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Fort Worth, TX Code of Ordinances

DIVISION 7: PUSHCARTS**SUBDIVISION I: GENERAL REQUIREMENTS FOR ALL PUSHCARTS****§ 16-171 GENERALLY.**

All pushcarts operating within the corporate city limits of the City of Fort Worth shall comply with the applicable requirements of this division. The regulatory health agency may impose additional requirements to protect against health hazards related to the pushcart operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this division relating to physical facilities or operations. Nonfood items shall not be sold from pushcarts selling food.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-172 PERMIT REQUIREMENTS FOR ALL PUSHCARTS.

(a) The owner or operator of any pushcart vending food within the corporate city limits of the City of Fort Worth shall obtain a valid food establishment permit, except that pushcarts from which only whole, raw, uncut produce or individually packaged, nonpotentially hazardous foods are vended is not a food establishment and does not require a food establishment permit, however, the owner or operator must comply with the other applicable provisions of this article.

(b) All food establishment pushcarts and their commissaries shall be inspected by the regulatory health agency prior to the issuance of a permit.

(c) Acceptance of a pushcart permit is an express acknowledgment and consent to the terms and restrictions of the permit.

(d) To fulfill the important public purpose of ensuring that nutritious foods are available to all people in the city, if a food establishment permit is otherwise required for a fruit and vegetable pushcart (such as one offering cut produce) a reduced fee of 50% off the regular food establishment permit fee in accordance with the city fee schedule shall be charged if at least 75% of the inventory of the cart consists of fruits and vegetables, with the remainder consisting of nonpotentially hazardous packaged foods.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-173 PUSH CART SANITATION REQUIREMENTS.

All pushcarts shall comply with the following requirements:

(a) *Configuration.*

(1) Pushcarts shall be constructed of a smooth and cleanable material and be constructed in a manner in which cleaning can be easily accomplished. A cleanable canopy shall extend over the pushcart and cover the top surface of the pushcart if unpackaged foods are offered.

(2) Separate space shall be set aside from areas where food is served or prepared, for nonfood related items which are displayed on pushcarts.

(3) A pushcart body shall not exceed four feet in height, three feet in width, or six feet in length.

(b) *Operation.*

(1) All food and condiments shall be dispensed in a sanitary manner.

(2) Each compartment or area used for storage, display or service of potentially hazardous food shall be maintained at proper temperatures for the food item stored therein. Hot foods shall be kept at 135°F or above; cold foods shall be kept at 41°F or below and frozen foods shall be kept frozen. Unbreakable thermometers shall be located conspicuously in each of the above applicable areas. Canned or bottled beverages where no ice is provided to the purchaser, commercially packaged nonpotentially hazardous single portion snack items, and commercially wrapped candy are exempt from this requirement.

(3) Food shall be stored, displayed and served in a fly- and rodent-proof manner. Unpackaged foods shall be protected by a properly installed sneeze guard shield.

(4) Bulk food items shall be properly labeled and dispensed through sanitary devices or utensils.

(5) Pushcart operators and their staff shall not cook on or adjacent to a pushcart unless such activity is in conjunction with another facility permitted and inspected by the regulatory health agency.

(c) *Sink requirements.*

(1) A pushcart that sells only packaged food that does not require the use of utensils and carts selling only whole, raw fruit or produce, will not be required to have a ware wash sink or a hand washing sink.

(2) A pushcart that sells open foods that do not require the use of utensils, such as a cart that sells roasted corn, will not be required to have a ware wash sink but will be required to have a hand washing sink.

(3) A pushcart that sells open foods that require utensils such as a hot dog cart, will be required to have a ware washing sink and a hand washing sink.

(4) Scooped ice cream sellers shall have a running water dipper well.

(5) A pushcart shall have a supply of paper towels, soap and detergent which shall be conveniently accessible if sinks are provided.

(6) Each pushcart having sinks shall have an adequate amount of hot and cold water under pressure to operate all sinks.

(7) Each pushcart having sinks shall also have adequate drain board space.

(d) *Fire safety.*

(1) Each pushcart employing butane or propane tanks shall comply with any and all applicable fire department regulations. Ground fault interrupters may be required by the fire department as a safety feature to prevent electrical shock. Each pushcart shall be equipped with an approved fire extinguisher with a 2A 10BC rating.

(2) Pushcarts using flammable substances, including, but not limited to, liquefied petroleum gas shall not be permitted inside of buildings.

(e) *Trash container.* All pushcarts shall have a trash container, such as a trash bag or bin, available to customers for the disposal of food wrappers and other waste. The trash container may be attached to the pushcart or standalone within ten feet of the pushcart.

(f) *Generally.*

(1) A determination of applicability or a variance with regard to the provisions of this division, and which does not unduly impact public health, may be granted by the director upon request.

(2) In addition to these requirements, a person owning or operating a pushcart shall comply with any applicable provisions of the Texas Food Establishment Rules.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-174 ATTENTION-GETTING DEVICES.

(a) No mechanical or electronic sound producing device shall be employed by a pushcart.

(b) Hawking and solicitation are strictly forbidden.

(c) Lights of sufficient illumination for vendors to operate during nighttime or darkness shall be permissible in addition to safety reflectors and lights required by traffic ordinances. Lights shall not be used as attention getting devices.

(d) No text shall be displayed on pushcart canopies.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-175 SINGLE SERVICE ARTICLES.

Pushcarts shall provide only single service articles for use to the consumers.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-176 COMMISSARY.

(a) All pushcarts shall operate from an authorized storage facility, commissary or other fixed food service establishment permitted and regularly inspected by a regulatory health agency.

(b) The commissary or base of operations shall be constructed and operated in compliance with the requirements of the Texas Food Establishment Rules and regulations of pertinent regulatory agencies.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-177 SERVICING AREA.

(a) All pushcarts shall have a servicing area which shall have a location(s) for draining and flushing liquid wastes and location(s) for loading and unloading of food and related supplies.

(b) The surface of the service area shall be constructed of a smooth nonabsorbent material graded to drain, and shall be kept in good repair.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-178 SERVICING OPERATION.

(a) Potable water servicing equipment shall be installed and maintained in a manner that protects the water and equipment from contamination.

(b) Pushcart liquid waste containers shall be thoroughly flushed and drained during servicing operations.

(c) Flushing and draining activities shall be conducted in the required servicing areas. No flushing or draining of liquid waste shall be permitted on public streets or in any area other than the required servicing area.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-179 WATER SYSTEM.

All pushcarts requiring sinks shall provide not less than five gallons of water under pressure at all times for use in utensil cleaning, sterilization and hand-washing. One water inlet shall be located so as not to be contaminated by waste discharge. Such inlet shall be capped at all times except when being filled, and shall contain only potable water. Connection or direct hookup to water sources other than those on the pushcart shall be approved by the regulatory health agency.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-180 WASTE RETENTION.

(a) All liquid waste shall be stored in a retention tank that shall have a minimum capacity of seven and five-tenths gallons or that is at least 15% larger in capacity than the fresh water supply tank, whichever is greater. Liquid waste shall only be discharged into a sanitary sewer disposal system. Waste connections shall be located lower than the water inlet connection in a manner to preclude contamination of the potable water system.

(b) Solid waste generated by permittees and employees shall be contained in an easily cleanable, self-closing, lidded trash receptacle. All pushcarts that remain stationary for longer than one hour shall provide and have available for the public, a fly-proof, lidded trash container for the disposal of refuse. Such trash container may be either on the pushcart or located conveniently nearby.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-181 ENFORCEMENT.

(a) The owner or operator of a pushcart unit commits an offense if the pushcart is operated in violation of any provision of this division. An offense as defined under this division is a misdemeanor punishable by a fine not to exceed \$2,000. Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense. If an offense defined under this division does not include a culpable mental state, then one is not needed and the offense shall be one of strict liability.

(b) The city's code compliance department shall have the authority to enforce any and all provisions of this division.

(c) It shall be within the power and discretion of the code compliance department to suspend or revoke any permit issued hereunder for continued or repeated violation or infraction of any provision of this division or any rule, direction or regulation of the code compliance department.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-182 APPEAL.

Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of the division, other than for an offense or violation, may file an appeal in writing with the city manager or that individual's authorized representative. An appeal must be filed within five days after receipt of notice of any protested decision or action by filing with the office of the city manager a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than 15 days after receipt of the letter of appeal unless extended by mutual agreement of the parties. Appellant shall be given at least five days' notice of the time and place of the hearing. The city manager or authorized representative shall give the appellant, and any other affected party, a reasonable opportunity to be heard, in order to show cause why the determination of the regulatory health agency should not be upheld. In all such cases the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the action taken by the regulatory health agency. The city manager or authorized representative shall make his or her determination and shall notify the appellant in writing of his or her determination. The decision of the city manager or authorized representative shall be final.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

SUBDIVISION II. REQUIREMENTS FOR PUSHCARTS THAT OPERATE ELSEWHERE THAN IN THE DOWNTOWN AREA

§ 16-183 PUSH CART SPECIFICATIONS.

(a) With the exception in subsection (b) below, a pushcart body shall not exceed four feet in height, three feet in width, or six feet in length.

(b) A pushcart for selling frozen ice cream and popsicles in a residential zone shall not exceed these pushcart body dimensions: two feet in height, two feet in width and three feet in length. It may have one attached nonabsorbent container that does not exceed 16 gallons in size, if maintained in good condition and clean, to display and store additional approved foods.

(c) Pushcarts operating outside the downtown area which are on commercial or industrial private property, within 20 feet of the public entrance or exit to an operating commercial or industrial business, and not within 100 feet of the public right-of-way may also have the following allowed accessories which shall be limited to:

- (1) Coolers;
- (2) Attached counters;
- (3) Canopies;
- (4) Up to two stools for use by employees; and
- (5) Trash cans for use by pushcart operators and customers.
- (6) Allowed accessories must be kept in close proximity to the pushcart body.

(d) When placed for operation, the pushcart body, allowed attachments and allowed accessories shall be limited to a total combined area not to exceed ten feet in height, six feet in width, or ten feet in length.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-184 PUSH CART LOCATIONS, HOURS, AND PRODUCTS.

(a) Pushcarts which operate in residentially zoned areas shall be governed by the following requirements:

- (1) Pushcarts shall operate only between the hours of 7:00 a.m. through sunset and shall operate from and on sidewalk areas, except as otherwise provided in this division.
- (2) Products sold from pushcarts shall be limited to fresh produce, packaged non-potentially hazardous foods, packaged frozen ice cream and popsicles. All foods other than produce shall be labeled according to the requirements of the Texas Food Establishment Rules.
- (3) A pushcart may have attached one nonabsorbent container that does not exceed 16 gallons in size to display and store approved foods as long as size does not exceed dimensions in § 16-183(a).
- (4) No pushcart may be located on a vacant lot. However, a pushcart may be permitted to operate on a vacant lot in a nonresidential district with written permission from the property owner and the director. In a residential area or district, a pushcart shall not be permitted to operate on a residentially used lot or vacant lot, but shall be permitted to operate on a lot with an existing nonresidential use such as a church or school with permission from the property owner and the director.
 - (b) Pushcarts may operate from commercially or industrially zoned private property, not in the public right-of-way, and which is located outside of the downtown area with the advance approval of the owner or duly authorized representative of said property. Pushcarts shall not, however, be permitted on private property in the downtown area.
 - (c) No sale or offering to sell shall be made from any pushcart of any edible or potable substance on any property which is used or zoned for residential purposes, or within 500 feet of any school property, nor on any municipal recreation facility, except as specifically provided herein or with the written approval of the director based upon special circumstances. No sale or offering to sell shall be made from any pushcart within a city park, except that sales may be made from the sidewalks on the perimeter of city parks.
 - (d) During special events, pushcarts that are in accordance with the special event permit may operate during the prescribed location and hours of the special event, notwithstanding any provision of this section to the contrary.
 - (e) On lots or properties where pushcarts are allowed under this section, no more than one pushcart shall be permitted at one time. Schools, however, shall not be subject to this limitation so long as the school has provided permission to the pushcart operators.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-185 FLOWER PUSHCARTS.

Flower pushcarts. Pushcarts which stock and sell flowers shall be governed by the following requirements.

- (a) A cleanable canopy shall extend over the cart and cover the top surface of the cart.
- (b) Food and/or beverages shall not be sold from carts selling flowers nor shall flowers be sold from carts selling food and/or beverages.
- (c) Flower carts shall have a holding facility to retain water or fluids used to keep flowers fresh.
- (d) Flower carts shall be subject to the same operation, permitting, spacing and location requirements as other pushcarts, except that flower carts shall be exempt from those provisions with reference to equipment and facilities which by their very nature have no application.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

SUBDIVISION III. SPECIAL REQUIREMENTS FOR DOWNTOWN AREA PUSHCARTS

§ 16-186 PERMITS.

(a) *Generally.* It shall be unlawful to sell, offer for sale, vend, operate, maintain or serve any item from a pushcart in the downtown area without a valid slot permit and a food establishment permit issued in accordance with this division. This slot permit shall be required in addition to any other license, permit or certification that may be required by law, including, but not limited to, food handler certification required under Chapter 16 of this code.

(1) Application for a slot permit shall be made in written form to the director.

(2) Slot permits for pushcarts shall only be available under the terms of this division. No encroachment agreement shall be granted for any pushcart unless such pushcart complies with all applicable requirements of this division and Chapter 16 in addition to requirements relating to encroachment.

(3) All pushcarts and required attendant facilities shall be inspected by the regulatory health agency prior to the issuance of a vending permit.

(4) In the interest of public health and safety, all slot permits shall be issued for a specific location. Vendors shall locate in compliance with the noted location so that the regulatory health agency may conduct inspections in compliance with city ordinances and investigate reports of unsanitary conditions or food borne illnesses.

(5) Acceptance of a vending permit is an express acknowledgment and consent to the terms and restrictions set by the regulatory health agency. The use of a permit is a privilege, not a right, subject to reasonable restrictions as set out herein or as may be promulgated by the regulatory health agency.

(6) As an express condition of the acceptance of a slot permit hereunder for an available slot on public property in the downtown area, recipient agrees to police for trash and debris, an area within a 25-foot radius of the pushcart location.

(7) In connection with issuing a slot permit, the director shall, following consultation with the director of the parks and community services department, assign an exact location within the designated slot and shall indicate such location on the slot permit documentation. The director may periodically adjust the exact location within the council-designated slot to allow for construction or other changed circumstances; any such adjustment shall be documented in writing and attached as an addendum to the slot permit documentation.

(b) *Insurance and indemnification.*

(1) No permit shall be issued to an applicant vending on public property in the downtown area unless verification of insurance is confirmed by a representative from the risk management division of finance. The applicant shall have filed with the city's risk manager a certificate showing that the applicant has secured and agrees to keep in force during the term of the permit a policy providing for bodily injury and property damage in the amounts as follow:

Property damage, per accident	\$100,000
Personal injury or death, per person	\$100,000
Personal injury or death, per accident	\$300,000
Product liability	\$300,000

Such insurance policy shall provide that it cannot be cancelled or amended without at least 30 days' notice in writing to the director and the city's risk manager.

(2) As an express condition of the acceptance of such permit, the permit holder thereby agrees to indemnify and save harmless the city, its officers, agents, servants and employees against any loss or liability or damage, including expenses and costs for bodily or personal injury, and for property damage sustained by any person as a result of the operation, use or maintenance of a pushcart, within the City of Fort Worth.

(3) As a further condition, permit holder by acceptance of the permit expressly agrees to indemnify and hold harmless and defend the city, its officers, agents, servants and employees, from and against any and all claims or suits for personal injury, including death, of whatsoever kind or character, whether real or asserted, arising out of or in connection with the consumption of food products sold on any public property herein described.

(c) Pushcart standards on public property in downtown area. Any pushcart which rests in whole or in part upon any public property in the downtown area shall comply with all of the following standards.

(1) Pushcart must be commercially manufactured. For purposes of this section, **COMMERCIALY MANUFACTURED** means a pushcart that was originally manufactured for use as a non-self-propelled mobile food vending vehicle by a person regularly in the business of manufacturing food preparation vehicles for sale and does not include any vehicle that is converted or retrofitted as a non-self-propelled mobile food vending vehicle.

(2) Pushcart body shall not exceed four feet in height, three feet in width or six feet in length, exclusive of allowed attachments and allowed accessories.

(3) Allowed attachments shall be limited to coolers and counters.

(4) To provide a uniform appearance, allowed attachments must be constructed of or surrounded by the same type of material as the pushcart body.

(5) Allowed attachments must fold out from or be clipped on to the pushcart body. Allowed attachments must be readily removable or retractable so as not to cause pushcart body to exceed the size limitations of subsection (c)(2) above.

(6) Allowed accessories shall be limited to:

- a. Canopies;
- b. Umbrellas;
- c. Up to two stools for use by employees; and
- d. A trash can for use by pushcart customers.

(7) Allowed accessories must be kept in close proximity to the pushcart body.

(8) When placed for operation, the pushcart body, allowed attachments and allowed accessories shall be limited to a total combined area not to exceed ten feet in height, six feet in width, or ten feet in length.

(9) [Reserved.]

(10) No pushcart shall be used to display information other than a valid permit, list of items served, the prices thereof and the name of the vendor, all of which must be contained on the body of the pushcart. No pushcart, allowed attachment or allowed accessory shall be used to display or depict artwork or advertising materials of any kind, including, but not limited to, the name, logo or mascot of any product or service.

