

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE
4 FOR
5 SENATE BILL NO 1793

By: Dahm

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to mobile food vendors; creating the
9 Mobile Food Vendor Act; defining terms; requiring
10 persons who operate as mobile food vendors to obtain
11 a license; prohibiting political subdivisions from
12 restricting certain vendors; requiring the State
13 Department of Health to prepare and make available a
14 license application; authorizing the Department to
15 require certain information; authorizing the
16 Department to require certain information by
17 individuals under oath; requiring applicants to abide
18 by requests for information; providing conditions for
19 denial of license; requiring the Department or a
20 political subdivision to conduct an inspection;
21 stating purpose of inspection; authorizing the
22 Department to establish a fee; requiring the
23 Department to issue a license under certain
24 conditions; prohibiting transfer of license;
providing exception to invalidation of license;
providing for renewal of license; requiring the
Department to submit notice of expiration; making it
a crime to knowingly provide false information;
requiring the Department to create and make available
a guide; requiring mobile food vendors to follow all
laws not in conflict with this act; providing
locations to operate mobile food trucks; requiring
certain operational standards; requiring display of
license and certification; authorizing the Department
to promulgate rules that adhere to certain
restrictions; requiring mobile food vendors to follow
laws and regulations regarding food handling and
safety; requiring possession of a state-recognized
food safety certification; requiring the Department
to classify mobile food vendors; requiring

1 inspections at a frequency based on classifications;
2 requiring the Department to establish and maintain a
3 database; authorizing the Department to collaborate
4 with political subdivisions for inspections;
5 requiring inspection certificates based on a letter
6 grade format; requiring notification of inspection;
7 authorizing mobile food vendors to request the
8 Department to obtain an administrative warrant;
9 requiring the Department to calculate average
10 inspection costs; stating limit on fees for
11 inspection; authorizing reimbursement of inspection
12 fees under certain circumstances; authorizing
13 political subdivisions to regulate certain aspects of
14 operations; prohibiting political subdivisions from
15 regulating certain aspects of operations; authorizing
16 the Department and political subdivisions to
17 investigate under certain circumstances; providing
18 for license denial, revocation and suspension;
19 providing for penalties; authorizing persons to
20 request an administrative hearing; providing
21 statutory reference; requiring the Department to
22 provide decision at the conclusion of hearing;
23 prohibiting certain persons from operating as mobile
24 food vendors; authorizing persons to appeal hearing
decision; providing preemption of political
subdivisions; stating the act shall not be construed
to compel political subdivisions to take certain
actions; amending 63 O.S. 2011, Section 1-1118, as
last amended by Section 1, Chapter 505, O.S.L. 2019
(63 O.S. Supp. 2019, Section 1-1118), which relates
to food establishment licenses; adding exemption;
providing for codification; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-1150 of Title 63, unless there
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Mobile Food
2 Vendor Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-1151 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in the Mobile Food Vendor Act:

7 1. "Customer" means any person with whom a mobile food vendor
8 conducts his or her mobile vending business, or any person who stops
9 to contemplate conducting such business with a mobile food vendor;

10 2. "Department" means the State Department of Health;

11 3. "Food vending vehicle" means any motorized, two-axle vehicle
12 used to sell food and beverages by a mobile food vendor;

13 4. "Local authority" means any local government including any
14 town, city, charter city, political subdivision or county;

15 5. "Mobile food vendor" means any person who dispenses food or
16 beverages from a food vending vehicle for immediate service or
17 consumption;

18 6. "Person" means any individual, group of individuals, firm,
19 partnership, company, corporation, trustee, association or any
20 public or private entity and includes the entity's employees or
21 agents;

22 7. "Prepackaged food" means any commercially labeled and
23 processed food prepackaged to prevent direct human contact with the
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1 food product upon distribution from the manufacturer, a food
2 facility or other approved source;

3 8. "Public property" means any property owned and operated by
4 this state or a local authority for the benefit of the public and
5 includes all rights-of-way contained wholly within any state or
6 local authority parks; and

7 9. "Sell" means to transfer or exchange for value, to expose,
8 display or offer for sale or exchange, or to procure, store, keep or
9 have on hand or in one's possession or control for the purpose of
10 selling.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-1152 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. No person may operate as a mobile food vendor in this state
15 without obtaining a mobile food vending license from the State
16 Department of Health. A separate mobile food license shall be
17 required for every food vending vehicle used by a mobile food
18 vendor.

