

ORDINANCE NO. 56-20

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, BY AMENDING CHAPTER 120, "OPERATION AND SALE OF FOOD FROM MOBILE FOOD TRUCKS," SECTION 120.01, "OPERATION AND SALE OF FOOD FROM MOBILE FOOD TRUCKS," TO UPDATE THE DEFINITIONS, MODIFY THE REQUIREMENTS TO OPERATE MOBILE FOOD TRUCKS WITHIN THE CITY, MODIFY THE LIMITATIONS AND PROHIBITIONS FOR THE OPERATION OF FOOD TRUCKS WITHIN THE CITY, AND ELIMINATE AND REPLACE CIVIL CITATIONS WITH GENERAL PENALTIES; PROVIDING A CONFLICTS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AUTHORITY TO CODIFY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature adopted, and on June 30, 2020, the Governor signed into law, CS/HB 1193 Deregulation of Professions and Occupations (the "Bill"); and

WHEREAS, the Bill created Section 509.102, *Florida Statutes*, which defined mobile food dispensing vehicle and preempted regulation of licenses, registrations, permits, and fees for mobile food dispensing vehicles to the State of Florida; and

WHEREAS, Section 509.102, *Florida Statutes*, took effect July 1, 2020; and

WHEREAS, the creation of Section 509.102, *Florida Statutes*, necessitates the City amend the City Code in order to ensure the City's regulations governing mobile food dispensing vehicles are consistent therewith; and

WHEREAS, this Ordinance is enacted pursuant to the home rule powers of the City of Delray Beach as set forth in Article VIII, Section 2, of the Constitution of the State of Florida, Chapter 166, *Florida Statutes*, and other applicable controlling laws; and

WHEREAS, the City Commission deems approval of this Ordinance to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitations set forth above are incorporated herein.

Section 2. Chapter 120, "Operation And Sale Of Food From Mobile Food Trucks," Section 120.01, "Operation And Sale Of Food From Mobile Food Trucks", of the Code of Ordinances of the City of Delray Beach, Florida, is hereby amended to read as follows:

Sec. 120.01. - OPERATION AND SALE OF FOOD FROM MOBILE FOOD TRUCKS.

(A) *Definitions.* For the purpose of this Chapter:

- (1) *Mobile food truck*, ~~means a~~ A vehicle which is used to vend food and beverage products and is classified as one of the following:
 - (a) ~~Class I—Mobile Kitchens~~ Mobile Food Dispensing Vehicles (MFDV). Any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. MFDVs may cook, prepare and assemble food items on or in the unit and serve a full menu. MFDVs are regulated by the Florida Department of Business and Professional Regulation. These vehicles may cook, prepare and assemble food items on or in the unit and serve a full menu. These vehicles may also vend the products permitted for Class II Mobile Food Trucks.
 - (b) ~~Class II—Canteen Trucks~~ Mobile Food Establishment (MFE). These vehicles vend pre-cooked foods, pre-packaged foods, pre-packaged drinks and incidental sales of pre-packaged frozen dairy or frozen water-based food products, fruits, and vegetables. No preparation or assembly of food or beverages may take place on or in the vehicle; however, the heating of pre-cooked food is permitted. MFEs are regulated by the Florida Department of Agriculture and Consumer Services.
- (2) *Mobile food vendor*, ~~means a~~ A person who prepares, dispenses, or otherwise sells food from a mobile food truck.

