

TOWN OF SUPERIOR
ORDINANCE NO. O-6
SERIES 2021

AN EMERGENCY ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR AMENDING SECTION 11-1-90 OF THE SUPERIOR MUNICIPAL CODE, AND AMENDING CHAPTER 11 OF THE SUPERIOR MUNICIPAL CODE BY THE ADDITION OF A NEW ARTICLE V, ENTITLED MOBILE VENDING

WHEREAS, allowing mobile vending in the Town will support economic development and help new businesses operate in the community;

WHEREAS, developing a mobile vendor permit program ensures that structures, vehicles, and equipment can coexist safely on public and private property; and

WHEREAS, the Board of Trustees wishes to amend the Superior Municipal Code to allow for and regulate mobile vending on both public and private property in the Town.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

Section 1. Section 11-1-90 of the Superior Municipal Code is hereby amended as follows:

Sec. 11-1-90. Sales on public property.

(a) It is unlawful for a person to park or stand a vehicle, cart, tent or other structure without a permit, regardless of whether such vehicle is occupied, on any public property, park, open space, recreation area, street, sidewalk or other public way, when such vehicle or structure is used for the operation of any business.

(b) It shall be an affirmative defense to a violation of this Section that the person was:

(1) Under the age of sixteen (16) and operating a refreshment stand; or

(2) Operating a mobile food vending business approved by *the Town pursuant to Article V of Chapter 11 of this Code* ~~the Boulder County Health Department or other applicable agency, and is not parked in any one~~(1)~~location for more than fifteen~~(15) minutes.

Section 2. Chapter 11 of the Superior Municipal Code is hereby amended by the addition of a new Article V, to read as follows:

ARTICLE V – Mobile Vending

Sec. 11-5-10. Definitions.

- (a) *Mobile food vendor* means a retail food establishment that is a wheeled vehicle (such as a mobile truck, trailer, or pushcart) that is readily movable and designed for the service of food from the interior of the unit.
- (b) *Mobile vendor* means a person who sells or attempts to sell, or offers to the public, any services, goods, wares or merchandise, including without limitation food or beverage, from a mobile truck, mobile trailer, or mobile cart.
- (c) *Mobile vendor vehicle* means a truck, trailer, pushcart, wagon, mobile stand, motor vehicle or other vehicle, or other appurtenances used to conduct mobile food vendor operations.

Sec. 11-5-20. License and permit required.

- (a) It is unlawful for any person to operate as a mobile vendor within the Town without first obtaining a business license and a mobile vending permit.
- (b) Mobile vendors shall conspicuously display their business license and mobile vending permit at all times during operation.

Sec. 11-5-30. Permit application.

An application for a mobile vending permit shall be submitted to the Town on forms provided by the Town, and shall include the following information at a minimum:

- (1) An application fee as set by resolution of the Board of Trustees;
- (2) A scaled drawing of the dimensions of the proposed mobile vendor vehicle, and any displays, signage, furniture, or other appurtenances thereto;
- (3) A site plan of the property or properties on which the mobile vendor intends to operate, including an indication of whether the applicant is applying for a specific site designated for such use by the Town;
- (4) A written plan for waste disposal;
- (5) If on private property, proof of ownership or written permission from the property owner;

(6) If on public property, a certificate of insurance naming the Town as an additional insured in amounts no less than \$1,000,000 per person and \$2,000,000 per incident;

(7) Evidence of all required permits and licenses, including without limitation, as applicable: a Colorado sales tax license; a Town business license; Town building permits; Town special use permits; and if the mobile vending activity includes any food product, approval by the Boulder County Health Department; and

(8) Any other information deemed necessary by the Town to make a determination as to whether the application meets the requirements of this Article.

Sec. 11-5-40. Review and approval.

(a) **Criteria.** The Town may administratively approve an application for a mobile vending permit if the following criteria are satisfied:

(1) The application, including fees and insurance evidence, is complete;

(2) The mobile vending activity is consistent with the zoning of the property;

(3) The applicant has demonstrated the ability to comply with the requirements of this Chapter and any necessary permit conditions; and

(4) The applicant is not delinquent in the payment of any permit fees or sales or use tax payments to the Town or the state.

(b) **Conditional approval.** The Town may approve a mobile vending permit with reasonable conditions if such conditions would allow the application to comply with the above-referenced criteria, including without limitation modifying the term of the permit. Such conditions shall be specified in the mobile vending permit.

(c) **Indemnity.** As a condition of every permit, the mobile vendor agrees to indemnify and hold harmless the Town, its officers, employees and agents against any and all claims for damage to persons or property arising out of or resulting from the mobile vendor's actions or omissions in carrying out the mobile vending.

(d) **Conflicts.** The Town occasionally authorizes activities or special events that may impact specific designated sites. Mobile vendors who have been granted a permit for a designated site shall not be allowed to vend during those permitted special events unless specifically authorized in writing by the event producer.

