

ORDINANCE NO. 3688

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON AMENDING TITLE 17, ZONING, ADDING A NEW CHAPTER TO BE NAMED CHAPTER 17.91 MOBILE VENDORS

WHEREAS, a SEPA Threshold Determination of Non-significance, non-project action, was issued on July 1, 2016 and published on July 7, 2016. The SEPA comment period lapsed on July 15, 2016; and the SEPA appeal period lapsed on July 25, 2016 and no comments were received or appeals filed; and,

WHEREAS, a notice of public hearing was published on July 7, 2016; and,

WHEREAS, the requisite notice of adoption of the proposed amendments was transmitted to the Department of Commerce on July 2, 2016 with expedited review granted by Commerce on July 4, 2016 in compliance with RCW 36.70A.106 (1); and,

WHEREAS, The City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum has discussed this Memorandum, including the "warning signals" identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION ONE. The City Council does hereby adopt the above listed recitals as set forth fully herein.

SECTION TWO. PLANNING COMMISSION'S FINDINGS OF FACT AND CONCLUSIONS OF LAW. The City Council adopts the Planning Commission's findings of fact and conclusions of law, outlined below, in their entirety.

A. Planning Commission's Findings of Fact:

1. The procedural requirements outlined in MVMC Chapter 14.05, Procedures, have been satisfied by City staff. This includes the Notice of Public Hearing, the environmental review pursuant to the SEPA statute, and receiving expedited review from the State Department of Commerce.

B. Planning Commission's Conclusions of Law:

1. The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.

SECTION THREE. PLANNING COMMISSION'S RECOMMENDATIONS. The City Council adopts the Planning Commission Recommendations identified below as 17.91.050(M), 17.91.060(10), and 17.91.090. The City Council choose not to adopt the Planning Commission's recommendation outlined below identified as 17.91.050(D)(1-3).

A. Planning Commission Recommendation to the City Council:

At their public hearing on July 19, 2016 after review of the materials presented by City staff and listening to public testimony the Planning Commission made a recommendation to adopt the amendments to the Mount Vernon Municipal Code as presented by City staff with the following suggested changes for City Council consideration:

17.91.050(D)(1-3) as follows:

1. Pine Square: 2 permits
2. South First and Gates: 1 permit
3. Riverfront Park: 2 permits

17.91.050(M) as follows:

No permitted vending cart shall be left unattended for more than 1 hour so long as: 1) Health Department regulations are complied with; and 2) the vendor provides a clear indication that they will return within the hour.

17.91.060(10): The Planning Commission requested that language be added to require an inspection by the City's Fire Marshall before a vendor was open for business.

17.91.090: Planning Commission requested that language adding a first right of refusal for permit holders for a previous year be added to this section.

SECTION FOUR. At their public hearing on August 10, 2016 after review of the materials presented by City staff and listening to public testimony the City Council made a motion to add a new Chapter to Mount Vernon Municipal Code Title 17, Zoning, with the new Chapter to read as follows:

**CHAPTER 17.91
MOBILE VENDORS**

17.91.010 Purpose

17.91.020 Permit Required

17.91.030 Definitions

17.91.040 Exemptions

17.91.050 Locations and Requirements

17.91.060 Application

17.91.070 Carrying of Permit Required

17.91.080 Violations

17.91.090 Yearly Permit and Fees

17.91.010 Purpose

The purpose of this chapter is to regulate the activities of mobile vendors located within areas owned, maintained, or under the control of by the City and to promote the dependability and accountability of said vendors.

17.91.020 Permit Required

- A. No person may operate a mobile vending unit within the City of Mount Vernon without first obtaining a mobile vendor permit under this chapter.
- B. Permits issued pursuant to this Chapter are not transferrable to a different applicant.
- C. Mobile vendor permits are Type 1 permits as defined by Mount Vernon Municipal Code Chapter 14.05.

17.91.030 Definitions

- A. "Mobile vendor" or "Vendor" means a person or persons owning, operating, or working in a non-motorized mobile vending unit and is the permit holder and person in charge of a mobile vending unit. Mobile vendors that sell food products are subject to the provisions of the Washington state administrative code, WAC 246-215-121 and the rules of Skagit County Health Department.
- B. "Mobile vending unit" means a self-contained, readily movable, non-motorized service establishment such as a push cart, or a temporary/movable structure approved for mobile vending. These units provide space for limited storage, handling, display, and/or dispensing of foods. Mobile vending units selling food products must obtain requisite permits from the Skagit County Health Department.

