

## **ORDINANCE NO. 680**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, ADDING CHAPTER 8.42 TO THE INDIAN WELLS MUNICIPAL CODE REGARDING THE REGULATION OF MOBILE FOOD FACILITIES**

**WHEREAS**, the City of Indian Wells is authorized to regulate mobile food facilities within its jurisdiction subject to the limitations set forth in Vehicle Code section 22455; and

**WHEREAS**, the City wishes to adopt mobile food facility regulations in compliance with applicable law; and

**WHEREAS**, the City's regulations are based on the following findings:

1. Regulating the hours and location of mobile vendors benefits the health, safety and welfare of City residents because the operation of these vehicles at inappropriate hours or locations creates traffic hazards, blocks adjacent sidewalks to pedestrians, results in unwanted noise, littering and loitering at that location and/or creates hazards for children.

2. Regulating the manner and type of mobile vendors benefits the health, safety and welfare of the City because the inappropriate operation and uncontrolled proliferation of these vehicles creates traffic hazards, blocks adjacent sidewalks to pedestrians, results in unwanted noise, littering and loitering at that location and/or creates hazards for children.

3. Regulating mobile vendors on private property is consistent with the City's interests in the aesthetics of the community.

4. Prohibiting mobile vendors from operating within City parks and recreation facilities is consistent with the City's interest in the aesthetics of the community, fair competition and otherwise ensuring the proper use of City property.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 8.42 is hereby **ADDED** to the Indian Wells Municipal Code to read in full as set forth in the attached Exhibit "A" and incorporated by this reference.

**SECTION 2. Severability.** If any provision, clause, sentence or paragraph of this Ordinance, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable. This Ordinance amends, adds to, or deletes (as applicable) sections of the Indian Wells Municipal Code.

**SECTION 3. Effective Date.** This Ordinance shall take effect and be in force thirty (30) days after passage.

**SECTION 4. Publication.** The City Clerk is directed to publish this Ordinance in the manner and in the time required by law.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Indian Wells, California, at an adjourned regular meeting of the City Council held on 18<sup>th</sup> day of September, 2014.

  
\_\_\_\_\_  
**TED J. MERTENS**  
**MAYOR**

**STATE OF CALIFORNIA        )**  
**COUNTY OF RIVERSIDE     )ss.**  
**CITY OF INDIAN WELLS    )**

**CERTIFICATION FOR ORDINANCE NO. 680**


I, Wade G. McKinney, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Ordinance No. 680, having been regularly introduced at the meeting of August 21, 2014, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at an adjourned regular meeting of the City Council held on this 18<sup>th</sup> day of September, 2014, and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES: Hanson, Mertens, Mullany, Peabody, Roche  
NOES: None

and was thereafter on said day signed by the Mayor of the City of Indian Wells

**ATTEST:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**WADE G. MCKINNEY**  
**CITY MANAGER/CITY CLERK**

  
\_\_\_\_\_  
**STEPHEN P. DEITSCH**  
**CITY ATTORNEY**

**EXHIBIT "A"**

**"Chapter 8.42  
MOBILE FOOD FACILITIES**

Sections:

- 8.42.010 Definitions.**
- 8.42.020 Mobile Food Facility on Public or Private Property.**
- 8.42.030 Mobile Food Facility in the Right of Way.**
- 8.42.040 Mobile Food Facility Permit.**
- 8.42.050 Mobile Food Facility Permit Issuance and Denial.**
- 8.42.060 Violations and Penalties.**

**8.42.010 Definitions.**

For purposes of this chapter, the following words or phrases shall have the following meanings:

"Food or food products" means any type of edible victuals or beverage.

"Mobile food facility" means any self-propelled, motorized device or vehicle by which any person or property may be propelled or moved upon a highway, excepting a device moved exclusively by human power, or which may be drawn or towed by a self-propelled, motorized vehicle, from which food or food products are sold, offered for sale, displayed, bartered, exchanged or otherwise given. Mobile food facility shall not include any vehicle only vending prepackaged food provided that the owner or operator of the vehicle has obtained all applicable state, local and City permits and approvals.

"Prepackaged Food" means any properly labeled and processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer, and prepared at an approved source.

"Vend" or "vending" means to sell, offer for sale, display, barter, exchange, or otherwise give food or food products from a mobile food facility.

"Vendor" means a person who vends, including an employee or agent of a vendor.

