



CITY COUNCIL MEETING

STUDY SESSION MEETING AGENDA

TUESDAY, OCTOBER 23, 2018, 1:00 PM

Council Chambers, 201 South Cortez Street
Prescott AZ 86303
(928) 777-1272

Greg Mengarelli, Mayor

Billie Orr, Mayor Pro Tem

Steve Blair, Councilman

Phil Goode, Councilman

Jim Lamerson, Councilman

Alexa Scholl, Councilwoman

Steve Sischka, Councilman

The following Agenda will be considered by the Prescott **City Council** at its **Study Session Meeting** pursuant to the Prescott City Charter, Article II, Section 13. Notice of the meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02. One or more members of the Council may be attending the meeting through the use of a technological device.

1. CALL TO ORDER

2. ROLL CALL

3. DISCUSSION

A. Discussion of possible amendment to Sign Regulations addressing Temporary Signs on private property.

B. Discussion of Mobile Food Truck and Mobile Merchant Regulations.

4. ADJOURNMENT

EXECUTIVE SESSION

Upon a public majority vote of a quorum of the City Council, the Council may hold an executive session, which will not be open to the public, regarding any item listed on the agenda but only for the following purposes:

- (1) Discussion or consideration of personnel matters (A.R.S. §38-431.03(A)(1));
- (2) Discussion or consideration of records exempt by law (A.R.S. §38-431.03(A)(2));
- (3) Discussion or consultation for legal advice with the city's attorneys (A.R.S. §38-431.03(A)(3));
- (4) Discussion or consultation with the city's attorneys regarding the city's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation, or in settlement discussions conducted in order to avoid litigation (A.R.S. §38-431.03(A)(4));
- (5) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations with employee organizations (A.R.S. §38-431.03(A)(5));
- (6) Discussion, consultation or consideration for negotiations by the city or its designated representatives with members of a tribal council, or its designated

- representatives, of an Indian reservation located within or adjacent to the city (A.R.S. §38-431.03(A)(6);
- (7) Discussion or consultation with designated representatives of the city to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property (A.R.S. §38-431.03(A)(7)).

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. With 72 hours advanced notice, special assistance can be provided for sight and/or hearing-impaired persons at this meeting. Reasonable accommodations will be made upon request for persons with disabilities or non-English speaking residents. Please call the City Clerk (928) 777-1272 to request an accommodation to participate in this public meeting. Prescott TDD number is (928) 445-6811. Additionally, free public relay service is available from Arizona Relay Service at 1-800-367-8939 and more information at www.azrelay.org

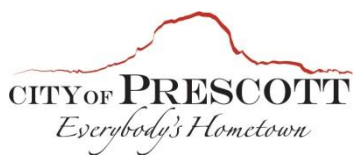
Confidentiality

Arizona statute precludes any person receiving executive session information from disclosing that information except as allowed by law. A.R.S. §38-431.03(F). Each violation of this statute is subject to a civil penalty not to exceed \$500, plus court costs and attorneys' fees. This penalty is assessed against the person who violates this statute or who knowingly aids, agrees to aid or attempts to aid another person in violating this article. The city is precluded from expending any public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced for violation of the statute unless City Council takes a legal action at a properly noticed open meeting to approve of such expenditures prior to incurring any such obligation or indebtedness. A.R.S. §38-431.07(A)(B).

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall on _____ at _____ m. in accordance with the statement filed by the Prescott City Council with the City Clerk

Maureen Scott, MMC, City Clerk

**COUNCIL AGENDA MEMO**

MEETING DATE/TYPE: **STUDY SESSION MEETING** **10-23-18**

DEPARTMENT: **Community Development**

AGENDA ITEM: Discussion of possible amendment to Sign Regulations addressing Temporary Signs on private property.

Approved By: Michael Lamar, City Manager

Item Summary

As a result of a Supreme Court decision in 2015 relating to municipal regulation of signs, City Council adopted Prescott's current sign regulations in 2016 to ensure that the City's Land Development Code (LDC) conformed to Constitutional protections of free speech. This was a revision to the 2003 LDC sign regulations, and was the result of staff research and Unified Development Code committee and Planning and Zoning Commission meetings.

Subsequently, City Council raised concerns about the revised regulations, including the size restrictions of individual temporary signs and permits and sign sizes for temporary commercial signs, which have resulted in a Council Motion for a moratorium on enforcement of the existing LDC regulations for temporary signs.

