

Effective Date: July 9, 2016

3/1/2016
6/2/2016
6/7/2016

17-O-16

AN ORDINANCE

**Amending City Code Title 8, Chapter 23, "Mobile Food Vehicle Vendors,"
to Omit the Requirement that a Vendor is Owned or Operated by a
Licensed Food Establishment in the City of Evanston**

**NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: *Legislative Statement.* The Illinois Supreme Court provides that "[i]f a subject pertains to local government and affairs, and the [Illinois] legislature has not expressly preempted home rule, municipalities may exercise their power." *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 988 N.E.2d 75, 82-83 (2013), *citing City of Chicago v. StubHub, Inc.*, 979 N.E.2d 844 (2011). The powers of a home rule unit such as Evanston are to be construed liberally pursuant to Article VII, § 6(m) of the Illinois Constitution, and Evanston's powers as a home rule authority are: "...to be given the broadest powers possible." *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992). Home rule municipalities are constitutionally conferred with tremendous authority and latitude to address local issues and concerns.

The Illinois Constitution provides that a home rule unit may: exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to *license*; to tax; and to incur debt. Ill. Const. art. VII, § 6. A city's power to regulate and license for the protection of public health and safety is drawn directly from the Constitution, and any such power must be expressly limited by the General

Assembly. See Ill. Const. art. VII, § 6(i); *Triple A Services, Inc. v. Rice*, 131 Ill. 2d 217, 230 (1989).

Evanston's police power also authorizes it to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety, and welfare of its citizens. This ordinance addresses a variety of issues within Evanston's police powers, including the proper disposal of food waste, health restrictions to prevent food borne illness, restrictions for locations to designate appropriate locations within the right-of-way and throughout the City.

The City Council finds there is a compelling governmental interest in implementing reasonable regulations on mobile food vehicle vendors while removing the impediment to non-Evanston based vendors from entering the mobile food vehicle vendor marketplace in the City. The City Council held meetings in compliance with the provisions of the Illinois Open Meetings Act, considered the statements, points and authorities made in the legislative Record, and received additional input from the public during a public meeting held with the restaurant industry on April 11, 2016.

SECTION 2: That Title 8, Chapter 23 "Mobile Food Vehicle Vendors" of the Evanston City Code of 2012, as amended, is hereby amended to read as follows:

8-23-1. – DEFINITIONS.

<i>Mobile food vehicle.</i>	A commercially manufactured, motorized mobile food unit in which ready-to-eat food is cooked, wrapped, packaged, processed, or portioned for service, sale or distribution.
<i>Mobile food vehicle vendor.</i>	The owner of mobile food vehicle or the owner's agent; hereinafter referred to as "vendor."

8-23-2. - PERMIT REQUIRED; APPLICATION.

- (A) It shall be unlawful for any person to operate within the City a mobile food vehicle, as defined in this Chapter, without first having obtained a license for that purpose.
- (B) Any person desiring to operate a mobile food vehicle shall make a written application for such license to the City Manager or his/her designee. The application for such license shall be on forms provided by the City Manager or his/her designee and shall include the following:
1. Name, signature and address of each applicant and each corporate officer;
 2. Name and address of the approved commercial supply source;
 3. A description of the preparation methods and food product offered for sale, including the intended menu, display, and distribution containers;
 4. The anticipated volume of food to be stored, prepared and sold;
 5. Plans and specifications for the mobile food vehicle, including the proposed layout, photographs, mechanical schematics, construction materials, finish schedules, equipment types, manufacturers, model numbers, locations, dimensions, weight of vehicle per wheel, performance capacities, power source, installation specifications, and information on any custom fabricated equipment;
 6. Proof of access to restrooms with a hand sink for use by employees within two hundred (200) feet of the mobile food vehicle during times when the vehicle is parked in one (1) location for more than two (2) hours. Proof of access shall be evidenced by written agreement between the vendor and the business or entity which will provide such access;
 7. A valid copy of all necessary licenses or permits required by State Health or Transportation Authorities. This includes proof of food handler certification training or valid Illinois Food Service Sanitation Manager Certification as required in the Food Handling Regulation Enforcement Act, 410 ILCS 625/0.01, *et seq.* During all times of mobile food vehicle operation in the City, at least one (1) certified trained food handler or someone holding a Food Service Sanitation Manager Certificate must be present on the vehicle;
 8. A signed statement that the vendor shall hold harmless the City and its officers and employees, and shall indemnify the City, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Vendor shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect vendor, property owners, and the City from all claims for damage to property or bodily injury, including death, which may arise from the operations under the license or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) per occurrence. The policy shall further provide that it may not be cancelled except upon thirty (30) days' written notice served upon the City of Evanston Law Department. A license issued pursuant to the provisions of this Section shall be invalid at any time the insurance required herein is

