

CITY OF RIVERBANK

ORDINANCE NO. 2021-004

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AMENDING TITLE XI: BUSINESS REGULATIONS, BY ADDING
NEW CHAPTER 127, MOBILE FOOD VENDING PROGRAM TO THE
RIVERBANK MUNICIPAL CODE OF ORDINANCES**

WHEREAS, in 2018 the Planning Commission held a workshop to discuss the public's desire to allow mobile food vendors to park and vend within Riverbank City limits; and

WHEREAS, as a result of the workshop, staff was directed to approach the City Council with a request to consider a Mobile Food Vending Program or ordinance; and

WHEREAS, staff drafted a Pilot Program and presented it to the City Council for their review and staff direction; and

WHEREAS, on January 22, 2019 the Riverbank City Council approved a six (6) month Pilot Program, by minute order, for mobile food vendors and staff implemented it utilizing a Temporary Use Permit process (for park perimeter parking) and an Administrative Use Permit process (for private property parking); and

WHEREAS, the Pilot Program began on April 1, 2019 with the issuance of the first permit, a Temporary Use Permit at Silva Park, and an end date of six (6) months; and

WHEREAS, on September 24, 2019 at their regular meeting and with only two (2) mobile food vendors in operation, the Council determined there had not been adequate time to assess the impacts of the Pilot Program; therefore, Council desired to extend the Pilot Program for twelve (12) months; and

WHEREAS, on September 22, 2020 at their regular meeting, the Council approved an additional twelve (12) month extension so staff could complete a mobile food vendor ordinance amid their Covid-19 pandemic responsibilities; and

WHEREAS, the Ordinance is consistent with the following general plan policies: Land-4.3, ED-2.5, and ED-8.1.

NOW, THEREFORE THE CITY OF RIVERBANK CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1: Title XI: BUSINESS REGULATIONS, adding New Chapter 127, MOBILE FOOD VENDING PROGRAM to the Riverbank Municipal Code of Ordinances, which shall read as follows:

Chapter 127 – MOBILE FOOD VENDING PROGRAM

ARTICLE 1 – GENERAL PROVISIONS

127.01 – TITLE AND PURPOSE.

This Chapter shall be known as the Mobile Food Vending Program and establishes regulations for a citywide mobile food vending program in Riverbank.

The purpose of this Chapter is to regulate the mobile vending of food and food products from food vending vehicles on public and private property throughout the city in such a manner as to bring convenience, economic vitality, and pedestrian activity to these areas. This includes protecting the health, safety, and general welfare of the Riverbank community and customers through appropriate regulation by requiring that new and existing mobile food vendors provide the community and customers with a minimum level of cleanliness, quality and security.

127.02. DEFINITIONS.

"Applicant" means the responsible party who seeks a Mobile Food Vending Permit from the City of Riverbank.

"Assembly Area" is an indoor or outdoor place where people may gather for any permitted purpose.

"Mobile Food Vending Vehicle" means a truck, trailer, or other motorized vehicle from which food vending services. This definition only applies to motorized vehicles and food preparation trailers made to be pulled by a motorized vehicle.

"Mobile Food Vending Permit" is the City of Riverbank's annual or temporary permit required to place, operate, maintain, or allow an individual food vending vehicle or group site within the Riverbank city limits.

"Mobile Food Vendor" means a person who is engaged in "mobile food vending" from a vehicle as governed by this Chapter.

"Group Site" or **"Group Site Food Vending"** means the stationary operation of two (2) or more mobile food vending vehicles clustered together on a single site and operating at the same time.

"Group Site Organizer" or "Responsible Party" means, for the purpose of determining liability for damage to City or public facilities as a result of a group

site operation, the individual or legal entity who is directly responsible for organizing and/or conducting the group site and/or the facility manager, and his or her respective designees.

"Group Site Mobile Food Vending Vehicle" or **"Group Site Vending Vehicle (GSVV)"** means a food vending vehicle that is operating at a "group site".

"Group Site Mobile Food Vending Permit" or **"Group Site Permit (GSP)"** means a Mobile Food Vending Permit for a group site.