Background

Regulation of signs, as with other forms of speech, must be based upon criteria other than the content of the message. A long history of court decisions have limited the scope of speech regulations to time, place and manner components. Courts determine the validity of government restrictions on commercial signs based on whether the regulations:

1. Seek to implement a substantial governmental interest,
2. Directly advance that interest, and
3. Reach no further than necessary to accomplish the given objective.

The current LDC sign regulations are similar to many cities' regulations in limiting sign size or placement, depending upon the type of sign. The previous LDC regulations treated campaign signs differently than other types of signs, such as garage sale signs and signs on commercial buildings. The differentiation in regulation, therefore, was based on the message of the sign and, therefore, the content of the speech.

AGENDA ITEM: Discussion of possible amendment to Sign Regulations addressing Temporary Signs on private property.

Changing Prescott's sign regulations to address the accepted time, place and manner for sign criteria resulted in consideration of a basic change in the way the LDC regulates signs. There was concern about simplifying the code, as well. Staff researched model sign codes, which informed the revised, adopted regulations, based on logical criteria, and without consideration of the content of the sign messages.

Adopted regulations for temporary non-residential signs allow a commercial use to inform the public of intermittent or individual events or occurrences such as sales, grand openings or to display other messages that are relevant for a limited time period. The number of signs is limited to one per business, up to 24 square feet in size. A time limitation of 180 days is applied because the signs are temporary, not intended to replace permanent signs, and are limited in size. The sign may be mounted to a wall or freestanding and the proposed location, materials and means of support or attachment specified in the permit application. A permit is required to assure compliance with the size and time limitations. As with permanent signs, the message or speech conveyed by the sign is not regulated. A temporary commercial sign could convey messages related to products, sales, events, social issues, political support, or religious beliefs.

Adopted regulations for temporary residential signs allow property owners the ability to display signs in residential areas with limited controls to prevent clutter and dilapidated or dangerous displays. Individual sign size is limited to 6 square feet, with a maximum height of 5 feet. No time limit is imposed, and no permit is required; however, the sign must be maintained for safety. Enforcement of the size limitation is contemplated to be complaint-based and handled by simple measurement of area. Establishment of a maximum aggregate square foot for residential property, as opposed to individual sign size, was a concept discussed during the review by staff and the UDC.

Options

Staff suggest a range of options to consider, based on research of other jurisdictions' regulations and on previous discussions, to consider in determining regulations for temporary signs:

- 1) Retain the existing LDC regulations (adopted in 2016) regarding temporary signs. Otherwise, the options to revise include:
- 2) Allow larger individual temporary signs, with an increase from the currently allowable 24 square feet to 36 square feet for non-residential signs, with no aggregate maximum square footage.
- 3) Allow an increase in size from 6 square feet to 16 square feet for residential signs, with no aggregate maximum square footage.
- 4) Implement a maximum aggregate square footage of signs on a lot for non-residential and/or residential signs, such as 36 square feet.

AGENDA ITEM: Discussion of possible amendment to Sign Regulations addressing Temporary Signs on private property.

- 5) Require a permit and fee for certain types of temporary signs, for example, banners over a certain size (which would also apply frequently to temporary business signs).

Direction from the Planning and Zoning Commission will help guide a specific proposal, and, if determined, a proposed Code revision for Council's consideration.

Attachments

1. Current LDC Temporary Sign Regulations

Recommended Action: This item is for discussion only. No action will be taken.

Attachment 1

Sec. 6.12 / Signs

6.12.5.B. Temporary Signs

Temporary signs are permitted on private property in all zoning districts, subject to the following.

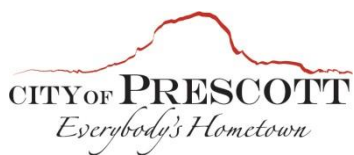
1. Temporary signs on private property for nonresidential uses:
 - a. One temporary sign, of up to 24 square feet, may be permitted per business.
 - b. A permit shall be required for all temporary signs.
 - c. Temporary sign permits shall be good for 180 days. A copy of the permit must be maintained on the premises and be readily available upon demand for verification by City inspectors.
 - d. A temporary sign may be attached to a building wall or may be freestanding. The proposed location, materials and means of attachment or support shall be specified in the permit application.
 - e. A temporary sign shall be subject to City inspection to assure that the installation is accomplished in a safe manner and location.
 - f. Damaged or dangerous conditions caused by a temporary sign must be immediately remedied or may result in the revocation of the permit.
 - g. Failure to obtain a permit for a temporary sign or failure to remove a temporary sign upon expiration of a permit shall constitute a blighting condition upon the property and shall be subject to enforcement and penalties as provided in City Code Chapter 1-3 and/or City Code Section 7-5-20.
2. Temporary signs on private property for residential uses are exempt from permitting, but subject to the following:
 - a. Each temporary sign shall be limited to not more than 6 square feet.

