

ZONING TEXT AMENDMENT: MOBILE FOOD VENDOR UPDATES  
(P23-50-ZTA)  
CITY OF HENDERSONVILLE - COMMUNITY DEVELOPMENT STAFF REPORT

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## PROJECT SUMMARY

- Project Name & Case #:
  - Mobile Food Vendor Updates
  - P23-50-ZTA
- Applicant:
  - City of Hendersonville
- Zoning Ordinance Articles Amended:
  - 16-4-17 Mobile food vendor
  - 8-1-1 Exceptions to setback regulations.
  - 13-1-10- Supplementary standards for mobile food vendors.
  - 13-1- 11- Noncommercial messages
- Planning Board - Legislative Committee Meeting
  - August 15<sup>th</sup>, 2023
- Summary Basics:
  - The City is proposing to amend the supplementary standards for mobile food vendors to address trends and problems that have arisen since the original ordinance was adopted in 2018.
  - Staff have found out through practice that our current ordinance is very restrictive and that few mobile food vendors in the City meet the requirements of the ordinance. It was also discovered that our ordinance is redundant and covers aspects that are outside the scope of zoning and that are being covered by other outside entities (Health Department, Water and Sewer, Fire, etc.)



### *Summary of Amendment Petition:*

*“Mobile Food Vendors” were added to the City Zoning Ordinance as a permitted use on April 5, 2018. The amendment in 2018 was an applicant driven text amendment petitioned by Mark Searcy to allow a mobile food vendor at 2745 Chimney Rock Road. Mobile food vendors are currently permitted in the following districts with supplementary standards: C-2, C-3, CMU, I-1, HMU. There have been no amendments to the mobile food vendor ordinance since its adoption in 2018.*

*Since 2018, staff have worked with and applied the supplementary standards for any permitted mobile food vendor operating in the City of Hendersonville. Through this work, staff has found that the current ordinance has some problematic aspects to it. It has been found problematic to apply the standards to real world requests, as well as the enforcement of current standards. There are few sites in the City that meet the requirements outlined in the ordinance and staff has found that our ordinance duplicates requirements that are enforced by other outside agencies.*

*For these reasons, staff is proposing the changes that are before you. Staff believe that these changes will make the supplementary standards enforceable and follows the trends that are currently happening in our community.*

## AMMENDMENT ANALYSIS – AMENDMENT OVERVIEW

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Staff is proposing a new approach to the permitting of mobile food vendors. Our current ordinance requires that all operators obtain a zoning compliance permit. This would require that a mobile food vendor obtain a new permit each time they change locations. For example, if a mobile food vendor sets up on a vacant lot on Asheville Highway, they would be required to obtain a permit for that location. If they then decide to move to a brewery across town, they would be required to obtain a new permit showing that they meet the requirements of the ordinance for the new location. Staff is proposing to change this approach. Staff proposes that the permit be location based, instead of vendor based. For example, if a brewery wants to add a mobile food vendor as an accessory use and it is permitted by the zoning ordinance, the brewery owner would just need to identify an area on their site where a food truck could be located. Once this location receives a zoning compliance permit, then any mobile food vendor could use that location on the site without the need to obtain additional zoning compliance permits each time the vendor changes. This would make enforcement and permit tracking easier for staff as well as the property owner.

Furthermore, staff is proposing that the City eliminate elements of the ordinance that are enforced by other agencies. The ordinance as written includes language and requirements that are outside the normal responsibilities of zoning. Our ordinance currently states that “Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the health department.”. This language is a direct reflection of the information provided to anyone who wants to start a mobile food vendor operation by the Henderson County Health Department and enforcement of these requirements is handled by the Henderson County Health Department. A copy of the Health Department’s rules for mobile food vendors is in your packet.

Additional language referencing other agencies’ requirements include “No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces” These requirements for food trucks are enforced through the Environmental Compliance arm of the Water and Sewer Department as well as the City’s Stormwater Division. The Stormwater Division investigates illicit discharges into storm drains and streams.

Finally, staff are proposing changes to the placement and configuration of mobile food vendors. Minimum setbacks for applicable districts have not rendered a better result than non setback districts. As such staff propose simply that mobile food vendors shall remain on private property and not encroach on sidewalks, drive aisles or be located in any required parking.

Staff are also proposing to eliminate the 250’ requirement from the nearest restaurant because staff have also found out that locations where a mobile food vendor could go are severely limited by this standard. Moreover, the existence of food trucks does not appear to have had an overly detrimental impact on the traditional brick and mortar restaurants, certainly not one influenced by proximity. Both dining options appear to provide separate dining experiences.

## ZONING TEXT AMENDMENT – MOBILE FOOD VENDORS

The proposed Mobile Food Vendor Language Changes reads as follows:

### Additions to the Ordinance

### ~~Deletions from the Ordinance~~

#### **16-4-17 Mobile food vendor.**

- a) Zoning compliance permits for mobile food vendor sites ~~and mobile food vendors shall be valid for a period of one year, and shall be renewed annually.~~ shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.
  - 1) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.
- ~~b) Mobile food vendors must have a base of operations, such as a restaurant or commissary, and must report to said base daily for supplies, cleaning, and servicing unless exempted by the health department. If the base of operations is under different ownership than the mobile food vendor, a written agreement for use must be submitted as part of the application. No waste, grease, or wastewater shall be released into the city's sanitary sewer or stormwater collection systems, ditches, tree wells, or other public spaces.~~
- b) ~~c)~~ There shall be no limit to the number of mobile food vendors per parcel so long as all other separation and site requirements as set forth below are met.
- c) ~~d) Mobile food vendors shall follow the dimensional requirements of the zoning district classification in which they are located. If there are no dimensional requirements in zoning district classification, at a minimum, food vendors shall be situated at least ten feet from all property lines and any road right-of-way.~~ Mobile food vendors shall:
  - 1) Not encroach onto any street, sidewalk, or travel way, and shall not obstruct any loading zone or handicapped parking space. ~~Additionally, mobile food vendors must be:~~
  - 2) ~~1) Be~~ located on property in a manner that does not eliminate required parking for a development or impede the flow of traffic in any way.
  - 3) ~~2) Be~~ situated at least 10 feet away from buildings, structures, vehicles, and any combustible materials. ~~Situated at least 25 feet from any permanent structure. The community development director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.~~
  - 4) ~~3) Not located within 250 feet from any restaurant, and~~ ~~N~~ot be located within 100 feet from any residential structure or residential zoning district lot line. ~~unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.~~
  - 5) ~~4) Be~~ set back a minimum of ten feet in all directions from fire hydrants.
  - 6) ~~5) Be~~ situated at least 10 ~~20~~ feet from one another.
- ~~e) Mobile food vendors on vacant sites shall adhere to article XV, buffering, screening, and landscaping general requirements, including any overlay district landscaping requirements.~~

- ~~f) Hours of operation for mobile food vendors shall be limited to 7:00 a.m. to 10:00 p.m. Mobile food vendor operators or their designee must be present at all times during operation, except in the event of an emergency.~~
- ~~g) Vendors must vacate the site each day unless the vendor owns the site.~~
- ~~h) Each food truck shall supply at least one waste receptacle which must be removed and emptied at the end of each day, city trash receptacles shall not be used for food truck waste.~~
- ~~i) Mobile food vendors shall be limited to the following signage: One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet and one small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer to display daily specials, menus, or other similar information. Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.~~

### **8-1-1 Exceptions to setback regulations.**

The following features shall not be subject to the required minimum setbacks:

Bridges

Doghouses

Driveways, walks and parking areas

Fences and walls not exceeding nine feet in height

Landscape features such as entrance piers, columns, gates, planters and gardens

Mobile food vendors

Playhouses, not exceeding 64 square feet in floor area

Required building entry ramps

Retaining walls

Stormwater management facilities such as head walls and culverts

### **13-1-10- Supplementary standards for mobile food vendors.**

Mobile food vendors shall be limited to the following signage:

- a) One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet. Any sign illumination shall be downward facing.
- b) One small A-frame sign not to exceed four feet in height and eight square feet of surface area may be placed within five feet of the vehicle or trailer.
- c) Other signs and devices including plaques, banners, pennants, streamers, and posters are not permitted.

### **13-1-10 II - Noncommercial messages.**

Any sign, display, or device allowed under this article and which complies with size, lighting, and spacing requirements of this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale.

PUBLIC INPUT / RECOMMENDATION

Legislative Committee of the Planning Board –August 15<sup>th</sup>, 2023

The Legislative Committee reviews all text amendments prior to consideration by the Planning Board. The committee members in attendance were:

- Jim Robertson
- Neil Brown
- Peter Hanley

Committee members discussed the proposed changes and the reasoning behind the changes. The committee proposed the following changes to the ordinance.

1. Exempting mobile food vendors that are associated with a special event. We do not currently have language exempting mobile food vendors that are associated with special events, which means that they should be following all the supplementary standards. Since meeting the supplementary standards could prove difficult for a mobile food vendor associated with a special event, staff and the legislative committee are proposing adding this proposed exemption.

- a. ~~Zoning compliance permits for mobile food vendor sites and mobile food vendors shall be valid for a period of one year, and shall be renewed annually.~~ shall be accompanied by a conceptual site plan depicting a location on the subject property that meets all applicable requirements of this section.

1) Exemption: A mobile food vendor associated with an event with an active City of Hendersonville Special Event Permit.

2. The Committee as well as staff had an interest in reducing the distance that mobile food vendors could be from permanent structures. The current requirement is 25' from all permanent structures unless exempted by the Fire Department. Upon speaking with the Fire Marshal, staff found out the minimum distance permitted by fire standards is 10' and not 25'. Staff are proposing that our ordinance be reduced in accordance with a distance approved by the Fire Marshal and allow a minimum setback of 10'. The City Fire Marshal was in favor of the proposed language.

- a. ~~Be situated at least 25 feet from any permanent structure. The community-development director or designee may, upon recommendation of the fire marshal, approve the placement of mobile food vendors within 25 feet or less of a permanent structure. Such approval shall be based upon building type, building materials, existing fire breaks, and other pertinent information.~~

3. The Committee was also interested in looking at the requirements for when a mobile food vendor is near residential. Our current ordinance does not allow mobile food vendors to operate within 100' of any residential zoning district or structure. Staff proposed that we allow mobile food vendors to operate within 100' of a residential zoning district or structure with some additional buffering requirements. Upon discussing with the committee, staff and the committee decided that it would be hard to figure out when and where the additional landscaping requirements would trigger. Instead of landscaping, the committee decided to add a

hours of operation stipulation for any mobile food vendor operating within 100' of any residential zoning district or structure. The hours of operation rule do not apply to mobile food vendors outside of the 100'.

- a. ~~4) 3) Not located within 250 feet from any restaurant, and N~~ot be located within 100 feet from any residential structure or residential zoning district lot line. **unless their hours of operation are limited to 7:00 a.m. to 10:00 p.m.**
4. Committee member Brown wanted to add a stipulation to the sign section of the ordinance. The requirement would be that any illumination to the mobile food vendor's sign would be required to be downward facing. This requirement is in alignment with recent lighting efforts and reforms throughout the City.
  - a. **One wall sign affixed to the vehicle or trailer per side of vehicle or trailer. Said sign shall be no larger than 32 square feet. Any sign illumination shall be downward facing.**

AMENDMENT ANALYSIS – COMPREHENSIVE PLAN CONSISTENCY (ARTICLE 11-4)

COMPREHENSIVE PLAN CONSISTENCY	
Land Use & Development	<i>Strategy LU-3.5. Minimize negative impacts from growth and land use changes on existing land uses.</i>
Population & Housing	<b><i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i></b>
Natural & Environmental Resources	<b><i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i></b>
Cultural & Historic Resources	<b><i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i></b>
Community Facilities	<b><i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i></b>
Water Resources	<b><i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i></b>
Transportation & Circulation	<b><i>There are no Goals, Strategies, or Actions that are directly applicable to this petition.</i></b>



## GENERAL REZONING STANDARDS

Compatibility	<b>Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject property –</b>
	<i>The proposed text amendment allows mobile food vendors and property owners more flexibility in how they use their land and business. The text amendment reflects real world conditions of mobile food vendors. The changes mirror the way in which mobile food vendors are already operating within the City.</i>
Changed Conditions	<b>Whether and the extent to which there are changed conditions, trends or facts that require an amendment -</b>
	<i>Mobile Food Vendors were a new use when originally written into the ordinance. Their impact and prevalence were unknown at that time. Through time and practice staff have been able to see which items did or did not have an impact on the community.</i>
Public Interest	<b>Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern that benefits the surrounding neighborhood, is in the public interest and promotes public health, safety and general welfare -</b>
	<i>The proposed text amendment aligns real world conditions with the ordinance. Staff receives few compliance complaints from citizens concerning mobile food vendors. This leads staff to believe that citizens are generally comfortable with how mobile food vendors largely operate. Staff is proposing to make these realities reflective in our ordinance.</i>
Public Facilities	<b>Whether and the extent to which adequate public facilities and services such as water supply, wastewater treatment, fire and police protection and transportation are available to support the proposed amendment</b>
	<i>The proposed text amendment does not have a large impact on public facilities. The water and sewer and fire departments will still review mobile food vendors in accordance with their standards.</i>
Effect on Natural Environment	<b>Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment including but not limited to water, air, noise, storm water management, streams, vegetation, wetlands and wildlife -</b>



	<p><i>There are not any direct connections between this text amendment and the environment/ natural resources. The current effect on the natural environment would not change with the passing of this text amendment.</i></p>
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## DRAFT COMPREHENSIVE PLAN CONSISTENCY AND TEXT AMENDMENT REASONABLENESS STATEMENT

The petition is found to be [consistent] with the City of Hendersonville 2030 Comprehensive Plan based on the information from the staff analysis and the public hearing, and because:

*The petition aligns with the Comprehensive Plan's Strategy LU-3.5. of minimizing negative impacts from growth and land use changes on existing land uses by reflecting current and ongoing trends in the community concerning mobile food vendors.*

We [find] this proposed zoning text amendment petition to be reasonable and in the public interest based on the information from the staff analysis and the public hearing, and because:

### *DRAFT [Rationale for Approval]*

- *The proposed text amendment creates flexibility for property owners and mobile food vendor operators while still limiting potential impacts to the greater community.*
- *The proposed text amendment reflects real world conditions and potentially allows non-conforming mobile food vendors to come into compliance.*
- *The proposed text amendment reduces duplicated standards and focuses primarily on zoning/site specific requirements.*

### *DRAFT [Rational for Denial]*

- *The proposed text amendment would reduce the distance required between mobile food vendors and permanent structures.*
- *The proposed text amendment eliminates the requirements for landscaping associated with mobile food vendors.*
- *The proposed text amendment removes setback requirements for mobile food vendors.*