"Individual Mobile Food Vending Vehicle" or **"Individual Vending Vehicle (IVV)"** means a mobile food vending vehicle that is not operating at a group site.

"Individual Food Vending Permit" or **"Individual Vending Permit (IVP)"** means a Mobile Food Vending Permit for an individual food vending vehicle.

"Mobile Café" is a motorized food vending vehicle that serves coffee and tea drinks and pre-made pastries, and does not have cooking equipment.

"Non-food Merchandise" means goods, wares, or non-food merchandise.

"Pushcart" is a type of non-motorized food vending vehicle that, because of its small size and operable wheels, can be easily moved by a person during hours of operation. This definition may also include a food vending vehicle integrated or pulled by non-motorized, pedal-powered vehicle such as a bicycle or tricycle. Pushcarts are not regulated by this Chapter.

"Pushcart Food Vendor" is a person who owns and operates a business vending from a pushcart.

"Roaming" means the movement of a food vending vehicle to multiple locations during vending hours.

"School" means any public, charter, or private school serving children between kindergarten and high school. For the purposes of this Chapter, pre-schools, community colleges and universities are not included in this definition.

"Site" means the specific public or private property location, including any public right-of-way, for which an applicant or responsible party has been issued a Mobile Food Vending Permit.

"Stationary" means a mobile food vending vehicle which does not move during vending hours.

127.03. ADMINISTRATIVE REGULATIONS.

The City Manager or his/her designee is hereby authorized to adopt rules and regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this

Chapter and make such interpretations of this Chapter as he or she may consider necessary to achieve the purposes of this Chapter.

127.04. PERMIT REQUIRED.

A. Except as may be allowed by another Chapter, it shall be unlawful for any individual, group, or legal entity to sell, offer for sale, or solicit offers to purchase food from mobile food vending vehicles in the City of Riverbank without first obtaining a Mobile Food Vending Permit as specified in this Chapter. Conducting a mobile food vending operation in the City of Riverbank without such a valid form of city permission is a public nuisance, as defined in this Code.

B. Any individual, group, or legal entity desiring to engage in mobile food vending in the City shall first file an application with the Community Development Director pursuant to procedures established in this Chapter.

C. Issuance of an Encroachment Permit from the City of Riverbank is not required to operate an individual food vending vehicle or group site in the public right-of-way.

D. Any individual, group, or legal entity desiring to engage in mobile food vending shall obtain and maintain all required permits from Stanislaus County Environmental Health and the City of Riverbank, and other regulatory agencies, including, but not limited to Electrical Permits, business permits or Stanislaus County Consolidated Fire District permits.

E. Upon demand of a peace officer or City employee authorized to enforce this Chapter, a person operating a mobile food vending vehicle shall present the vehicle permit that is in effect for that vehicle.

127.05. CONFLICTING PROVISIONS.

Where a conflict exists between the regulations or requirements in this Chapter and applicable regulations or requirements contained in other Chapters and Titles of the Riverbank Municipal Code, including but not limited to the Riverbank Zoning Code (Title 15), the applicable regulations or requirements in this Chapter shall prevail.

127.06. PERMITTED AREA.

Individual food vending vehicles and group sites shall be subject to the following location requirements:

A. Mobile food vending shall only be located in areas approved by the Community Development Director, and may be located on private property, on publicly-owned property, or in the public right-of-way. Food vending in the street

right-of-way is restricted to the perimeter of city parks and in the Downtown Specific Plan area during special events.

B. A location for an individual mobile food vending vehicle or group site shall not be permitted if it is proposed to be closer than the following distances:

1. Mobile food vending within three hundred (300) feet from the parcel boundary of a public or private school serving children between kindergarten and high school between the hours of 7 a.m. and 6 p.m. Monday through Friday.

2. Mobile food vending within three hundred fifty (350) feet of any building-enclosed restaurant as measured from the primary customer entrance of the restaurant, except when the mobile food vendor has written authorization from all building-enclosed restaurants that are within that same three hundred fifty (350) foot radius.

