



## Legislation Details (With Text)

**File #:** 21-1942      **Version:** 1      **Name:** TA21-001: Text Amendment for Food Truck Court  
**Type:** Other Items of Business      **Status:** Agenda Ready  
**File created:** 4/7/2021      **In control:** City Council Special Meeting  
**On agenda:** 4/15/2021      **Final action:**  
**Title:** TA21-001: Text Amendment to Article 30 of the Unified Development Ordinance for a Food Truck Court by Jordan Sherrod.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. TA21-001 Ordinance 1 - Applicant, 2. TA21-001 Ordinance 2 - Staff, 3. TA21-001 Ordinance 3 - Reduced-Standards

Date	Ver.	Action By	Action	Result
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**TO:** Mayor and Members of City Council

**THRU:** Telly C. Whitfield, Ph.D. - Assistant City Manager  
Dr. Gerald Newton, AICP - Development Services Director  
Taurus Freeman, MPA - Planning and Zoning Division Manager

**FROM:** Alicia P. Moore, Esq., MUP - Planner II

**DATE:** April 15, 2021

**RE:**  
**TA21-001:** Text Amendment to Article 30 of the Unified Development Ordinance for a Food Truck Court by Jordan Sherrod.

**COUNCIL DISTRICT(S):**  
All

### Relationship To Strategic Plan:

Goal 3: City Investment in Today and Tomorrow

Objective 3.2 - Manage the City's future growth and strategic land use.

### Executive Summary:

The applicant, Jordan Sherrod, requests an amendment to the Unified Development Ordinance to create a new land-use category of *Food Truck Court*. Current regulations allow food trucks as a temporary use for special events or as an accessory use on private lots.

A *food truck court* differs from this usage of food trucks, which operate in a transitory manner in areas not specifically developed or contemplated for food trucks. Instead, a *food truck court* operates as permanent eating establishment on a parcel specifically developed to accommodate food trucks. In this way, *food truck courts* are akin to brick and mortar eating establishments but with the regular use of food trucks at the crux of their business plan.

The proposed changes would create a new use category with specific regulations and would not impact the current regulations applicable to food trucks as an accessory use.

On March 4, 2021, the Planning Commission heard the request at a Special Called meeting. The applicant expressed support for the Staff-proposed ordinance. The Planning Commission voted unanimously to recommend approval for the Staff-proposed ordinance by a vote of 9-0.

On March 22, 2021, the City Council heard the request, and upon motion by Councilmember Haire, voted to postpone review and decision by a vote of 5-4, with Councilmember J. Dawkins absent.

Three versions of the proposed changes are submitted for review:

- Ordinance 1: The first version is the original submission by the Applicant.
- Ordinance 2: The second version, referred to as the Staff-proposed ordinance, is based on the Applicant's submitted version and includes recommended changes for adherence to the policies and requirements of the City Code. (This version is supported by the applicant and recommended by the Planning Commission.)
- Ordinance 3: The third version, referred to as the Reduced-Standards ordinance, is based on concerns that the proposed version may be too limiting, and has minimal development standards except for safety and environmental protection standards. (the standards that would be removed are highlighted in yellow on that version.)

### **Background:**

The food truck industry has received growing national attention through reports from the US Chamber of Commerce, Harvard University, and the American Planning Association, among others. In September, 2020, the U.S. News & World Report published a story, "Fayetteville Food Trucks Gain Popularity Amid Pandemic."

Despite growing demand, entrepreneurial residents face regulatory roadblocks in the form zoning requirements. Last year, there were at least three instances where residents were unable to operate their food trucks in Fayetteville because their operation clashed with the City's zoning requirements. In particular, the applicant sought to establish a commercial destination centered around multiple food trucks regularly operating on the same lot - essentially, a food court with food trucks, or a food truck court.

Under current zoning regulations, this sort of establishment is not possible because food trucks are permitted only for City-approved special events or as an accessory use where a principal use is already in operation on the site. Additional restrictions as an accessory use include a maximum number of food trucks per lot, minimum distances from brick and mortar restaurants and from each other, and limited hours of operation.

Planning and Zoning Division Staff held several meetings with the applicant and with other divisions and departments to develop the proposed text amendment. The most recent interdepartmental meeting, included staff from Code Enforcement, Zoning Administration, Technical Review, Electrical Inspections, Building Inspections, and the Fire Department. Reviewing and building upon the

Applicant-submitted ordinance, each staff member provided feedback to contribute to the Staff-proposed ordinance. The proposal is built upon extensive research of comparative regulations and policy exploration, and tailored specifically to Fayetteville, based on the needs expressed by residents and expertise contributed by staff members. The development standards in the Staff-proposed ordinance represent a researched and careful balance between community interests in sound development and private interests in business opportunities. The Reduced-Standards ordinance is based on the concerns expressed during a Council meeting that the development standards may be too restrictive.

Fayetteville's food truck regulations were last updated in 2013. Other cities in North Carolina have more recently adapted their regulations, and cities across the county have been adding provisions specifically to accommodate food truck courts.

### **Issues/Analysis:**

In addition to use at City-approved special events, food trucks are permitted as an accessory use; they are allowed only where their use is "incidental, appropriate, and subordinate to the principal use" on the same lot. (Section 30-9, Definitions.) This requirement prevents a food truck vendor from utilizing an otherwise undeveloped or vacant lot. Instead, food trucks can operate only in the parking lots of existing uses, provided that the owner provides permission, and the parking lot has extra parking spaces (which is not based on actual customer use of the spaces, but upon regulatory minimums).