- b. Each temporary sign must be freestanding and installed in a safe and secure manner.
- c. Each temporary sign shall be limited to a maximum height of 5 feet.
- d. Damaged or dangerous conditions caused by a temporary sign must be immediately remedied or may result in enforcement action by the City.
- e. Failure to maintain a temporary sign shall constitute a blighting condition upon the property and shall be subject to enforcement and penalties as provided in City Code Chapter 1-3 and/or City Code Chapter 7-5.

C. Signs in the Public Right-of-Way

See City Code Title VIII.

(Ord. 5015-1553, 11-15-2016)

**COUNCIL AGENDA MEMO**

MEETING DATE/TYPE: **STUDY SESSION MEETING** **10-23-18**

DEPARTMENT: **City Attorney**

AGENDA ITEM: Discussion of Mobile Food Truck and Mobile Merchant Regulations.

Approved By: Michael Lamar, City Manager

Item Summary

This is an opportunity for the City Council to discuss the regulation of mobile food vendors and mobile merchants that operate in the City of Prescott.

Background

During the 2018 legislative session, A.R.S. §§9-485, 9-485.01 and 9-485.02 were passed and adopted into law. These statutes restrict and limit the City's ability to prohibit or ban the operation of mobile food vendors and mobile merchants, but do provide some authority to the City to adopt reasonable regulations for such mobile operations. The draft ordinance creates reasonable regulations for operations of mobile food vendors and mobile merchants.

The draft ordinance creates different layers of regulation depending on where the mobile food vendor or mobile merchant operates.

For example, all operators are required to obtain city business licenses, TPT licenses, county health inspection permits and food handler cards as appropriate. All mobile food trucks must comply with fire and safety codes and must show proof of inspection by a municipal fire department. All must comply with City utility requirements when applicable provide for handling of trash, refuse and litter, and comply with noise limitation requirements. All must comply with the ADA and provide a secure environment, including lighting.

When operating on non-residentially zoned private property, the regulations provide the least restrictions, such as written proof of permission from the owner and compliance with the Land Development Code signage regulations. Operation on commercial or business zoned property is also limited to not more than 96 consecutive hours.

When operating on residentially zoned private property (e.g. a special event or private party), in addition to the generally applicable regulations, the ordinance places a four

AGENDA ITEM: Discussion of Mobile Food Truck and Mobile Merchant Regulations.
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hour limit on the operation of the mobile vending unit, but prohibits operation in the right-of-way within residentially zoned areas and within 250 feet of residentially zoned areas.

When operating on City right-of-way, the operator must obtain a permit from the City for a nominal fee and show, among other things, proof of liability insurance naming the City as an additional insured. Other limitations on operating in City right-of-way include limiting use to one parking spot, a 6 hour time limit in any one parking spot, as well as requiring the service window to face, complying with all generally applicable parking regulations and imposing a size limit on mobile vending units to not more than 24 feet in length when parked in a diagonal space.

When operating on City owned property that is not right-of-way (e.g. city parking lots, city parks, city sponsored special events), the operator must first obtain an agreement from the City setting forth the terms of any such use. Terms could include a rental payment, as well as other operational requirements or limitations.

If the Council decides to move forward with a mobile vending regulation, staff would also present a concurrent amendment to the Prescott Land Development Code.

Financial Impact

The draft ordinance provides that permit fees to cover the administrative costs of right-of-way use permits be set by resolution. Additionally, mobile vending operations at or on city parking lots, city parks, the Prescott Regional Airport, City sponsored special events or other City property can create some revenue in the form of rent or license fees. All mobile vending of food, drinks and tangible goods is subject to transaction privilege tax.

Attachments

1. Prescott Mobile Food Vending Ordinance DRAFT
2. LDC 2.5.13 Mobile Vending

Recommended Action: This item is for discussion only. No action will be taken.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PRESCOTT, ARIZONA, AMENDING PRESCOTT CITY CODE TITLE IV (BUSINESS REGULATIONS) BY ADOPTING A NEW CHAPTER 4-8 REGULATING MOBILE FOOD VENDORS AND OTHER MOBILE MERCHANTS; ESTABLISHING A PURPOSE; SETTING FORTH DEFINITIONS; PROVIDING FOR PERMIT AND LICENSING REQUIREMENTS; ESTABLISHING MOBILE FOOD VENDOR AND MOBILE MERCHANT OPERATIONAL REQUIREMENTS; IMPOSING A PERMIT FEE; SETTING FORTH VIOLATIONS; ESTABLISHING PENALTIES; PROVIDING FOR APPEALS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City is authorized to regulate mobile food vendors and other mobile merchants pursuant to applicable law, including Arizona Revised Statutes Sections 9-485, 9-485.01, 9-485.02, and 36-1761;

WHEREAS, the City recognizes that mobile food vendors and other mobile merchants create opportunities for small business development and can provide affordable, high quality food and goods at a variety of locations and events;

WHEREAS, Prescott seeks to protect public health, safety and welfare through a reasonable regulatory program of mobile food vendors and other mobile merchants that includes food safety standards and parking regulations;

WHEREAS, with these regulations, the City ensures that mobile food vendors and other mobile merchants comply with building codes, health and sanitation codes, and accommodates people with disabilities;

WHEREAS, Prescott seeks to minimize potential traffic safety threats by mobile food vendors and other mobile merchants who may impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view of pedestrians and vehicle operators, and encourage pedestrians who wish to inquire about services to cross the street in an unsafe and illegal manner;

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Prescott, Arizona, as follows:

Section I. In General

Article IV of City Code of Prescott, Arizona is hereby amended by adding a new Chapter 4-8 (Mobile Food Vendors and Mobile Merchants) to read as follows:

Sec. 4-8-1 Purpose

This Chapter is adopted to protect the health, safety and welfare of the residents, workers and visitors of Prescott by enacting reasonable regulation for mobile food vendors and mobile merchants, their employees, agents, lessees or independent contractors by requiring compliance with minimum standards for safety and security.

Sec. 4-8-2 Definitions

The below words and phrases, wherever used in this Chapter shall be construed as defined in this Section unless, clearly from the context, a different meaning is intended. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. “*Applicant*” means the person who applies for a permit pursuant to this article.
- B. “*Controlling person*” means a natural person who either (A) has a ten percent (10%) or greater interest in the ownership or earnings of the business, or (B) is any of the following:
 - 1. An officer, director, or any stockholder who owns ten per cent (10%) or more, of a corporation licensee/applicant;
 - 2. A general partner of a limited partnership licensee/applicant or partner of a non-limited partnership licensee/applicant;
 - 3. An officer, president, or secretary of a limited liability company/corporation licensee/applicant; or
 - 4. The sole proprietor of a sole proprietorship licensee/applicant.
- C. “*Designated agent*” means the person designated by the applicant, or permittee to receive notices from the City pursuant to this article.

- D. *“Legal parking space”*:
1. Means an area on City right-of-way designated by two white stall lines in paved areas, by concrete bumper blocks or wheel stops in unpaved lots, (vehicles must be parked perpendicular to concrete bumper block or wheel stop) or marked for diagonal or parallel parking by signs.
 2. Does not include a parking space in a parking lot on property owned by the City that is required for the principal use or uses of the property associated with the parking spaces.
- E. *“Mobile food unit”* means a food establishment that is licensed by the state, that is readily movable and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any vehicle as defined in Arizona Revised Statutes Section 28-101.
- F. *“Mobile food vendor”* means any person who owns, controls, manages or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive or operate a mobile food unit.
- G. *“Mobile merchant”* means any person who sells any type of tangible personal property at or adjacent to the person’s mobile sales unit in which such tangible personal property is carried. This definition shall not include peddlers or solicitors or any persons regulated under City Code Chapter 4-4.
- H. *“Mobile sales unit”* means any vehicle used for carrying tangible personal property for sale at or adjacent to the vehicle in which such tangible personal property is carried.
- I. *“Permittee”* means the person who applied for a permit pursuant to this Chapter and in whose name such permit was issued by the City pursuant to this Chapter.
- J. *“Person”* means an individual, partnership, corporation, association or any other entity of whatever kind or nature.
- K. *“Right-of-way”* means any street, road, alley or sidewalk owned by the Prescott.
- L. *“Semi-permanent structure”* means equipment, or any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters.

Sec. 4-8-3 Compliance with State Licensing Requirements.

- A. It shall be unlawful for any person to operate a mobile food unit or act as a mobile food vendor without having first obtained a valid license from the State of Arizona Department of Health Services pursuant to A.R.S. § 36-1761.
- B. It shall be a class one misdemeanor to violate this section.

