ORDINANCE NO. 2014-08

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF OCEAN SPRINGS, TO PROVIDE REGULATIONS FOR MOBILE ICE CREAM VENDING

WHEREAS, the City has seen an interest from ice cream and frozen dessert vendors desiring to offer edible food products to local citizens and visitors to the City of Ocean Springs; and

WHEREAS, the City desires to allow such vendors to operate in the City of Ocean Springs in a safe and responsible manner; and

WHEREAS, in order to protect the health, safety and welfare of its citizens, the Mayor and Board of Aldermen deem it appropriate to provide for regulation of such to be located in the City of Ocean Springs.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF OCEAN SPRINGS, as follows:

SECTION I. CHAPTER 20.5 is hereby amended by adding**, Article IV. MOBILE ICE CREAM VENDORS** and shall read in their entirety as follows:

20.5 – 50 MOBILE ICE CREAM VENDORS

(A) DEFINITIONS

1. *Ice Cream Truck* – Motor vehicle in which ice cream, popsicles, ice sherbets, or other frozen desserts or any other prepackaged snack food items of any kind are carried for the purpose of retail sale on public streets.
2. *Vending* – The selling, displaying, or offering to sell ice cream or any other prepackaged snack food items prepackaged by the manufacturer for sale from an ice cream truck on public streets.

(B) PERMIT AND APPLICATION

1. *Permit.* Every Ice Cream Truck shall have a permit issued by the city to conduct business in the city.
2. *Application.* Every Ice Cream Truck vendor shall apply for a permit on a form promulgated by the city. Each vending unit requires a separate permit.

Applications for permits meeting the requirements for mobile vendors shall be processed within thirty (30) business days.

3. *Permit form.* A complete application shall require the following information from the applicant to be considered:

   a. Name of applicant.
   b. Legal name of business or entity.
   c. State of incorporation or filing of a partnership or articles of association.
   d. If applicable, copy of charter or articles of incorporation and current listing of the directors, partners, or principles.
   e. Sales tax number with a copy of sales tax permit.
   f. Signed permission form or provide notarized affidavit from the private property owner/ lease holder granting permission for any unit placement not covered under this ordinance
   g. Name, phone number and driver's license number of business owner and all employees operating within the Ice Cream Truck unit.
   h. Proposed itinerary with route, vending locations and times.
   i. Contact name and phone number for Ice Cream Truck unit while in route.
   j. Description of product(s) being sold.
   k. Authorization for background and criminal history check.
   l. Vehicle identification number and description of Ice Cream Truck unit.
   m. Proof of insurance
   n. Employee Health Certificate
   o. Vehicle Safety Inspection Certificate
   p. Food Safety Inspection Certificate
   q. Signed affidavit by all operators stating all criminal convictions in any state, the United States, or U.S. possession within the last ten years.

(C) PERMIT FEE

1. The application fee for an Ice Cream Truck permit shall be in accord with the latest adopted fee schedule. Each Ice Cream Truck unit shall be permitted separately.
2. Ice Cream Truck permits shall be valid for one year from the date of permit issuance.
3. Upon renewal the applicant shall pay the renewal in accord with the latest adopted fee schedule, and update any changes in the permitting documentation upon permit renewal. The applicant must submit the application and the renewal fee within 30 days before expiration of the permit or must reapply as a new applicant.

(D) PERMIT DENIAL

A permit may be denied where:

1. An applicant is found to have an unpaid civil judgment(s) against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and amount of the judgment, the relationship of the judgment to the purpose of the permit and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments; or
2. An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit and the extent that the permit would allow someone to engage in further criminal activity; or
3. The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as an Ice Cream Truck.
4. The opportunity to issue a permit has been denied due to previous violations as described in this section.

(E) PERMIT REVOCATION OR SUSPENSION

1. A permit may be revoked upon conviction of any offense committed by an individual operating as an Ice Cream Truck in the city while engaged in the

permitted business, or if a final conviction occurs or is found to have existed at the time of application, or if civil judgments, as set forth above, are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime, as set forth above, upon a Judge's determination of probable cause in connection with such charges.