Section 30-4.D.3, *Specific Standards for Certain Accessory Uses*, sets the maximum number of trucks per lot, establishes separation requirements, parking, hours of operation, and operational standards.

Under these accessory use regulations, a maximum of two food trucks are allowed on lots up to one acre. For parcels greater in size, the maximum is three trucks. Temporary seating is permissible on lots that are at least two acres in size. Food trucks are also restricted from setting up within 50 feet of each other, 100 feet from brick and mortar restaurants, and 100 feet from any residential district (including single-family and multi-family districts). Hours of operation are required to end by 10 p.m. if the location is within 150 feet of a residential dwelling. These restrictions apply regardless of whether seating is provided. For comparison, other types of outdoor eating establishments are not restricted in proximity from each other; separation from residential districts only applies for single-family districts; and the hours of operation are not restricted.

Potential food truck vendors seeking to establish or promote their businesses in Fayetteville have faced regulatory roadblocks. The applicant, Jordan Sherrod and his business team, seek to repurpose a defunct gas station into a destination spot as a food truck court. The food truck court would feature four trucks and provide outdoor seating. The site location in Haymount is near public transit and walkable from the Downtown area, thus contributing to the Downtown and expanding its draw.

The Applicant-submitted ordinance and the Staff-proposed ordinance are essentially similar. The bulk of the differences is in the technical language, and the Staff-proposed version makes references to other relevant portions of the Code. The most notable difference between the two versions is that the Staff-proposed version would require a Special Use Permit for food truck courts in Neighborhood Commercial zones. The third version, the Reduced-Standards ordinance, shares the same safety and environmental standards as the Staff-proposed version. However, almost all development

standards have been removed in that option.

All of the versions would create a new use category of “food truck court.” The new category would be as a principal use without having to be subordinate to another use. Food truck courts would be allowed in non-residential zoning districts.

Under the Staff-proposed ordinance, food truck courts would be subject to the same restrictions as other outdoor eating establishments to assure harmony with surrounding uses. To insure compliance with all applicable regulations, a Major Site Plan review would be required and subject to approval by all pertinent departments. To insure that compliance continues, the food truck court would be subject to regular inspections by Development Services, Public Services, and the Fire Marshal. An annual zoning permit would be required from the City, and renewals would not be allowed if any violations were outstanding.

Under the Reduced-Standards ordinance, minimal development standards would apply, but there would be no Major Site Plan review or zoning permit required.

The proposed amendment would not change the existing regulations for food trucks as an accessory use. The accessory use would continue under the existing requirements. By adding a new use category, the proposed amendment would increase the options for food truck vendors to choose whether to operate as an accessory use or as a principal use, thereby increasing opportunities for business ventures and choices for patrons.

#### Code Enforcement

Code Enforcement enforces current Food Trucks standards as an accessory use typically on a complaint-driven basis. There have been very few cases regarding food trucks since the City Council enacted the ordinance. Most violations occur when the trucks are found to be operating on undeveloped lots or displaying prohibited signage.

If food trucks are also permitted as a principal use, then the two types of food truck use (accessory and principal) would each be regulated and enforced under its own separate set of standards. While certain requirements are common to both sets of standards (for example, 15 ft. minimum from fire hydrants), each set of standards is complete, and enforcement under either set of standards would be independent from the other. Food trucks that operate as an accessory use would continue to be regulated under the *accessory use standards*, and food trucks that operate as a principal use would be regulated under the *principal use standards*.

#### Budget Impact:

NA

#### Options:

The City Council shall hold a legislative hearing on the application in accordance with the Fayetteville City Code. After the close of the hearing, the Council shall consider the application, relevant support materials, the staff report, the Planning Commission recommendation, and any comments given by the public. The City Council, by a majority vote of a quorum present, shall take one of the following actions:

- 1) Approve adoption of Option 1(Applicant);
- 2) Approve adoption of Option 2 (Staff);

- 3) Approve adoption of Option 3 (Reduced-Standards);
- 4) Denial of all proposed text amendments;
- 5) Revisions and adoption of any of proposed text amendments; or
- 6) Remanding any of the proposed text amendments back to Staff for further consideration.

In making its decision, the City Council shall approve a brief statement describing whether its action is consistent or inconsistent with the Comprehensive Plan and any other City-adopted plans that are applicable.

**Recommended Action:**

The Planning Commission and Staff recommend approval of the TA21-001: Ordinance 2 (Staff) based upon the congruency of the proposed amendment with the following standards for text amendments as required by the Code §30-2.C.2(e):

1. The proposed amendment is consistent with all applicable City-adopted plans.
2. The proposed amendment is not in conflict with any provision of this Ordinance, or any related City regulations.
3. The proposed amendment aligns with Code with NC General Statutes, NC Building Codes, and various other regulations and requirements within the City and the Code.
4. The proposed amendment addresses a community need to provide the best Codes as possible for interpretation, enforcement and compliance.
5. The proposed amendment is consistent with the purpose and intent of the zoning districts in the Code and ensures efficient development within the City.
6. The proposed amendment would result in a logical and orderly development pattern.
7. The proposed amendment would not result in significantly adverse impacts on the natural environment and the natural functioning of the environment.

The development standards in the Staff-proposed ordinance represent a researched and careful balance between community interests in sound development and private interests in business opportunities.

**Attachments:**

1. TA21-001: Ordinance 1 (Applicant)
2. TA21-001: Ordinance 2 (Staff)
3. TA21-001: Ordinance 3 (Reduced-Standards)