Sec. 4-8-4 Permit Requirements

- A. It shall be unlawful for a person to operate a mobile food unit or mobile sales unit on any City right-of-way without first obtaining a permit from the City in accordance with this Chapter. The mobile food vendor or mobile merchant shall comply with the requirements of this Chapter.
- B. A permit issued pursuant to this article, including a renewal of a permit, is valid for a period of one (1) year from the date of issuance if the mobile food vendor or mobile merchant is in compliance with this Chapter. The permit is non-transferable.
- C. Application Requirements; Procedure. Any person desiring to obtain a new or renewal permit must apply to the City by presenting a complete application and the applicable fee to the City _____ Department.
 - 1. The application shall include, but not be limited to, the following information:
 - i. The names, addresses, and contact information for the applicant, including all controlling persons and designated agents;
 - ii. A general description of the goods to be sold by the mobile food vendor or mobile merchant;
 - iii. A description, license plate number and photograph of the mobile food unit or mobile sales unit;
 - iv. A valid driver's license;
 - v. Copies of valid City business licenses and privilege or use tax licenses;

- vi. Proof of liability insurance naming the City as an additional insured that shall be maintained during the term of the permit and shall have be in a form and in the amounts as established from time to time by the City Attorney; and
 - vii. If the applicant is a mobile food vendor, required certificate(s) from health services department of Yavapai County.
- D. Complete permit renewal applications shall be submitted to the City _____ Department no later than ____ calendar days prior to the expiration of a permit; otherwise the permit shall be deemed expired and non-renewable. If the renewal application is not received as stated above, the permittee shall submit an application for a new permit and provide all information and fees required for a new permit application.
- E. A new or renewal permit shall be issued to an applicant pursuant to this Chapter unless one or more of the following apply:
- 1. The applicant failed to provide a completed application;
 - 2. The applicant fails to pay the applicable permit fee for a new or renewal permit;
 - 3. The applicant or a controlling person is currently in violation of this Chapter, in violation of or is not in compliance with the Prescott City Code, Prescott Land Development Code, or the Arizona Revised Statutes;
 - 4. The applicant has been determined by the City to owe delinquent City transaction privilege taxes, and/or other delinquent fees payable to the City;
 - 5. The application contains false or misleading information;
 - 6. The applicant has a current debt related to any open or closed account maintained or formerly maintained with the City;
 - 7. The applicant or controlling person failed to comply with any federal and state laws, and if the applicant is a mobile food vendor, regulations promulgated by the Arizona Department of Health Services or Yavapai County, or the Prescott City Code; or
- F. An application for a license shall be denied if any licensee, designated agent or controlling person has been convicted within five (5) years of (i) a

felony drug offense involving the sale, manufacture or transportation of any dangerous drug as defined under A.R.S. § 13-3401; (ii) a “violent crime” under A.R.S. Title 13, Chapters 11, 12, 13; (iii) a “sexual offense” under A.R.S. Title 13, Chapter 14; (iv) (i) a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, or any preparatory offenses of the aforementioned crimes; (ii) a felony involving a fraudulent or dishonest act; or (iii) a misdemeanor involving moral turpitude; or (v) for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this subsection.

Sec. 4-8-4 Licensing Requirements

It shall be unlawful for a person to operate a mobile food unit or mobile sales unit at any location within the City without obtaining a business license from the City pursuant to City Code Chapter 4-6 and to obtain all other required federal, state, county and local licenses for the lawful operation of business, including, but not limited to, a privilege or use tax license, the applicable county environmental health services permit from Yavapai County, and for a mobile food vendor, a current food handler’s card or certificate from an accredited food handler training class as specified by rules from the Arizona Department of Health Services.

Sec. 4-8-5 Operation at City Sponsored Events or on City Property Other Than Right-of-Way

Prior to a mobile food vendor or mobile merchant operating a mobile food unit or mobile sales unit at an event sponsored by the City or on property owned by the City other than City rights-of-way, such vendor or merchant shall enter into a license, concessionaire or other agreement with the City setting forth the terms of any such operation.

Sec. 4-8-6 Operational Requirements.

- A. Fire Safety and Inspection. A mobile food vendor must ensure that all mobile food units comply with the version of the International Fire Code, state law, and the City Code relating to fire and explosion safety standards in effect at the time of licensing and/or permitting as provided in this Chapter.
- B. A mobile food unit(s) shall be inspected by the City’s Fire Department, or the mobile food vendor shall provide evidence that the mobile food unit passed a fire inspection by another city or town fire department in this state within the preceding twelve (12) months.
- C. The mobile food vendor or mobile merchant shall comply with utility requirements pursuant to City Code. Evidence of such permit(s) for

each mobile food unit or mobile sales unit shall be maintained in the mobile food unit or mobile sales unit at all times and shall be made available for review by City of Prescott or Yavapai County inspectors upon request. All work shall be performed by a contractor with the applicable required state license.

