

ORDINANCE 2021-14

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO MOBILE FOOD VEHICLES; AMENDING THE *CODE OF ORDINANCES, APPENDIX G-LAND DEVELOPMENT CODE*; BY AMENDING CHAPTER 2 ENTITLED “DEFINITIONS” TO PROVIDE FOR A DEFINITION OF MOBILE FOOD VEHICLE; AMENDING CHAPTER 14 ENTITLED “ZONING REGULATIONS” TO PROVIDE FOR MOBILE FOOD VEHICLES ON CERTAIN PROPERTIES WITHIN CITY LIMITS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its comprehensive plan and protecting the public health, safety, and general welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores desires that the economy of the City of Daytona Beach Shores be one that is vibrant, creative, flexible and dynamic; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that mobile food vehicles can help to retain and enhance existing business operations and success; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that mobile food vehicles can be regulated so as to not adversely impact the appearance of the community and its public image; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that mobile food vehicles as part of an overall development plan can encourage redevelopment of certain blighted properties and enhance economic and social activity within the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that mobile food vehicles can be regulated so as to not adversely impact the public health, safety and welfare; and

WHEREAS, the City Council of the City of Daytona Beach Shores has deemed approval of this Ordinance to be in the best interest of the businesses, visitors, residents and citizens of the City of Daytona Beach Shores; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, the City of Daytona Beach Shores recognizes the need to comply with Section 509.102, *Florida Statutes*, which preempts certain regulatory abilities of local governments regarding mobile food dispensing vehicles; and

WHEREAS, the City Council of the City of Daytona Beach Shores values and recognizes the local economic importance of brick and mortar public food establishments in the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores recognizes that limiting mobile food vehicle locations to commercial and hotel properties subject to an active development agreement will not negatively impact either brick and mortar public food establishments in the City or mobile food vehicle businesses; and

WHEREAS, this Ordinance is consistent with Section 509.102, *Florida Statutes*; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

WHEREAS, for purposes of this Ordinance, underlined type shall constitute additions to the original text, *** shall constitute ellipses to the original text and strikethrough shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Chapter 2, entitled “Definitions,” by adding the following:

CHAPTER 2. - DEFINITIONS

Sec. 2-2. - General definitions.

Mobile Food Vehicle: Any vehicle whose operator possesses an active mobile food service license from the Florida Department of Business and Professional Regulation (DBPR) wherein food is prepared, served, or sold for takeout or immediate consumption on or in the vicinity of the premises.

SECTION TWO: The City Council of the City of Daytona Beach Shores hereby amends the *Code of Ordinances of the City of Daytona Beach Shores*, Appendix G-Land Development Code, Chapter 14, entitled “Zoning Regulations,” by adding the following:

CHAPTER 14 – ZONING REGULATIONS

Sec. 14-22. - GC-1 Tourist-Oriented Commercial District.

14-22.1. Purpose and Intent.

The purpose and intent of this district is to encourage the development of an intensive commercial facility, providing a wide range of tourist oriented goods and services located adjoining at least one (1) major collector or arterial road.

14-22.3. Restriction of Exterior Sales and Services.

Except for uses as permitted in section 14-60.2. and compliant with section 14-60.3.3 of this code, all ~~All~~ retail sales and services shall be within a completely enclosed structure which does not create any noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot.

1. Items displayed outdoors shall not impede walking traffic and shall maintain a minimum five (5) foot sidewalk clearance.
2. Outdoor displays shall not impede vehicular traffic and shall not be placed in any parking area.

Sec. 14-23. - GC-2 Retail/Service Commercial District.

14-23.1. Purpose and Intent.

This restrictive district is designed to provide small attractive commercial areas, keyed to general locations designated in the Comprehensive Plan, to meet the daily retail and service needs of the resident and tourist population. These commercial areas should be designed and constructed so as to cause the least possible nuisance to adjacent residential uses.

14-23.3. Restriction of Exterior Sales and Services.

Except for uses as permitted in section 14-60.2. and compliant with section 14-60.3.3 of this code, all ~~All~~ retail sales and services shall be within a completely enclosed structure which does not create any noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot.

1. Items displayed outdoors shall not impede walking traffic and shall maintain a minimum five-foot sidewalk clearance.

2. Outdoor displays shall not impede vehicular traffic and shall not be placed in any parking area.

Sec. 14-31. - Redevelopment Districts.

14-31.1. GC-RD General Commercial-Redevelopment District.

14-31.1.1.

Purpose and Intent. To encourage the development and redevelopment of commercial property in the redevelopment areas.

14-31.1.6.

Restriction of Exterior Sales and Services.

Notwithstanding section 14-31.1.7 of this Code, and except for uses as permitted in section 14-60.2. and compliant with section 14-60.3.3 of this code, all retail sales and services shall occur within a completely enclosed structure and it is prohibited and unlawful for such uses to create any noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot on which the structure is located. It is prohibited and unlawful to violate either of the following conditions:

1. Outdoor items and displays shall not impede walking traffic and shall maintain a minimum sidewalk clearance of five (5) feet.

