

ORDINANCE NO. 2380

AN ORDINANCE AMENDING CHAPTER 92 OF THE HERMISTON MUNICIPAL CODE RELATING TO NUISANCE BY ADDING THE NUISANCE OF UNLAWFUL FOOD VENDING

WHEREAS, the City of Hermiston Municipal Code (“HMC”) includes Chapter 92 “Nuisance”; and

WHEREAS, during 2025 on multiple occasions, multiple individuals who are working together as an enterprise entered Hermiston (“City”), set up a temporary location and then prepared food, including but not limited to meat, and sold the food to humans for consumption; and

WHEREAS, the public complaints have been submitted to Code Enforcement staff, and the City Council has received public testimony at several meetings requesting assistance in regulating temporary food vendors periodically operating in the city; and

WHEREAS, the appropriate authorities have informed the City that such individuals do not possess valid City of Hermiston mobile vending license, Umatilla County Public Health License or Oregon Department of Agriculture license, and Oregon Health Authority food handlers certification as required by state regulations. As a result, the food that these individuals prepare and sell is potentially unsafe for human consumption; and

WHEREAS, such individuals have not, either separately or as an enterprise, obtained a valid City business license as required by the municipal code. As a result, these individuals are illegally engaging in business in Hermiston and are unlawfully competing with legally-compliant restaurants and mobile food vendors; and

WHEREAS, at times, these individuals have carried out their activities on or upon property that they do not have valid legal permission to use, including but not limited to City-owned land and also privately-owned land; and

WHEREAS, the actions of these individuals created in Hermiston, and if repeated similarly, will again create, actual and substantial dangers with regard to public health and public safety because customers are consuming food from unqualified and disreputable preparers. It is not merely conceivable, but highly likely, that one or more customers will become ill if these individuals continue to sell unsafe food in Hermiston; and

WHEREAS, furthermore, the actions of these individuals created in Hermiston, and if repeated similarly, will again create, an actual and substantial risk of breach of the peace because landowners are having their rights trampled and may resultantly confront these individuals via

verbal or physical means, and, likewise, because other food sellers in the City are facing unlawful competition and may resultantly confront these individuals via verbal or physical means. It is not merely conceivable, but highly likely, that aggressive or violent confrontations will occur if these individuals continue to trample landowners' rights and continue to unlawfully compete with legally-compliant businesses; and

WHEREAS, it is a reasonable belief and expectation that these individuals, or others, either associated with them or operating independently, are planning to carry out the same activities within the City in the near future and, further, that some or all of them have no intention of ever seeking or obtaining valid licenses, permits or certifications, nor a valid City business license, nor lawful permission from landowners; and

WHEREAS, accordingly there is an existing emergency in Hermiston; now therefore:

THE CITY OF HERMISTON ORDAINS AS FOLLOWS:

(New language is in red and underlined and repealed language has ~~a line through it.~~)

Section 1. Title IX General Regulations of the Hermiston Municipal Code is amended by amending Chapter 92 by adding the following:

UNLICENSED FOOD VENDING

92.40 PURPOSE. This subchapter is enacted to protect, preserve, and promote the health, safety, and welfare, of the residents and visitors of Hermiston through the reduction, control, and prevention of the selling, vending, or retailing, of food items by businesses that do not have the appropriate certificate, license, or permit to do so.

92.41 FINDING. The unlicensed selling of food by a vendor is declared a nuisance within the City of Hermiston. Due to the dangers that come from uninspected food preparation, improper food handling, and food being sold to citizens of the City by individuals or groups of individuals that are not properly licensed or inspected to do so, food items sold by such individuals are deemed to be unsafe for consumption and an Unlicensed Food Vending nuisance is presumed to constitute an immediate danger to the public.

To be considered properly licensed a food vendor shall maintain upon the premises at all times all required licenses or permits, including but not limited to, a City of Hermiston business license, City of Hermiston mobile vending license, Umatilla County Public Health License or Oregon Department of Agriculture license, and Oregon Health Authority food handler certification.

The use of private or public property for unlicensed food vending without the consent of the owner is also found to be a nuisance.

92.42 JURISDICTION. This subchapter applies to all unlicensed food vending within the jurisdictional limits of the city.

92.43 DEFINITIONS

Food Vending: Any person(s), entity(s) or other parties who sell food from any tent, push cart, vehicle, trailer or other conveyance and is required to have a Class II, III, or IV mobile food unit license as defined by Oregon statutes, a temporary food license from the Umatilla County Health Authority or a license from the Oregon Department of Agriculture.

Food Vending Location: Any property, public or privately owned upon which food vending occurs and which is commercially zoned by the City of Hermiston. Food vending is not permitted on residentially zoned land except as allowed in 92.45 and 119.05 of the Hermiston Municipal Code.