3. Any additional location requirements, as determined by the Community Development Director, or his or her designee.

C. Individual food vending vehicles or group sites cannot block or impede access to:

1. Required parking or driveways;
2. Bicycle racks;
3. Signal crossings;
4. Required off street parking;
5. Parking meters;
6. Pedestrian or bicycle routes;
7. Emergency vehicle routes;
8. Building entrances and exits;
9. Required accessibility routes and curb cuts;
10. Easements;
11. Trash enclosure areas or access to trash bins/trash enclosures;

or

12. City facilities, as determined by the Community Development Director, or his or her designee.

D. Individual food vending vehicles and group sites shall maintain site circulation and access consistent with the Americans with Disabilities Act (ADA).

E. Each Individual Vending Vehicle (IVV) and Group Site Vending Vehicle (GSVV) on private property shall be located within two hundred (200) feet of a restroom facility that employees can legally access and a trash enclosure that they have permission to use.

127.07. TRANSFERABILITY OF A MOBILE FOOD VENDING PERMIT.

A Mobile Food Vending Permit is not property and shall have no value. A Mobile Food Vending Permit cannot be transferred, conveyed or otherwise assigned in any manner to another person or entity, including new owners in a corporation or partnership, without written permission from the Community Development Director or his or her designee.

127.08. MOBILE FOOD VENDING PERMIT NOT A LAND USE ENTITLEMENT.

No City action related to issuance or renewal of a Mobile Food Vending Permit for an individual food vendor or a group site shall be interpreted to confer any form of permanent land use entitlement to the person, group, entity, or property associated with such permit.

127.09. MAXIMUM NUMBER OF MOBILE FOOD VENDING PERMITS.

A maximum number for the different types of Mobile Food Vending Permits which may be issued may be determined and set by the City Manager and if set, reviewed annually. At no time shall more than the maximum number of the specified types of Mobile Food Vending Permits be active.

127.100. APPLICATION REQUIREMENTS FOR ALL MOBILE FOOD VENDING PERMITS.

Application for an Individual Food Vending Permit shall be made by the owner of the food vending vehicle, or his or her authorized agent, or in the case of a Group Site Food Vending Permit, by the group site organizer, or his or her authorized agent, on a form prescribed by Community Development Director. Each application for an Individual or Group Site Food Vending Permit shall include:

A. Name, phone number, address and copy of a photo ID of the applicant, vehicle owner and all persons directly or indirectly interested in the conduct of such business, including all members of any firm or partnership. A corporate applicant shall provide the name, phone number, address and copy of a photo ID of the officers, directors and principal owners, including all owners of ten percent (10%) or more of the corporate stock;

B. Completed City of Riverbank Business License Application with attachments;

C. A non-refundable Business License application fee in an amount of as set by the City Council;

D. A nonrefundable application fee for a Mobile Food Vending Permit, as set by the City Council;

E. The location at which the applicant proposes to conduct the business;

F. If proposed location is on private property, written consent in a form approved by the City from the property owner (if other than self) permitting the individual food vending facility or group site to locate on the property; or, if owned by applicant, proof of ownership;

G. A map or illustration, showing:

1. The proposed location or specific parking space upon the street;
2. The address and Assessor's Parcel Number of the parcel or nearest parcel.

H. A site plan for the proposed location, containing:

1. If on a parcel, the location and dimensions of all proposed food vending vehicle(s), any public seating or other site amenities (including chairs and tables), buildings or other structures on site, paved areas, driveways, trash receptacles, garages, parking spaces, maneuvering aisles, and pavement striping;

2. If upon the street, location and dimensions of the proposed food vending vehicle, sidewalks, curb cuts, trash receptacles, and obstructions such as telecommunication boxes, street trees, and light poles.