17.91.040 Exemptions

This chapter shall not apply to:

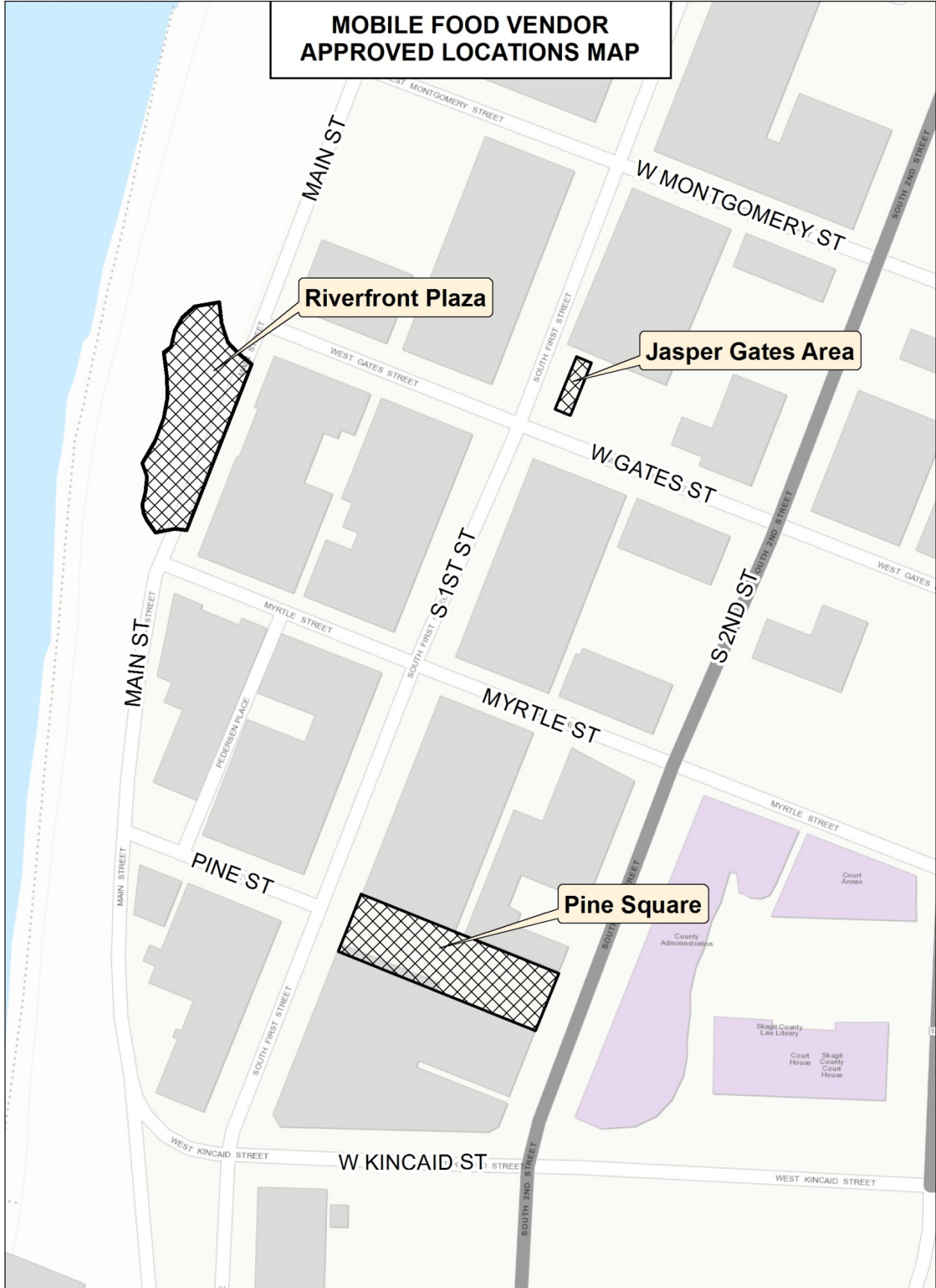
- A. A farmer or gardener vending his own unprocessed farm products raised or grown exclusively upon lands owned or tenanted by him/her.
- B. Newspaper carriers.
- C. Candidates for elected government positions and their campaign workers.
- D. Private garage/yard and estate sales of an infrequent nature upon residential property owned or tenanted by that person conducting such sale.