~~(B) *Administrative Rules and Regulations.* The City Manager shall adopt, enact and amend Administrative Rules and Regulations for Mobile Food Trucks. These Administrative Rules and Regulations shall cover the mobile food vendor permit application requirements, permit fees and the permit renewal procedure.~~

~~(C) *Permit Requirements.*~~

- ~~(1) Any person engaged in the selling, preparation or dispensing of food from a mobile food truck must purchase a mobile food vendor permit in accordance with this Chapter and the Administrative Rules and Regulations promulgated by the City Manager.~~
- ~~(2) An applicant for a Class I Mobile Food Vendor permit shall make their mobile food truck available for inspection by the City of Delray Beach Fire Department at a location determined by the Fire Department. The City of Delray Beach Fire Department shall ensure compliance with all applicable federal, state and local fire safety statutes, regulations, ordinances and codes. Subsequently, every Class I Mobile Food Truck must undergo an inspection by the City of Delray Beach Fire Department every six (6) months.~~
- ~~(3) All mobile food vendors must display the mobile food vendor permit issued by the City in a prominent and visible manner.~~

~~(D) *Permitted Zoning Districts for Operation of a Mobile Food Truck.* Locational Restrictions and Prohibitions. The following restrictions and prohibitions apply to all ~~M~~mobile food trucks, will be permitted to operate in the following zoning districts:~~

- ~~(1) Automotive Commercial (AC).~~
- ~~(2) General Commercial (GC).~~
- ~~(3) Planned Commercial (PC).~~
- ~~(4) Planned Office Center (POC).~~

~~(5) Planned Commerce Center (PCC).~~

~~(6) Mixed Industrial and Commercial (MIC).~~

~~(7) Planned Office District (POD).~~

~~(8) Mixed Residential Office and Commercial (MROC).~~

~~(9) Light Industrial (LI).~~

~~(10) Industrial (I).~~

(1) Mobile food trucks are allowed to operate in the following zoning districts, subject to the additional zoning district regulations and limitations as set forth in the Land Development Regulations:

(a) Automotive Commercial (AC).

(b) General Commercial (GC).

(c) Planned Commercial (PC).

(d) Planned Office Center (POC).

(e) Planned Commerce Center (PCC).

(f) Mixed Industrial and Commercial (MIC).

(g) Planned Office District (POD).

(h) Mixed Residential Office and Commercial (MROC).

(i) Light Industrial (LI).

(j) Industrial (I).

(j) Central Business District (CBD). To maintain the historic character, and further support, the restaurant and retail activity of the downtown area, Mobile Food Dispensing Vehicles (MFDVs) may only operate within the portion of the Central Core Sub-district located north of Lake Ida Road. Operation of a MFDV in this area is subject to the following:

1. MFDVs must comply with the provisions in Code of Ordinances Title 11 – Business Regulations, Chapter 120 – Operation and Sale of Food from Mobile Food Trucks, unless otherwise amended in this subsection.
2. MFDVs are not subject to duration of stay restrictions in Chapter 120 and are limited to the hours of operation as the approved principle use(s) on the property.
3. MFDVs are not subject to the separation requirements from brick and mortar restaurants or outdoor dining areas, as specified in Chapter 120.
4. MFDVs must be parked on an improved surface.

(2) Mobile Food Trucks shall not be operated in residential zoning districts.

(3) Mobile Food Trucks shall not be parked in the following locations:

(a) Within twenty (20) feet of a crosswalk;

- (b) Within two hundred (200) feet of any brick and mortar restaurant or outdoor dining area;
- (c) Within fifteen (15) feet of any fire hydrant or storm drainage structure
- (4) Mobile Food Trucks shall not be operated in any City park, City parking lot, municipal beach, State Road A-1-A, other public rights-of-way, and in municipal cemeteries, unless otherwise approved by a separate agreement with the City.
- (5) Mobile Food Trucks shall not be operated on unimproved surfaces, vacant lots, and abandoned business locations, unless otherwise approved by the City Commission
- (6) Mobile food vendors are prohibited from selling or distributing alcoholic beverages.
- (7) Mobile food vendors are prohibited from providing a dining area, including, but not limited to, tables, chairs, booths, bar stools, benches, and standup counters.
- (8) Mobile food vendors are prohibited from selling or dispensing food to customers in a moving vehicle or otherwise engage in drive-up sales.