- not maintained and evidence of continuing coverage is not filed with the City of Evanston Law Department; and
9. The proposed location(s) and times of operation for conducting business in accordance with this Chapter. Vendors shall be required to provide to the City a signed statement that the vendor shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be occasioned by any activity carried on or under the permit. No application will be accepted for a permit to operate at a location where a current permit has been issued or a complete application is pending. If the proposed location is private property, the applicant shall provide to the City written consent from the property owner.

Vendor shall notify the City Manager or his/her designee within thirty (30) days of any changes to application information.

- It shall be the duty of the City Manager or his/her designee to inspect the vehicle and determine the fitness and suitability of the vehicle for its intended use.
- (C) *License Fees.* All vendors licensed under this Chapter shall pay an annual license fee of five hundred dollars (\$500.00). The fee for any such license issued after July 1 in any calendar year shall equal two hundred fifty dollars (\$250.00).
- (D) *Form and Condition of Permit.* In addition to naming the vendor, the approved operating location site diagram, and other information deemed appropriate by the City Manager or his/her designee, the mobile food vehicle vending permit shall contain the following conditions:
1. Each mobile food vehicle vending license shall expire on December 31 of each year.
 2. The license shall not be transferrable from person to person or from place to place without the approval of the City Manager or his/her designee.
 3. The approved operational location may be changed, either temporarily or permanently, by written notice of the City Manager or his/her designee.
 4. The license is valid for one (1) vehicle only.
 5. There shall be issued to each vendor a suitable decal that shall be permanently and prominently affixed to the vehicle.
- (E) *Refusal to Issue; Suspension; Revocation.* Licenses authorized to be issued pursuant to this Chapter may be suspended, revoked or refused to be issued upon good cause shown. The issuing authority may refuse to issue, revoke, or suspend a license if any applicant or agent thereof refuses to comply with any requirement of this Chapter.
- (F) *Temporary Food Establishment Permit.* A mobile food vehicle vendor who has a current valid permit under this section shall not be required to pay a fee for a temporary permit in order to conduct business at a private event, unless said vendor alters its current and approved menu, in which case the mobile food vehicle vendor shall be required to obtain a temporary food establishment permit in order to operate at a private event.

8-23-3. - LOCATION REVIEW AND RESTRICTIONS.

Proposed operating locations shall be reviewed as follows:

- (A) Upon receipt of a complete application for a license, the license shall be referred to the Director of Public Works Agency or his/her designee for approval or disapproval. The use of the licensed operating location for mobile food vending must be compatible with the public interest in use of the public right-of-way. In making such determination, the Director of Public Works Agency or his/her designee shall consider the width of the public way, parking issues and traffic congestion, the weight that can be supported by the paving or street surface at the proposed location, the proximity and location of existing street furniture, including, but not limited to, utility poles, parking meters, bus shelters, benches, street trees, news racks, as well as the presence of bus stops, truck loading zones, taxi stands, valet parking zones, or other businesses or approved mobile food vehicles to determine whether the requested location would result in pedestrian or street congestion.
- (B) The Director of Public Works Agency or his/her designee shall not approve a location where a mobile food vehicle would substantially obstruct a public way, impair the movement of pedestrians or vehicles, or pose a hazard to public safety. The Director of Public Works Agency or his/her designee shall not approve any location which is adjacent to a bus stop, taxi stand, or handicap loading zone, within thirty (30) feet of an intersection, within three (3) feet of a curb, or directly in front of a property entryway. Pedestrian walkways of no less than six (6) feet must be maintained around the mobile food vehicle.
- (C) It shall be unlawful for a mobile food vehicle vendor to park, stand, or operate in a location which is adjacent to or within one hundred (100) feet of the address point of a licensed Type 1 or Type 2 restaurant. This requirement may be waived if the application is submitted with the written consent of the proprietor of the adjacent licensed Type 1 or Type 2 restaurant. No person or corporation shall either pay or accept payment for the written consent provided herein. If applicable, this requirement shall not apply to a licensed Type 1 or Type 2 restaurant affiliated with the mobile food vehicle vendor.
- (D) The City shall not approve more than one (1) mobile food vehicle per private parking lot, which must remain in compliance with the zoning code, including the off-street parking requirements for the host parking lot. The vehicle shall not block required drive aisles.
- (E) Vendor shall not operate a mobile food vehicle within five hundred (500) feet of the address point of any fair, carnival, circus, festival, special event, or civic event that is licensed or sanctioned by the City except when vendor has obtained a temporary food permit from the City.
- (F) On days when school is in session at Evanston Township High School, it shall be unlawful for any vendor to operate a mobile food vehicle on the following streets:

