

ORDINANCE NO 1606

AMENDING AND ADDING SECTIONS REGARDING FOOD VENDORS

WHEREAS,

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BE IT THEREFORE ORDAINED by the City Commission of the City of Alamogordo that the following sections of the Code of Ordinances be amended to read as follows:

3-01-070. - Permitted activities.

Commercial activities of sale or display of merchandise, and advertising signs, are prohibited on streets, sidewalks, and adjoining rights-of-way with the following exceptions:

- (1) Any sign advertising an adjoining residential property for sale, when located in an unimproved portion of a right-of-way.
- (2) Any advertising sign within a motor vehicle, or attached to a motor vehicle so as not to project beyond the normal contours of the vehicle.
- (3) Display of wares by a merchant or merchants in a sidewalk, other right-of-way or street where authorized by the city manager. Sales in the sidewalk or other right-of-way shall be outside the roadway, adjacent to the merchant's place of business, and shall allow sufficient area for safe and efficient pedestrian travel outside the roadway, and the display shall not create any hazard to traffic. Sales in the roadway shall involve closure of sufficient roadway for traffic safety.

~~(4) Sales of food and beverage from vehicles (including trailers or carts) which travel along fixed or variable routes within the city, and which stop no longer than is necessary to complete the sale for which the stop is made, or which are stopped for a specified period of time at a city park. Any business operating such a vehicle must be licensed by the city, with routes and park sales approved by the city manager, and must be approved by the state environment department.~~

~~(§ 4) Advertising signs, benches or similar structures erected and maintained pursuant to a lease with the city.
(Ord. No. 1332, § 5, 4-22-08)~~

17-01A-050. - License fees for certain businesses.

All persons, firms, corporations or associations engaged in any of the following pursuits, businesses and occupations shall, before commencing business, and on or before the 16th day of March of each year thereafter, secure a license from the city clerk and pay the listed fee instead of the business registration required by article I of this chapter:

Amusement halls, per year \$ 35.00

Boxing, sparring, wrestling or martial arts contest, per day 35.00

Carnivals and circuses, per day 35.00

Commercial solicitors (in addition to other license and business registration fees), per year 35.00

Drive-in restaurants, per year 35.00

Outdoor concerts, exhibitions and amusements for profit, per day 35.00

Outdoor displays and sales, per year 35.00

Pawnbrokers, per year 35.00

Public dances, per day 35.00

Route Food vendors (see section 21-01-020(d)), per year 35.00

Vehicles for hire regulated by Chapter 27 35.00

Drivers of vehicles for hire if required by section 27-01-040, per year 15.00

(Ord. No. 652, § 3, 2-22-83; Ord. No. 680, § 3, 7-10-84; Ord. No. 702, § 2, 10-22-85; Ord. No. 784, § 4, 2-13-90)

~~29-01-086. — Farmer's market.~~

~~A farmer's market is hereby allowed in the city due to its benefits to the city and the health and welfare of its citizens.~~

~~The city manager is authorized and charged with the responsibility for:~~

~~(1) — Establishing the location of the farmer's market in the city parks.~~

~~(2) — Establishing the location of display and sales areas.~~

- ~~a. The city manager or designated representative is authorized and directed to establish space limitations for the farmer's market and rules for display facilities, set up, signs, sales and cleanup, which will be incorporated in, and attached to each permit.~~

~~(3) — Classifying such areas with relation to the kinds of produce, commodities and crafts displayed:~~

- ~~a. Display and sales shall be restricted to locally grown agricultural products, including fruits, vegetables, nuts, plants, eggs, honey, and home food preparations limited to baked goods produced or prepared by the seller, including cream or "soft" pies sealed to prevent contamination and approved for sale by the state environmental protection agency.~~

~~The fee for a farmer's market permit shall be seventy dollars (\$70.00) per year, which said permit shall be obtained from the city clerk's office prior to display and sale. All other parks policies shall apply.~~

~~(Ord. No. 1531, § 2, 12-6-16)~~

29-01-087. -- Days of Operation.

The market shall be available for not more than three (3) days per week from April 15 through November 30 of each calendar year.

(Ord. No. ~~1531~~, § 3, 12-6-16)

29-01-088. -- Prohibited acts.