19 B. No local authority may prohibit a mobile food vendor from
20 lawfully operating in its jurisdiction if the vendor holds a mobile
21 food vending license and is in compliance with all other state laws
22 and local laws not in conflict with this act.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1153 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The State Department of Health shall prepare a written
5 application for a statewide mobile food vending license. The
6 Department shall make the mobile food vending license application
7 available to applicants in person and on the Department's website.

8 B. The Department shall require an applicant to provide the
9 following information, under oath, before issuing a license:

10 1. The name, permanent address and telephone number of the
11 applicant;

12 2. The name, address and telephone number of any associated
13 entities or organizations that the applicant is representing and
14 copies of documents verifying that relationship;

15 3. A listing of all primary residences for the last five (5)
16 years;

17 4. A statement of whether any employees or agents will operate
18 with the applicant under the license and whether the employees or
19 agents hold a current food safety certification;

20 5. The nature of the food or beverages to be offered by the
21 applicant; and

22 6. A statement of whether the applicant has previously been
23 denied a license to operate as a mobile food vendor or if the
24 applicant has had a previous mobile food vending license suspended

1 or revoked in any state or local jurisdiction and, if so, the
2 reasons or the circumstances surrounding the denial, suspension or
3 revocation.

4 C. In addition to the written application, the Department shall
5 require an applicant who will operate from a food vending vehicle to
6 provide the following:

7 1. A listing of all vehicle license numbers, vehicle
8 descriptions, vehicle identification numbers and vehicle
9 registration papers;

10 2. Proof of automobile insurance for the vehicle or vehicles
11 from which the applicant proposes to conduct business; and

12 3. A copy or proof of any additional licenses or permits
13 required by this state for certain commercial vehicles.

14 D. Any person who drives a food vending vehicle shall hold a
15 current driver's license to drive the food vending vehicle.

16 E. The applicant shall complete the application form and abide
17 by any request for information required by this act made by the
18 Department. The applicant may submit one application for all
19 vehicles which require a license. Failure to submit a complete
20 application form and provide all requested information may result in
21 denial of a license.

22 F. Within thirty (30) days of receiving a complete application,
23 the Department, or a local authority acting under a collaborative
24 agreement pursuant to Section 6 of this act, shall conduct a health

1 inspection, if required by the Department, prior to issuing a mobile
2 food vending license. The purpose of the inspection is to ensure
3 the applicant's vehicle is safe for preparing, handling and selling
4 food to customers and the applicant is compliant with applicable
5 regulations.

6 G. The Department may establish a reasonable schedule of fees
7 not to exceed Two Hundred Dollars (\$200.00) for a mobile food
8 vending license or for renewal of a mobile food vending license.
9 The Department may also establish an inspection fee that covers the
10 average cost of conducting health inspections for the vendor and
11 charge that fee in conjunction with a mobile food vending license
12 fee or the renewal fee of a mobile food vending license.

13 H. Upon a receipt of a complete application and an applicant
14 passing initial inspection if required by the Department, the
15 Department shall issue a mobile vending license to the applicant.
16 Licenses shall be valid for one (1) year.

17 I. Licenses are not transferable, nor shall a license authorize
18 the activities of any person other than the person to whom it is
19 issued, except that the sale of the specific vehicle identified in a
20 license application, when replaced by another vending vehicle on a
21 one-for-one basis, will not invalidate the original license nor
22 cause a new license to be required. When replacing a vending
23 vehicle on a one-for-one basis, the licensee shall notify the
24 Department of the information required by subsection C of this

1 section. If the Department determines an inspection of the new
2 vehicle is required, the inspection shall take place as soon as
3 practicable but no later than fourteen (14) calendar days from
4 receipt of the information required by subsection C of this section.

5 J. If a mobile food vendor transfers its mobile food vending
6 business assets, the recipient of the assets shall, before operating
7 in the state, apply for and obtain a new mobile food vending
8 license.

9 K. Licenses shall be renewed on an annual basis. The
10 Department shall send notice to the licensee. It is the
11 responsibility of the licensee to submit the renewal application
12 annually, at least fourteen (14) days prior to the license's
13 expiration date. While an application for renewal is pending with
14 the Department, a licensee may continue mobile food vending
15 operations.