Church Street between Pitner Avenue and Dewey Avenue;
Dodge Avenue between Lyons Street and Dempster Street; and
Lake Street between Pitner Avenue and Darrow Avenue.

On days when events are being conducted within the Evanston Township High School Memorial Stadium, it shall be unlawful for any vendor to sell or offer for sale any food, beverages or any other merchandise whatsoever on the following streets:

Church Street between McDaniel Avenue and Dewey Avenue;
Hartrey Avenue between Emerson Street and Church Street;
Lyons Street between Leland Avenue and Hartrey Avenue; and
Pitner Avenue between Church Street and Lake Street.

- (G) On days when school is in session at elementary, middle, and secondary schools (public or private), it shall be unlawful for any vendor to operate a mobile food vehicle within five hundred (500) feet of the address point of property of said schools. *Exception.* During summer school sessions, this restriction shall apply only to those individual schools which are in operation.
- (H) It shall be unlawful for any vendor to operate a mobile food vehicle in or within one hundred (100) feet of the address point of public parks enumerated in City Code Sections 7-10-1 and 7-11-1, or without first obtaining written authorization from the City. This restriction may be waived by the City Manager or his/her designee.
- (I) A vendor shall not operate on private property within the corporate limits of Evanston without first obtaining written consent to operate from the affected private property owner.
- (J) Permitted Operating Areas: The Director of Public Works Agency or his/her designee may review the location restrictions contained within City Code Section 8-23-3, no parking restrictions provided in the City Code, and consider public safety and right-of-way safety issues to compile a map of permitted operating areas for vendors in the City of Evanston. The permitted operating area map will be completed and posted to the City's website on an annual basis.
- (K) Mobile food vehicle vendors may be permitted to locate within the Permitted Operating Areas provided on the map on a first-come first-serve basis within the parameters provided in this Code, including but not limited to hours of operation. The license must be prominently displayed on the mobile food vehicle at all times. The mobile food vehicle vendors must pay any and all parking meter fees for the time and usage of any and all City parking spaces, including paying parking meter fees for the usage of multiple parking spaces during operation of the vehicle.

8-23-4. - APPROVED FOOD AND BEVERAGE LIST.

The Health and Human Services Department Director shall maintain a record of approved food and beverage items which may be prepared and sold by mobile food vehicle vendors. Requests to have a food or beverage item considered for approval shall be submitted in writing to the Health and Human Services Department Director, who shall determine whether the food or beverage item is capable of preparation and

service from the mobile food vehicle based on the equipment being used and the design and construction of the vehicle.

8-23-5. - SANITATION AND INSPECTIONS.