- D. Refuse, Trash and Litter Maintenance. A mobile food unit shall:
- (1) Provide a minimum of one fifteen (15) gallon trash receptacle within fifteen (15) feet of each individual mobile food unit for customers and employees;
 - (2) Maintain an area around the mobile unit clear of litter, garbage, rubble and debris; and
 - (3) Transport the trash from the area of operation into an authorized waste disposal location.
- E. Noise Restrictions. A mobile food vendor or mobile merchant shall not use, play, or caused to be used or played any amplifier, loudspeaker, microphone, amplified music, or any other amplified instrument or device used for the production of sound in a vending area when the mobile food unit or mobile sales unit from which the from which mobile food vendor or mobile merchant is vending is stationary or mobile upon any right-of-way, park or other public place, and shall otherwise comply with City Code Chapter 5-4 (Unnecessary Noise Prohibited).
- F. Security.
- (1) The mobile food unit or mobile sales unit and the surrounding vending area shall be maintained in a safe and clean manner at all times.
 - (2) A mobile food unit or mobile sales unit shall have adequate lighting to ensure customer safety in the vending area. Lighting shall be directed downwards and away from rights-of-way and adjacent properties.
 - (3) The mobile food unit or mobile sales unit and its customers shall not obstruct the movement of pedestrians or other vehicles using the sidewalk, street, alley, or other public right-of-way.
- G. Private Property. A mobile food vendor or mobile merchant shall operate a mobile food unit or mobile sales unit only in non-residential

zoning districts in accordance with the Prescott Land Development Code and subject to the following limitations and conditions:

- (1) A mobile food vendor or mobile merchant shall obtain written permission to use the private property where the mobile food unit or mobile sales unit is located and shall provide proof of such written permission on demand by the City. Notwithstanding the permission of a person owning or having lawful control of private real property, a mobile food unit or mobile merchant shall not remain in one location on private real property for longer than ninety-six (96) consecutive hours unless the City grants an extension for a permitted event. "One location" within this subsection means a location within a parcel of land and includes movements from different parked positions within the same parcel.
- (2) Residential Area. A mobile food vendor or mobile merchant shall not operate on City right-of-way in an area zoned for residential use or within two hundred fifty (250) feet of an area zoned for residential use, except (i) a mobile food vendor selling only ice cream may operate on public rights-of-way in areas zoned for residential use; or (ii) subject to applicable laws and the City Code, a mobile food vendor or mobile merchant may operate on private property in a residential area if the mobile food vendor or mobile merchant obtains a separate agreement with the property owner to operate a mobile food unit or mobile sales unit for a maximum of six (6) hours within a twenty-four (24) hour period on the property.

H. City Rights-of-Way and Other City Property. A mobile food vendor or mobile merchant may operate a mobile food unit or mobile sales unit on City Rights-of-Way and other City Property in accordance with the subject to the following limitations and conditions:

- (1) City Right-of-Way. A mobile food vendor or mobile merchant shall obtain a permit pursuant to Section 4-8-3 prior to operating in a City right-of-way. A mobile food vendor or mobile merchant shall operate only in a single legal parking space.
- (2) City Owned Property Other Than Right-of-Way. If the mobile food vendor or mobile merchant desires to operate on City property other than legal parking space in a City right-of-way, the mobile food vendor or mobile merchant shall obtain an approved license, or enter into a separate licensing, concessionaire or use agreement or similar agreement with the City. The approval of any such agreement is within the sole

discretion of the City. A mobile food vendor or mobile merchant operating under such an agreement shall also possess all licenses as required under this Section 4-8-4.

- (3) Prescott Regional Airport. Mobile food vendors or mobile merchants shall not operate at the Prescott Regional Airport unless the mobile food vendor or mobile merchant has obtained an approved license, or entered into a separate licensing, concessionaire or use agreement or similar agreement with the City. The approval of any such separate agreement is within the discretion of the City. A mobile food vendor or mobile merchant operating under a separate agreement shall also possess all licenses as required under this Section 4-8-4.

- I. Parking. A mobile food unit or mobile sales unit shall comply with this subsection and applicable law as it pertains to parking.

