

ORDINANCE 2019 -1775

AN ORDINANCE AMENDING CITY OF MURRAY CODE OF ORDINANCES CHAPTER 115: SOLICITORS AND PEDDLERS, SPECIFICALLY TO INCLUDE A NEW SUBSECTION §115.06 TO ESTABLISH A PILOT PROGRAM OF REGULATIONS FOR MOBILE FOOD VEHICLES AND PUSHCARTS IN THE CITY AND TO AMEND §115.02: USING STREETS OR PUBLIC PREMISES; EXCEPTION; AND §115.05: PROHIBITING SOLICITATION ON STREETS AND BYWAYS FOR THE PURPOSE OF IDENTIFYING THE PILOT PROGRAM AS AN EXCEPTION IN THESE RESPECTIVE SUBSECTIONS. THIS ORDINANCE SHALL BECOME EFFECTIVE ON JUNE 1, 2019.

WHEREAS, the City of Murray acknowledges the growing business of the mobile food vehicle and pushcart industry and desires to amend Chapter 115, Solicitors and Peddlers, in order to include a new subsection §115.06 to establish a pilot program of regulations for mobile food vehicles and push carts in the City and to amend §115.02: USING STREETS OR PUBLIC PREMISES; EXCEPTION; AND §115.05: PROHIBITING SOLICITATION ON STREETS AND BYWAYS for the purpose of identifying the pilot program as an exception in these respective subsections.

WHEREAS, the City of Murray wishes to establish the aforementioned Pilot Program for a two (2) year period in order to (1) gather data and feedback in preparation for final legislation; (2) allow flexibility to adjust operations as needed; (3) acquaint the public with the program and (4) allow the City to estimate costs and staffing needs required to maintain such a program.

WHEREAS, the Murray City Council has reviewed and discussed the following proposed changes to Chapter 115 of the City of Murray Code of Ordinances and believes that the proposed changes are reasonable and necessary.

BE IT ORDAINED by the City Council of the City of Murray, as follows:

**AMENDMENT I. ADDITIONS, ASSERTIONS & CHANGES:**

City of Murray Code of Ordinances, Chapter 115, specifically §115.02 is amended as follows:

**§115.02 USING STREETS OR PUBLIC PREMISES; EXCEPTION.**

The practice of using streets of the city, the court house or the court house yard, or other public premises, for the purpose of soliciting orders for the sale of goods, wares, merchandise, or services, or for the purpose of disposing of or peddling or hawking the same is declared to be a nuisance and punishable as such nuisance as a misdemeanor. ~~That part of Third Street between Main Street and Walnut Street may, however, be used for these purposes.~~ However, the area from the railroad tracks to Seventh Street and from Olive Street to Elm Street may be utilized by permitted Mobile Food Vendors, in such areas as designated by the City.

**AMENDMENT II. ADDITIONS, ASSERTIONS & CHANGES:**

City of Murray Code of Ordinances, Chapter 115, specifically §115.05 is amended as follows:

### **§115.05 PROHIBITING SOLICITATION ON STREETS AND BYWAYS.**

(A) Any person, firm, corporation, or other legal entity is prohibited from soliciting charitable contributions or from selling products within the streets and byways of the city, excluding permitted Mobile Food Vendors, as designated by the City.

(B) Nothing in this section shall prohibit any person, firm, corporation, or legal entity, from disseminating an idea protected by the first amendment of the United States Constitution so long as the dissemination of such ideas is not done in public streets and byways, not including sidewalks, within the city limits of the city.

### **AMENDMENT III. ADDITIONS, ASSERTIONS & CHANGES:**

City of Murray Code of Ordinances, Chapter 115, is amended to include a new section, specifically §115.06 as follows:

### **§115.06 MOBILE FOOD VENDOR PILOT PROGRAM POLICY.**

#### **(A) DEFINITIONS.**

1. “Commissary” means a fixed location, non-mobile establishment or any other place used for the storage of supplies, the preparation of food to be sold or served at or by one or more Mobile Food Vendors, and the cleaning and servicing of the Mobile Food Vending Unit.

2. “Food products” means those products that are ready for immediate consumption. The term “food products” does not include fresh produce.

3. “Mobile Food Vending Unit” means an enclosed unit, truck, or trailer, cart, or similar vehicle-mounted unit that is:

- (a) mobile or capable of being moved by a licensed motor vehicle;
- (b) independent with respect to water, waste water, and power utilities;
- (c) used for the preparation, sale, or donation of food products and beverages; and no larger than thirty-five (35) feet in length.

4. “Operate or Operation” means all activities associated with the conduct of business, including, but not limited to, set up, take down, and actual hours where the Unit is open for business.

5. “Designated Operation Area” means the public area or areas designated by the City situated between the railroad tracks to Seventh Street and from Olive Street to Elm Street, and any other area or areas specifically identified on the Vendor Permit, EXCLUDING public areas (unless otherwise permitted by Owner) and all residential areas.

6. “Mobile Food Vendor” means an individual engaged in the operation of a Unit; if more than one individual is operating a single Unit, then Vendor shall include all individuals operating such single Unit.

7. “Laws” means any law, rule, administrative regulation, code, policy and ordinance imposed by the federal government, the Commonwealth of Kentucky, the City of Murray and the Calloway County Health Department and any and all other applicable entity.

8. “Food Code” means the Kentucky Food Code, 902 KAR 45:005, as amended and any mandatory or proposed model FDA Food Code published by the the United States Department of Health and Human Services and adopted by the Commonwealth of Kentucky, City of Murray, Calloway County Health Department or other authority.

9. “Certified Food Protection Manager” means a person-in-charge of a Mobile Food Vending Unit that prepares, handles or serves non-prepackaged potentially hazardous food, whom is certified or demonstrates knowledge of food safety as outlined in the FDA Food Code by successfully passing an accredited ANSI food safety certification exam.

## (B) OPERATION OF MOBILE FOOD VENDOR UNITS

1. Beginning on JUNE 1, 2019, Mobile Food Vendors, holding a valid permit from the City of Murray Planning Department, may operate a mobile food unit within the area or areas designated by the City.

2. All Mobile Food Vendor Units shall be operated by a Certified Food Protection Manager.

3. Hours/Days of Operation. Mobile Food Vendors may operate Monday – Saturday between the hours of 6:00 a.m. and 1:00 a.m. and on Sunday from 11:00 a.m. to 9:00 p.m.

4. Compliance with Laws. Vendors must follow all applicable federal, state and local laws, regulations, codes and ordinances governing mobile food vendors, including but not limited to laws, rules, regulations, codes and ordinances governing health, sanitation and public welfare. Unit placement and operation must strictly adhere to all applicable federal, state, and local laws, regulations, and policies. Local laws, regulations, and policies include, but are not limited to, the City of Murray’s zoning ordinance, noise ordinance, stormwater regulations, and fire codes, as well as all rules and regulations imposed by the Calloway County Health Department.

5. Vendors shall strictly comply with Section (C) and (D) herein regarding placement of Units.

6. Fire Extinguishers Required. All Units must be equipped with 2-A:10-B:C 5lb. fire extinguisher that is certified annually by a licensed company. Additionally, Units that produce grease laden vapors (e.g., those units with deep fat fryers or flat top griddles), must have a listed fire suppression system certified bi-annually by a licensed company, supplemented by a certified K Class fire extinguisher.

7. Items for Sale. A Vendor operating a Unit may only sell items specifically described in the Vendor’s Permit.

8. Methods of Support. Units shall not use stakes, rods, or any method of support that must be drilled, driven, or otherwise fixed, into or onto asphalt, pavement, curbs, sidewalks, or buildings.

9. Obstruction of Traffic. Placement of Units and any devices related to the Unit shall not obstruct or impede pedestrian or vehicular traffic, access to driveways, and sight distance for drivers.

10. Service to Pedestrians. Units shall serve pedestrians only; a drive-thru or drive-in service is prohibited.

11. Signs. A Unit is limited to signs mounted to the exterior of the mobile food establishment. All signs mounted on the Unit shall be secured and mounted flat against the Unit and shall not project more than six inches (6") from the exterior of the Unit.

12. Special Events. Vendors hours and dates may be affected during a City-authorized street fair, public festival, farmers market, or similar events. Vendors shall not operate within the boundaries of a Special Event unless the Vendor has authorization from the event sponsor.

13. Spills. To prevent discharges into the storm drain system and otherwise, each Unit shall comply with the stormwater regulations of the City of Murray. In addition, each Unit shall have a spill response plan and kit onboard to contain and remediate any discharge from the Unit.

14. Waste and Recycling. Vendors shall supply, in a prominent location, trash containers sufficient in size to collect all waste generated by customers and staff of the Unit. In addition, Vendors are encouraged to provide recycling containers for customers and staff, but recycling containers are not required. The Vendor shall keep the area around the Unit clear of litter and debris at all times. All trash and debris generated by customers and staff shall be collected by the Vendor and deposited in their trash or recycling container and removed from the site by the Vendor. The Vendor shall contain on-board at all times, any waste liquids generated by its operations (e.g. oil, wash water, etc.) and shall dispose of same in an appropriate manner.

#### (C) LOCATION OF MOBILE VENDING.

1. The Mobile Food Vendor Permit is limited to operation within the designated area or areas and Vendor shall not operate outside the area or areas designated on Vendor's permit.

2. Operation is strictly prohibited:

a. Within public right-of-ways, with the exception of permitted parking areas;

b. Within 50' of a building in which a full-service restaurant or fast-food restaurant is located and operating, unless approval is obtained, in writing, from the owner of the business;

c. Within 20' of any structure built of combustible construction and within 10' of any structure built of non-combustible construction;

d. Within 15' of any fire hydrant, fire escape, bus stop, any intersection curb radius return (the point of intersection of the street curb line and the curb radius), any doorway or driveway or other main entrance of any building, and any emergency or fire exits;

e. Within a city block of a school zone during regular school hours; and

f. Within a public alley.

3. Additional Structures Prohibited. Vendors shall not provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters. "Additional structures" does not include the waste containers required herein.

4. Availability. Spaces in the Designated Operation Area are available to all Vendors with a City of Murray Vendor Permit subject to available space.
5. Electrical Service. Electrical service shall be provided only by an on-board generator.
6. Parking Direction. Units shall park, a minimum of 6' apart, in the direction designated by the City Planning Department. The parking direction may change based on the number of Vendors or other activities within the Designated Operation Area.
7. Pedestrian Travel Path. Mobile Food Vendors shall not reduce the clear pedestrian path of travel on the sidewalk, or between units, to less than 6'. This includes all components of the Unit. All awnings or canopies of the Unit shall be at least 6'8" above the sidewalk/parking lot.
8. Preparation Outside of the Unit. While operating, any food and beverage preparation outside of the Unit (ie. smoking of meat, roasting of corn), shall not obstruct vehicular or pedestrian traffic, and such preparation shall not create safety hazards for the public. Vendors shall not serve food to customers directly from any outside preparation unit.
9. Sound Amplification. While operating, Units shall not use amplification equipment to project sounds, music, or voices.
10. Area Defined. Vendors shall operate only within the Designated Operation Area and at the designated times, as specified herein. Notification of changes will be emailed to current permit holders and posted on the City's website.
9. Area as Temporary. The use, marking, or designation of spaces for Mobile Food Vendors does not grant Vendors a vested right or property interest in any specific space. The area may be adjusted or removed if such adjustment or removal is determined to be in the interest of public health, safety, and welfare.

#### (D) MOBILE FOOD VENDOR PERMITS

1. All Mobile Food Vendors must hold a valid state-wide permit issued by the Commonwealth of Kentucky. In addition, all Mobile Food Vendors must obtain a Permit ("Vendor Permit") from the City of Murray Planning Department in order to operate a Mobile Food Unit in the City. A separate permit is required for each Unit and the Vendor Permit is non-transferrable. All Vendor Permits shall be prominently displayed on the Unit. All commissaries located within the city limits must be issued a permit by the City and shall be subject to periodic required inspections. Only one (1) permit is required per commissary, regardless of the number of Vendors sharing the commissary. Commissaries located outside the city limits must provide all required documentation and consent to all required inspections, however, shall not be required to purchase a permit.
2. Application. Every Vendor desiring to engage in Mobile Food Operations shall submit an Application for a Vendor Permit to the City of Murray Planning Department. All Vendors shall obtain required inspections and permits from the Commonwealth of Kentucky, Calloway County Health Department and State Plumbing Inspector and shall submit same, along with a site plan, with the Application. The City may request additional information reasonably required to complete the Application. The Application shall not be considered complete until the City has received all information and documentation required by the Application or otherwise.

3. Issuance of Permit. Once the Application is complete, the City of Murray Planning Department will review same and shall issue the Vendor Permit to the qualified vendor within fourteen (14) business days. The Vendor Permit shall be valid for either one (1) calendar year from the date of issuance, or until the cessation of the Pilot Program, whichever date occurs first. In the event a Vendor is determined to be unqualified for a permit, the City shall advise the Vendor within fourteen (14) business days.

4. Fees. An Application for a Vendor Permit under this Pilot Program shall be submitted, along the applicable business license fee established by the City of \$150.00. Fees are subject to change. There shall be proration of the business license fee. Fees are non-refundable once a Vendor Permit has been issued by the City.

5. Inspections after Permitting. Permitted operations will be inspected periodically and without notice by representatives of various City departments and the Calloway County Health Department, to ensure compliance with the Pilot Program.

6. Revocation of Permit. The City may suspend or revoke a Vendor Permit if the City discovers that:

- a. An applicant obtained the Vendor Permit by knowingly provided false information on the application;
- b. The continuation of the Vendor's Permit presents a significant threat to public health or safety; or
- c. The Vendor or Unit violates these regulations.

7. Complaints. If a complaint is filed with the City, alleging that a Vendor has violated the provisions of this Pilot Program, the City shall notify the Vendor of the complaint and shall promptly investigate the complaint. The Vendor shall be invited to respond to the complaint within ten (10) business days, present evidence, and respond to evidence produced by the investigation. If the City, after reviewing all relevant material, finds the complaint to be supported by a preponderance of the evidence, the City may immediately revoke the Vendor's Permit or take other enforcement action as allowed by law.

#### (E) MODIFICATION OF THE PILOT PROGRAM

During the Pilot Program, the Mobile Food Vending Program may be modified by the City based on evaluative information received and approved by the Planning Commission. This modification may include, but is not limited to, the expansion or contraction of the Designated Operational Area. Notification of changes to the Pilot Program will be emailed to current permit holders and posted on the City's website.

## (F) INDEMNITY FOR BENEFIT OF THE CITY & INSURANCE

1. Indemnity. Any Vendor operating under this Pilot Program shall defend, indemnify and hold harmless the City of Murray, its officers, employees and agents from and against any and all lawsuits, claims, liabilities, damages, losses, and expenses (including, but not limited to, court costs, reasonable attorney fees, and costs of claim processing, investigation, and litigation) for losses caused in whole or in part by the negligent acts, errors, or omissions of the Vendor in performance of its operations or from the Vendor's failure to perform its operations using a due and reasonable standard of professional care and skill ("Indemnified Claim"), and except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this section.

2. The Vendor shall assume and take over the defense of the City of Murray in any such claim, demand, suit, or cause of action involving an Indemnified Claim upon written notice and demand for same by the City. The Vendor will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as the Vendor may request. The Vendor will not consent to the entry of any judgment or enter into any settlement with respect to an Indemnified Claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against an Indemnified Claim with counsel of its choice at its own expense. The Vendor shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City with respect to any Indemnified Claim. The indemnification and hold harmless provisions required by this Pilot Program shall survive termination of the pilot.

## (G) INSURANCE

1. Any Vendor or applicant for a Mobile Food Vending Unit shall give and maintain insurance policies as required by this section. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better; modification of this standard may be considered upon appeal to the City of Murray Planning Department. Copies of such insurance policies shall be filed with the City during the application process. If the policy of insurance required by this section lapses for any reason, the permit issued shall become void for such permittee.

2. Commercial General and Umbrella Liability Insurance; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this pilot or be no less than \$3,000,000. Such insurance shall:

- a. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the vendor including food products, materials, parts, or equipment sold, furnished or utilized in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.

- b. For any claims related to this project, Vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
3. Automobile Liability Insurance; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Vendor.
4. Workers' Compensation Insurance; If applicable, Vendors shall maintain workers' compensation insurance with statutory limits as may be required by the Commonwealth of Kentucky or other applicable laws and employers' liability insurance with limits of not less than \$500,000.
5. Other Insurance Requirements; The Vendor shall:
- a. Prior to commencement of operations, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on thirty (30) days' prior written notice to the City. Proof of policy provisions regarding notice of cancellation will be required.
- b. Upon the City's request, provide certified copies of endorsements in addition to certificates of Insurance.
- c. Replace certificates and endorsements for any such insurance expiring prior to completion of operations.
- d. Maintain such insurance at all times during its operations. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a violation of these guidelines.
- e. Disclose any deductibles and/or self-insured retentions greater than \$10,000, which must be approved by the City of Murray prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.
- f. Agree, through its insurer, to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from the Vendor's operations. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.

#### H. ENFORCEMENT & REVOCATION

1. The Code Enforcement Officer and Code Enforcement Board shall be responsible for Enforcement of this Ordinance.
2. A Vendor's permit may be denied, revoked, suspended or not renewed by the City of Murray Planning Department or the Calloway County Health Department, for failure to comply with any



applicable federal, state or local law, rule, administrative regulation, code or ordinance, whether or not specifically set forth herein.

§115.99 PENALTIES

- (A) Any person convicted of perpetrating a nuisance as declared and described in this chapter shall, on conviction be fined in a sum not less than ~~\$550~~ nor more than ~~\$15~~ 500 for each offense, and each solicitation or sale shall constitute a separate distinct offense.
- (B) Any person found guilty of soliciting, without a permit, shall be fined not less than \$550 or more than ~~\$20~~ 500 for each such occasion.
- (C) Any Mobile Food Vendor found guilty of violating any applicable federal, state or local law, rule, administrative regulation, code or any applicable section of this ordinance shall, in addition to any fines imposed by the United States, Commonwealth of Kentucky, or other entity authorized to impose fines, be fined \$50 for the first violation, \$250 for a second violation and \$500 for a third violation. A Vendor found to have three (3) or more violations during the term of this pilot program may have its permit revoked and/or may be refused a renewal of its permit.

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this Ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

All other sections and provisions of the Ordinances for the City of Murray, not specifically amended herein shall remain in full force and effect and shall not be considered amended and shall be incorporated by reference as if fully stated herein.

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BOB ROGERS, MAYOR  
CITY OF MURRAY, KENTUCKY

ATTEST:

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DANNETTA CLAYTON, CITY CLERK

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Adopted by the City Council on \_\_\_\_\_, 2019.

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