I. Photographs of the site and food vending vehicle(s);

J. Sample, photo, or rendering of proposed signs;

K. The type of foods, wares or merchandise to be sold;

L. Proof of all required approvals from Stanislaus County Environmental Health for the proposed food vending vehicle(s) and/or group site;

M. Proof that the food vendor(s) and, if applicable, group site organizer, has a valid City of Riverbank Business License;

N. The proposed hours of operation for the individual food vending vehicle or group site, including dates, and starting and ending times of the vending period;

O. Maintenance plan, including litter pickup and cleaning in the vicinity of the individual food vending vehicle or group site;

P. The address where the food vending vehicle(s) will be stored and serviced during non-operating hours;

Q. The following information shall be provided regarding the commercial kitchen or commissary to be used by the applicant, if any:

1. Proof of all required approvals from Stanislaus County Environmental Health;

2. A valid lease between the vehicle and/or business owner(s) and a commercial kitchen or commissary.

R. Whether the applicant has at any time been convicted of a felony or of any offense involving moral turpitude or has been convicted of any narcotics violation;

S. Whether or not any permit or license heretofore granted to applicant to engage in any business or to do any act within the City or elsewhere has been revoked or denied, and, if so, circumstances surrounding the revocation or denial;

T. A signed statement from the applicant that they will abide by all local, state and federal requirements, including, but not limited to, those relating to the minimum wage and sick leave;

U. Proof of liability insurance in the amount required by the City.

V. Any other reasonable information regarding the identity and character of the applicant or applicant's employees, the location proposed or the nature of the business that the Community Development Director, or his or her designee, requires to evaluate the proposal.

127.110. ADDITIONAL APPLICATIONS REQUIREMENTS FOR GROUP SITES.

The application for a Group Site Food Vending Permit shall include the items in Section 127.100, and the following additional information:

A. Legal and business name and mailing address for each food vendor; and

B. Designation of a manager to be responsible for the day-to-day site management of the group site.

127.120. DECISIONS REGARDING THE APPROVAL, APPROVAL WITH CONDITIONS, OR DENIAL OF A FOOD VENDING PERMIT.

A. The Community Development Director, or his or her designee, shall determine whether the proposal meets the requirements for a Mobile Food Vending Permit as set forth in this Chapter.

1. The Community Development Director, or his or her designee, shall review and issue Mobile Food Vending Permits in the following order of priority:

I. Priority Group One: Vendors with valid, unexpired Riverbank Administrative Use Permits on private property;

II. Priority Group Two: Vendors with valid, unexpired Riverbank Temporary Use Permits in the street right-of-way, adjacent to City parks; and

III. Priority Group Three: All other vending applicants.

B. Decision by the Community Development Director. The Community Development Director or, his or her designee, shall approve, approve with conditions, or deny a Mobile Food Vending Permit application based on the standards and criteria set forth in this Chapter. The Community Development Director, or his or her designee may impose conditions of approval on a Mobile Food Vending Permit in the exercise of his or her reasonable discretion. The applicant shall be notified of any conditions of approval in writing.

C. A Mobile Food Vending Permit application may be denied if in his or her opinion:

1. Information contained in the application, or supplementary information requested from the applicant, is false in any material detail; or

2. The applicant has failed to ensure conformity with the operating standards or permitted area location requirements in this Chapter; or

3. The applicant has failed to provide a complete application form after having been notified of the requirement of producing additional information or documents; or

4. The applicant has previously been cited by the City of Riverbank for causing a public nuisance, or causing an unlawful or criminal activity during the operation of a food vending activity; or

5. The applicant has previously had a food vending permit revoked in Riverbank or in another jurisdiction, for violating food vending permit conditions or for unlawful conduct relating thereto; or

6. The applicant has been convicted of a felony or of any offense involving moral turpitude or has been convicted of any narcotics violation; or

7. The granting of the Food Vending Permit will have an adverse impact upon the public health, safety, or order.

D. Prior to the issuance of any permit under this Chapter, the applicant shall pay to the City any business operations tax required by Section 110.18.

E. Decisions of the Community Development Director, or his or her designee, relating to the granting or denial of any application for a mobile food vendor's permit shall be rendered in writing.

127.130. INSPECTIONS REQUIRED PRIOR TO LEGAL OPERATION.

The applicant shall not commence business activities until:

A. A Stanislaus Consolidated Fire District designee and City of Riverbank Building Inspector have inspected all food vending vehicles and locations for safety before a Riverbank Business License has been issued.

