

ORDINANCE NO. 1710

MOBILE FOOD VENDING

ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF AMORY, MONROE COUNTY, MISSISSIPPI AMENDING PREVIOUS ORDINANCES 1154 AND 1679 ALLOWING FOR THE ADDITION OF MOBILE FOOD VEHICLES AND MOBILE PUSHCARTS EXCEPTION TO THE PRIOR ORDINANCE AND AMENDING PENALTY PROVISIONS IN ADDITION TO THE ALLOWANCE OF ICE CREAM MOBILE VENDING AND SALES

BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF AMORY:

WHEREAS, the Mayor and Board of Aldermen of the City of Amory on the 27th day of October 1937 previously enacted Ordinance 1154 which prohibited the licensing of any person to do business for private gain upon the streets and alleys of the City of Amory and prohibiting the streets and alleys of the city as a storage place or truck or automobile location for the carrying out of a private business and on the 2nd day of July 2013 previously enacted Ordinance 1679 which allowed for an ice cream mobile vending and sales exception; and

WHEREAS, the Mayor and Board of Aldermen of the City of Amory have determined that it would be beneficial to the citizens of Amory and the community to allow for mobile food vending and mobile food pushcarts; and

WHEREAS, the Mayor and Board of Aldermen find as fact that mobile food vendors and mobile pushcarts and the selling of products and food is a complimentary and favorable resource and the citizens of the City of Amory would benefit from having such services readily available to them; and

NOW THEREFORE, the Mayor and Board of Aldermen do hereby amend prior Ordinances Nos. 1154 and 1679 as follows:

- I. Section 8 shall be amended on Ordinance 1679 and such section shall read as follows:

**Section 8. Mobile Food Vendor and Ice Cream Mobile Vending and Sale Exception.**

The following specific exceptions to this Ordinance are allowed and approved by the Mayor and Board of Aldermen:

Sections:

- 8.1 Definitions
- 8.2 Privilege License Requirement

8.2.010	Additional Requirements
8.2.020	Failure to Comply
8.3	Regulations applicable to mobile food and ice cream vending and sales
8.4	Exemption from Zoning Ordinance 1154

**Section 8.1 - Definitions.** As used in this chapter, the following terms shall have the meanings as defined in this section:

(a) *Mobile food vendor* means any person who sells food and/or beverages from a mobile pushcart or motorized mobile food preparation vehicle on a consistent basis and for a period of more than 15 days each calendar year.

(b) *Mobile food preparation vehicle* means any moveable car, van, truck, or trailer that includes a self-contained kitchen in which food is prepared, processed, or stored and used to sell and dispense food to the consumer. The unit must be on wheels at all times. This definition does not include pushcarts, which is defined below:

(c) *Mobile pushcart* means portable vending device, pushcart or other wheeled vehicle or device which may be moved without assistance of a motor and which is not required to be licensed and registered by the Department of Transportation, used for displaying, storing or transporting of food offered for sale by a vendor. Said cart may be up to four feet in width, six feet in length, excluding auxiliary items such as handles or fenders, or otherwise the cart shall not occupy space greater than a total of 24 square feet.

(d) *Ice Cream Truck* means a motor vehicle in which prepackaged ice cream, popsicles, ice sherbets and/or other frozen desserts of any kind and including non-prepackaged snow cones prepared on site are carried for the purpose of retail sale on the streets of the City of Amory whether stationary or mobile and does not include other foods. The inclusion of other and/or hot foods would define the vehicle as a Mobile Food Vendor and all applicable rules would apply.

(e) *Vend or Vending* means the offering of ice cream, popsicles, ice sherbets, frozen desserts, snow cones, and food prepared in a sanitary and safe fashion.

## **Section 8.2 - Privilege License and Permit Requirement**

(a) General. All mobile food vendors shall obtain and maintain a City of Amory Privilege License and a mobile food vending permit for each mobile pushcart, mobile food preparation vehicle, and/or ice cream truck in operation. All applications for permit renewal shall be filed annually with the City of Amory City Clerk. No person shall operate or permit a mobile food

vehicle, pushcart, or ice cream truck owned or controlled by such person to be operated as a mobile food vehicle, pushcart or ice cream truck on the streets of the City of Amory except as authorized by a duly issued and currently valid Privilege License and mobile food vending permit obtained pursuant to this section. The license issued under this section shall be prominently displayed on the mobile food vehicle, pushcart, and/or ice cream truck whenever it is being used for vending.