(C) Mobile Food Establishment

- (1) *Administrative Rules and Regulations.* The City Manager shall adopt, enact and amend Administrative Rules and Regulations for mobile food establishments at the direction of the City Commission. Mobile food establishments are exempt from the locational limitations of this section, provided such vehicles are only parked for a maximum of fifteen (15) minutes.
- (2) *Permit Requirements.* Any person engaged in the selling, preparation or dispensing of food from a mobile food establishment must purchase a mobile food vendor permit in accordance with this Chapter and the Administrative Rules and Regulations. All mobile food establishment vendors must display the permit issued by the City in a prominent and visible manner.

~~(E) Prohibitions.~~ Mobile food vendors are prohibited from the following:

- ~~(1) Selling or distributing alcoholic beverages;~~
- ~~(2) Operating in a City park or City parking lots, municipal beach, state road A-1-A, and public rights of way, municipal cemetery or residentially zoned neighborhoods unless pursuant to a separate agreement with the City;~~
- ~~(3) Operating outside of the permitted zoning districts listed in Section 120.01(D) above unless pursuant to a separate agreement with the City or this Chapter;~~
- ~~(4) Operating on unimproved surfaces, vacant lots and abandoned business locations;~~
- ~~(5) Providing or allowing a dining area, including but not limited to tables, chairs, booths, bar stools, benches and standup counters;~~
- ~~(6) Selling or dispensing food to customers in a moving vehicle or otherwise engaging in drive-up sales;~~
- ~~(7) Parking a mobile food truck:~~
 - ~~(a) Within twenty (20) feet of a crosswalk;~~
 - ~~(b) Within two hundred (200) feet of any brick and mortar restaurant or outdoor dining area;~~

~~(c) Within fifteen (15) feet of any fire hydrant or storm drainage structure~~

~~(FD)~~ *Food Truck General Regulations.*

- (1) Mobile food vendors shall remove all waste and trash at the end of each day.
- (2) Under no circumstances shall grease be released into the City's sanitary sewer system. No liquid waste or grease is to be disposed in tree pits or onto the sidewalks, streets or other public spaces.
- (3) In accordance with the State of Florida Department of Business and Professional Regulation guidelines, all necessary control measures shall be used to effectively minimize, or eliminate when possible, the presence of rodents, roaches and other vermin and insects on the premises of all mobile food Trucks. Each Mobile Food Vendor shall maintain a log containing a written record of the control measures performed by exterminators or other pest control businesses on the mobile food truck. This log shall be open to inspection by City Code Enforcement Officers.
- (4) Mobile food vendors must not engage in food preparation if the vehicle does not provide water and waste systems as required by the Florida Department of Business and Professional Regulation or otherwise fails to meet sanitation and safety requirements.
- (5) All food service equipment utilized by the mobile food vendor shall be maintained in good repair and a clean condition.
- (6) A mobile food vendor shall use only single-service food utensils. All single-service food utensils such as cups, straws, knives, forks, spoons and stirrers shall be individually wrapped, kept in a clean place, properly handled and shall be used only once. Vendors are encouraged to use sustainable single-use products, pursuant to guidelines developed by the Sustainability Department. All cups and containers for bulk drinks shall be stored in closed cartons and served from dispensers which protect their rims from contamination by customers, dust, dirt or flies.
- (7) All pre-packaged food must be individually wrapped and must comply with the labeling requirements provided in 21 CFR Part 101, as amended. No person shall keep or offer for sale individual portions of perishable food products which have been rewrapped or repackaged or portions of which the identifying date on the wrapper has been altered, disfigured or changed in any manner.

~~(GE)~~ *Operating Requirements.*

- (1) Mobile food trucks shall be permitted to operate between 9:00 a.m. and midnight each day of the week.
- (2) Mobile food trucks shall not be parked at one location for longer than six ~~(6)~~ hours.
- (3) A mobile food truck may operate at a single location up to a maximum of four ~~(4)~~ days per week but no more than three ~~(3)~~ consecutive days.
- (4) Mobile food trucks shall not exceed ~~ten (10)~~ feet in width, including any side extensions of awnings, ~~twenty-four (24)~~ feet in length, including the length of any trailer hitch, the trailer or other extensions.
- (5) Mobile food trucks must be self-contained when operating, except for the required trash and/or recycling receptacles, which must be attached to the mobile food truck, and shall not impede free movement of automobiles or pedestrians. The mobile food vendor shall keep all areas within five ~~(5)~~ feet of the mobile food truck clean of grease, trash, paper, cups or cans associated with the vending operation.