- (a) ~~Food and drink concessions and sales for on-premises consumption.~~
- (b) ~~Amplified speakers and yelling.~~
- (c) ~~Blockage of ingress and egress to market areas.~~

The following new Article 17-011 is hereby added to the *Alamogordo Code of Ordinances* to read as follows:

ARTICLE 17-11. – FOOD VENDORS.**17-11-010. – Purpose.**

The purpose of this ordinance is to regulate food vendors, whether mobile and/or temporary food vending activities in order to protect public health, safety, and welfare, while accommodating commercial uses that generally promote an active and social pedestrian environment within the appropriate areas of the City of Alamogordo. This ordinance is also written with specific consideration given to the continued successful operation of existing brick and mortar restaurant establishments in recognition of the investments they make, and tax revenue they generate within the City of Alamogordo. The overall goal of this ordinance is to provide a business climate that offers fair opportunities for all food vendor operations and permanent restaurants in order to provide residents and visitors with a variety of food options that promote a vibrant food selection within our community.

17-11-020. – Scope.

This Ordinance shall apply to all food vendor establishments operating within the City of Alamogordo, regardless of type.

17-11-030. – Definitions.

- (a) The term “Ice cream truck” means a mobile food establishment that sells either frozen dessert servings that are prepackaged/enclosed in a wrapper or container having been manufactured, prepared or wrapped in a licensed food establishment or ice cream that is not pre-packaged.
- (b) The term “Licensee” means a food vendor that holds a City of Alamogordo food vendor license.
- (c) The term “food vendor” means a restaurant or retail food establishment where food is served or sold from a mobile food truck, mobile food trailer, mobile sidewalk cart, temporary food booth, tent and/or stand.

- (d) The term “Mobile food truck” means a vehicle specifically designed and used for cooking, keeping, storing or warming food or beverage which are for sale by a vendor, which may move under its own power.
- (e) The term “Mobile food trailer” means a trailer specifically designed and used for cooking, keeping, storing or warming food or beverage which are for sale by a vendor, which does not move under its own power, but may be towed by a vehicle.
- (f) The term “Mobile food vendor” means a vendor selling from a mobile food establishment.
- (g) The term “Mobile sidewalk cart” means a bicycle cart or a wheeled pushcart, specifically designed and used for keeping, storing, or warming food or beverage which are for sale by a vendor, which may be moved by one person without the assistance of a motor. Each sidewalk cart shall be non-motorized and capable of being moved and kept under control by one person.
- (h) The term “Temporary farm stand” means a booth, tent, or stand which exclusively sells non-processed raw agricultural products.
- (i) The term “Temporary food booth, tent, or stand” means a booth, tent, or stand vending type unit which sells food or beverages.
- (j) City Official- City manager, City Attorney, Fire Department Command Staff, Police Department Command Staff, Code Enforcement Supervisor and Officers.

17-11-040. – Licensing Requirements for Food Vendors

It shall be unlawful for any Food Vendor to engage in sales activities in the City of Alamogordo without first obtaining a business license from the city.

- A. License Application. Each food vendor owner that wishes to operate within the City of Alamogordo shall file annually for an application for a City of Alamogordo food vendor operator’s license with the city clerk or his/her designee on forms provided by the city. Each applicant shall pay an established license fee before a license is issued, and be subject to an annual fire inspection that will be conducted by the Alamogordo Fire Department. All food vendors will be inspected according to the International Fire Code adopted, and according to the standards outlined in the National Fire Code (NFC). The application form provided shall require the following information from the applicant:
1. The name, address and telephone number of the person, firm, association or corporation that owns the unit.
 2. The length of time for which the right to conduct business is desired.
 3. The make, model and license number of any vehicle or trailer to be used in the food vendor operation.
 4. The location or locations from which the applicant desires to operate the unit.
 5. A copy of the applicant’s valid food and beverage license issued by the State of New Mexico Health Department or other agency within the jurisdiction.

6. A copy of the vendor's proof of insurance.
7. A letter of written permission to operate on private property if applicable, and
8. At the time of filing the application, the food vendor owner shall present a valid driver's license or other acceptable picture proof identification to the City Clerk for examination.

B. License Approval Process. Upon receipt of proper documentation and payment of an application for a license, the City Clerk will start the license approval process, and will refer the application to Planning and Zoning, the Fire Chief, or his/her designee, the Police Chief, or his/her designee, and the City Manager or his/her designee in order to complete the application process. All applications will be processed within ten (10) business days. Upon completion, the permit will be issued unless the City Clerk determines any of the following:

1. The applicant made a false statement on the application.
2. The applicant is under eighteen (18) years old. This is only applicable to operators of mobile food establishments which requires a CDL License.
3. The application is incomplete, or
4. The application and/or its contents do not meet the criteria of any city ordinance, and/or policy adopted by the City of Alamogordo.

