

# RECORD OF ORDINANCES

Ordinance No. 3679

Passed: August 25,

2020

AN ORDINANCE ADOPTING AMENDMENTS TO CHAPTER 154 OF THE CODE OF ORDINANCES OF WEST CARROLLTON KNOWN AS THE "ZONING CODE," BY REPEALING AND REPLACING SECTION 154.16.11, MOBILE FOOD VENDORS, AND REPEALING AND REPLACING SECTION 37.35, MOBILE FOOD VENDOR LICENSE FEE.

WHEREAS, after extensive research and deliberation and consultation with mobile food vendor and restaurant operators, the City of West Carrollton seeks to bring its mobile food vendor regulations and fee in line with other area communities; and

WHEREAS, an application has been filed by the City of West Carrollton proposing amendments to Chapter 154 of the Code of Ordinances of West Carrollton known as the "Zoning Code," by repealing and replacing Section 154.16.11, Mobile Food Vendors, and proposing amendments to Chapter 37 of the Code of Ordinances of West Carrollton known as the "General Fee Schedule," by repealing and replacing Section 37.35, Mobile Food Vendor License Fee; and

WHEREAS, a public hearing was held on June 18, 2020 by the West Carrollton Planning Commission, at which time all people who wished to testify gave their comments, and the Planning Commission unanimously recommends approval of the proposed amendments; and

WHEREAS, notification of a public hearing before the City Council regarding this matter was properly advertised in a newspaper of general circulation on July 2, 2020 in accordance with Section 154.08.01(D)(1) of the Zoning Code; and

WHEREAS, a public hearing was held by the West Carrollton City Council on August 11, 2020, at which time all people who wished to testify gave their comments; and

WHEREAS, Sections 154.05.05(C) of the West Carrollton Zoning Code specifies circumstances which justify amending the Zoning Code; and

WHEREAS, the City of West Carrollton has determined that adoption of the proposed text amendments to Chapter 154 of the Code of Ordinances of West Carrollton known as the "Zoning Code," by repealing and replacing Section 154.16.11, Mobile Food Vendors, and adoption of the proposed text amendments to Chapter 37 of the Code of Ordinances of West Carrollton known as the "General Fee Schedule," by repealing and replacing Section 37.35, Mobile Food Vendor License Fee, is in the best interest of the citizens of West Carrollton to preserve and enhance property values and protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, COUNTY OF MONTGOMERY, STATE OF OHIO:

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SECTION 1: That the City Council makes the following findings of fact with respect to the proposed text amendments pursuant to case T-20-3, said findings of fact based upon criteria found within Section 154.05.05(C) of the Zoning Code:

- a) Adopting more flexible operational standards and a lower fee for Mobile Food Vendors can help attract more quality mobile food vendors, thereby achieving a number of economic development goals in the Comprehensive Plan:
  - 1) Stimulate economic vitality, identify opportunities for business growth, and be an entrepreneur-friendly community. The proposal would support the establishment of new small businesses in the community, which if successful may eventually transition to permanent space.
  - 2) Promote a variety of unique eating and entertainment establishments and options. The additional food and beverage options offered within non-traditional venues would enhance the variety of eating options within the City.
  - 3) Enhance the City's image within the region. In many metropolitan areas, Mobile Food Vendors have generated a "buzz" and positive media coverage for the host community, which would contribute to the perception of West Carrollton as a vibrant, trendy, and business-friendly community.
  - 4) Become a "Destination City" and create a critical mass of unique experiences and destination assets. Popular vendors can become a "destination" business to draw non-residents into the community.
  - 5) Attract younger residents. These vendors tend to attract the young demographic, since the vendors often use social media to communicate with their patrons about daily locations and menu offerings, and the patrons often use social media to talk about the vendors, and by association the community in which they are located. Exposing this demographic to the City may eventually translate into new residents.
  - 6) Define, develop and promote the "Downtown Corridor." One of the central themes of the Comprehensive Plan is to develop the Central Avenue-Dixie Drive corridor into a vibrant, mixed-use, destination district.