B. Once the mobile food vending vehicle or group site has passed all required inspections and can legally operate, the applicant shall affix an issued City of Riverbank Mobile Food Vending Permit in a clearly visible location within the IVV, or display such permit at a prominent place at a group site. The City of Riverbank Mobile Food Vending Permit shall contain the permit number, the expiration date, and a map showing the permitted location of the individual food vending vehicle or group site.

127.140. MOBILE FOOD VENDING PERMIT EXPIRATION AND RENEWAL.

A. All Mobile Food Vending Permits shall run concurrently with a City of Riverbank Business License.

B. A permittee may file an application for renewal of a mobile food permit with the Community Development Director at any time prior to the expiration of a mobile food vending permit. Renewal applications shall contain information provided by section 127.100 and 127.110 and any additional information required by Community Development Director, or his or her designee. Renewal applications shall be accompanied by a nonrefundable renewal application fee in an amount established by the City Council. Renewal applications may be approved or denied in accordance with provisions of Section 127.120. Renewals are in effect from January 1 – December 31.

C. Initial Permits may be obtained in any quarter of a calendar year but all permits expire on December 31.

ARTICLE II – STANDARDS AND REQUIREMENTS

127.150. HOURS OF OPERATION.

A. The regular permitted hours of operation for all individual food vending vehicles are 7:00 a.m. to 11:00 p.m., daily. Individual food vending vehicles may only remain open as long as the primary business on their site remains open. The City Manager, or his or her designee, may grant an exception and authorize individual food vending after the closure of the primary business, if the owner of the food vending business is also the owner of the primary business on site and has access to the restroom facilities after the primary business is closed. In no case shall vending occur between the hours of 11:00 p.m. and 7:00 a.m.

B. For Group Sites, the specific hours of operation shall be determined by the City Manager, or his or her designee, based on the proximity of the group site

to noise and traffic sensitive uses such as residential units, schools, and churches. Vending shall not occur between the hours of 11:00 p.m. and 7:00 a.m. unless permission is granted for a special event by the City Manager.

C. For Food Vending Vehicles within City parks or connected to City events, the hours of operation shall be determined by the Director of Parks and Recreation.

127.160. APPEARANCE AND OPERATING STANDARDS.

A. Appearance and condition of the mobile food vending vehicle.

1. All mobile food vending vehicles and group sites shall clearly display a current City of Riverbank business license, City of Riverbank Mobile Food Vending Permit, and Stanislaus County Environmental Health permit in plain view and at all times on the mobile food vending vehicle or at the group site.

2. No more than three (3) signs shall be attached to any food vending facility, with a maximum aggregate display surface of thirty (30) square feet of signage per food vending vehicle.

B. Utilities.

1. Individual food vending vehicles and group sites shall either be entirely self-sufficient in regards to gas, electricity, water, and telecommunications, or the food vending vehicle shall be required to apply for appropriate permits for any utility hook-ups or connections to on-site utilities to ensure building and public safety and consistency with applicable building codes.

C. Refuse, trash and litter maintenance.

1. The food vending facility or group site organizer shall not throw, deposit, discharge, leave, or permit to be thrown, deposited, discharged, or left, any fat, oil, grease, refuse, garbage, or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, gutter, storm drain, inlet, catch basin, conduit or other drainage structure, or upon any public or private lot of land in the City, so that the same might be or become a pollutant.

2. A minimum of one thirty-two (32)-gallon litter receptacle shall be within fifteen (15) feet of each individual food vending vehicle for customers and employees.

3. Individual food vending vehicles and group site organizers shall maintain the subject site and adjacent public right-of-way free of litter on and within one hundred (100) feet of their site.

4. At a minimum, all refuse shall be removed from the individual food vending vehicle location or group site, and properly disposed of after each vending period.

5. Failure to adequately clean up after a food vending operation date shall be grounds for denying an applicant's request for permit renewal as set forth in Section 127.120 (C).

D. Seating, chairs and tables.

1. Depending on site size, configuration and location, a plan for site amenities, including but not limited to tables and chairs, portable restroom facilities, or temporary shade structures, may be permitted in conjunction with the operation of a mobile food vending site. A site plan depicting the proposed location of any site amenities shall be submitted for review and approval in conjunction with a food vending permit application.