- (6) No more than one mobile food truck shall operate on any property at any one time, except as may be permitted by a special event or special use permit issued by the City.
- (7) Mobile food trucks operating at a site for a duration of more than three ~~(3)~~ hours shall have a written agreement, available upon request, which confirms that employees have access to a flushable restroom within ~~one hundred fifty~~ (150) feet of the vending location during the hours of operation.
- (8) Mobile food trucks shall be operated only by the mobile food vendor permittee or by an authorized employee of such permittee.

~~(H)~~ *Refrigeration and Heating Equipment.*

- (1) All mobile food trucks shall have adequate mechanical refrigeration equipment that is capable of maintaining food or drink at a temperature of ~~forty~~ (40) degrees Fahrenheit or less, if any food or drink is required to be kept cold.
- (2) All mobile food trucks shall have adequate mechanical heating equipment that is capable of maintaining food or drink at a temperature of ~~one hundred forty~~ (140) degrees Fahrenheit or more, if any food or drink is required to be kept hot, or capable of heating food or drink to a temperature of ~~one hundred sixty-five~~ (165) degrees Fahrenheit or more, if any food or drink is required to be heated.
- (3) All mechanical refrigeration and heating equipment shall be equipped with a thermometer.

~~(I)~~ *Food Service Provided to Persons Engaged in Construction.* ~~Class II Mobile Food Trucks~~ MFEs that are being used to provide food and drink to persons engaged in construction in the City of Delray Beach are exempt from the provisions of Section 120.01(D) above, provided such vehicles are only parked for a maximum of ~~fifteen~~ (15) minutes.

~~(J)~~ *Penalty.*

- ~~(1) A Code Enforcement Officer or a Law Enforcement Officer may issue a civil citation for a violation of this Chapter pursuant to the procedures and amounts listed in Section 37.45 of this City's Code of Ordinances. Each violation shall constitute a separate instance for which a separate penalty may be imposed in accordance with the penalties listed below:~~
 - ~~(a) If the offense is the first offense, a maximum fine of three hundred twenty-five dollars (\$325.00) may be imposed.~~
 - ~~(b) If the offense is the second offense within the preceding twelve (12) months, a maximum fine of five hundred dollars (\$500.00) may be imposed.~~
 - ~~(c) If the offense is the third offense within the preceding twelve (12) months, the mobile food vendor permit may be revoked.~~
- ~~(2) For the purposes of this section, "offense" shall mean a finding of violation by the Code Enforcement Board or payment of the noncontested civil penalty in Section 37.45(Q) of this City's Code of Ordinances. An offense shall be deemed to have occurred on the date the violation occurred. An offense occurring twelve (12) months after the last offense shall be treated as a first offense for purposes of incurring new fines and penalties.~~
- ~~(3) If, at any time, the Florida Department of Business and Professional Regulation revokes or suspends the mobile food vendor's license, the City's Mobile Food Vendor permit shall be deemed to have been simultaneously revoked or suspended.~~

(1) Any person who violates this section shall be subject to the penalties set forth at Section 10.99 of the Code of Ordinances, Chapter 37 of the Code of Ordinances, F.S. Ch. 162, and/or any other means of enforcement available under state or federal law, inclusive.

(2) Additionally, the City may initiate a civil action in a court of competent jurisdiction to enjoin any violation of this section.

Section 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. Specific authority and direction is hereby given to the City Clerk to codify this Ordinance.

Section 6. That this ordinance shall become effective immediately upon its passage on second and final reading and shall apply to all existing and future applications for permits.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2020.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

First Reading _____

Second Reading _____

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney