

DURHAM



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NORTH CAROLINA



Date: November 5, 2012

To: Thomas J. Bonfield, City Manager

Through: Keith Chadwell, Deputy City Manager

From: Steven L. Medlin, AICP, City-County Planning Director

Subject: City Code Amendment – Street Vendors in Public Right-of-Way

Summary. The proposed revisions to City Code Sections 54-25, 54-26, 54-84, 54-85, 54-86, 54-87, 54-88, 54-91, 54-110, 54-111, 54-112, 54-113, 54-114, 54-115, 54-116, 54-117, 54-118, 54-140, 54-141, 54-188, 54-189, 54-190, 54-191, and 54-192 will revise the existing code provisions to create a new street vending process. The proposed regulations will apply to all mobile vendors selling food and first amendment items within the public right-of-way in the Durham City limits.

Recommendation. Staff recommends approval of the City Code amendment.

Background. In 2011, City staff from various departments began reviewing the current City Code as it applies to mobile vending in public right-of-way. Staff received comments from vendors, Durham Central Park, Durham Farmer’s Market, and the general public about the need for an updated code that better reflects current practices of mobile vendors and takes into account the needs of various stakeholders. Durham has become a “foodie” city and code modifications are needed to allow for vendors to continue operating in a reasonable manner while preserving safety and clearance in street right-of-way.

Since 2002 the City has allowed for two types of food vendors, mobile vendor and fixed location vendor, to sell from carts on sidewalks and other street right-of-way. The administration recommends eliminating these categories and creating a new category of “street vendors” which will operate under the proposed set of requirements.

The current code requires that, before beginning operations, both mobile and fixed location vendors must obtain a City mobile vending or fixed location vending permit, valid for up to 12 months. Both types of vendors are limited to selling food and First Amendment items, such as newspapers and magazines. Mobile carts may operate only on sidewalks. The permit may specify limits on the size and design of the cart, as well as the hours that it may operate. All mobile carts must move 60 feet at least once every 15 minutes. Once permitted, they may operate on all sidewalks in the City.

Fixed location vendors may operate only at the precise location specified in their fixed location vending permits. The location may be in the street right-of-way, including sidewalks and on-

street parking spaces, but not in the travel portion of a street or in the median. The permit may impose limits on the size and design of the cart, as well as the operating hours. The cart may be on the location only during the hours permitted. Mobile and fixed location vendors must comply with the ordinance and with their permits. Permits can be revoked for violations. The recommended ordinance will create a different system. Under the new system, street vendors would not apply for or receive permits. Instead, everyone will have the right to set up and operate without asking for approval. Street vendors will come to City Hall and register their food trucks or carts, which involves completing a brief application so that the City will have contact information on file. All vendors will pay a \$10 annual fee to offset the administrative costs of the program. The street vendor will continue to pay the annual City business tax (also known as the privilege license tax).

The proposed ordinance contains provisions that reflect current practice with regard to special-event permits, such as that only vendors authorized by a special-event permit may engage in business on the blocked street. When a special-event permit is issued in conjunction with a blocked street order, the restrictions in section 54-91 of the ordinance would not apply to the blocked street. The ordinance authorizes the administration to write conditions in special-event permits that match the needs of the particular event and its location.

Instead of complying with restrictions spelled out in permits regarding the size, construction, and location of their carts, street vendors could use any size and construction of cart that meets the prescribed code's limits. Under the proposed code, street vendors would continue to be limited to selling food and First Amendment items. The proposal also eliminates the provision requiring mobile vendors to move 60 feet at least once every 15 minutes.

The proposed ordinance contains the following specific requirements:

- Separation. Street vendors selling food must stay at least 50 feet from the front door of any restaurant and any outdoor dining areas associated with a restaurant, unless they have the restaurant's written permission. This applies only when the restaurant is open for business. For that purpose, "restaurant" is limited to eating establishments in permanent buildings providing at least 10 seats.
- Clearance. All street vendors will have to provide at least a 10-foot clearance from intersections, crosswalks, bus shelters, taxi stands, fire hydrants, building entrances, fire and police stations, and other street vendors. The proposed code requires a 20 foot distance separation from ATM's and the entrance and exit of banking institutions.
- Parking. If a street vendor chooses to sell from an on-street parking place, he or she must comply with any parking limitations that might apply to that space (30 minutes, 1 hour, etc.); they may remain indefinitely in on-street parking spaces that have no time limits. Since sidewalks do not have time limits street vendors could remain as long as they wish on sidewalks.
- Location. If two vendors wish to be in the same location, the proposed ordinance allows them to resolve that issue on a first-come, first served basis each day.

Under both the old and the proposed ordinances, all vendors must comply with the regulations set forth by the Durham County Health Department. In addition, they must also provide trash cans and pick up trash resulting from their sales that is within ten feet of their carts. The

proposed ordinance expands the area to be cleaned to 15 feet and adds the need to provide a recycling bin. If the street vendor uses deep fat fryers or certain other equipment, they must carry a fire extinguisher.

Street vendors cannot provide seats for customers nor sell to customers who are in an automobile (operate a drive through type service). Street vendors would be allowed to leave their sales gear unattended for up to 10 minutes.

Neither the current ordinance nor the proposed ordinance requires vendors to purchase insurance.

City staff will prepare handouts to be given to each vendor at the time they register their cart or vehicle. The handout will outline the code provision and should answer any frequently asked questions.

Issues. City staff held a public information session on July 9, 2012 to provide an overview of the proposed Street Vendor Ordinance. The public feedback from that meeting focused mainly on proposed distance requirements for street vendors from restaurants. A majority of current mobile vendors opposed the distance requirement stating it was not necessary. Some stated the proposal intended to manage competition and protect the revenues of existing restaurants, the Durham Farmers' Market, and permitted special events and called it protectionism. After reviewing how other jurisdictions regulate mobile vending and speaking directly with local restaurant owners, staff is recommending a 50 foot distance requirement that would serve to meet the needs of the various stakeholders involved.

Consideration was given to requiring a distance separation from the Durham Farmer's Market and other special events but after full evaluation, staff is not recommending any distance separations at this time. City staff has conducted several follow up meetings to further review the proposed ordinance and received input. Staff met with mobile vendors and other stakeholders including: Durham Farmers' Market, Durham Central Park, restaurant owners and the Durham Police Department.

The proposed amendment would become effective thirty (30) days after adoption. The Planning Department will be responsible for administering the proposed Street Vending ordinance and associated registration process. The Zoning Administration section will be the primary contact for enforcement of the ordinance, with the Police Department providing assistance on nights and weekends. The ordinance will be enforced on a complaint basis only.

Fiscal Impact. The proposed code will require each vendor to register at the rate of \$10 per cart and/or vehicle. Registration will be required on an annual basis. It is estimated the proposed fee structure will generate revenues of approximately \$1,200.00 annually. This figure could vary based on the number of food trucks and carts. Privilege license tax (business tax) revenues will be unaffected by the ordinance change and will continue to be collected by the Finance Department. The City Council adopted the \$10.00 registration fee as part of the recent changes made to the Planning Department fee ordinance on October 15, 2012.

Thomas J. Bonfield, City Manager
Street Vendor Ordinance
November 5, 2012

Attachments

Attachment 1, Ordinance to Amend Provisions of the Code of Ordinances Regulating Mobile Street Vendors

Attachment 2, Ordinance Setting a Registration fee for Street Vending