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- b) The devastation of the national, state, and local economy and historic unemployment rate caused by the COVID-19 pandemic may accelerate the growth of the Mobile Food Vendor industry, given that many restaurants have closed and others are operating at restricted capacity. This change in economic conditions justifies a relaxation of the City's regulations to allow for alternative dining options for city residents and workers. The proposed amendments can be justified on the grounds that there has been a substantial change in area conditions.

SECTION 2: That Section 154.16.11, Mobile Food Vendors, of Chapter 154 of the Code of Ordinances of West Carrollton known as the "Zoning Code," and Section 37.35, Mobile Food Vendor License Fee, of Chapter 37 of the Code of Ordinances of West Carrollton known as the "General Fee Schedule," be and hereby are repealed and replaced as reflected in Exhibit 1, attached hereto.

SECTION 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4: That this Ordinance shall take effect from and after the earliest period allowed by law.

Passed: August 25, 2020

Attest: Tom Reilly  
Clerk of Council

Mark Summer  
Mayor

Effective Date: September 24, 2020

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### CERTIFICATE

The undersigned, Clerk of Council of the City of West Carrollton, Ohio, hereby certifies the foregoing is a true and correct copy of Ordinance 3678, passed by said Council on the 25<sup>th</sup> day of August, 2020.

\_\_\_\_\_  
Clerk of Council

Dated: \_\_\_\_\_



## **ORDINANCE 3679**

### **EXHIBIT 1**

**Repeal current Section 37.35 of Chapter 37: General Fee Schedule and replace with the following:**

#### **37.35 MOBILE FOOD VENDOR LICENSE FEE (§154.16.11).**

Upon issuance of the Mobile Food Vendor License and as may be renewed thereafter, a non-refundable Mobile Food Vendor License fee of fifty dollars (\$50) shall be due and payable. This fee is in addition to fees as may be required by other governing jurisdictions.

**Repeal current Section 154.16.11 of Chapter 154: Zoning Code and replace with the following:**

#### **§154.16.11 MOBILE FOOD VENDORS.**

- (A) Definition. For the purposes of this Section, a Mobile Food Vendor shall be defined as any person who sells, offers for sale, or distributes free of charge, food or beverages to the public from any unit (vehicle, trailer, cart, wagon, or similar use) which is designed to be readily moveable and which changes location from time to time. A Mobile Food Vendor unit shall not include tents or similar portable structures. The food may be cooked, wrapped, packaged, processed and/or portioned for service, sale, or distribution in the Mobile Food Vendor unit. The sale of products other than food or beverages is prohibited.
- (B) Mobile Food Vendor License Required.
  - (1) Except as provided in paragraph (C) below, no person shall engage in the business of operating a Mobile Food Vendor unit within the city of West Carrollton without a current and valid Mobile Food Vendor License issued pursuant to this Section.
  - (2) Any person desiring to operate a Mobile Food Vendor unit within the city of West Carrollton shall make a written application for a Mobile Food Vendor License to the City of West Carrollton. The application for such License shall include the following:
    - i. A fully completed Mobile Food Vendor License application on form(s) provided by the City.
    - ii. Written permission of the property owner(s) consenting to the Mobile Food Vendor operation on any and all properties on which the unit will operate, if applicable.

