-way, shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. This requirement shall not apply to special events approved by the city for placement upon public streets.
 - iii. Temporary uses, structures and events may obstruct travel ways within parking lots only upon determination by the administrator that such obstruction will not impede commerce, hinder the flow of traffic or endanger the safety of motorists or pedestrians. Uses, structures or events shall be clearly delineated and separated from areas of active vehicle operation by means of traffic safety cones, signage, flagging, or other approved means.
 - iv. Temporary uses, structures and special events shall be situated at least ten feet from points of ingress and egress, and shall not obstruct the sight triangle at any intersection. Ingresses and egresses to the temporary uses, structures and special events shall be designated.

E. Temporary vendors.

1. Temporary vendors, excluding vending pushcart operators, may be permitted one tent, which shall not exceed 1,500 square feet in area. Temporary vendors shall employ no other temporary structure.
2. Signage: Temporary vendors shall be allowed signage only as described in Chapter 12 of this Ordinance.
3. Prohibited conduct. No temporary vendor shall:
 - a. Sell, barter, exchange or attempt to sell any goods, wares or merchandise from any city street or from any passenger vehicle or trailer. This prohibition shall not apply to vending carts or mobile food vendors (aka "Food Trucks") as set forth below. This prohibition may be waived by the administrator for special events recognized by the city, provided that the applicant satisfies all permit requirements of section 66-7 and complies with article I of chapter 66 and other applicable provisions of Brevard City Code.
 - b. Vend on any street or sidewalk where vending is otherwise prohibited.
 - c. Vend between 9:00 p.m. and 7:00 a.m. of the following day, except during city-approved festivals and events.
 - d. Sell food or beverages for immediate consumption unless the operator has available for public use his own or a public litter receptacle which is available for his patrons' use and no more than ten feet distant from his pushcart or mobile food unit.
 - e. Leave the designated location without first picking up, removing and disposing of all trash or refuse remaining from sales made.
 - f. Solicit or conduct business with persons in motor vehicles.
 - g. Sell anything other than that which the operator is licensed to vend.
 - h. Sound or permit the sounding of any device which produces noise, or use or operate any sound system, radio, sound amplifier or speaker to attract the attention of the public.
 - i. Vend within 50 feet of any driveway entrance to a police or fire station, or within ten feet of any other driveway or of any alley.
 - j. Vend within ten feet of the crosswalk at any intersection.
 - k. Vend within ten feet of any fire hydrant or fire escape.
 - l. Allow any item relating to the operation of the vending business to lean against or hang from any building or other structure lawfully placed on public property, without the owner's permission.
 - m. Vend within ten feet of any building.
4. Application for permit. The application for a temporary vending permit shall include:
 - a. The name and address of the applicant, and the name and address of the owner of the vending business or of the cart to be used in the operation of the vending business.
 - b. A description of the type of food, beverage or merchandise to be sold.

- c. A description (including the size) and a photograph of any pushcart to be used in the operation of the business, including the license and registration number of any motor vehicle used in the operation of the business.
 - d. A copy of any approval required by the county health department, building inspector, or fire marshal.
 - e. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the permittee and the property owner (including the city in the case of pushcart operators) from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the permit. Such insurance shall name the property owner as additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days' advance written notice to the city. Policies covering pushcart operators shall conform to the minimum coverage requirements as set forth by the city manager.
 - f. The federal and state tax identification numbers of the owner of the business, and copies of the owner's pre-printed North Carolina sales and use tax forms for the months of proposed operation.
5. All permits issued under this section shall be displayed in a prominent location at all times during the operation of the vending business.
 6. Any temporary vendor's permit may be denied, suspended or revoked by the administrator for fraud or misrepresentation in the application for the permit or in the conduct of the business, for conduct of the business in such a manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals, or for conduct which is contrary to the provisions of this chapter or any condition of permit approval.
 7. Non-agricultural roadside vendors:
 - a. Non-agricultural vendors may be permitted to operate for a period not to exceed 90 days, after which such vendors shall vacate the premises and shall not be reestablished for a period of 45 days.
 8. Agricultural roadside vendors:
 - a. Agricultural vendors may be permitted to operate for a period not to exceed 180 days, after which such vendors shall vacate the premises and shall not be reestablished for a period of 45 days.
 - b. Agricultural vendors shall only offer seasonal horticultural, agricultural, aquacultural or forest products, including but not limited to raw fruits, vegetable, perennials, annuals bulbs, dried flowers, Christmas trees, and similar products.
 9. Vending pushcarts:
 - a. To relieve any potential for traffic hazard or pedestrian congestion, or any safety hazard resulting therefrom, the number of vending carts with active permits within the central business district at any given time shall not exceed four.
 - b. No vendor selling from a pushcart on the sidewalk shall:
 - i. Leave any pushcart unattended.
 - ii. Store, park or leave any pushcart overnight on any street or sidewalk.
 - iii. Vend within 75 feet of any other vending cart.
 - iv. Set up, maintain or permit the use of any table, crate, carton, rack or other device to increase the selling or display capacity of his pushcart or where such items have not been described in his application.
 - v. Allow any items relating to the operation of the vending business to be placed anywhere other than in, on or under the pushcart.
 - vi. Maintain any pushcart upon any street or sidewalk which impedes, endangers or interferes with the travel upon or use of the street or sidewalk.
 - vii. Set up a pushcart so as to block or impede ingress and egress to any structure.
 - c. If it becomes necessary for the regulation of traffic or the safety or convenience of pedestrians, any law officer of the city may direct vendors to move to another location. No person may refuse to comply with a law enforcement officer when the order is given under the authority of this section.
 - d. Size of pushcarts:
 - i. No pushcart shall exceed 48 inches in width or 72 inches in length.
 - ii. No pushcart shall exceed 60 inches in height, nor shall any canopy be less than 78 inches in height at its lowest point.
 - iii. The administrator shall have the right to require smaller dimensions based upon such factors as, but not limited to, pedestrian and vehicular safety and adequate sight distances.