Sec. 11-5-50. Term and renewal.

- (a) A mobile vending permit shall be valid for the period stated in the permit, unless revoked or suspended prior to expiration.
- (b) An application for renewal of a mobile vending permit shall be submitted to the Town on forms provided by the Town and shall be processed in the same manner as an initial application, provided that any information previously submitted that has not changed need not be resubmitted with a renewal application.

Sec. 11-5-60. Location; hours; operation.

- (a) Mobile vendor vehicles shall abide by all Town parking rules and standards.
- (b) In any non-residential or multi-use zone district, mobile vendors may operate on private property, in public rights-of-way and in public parking lots. In residential zone districts, mobile vendors may only operate on private property, or in public rights-of-way during special events approved by the Town, such as block parties.
- (c) It is unlawful for a mobile vendor to stop or operate within twenty (20) feet of an intersection, or to sell or attempt to sell to any person who is standing in the street or roadway, or operate in any area so as to interrupt or interfere with the normal flow of vehicular or pedestrian traffic.
- (d) It is unlawful for a mobile food vendor to stop or to place a mobile food vending apparatus, food, tables, chairs or other fixtures, furniture, devices, generators or awnings used to conduct mobile food vendor operations so as to obstruct the free travel of pedestrians or vehicles in, on, near or above any public street, sidewalk, or other public right-of-way.
- (e) It is unlawful for a mobile vendor to operate on any private property without the express written permission of the owner.
- (f) It is unlawful for a mobile food vendor to operate within fifty (50) feet of an open brick-and-mortar restaurant without written permission from the restaurant.
- (g) Mobile vendors shall comply with all applicable state and county regulations, including health mandates and sanitation requirements.
- (h) Mobile vendors shall be responsible for providing trash and sanitation stations and for any environmental impacts resulting from their operation.
- (i) Mobile vendors shall maintain the permitted area and immediate area surrounding the permitted area free of debris, trash, and hazards.

Sec. 11-5-70. Suspension and revocation.

(a) Grounds for suspension or revocation of a permit issued under this Article shall include without limitation:

(1) A violation of any provision of the permit, this Article or any other applicable law;

(2) Conducting mobile vending activities in such a manner as to create a public nuisance or constitute a danger to the public health, safety and welfare;

(3) Failure to pay state or local taxes that are related to the operation of the business associated with the permit; or

(4) Fraud, misrepresentation or a false statement of material fact contained in the original or renewal permit application.

(b) The Town shall deliver written notice to the permittee stating the action taken and the basis therefor. The written notice may be hand delivered to the permittee or mailed to the permittee's last known address.

(c) In addition to the foregoing, the Town reserves the right to end the mobile vending permit program altogether and revoke all mobile vending permits if the Town discovers that mobile vendors are negatively impacting brick and mortar businesses located in the Town.

Sec. 11-5-80. Violation and penalties.

(a) Violations of this Article may result in the immediate suspension or revocation of a vending permit. In addition, a violation of this Chapter shall be subject to the civil penalties set forth in Section 1-3-20 of this Code.

(b) Each day of violation shall constitute a separate offense.

Sec. 11-5-90. Appeal.

An appeal of any decision by the Town made pursuant to this Chapter, including denial, suspension, or revocation of a permit, may be made by filing with the Town Clerk a written notice of appeal within fourteen (14) days of the date of the decision being appealed. The Board of Trustees will hear such appeal on a *de novo* basis within thirty (30) days of the filing of the appeal. Failure to file an appeal within the time allotted shall be a jurisdictional bar to the Board of Trustees' authority to hear such appeal. The decision of the Board of Trustees shall be final, subject only to judicial review under C.D.C. 106(a)(4).

Section 3. **Severability.** If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision

shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one or part or parts be declared unconstitutional or invalid.

Section 4. Safety. This Ordinance is deemed necessary for the protection of the health, welfare and safety of the community.

Section 5. Emergency Declaration. Pursuant to C.R.S. § 31-16-105, the Board of Trustees hereby finds and declares that this Ordinance is necessary for the immediate preservation of the public health, safety and welfare, to encourage economic development in the Town and to ameliorate the negative effects of the COVID-19 pandemic on the Town.

Section 6. Effective Date. This Ordinance shall take effect immediately upon adoption.

INTRODUCED, READ, PASSED AND ORDERED PUBLISHED this 24th day of May, 2021.



Clint Folsom, Mayor

ATTEST


Phyllis Hardin, Town Clerk-Treasurer



The seal is circular with a double-line border. The outer ring contains the text 'THE TOWN OF SUPERIOR' at the top and 'COLORADO' at the bottom, separated by two stars. The inner circle contains the text 'SEAL' in the center.