- E. A vendor who is participating in a special event permitted, authorized, or sanctioned by the City such as the Tulip Festival or Farmer's Markets. The Community & Economic Development Department Director shall, once requested, determine whether or not an event is exempted or not, after they consult with the organization, agency, or department that is in charge of the event.
- F. Exempt persons are exempt only from the provisions of this Chapter of the Mount Vernon Municipal Code.

17.91.050 Locations and Requirements

- A. Mobile vending units may be allowed to operate within the below described and mapped areas:
 - 1. Pine Square
 - 2. South First Street & Gates
 - i. This location will be eligible for mobile vendors to locate within only after the City owns or has easement (or other) rights to use this property for this purpose.
 - 3. Riverfront Park
- B. Following is a map identified as the Mobile Food Vendor Approved Locations Map.

**MOBILE FOOD VENDOR
APPROVED LOCATIONS MAP**



- C. The vendor must indicate which of the three, above described and mapped areas, they will operate within. A valid mobile vendor permit does not confer nor guarantee any exclusive right to any specific identified location within the selected area.
- D. The city limits the number of vending permit sites in the three areas this use is allowed. The number of permits issued per area is as follows:
 - 1. Pine Square: 1 permit(s)
 - 2. South First and Gates: 1 permit
 - 3. Riverfront Park: 2 permit(s)
- E. The vendor will not be allowed to operate under the permit authorized pursuant to this Chapter during special events permitted or sanctioned by the City such as the Tulip Festival Street Fair or Farmers Markets.
- F. The vendor must setup and operate the mobile vending unit so as to maintain a minimum five foot clear pedestrian pathway, twenty feet in both directions from the vending unit along public walkways at all times.
- G. The maximum permissible size for any non-motorized mobile vending unit shall be:
 - 1. Thirty square feet;
 - 2. In no event shall any non-motorized mobile vending unit exceed 10 feet in length; and,
 - 3. The height of the vending cart, excluding canopies or umbrellas shall not exceed 5 feet.
- H. No person may conduct business in any of the following places:
 - 1. Within 10 feet of the intersection of the sidewalk with any other sidewalk unless specifically approved by the Community & Economic Development Department;
 - 2. Within 8 feet of an abutting property line;
 - 3. Within 10 feet of the extension of any building entrance or doorway, to the curb closest to the property line;
 - 4. Within 10 feet of any handicapped parking space, or access ramp.
 - 5. Vendors shall not sell on the street side of the mobile vending unit.
- I. No vendor shall make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to their wares. No mechanical audio or noise making devices and no hawking is allowed. Hawking is the loud, repeated oral solicitation of business by the vendor.
 - i. In addition, no vendor shall persist or continue in any solicitation or attempted solicitation of any particular member or members of the general public if such person or persons do not wish or desire any further solicitation efforts.
- J. The vending site shall be kept clean and orderly at all times, and the vendor must provide refuse container(s). No portion of a vendor's inventory, sales equipment, or any other structure or equipment used in the sales or solicitation process shall be left overnight upon any unenclosed portion of any lot or site within the city, nor upon any right-of-way, or other area owned, maintained or under the control of the City.
- K. Signage shall be limited to one professionally designed and constructed non-illuminated sign not to exceed two square feet in size that shall be placed on the non-motorized mobile vending unit and will not be allowed on canopies, umbrellas, the street or sidewalk.
- L. Sales from mobile vending units shall be limited to food and nonalcoholic beverages. Liquor, as defined in RCW 66.04.010(16), as now existing or hereafter amended, may not be used or sold by any mobile food vendor.
- M. No permitted vending cart shall be left unattended for more than 1 hour so long as: 1) Health Department regulations are complied with; and 2) the vendor provides a clear indication that they will return within the hour.
- N. Mobile vendors shall not locate within that portion of improved street right-of-way designed for vehicular traffic or parking.

- O. Mobile vending units shall be self-contained. The mobile vendor shall make arrangements to legally dispose of their garbage and shall not use the City's garbage containers. The mobile vendor shall not empty anything into the City's sanitary or storm sewer systems.
- P. Mobile vendors shall comply with all applicable Federal, State, County and local laws and requirements.
- Q. Mobile vendors shall not obstruct the passage along any sidewalk, street, alley or parking lot by causing a congregation of people, nor annoy, injure or endanger the safety, health, comfort, or repose of the public.