- (A) All mobile food vehicles shall be kept in a clean and sanitary condition. It shall be the duty of the City Manager or his/her designee to make or cause to be made such inspections as may be necessary to ensure all mobile food vehicles are kept in a clean and sanitary condition. The City Manager or his/her designee, bearing proper identification, shall be permitted to enter any mobile food vehicle at any reasonable time for the purpose of inspecting to determine whether the vendor has complied with the terms of this title. Additionally, the vendor shall, on request, provide the City Manager or his/her designee with the records of the mobile food vehicle to obtain information pertaining to food and supplies purchased, received, or used. Denial of access to the mobile food vehicle or to said records shall be deemed an interference with the City Manager or his/her designee in the performance of his/her duties.
- (B) All food storage, preparation and distribution of food, and vehicle equipment must meet applicable Illinois Department of Public Health standards and requirements, as well as standards to be determined by the City Manager or his/her designee.
- (C) All food, beverages, ice and other materials sold or used in preparation of goods to be sold must be obtained from an approved commercial source.
- (D) All off-site food preparation and food storage must be done either: at a City of Evanston licensed food establishment; or if the mobile food vehicle vendor is outside the jurisdiction of the Health and Human Services Department, it must comply with the applicable requirements of this Code; and (i) the mobile food vehicle vendor applicant does dispense foods which are prepared and wrapped in a commissary which conducts its operations under the supervision of a state or local health authority; or (ii) the mobile food vehicle vendor prepares food in compliance with any and all rules and regulations of the Health and Human Services Department and conducts its operations under the supervision of a state or local health authority, provided that the regulations are substantially similar to this chapter. The mobile food vehicle vendor shall, in addition to the application, if requested, provide reports including inspection reports and laboratory results from the state and local health authority in the jurisdiction where the food source or commissary is located, indicating compliance with such approval. Food cannot be prepared in a home.
- (E) All waste liquids, garbage, litter and refuse shall be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight-fitting lids and properly disposed of either at an affiliated licensed restaurant or alternative location(s) as disclosed and agreed to with the Health and Human Services Department Director or his/her designee. No waste liquids, garbage, litter or refuse shall be dumped or drained into sidewalks, streets, gutters, drains, trash receptacles, other than the agreed locations with City staff. A garbage receptacle shall be easily accessible for customer use. Vendor shall be responsible for all litter and garbage left by customers.

8-23-6. - RESTRICTIONS ON USE.

- (A) Hours of operation shall be limited to the hours between 7:00 a.m. and midnight. The hours of operation for mobile food vehicles located within three hundred (300) feet of a residential building or a mixed use building with a residential component shall be limited to the hours between 7:00 a.m. and 10:00 p.m. No approved mobile food vehicle shall be left unattended on a public way, nor remain on a public way outside of these allowed hours of operation.
- (B) No mobile food vehicle vendor shall use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns or whistles.
- (C) No mobile food vehicle shall use external signage, bollards, seating, or any other equipment not contained within the vehicle.
- (D) The mobile food vehicle shall not have a drive-through.
- (E) Vendor shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a public way or remove the vehicle entirely from the public way if necessary to avoid such congestion or obstruction.
- (F) The mobile food vehicle must prominently display the name and address of the owner.
- (G) Any power required for the mobile food vehicle located on a public way shall be self-contained and shall not use utilities drawn from the public right-of-way. Mobile food vehicles on private property may use electrical power from an adjacent property only when the property owner provides written consent. All other power sources must be self-contained. No power cable or equipment shall be extended at grade across any City street, alley or sidewalk.
- (H) All identifying information, logos, advertising, decorations, or other displays on the exterior of a mobile food vehicle shall conform to the purposes set forth in City Code Section 4-12-2 regulating commercial signage, to the extent applicable. In particular, exterior displays shall be designed to minimize confusion or distraction that jeopardizes vehicular and pedestrian safety and shall be harmonious with the surroundings and consistent with the character of the community in which the mobile food vehicle operates.

8-23-7. - LICENSE ADVERSE ACTION.

An application or approved license may be denied, revoked, suspended, or not renewed for any of the following reasons:

- (A) The application contains material omissions or false, fraudulent, or deceptive statements.
- (B) The vehicle is operated in such a manner as constituting a public nuisance per the Evanston Code of Ordinances or state statutes.
- (C) The proposed operation is in violation of any federal, state, or local laws including, but not limited to, the provisions of this City Code pertaining to food, fire prevention, public health or safety. The provisions of this Section are not

exclusive. This Section shall not preclude the enforcement of any other provisions of this City Code or state and federal laws and regulations.

8-23-8. - PENALTIES.

Any person licensed under this Chapter or any agent thereof violating any of the provisions of this Chapter shall, upon conviction thereof, be fined not less than five hundred dollars (\$500.00) for each violation.

SECTION 3: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 4: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: This ordinance shall be in full force and effect after its passage, approval and publication in the manner provided by law.

SECTION 6: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

Introduced: June 13, 2016

Adopted: June 13, 2016


Approved:

June 29, 2016

Elizabeth B. Tisdahl

Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Approved as to form:


Michelle Marmey, Acting City
W. Grant Farrar, Corporation Counsel Attorney