

STATE OF GEORGIA
CITY OF MCDONOUGH

ORDINANCE NO. 23-07-06.2

AN ORDINANCE PROMOTING THE PUBLIC HEALTH AND SAFETY OF THE CITY, AMENDING TITLE 5, BUSINESS OCCUPATION TAXES, ADMINISTRATIVE FEES AND REGULATORY FEES, OF THE CITY CODE OF ORDINANCES; REGULATING MOBILE FOOD VENDORS AND FOR OTHER LAWFUL PURPOSES

WHEREAS, the City of McDonough (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City are the Mayor and Council (“City Council”) thereof;

WHEREAS, the City is authorized pursuant to Section 2.17(b) of the City Charter to adopt ordinances, resolutions, rules and regulations deemed necessary, expedient, or helpful for the good order, welfare, prosperity and well-being of the City;

WHEREAS, the City finds it desirable and to the benefit of the public health and safety to provide for the licensing, operation and regulation of mobile food vendors whether through mobile food trucks or pushcarts; and

WHEREAS, the City Council finds this Ordinance to be in the best interest of the health, safety and welfare of the City.

THE COUNCIL OF THE CITY OF MCDONOUGH HEREBY ORDAINS as follows:

Section 1. Title 5, Business Occupation Taxes, Administrative Fees and Regulatory Fees, of the City of McDonough Code of Ordinances is hereby amended by adding Chapter 5.26, Mobile Food Vendors, to read as follows:

TITLE 5 - BUSINESS OCCUPATION TAXES, ADMINISTRATIVE FEES AND REGULATORY FEES

CHAPTER 5.26 - MOBILE FOOD VENDORS

Sec. 5.26.010. Purpose.

- (a) The general purpose of this article is to promote the health, safety, and general welfare of the citizens of the City by requiring that mobile food vendors provide residents and customers with a level of cleanliness, quality and safety.
- (b) It is also the intent of this article to establish reasonable guidelines and restrictions for mobile food vendors in relationship to established restaurant businesses, and ensure the safe and convenient use of the public rights-of-way.

Sec. 5.26.020. Definitions.

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

Commissary means an approved catering establishment, restaurant, or other approved place in which food, containers or supplies are kept, handled, prepared, packaged or stored.

Ice cream truck means a motor vehicle in which pre-packaged ice cream, popsicles, ice sherbets or other frozen desserts of any kind are carried for the purpose of retail sale on the streets of the City. For the purpose of this article, the term "ice cream truck" shall not include vendors who prepare ice cream, popsicles, ice sherbets or other frozen desserts of any kind.

Mobile food vendor means a retail food establishment that reports to and operates from a commissary and is readily moveable, is a motorized wheeled vehicle, or a towed wheeled vehicle designed and equipped to prepare and serve food.

Push cart means a non-self-propelled vehicle limited to serving commissary prepared or prepackaged food and non-potentially-hazardous food, unless the equipment is commercially designed and approved to handle food preparation and service. Pushcarts shall not be required to comply with mobile vehicular safety requirements.

Restaurant means an establishment where food and drink are prepared, served, and consumed primarily within the principal building.

Temporary food establishment means a retail food establishment, other than a City permitted mobile food vendor or pushcart, that is not intended to be permanent and that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

Sec. 5.26.020. License and insurance required.

- (a) **License required.** It shall be unlawful for any person to sell, or offer for sale, food of any type from a commissary, mobile retail food establishment vendor, ice cream truck, pushcart or temporary food establishment without a permit first having been granted under this section, except as part of a City-sponsored or City sanctioned special event.
- (b) An application for a permit hereunder shall be submitted to the Community Development Director or his designee setting forth all information required hereunder and in compliance with this chapter. The Community Development Director or his designee shall develop a form of application for the purpose of compliance with this article.
- (c) **Mobile food vendor/push cart permits.** The following information shall be provided with each application for a mobile food vendor, or push cart permit:
 - (1) Name of the mobile food vendor;
 - (2) Make, model and license plate number of the vending unit;
 - (3) Owner's contact information;
 - (4) Operator's contact information;
 - (5) Type of vendor (street vending unit or sidewalk vending unit);

- (6) Copy of the approved permit from the County Health Department;
- (7) List of operating locations and times;
- (8) Signatures from property owners indicating consent for the use of their property;
- (9) Signature of the applicant indicating agreement to the listed requirements.
- (10) Insurance requirement specific to mobile food vendors prior to issuance of permit. A mobile food vendor shall maintain a \$1,000,000.00 liability insurance policy as a condition of holding a City issued mobile food vendor permit. Proof of current liability insurance, issued by an insurance company licensed to do business in Georgia, protecting the mobile food vendor, the public and the City from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the permit. Such insurance shall name the City as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration date without 30 days advanced written notice to the City.