- e. Minimum travel way. The pushcart shall be set up so that a minimum of five feet of pedestrian passage is maintained along the sidewalk at all times.
 - f. Operation during special events within the central business district. Vendor permits will be invalid during special festivals and events within the central business district. However, vendors may apply for permits from the sponsoring organization or committee to operate within the area of the special event.
10. Mobile food vendors:
- a. Mobile food vendors are licensed motor vehicles or mobile food units which offer for sale and consumption food and beverages (excluding alcohol).
 - b. Permits required.
 - i. The owner, or authorized agent thereof, of any property upon which a mobile food vendor(s) proposes to operate, shall secure a permit for the establishment of a mobile food vendor site. Applicants shall provide such information as is deemed necessary by the administrator to demonstrate compliance with this ordinance; such information shall include, but shall not be limited to, a listing of the mobile food vendors authorized to operate upon the subject property.
 - ii. Mobile food vendors shall secure all necessary permits required by the Transylvania County Health Department. Mobile food vendors must follow all applicable rules and requirements of the Transylvania County Health Department and any other relevant agencies of Transylvania County or the State of North Carolina.
 - iii. In the issuance of permits for mobile food vendor sites, the administrator shall have broad discretion to assign such conditions as may be necessary to protect the health, safety, and welfare of the public.
 - iv. Permit fees for mobile food vendor sites shall be determined by Brevard City Council as set forth in the City of Brevard Schedule of Taxes, Charges and Fees.
 - c. There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth in this section are met.
 - d. Separation and setbacks.
 - i. Mobile food vendors shall be subject to all site requirements as set forth in subsection 3.23.A.4.k. except as modified below.
 - ii. Setbacks, generally. Mobile food vendors shall be situated at least ten feet from all property lines and any road right-of-way, shall not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. This requirement shall not apply to special events approved by the city for placement upon public streets.
 - iii. Separation between mobile food vendors. Mobile food vendors shall be situated at least 20 feet from one another.
 - iv. Separation between mobile food vendors and permanent structures.
 - a. Mobile food vendors shall be situated at least 25 feet from any permanent structures.
 - b. The administrator may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information. Such reductions shall be reviewed on a case-by-case basis, at the discretion of the administrator.
 - c. There shall be no reduction in separation between mobile food vendors and permanent structures within the downtown fire district.
 - d. Mobile food vendors shall be situated at least 200 feet from any residential structure that is located within a general residential (GR) zoning district.
 - e. Mobile food vendors must be set back a minimum of ten feet in all directions from fire hydrants.
 - v. Site Plan Required. The application for a mobile food vendor site shall include a site plan detailing all of the above separation and setbacks requirements. If seeking approval for multiple mobile food vendors, spaces for each desired vendor shall be denoted on the site plan with appropriate setbacks shown from each vendor space.
 - e. Power.
 - i. Outside of the Heart of Brevard district, generators may be used to power the vending unit. Within the Heart of Brevard only dedicated power supplies shall be used.
 - ii. For dedicated power supplies the applicant must present documentation that power load supplied to the vehicle is sufficient to meet the vehicles needs while in operation.
 - f. Vendors are subject to the requirements of the City of Brevard Noise Ordinance, North Carolina Health Code, and North Carolina Building Code.

- g. Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m., except during an approved special event, when other operating hours may be established as part of the event.
- h. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.
- i. Each food truck shall supply at least one waste receptacle which must be removed and emptied at the end of each day, City trash receptacles shall not be used for food truck waste.
- j. Signage.
 - i. Mobile food vendors shall be limited to the following:
 - a. Mobile food vendors shall be allowed signage only as described in Chapter 12 of this Ordinance.
 - b. Nothing in this Ordinance shall be construed to mean that mobile food vendor vehicles cannot be painted or decorated, or display menus affixed to the side(s) of the vendor vehicle.

(Ord. No. 07-10, § 4(Exh. E), 4-5-10; Ord. No. 24-11, § 3(Exh. A), 9-19-11; Ord. No. 2013-13, § 01.c)(Exh. B), 10-21-13)