E. Performance standards.

1. Vendors shall not play or operate any drum, radio, CD Player, phonograph, cell phone, loud speaker, sound amplifier, car radio/CD or tape, television, or similar sound-amplifying device, whether mobile or from a fixed location upon the public streets, public rights-of-way, or in public parks

2. Noise levels from food vending vehicles shall not exceed the City's noise ordinance standards. Vendors should use low-noise emission generators.

3. Odors from food vending vehicles shall be contained within immediate area of the permitted food vending location.

4. The food vending vehicle and site amenities shall remain free of tobacco and cannabis smoke, vaping included. A notice to the public shall be posted on the vehicle and enforced by the vendor.

F. Security.

1. Mobile food vendors shall not operate in an unsafe manner, including but not limited to impeding on- or off-site vehicle circulation and obstructing the view of pedestrian by motorists.

2. The site shall be maintained in a safe and clean manner at all times.

3. Food vending vehicles and group sites shall have adequate lighting to ensure customer safety. Lighting shall be directed downwards and away from public streets and adjacent properties.

4. Mobile food vendors shall not use or permit use of parking spaces on the site (e.g., for customer queuing, tables, chairs, portable restrooms, signs, and any other ancillary equipment) if doing so will adversely affect the required off-street parking available for primary use(s) of the site during peak periods as determined by the Community Development Director.

5. Mobile food vendors shall not stop, stand, or park in any clear vision triangle or no parking zone.

G. Other requirements.

1. All mobile food vendors shall comply with all applicable laws.
2. Food vending facilities shall be maintained in operating condition at all times, and shall be movable at all times. Food vending vehicles are not permitted to remain at their site between 11:00 p.m. and 7:00 a.m.
3. No food vending vehicle shall become a permanent fixture on a site and shall not be considered an improvement to real property.
4. The food vendor shall maintain a valid Stanislaus County Environmental Health Permit at all times. If the permit expires, or is suspended or revoked, then all food sales shall cease until the permit is reinstated.
5. The group site organizer, or his or her representative, shall be personally present at all times during group site operations.
6. Proof of liability insurance as required by the City Manager shall be maintained by the individual food vendor or group site organizer.
7. The individual food vendor or group site organizer shall have a working telephone where he or she can be reached directly at all times during food vending.
8. Group vending sites shall be paved. Individual food vending sites are encouraged to be paved. If an individual food vending site has been in operation for at least three (3) years and is not paved, it shall be paved before the permit renewal is approved for the fourth (4th) year.

127.170. ADDITIONAL OPERATIONAL STANDARDS FOR ICE CREAM TRUCKS.

Standards for ice cream trucks shall be governed under Vehicle Code section 22456. Ice cream trucks shall also comply with all requirements of this Chapter. To the extent that this Chapter is more restrictive, it shall supersede the requirements of Vehicle Code section 22456.

127.180. LIABILITY AND INDEMNIFICATION.

A. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

B. To the maximum extent permitted by law, the permittees under this Chapter shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Riverbank, the Riverbank City Council, the Riverbank Planning Commission, and their respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect),

causes of action, proceedings or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, any food vending-related approvals and actions or implementation of such approvals and actions, including conditions of approval, if any. The City may elect, in its sole discretion, to participate in the defense of said Action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees.

C. Within ten (10) calendar days of the service of the pleadings upon the City of any Action as specified in Subsection B above, the permittee shall execute a Letter of Agreement with the City, acceptable to the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the food vending-related approval. Failure to timely execute the Letter of Agreement does not relieve the permittee of any of the obligations contained in this Section or any other requirements or performance or operating standards that may be imposed by the City.

ARTICLE III - ENFORCEMENT, REVOCATION, AND ABATEMENT.

127.190. ENFORCEMENT.

The City Manager, or his or her designee shall be responsible for enforcing this Chapter. If periodic inspections are necessary to monitor compliance, reinspection fees per the Master Fee Schedule shall be assessed against the responsible party.

127.200. VIOLATION.

Failure to comply with any of the provisions of this Chapter is declared to be prima facie evidence of an existing violation, a continuing blight and a declared public nuisance and shall be abated by the City Manager or his or her designee, in accordance with the provisions of this Chapter. Any person in violation will be subject to administrative penalties, citations, civil action or other legal remedies, including seizure of a mobile food vending vehicle, or food and drink merchandise.