C. Appeal Process for Licensed Vendors. Any decision of the City Clerk or his/her designee in respect to the issuance or refusal to issue a permit or the revocation of a permit may be appealed to the City Manager by written notice. The decision of the City Manager shall be made in writing and shall be final.

D. License Revocation or Suspension for Licensed Vendors. A license may be suspended or revoked by the City Clerk, the Fire Chief, the Chief of Police and/or the City Manager, or their designee if it is found at any time that the license holder made any material omission or inaccurate statements in the license application, or if the license holder is found to be in violation of any ordinance or statutory violation directly related to the licensed activity. A "Notice of Suspension or Revocation" will be served on the applicant and will include a statement of violations. The appeal process is addressed in Section 17-11-040.

E. Operational Requirements. Operational requirements for all food vendors shall be consistent with Section 17-11-080 of this ordinance.

17-11-050. – Food Vendors Operating at Special Events and Block Parties

All food vendors operating at special events and/or block parties are required to be fully permitted through the New Mexico Health Department, the City of Alamogordo, and be subject to a fire inspection conducted by the Alamogordo Fire Department as stated above. The City of Alamogordo will require all special event and block party organizers submit a list of vendor operator names 10 (ten) business days prior to the event for the purpose of verifying that all vendors have meet the criteria set forth by the City of Alamogordo. Note: Additional fees may be required by the organizer of such events that are not part of the annual license fee.

17-11-060. – Non-Profit Operators

All Non-profit temporary food vendors covered by this article operating at special events and/or block parties are required to be fully permitted through the New Mexico Health Department, the City of Alamogordo, and be subject to a fire inspection conducted by the Alamogordo Fire Department, with the exception of minor's under the age of eighteen (18) who participate in food vendor activities are exempt from the licensing requirements of this article except when they are acting as agents of adults. Please refer to section 17-08-030 titled "Exemptions". Non-profit groups may operate on private property if granted permission, provided that public health, safety and welfare is not compromised. Non-profit groups may vend in public places designated by the City of Alamogordo adhering to all conditions required by the City, which such conditions may address compensation for use of City property as well as limitations on hours of operation and specific places of operation. As stated above, Non-profits groups may also operate in conjunction with special events.

17-11-070. – Farm Stand Operators

Temporary farm stands food vendors operating at special events and/or block parties are required to be fully permitted through the New Mexico Health Department, the City of Alamogordo, and be subject to a fire inspection conducted by the Alamogordo Fire Department. Farm Stand operators may operate on private property if granted permission, provided that public health, safety and welfare is not compromised. Temporary farm stands may vend in public places designated by the City of Alamogordo adhering to all conditions required by the City, which such conditions may address compensation for use of City property as well as limitations on hours of operation and specific places of operation. Temporary farm stands may also operate in conjunction in with special events.

17-11-080. – General Operating Requirements

A. Operations

1. The licensee or the licensee's employee or agent shall be present within the vending site during all times in which items are sold.
2. Food vendor display of license and proper documentation:
 - (a) Each license issued or required under this ordinance shall be displayed in a conspicuous location which is visible to the public.
 - (b) Each licensee shall display the copy of the applicant's valid food and beverage license issued by the State of New Mexico Health Department in a conspicuous location which is visible to the public.
 - (c) If operating on private property, the vendor must keep written permission from the property owner within the vending unit at all times.
 - (d) If operating on a route, the vendor must keep the outlined route map that was provided to the City Clerk within the vending unit at all times.
3. Temporary free-standing signs associated with mobile food vendors shall be prohibited unless allowed by the sign ordinance. Please refer to 3-01-015 titled "Temporary signs".
4. No mobile food vendors shall use bells or lights, noise-makers, including music, to attract customers. "Ice cream/dessert vendors" are exempt from this restriction. Any noise originating from a mobile food vendor operation shall comply with the City of Alamogordo noise ordinance.

5. Mobile food vendors are prohibited from using city water, electricity or other utilities in the course of its operations unless explicitly provided permission from the City of Alamogordo with an arrangement made for compensation.

B. Required Insurance

Food vendors licensed by the City of Alamogordo shall provide proof of liability insurance for any single accident and for any property damage in the amount required by the “State of New Mexico Tort Claims Act”. Such liability insurance shall be in effect at all times the vendor is licensed in accordance with this section. A certificate of insurance for such coverage shall be delivered to the city clerk or his/her designee prior to issuance of a license. If such insurance coverage is cancelled, not renewed, or changed, the insurer and licensee shall immediately provide notice to the city clerk or his/her designee. Failure to maintain such insurance may result in the suspension or revocation of the license.