(d) **Ice cream truck permit.** The following information shall be provided with each application for an ice cream truck permit:

- (1) Name of the mobile food vendor;
- (2) Owner's contact information;
- (3) Operator's contact information;
- (4) Type of vendor (street vending unit or sidewalk vending unit);
- (5) Copy of the approved permit from the state department of agriculture;
- (6) Signatures from property owners indicating consent for the use of their property, if applicable;
- (7) Signature of the applicant indicating agreement to the listed requirements.

Sec. 5.26.030. Prohibited conduct and requirements.

- (a) *Right-of-way prohibition.* Except for ice cream trucks, no mobile food vendor shall conduct business or operate in the public right-of-way, except as part of a City-sponsored or City sanctioned special event.
- (b) *Private property.* Operation from private property.
 - (1) A mobile food vendor shall not operate on any private property without the prior written consent of the owner.
 - (2) Except for mobile food vendors operating on the premises of a licensed restaurant or as may be allowed as part of a City-issued special event permit, mobile food vendors are permitted on a given property no more than eight days in any calendar month. A minimum of two calendar days must transpire between operating periods on any given property.
 - (3) Except as may be allowed as part of a City-issued special event permit, no more than two mobile food vendors may operate on any single property at any one time.

- (4) Except for mobile food vendors operating on the premises of a licensed restaurant or as may be allowed as part of a City-issued special event permit, mobile food vendors may occupy no more than five percent of the designated parking spaces on a given property, and at no time shall the operation of a mobile food vendor reduce the number of parking spaces on a property below the minimum required by City code.
- (5) Vending structures shall not be left unattended or stored at any time on the open vending site when vending is not taking place or during restricted hours of operation.
- (c) *Noise restrictions.* Except for ice cream trucks, a mobile food vendor shall not make sounds or announcements to call attention to the mobile food vehicle either while traveling on the public rights-of-way or when stationary. At all times said mobile food vendor, ice cream truck, or push cart shall be in compliance with the City noise ordinance.
- (d) *License visibility.* The permit under which a mobile food vendor, ice cream truck, or push cart is operating must be firmly attached and visible on the mobile food vendor or pushcart at all times.
- (e) *State license required.* Any driver of a mobile food vendor or ice cream truck motorized vehicle must possess a valid state driver's license.
- (f) *Residential district limitations.* Except for ice cream trucks, mobile food vendors are allowed only in commercial zoning districts, except as part of a special event sponsored by the City, a homeowners' association or similar official neighborhood organization.
- (g) *Crosswalk/intersections.* Mobile food vendors shall not be located within 15 feet of any street intersection or pedestrian crosswalk or ten feet of any driveway, except as part of a City-sponsored or City sanctioned special event.
- (h) *Operation limitations near licensed restaurants.* Mobile food vendors shall not operate within 200 feet of any licensed restaurant except as part of a City-sponsored or City sanctioned special event, with the exception that mobile food vendors may operate within 200 feet of a licensed restaurant, consistent with this chapter: 1) while exclusively on the premises of a licensed restaurant, or 2) with signed written consent from all licensed restaurants within 200 feet of the mobile food vendors' operation. This distance will be measured from the serving window in a straight line to the property line of the nearest licensed restaurant.
- (i) *Operation limitations near City events.* Except as may be allowed as part of a City-issued special event permit, mobile food vendors shall not operate within 200 feet of any City-sponsored or City sanctioned special event, except while exclusively on the premises of a licensed restaurant.
- (j) *Hours of operation.* Except as may be allowed as part of a City-issued special event permit, a mobile food vendor may only operate within the City between the hours of 7:00 a.m. and 9:00 p.m.
- (k) *Dairy and related products.* No sale or offer for sale of ice cream, frozen milk, frozen dairy or ice confection products shall be made from a mobile food vendor unless each side of the

vehicle is marked, in letters and numbers at least three inches in height, with the name and address of the mobile food vendor permittee.

- (l) *Compliance with public health and related authorities.* The mobile food vendor shall comply with all state, federal and local ordinances, laws, and health and safety regulations, and shall obtain and maintain any and all licenses required by any other health organization or governmental organization having jurisdiction over this subject matter.
- (m) *Motorized, wheeled vehicle requirements.* Except as otherwise allowed and described within this section, a mobile food vendor must operate from a motorized, wheeled vehicle that may lawfully be driven upon streets and roadways within the state.
 - (1) The owner of a licensed restaurant located within the City may, with a valid City mobile food vendor permit, engage in mobile food vending from a wheeled mobile trailer, pushcart, or motorized vehicle as an ancillary location of said restaurant, provided that all other provisions of this article are met and adhered to.
 - (2) As allowed by a City-issued special event permit, a mobile food vendor that holds a valid City mobile food vendor permit may operate from a wheeled mobile trailer, pushcart, or motorized vehicle.
- (n) *Self-propelled vehicles.* The following safety regulations shall apply to any and all vehicles operating under this article or used for mobile retail food establishments:
 - (1) Every self-propelled vehicle shall be equipped with a reverse gear signal alarm with a sound distinguishable from the surrounding noise level.
 - (2) Every self-propelled vehicle shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle.
- (o) *Alcohol sales restricted.* The mobile food vendor may sell food and non-alcoholic beverage items only.

