

COUNCIL COMMUNICATION

Meeting Date: August 24, 2021	Agenda Item: 10B	Agenda Location: Consent Calendar	Goal(s):	Legal Review: <i>W/A</i>	<input type="checkbox"/> 1 st Reading <input checked="" type="checkbox"/> 2 nd Reading
Subject: An ordinance amending the Thornton City Code to establish operating requirements for mobile food trucks.					
Recommended by: Robb Kolstad <i>RK</i> Approved by: Kevin S. Woods <i>KW</i>				Ordinance previously introduced by: <u>Marvin</u>	
Presenter(s): Robb Kolstad, Assistant City Manager					

SYNOPSIS:

The proposed ordinance would establish operating requirements for mobile food trucks and eliminate the requirement for a Temporary Use Permit (TUP). The proposed requirements include possession of a Thornton sales and use tax business license, possession of a retail food license issued by the Tri-County Health Department, and completion of an annual inspection performed by the Thornton Fire Department. In addition, the proposed requirements include a number of operating regulations to ensure mobile food trucks operate safely without negatively impacting the community.

RECOMMENDATION:

Staff recommends Alternative No. 1, approve the proposed mobile food truck operating requirements.

BUDGET/STAFF IMPLICATIONS:

By eliminating the TUP requirement, the proposed ordinance will reduce the amount of time dedicated to reviewing and approving applications.

ALTERNATIVES:

1. Approve the proposed mobile food truck operating requirements.
2. Amend the proposed mobile food truck operating requirements.
3. Do not approve the proposed mobile food truck operating requirements.

BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY): (includes previous City Council action)

On June 9, 2020, City Council discussed the current food truck permitting process (TUP) and directed staff to 1) recommend modifications to the current permitting process and 2) bring forward an Emergency Declaration to ease food truck operation during the Coronavirus Disease 2019 (COVID-19) pandemic.

On August 3, 2020, the City Manager issued an Emergency Declaration that temporarily suspended portions of land use ordinances and regulations that relate to the operation and location of food trucks, but were not safety-related.

On May 4, 2021, City Council discussed a conceptual framework for updated food truck regulations and directed staff to conduct outreach to food truck operators and restaurant owners.

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On June 6, 2021, City Council reviewed and discussed draft operating requirements and directed staff to bring forward an ordinance establishing mobile food truck operating requirements for formal consideration.

INTRODUCED BY: Marvin

AN ORDINANCE AMENDING THE THORNTON CITY CODE TO ESTABLISH OPERATING REQUIREMENTS FOR MOBILE FOOD TRUCKS.

WHEREAS, pursuant to the City's Declaration of Emergency relating to the Coronavirus Disease 2019 (COVID-19) pandemic and Section 38-33 of the City Code, the City Manager issued an emergency regulation that temporarily suspends ordinances relating to mobile food trucks to the extent those ordinances do not protect against an immediate and substantial risk of harm to the public; and

WHEREAS, the City wishes to maintain a more flexible regulatory approach by adopting City Code provisions that prescribe mobile food truck operating requirements while eliminating the need to obtain a temporary use permit.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 38-494 of the Thornton City Code is hereby amended, by the addition of the words double-underlined, to read as follows:

Sec. 38-494. - Sale of food from vehicles prohibited.

It shall be unlawful to sell or offer for sale any candy, ice cream, confection or any food or beverage for human consumption from any motor vehicle or any vehicle or cart of any kind on any public street or sidewalk in the city, except as provided for in Sections 42-601 through 42-613 and 42-801 through 42-805 of the City Code and except in the TOD or MU zoning districts, and in the PD zoning district if specifically provided for in the PD standards. There shall be specifically excluded from the effect of this section delivery trucks delivering milk, bread and other products for human consumption.

2. Sections 42-801 through 42-805 of the Thornton City Code are hereby created to read as follows:

ARTICLE XI. - MOBILE FOOD TRUCKS

Sec. 42-801. - Purpose.

The purpose of this article is to establish operating requirements for mobile food trucks.

Sec. 42-802. - Definitions.

As used in this article:

Mobile food truck means a motorized or towed wheeled vehicle that is designed, equipped and used to prepare, or serve, and sell food at a transitory or static location, and is not situated in a permanent structure as an accessory to a business located in the structure for purposes of primarily serving patrons of the business. The term does not include ice cream trucks as defined in Section 42-602, nor does the term constitute a use requiring a temporary use permit pursuant to chapter 18, article IV, division 11;

Person means any individual, firm, company, partnership, corporation, limited liability company, organization or other entity;

Vend means to sell or offer food or beverages to customers from a mobile food truck.

Sec. 42-803. - Operating requirements.

Every person shall do the following in operating a mobile food truck:

- (1) Possess a sales and use tax business license issued by the city treasurer;
- (2) Operate a mobile food truck that has passed an inspection performed by the Thornton Fire Department;
- (3) Possess a retail food license to operate a mobile food truck issued by the Tri-County Health Department;
- (4) Comply with all applicable health and sanitation statutes, rules, regulations, ordinances and other laws;
- (5) Obey all traffic and parking laws and regulations, including, but not limited to, the following:
 - a. Vend only on collector and local streets in areas where on-street parking is permitted and in such manner that the flow of traffic is not impeded;
 - b. Do not park a mobile food truck in a manner that obstructs the visibility of motorists as provided in Section 18-567 or parking lot, pedestrian or vehicular circulation, blocks access to a public street, alley, path or sidewalk, emergency service access, site ingress or egress or ADA accessible route, or creates an unreasonable risk of harm to people or property;
 - c. Do not park a mobile food truck on a public sidewalk within the extended boundaries of a crosswalk or within ten (10) feet of the extension of any building entranceway, doorway or driveway;
 - d. Park a mobile food truck entirely on paved or all-weather surfaces.

- (6) Vend only from the side of the mobile food truck away from moving traffic and as near as possible to the curb or side of the street;
- (7) Vend at least one hundred and fifty (150) feet from a restaurant, while the restaurant is open for business, as measured from the public entrance of the restaurant to the closest point of the mobile food truck, unless the permission of all restaurants within the one hundred and fifty (150) foot setback has been obtained;
- (8) Vend in a city park or open space, or any other city property as defined in Section 70-4, only with the written approval of, and subject to any conditions set by, the city manager or designee;
- (9) Vend on property owned or controlled by another governmental entity only with, and subject to the terms of, the permission of the governmental entity;
- (10) Subject to subsection (7) of this section, vend on private property only with, and subject to the terms of, the permission of the owner or person in control of the property;
- (11) Vend only between 7:30 a.m. and 10:00 p.m.;
- (12) Vend only non-alcoholic beverages;
- (13) Store trash, refuse and recyclables in clearly marked receptacles and empty them on a daily basis, and do not cause any liquid wastes, except clean ice melt, to be discharged from the mobile food truck;
- (14) Comply with the city code's provisions concerning noise and sound;
- (15) Comply with the sign regulations set forth in chapter 18, article VII and chapter 70, article I of the city code;
- (16) Do not set up any structures, canopies, tables or chairs for purposes of food or beverage consumption or other use by patrons or other members of the public;
- (17) Comply with any other applicable provisions of the city code.

Sec. 42-804. - Violations and penalties.

- (a) Any person who violates a provision of this article shall, upon conviction, be punished in accordance with in Section 1-8(a).

- (b) In addition to the administrative remedies and penalties set forth in this article, the city attorney may initiate an action before any court of competent jurisdiction to seek any appropriate remedy available to secure compliance with this article, including injunctive relief, and to secure costs and damages sustained by the city in enforcing this article.

Sec. 42-805. No assumption of liability.

Nothing in this article shall create any duty to any person with regard to the enforcement or nonenforcement of this article. No person shall have any civil liability remedy against the city, its officers, employees or agents for any damages arising out of or in any way connected with the adoption, enforcement or nonenforcement of this article, and nothing in this article shall be construed to create any liability, waive any immunities, limitations on liability or other provisions of the Governmental Immunity Act, Colo. Rev. Stat. § 24-10-101 et seq., or waive any immunities or limitations on liability otherwise available.

3. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.
4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.
5. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
6. This ordinance shall take effect upon final passage.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on August 10, 2021.

PASSED AND ADOPTED on second and final reading on _____, 2021.

CITY OF THORNTON, COLORADO

Jan Kulmann, Mayor

ATTEST:

Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

William A. Tuthill III, Interim City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on August 11, 2021, and after second and final reading on _____, 2021.