16 L. It shall be a misdemeanor for any individual to
17 intentionally provide false information or to intentionally omit
18 requested information on an application for any license issued
19 pursuant to this act.

20 M. The Department shall prepare a guide for applicants for a
21 mobile food vending license. The guide shall include instructions
22 for applying for, obtaining and maintaining a mobile food vending
23 license and shall describe the standards used to inspect food
24 vending vehicles. The guide shall be made available for applicants

1 in person at the Department's office and on the Department's
2 website.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-1154 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Mobile food vendors shall follow all state and local laws
7 and regulations governing operations in the jurisdiction where the
8 vendor is operating including without limitation all fire codes,
9 zoning codes, occupational tax codes and any other applicable state
10 and local authority codes and laws not in conflict with the
11 provisions of this act.

12 B. A mobile food vendor may operate in the following locations:

13 1. On public property, except as provided in paragraph 3 of
14 subsection A of Section 7 of this act, so long as the vending
15 vehicle is not parked within twenty (20) feet of an intersection. A
16 mobile vendor may operate from legal parking spaces on the public
17 right-of-way including metered spaces upon payment of appropriate
18 fees. When operating on public property, a mobile vendor is subject
19 to the same parking rules, restrictions and obligations that a
20 commercial vehicle would be subject to if not used by a mobile food
21 vendor; and

22 2. On private property under the following circumstances:

23 a. the property is located in an industrial, commercial
24 or institutional zoning district, and the vendor has

1 permission of the property owner or designee or a
2 lessor, and

3 b. the property is located in a residential zoning
4 district, and the mobile food vendor has been invited
5 by a resident or group of residents in that district
6 to operate on their property for the purpose of
7 serving food to that resident, group of residents or
8 their guests.

9 C. A mobile food vendor shall not operate in any manner which
10 will interfere with or obstruct the free passage of pedestrians or
11 vehicles along any street, sidewalk or parkway.

12 D. When operating, a mobile food vendor shall:

13 1. Maintain a food vending vehicle in good operating order and
14 visual appearance including the removal of any graffiti that is not
15 part of the overall design or art featured on the vehicle;

16 2. Park so that its service window faces the sidewalk or away
17 from the street if the vehicle is parked along a street;

18 3. Serve customers through a service window;

19 4. Provide a waste receptacle for customers which is clearly
20 visible and request its use by customers;

21 5. Remove and dispose of all refuse within twenty-five (25)
22 feet of the vendor's operating area at the conclusion of operation;

23 6. Submit to and pass any required health inspections; and
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1 7. Display the mobile food vendor license and required
2 inspection certificates or permits in a conspicuous location for
3 public view.

4 E. The State Department of Health may promulgate rules to
5 enforce the provisions of this act. Rules adopted shall not:

6 1. Require a mobile food vendor to operate a specific distance
7 from the perimeter of an existing commercial establishment;

8 2. Require a mobile food vendor to enter into any agreement
9 with a commercial establishment;

10 3. Restrict the operating hours of a mobile food vendor;

11 4. Require a mobile food vendor that does not prepare food to
12 have a handwashing sink in his or her food vending vehicle;

13 5. Require a mobile food vendor to associate with a commissary
14 if the vendor carries all the equipment necessary to comply with
15 health and safety standards and all applicable regulations;

16 6. Limit the number of mobile food vendor licenses issued;

17 7. Require a mobile food vendor to obtain any additional
18 permits from a local authority, unless the mobile food vendor seeks
19 to operate in a local, public park;

20 8. Require a mobile food vendor to be fingerprinted;

21 9. Require a mobile food vendor to install a GPS tracking
22 device on the vendor's vehicle;

23 10. Require a mobile food vendor to stay in constant motion
24 except for when serving customers;

1 11. Require a mobile food vendor to maintain insurance that
2 names a local authority as an additional insured unless the vendor
3 is attending an event sponsored by the local authority; and

4 12. Require a mobile food vendor to submit to inspections
5 beyond health inspections conducted by the Department or by a local
6 authority under a collaborative agreement with the Department,
7 unless the Department is investigating a reported foodborne illness.