**8.42.020 Mobile Food Facility on Public or Private Property.**

(a) No mobile food facility may vend or locate on any private property or City property except as permitted in this section. All permitted operations on private property or City property shall comply with the operational standards set forth in Subsection (a), (b), (f) to (q), and (t) of Section 8.42.030 (Mobile Food Facility in the Right of Way).

(b) Mobile food facilities may vend or locate on non-residential private property with written permission from the property owner pursuant to a site permit issued under this section or if approved as part of a Temporary Use Permit (TUP) for a special event as outlined in Section 21.60.060 (Temporary Uses). In addition, any mobile food facility participating in a City

sponsored event shall not be required to obtain a site permit or TUP and may vend as part of the City sponsored event.

(c) Mobile food facilities wishing to obtain a site permit to vend on private property located in a non-residential zone or City property outside of the public right-of-way shall file a written request to do so at least ten (10) days prior to the requested date of vending. Such request may be made on a form prescribed by the Community Development Director and shall include, at a minimum, the location, date, and time of the requested vending. Mobile food facilities may request, and the Community Development Director may grant, a site permit covering multiple dates and times and locations. No application for a site permit shall be accepted unless the application is accompanied by a fee in an amount set by City Council resolution.

(d) The Community Development Director shall evaluate and consider any request for a site permit. The Community Development Director may approve, conditionally approve or deny the request consistent with the requirements of this chapter and the public health, safety, and welfare. The Community Development Director's decision may be appealed in the same manner as a mobile food facility permit.

(e) Violation of any site permit shall be grounds for suspension or revocation of a mobile food facility permit. A site permit may be suspended or revoked in the same manner as a mobile food facility permit.

#### **8.42.030 Mobile Food Facility in the Right of Way.**

A vendor may locate its mobile food facility in the public right-of-way as long as the vendor adheres to the following standards and conditions:

(a) The vendor has a valid mobile food facility permit and business license from the City, including insurance as defined in Subsection (o) below.

(b) The mobile food facility is in full compliance with all parking and Vehicle Code provisions which apply to the location at which it is parked.

(c) The mobile food facility does not obstruct pedestrian or vehicular traffic.

(d) Vending is prohibited on the exposed street and/or vehicular traffic side of the mobile food facility.

(e) The vendor shall not distribute any item from the mobile food facility in a manner that causes any person to stand in that portion of the street that is between the vehicle and the center of the street.

(f) The vendor shall not encroach onto a public sidewalk with any part of its mobile food facility or any other equipment or furniture related to the operation of its business.

(g) The mobile food facility has a valid permit, certificate or other required approval from the Riverside County Department of Health.

(h) All food products sold or provided from the mobile food facility shall comply with all applicable food labeling requirements established by the State of California and the vendor must obtain all required permits, including without limitation, health permits, to sell or provide such items.

(i) No alcohol beverage, general merchandise or commercial sales other than food are permitted.

(j) No amplified music is permitted.

(k) A mobile food facility is limited to two (2) signs excluding exterior graphics. The exterior sign shall be secured at all times that the mobile food facility is moving. No sandwich board or other signs are permitted on the ground in the area or on the mobile food facility.

(l) No vendor may engage in vending or otherwise operate a mobile food facility:

(1) Within one hundred and fifty (150') feet from the outer edge of any entrance of any business on private property during the hours such business is open to the public. This prohibition may be waived with the written consent of such business.

(2) Within twenty-five (25') feet of any street intersection controlled by a traffic light, crosswalk, or stop sign.

(3) Within twenty-five (25') feet of a bus stop.

(4) No mobile food facility may be locate within three hundred (300') feet of the nearest property line of any property on which a public or private school building is located, between the hours of 7:00 a.m. and 5:00 p.m. of any school day..

(m) A mobile food facility may only stand or park in the public right of way between the hours of 9:00 a.m. and dusk.

(n) No vendor shall engage in vending unless he or she maintains a clearly designated litter receptacle in the immediate vicinity of the mobile food facility, marked with a sign requesting use by patrons. Prior to leaving the location, the vendor shall pick up, remove and dispose of all trash generated by the vendor's operation located within a twenty-five-foot (25') radius of the mobile food facility's location. This does not include picking up trash in the street in an unsafe manor.

(o) The vendor shall maintain insurance, as deemed acceptable in the reasonable discretion of the City, and provide to the City written certification thereof, against liability for death or injury to any person and damage to property as a result of ownership, operation, or use of its mobile food facilities. The City Council may adopt insurance requirements as set by resolution. In addition, the vendor shall indemnify, defend and hold the City harmless from any claims arising out of or related to the vendor's ownership, operation, or use of its mobile food facilities, except as otherwise permitted by applicable law.

(p) The vendor shall not discharge any liquid (e.g. water, grease, oil, etc.) onto or into City streets, storm drains, catch basins, or sewer facilities. All discharges shall be contained and properly disposed of by the vendor.

(q) A mobile food facility shall be operated within two hundred (200') feet travel distance of an approved and readily available toilet and handwashing public facility to ensure that restroom facilities are available to customers or truck employees whenever the mobile food facility is stopped to conduct business for more than a one-hour period.

(r) A mobile food facility may not stand or park in the public right of way with a street speed limit of 35 mph or less, regardless if it is posted.

(s) A mobile food facility may not stand or park in one spot in the public right of way for more than one (1) hour.

(t) Mobile food facilities shall comply with all applicable state and local laws.

#### **8.42.040 Mobile Food Facility Permit.**

(a) No mobile food facility or vendor may vend in the City without first obtaining and having in his or her possession an annual mobile food facility permit issued by the City's Community Development Director in accordance with this chapter.

(b) To receive a mobile food facility permit, a vendor must complete a permit application on the form approved by the City and file it with the City. The Applicant must provide the following information:

- (1) Applicant's full name and address.
- (2) Proof of Applicant's identity.
- (3) Proof of insurance coverage satisfactory to City.
- (4) A brief description of the type of food products to be sold. This shall include the nature, character and quality of the product.
- (5) The location and/or streets where the Applicant plans to vend.
- (6) If Applicant is employed by another to vend, the name and business address of the employer.
- (7) A description of the vending vehicle, including logo and color scheme, its registration number, and its license number.
- (8) A copy of the valid Riverside County Department of Health permit.
- (9) A copy of the Applicant's City business license.
- (10) A certification that he or she complies with all local, state and federal laws regarding food product vending, including all applicable sales tax requirements and this chapter.

(c) No application for a new or renewed mobile food facility permit shall be accepted unless the application is accompanied by a fee in an amount set by City Council resolution.

#### **8.42.050 Mobile Food Facility Permit Issuance and Denial.**

(a) Upon receipt of a written application for a mobile food facility permit, the Community Development Director shall conduct such investigation as he or she deems appropriate to determine whether a mobile food facility permit should be approved. A permit shall be approved, conditionally approved, or denied within thirty (30) calendar days of the filing of an application. The mobile food facility permit shall be approved unless one of the following findings is made:

(1) The Applicant has knowingly made a false, misleading or fraudulent statement of fact to the City in the application process.

(2) The application does not contain the information required by this chapter.

(3) The Applicant has not satisfied the requirements of this chapter.

(b) The City may condition the approval of any mobile food facility permit to ensure compliance with this chapter and other applicable laws.

(c) Any mobile food facility permit shall be valid for the term of one (1) calendar year (January – December). Upon the expiration of the mobile food facility permit, an application for renewal shall be filed in a like manner as an application for an original mobile food facility permit, and such renewal permit shall be approved or conditionally approved only when the requirements for the issuance of an original permit are met.

(d) Any mobile food facility permit may be suspended or revoked by the Community Development Director for failure to comply with the terms and conditions of this chapter. Such suspension or revocation shall be made with written notice to the permit holder, stating the grounds for the revocation and the procedures for appealing the same. The permit holder may appeal this decision by filing a written request for appeal with the City Clerk within fifteen (15) days of the date of the notice. Any revocation or suspension shall be stayed during the pendency of the appeal unless the immediate public health or safety requires otherwise. The hearing on the appeal shall be held within sixty (60) calendar days of the appeal request unless otherwise agreed to by the parties. The City Council may conduct the hearing or designate a hearing officer, consistent with applicable law, to do so. The City Council's or hearing officer's decision shall be final.

(e) A mobile food facility permit shall not be assignable or transferable.

#### **8.42.060 Violations and Penalties.**

All penalties for violations of this chapter shall be as set forth in Chapter 1.16 General Penalty of the Indian Wells Municipal Code. The penalties provided in Chapter 1.16 are cumulative to any other penalty provided by law."