2. A permit may be revoked for non-conformity to the application location specifications or requirements as well as to non-conformity to an approved location plan or diagram.
3. Any employee working for an applicant permitted as an employer under this section above may be denied the right to solicit under such permit, or such rights may be suspended or terminated, under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer's permit terminates all employee permits.
4. A permit may be suspended or revoked for not complying with the requirements of this section, or any other ordinances, or laws.
5. Failure to pay outstanding fees and fines.

(F) APPEAL OF PERMIT REVOCATION, SUSPENSION, OR DENIAL

1. The notice of revocation, suspension, or denial of a permit shall include the procedure for appealing the suspension, revocation, or denial.
2. If a City Official revokes, suspends, or denies an Ice Cream Truck permit, the holder or applicant of the permit which has been revoked, suspended, or denied, shall have the right of appeal to the Mayor and Board of Aldermen by submitting an appeal in writing to the Building Official within ten business days of the revocation, suspension, or denial.
3. Pending action on the appeal, a permit which has been revoked or suspended shall be considered revoked or suspended.
4. If a written appeal is not submitted within the ten business days of revocation, suspension, or denial, or if the appeal is denied, the permit shall hence be considered revoked, suspended or denied.

(G) RE-APPLICATION AFTER REVOCATION, SUSPENSION, OR DENIAL OF PERMIT

1. If an Ice Cream Truck or applicant is not in compliance with this section or any other ordinance, law or the approved vendor application, the following action will be taken:
   a. *1st violation.* A warning may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
   b. *2nd violation.* Permit will be revoked and the vendor may become ineligible for a new or reissued permit for 90 consecutive days.
   c. *3rd violation.* Permit will be revoked and the vendor will become ineligible for new or reissued permit for one year.
   d. If an applicant's permit has been denied and the appeal is denied the applicant may not reapply for 90 consecutive days.

(H) ZONING AND LOCATION RESTRICTIONS

1. Distance regulations.
   a. No Ice Cream Truck shall conduct business within any single-family residential zoning district, neighborhood and/or subdivision that is restricted in writing by the Building Official.
   b. An Ice Cream Truck may not be located within 100 feet of the primary entrance of an open and operating fixed-location food service or eating establishment except when specifically permitted during City sponsored or other community events.
   c. An Ice cream truck shall not conduct business before 4:00 pm within 500 feet of any school property on days school is in session.
   d. An Ice Cream Truck shall not be located within 40 feet from another Ice Cream Truck except when specifically permitted during city sponsored or other community events.
2. An Ice Cream Truck shall not conduct sales at a stationary location:
   a. For a duration exceeding 10 minutes per location on public property or right-of-way per day.

b. Without the written permission of the property owner or lease holder on private property.

c. Within any area designated as a crosswalk.

d. On any public street with a speed limit greater than 30 mph.

e. In congested areas where the operation impedes vehicular or pedestrian traffic.

f. Between the hours of 6:00 p.m. and 10:00 a.m.

3. Location regulations.

a. No Ice Cream Truck shall be located on any private property without written permission to do so and must comply if asked to leave by the property owner, lease holder or city official. A copy of the written permission to operate in a specific location signed by the private property owner or lease holder, shall be kept within the mobile vending unit at all times.

b. No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill.

c. No person shall distribute, deposit, place, throw, scatter or cast any commercial handbill upon any premises if requested by the property owner or city not to do so, or if there is placed near or at the entrance thereof a sign bearing the words "no advertisement".

d. No person shall sell or offer for sale any item upon any premises if requested by the property owner or city official not to do so, or if there is placed at or near the entrance thereof a sign bearing the words" no peddlers or vendors," "no trespassing," or "no solicitors."

(I) ICE CREAM TRUCK REQUIREMENTS.

The following regulations shall apply to Ice Cream Trucks within any zoning district:

1. Ice Cream Trucks shall operate from a central preparation facility and shall report to such location for supplies and for cleaning and servicing operations.

2. Each unit shall be equipped with a portable trash receptacle, and shall be responsible for proper disposal of solid waste and waste water in the sanitation facility legally accessed by the food service establishment. All

disturbed areas must be cleaned following each stop to a minimum 20 feet of the sales location.

3. Ice Cream Truck may not have a drive through.
4. Only Ice Cream Truck employees are allowed in the Ice Cream Truck.
5. Continuous music or repetitive sounds shall not project from the mobile unit so as to disturb the peace or violate the Section 15-13 of the Municipal Code.
6. A five-foot clear space should be maintained around the Ice Cream Truck unit.
7. The mobile unit will be subject to inspection upon permit application through the code enforcement, health department and the fire marshal, and may be subject to random inspection and upon reissuance of the permit.
8. No vending allowed within public park facilities.
9. A "No Smoking" sign must be posted next to the order window or area.
10. An approved portable type ABC fire extinguisher tagged by a licensed company shall be kept accessible as directed by the city fire marshal or designee.
11. All appliances shall be UL approved appliances.
12. Product price list shall be displayed on the exterior of the Ice Cream Truck in a conspicuous place where it can be read by the general public on the Ice Cream Truck.
13. Every permit, including those from the city, shall be displayed at all times in a conspicuous place where it can be read by the general public on the Ice Cream Truck.
14. Business shall be conducted after a complete stop, while stopped, on the passenger side of the Truck and away from moving traffic.

(J) Offenses and regulations.

1. It shall be unlawful for any individual as the agent or employee of another regulated under this section to sell goods in the city unless its principal or employer has received a permit under this section.
2. A permit issued under this section is not transferable.

3. It shall be unlawful for an individual to sell goods while displaying a valid permit issued by the city in the name of another individual, organization, or entity.
4. It shall be unlawful for any individual directly or through an agent or employee to sell goods within the corporate limits of the city after the expiration of the permit issued by the city under this section.
5. It shall be unlawful for an individual directly or through an agent or employee to misrepresent on the permit affidavit any acts that are regulated under this section.
6. It shall be unlawful for any individual directly or through his agents or employees to represent that the issuance of a permit by the city constitutes the City's endorsement or approval of the product for sale.
7. It shall be unlawful to operate an Ice Cream Truck operation that is not in compliance with the Mississippi Department of Health Rules as amended from time to time.

SECTION II. REPEALER CLAUSE: This Ordinance shall be cumulative of all other ordinances dealing with the same subject and any provision of any ordinance in direct conflict with any provision of this Ordinance is hereby repealed and the provisions of this Ordinance shall supersede any provisions in conflict herewith; all provisions of any other ordinance not in conflict herewith shall remain in full force and effect.

SECTION III. SAVINGS CLAUSE: If any section, part, or provision of this Ordinance is declared unconstitutional or invalid, by a court of competent jurisdiction, then, in that event, it is expressly provided, and it is the intention of the City in passing this Ordinance that its parts shall be severable and all other parts of this Ordinance shall not be affected thereby and they shall remain in full force and effect.

SECTION IV. PENALTY CLAUSE: Each violation of any of the provisions of this Ordinance shall constitute a separate offense and shall, upon conviction thereof, be punishable by a fine not to exceed $250.00 for the first offense and a fine not to exceed $1,000.00 for each subsequent offense.

SECTION V. PUBLICATION AND EFFECTIVE DATE: This Ordinance shall take effect immediately upon its passage and publication according to law.

The above Amendment to Ordinance No. 2014-08 and Municipal Code Section One having been first reduced to writing, the vote was as follows:

Alderman Cox	Aye
Alderman Gill	Aye
Alderman McDonnell	Aye
Alderman Cody	Aye
Alderman Denyer	Absent
Alderman Dalgo	Aye
Alderman Impey	Aye

BY ORDER OF THE MAYOR AND BOARD OF ALDERMEN of the City of Ocean Springs, Mississippi, on this the 19th day of August, 2014.

Connie Moran
MAYOR

Shelly Ferguson
CITY CLERK