Food: Food vending is classified by the State of Oregon as follows

Class I These units can serve only intact, packaged foods and non-potentially hazardous beverages. No preparation or assembly of foods or beverages may take place on the unit. Non-potentially hazardous beverages may be provided from covered urns or dispenser heads only. No dispensed ice is allowed.

Class II These units may serve foods allowed under Class I and provide hot and cold holding display areas from which unpackaged foods are displayed. Self-service by customers of unpackaged food is not allowed. Preparation, assembly or cooking of foods is not allowed on this unit.

Class III These units may serve any food item allowed under Class II, and may cook, prepare, and assemble food items on the unit. However, cooking of raw animal food on the unit is not allowed.

Class IV These mobile food units may serve a full menu.

Licensed: A license issued by the City of Hermiston for the operation of a business and the mobile vending of food. A license issued by the Umatilla County Health Authority for Class I, II, III, or IV mobile food vending or a license from the Oregon Department of Agriculture for the sale of seafood and shellfish, baked goods, home cooking and baking, meat, eggs, and dairy. A food handler certification/card from the Oregon Health Authority.

92.44 UNLAWFUL FOOD VENDING GENERAL PROHIBITION

(A) No person shall sell food within the City of Hermiston unless first licensed and permitted to do so by all licensing agencies including but not limited to the City of Hermiston, Umatilla County Health, Oregon Health Authority, and/or the Oregon Department of Agriculture.

(B) Any person vending food from a property without written consent from the landowner is in violation of this chapter.

92.45 ENFORCEMENT. The City Manager, Police Chief, Code Enforcement Official, or any designee(s) thereof will have primary responsibility for the enforcement of the regulations contained in this subchapter. If the City Manager or designee has reason to conclude that an unlicensed food vending nuisance exists, the City Manager or designee may, in their discretion:

(A) Issue a citation or enforcement complaint as provided in Chapter 136 or 138;

(B) Summary Abatement. Due to the danger to citizens caused by unlicensed food vending the City has found this nuisance to be an immediate danger to the public and under HMC 92.15(D), the City may summarily and without notice, abate the nuisance including the closing down of the vending location. Notice of the abatement, including the reason for it, shall be given to the person(s) responsible for the nuisance as soon as reasonably possible. The costs of the summary abatement shall be charged to the person(s) responsible and become a lien upon the property in accordance with the provisions of this chapter applicable to costs of non-summary abatements.

(C) Nothing in this subchapter shall prevent the City Manager, Police Chief or Code Enforcement Official, or any designee(s) from obtaining voluntary compliance by way of warning, notice, or education.

(D) A private property owner that allows an unlicensed food vending nuisance to occur on the said property and the person responsible for an unlicensed food vending nuisance shall be jointly and severally responsible for any violation of this section or other applicable sections of the Hermiston Municipal Code.

92.45 EXEMPTION

(A) The City recognizes the value of and encourages youth entrepreneurship, so therefore, in addition to exempted activities listed in 119.05, temporary vending by a person under 18, located on property used for residential purposes, and operated for no more than three consecutive days, shall be exempt from the provisions of this subchapter. This exemption specifically applies to, but is not limited to, activities such as lemonade stands or similar temporary vending operations. Operation beyond the allowed timeframe shall require compliance with all provisions of this subchapter. The youth vendor must have obtained permission from the owner or authorized occupant of the residential property where the vending activity is to take place. While exempt from the provisions of this subchapter, youth vendors and their supervising adults remain responsible for ensuring that the vending activity is conducted in a safe manner that does not

create hazards for customers or the public. Youth vendors and their supervising adults shall be solely responsible for ensuring that any food, beverages, or other products offered for sale are safe for consumption or use. This exemption does not relieve vendors from compliance with applicable health and safety standards.

92.99 PENALTY.

In addition to abatement or any other remedy provided by law, unless otherwise provided in this chapter:

- (A) Anyone who violates any provision of §§ 92.01 through 92.10, § 92.12, or § 92.13 commits a Class B violation.
- (B) Violation of any provision of § 92.11 or 92.44 is a Class A violation.
- (C) Violation of any provision of §§ 92.23 through 92.29 shall constitute a Class B violation.
- (D) Any person who shall attempt to commit a violation of this chapter but who for any reason is prevented from consummating the act, commits a Class C violation.
- (E) Each day's violation of a provision of this chapter constitutes a separate offense.

Section 2. All other provisions of the Hermiston Municipal Code remain unchanged and in full effect.

Section 3. The City Recorder is hereby authorized to correct any scrivener's errors and to conform the revisions to the Hermiston Municipal Code with appropriate numbering.

Section 4. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 23rd day of February 2026.

SIGNED by the Mayor this 23rd day of February 2026.

Doug Primmer, MAYOR

ATTEST:

Lilly Alarcon-Strong, CMC CITY RECORDER