(b) Terms. The Privilege License or any rights or privileges thereunder, may not be assigned or transferred. Acceptance of a license by the permittee shall constitute an agreement by such permittee that he or she has no property right in the permit, and that such permittee shall appear and defend, and indemnify and hold the City of Amory, its officers, and employees harmless from and against any and all claims, loss, damage, or expense for any injury to or death of any person or persons, or for damage to property resulting from, relating to, or arising out of any activity, act, or omission of such permittee, or any of the permittee's employees, agents, representatives, or customers on the City of Amory streets. The Mayor and Board of Aldermen of the City of Amory and its elected and appointed officials and employees assume no responsibility for or regarding any goods sold or activities by any permittee or any of the permittee's employees, agents, representatives, contractors, or customers.

(c) Application for Permit.

The application may be reviewed by any department of the city as may be necessary or convenient to determine whether the application is complete or whether the permit should be granted. Permit applications shall contain the following information:

- (1) The name, mailing address, physical address, telephone number(s), and email address of the applicant(s). 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) Mobile food vending permits costs shall be based on the following schedule and paid annually per vehicle or cart which covers the administrative cost of processing the application and regulating each mobile pushcart or mobile food preparation vehicle:

Businesses with a home office located within Amory City District that hold a MS Sales Tax License indicating Amory, MS as your place of business.  
\$20.00 per year

Business with a home office located outside of the Amory City District that hold a MS Sales Tax license indicating any other city or town within Mississippi as your place of business.  
\$150.00 per year

- (3) Permit holders may be required to remove private materials or accessories to allow utility access for emergency and maintenance operation or both.
- (4) This permit does not allow permit holders to operate during city appointed special events without proper authorization from the special event organizers and the City of Amory.
- (5) The permit shall be displayed on the mobile pushcart or mobile food preparation vehicle at all times.
- (6) Permits are non-transferable.
- (7) A damaged or destroyed mobile pushcart or mobile food preparation vehicle may be replaced if and only if approval for its replacement is obtained from the city clerk's office. Any such replacement pushcart or vehicle shall be of substantially the same type, size, and dimension and with the same general characteristics as the original. Such replacement may be disallowed if the original vendor permit would not have approved the use of the replacement pushcart or food preparation vehicle.
- (8) Any permit granted pursuant to this article shall be nonexclusive. The city may grant any number of such permits as the city deems appropriate. The granting of a permit shall not limit or abridge any power or authority of the city and shall not limit the authority of the city to commence appropriate civil, criminal, or other enforcement actions. The city retains full authority to amend the ordinances, rules and regulations that apply to any permit.
- (9) The city may revoke and terminate the permit in the event the vendor violates any term, condition, or provision of the permit, the City of Amory Code of Ordinances and/or zoning ordinances, state and/or federal law, or if the business license issued by the city for the permitted activity is revoked. The procedures for revoking or terminating a permit shall be the same as revoking or terminating a business license. The revocation may be sought as a remedy in a civil action. The vendor may terminate or surrender the permit at will any time prior to the expiration of the permit by providing written notice to city clerk. Termination of the permit shall not operate to relieve the vendor of the obligation to release, hold harmless, and indemnify the city and its officers, agents, and employees.

#### **Section 8.2.010 - Additional Requirements**

The following items must be attached to the Application for Permit and will be retained in the City Clerk's office with application for permit:

- (1) A valid City of Amory Privilege license to be renewed yearly:
  - 0-3 Employees \$20.00
  - 4-10 Employees \$30.00
  - 11 or more \$30.00 plus \$3.00 for each employee over 10, not to exceed \$150.00

- (2) The permittee must obtain a Mississippi Department of Agriculture and Commerce License as a permitted applicant for mobile food vending and sanitation required by Miss. Code Ann. 69-1-18 and a food service permit from the Mississippi Department of Health.
- (3) The permittee must obtain some form of verification from the Monroe County Health inspector or health facility within the county of location of permanent residence confirming or approving the mobile vender eligible for occupation.
- (4) All mobile pushcarts, mobile food preparation vehicles, and ice cream trucks shall be issued a State tax number by the Mississippi Department of Revenue designating them as a City of Amory business. Those who are located with a home office/kitchen outside of the City of Amory will pay a different Permit Fee. A copy of the Sales Tax License must be given to the City Clerk.
- (5) An approval from the City of Amory Fire Chief.
- (6) A City of Amory Property Owner Consent Form for each proposed location of operation.
- (7) All permit applicants must operate under a central kitchen within the state of Mississippi that is approved by the Mississippi Department of Health for food service.
- (8) A list of products to be sold.
- (9) Proof of a valid insurance policy. The permittee must maintain at all times during the entire term of the permit at least a current public liability insurance policy in an amount of not less than Three Hundred Thousand Dollars (\$300,000) for Ice Cream Trucks, Five Hundred Thousand Dollars (\$500,000.00) per mobile food preparation vehicle, and Five Hundred Thousand (\$500,000.00) per mobile pushcart, with the city named as an additional insured.
- (10) A written indemnity agreement that will hold harmless the city, its officers, and employees, for any loss or liability or damage, including costs, for bodily injury or property damage sustained by a person as a result of the negligent installation, use, or maintenance of a permitted space.
- (11) 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 mobile pushcart or mobile food preparation vehicle for which a permit is requested. This shall include all related response and follow up documents showing any results, findings or actions.
- (12) Background Check - All vendor applicants must be fingerprinted by the Amory Police Department and cleared before permitted. The dates, jurisdiction, court, and disposition of the following (if applicable):
  - a. All felony charges related to the applicant or any principal of the applicant; and

- b. All misdemeanors and violations directly or indirectly related to food, food preparation, permit operations, and/or business operations, related to the applicant or any principal of the applicant.
- (13) Identification. The Vehicle or Cart must be clearly identifiable as a mobile vending vehicle and labeled with the business name. The Ice Cream Truck or Mobile Vending food preparation vehicle must have a commercial chassis appearance such as a step van. Converted privately owned vehicles or vehicles with a non commercial appearance shall be subject to review and possible denial of permit.
- (14) Safety. Permitted vehicles will be labeled with safety signs with 3" letters. The signs should read "Curbside Only", "Pedestrian Crossing", and/or "Watch for Children". The vehicles used for mobile Ice Cream Trucks shall be outfitted with a musical device that plays only classic ice cream truck novelty tunes to notify citizens and communities that it is in the area, provided the music should not be audible beyond 100 yards. Additionally, the music shall stop when the vehicle stops and/or is parked.
- (15) Length of Stop. No ice cream truck shall stop for the purpose of making sales for more than 20 minutes in a single location unless authorized by the City of Amory in the permit or for special occasions authorized by the City of Amory.
- (16) Such other additional information required by law, rule, or ordinance, or that any department of the city or board of alderman, or the permit applicant reasonably deems appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.

### **Section 8.2.020 - Failure to Comply**

If any permittee chooses not to or fails to meet the terms to every additional requirement listed above, he / she will be unqualified for granting of a City of Amory Permit. Such permittee and/or potential applicant shall also be subject to all penalties and fines for violations of the terms of this Ordinance and Ordinance 1154.

### **Section 8.3 - Regulations applicable to mobile food and ice cream vending and sales**

- (a) Permitted Sales Locations and Hours of Operation: Sales from Ice Cream Mobile Vending shall occur only on public ways with a speed limit of 30 miles per hour or less located within residential and partial commercial districts under the City of Amory Zoning Ordinance or on private ways with the consent of the owner or owners of the private way. Mobile pushcarts and mobile food preparation vehicles shall only conduct business on private property, in designated areas approved by the department of planning. These areas include: downtown business (DB), general business (GB), shopping center (SC), professional business (PB), neighborhood business (NB), medical district (MD) and planned unit development (PUD).