8 SECTION 6. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-1155 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Mobile food vendors shall adhere to all laws and regulations
12 of the Oklahoma Administrative Code pertaining to the preparation
13 and handling of food.

14 B. Any person preparing food or beverages in a food vending
15 vehicle shall hold a current food safety certification recognized by
16 this state. At all times at least one person working in a food
17 vending vehicle must hold a current food safety certification
18 recognized by this state.

19 C. Upon receipt of a complete license application, the State
20 Department of Health shall classify a mobile food vendor into one of
21 the following three classifications for the purpose of conducting
22 inspections:

23 1. If a vendor dispenses prepackaged foods or non-
24 time/temperature control for safety food, as defined in 310:257-1-2

1 of the Oklahoma Administrative Code, beverages or poses a low risk
2 of harm to the public, it shall be classified as a Mobile Food Type
3 I Vendor;

4 2. If a vendor dispenses food that requires limited handling
5 and preparation, it shall be classified as a Mobile Food Type II
6 Vendor; and

7 3. If a vendor prepares, cooks, holds and serves food from the
8 vehicle, it shall be classified as a Mobile Food Type III Vendor.

9 D. The Department shall specify the categories of foods or
10 beverages that mobile vendors in each classification may serve. If
11 a mobile food vendor seeks to serve food or beverages that may
12 require the vendor to be reclassified, the mobile food vendor shall
13 notify the Department of the nature of the food or beverages to be
14 sold, and the Department shall reclassify the mobile food vendor.

15 E. For the purpose of protecting public health and safety, the
16 Department shall ensure that mobile food vendors are inspected on an
17 ongoing, randomized basis pursuant to the frequency set forth in
18 subsection I of this section based on their classification and
19 inspection grade. The Department, upon a local authority's request,
20 may enter into a collaborative agreement with the local authority
21 for conducting health inspections. The Department shall reimburse
22 the local authority acting under a collaborative agreement for the
23 cost of conducting inspections using funds from inspection fees
24 collected from licensees pursuant to subsection K of this section.

1 F. The Department shall establish and maintain a statewide
2 database for the Department and local authorities to record and
3 reference the names of licensees, inspections, inspection reports
4 and public complaints.

5 G. Health inspections shall be conducted by the Department
6 or a local authority acting under a collaborative agreement using
7 statewide inspection criteria and a score-based grading system
8 established by the Department based on objective factors. The
9 inspection criteria shall provide a letter-grade format that rates
10 the vendor with an "A," "B," "C" or "F" grade, based on the score
11 received during the inspection. If a vendor receives two
12 consecutive "A" grades, it shall be given a certificate of
13 excellence. If a vendor receives an "F" grade, the Department may
14 suspend the mobile food vendor's license until the mobile food
15 vendor corrects the violations.

16 H. Upon completion of an inspection, the Department, or local
17 authority operating under a collaborative agreement, shall issue a
18 certificate to the mobile food vendor displaying the vendor's letter
19 grade or achievement of excellence and record the grade in the
20 Department's database. The mobile food vendor shall display its
21 certificate indicating its letter grade or achievement of excellence
22 in a conspicuous place for public view.

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1 I. Health inspections shall occur on a randomized basis,
2 pursuant to the following frequency, based on the mobile food
3 vendor's classification:

4 1. A Mobile Food Type I Vendor shall be inspected only upon the
5 Department or a local authority being notified of a public health or
6 safety complaint regarding the vendor. If the inspection reveals a
7 violation of law or rule, the vendor shall become subject to
8 inspections at the frequency set for a Mobile Food Type II Vendor
9 until the vendor obtains a certificate of excellence;

10 2. Mobile Food Type II Vendors shall be inspected once per
11 calendar year. If a Mobile Food Type II Vendor receives a
12 certificate of excellence, it shall become subject to inspections at
13 the frequency set for Mobile Food Type I Vendors. If a Mobile Food
14 Type II Vendor holding a certificate of excellence receives a score
15 lower than an "A" on a subsequent inspection, the vendor shall lose
16 its certificate of excellence and return to being inspected once per
17 year; and

18 3. Mobile Food Type III Vendors shall be inspected twice per
19 calendar year. If a Mobile Food Type III Vendor receives a
20 certificate of excellence, it shall be inspected at the frequency
21 set for Mobile Food Type II Vendors. If a Mobile Food Type III
22 Vendor holding a certificate of excellence receives a score lower
23 than an "A" on a subsequent inspection, the vendor shall lose its
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1 certificate of excellence and return to being inspected twice per
2 calendar year.