127.210. RESPONSIBILITY.

If a mobile food vending vehicle is on a privately owned parcel, the parcel owner and the individual food vending vehicle or group site organizer have joint and several liability for compliance with this Chapter, including fees, administrative citations, civil actions, or legal remedies relating to an individual food vending vehicle or group site. The parcel owner remains liable for any violation of duties imposed by this Chapter even if the parcel owner has, by agreement, imposed on

the individual food vending vehicle or group site organizer the duty of complying with the provisions of this Chapter.

127.220. APPEALS.

A. Decisions to deny an application for a permit or renewal of a permit may be appealed by any interested person. Appeals shall be heard and determined by the Appeals Board.

B. An appeal shall be initiated within 21 calendar days of the decision to deny an application for a permit.

C. Appeals of decisions to deny an application for a permit shall be made in writing to the Appeals Board on forms provided by the City Clerk. The appeal shall state the facts and basis for the appeal.

D. Appeals of a decision to deny an application for a permit or renewal of a permit shall be accompanied by a fee which is fifty percent (50%) of the cost of the permit or renewal of the permit.

E. An appeal shall be scheduled for a hearing before the Appeals Board within thirty (30) calendar days of the filing of the appeal unless both the appellant and the City Clerk consent to a later date.

F. The City Clerk shall give notice in writing to the appellant of the time and the location of the appeal hearing. At the hearing, the Appeals Board shall review the record of the decision and hear testimony of the appellant, if any, the applicant, and any other interested party. The appeal shall be reviewed and determined on a de novo basis.

G. After the hearing, the Appeals Board shall affirm, modify, or reverse the original decision to deny an application for a permit or renewal of a permit. When a decision is modified or reversed, the Appeals Board shall state the specific reasons for modification or reversal. The City Clerk shall serve personally or by certified mail the notice of decision to the appellant.

H. The City Manager, or his or her designee, may revoke any mobile food vending permit at any time if it is found that the activity is violating any of the provisions of the City of Riverbank Municipal Code or causing a public nuisance, in accordance with RMC Chapter 98 for:

1. Violating any of the required operating standards set forth in Article II – Standards and Requirements; or

2. Violating any of the imposed permit conditions after one written warning; or

3. Causing a public nuisance, or causing an unlawful or criminal activity occurring during the operation of a food vending activity or group site; or any other violation of this Chapter.

I. No Mobile Food Vending Permit shall be revoked until after a hearing before the City Council. However, if the City Manager determines, in his or her sole discretion, a suspension of a Mobile Food Vending Permit is necessary prior to a revocation hearing to protect public health, safety or general welfare, the City Manager may suspend a Mobile Food Vending Permit, effective immediately, prior to any revocation hearing. Should a Mobile Food Vending Permit be suspended or revoked, the vendor shall be required to cease operations immediately or be subject to action which may include impounding of the vehicle and/or a citation. A public hearing with the City Council for the revocation of the Mobile Food Vending Permit shall be conducted in accordance with RMC 110.26 (Revocation of License).

127.230. PENALTIES FOR VIOLATION OF FOOD VENDING PERMIT REQUIREMENTS.

Any violation of this Chapter may be charged as a civil penalty or administrative citation as provided for in Chapter 98 of this Code. Enforcement action specifically authorized by this Section may be utilized in conjunction with, or in addition to, any other statutory, code, administrative or regulatory procedure applicable to this Chapter, including confiscation of merchandise and food for sale, or impoundment of the food vending vehicle. In addition, nothing in this Section shall be interpreted to preclude or limit the City from seeking injunctive or other judicial relief.

127.240. ABATEMENT GENERALLY.

A. Failure to permanently remove a food vending vehicle or group site and failure to cease operation as a food vending vehicle or group site after the termination, revocation, expiration, or suspension of any permit issued pursuant to this Chapter shall constitute a public nuisance, and shall be subject to enforcement and abatement procedures set forth in Chapter 98 of this Code.