Sec. 5.26.040. Indemnity.

As part of the permitting process set forth herein, any person or entity receiving a permit under this chapter shall execute an indemnity agreement indemnifying and releasing the City, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever arising from their operations.

Sec. 5.26.050. Revocation and suspension.

- (a) The Community Development Director shall have the right to suspend or revoke a mobile food vendor permit under the conditions set forth in this section. In the event the Community Development Director seeks to suspend or to revoke a permit, the Community Development Director shall give written notification to the permittee of such action and such notice shall contain a specification of the violation or violations for which cause the action is being taken.
- (b) The Community Development Director shall be authorized to suspend or revoke a permit in the event of any one or more of the following:

- (1) A permittee gave false or misleading information in the original application or renewal process;
- (2) A permittee has knowingly allowed a violation of this mobile food vendor article to occur or did not make a reasonable effort to prevent any such occurrence;
- (3) A permittee failed to pay any fee, permit fee, or other amount of money due to the City under this article or any other licensing ordinance of the City.

(c) In the event that the Community Development Director determines that a permit violation has occurred, such permit shall be suspended for 30 days for the first violation. For a second violation occurring within any consecutive 12-month period, the permit shall be suspended for 90 days. Any permit that has been suspended two times within any consecutive 12-month period that is determined to have committed a subsequent permit violation within 24 months of the second suspension shall be revoked. Provided, however, that the permittee shall be authorized to continue its business operations until the date of the hearing scheduled in accordance with subsection (e) of this section. Should a permit be revoked, the owner and/or operator shall not be eligible to apply for a mobile food vendor permit for a period of three years from the date of revocation.

(d) In the event of a revocation by the Community Development Director, the permittee may appeal the decision of the Community Development Director to the City Administrator by filing a written notice of appeal with the Community Development Director within ten business days from the date of the effective date of the written notice received by the permittee in accordance with subsection (a) of this section. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Community Development Director may submit a memorandum in response to the memorandum filed by the permittee on appeal to the City Administrator. The Community Development Director's decision shall be final unless an appeal is timely filed. An appeal shall stay the Community Development Director's decision until the appeal is heard or withdrawn.

(e) When an appeal is received, the City Administrator shall, within ten business days from the date on which the notice of appeal is received by the Community Development Director, take either of the following actions:

- (1) Set a hearing date before the City Administrator and instruct the Community Development Director to give such notice of hearing as may be required by law; or
- (2) Appoint a hearing officer and fix the time and place of hearing. The Community Development Director shall assume responsibility for such publication of notice as may be required by law.

In either event, the hearing shall be held within 30 calendar days of the Community Development Director's action, unless a continuance of such date is agreed to by the permittee and the Community Development Director.

(f) The City Administrator or assigned hearing officer may sustain, overrule, or modify the action of the Community Development Director. The decision of the City Administrator or hearing officer shall be final.

1 **Sec. 5.26.060. Fees.**

2 The fee for permits under this chapter are as follows:

3

Permit Type	One time	Annual
Mobile food vendor	\$100	\$500
Temporary food establishment	\$100	N/A
Push cart	\$15	\$50
Ice cream truck	\$15	\$50

Section 2. It is hereby declared to be the intention of the City Council that:

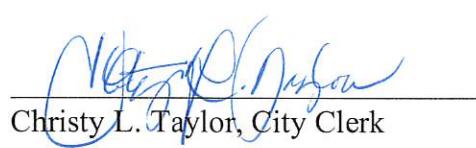
- (a) All sections, paragraphs, sentences and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.
- (b) To the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.
- (c) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the City Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance.

Section 3. The City Attorney and City Clerk are authorized to make non-substantive editing and renumbering revisions to this Ordinance for proofing and renumbering purposes.

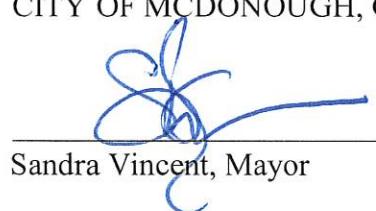
Section 4. The effective date of this Ordinance shall be the date of adoption, unless provided otherwise by the City Charter, state and/or federal law.

BE IT SO ORDAINED, this 6th day of July, 2023.

ATTEST:


Christy L. Taylor, City Clerk

CITY OF MCDONOUGH, GEORGIA:


Sandra Vincent, Mayor

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read "E.C. Walker".

Emilia C. Walker, City Attorney