3 J. The Department, or local authority acting under a
4 collaborative agreement, shall notify a mobile food vendor by phone
5 or by First-Class Mail, with a return receipt requested, of its
6 intent to inspect the food vending vehicle within thirty (30) days
7 following the delivery of the notice. The mobile food vendor may
8 request the Department or local authority obtain an administrative
9 warrant prior to conducting an inspection. Upon receipt of notice
10 of an inspection, the mobile food vendor shall provide the locations
11 where the vendor can be located for an inspection if requested by
12 the Department or local authority.

13 K. The Department shall calculate the average cost of providing
14 notice of and conducting a health inspection. If the Department has
15 entered into a collaborative agreement with a local authority, the
16 Department shall consult with the local authority and determine the
17 average cost of providing notice of and conducting health
18 inspections in that jurisdiction. The Department shall charge the
19 mobile food vendor an inspection fee at the time the mobile vendor
20 applies for or renews a license, based on the average cost of
21 providing notice of and conducting an inspection, multiplied by the
22 number of annual inspections required for the upcoming year as
23 required by this section. A mobile food vendor may request
24 reimbursement for an inspection that was not conducted at the

1 expiration of its mobile vending license or when the vendor renews a
2 license. The Department shall reimburse the vendor for any
3 inspection that was not conducted in the previous year within thirty
4 (30) calendar days following receipt of a mobile food vendor's
5 request.

6 SECTION 7. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-1156 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The local authority may regulate state-licensed mobile food
10 vendors in accordance with this act. In relation to a state-
11 licensed mobile food vendor's operations, a local authority may:

12 1. Impose operating hours only if they are the same as the
13 operating hours imposed on commercial businesses;

14 2. Restrict the operation of noisemaking devices during certain
15 hours of day;

16 3. Restrict a mobile food vendor from operating in a public
17 park or require a special permit and payment of fees to operate in a
18 public park;

19 4. Prohibit a mobile food vendor that is operating on private
20 property from blocking ingress or egress from that property;

21 5. Develop a mobile food vendor metered parking pass for a fee
22 that permits a mobile food vendor to operate from metered parking
23 spaces for longer than the vendor would otherwise be permitted;

24 6. Investigate reports of foodborne illnesses;

1 7. Report a mobile food vendor's suspected violation of this
2 act to the State Department of Health and recommend the Department
3 suspend or revoke a mobile food vending license; and

4 8. Issue citations and penalties to mobile food vendors for
5 violations of local law not inconsistent with the provisions of this
6 act.

7 B. In relation to a state-licensed mobile food vendor's
8 operations, a local authority may not:

9 1. Prohibit or restrict a mobile food vendor from operating in
10 a lawful manner provided for in this act;

11 2. Require a mobile food vendor to receive any kind of special
12 permit from a local authority in addition to the mobile food vending
13 license or permit to operate as a commercial vehicle, unless the
14 mobile food vendor seeks to operate in a public park;

15 3. Restrict the duration of time a mobile food vendor may
16 operate on private property in industrial, commercial or
17 institutional zoning districts;

18 4. Require a mobile food vendor to operate a specific distance
19 from commercial food or retail establishments;

20 5. Require a mobile food vendor to be fingerprinted;

21 6. Require a mobile food vendor to install a Global Positioning
22 System (GPS) tracking device on its vehicle;

23 7. Require a mobile food vendor to stay in constant motion
24 while serving customers;

1 8. Require a mobile food vendor to maintain an insurance policy
2 that names the local authority as an additional insured unless the
3 vendor is attending an event sponsored by the local authority;

4 9. Require a mobile food vendor to submit to inspections beyond
5 health inspections conducted under a collaborative agreement with
6 the Department, unless the local authority is investigating a
7 reported foodborne illness;

8 10. Require a mobile food vendor to enter into any agreement
9 with a commercial establishment or restaurant;

10 11. Regulate the equipment requirements for a food vending
11 vehicle; and

12 12. Require a mobile food vendor to associate with a commissary
13 if the vendor has all the equipment necessary to comply with all
14 regulations pertaining to food establishments.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-1157 of Title 63, unless there
17 is created a duplication in numbering, reads as follows:

18 A. The State Department of Health or a local authority may
19 investigate a mobile food vendor upon reasonable suspicion the
20 vendor has violated the law or upon receipt of a health or safety
21 complaint. Any complaint shall be recorded in the state's mobile
22 vending database. The local authority shall report suspected
23 violations of law to the Department and may recommend the Department
24 suspend or revoke a mobile food vending license.