17.91.060 Application

- A. Applications for mobile vendor permits must be submitted on forms provided by the Department of Community & Economic Development and shall include the following information:
 - 1. The name and contact information including phone number, business address and mailing address of the following:
 - i. Applicant.
 - ii. Registered Owner of the mobile vendor unit.
 - iii. All persons who will be working at the vending unit.
 - 2. A brief description of the nature of the business and specific goods to be sold.
 - 3. A to-scale site plan identifying the exact location of where the mobile vendor will be located with details demonstrating that the requirements within this Chapter will be complied with. If the mobile vending unit will be utilizing power the location of the power outlet, wattage to be used, and method to ensure cords are not a hazard shall be shown.
 - 4. Place of manufacture or production of goods to be offered for sale, the present location of such goods, and the proposed method of delivery.
 - 5. Proof of Insurance. The proof of insurance submitted shall be maintained in full force and effect while the mobile vendor permit is in effect; and shall include public liability insurance in the amount specified by the Community & Economic Development Department in consultation with the City Attorney to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to the use of the public property for mobile vending purposes, naming the City of Mount Vernon as an additional insured.
 - 6. Proof that the mobile unit has been inspected and is currently registered by state and local agencies as required by law.
 - 7. Hold Harmless Agreement. The applicant for a mobile vendor permit shall deliver to the City, on a form supplied by the City, signed and acknowledged agreement by the applicant to defend, indemnify, and hold the City harmless from any and all claims, actions or damages or liabilities of every kind and description which may accrue to, or be suffered by, any persons by reason of or related to the operation of such mobile vending unit. In addition, the agreement shall contain a provision that the permit is wholly of a temporary nature, that it vests no permanent right whatsoever, that it may be suspended or revoked pursuant to the procedures set forth in MVMC 17.91.080.
 - 8. A signed and notarized affidavit attesting to the following:
 - i. The validity of the information provided on application forms submitted by the mobile vendor to the City.
 - ii. That the mobile food vendor acknowledges that their permit could be revoked if they violate the development regulations contained within this Chapter or other Federal, State, County or local rules or regulations.
 - iii. That the mobile food vendor acknowledges that their permit does not allow them to operate during special events permitted or sanctioned by the City such as the Tulip Festival Street Fair or the Farmers Market.

- iv. Any other items deemed necessary by the Community & Economic Development Department consistent with this Chapter of the municipal code.
9. The director of the Department of Community & Economic Development may require additional documentation or materials of the applicant as deemed necessary prior to issuing the license.
10. The City's Fire Marshall shall inspect the food vendor's equipment, location, and proposed operations once they have received the required permits from the City and Health Department, but before commencing their anticipated business activities.

17.91.070 Carrying of Permit Required

- A. Every mobile vendor shall be required to carry the mobile vendor permit and display it along with photo identification upon request by a prospective customer, City employee, or law enforcement personnel.

17.91.080 Violations

- A. Enforcement of this Chapter shall be through Mount Vernon Municipal Code Chapter 19.05 with the exception of the following more restrictive requirements:
 1. The City may cause the removal of any mobile vending unit found in violation of this Chapter and is authorized to store such unit until the owner thereof shall redeem it by paying the removal and storage charges incurred by the City.
 2. The Community & Economic Development Department or the Mount Vernon Police Department, or any authorized representative thereof, may order the vendor to depart from a specific location when it has clear and convincing evidence that the vendor's presence at that location is causing or contributing to an imminent public safety hazard.
 3. The Community & Economic Development Department retains the ability to revoke a mobile vendor permit after two warnings are issued/provided to a vendor for violations of this Chapter of the code.

17.91.090 Yearly Permit and Fees

- A. The applicant shall submit a new permit for each calendar year and shall pay a yearly fee to cover the cost to the City of processing the application in the amount of \$100.00. An increased permit fee of \$150.00 per year shall be required if the mobile vendor is utilizing electricity supplied by City owned, maintained or controlled facilities.
 - i. On January 1st of each year all permits shall automatically expire and be null and void.
 - ii. A mobile food vendor that received and operated a mobile vending business during the year prior to January 1st of any given year shall be provided the first right of refusal in obtaining a new permit the following year. The first right of refusal shall expire on January 10th of any given year. Should January 10th fall on a Saturday or Sunday the first right of refusal shall expire the Monday following and should January 10th fall on a federally recognized holiday the first right of refusal shall expire the business day following said holiday.

SECTION FIVE. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

SECTION SIX. City staff are hereby directed to complete preparation of the final ordinance, including correction of any typographical or editorial edits.

SECTION SEVEN. This ordinance shall be in full force and effect five days after its passage, approval and publication as provided by law.

PASSED AND ADOPTED this 10th day of August, 2016.

SIGNED AND APPROVED this ____ day of August, 2016.

Alicia D. Huschka, Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Published _____