- (1) A special exception may be granted by the City of Amory Development Board for a mobile food vendor to operate in multi-unit residential (RC) districts.
- (b) The city clerk's office, department of planning, department of public works and the code enforcement officer shall have continuing authority to approve locations, grant conditions for approval, revoke prior approval of locations, make conditional revocations of approved locations, require adjustments by the mobile food vendor in setup or location to accommodate public safety and convenience, and to otherwise maintain full lawful control over all public ways of the city. The City of Amory Police and Fire Departments shall have concurrent authority to oversee locations and setup of mobile pushcarts and mobile food preparation vehicles. If an applicant is denied and wishes to appeal his grievance, he may request an order approving his application to the board of alderman at a regular scheduled meeting and said item will be considered "approved or disapproved."
- (c) Ice cream trucks, mobile pushcarts, and mobile food preparation vehicles shall conform to the following regulations regarding location and operation:
  - (1) Ice cream trucks, mobile pushcarts, and mobile food preparation vehicles must be located in areas as deemed by Section 8.3 (a):
    - a. Proof of said permission must be filed with the city clerk's office.
  - (2) A mobile food vendor operating in all districts shall operate Monday through Saturday between the hours of 6:00 a.m. and 1:00 a.m. If private property, the owner of said property may permit less time. Ice cream trucks may stop for the purpose of making sales only between the hours of 9:00 a.m. and 8:00 p.m. Monday through Saturday. Cleanup and removal of the pushcart or vehicle shall be completed within 30 minutes of closing. The City of Amory may authorize special exception of additional hours in the case of festivals, hired parties, or other special events.
  - (3) Mobile pushcarts and mobile food preparation vehicles must not be locked or attached to trees, garbage receptacles, or street furniture or left parked on the street overnight or left unattended and unsecured at any time food is in the vehicle. Any mobile food vehicle found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.
  - (4) Ice cream trucks, mobile pushcarts, and mobile food preparation vehicles may not locate within any area which would block the view of traffic or traffic signals or traffic signs.
  - (5) Ice cream trucks, mobile pushcarts and mobile food preparation vehicles may not locate within ten feet of any fire hydrant.
  - (6) The operators must be present at all times.
  - (7) Sales of goods are limited to food and beverage allowed by City of Amory laws.
  - (8) In no event shall any mobile pushcart or mobile food preparation vehicle display device, or accessory container be located inside any public building or structure or at any place the general public is prohibited.

- (9) Mobile food vendors are responsible for all waste and trash removal. The containment area must be kept clear of grease, trash, paper, cups or cans associated with the operation. No liquid waste or grease is to be disposed of in tree pits or onto sidewalks, streets, or other public places; nor shall it be disposed of in drains or sanitary sewers.
- (10) The mobile food vendor shall not provide stands, shelves, bins, equipment, signs, covers, or any 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 graphics required as part of the application.
- (11) During the hours of operation, the permit holder shall provide a trash receptacle for use by customers located adjacent to the mobile pushcart or mobile food preparation vehicle in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic.
  - a. The mobile food vendor shall contain all refuse, trash and litter within the mobile food preparation vehicle.
  - b. The vendor shall be responsible for the proper disposal of such refuse, trash, and litter, and shall place it in the public trash container, or in any private container with proper permission.
  - c. The vendor is responsible for all litter and trash within 15 feet of the mobile pushcart or mobile food preparation vehicle at any time the vendor is selling or offering to sell any merchandise or service.
- (12) The ice cream truck, mobile pushcart, or mobile food preparation vehicle must have self-contained utilities and shall not use the city's utilities or private utilities (unless expressly stated in application from property owner) that are not self-contained and integral to the vendor unit.
- (13) No mobile food vendor shall sell or attempt to sell any item to the occupant of any motor vehicle, unless it is parked in a lawful parking space.
- (14) Mobile pushcarts and mobile food preparation vehicles must comply with all local, state, and federal rules regarding sanitation and protection of food from airborne contamination.
- (15) Every mobile food vendor shall keep records utilizing generally accepted accounting practices for the purposes of compliance with all federal, state and local tax laws. All vendors must pay all tax and licensing fees as required by the State of Mississippi.
- (16) Umbrellas or canopies must be attached to the pushcart or vehicle and must not exceed eight feet in height above grade. Maximum diameter of canopies and umbrellas shall not exceed six feet and shall not interfere with pedestrian movement. No mobile pushcart or mobile food preparation vehicle shall have more than two umbrellas.



- (17) All signage on mobile pushcarts and mobile food preparation vehicles shall comply with the City of Amory Sign Ordinance # 1563. Please see the City of Amory Planning and Zoning Department for approval.
- (18) Mobile food vendors may place a maximum of three coolers within their containment area so long as the coolers are neatly stacked to avoid visual clutter.
- (19) No accessory container shall be more than three feet from the unit.
- (20) Accessory containers must be made of hard substances such as hard plastic or a metal and may not be made by expanded polystyrene plastic, paper, paperboard, or cardboard.