1 B. The mobile food vendor shall cooperate with the Department
2 or local authority during an investigation. Failure to cooperate
3 with the Department or local authority may result in suspension or
4 revocation of a license.

5 C. Nothing in this act shall be construed to impede the
6 Department or local authority in any investigation of a reported
7 foodborne illness.

8 SECTION 9. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-1158 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 A. A license issued under this act may be denied, suspended or
12 revoked by the State Department of Health for the following reasons:

13 1. Fraud, misrepresentation or a false statement contained in
14 the application for a license;

15 2. Fraud, misrepresentation or a false statement made in
16 connection with the selling of food or beverages;

17 3. Any facts or conditions which would justify the denial of
18 the original application;

19 4. Three (3) or more violations of this act within a period of
20 twelve (12) months; and

21 5. The receipt of an "F" grade during an inspection or an
22 investigation in response to a complaint.

23 B. Any person who has been notified regarding the denial of
24 their mobile food vending application or the possible suspension or

1 revocation of their mobile food vending license may request an
2 administrative hearing in accordance with the Administrative
3 Procedures Act within fourteen (14) calendar days of receipt of the
4 notice. Other than as described in subsection C of this section, no
5 license shall be suspended or revoked prior to a hearing if a mobile
6 food vendor requests a hearing within the fourteen-day period
7 required. Upon receipt of a request for a hearing, the Department
8 shall hold a hearing within fourteen (14) calendar days and issue
9 findings of fact, conclusions of law and a decision at the
10 conclusion of the hearing.

11 C. When circumstances demonstrate that continued operation by a
12 mobile vendor poses an imminent threat to the public's health and
13 safety, the Department may immediately suspend or revoke a mobile
14 food vending license. The mobile food vendor may request a hearing
15 regarding the suspension or revocation within fourteen (14) calendar
16 days of receiving notice of the suspension or revocation. Any
17 hearing regarding the summary suspension or revocation of a license
18 shall be given priority over all potential license denial,
19 suspension or revocation proceedings and shall be held within seven
20 (7) calendar days from the date the Department receives a mobile
21 food vendor's request for a hearing, and the Department shall issue
22 findings of fact, conclusions of law and a decision at the
23 conclusion of the hearing.

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1 D. It shall be a misdemeanor for a licensee whose license has
2 been suspended or revoked to continue business operations. If the
3 Department suspends or revokes a mobile vending license, the mobile
4 vendor shall immediately surrender the license to the Department.
5 The Department may issue civil penalties to a person who operates as
6 a mobile food vendor without a license, with a suspended license or
7 after a license is revoked.

8 SECTION 10. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1-1159 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 A person aggrieved by an agency decision following a hearing has
12 the right to appeal the decision in accordance with the provisions
13 of the Administrative Procedures Act.

14 SECTION 11. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-1160 of Title 63, unless there
16 is created a duplication in numbering, reads as follows:

17 This act preempts local authorities from prohibiting mobile food
18 vending and regulating mobile food vending in a way that conflicts
19 with the provisions of this act.

20 SECTION 12. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1-1161 of Title 63, unless there
22 is created a duplication in numbering, reads as follows:

23 This act shall not be construed to require a local authority to
24 enter into a collaborative agreement with the State Department of

1 Health to conduct health inspections, to adopt a program regulating
2 mobile food vendors or to modify its existing program regulating
3 mobile food vendors; provided, the regulations do not conflict with
4 the provisions of this act.