- iii. A site plan showing any and all properties on which the unit will operate for sales purposes, with the proposed location and dimensions of the Mobile Food Vendor unit relative to buildings, parking and loading areas, streets and driveway approaches, refuse containers, and any other site information the City may require.
- iv. Color photographs of all sides of the Mobile Food Vendor unit and any signage to be used in operation of the business.
- v. A signed indemnification statement and copy of liability insurance for the business in an amount not less than one million dollars (\$1,000,000), naming the City of West Carrollton as an additional insured, as further described below.
- vi. A valid copy of all licenses or permits required by the County of Montgomery, the State of Ohio, and any subsidiary enforcement divisions thereof, including but not limited to the Public Health - Dayton & Montgomery County and the Bureau of Motor Vehicles.
- vii. Proof of registration with the City's income tax division if operating within the City for more than twenty (20) days in a calendar year.
- viii. Any additional information which shows that the proposed operation will satisfy the requirements of this Section and all applicable laws.
- ix. A signed statement that the vendor will hold harmless the City and its officers and employees, and shall indemnify the City, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the Mobile Food Vendor License. The Mobile Food Vendor shall furnish and maintain such public commercial general liability insurance, including products liability, property damage, bodily injury and personal & advertising injury against claims for injuries to persons or damages to property which may arise from or in connection with the operations under the Mobile Food Vendor License or in connection therewith. Such insurance shall be issued by an insurance company licensed to do business in Ohio and shall provide coverage of not less than one million dollars (\$1,000,000) per occurrence. The policy shall cover, or be endorsed to cover, the City of West Carrollton, its officials, employees and volunteers as additional insureds. Such coverage shall be primary and non-contributing as respects the additional insureds. The policy shall further provide that it may not be cancelled except upon thirty (30) days written notice served upon the City Manager of the City of West Carrollton. The Mobile Food Vendor shall provide a certificate of insurance evidencing compliance with the specifications herein prior to commencing activities pursuant to this License. A Mobile Food Vendor License issued pursuant to the provisions of this Section shall be invalid at any time the insurance

required herein is not maintained and evidence of continuing coverage is not filed with the City of West Carrollton.

- (3) A Mobile Food Vendor License shall be issued upon full completion of the application and determination by the City that all requirements of this Section are met. If a complete application for a Mobile Food Vendor License is not approved, the City shall notify the applicant of the determination in writing including any reason(s) for the decision. No License shall be issued to an applicant who has a conviction within the last ten years for a crime of violence, a crime involving moral turpitude, a crime involving drug convictions, or a crime involving sex offenses.
- (4) The Mobile Food Vendor License shall be valid for a period of one (1) year or less and shall expire on December 31 of the calendar year in which it was issued, regardless of when during the year such License was issued.
- (5) The Mobile Food Vendor License is valid for one Mobile Food Vendor unit only, which shall be that unit identified in the License application. The Mobile Food Vendor License is valid only for the property or properties identified in the License application. The License must be prominently displayed on the Mobile Food Vendor unit along with any other required licenses, and shall be available for inspection upon request.
- (6) The Mobile Food Vendor License is non-transferable and may be used only by the individual, partners, or entities to whom the License was granted.
- (7) A Mobile Food Vendor unit shall comply with all applicable federal, state, and local fire safety requirements, as determined by an inspection by the West Carrollton Fire Department prior to issuance of a License, and at any other time deemed necessary to address life safety concerns.

(C) Exceptions.

- (1) Mobile Food Vendors operating as part of a special event which is open to the general public, lasts not more than four (4) consecutive days, and has received a Temporary Use permit shall not require a separate Mobile Food Vendor License. However, such Mobile Food Vendors shall be subject to the provisions of this Section as determined by the City to be applicable, and may operate only during the hours of the special event. In no case shall multiple Temporary Use permits for such events on the same property total more than thirty (30) days within a ninety (90) day period. The Temporary Use permit fee shall be waived for any public, school, or charitable event.
- (2) The requirements of this Section do not apply to:



- i. A Mobile Food Vendor Unit operating on the same premises as a restaurant under the same ownership. Such units shall comply with all other requirements of the City of West Carrollton Codified Ordinances.
- ii. Ice Cream Peddlers as regulated by Chapter 111 of the City of West Carrollton Codified Ordinances.
- iii. Temporary sales of seasonal produce as regulated by Section 154.16.08(E).
- iv. One or more Mobile Food Vendor units operating on a particular property at the request of and with the written permission of the property owner or the business located on the property, which limits the sale of its food to serve only on-site employees of such business and is not open for sales to the general public. Provided, however, such Mobile Food Vendor unit shall be subject to an inspection by the City of West Carrollton Fire Department and does not operate for more than three (3) hours each day.