B. When the City Manager, or his or her designee, determines that an individual food vending vehicle or a group site has been used as an instrument for, or has contributed substantially to a violation of this Chapter, the City Manager, or his or her designee, may deem the violation a public nuisance and issue a notice to abate the mobile food vending vehicle or group site operation, and direct the responsible party to:

1. Comply with the notice to abate;
2. Comply with a time schedule for compliance; and
3. Take appropriate remedial or preventive action to prevent the violation from recurring.

127.250. NOTICE TO ABATE.

A. Upon declaring and deeming a violation of this Chapter a nuisance, the City Manager or his other designee shall send a notice of abatement to the property owner, individual food vendor, or responsible party. The notice of abatement shall contain the following:

1. The street address and legal description of the site sufficient for identification of the premises or property upon which the nuisance condition(s) is located; and

2. A statement that the enforcement official has determined pursuant to this Chapter that the applicant, as well as the property owner if the activity is located on private property, are in violation of this Chapter; and

3. A statement specifying the condition that has been deemed a public nuisance; and

4. A statement ordering the property owner, individual food vendor, and/or responsible party to abate the condition(s), and specifying the manner in which the same shall be abated, and the period within which such abatement shall be accomplished.

B. Service of said notice may be made by delivery to the property owner, individual food vendor, or responsible party and to the applicant or person in possession personally or by enclosing the same in a sealed envelope, addressed to the occupant at such premises, or to the property owner at the address provided in the Mobile Food Vending Permit application, postage prepaid, registered or certified mail, return receipt requested, and depositing same in the United States mail. Service shall be deemed complete at the time of the deposit in the United States mail.

C. It is unlawful for the property owner, individual food vendor, or responsible party to fail or neglect to comply with such order or notice of abatement. In the event that the property owner, individual food vendor, /or responsible party shall not promptly proceed to abate said nuisance condition(s) within seven (7) days of notice to abate, as ordered by the enforcing official, the abatement procedure set forth in Chapter 98 may be undertaken.

127.260. VIOLATIONS CONSTITUTING INFRACTIONS.

Any person violating or failing to comply with any of the provisions of this Chapter shall be guilty of an infraction.

127.270. PENALTY FOR VIOLATION.

Any person violating any provision of this Chapter shall be punished upon a first violation by a fine of not more than one hundred dollars (\$100.00) and, for a

second violation within a period of one year, by a fine of not more than two hundred dollars (\$200.00) and, for a third or any subsequent violation within a one-year period, by a fine of not more than five hundred dollars (\$500.00). Any violation beyond the third, within a one-year period may be charged by the City Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than one thousand dollars (\$1,000.000) or by imprisonment in the county jail for a period of not more than six (6) months or by both. Any person violating or failing to comply with any of the provisions of this Chapter shall be subject to civil penalties and administrative citations per Chapter 98 of this Code and subject to confiscation of their merchandise and food for sale, and/or impoundment of the food vending vehicle.

127.280. REMEDIES ARE CUMULATIVE.

All remedies prescribed under this Chapter shall be cumulative and use of any remedy provided in this Chapter shall not bar the City from the pursuit of any other remedy available by law.

SECTION 2. Severability. If any section, subsection, sentence, clause, phrase, or word of this Ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Riverbank hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 3. This Ordinance shall become effective thirty (30) days from and after its final passage and adoption (on 09/24/2021), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on July 27, 2021. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 24th day of August, 2021; motioned by Councilmember District 3 Cal Campbell, seconded by Councilmember District 4 Darlene Barber-Martinez, moved said ordinance by a City Council roll call vote of 5-0:

**AYES: Councilmember District 4 Darlene Barber-Martinez,
Councilmember District 3 Cal Campbell**

**Councilmember District 2 Rachel Hernandez
Vice Mayor (CM-D1) Luis Uribe
Mayor Richard D. O'Brien**

**NAYS: None
ABSENT: None
ABSTAINED: None**

ATTEST:

APPROVED:

**Annabelle H. Aguilar, CMC
City Clerk**

**Richard D. O'Brien
Mayor**

APPROVED AS TO FORM:

**Tom P. Hallinan
City Attorney**