(11) During the months of March through October, pushcarts must be open to the public for a minimum of two hours per day on at least eight days of each month, provided however, that the director may reduce or waive this requirement due to inclement weather, demonstrated viability issues related to a particular slot or other extenuating circumstance.

(12) Each vendor operating in a slot in the downtown area shall maintain an operations log in a form prescribed by the director to show the days and times on which the vendor operated and/or document the specific reason that a vendor was unable to operate on a particular date. The operations log shall be made available to the code compliance department on request. Failure to maintain or produce an operations log shall give rise to a presumption that the permittee has failed to comply with the minimum operating hours requirement and that the slot has been abandoned.

(d) *Number of slot permits.* The number of slot permits available for vending on public property in the downtown area shall be determined by the city council after receiving comments and recommendations by the city manager, the director and the director of parks and community services. Only the city council may create or alter slot designations in the downtown area.

(e) *Permit conditions, limitations and restrictions.* Permits on public property in the downtown area shall be subject to the following conditions, limitations and restrictions.

(1) Slot permits shall be issued for a period not to exceed 24 months.

(2) On or about February 1 of every odd numbered year, all slots in the downtown area shall be put out for bid by the city. Slots shall be awarded to the highest bidder that is in compliance with all requirements of this subsection (e).

(3) If a slot becomes available outside of the typical bid cycle, it shall be put out for bid by the city for the remainder of the unexpired term and awarded to the highest bidder that is in compliance with all requirements of this subsection (e).

(4) No slot shall be awarded and no slot permit shall be issued unless the permit applicant can demonstrate that: He or she has a pushcart available for dedicated and exclusive use in that slot; and that such pushcart complies with all of the requirements of this division, including but not limited to, size and construction requirements outlined in subsection (c) of this section.

(5) No more than two permits to operate pushcarts on public property in the downtown area shall be issued to an individual, a single business entity or to two or more affiliated entities. For purposes of this provision ***AFFILIATED ENTITIES*** shall include:

a. Individuals related within the third degree by consanguinity or within the second degree by affinity as defined by Tex. Government Code Chapter 573;

b. Business entities with at least 10% common ownership; and

c. An individual and a business entity that the individual controls or in which the individual has at least a 2% ownership interest.

(f) *Slot permits nontransferable.*

(1) Use of a slot as approved by city council on public property in the downtown area is a privilege, not a property right. Such a designated slot shall not be transferable; it shall be available only to the person designated by slot permit.

(2) It shall be unlawful to attempt to sell, lease or otherwise transfer the use of such a designated slot from the original permittee to any other person natural or unnatural. Such action shall result in automatic revocation of the permits of the parties involved, and those parties shall be banned from operating within the city limits for one year from the date of revocation. Such revocation shall not preclude any other legal action.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-187 DOWNTOWN AREA HOURS OF OPERATION AND LOCATIONS.

- (a) No sale or offering to sell shall be made from any downtown pushcart at any time between 9:00 p.m. and 7:00 a.m.
- (b) During special events, pushcarts with special event permits may operate during the prescribed hours of the special event.
- (c) It shall be permissible for pushcarts to operate within the following designated areas:
 - (1) Designated slots on public property in the downtown area in accordance with the terms of a valid slot permit issued by the director;
 - (2) At temporary special events with a special event permit.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-188 SLOT PERMIT FEES.

- (a) After inspection and approval by the code compliance department of each pushcart, each pushcart shall be assessed a slot permit fee in the amount of the permittee's bid under § 16-186(e).
- (b) Permits shall be issued in accordance with the application procedures and upon payment of the permit fees per pushcart in the amount established by city council.

(Ord. 22242-05-2016, § 4, passed 5-24-2016)

§ 16-189 REVOCATION OF SLOT PERMIT.

- (a) The director may revoke a slot permit issued under this division if the holder or an employee:
 - (1) Has abandoned the assigned slot;
 - (2) Fails to comply with any requirement of this division;
 - (3) Violates or fails to comply with any provision of city code or other applicable law;
 - (4) Is discovered to have provided false or inaccurate information on or in connection with the original permit application; or
 - (5) Is discovered to have provided false or inaccurate information on or in connection with the operations log or any other documentation required under this division.
- (b) The director shall notify the permittee in writing of the revocation.

- (c) The revocation of a slot permit may be appealed in accordance with the process outlined in § 16-182.
- (Ord. 22242-05-2016, § 4, passed 5-24-2016)