5 SECTION 13. AMENDATORY 63 O.S. 2011, Section 1-1118, as
6 last amended by Section 1, Chapter 505, O.S.L. 2019 (63 O.S. Supp.
7 2019, Section 1-1118), is amended to read as follows:

8 Section 1-1118. A. It shall be unlawful for any person to
9 operate or maintain any establishment, stationary or otherwise,
10 where food or drink is offered for sale, or sold, to the public,
11 unless the person is the holder of a food establishment license
12 issued for such purpose by the State Commissioner of Health or
13 designee. A food establishment license shall not be required for:

14 1. A produce stand that offers only whole, uncut and
15 unprocessed fresh fruits, melons, vegetables and legumes and/or
16 whole uncracked and unprocessed nuts;

17 2. A manufacturer, wholesaler or broker of food licensed
18 pursuant to Section 1-1119 of this title;

19 3. A kitchen in a private home if only food that does not
20 require time and temperature control for safety is prepared for sale
21 or service at a function such as a nonprofit civic, charitable or
22 religious organization's bake sale;

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- 1 4. An area where food that is prepared as specified in
2 paragraph 3 of this subsection is sold or offered for human
3 consumption;
- 4 5. A private home that receives catered or home-delivered food;
- 5 6. A hotel licensed pursuant to Section 1-1201 of this title
6 which provides limited food service in compliance with rules
7 promulgated by the State Board of Health;
- 8 7. A kitchen in a private home or in a bed and breakfast that
9 prepares and offers food to guests, if the home is owner-occupied,
10 the number of available guest bedrooms does not exceed three, and
11 breakfast is the only meal offered;
- 12 8. A nonprofit civic, charitable or religious organization
13 using unpaid individuals to prepare or serve food on its behalf, for
14 occasional fund-raising events sponsored and conducted by the
15 organization. For the purposes of this paragraph, an "occasional
16 fund-raising event" shall be defined as an event that occurs four
17 times a year or less;
- 18 9. Day care centers or family day care centers, and all other
19 child care facilities as defined and licensed pursuant to the
20 provisions of the Oklahoma Child Care Facilities Licensing Act;
- 21 10. Nursing facilities and specialized facilities, as defined
22 in and licensed pursuant to the provisions of the Nursing Home Care
23 Act, residential care homes as defined by the Residential Care Act,
24 adult day care centers as defined by the Adult Day Care Act, and

1 assisted living centers and continuum of care facilities licensed
2 pursuant to the Continuum of Care and Assisted Living Act; ~~and~~

3 11. Other establishments exempted from food establishment
4 licensure pursuant to state law; and

5 12. Mobile food vendors licensed pursuant to Section 3 of this
6 act.

7 B. Each license shall expire one (1) year following the date of
8 its issuance. The State Department of Health shall charge and
9 collect for each such license an annual fee to be fixed by the State
10 Board of Health.

11 1. The Board may provide by rule for a fee-exempt license for a
12 food establishment operated by a nonprofit, civic, charitable or
13 religious organization that uses unpaid persons to sell or offer
14 food on a more frequent basis than the occasional fund-raising
15 event. A fee-exempt license shall not expire but shall remain in
16 full force and effect until affirmatively revoked, suspended,
17 annulled or withdrawn by the Department in accordance with
18 applicable law.

19 2. The Board may by rule also provide that licenses for
20 establishments serving events of limited duration or operating on a
21 seasonal basis shall extend only for the term of the event or
22 season, and may by rule adjust the fees for such licenses
23 accordingly.

24

1 3. The Board shall provide by rule a three-day license for
2 vendors who only sell at farmers markets as defined in 310:257-1-2
3 of the Oklahoma Administrative Code or at county fairs. Licenses
4 for vendors who only sell at farmers markets or county fairs shall
5 not exceed Fifty Dollars (\$50.00). Vendors who do not sell food and
6 vendors who meet the exceptions provided in subsection A of this
7 section shall not be required to obtain a three-day license or a
8 food establishment license.

9 C. The State Board of Health shall promulgate reasonable
10 standards and rules for sanitation of establishments required to be
11 licensed, which shall include the following: buildings, vehicles,
12 and appurtenances thereto, including plumbing, ventilation and
13 lighting; construction, cleanliness and bactericidal treatment of
14 equipment and utensils; cleanliness, wholesomeness, storage and
15 refrigeration of food and drink sold or served; cleanliness and
16 hygiene of personnel; toilet facilities; disposal of waste; water
17 supply; and other items deemed necessary to safeguard the health,
18 comfort, and safety of customers.

19 SECTION 14. This act shall become effective November 1, 2020.

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21 57-2-3947 QD 2/25/2020 9:00:17 AM

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