

### **ARTICLE III. SOLICITING AND MOBILE VENDING<sup>1</sup>**

#### **Sec. 6-74. Definitions.**

The following words, terms and phrases, when used in the article, shall have the meaning ascribed herein:

*Base of operation* means a food service establishment, or any other permitted location in which food, containers or supplies are kept, handled, prepared, packaged, stored, or placed in containers for subsequent transport, sale or service elsewhere.

*Fixed food service establishment* (also referred to as brick and mortar restaurants) means a non-mobile public or private establishment which prepares and serves meals, lunches, short orders, sandwiches, frozen desserts, or other edible products directly to the consumer either for carry out or service within the establishment. The term includes restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, taverns, lunchrooms, places which sell retail sandwiches or salads, soda fountains, and similar facilities by whatever name called. This term shall not apply to establishments offering food service incidental to their operations.

*Food truck* encompasses all mobile food service units with the exception of pushcarts. Food trucks shall be no larger than 30 feet long and eight feet wide.

*Ice cream truck* is defined as a motor vehicle containing a commercial freezer and from which a vendor sells frozen prepackaged food products such as ice cream, frozen yogurt, frozen custard, flavored frozen water and similar products.

*Lot* means an area designated as a separate and distinct parcel of land on a legally recorded subdivision plat or legally recorded deed as recorded with the Office of the Beaufort County Register of Deeds.

*Mobile food service unit* means a trailer, pushcart, vehicle vendor or any other similar conveyance operating as an extension of and under the managerial authority of the permit holder licensed at its permitted base of operation. The mobile food service unit and its permitted base of operation together make a mobile food service establishment.

*Mobile retail vendor vehicle* is defined as a vehicle that is used for operating a mobile vending retail use that is other than a food truck.

*Pushcart* means a human propelled, self-contained, enclosed service cart that operates at pre-determined locations as approved by Town of Bluffton. Pushcarts shall be no larger than ten feet long and five feet wide feet.

*Town* means the Town of Bluffton, South Carolina.

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<sup>1</sup>Editor's note(s)—Ord. No. 2017-01, § 1(Exh. A), adopted February 14, 2017, repealed the former Art. III, §§ 6-75—6-77, and enacted a new Art. III. The provisions set forth in the Ord. No. 2017-01, § 1(Exh. A) have been renumbered at the discretion of the editor with Town approval. The former Art. III pertained to similar subject matter and derived from the Code of 1999, § 15.101; Ord. No. 2010-17, adopted November 9, 2010; Ord. No. 2013-01, February 19, 2013; and Ord. No. 2014-13, Att. 1, August 12, 2014.

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### **Sec. 6-75. Purpose and intent.**

It is the purpose of this article to protect the public health, safety and general welfare of individuals and the community at large; to establish uniform regulations for the operation of mobile food service units and mobile retail vendor vehicles; and to enhance street-level economic opportunities within the Town.

### **Sec. 6-76. Solicitors conditionally prohibited.**

It shall be unlawful for the operator, owner, manager or agent of any rooming house, boarding house, or lodging house, restaurant, café, tearoom, lunchroom, storage garage, or any other business, hereafter called "establishment," to employ or use any person to solicit patrons therefor, by going upon the streets and soliciting pedestrians or occupants of vehicles, either verbally or by means of signs or any other device whatsoever.

### **Sec. 6-77. Use of streets for sales.**

It shall be unlawful for any person or group of persons to sell, solicit sales, or offer for distribution any merchandise, publication, handbill, or pamphlet while such person is standing in the street and right-of-way, areas reserved for parking spaces, or the areas reserved for loading and unloading, or to enter any of said areas for the purpose of sale and/or delivery of any said items.

### **Sec. 6-78. Approvals, fees and taxes.**

- (a) All approvals for mobile vending units will be issued annually based on the business license year. No approval issued under this article may be prorated, transferred, or assigned or used by any person other than the one to whom it is issued, or at any location other than the one for which it is issued.
- (b) Annual mobile vending fee. Separate from the annual business license fee, an annual mobile vending provisional privilege fee **in accordance with the Town of Bluffton Master Fee Schedule of \$400.00** is due upon approval of the application. If a vendor chooses to withdraw operating in the Town, the annual fee is forfeited.
- (c) Hospitality taxes shall be collected on all applicable sales according to Sections 24-62 through 24-65 and remitted to the Town.