(D) License Fee. Upon issuance of the Mobile Food Vendor License and as may be renewed thereafter, a non-refundable Mobile Food Vendor License Fee shall be due and payable as set forth in Chapter 37 of the City of West Carrollton Code of Ordinances. This fee is in addition to fees as may be required by other governing jurisdictions.

(E) Location.

- (1) A Mobile Food Vendor unit may be permitted to operate on any property on which a non-residential principal use is located, subject to the requirements of this Section. A Mobile Food Vendor is considered to be a temporary use, and shall not be permitted as a principal use on a property.
- (2) A Mobile Food Vendor may be permitted to operate within the public right-of-way in all non-residential or mixed-use zoning districts, subject to the requirements of this Section and provided:
  - i. The Mobile Food Vendor unit is parked in a legally-designated on-street parking space, except that no Mobile Food Vendor unit shall park in angled parking spaces in the right-of-way.
  - ii. The Mobile Food Vendor unit is parked in the same direction as traffic with no more than twelve inches (12”) between the curb face or edge of pavement and the unit, and with the service window of the unit facing the curb. All items shall be sold, offered for sale, or dispensed only from the curb side of a Mobile Food Vendor unit.
  - iii. A Mobile Food Vendor unit located in the public right-of-way shall not remain stationary in one location for longer than two (2) hours. After remaining stationary in one location for up to two (2) hours, the Mobile Food

Vendor unit shall be moved to a location at least one hundred (100) yards from the previous location.

- iv. Hazard lights are operated continuously at all times when a Mobile Food Vendor unit is parked or stopped so as to be clearly visible to drivers of other vehicles approaching such vehicle from the front or rear.
- v. The Mobile Food Vendor unit is not operating for sales purposes in a public alley, unless specifically authorized by the City.
- vi. The Mobile Food Vendor unit is not left unattended in the public right-of-way. The City shall consider any unattended Mobile Food Vendor unit located in the public right-of-way as an illegally-parked vehicle and may remove said unit pursuant to Chapter 73 of the City of West Carrollton Codified Ordinances.

(3) Notwithstanding paragraphs (E)(1) and (2), no Mobile Food Vendor unit shall be located:

- i. Within one hundred (100) feet of property containing a restaurant located in an enclosed building, unless operated by the restaurant owner or written permission by the restaurant or property owner is provided. However, this restriction does not prevent approval of any new restaurant located in an enclosed building within one hundred (100) feet of any pre-existing approved Mobile Food Vendor location. In that event, the Mobile Food Vendor may continue to operate at the pre-approved location until the expiration of the License term. Upon renewal of the License, the Mobile Food Vendor must then relocate to meet the requirements of this Section.
- ii. On property used exclusively for single-family residential purposes, irrespective of its zoning classification.
- iii. On any unpaved surface.
- iv. Closer than five (5) feet to any property line, unless written permission is provided by the abutting property owner.
- v. Proximate to any land owned by a public or private school, unless written permission has been granted by the school.
- vi. Proximate to any property containing a festival, special or civic event that is permitted or sanctioned by the City, unless the Mobile Food Vendor is an authorized participant in such event.
- vii. Within parking spaces which are required to meet the minimum parking requirements for the property.