- (1) A mobile food unit or mobile sales unit, including any semi-permanent structure used or associated with the mobile food unit or mobile sales unit, shall park in only one (1) legal parking space while operating in City right-of-way.
- (2) A mobile food unit or mobile sales unit, including any semi-permanent structure used or associated with the mobile food unit or mobile sales unit, may use no more than one (1) parking space on City property, except as may be provided by way of a separate agreement with the City to use additional parking spaces on City property.
- (3) No mobile food unit or mobile sales unit exceeding twenty-four (24) feet may park diagonally in a diagonal parking space.
- (4) No mobile food or mobile sales unit may use a diagonal parking space when that diagonal parking space is adjacent to another diagonal parking space on the same side as the serving window side of the mobile food unit or mobile sales unit.
- (5) No mobile food unit or mobile sales unit operator shall operate with the serving window facing street traffic.
- (6) A mobile food unit or mobile sales unit shall abide by all parking regulations, including posted time limits. If there are no other time restrictions on the use of a legal parking space, a mobile food unit shall not occupy a legal parking space for more than six (6) hours in a twenty-four (24) hour period. "Occupy" within this subsection means within one hundred (100) feet of the

place in which the mobile food unit was initially parked.

(7) A mobile food unit shall not occupy a legal parking space with insufficient parking capacity as prescribed by Prescott City Code and applicable law, and includes occupying a parking space on private property that reduces the number of available parking spaces on the private property below that which is required for the principal use or uses of the property associated with the parking spaces as set forth in A.R.S. Title 9 and the City's Land Development Code.

(8) A mobile food vendor shall not claim or attempt to establish any exclusive right to park at a particular street location.

J. Signs. A mobile food vendor shall comply with the Prescott Land Development Code sign regulations pursuant to LDC Section .5.13.

Sec. 4-8-7 Fees

The fee for the permit required under Section 4-8-3 shall be established by a resolution of the City Council.

Sec. 4-8-8 Violations; Suspension; Revocation.

- A. The City shall give written notice of a violation to the permittee or designated agent that may result in the suspension or revocation of the permit. The notice shall include a description of the violation, the statutory or code reference, how the permittee can comply with the requirement, a description of the process whereby a hearing may be requested, the time limit for requesting a hearing, and a warning that failure to timely request a hearing may result in suspension or revocation of the permit. The notice shall be personally served on the permittee or sent via registered/certified mail to the permittee or designated agent. Service of the notice shall be deemed complete upon mailing or personal service on the licensee or designated agent.
- B. The permittee or designated agent receiving a notice under this section may request a hearing pursuant to City Code Section 1-3-7. If the permittee fails to comply with the requirements of this Chapter by the date provided in the notice, the City may suspend or revoke the permit as provided in this section.
- C. In addition to any penalties set forth in this Chapter, a permit shall be suspended if, during the term of the permit, the permittee or a controlling person has violated any of the provisions of this Chapter. During the suspension period, the permittee shall not operate the

mobile food unit or mobile sales unit associated with the suspended permit on City right-of-way. If a fine is associated with the violation that is the basis for suspension, the suspension may continue beyond the period set forth in this subsection until such time as the permittee pays the fine. The penalty for a suspension of a permit shall be:

1. For the first suspension of a permit during a 12 month period, the license shall be suspended up to fourteen (14) calendar days and a fine of \$100 will be imposed.
 2. For the second suspension of a permit during a 12 month period, the permit shall be suspended to a minimum of fifteen (15) calendar days up to a maximum of thirty (30) calendar days and a fine of \$250 shall be imposed.
 3. For the third suspension of a permit during a 12 month period, the permit shall be revoked.
- D. In addition to a revocation for a third suspension as set forth above, the City may revoke a permit issued pursuant to this Chapter if the City determines that:
1. A permittee or designated agent operated the business during a period of time when the permit related to the mobile food unit or mobile sales unit was suspended;
 2. A permittee or designated agent or controlling person, following the issuance of a permit, is convicted of (i) a felony drug offense involving the sale, manufacture or transportation of any dangerous drug as defined under A.R.S. § 13-3401; (ii) a “violent crime” under A.R.S. Title 13, Chapters 11, 12, 13; (iii) a “sexual offense” under A.R.S. Title 13, Chapter 14; (iv) (i) a felony involving trafficking in stolen property, fraud, forgery, theft, burglary, robbery, extortion, conspiracy to defraud, or any preparatory offenses of the aforementioned crimes; (ii) a felony involving a fraudulent or dishonest act; or (iii) a misdemeanor involving moral turpitude; or (v) for conduct in another jurisdiction which if carried out in Arizona would constitute an offense under one of the statutory provisions enumerated in this subsection.
 3. The permittee or designated agent operated, or attempted to operate a mobile food unit or mobile sales unit on City right-of-way without a license;

4. The City previously issued three (3) or more notices of suspension or violation within a six (6) month period;
 5. The permittee or controlling person has not complied with a provision of this Chapter or has failed to provide information as required by this Chapter;
 6. The application fee, permit fee, or any transaction privilege tax has not been paid; or
 7. The permittee fails to pay outstanding fines or resolve any violations.
- E. It is a violation of this Chapter for any person to provide false information on any license application.
- F. It is a violation of this Chapter for a person to operate a mobile food unit or mobile sales unit that fails to meet all of the requirements in this Chapter.
- G. If a permit is revoked pursuant to this section, the permit and its controlling person(s) may not apply for a permit under this Chapter for a period of one (1) year from the date of revocation.

Sec. 4-8-9 Fines; Penalties.

- A. Each day any violation of any provision of this Chapter shall continue shall constitute a separate offense.
- B. Civil Penalty: Violations of any provision of this article shall be civil code offenses which may be adjudicated and enforced by the City Court under Chapter 1-3 of the Prescott City Code.
- C. Criminal Penalty: Among other penalties that may apply, including revocation or suspension of a permit (when applicable), any person who violates any provision of this Chapter, whether or not he act is specifically stated as being unlawful, shall be guilty of a class 1 misdemeanor and upon conviction shall be punished as provided in Chapter 1-3 of the Prescott City Code.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Recitals.

The recitals above are fully incorporated in this Ordinance by reference.

Section IV. Effective Date.

The effective date of this Ordinance shall be ____ days following adoption by the City Council.

Section V. Preservation of Rights and Duties.

This Ordinance does not affect the rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this Ordinance.

Section VI. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the City Council of the City of Prescott Arizona, this ____ day of _____, 2018, by the following vote:

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott, Arizona on this ____ day of _____, 2018.

GREG L. MENGARELLI
Mayor

ATTEST:

APPROVED AS TO FORM:

MAUREEN SCOTT
City Clerk

JON M. PALADINI
City Attorney

CERTIFICATION OF RECORDING OFFICER

STATE OF ARIZONA)
County of Yavapai) ss.

I, the undersigned Maureen Scott, being the duly appointed, qualified City Clerk of the City of Prescott, Yavapai County, Arizona, certify that the foregoing Ordinance No. _____ is a true, correct and accurate copy of Ordinance No. _____, passed and adopted at a Voting Meeting of the Council of the City of Prescott, Yavapai County, Arizona, held on the _____ day of _____ 2018, at which a quorum was present and, by a _____ vote, _____ voted in favor of said ordinance.

Given under my hand and sealed this _____ day of _____, 2018.

Seal

City Clerk

Attachment: Prescott Mobile Food Vending Ordinance DRAFT (2203 : Mobile Food Truck and Mobile Merchant Regulation)

2.5.13 / Mobile Food Vendors and Mobile Merchants

“Mobile food unit” means a food establishment that is licensed by this state, that is readily movable and that dispenses food or beverages for immediate service and consumption and other incidental retail items from any vehicle as defined in Arizona Revised Statutes Section 28-101.

“Mobile food vendor” means any person who owns, controls, manages or leases a mobile food unit or contracts with a person to prepare foods and vend from, drive or operate a mobile food unit.

“Mobile merchant” means any person who sells any type of tangible personal property, including, but not limited to, food and drink, at or adjacent to the person’s mobile sales unit in which such tangible personal property is carried. This definition shall not include any person working or acting for a person holding a mobile merchant permit issued in accordance with this section.

“Mobile sales unit” means any vehicle used for carrying tangible personal property for sale at or adjacent to the vehicle in which such tangible personal property is carried.

A. Mobile food vendors are permitted to operate on non-residentially zoned private property in accordance with City Code Chapter 4-8 (Mobile Food Vendors and Mobile Merchants).

B. The operation of a mobile food unit or mobile sales unit pursuant to this section shall not reduce the number of parking spaces on such property below the number of parking spaces required for operation of the permanent, existing business(es) on the property and shall not impede vehicular circulation within the parking area of that business.

F. Mobile food vendor or mobile merchant signage shall be an integral part of the mobile food unit or mobile sales unit with lettering not exceeding **ten** inches in height. Only the name of the vendor or the vending company, the products offered, and the price of the products shall be included on the sign.

G. Mobile food vendor or mobile merchants signs shall not be internally illuminated or make use of flashing or intermittent lighting, animation, or noisemaking devices. Graphic illustrations shall display only the products being offered.