### **Sec. 6-79. Approvals, licensing and regulations.**

The following section provides guidance for the approval process, required licenses and Town regulations as it relates to mobile vending.

### **Sec. 6-80. Specific requirements.**

- (a) Any person or entity intending to operate a mobile vending unit within the corporate limits of the Town of Bluffton shall obtain, prior to commencing operation:
  - (1) All permits as may be required to operate a mobile food service unit by the State, including the SC Department of Agriculture;
  - (2) A Town of Bluffton business license;
  - (3) A fire safety inspection (applicable to food trucks only); and

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- (4) Mobile food service unit location approved application (excludes ice cream trucks). Applicants seeking mobile food service unit location approval shall submit, on an annual basis, an application for such approval. Such application shall include:
- a. The name, address, telephone number, and email address of the mobile food service unit's owner(s) of record. An approval shall be required for each mobile food service unit, notwithstanding unity of ownership or operation. Where an owner(s) is a non-natural person whether or not formally organized, the application shall identify all partners, officers, directors and/or natural person with a financial interest in any such entity, including personal contact information for each;
  - b. Information identifying the mobile service unit including its make, model and license plate number, together with a photograph of the mobile food service unit;
  - c. The corporate and, where applicable, trade name of the base of operations associated with the mobile food service unit, together with a copy of the base of operation's Town of Bluffton's Business License. Where the base of operation is located outside the Town limits, the applicant shall provide evidence of licensing in the base of operation's home jurisdiction;
  - d. A copy of the approved permit and inspection certificate for the base of operation issued by the South Carolina Department of Health and Environmental Control or South Carolina Department of Agriculture;
  - e. A listing of operating locations;
  - f. A certificate of proof of insurance must be provided at time of application;
  - g. Any driver of a food truck must possess a valid driver's license (a photocopy must be included with the application);
  - h. Any signage will be in compliance of Section 5.13 Signs of the Unified Development Ordinance; and
  - i. A written agreement from applicable property owner(s)/manager(s) with regard to the time(s) and location for the premises must be provided with the application.
- (b) No mobile vendor shall operate between the hours of 10:00 p.m. and 8:00 a.m.
- (c) No food truck may be placed under any temporary tents, tarps or other non-permanent covering.
- (d) Shade features may not be attached to trees, structures or other permanent feature on any property.

#### **Sec. 6-81. Grant or denial of application.**

- (a) Review and consideration of an application shall be conducted in accordance with principles of due process. Applications may be denied where an applicant fails to demonstrate that he or she meets the conditions and requirements of this article, or where an applicant fails to comply with applicable local, State or Federal law. Any false statements, material omissions or substantially misleading information provided in an application or furnished by an applicant in connection with an application constitute grounds for any one or combination of the following sanctions: denial; refusal to renew; revocation; suspension; and imposition of penalties.
- (b) The Town of Bluffton Code Enforcement Division may inspect each unit every six months or as needed to ensure compliance with all applicable requirements. Provisional licenses may be suspended if it is determined that requirements or conditions are unmet until such time as remedies are made.

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## **Sec. 6-82. Operational requirements and provisions.**

(a) *Food trucks.* The following operational requirements and conditions apply to food trucks:

- (1) Food trucks shall not conduct business within the public right-of-way, with the exception of special events recognized by the Town of Bluffton and for which the food truck has received pre-approval.
- (2) No operator or employee of a food truck may, at any time, utilize amplified sound devices.
- (3) The South Carolina Department of Public Health mobile food service unit permit, together with all applicable health certificates, including food inspection reports, pertaining to the unit, shall be firmly attached in a prominent location, which shall be plainly visible to the public at all times the food truck is conducting business.
- (4) Food trucks shall not conduct business in any of the following zoning districts: Preserve (PR); Riverfront Edge Historic District (RV-HD); Neighborhood Conservation Historic District (NCV-HD); Neighborhood General Historic District (NG-HD); Neighborhood Center Historic District (NCE-HD); and Neighborhood Core Historic District (NC-HD).
- (5) No food truck may conduct business on single family lots in any of the following zoning districts: Agricultural District, Residential General (RG) District.
- (6) When conducting business, food trucks shall provide no less than nine feet of unobstructed horizontal pedestrian clearance on private property, as measured from the main service window.
- (7) Food trucks may not be left unattended or otherwise stored on sites at which they offer the sale of food and beverage to the public, unless allowed by the Unified Development Ordinance or the associated Planned Unit Development regulations. All mobile food service units must return to their base of operations when not in use.
- (8) Food trucks may not conduct business within 200 feet as measured from the main entrance of a fixed food service establishment to the service window of the food truck, unless such fixed food service establishment has provided written consent to allow the food truck to be located at the proposed location.
- (9) Food trucks may not conduct business in a location that blocks or impedes either pedestrian or vehicular traffic.
- (10) Food trucks may not conduct business with any person while such person is situated in a motor vehicle.
- (11) Multiple food trucks may be allowed on the same property.
- (12) Food trucks may not block or otherwise interfere with Fire Department/Emergency Management Services fire lanes. Food trucks must be parked a minimum of 15 feet from any fire hydrant.
- (13) Food truck owners must maintain for patrons' use a litter receptacle of sufficient size to accept the litter being generated by the sales from the vendor's vehicle at the point of sales. The receptacle must be maintained in such a manner as to preclude an over flow of refuse.
- (14) No point of sale is allowed outside of the unit's service window.

(b) *Push carts.* The following operational requirements and conditions apply to push carts:

- (1) No operator or employee of a push cart may, at any time, utilize amplified sound devices.
- (2) The South Carolina Department of Public Health mobile food service unit permit, together with all applicable health certificates, including food inspection reports, pertaining to the unit, shall be firmly attached in a prominent location, which shall be plainly visible to the public at all times the push cart is conducting business.

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- (3) Push carts shall not conduct business in any of the following zoning districts: Preserve (PR); Riverfront Edge Historic District (RV-HD); Neighborhood Conservation Historic District (NCV-HD); Neighborhood General Historic District (NG-HD); Neighborhood Center Historic District (NCE-HD); and Neighborhood Core Historic District (NC-HD).
  - (4) No push cart may conduct business on single family lots in any of the following zoning districts: Agricultural District, Residential General (RG) District.
  - (5) When conducting business, push carts shall provide no less than six feet of unobstructed horizontal pedestrian clearance on private property, as measured from the main service window.
  - (6) Push carts may not display signage not affixed to the vehicle.
  - (7) Push carts may not conduct business in a location that block or impede either pedestrian or vehicular traffic.
  - (8) Push carts may not conduct business with any person while such person is situated in a motor vehicle.
- (c) *Ice cream trucks.* The following operational requirements and conditions apply to ice cream trucks:
- (1) Vendors can operate out of a motor vehicle used for selling, displaying or offering to sell ice cream only.
  - (2) Vendor shall be subject to a background check for Municipal, County, State and National criminal history records including misdemeanor driving offenses, as part of the application process.
  - (3) No vendor shall remain stationary on a public street or right-of-way more than 30 minutes in any one location conducting business, after which time such vendor must move at least one block or 500 feet, whichever is greater, and shall not return to the same block or location within the same day.
  - (4) Each vendor must maintain a litter receptacle for patrons' use. Excessive litter caused by product packaging may result in revocation of this license.
  - (5) Vendors must equip motorized vehicles with a flashing amber dome light and front and rear warning lights, which the vendor shall flash alternately and shall be flashing when such vehicle is stopped for the purpose of selling ice cream.
  - (6) Signs stating "WATCH FOR CHILDREN" must be provided on the front, back and both sides of the vehicle in at least four-inch letters of contrasting colors.
  - (7) Vendors shall not be positioned so as to expose customers to vehicular traffic, or otherwise in an unsafe manner. Any directive by a police officer in this regard shall be immediately complied with.
  - (8) Vendors shall not sell non-food novelty items, noisemakers or toys.
  - (9) No vendor shall sound any device which produces an offensive or loud noise to attract customers, and vendors shall not use any public address system on the vehicle to broadcast or advertise products. A bell or musical recording may be sounded for a period not to exceed five minutes to announce the arrival of the vehicle at each location.
- (d) *Agricultural/seafood.* The following operational requirements and conditions apply to agricultural and seafood products:
- (1) The following uses are considered agricultural/seafood: fruit/vegetable produce stand, selling of local honey and honey based products, hand crafted bird feeders or similar, locally caught seafood.
  - (2) Vendor shall not conduct business in any of the following zoning districts: Preserve (PR); Riverfront Edge Historic District (RV-HD); Neighborhood Conservation Historic District (NCV-HD); Neighborhood General Historic District (NG-HD); Neighborhood Center Historic District (NCE-HD); and Neighborhood Core Historic District (NC-HD).