(F) Operating Requirements. Mobile Food Vendors shall meet the following requirements:

- (1) A Mobile Food Vendor may operate for sales purposes between the hours of 6:00 a.m. and 11:00 p.m.
- (2) A Mobile Food Vendor unit located outside of the public right-of-way shall not remain stationary in one location for longer than six (6) hours. After remaining stationary in one location for up to six (6) hours, the Mobile Food Vendor unit shall be moved to a location at least one hundred (100) yards from the previous location.
- (3) A Mobile Food Vendor unit shall not be left unattended within public view at any time.
- (4) A Mobile Food Vendor unit shall not obstruct a public way, impair the movement of pedestrians or vehicles, impair the clear view of traffic from any direction, or pose a hazard to public safety.
- (5) A Mobile Food Vendor unit shall not be in such a deteriorated physical condition as to adversely affect the character, appearance, image, or economic value of surrounding property.
- (6) No Mobile Food Vendor shall, for the purposes of attracting attention to its operation, shout or use any outside sound amplifying equipment, music, or noisemakers such as bells, horns, or whistles. Sound emanating from a Mobile Food Vendor unit shall be in compliance with the requirements of Chapter 138.08, Disturbing the Peace.
- (7) A Mobile Food Vendor unit shall not remain attached to any vehicle used to haul the unit. Such hauling vehicle shall be detached from the unit and parked in a lawful parking space separate from the unit.
- (8) The Mobile Food Vendor shall provide at least one (1) trash receptacle and shall properly remove all waste and trash generated by the operation at least once per day and as needed to maintain cleanliness.
- (9) Mobile Food Vendor signage is permitted as professionally applied within the outlines of the unit. One sandwich board not exceeding six (6) square feet per sign face and three (3) feet in height is permitted per public street frontage, but may not be placed in the public right-of-way, on a public sidewalk, or in a designated parking space.
- (10) Conduct of the Mobile Food Vendor business shall not create a public nuisance or constitute a danger to the public health, safety, or welfare.



(G) Enforcement.

- (1) The City may deny, revoke, suspend, or not renew a Mobile Food Vendor License issued under the provisions of this Section for any of the following reasons:
  - i. The licensee is determined by the City to be guilty of any fraud or misrepresentation in connection with the submitted Mobile Food Vendor License application;
  - ii. The licensee is determined by the City to be guilty of any fraud, misrepresentation, or unlawful act in connection with the business activities for which a Mobile Food Vendor License was issued;
  - iii. The licensed Mobile Food Vendor business is conducted in such a manner as to create a public nuisance or to constitute a danger to the public health, safety, or welfare;
  - iv. Conviction of the licensee within the last ten years for a crime of violence, a crime involving moral turpitude, a crime involving drug convictions, or a crime involving sex offenses;
  - v. The licensee is found by the City to be a person who constitutes a clear and present danger to the residents of the city;
  - vi. The licensee violates any provision of this Section;
  - vii. The licensee is delinquent in financial obligations to the City;
  - viii. The licensee fails to maintain valid permits or licenses from the County of Montgomery, the State of Ohio, and any enforcement divisions thereof;
  - ix. For any good cause shown.
- (2) When good cause has been demonstrated to deny, revoke, suspend, or not renew a Mobile Food Vendor License, the City shall issue an order which shall become effective immediately upon service of a written notice to the Licensee. Such notice shall specify the reason for denial, revocation, suspension, or non-renewal and may provide for conditions upon which the License may be approved or reinstated, upon compliance with said conditions. Should no conditions be given for the possible approval or reinstatement of the License, the order shall constitute a denial or revocation of the License.
- (3) The City may allow a Mobile Food Vendor to reapply for a Mobile Food Vendor License after twelve (12) months from the date of denial, revocation, suspension, or non-renewal. The Mobile Food Vendor shall correct all circumstances that led to the violations, and shall pay an additional fee in the amount of five hundred dollars (\$500) to offset the City's costs of compliance measures, necessary

inspections, and to ensure the circumstances that led to the revocation have been corrected.

- (H) Penalty. Whoever violates any provision of this Section is guilty of an unclassified misdemeanor and shall be fined not more than one thousand dollars (\$1,000) for each offense. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.
- (I) Appeal. Any person aggrieved by any administrative decision pursuant to this Section may submit an appeal of said decision in accordance with the provisions of Section 154.05.06 of the City of West Carrollton Code of Ordinances.

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