(d) Prohibited Locations. No ice cream mobile vendor, mobile pushcart, or mobile food preparation vehicle shall make sales within 500 feet of a restaurant, retail store selling prepackaged food items, may not locate within any area which would block the view of traffic or traffic signals or traffic signs, or within ten feet of any fire hydrant. No ice cream mobile vender shall make any sales within 500 feet of a school without permission of the school administrator. Additionally, there shall be no sales within 50 feet of an intersection for mobile ice cream trucks stopping in streets, and mobile ice cream trucks shall not stop on the following streets for the purpose of sales in the City of Amory:

- (1) Main Street
- (2) Boulevard Drive
- (3) Hatley Road
- (4) Tschudi Road
- (5) All State Highways
- (6) Fifth (5th) Avenue North
- (7) Martin Luther King Drive
- (8) Earl Frye Boulevard

(e) Safety Zone. Mobile vendors are subject to all local and state vehicle and traffic laws, ordinances, and regulations applicable to other vehicles.

(f) Manner of Stops. Mobile Ice Cream trucks shall pull as far as practicable to the side of the right of way when stopping for the purpose of making sales and shall operate four-way flashers when stopped. In no event shall an ice cream truck stop for the purpose of making sales prevent the passage of other motor vehicles on the right of way.

(g) Unauthorized Stops. No ice cream truck shall stop at any time for the purpose of making sales in any area where parking is prohibited by the City of Amory or in any area posted as a no parking zone by the City of Amory or Amory Police Department.

(h) Minors in Vehicle. No person shall permit more than 2 persons under sixteen (16) years of age to ride in or on an ice cream truck unless the person in control of the ice cream truck is the parent or guardian of the minor or minors.

(i) Applicant. A permit shall not be issued for Ice Cream Truck vending to any person required by a governmental jurisdiction to register as a sexual offender, sexual predator, or such other similar classification as may exist in the the state or territory of conviction.

(j) Traffic Offenses. The permittee and any employee or operator shall have had no convictions within the preceding three (3) years in any governmental jurisdiction for reckless driving, driving under the influence, or such similar offenses as may exist in the jurisdiction of conviction.

(k) Dining Area. No mobile food vehicle vendor shall provide or allow any dining area, including but not limited to tables, chairs, booths, stools, benches, or stand up counters unless located on private property and with the express written consent of the property owner.

(l) General. The permittee, and any employee, agent, or representative thereof, shall insure that persons waiting to make purchases at the mobile vendor line up in a single file on the side away from the traveled part of the street (curbside) and in such a fashion as to create the least obstruction to pedestrian traffic. In the case of mobile ice cream vehicles, the permittee, and any employee, agent or representative thereof, shall vend only from the side of the vehicle away from moving traffic as near as possible to the curb or side of the street.

#### **Section 8.4 - Exemption from Zoning Ordinance**

A mobile food vendor licensed under this ordinance and operated in compliance with this ordinance shall not be considered a land use subject to regulation under the City of Amory Zoning Ordinance.

(a) Section 4 of Ordinance Number 1154 shall also be amended as follows:

Any violation of this Ordinance shall constitute a misdemeanor and be punishable as such, by a fine of up to \$500 per day. Each day of a violation shall constitute a separate and distinct offense.

Additionally, any privilege license issued pursuant to this Ordinance may be revoked, suspended or not renewed by the City Clerk for failure to comply with the provisions of this Ordinance and any rules or regulations promulgated by the City of Amory.

All other provisions of Ordinance No. 1154 shall remain in full force and effect.

BE IT FURTHER RESOLVED, that this Ordinance will be in full force and effect from and after the date of its passage. Good cause exists to allow this ordinance to become effective immediately. Such products should be allowed to be sold immediately for the benefit of the individual selling the products and for the benefit of the purchasing public.

This Ordinance having been first reduced to writing, was read, considered and adopted, first section by section and then as a whole.

Thereupon, upon motion duly made by Alderman John Darden, seconded by Alderman Joe McGonagill, and unanimously carried to adopt the foregoing Ordinance, and the question being put to roll call vote, the result was as follows:

Alderman Buddy Carlisle voting: YES

Alderman John Darden voting: YES

Alderman Tony Poss voting: YES

Alderman Glen Bingham voting: ABSENT

Alderman Joe McGonagill voting: YES

Thereupon, the Mayor declared said Ordinance approved, passed and adopted, on this the 20<sup>TH</sup> day of February 2018.

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MAYOR BRAD BLALOCK

ATTEST:

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JAMIE E. MORGAN, CITY CLERK