C. Vehicle Regulations

1. Each food vendor platform or vehicle shall be designed and constructed specifically for the purpose of vending the product or products to be sold.
2. Each food vendor platform or vehicle shall have valid license plates and registration as required by the State of New Mexico Department of Motor Vehicles Division.
3. Each food vendor platform or vehicle shall be in compliance with all Federal, State and local laws or regulations which govern motor vehicles, including, but not limited to, vehicle size requirements.
4. Each food vendor platform or vehicle shall be kept in a safe, operable condition with no visible signs of rust or other deterioration or unsightly condition.

D. Garbage Requirements

1. The licensee and his/her employee(s) shall be responsible at all times for the removal of all refuse resulting from his/her business or customers use of his/her business. Such refuse shall be placed solely in the mobile food establishment’s waste bins. All such containers shall be kept covered with a tight fitting lid. No food vendor establishments shall discharge any material onto the street, sidewalk, gutters, storm drain or the property of another, including, but not limited to, public property. All operators are responsible for ensuring that all waste is disposed of in accordance with city ordinances and/or maintaining all areas used for food vending and customer activity in a safe and clean condition.
2. All food vendors shall deploy at least two (2) leak-proof, thirty (30) gallon trash containers accessible to the public.
3. All mobile sidewalk carts shall be equipped with at least one (1) appropriately sized leak-proof garbage container.

E. Specified Locations of Operation

1. No food vendor may conduct businesses located on City-owned or controlled location unless permitted by the City of Alamogordo.
2. All food vendors shall be located on a paved surface at all times, unless expressly allowed by the City of Alamogordo.

3. All food vendor business activity taking place in the public right-of-way shall be conducted from the curbside of the vehicle at all times, unless expressly approved by the City.
4. No food vendor shall operate in a way that impedes pedestrian or vehicle circulation.
5. Food vendor parking on designated City owned or controlled property will be allowed to operate on a “first come first served” basis within designated vending locations identified by the City of Alamogordo. Parking spaces may be occupied by non-vendors. Designated vending locations will be in effect at all times unless otherwise expressly approved by the City of Alamogordo and/or permitted in conjunction with a special event.

F. Distance Restriction from Restaurants Generally

Food vendors are prohibited from conducting business within two hundred (200) feet of a public entrance of any business which is a licensed or permitted restaurant by the New Mexico Health Department, and the City of Alamogordo during the hours the subject business is open to the public. If a food vendor wishes to operate within the (200) foot threshold, written permission must be granted by the business owner, all food vendors shall keep the written permission on site for review purposes.

G. Distance Restriction from Restaurants during Special Events

During permitted special events, food vendors may not operate within one hundred (100) feet of any business selling the same or similar type products unless written permission is granted by the business.

H. Distance Restriction from Permitted Special Events

Food vendors shall not conduct business within five hundred (500) feet of any City of Alamogordo permitted special event unless the vendor has obtained written permission from the event organizer or permittee.

I. Operating on Private Property

Food vendors shall be prohibited from conducting business on any private property without written permission from the property owner. A copy of the written permission shall be kept in the food vendor unit at all times. The food vendor shall comply if asked to leave the private property by the property owner or a city official.

J. Operating in Residential Zones

Food vendors are prohibited from operating in residentially zoned districts or residential property uses. “Mobile ice cream/dessert vendors” may conduct business within R-1, R-2, and R-3 residential zoned districts from the public right-of-way, while adhering to all other operational regulations of this ordinance.

K. Designated Hours of Operation

1. Sunday through Saturday: 6 a.m. to 10 p.m.
2. Food vendors may operate in designated locations/areas for the duration of designated times of operation and are not required to move during those times.

- 3. Day and time of operation restrictions shall be in effect for food vendors in all designated vending locations, unless operating in conjunction with special events.
- 4. In addition to those times listed in (1) of this section, licensed ice cream/dessert vendors may operate from the public right-of-way within the R-1, R-2, and R-3 residential districts Sunday through Saturday, 11 a.m. to a half hour before sunset but no later than 8 p.m. Ice cream/dessert vendors may not conduct business at a location longer than fifteen (15) continuous minutes in residential zoned districts, meaning the vendor must move not less than two hundred fifty (250) feet every fifteen (15) minutes.
- 5. Food vendors may operate at a special events during approved hours of the event.

DONE this _____ day of _____, 2019.

CITY OF ALAMOGORDO, NEW MEXICO
a New Mexico municipal corporation

By: _____
Richard A. Boss, Mayor

ATTEST:

Rachel Hughs, City Clerk

APPROVED AS TO FORM:

Petria Bengoechea, City Attorney