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- (3) No vendor may conduct business on single family lots in any of the following zoning districts: Agricultural District, Residential General (RG) District.
- (e) *Mobile retail vendors.* The following operational requirements and conditions apply to all other retail vendors not listed above:
- (1) Mobile retail vendors shall not conduct business within the public right-of-way, with the exception of special events recognized by the Town of Bluffton for which the mobile retail vendor has received pre-approval.
  - (2) No operator or employee of a mobile retail vendor may, at any time, utilize amplified sound devices.
  - (3) Mobile retail vendors shall not conduct business in any of the following zoning districts: Preserve (PR); Riverfront Edge Historic District (RV-HD); Neighborhood Conservation Historic District (NCV-HD); Neighborhood General Historic District (NG-HD); Neighborhood Center Historic District (NCE-HD); and Neighborhood Core Historic District (NC-HD).
  - (4) No mobile retail vendor may conduct business on single family lots in any of the following zoning districts: Agricultural District, Residential General (RG) District.
  - (5) When conducting business, mobile retail vendors shall provide no less than nine feet of unobstructed horizontal pedestrian clearance on private property, as measured from the main service window.
  - (6) Mobile retail vendors vehicles may not be left unattended or otherwise stored on sites at which they offer retail sales to the public, unless allowed by the Unified Development Ordinance or the associated Planned Unit Development regulations.
  - (7) Mobile retail vendors shall meet all sign regulations as states in Section 5.13 Signs of the Unified Development Ordinance.
  - (8) Mobile retail vendors may not conduct business in a location that will block or impede either pedestrian or vehicular traffic.
  - (9) Mobile retail vendors may not conduct business with any person while such person is situated in a motor vehicle.
  - (10) Mobile retail vendors may not block or otherwise interfere with Fire Department/Emergency Management Services fire lanes. The vehicle must be parked a minimum of 15 feet from any fire hydrant.
  - (11) No point of sale is allowed outside of the mobile retail vendor's vehicle.

### **Sec. 6-83. Fire safety.**

To minimize the threat to public safety posed by fire, prior to submitting a mobile vendor permit, food trucks and mobile food service units shall be inspected ~~to ensure that the vehicle meets the conditions below.~~

An annual fire and life safety inspection shall be completed and approved prior to the issuance of a business license. All mobile vending shall be in compliance with the South Carolina Fire Code and all applicable rules and regulations (as amended).

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## **Sec. 6-84. – Violations and penalties.**

(a) It shall be a violation of this article to:

- (1) Operate a mobile food service unit or mobile retail vendor vehicle without complying with the requirements of this article and the Town Code of Ordinances;
- (2) Advertise without first complying with the requirements of this article, including applying for and obtaining a mobile vending permit;
- (3) Operate a mobile food service unit or mobile retail vendor vehicle that has received two or more notifications of violations during any one-year permit period.
  - a. When there is a change of ownership, the number of allowable notices and violations shall be reset upon the issuance of a new mobile vending permit.
- (4) Knowingly provide false information to the Town

(b) Failure of the mobile food service unit or mobile retail vendor vehicle to timely appear to two or more complaints regarding violations may be grounds for penalties including but not limited to, revocation of the permit as set forth in this article.

(c) Upon conviction for a violation hereof, the violator shall be guilty of a misdemeanor punishable as provided in Section 1-7 of this Code.

(d) In the event payment for an annual permit is not timely remitted to the Town as set forth in this article, the mobile food service unit or mobile retail vendor vehicle failing to remit shall also pay a penalty of five percent of the unpaid amount for each month or a portion thereof until said permit is paid in full.

(e) For good cause shown, but not otherwise, a mobile food service unit or mobile retail vendor vehicle may petition the Town Manager, or designee for a reduction of the penalties otherwise due when the failure to pay is not willful and is more than mere oversight and inadvertence.

## **Secs. 6-85—6-97. Reserved.**