2. Outdoor items and displays shall not impede vehicular traffic and shall not be placed in any parking area.

Sec. 14-34. - Accessory uses and structures.

No accessory uses, structures, which shall include publication storage devices as an accessory use, shall be located in any required yard except as provided for below:

8. Mobile food vehicles may be permitted in required side and rear yards pursuant to Section 14-60.3.3 of this code.

Sec. 14-60.3. - Outside activities and uses.

1. *Outside Activities and Uses Prohibited Generally.* Except as specifically provided otherwise all activities, storage and displays shall be conducted entirely within an enclosed structure in all districts of the city.

2. *Outside Activities and Uses Specifically Permitted.*

- (a) Gift shop shell displays not greater than eighty (80) square feet.
- (b) Retail displays at least one hundred (100) feet from any public right-of-way.
- (c) Temporary promotional activities as provided in section 14-60.2.
- (d) Sidewalk cafes in the TC-MUPUDW District pursuant to an approved development agreement.
- (e) Outdoor dining pursuant to section 14-58.2.1 of this Code.
- (f) Garage sales and other customary accessory uses in the RSF-1 and RSF-2 zoning districts.
- (g) Mobile food vehicles pursuant to section 14-60.3.3 of this code.

3. Mobile Food Vehicles

(a) Location.

Mobile food vehicles as defined in Sec. 2-2 of this code are authorized to operate on (i) any active construction site pursuant to Sec. 5-14 of this code and (ii) any commercial or hotel property that is subject to an approved development agreement. All mobile food vehicles operating in the city shall adhere to the following requirements provided however, mobile food vehicles operating with a permit for a specific special event sponsored by the City of Daytona Beach Shores are exempt from the provisions of these regulations except for life safety provisions required by controlling law.

(b) Specific requirements.

- 1. The operator of a mobile food vehicle as defined in Sec. 2-2 of this code shall have the written consent of the property owner(s) prior to operation of the mobile food vehicle.
- 2. Mobile food vehicle operator shall make the mobile food vehicle available for inspection by the Public Safety Department at a location determined by the department prior to operation. The Public Safety Department shall ensure compliance with all applicable federal, state, and local fire safety statutes, regulations, ordinances, and codes. Subsequently, every mobile food vehicle shall undergo bi-annual inspection by the Public Safety Department. Failure to have the mobile food vehicle inspected prior to operation may result in a public safety officer, under the authority of the fire marshal, requiring the mobile food vehicle to shut down until the initial inspection can be conducted.
- 3. Mobile food vehicle operators shall display prominently all applicable approvals and licenses from the State of Florida Department of Business and Professional Regulations (DBPR), Florida Department of Health, and Florida Department of Agriculture and Consumer Services.

4. Prior to performing outdoor cooking operations, workers shall be trained in emergency response procedures.
5. Initial and refresher training shall be documented and made available to an inspector upon request.
6. Mobile food vehicles shall comply with all requirements of National Fire Protection Association most current adopted edition by the Florida Administrative Code 69A (NFPA) 1 Chapter 50 Mobile and Temporary Cooking Operations.

(c) Prohibitions

Mobile food vehicle operations are prohibited from the following:

1. Selling or distributing alcoholic beverages.
2. Serving food from a free-standing barbecue grill.
3. Operating, standing or storage of the vehicle on a public right-of-way, driveway, driveway aisle, loading zone, no parking zone, required parking area or any other required vehicular use element of the site.
4. Operating in a fire lane or blocking fire hydrants or any other fire protection devices and equipment, or Americans with Disabilities Act (ADA) accessible parking spaces and/or accessible ramps.
5. Operating in a location that will impede on-site circulation of motor vehicles.
6. Operating at inactive construction sites and vacant business locations.
7. Use of sound amplification regardless of intended purpose.
8. Utilizing balloons, banners, streamers, flashing (including moving or alternating) lights, or other similar devices to attract customers.
9. Selling or dispensing food to customers in a moving vehicle or otherwise engaging in drive-up sales.

(d) General requirements.

1. Mobile food vehicle operators shall remove all waste and trash prior to vacating their location.
2. Under no circumstances shall grease or any waste materials be released into the stormwater system, tree pits, landscaped areas, open areas, sidewalks, streets, parking lots, or on any other private or public property. Outdoor food vendors shall be responsible to properly discard any waste material in accordance with controlling law.
3. There shall be no emission of visible smoke, dust, dirt, fly ash or any particulate matter from any pipes, vents or other openings, or from any other source, into the air. All fuel shall be used so as to prevent any emission of visible smoke, fly ash or cinders into the air.
4. There shall be no emission of any fumes, vapors or gases of a noxious, toxic or corrosive nature which can cause any damage or irritation to health, animals, vegetation or to any form of persons or property.
5. No mobile food vehicle equipment or process shall create noise or sounds in excess of 65dBA while operating.

6. In accordance with the 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 or within the premises of all outdoor food vending operation, including mobile food trucks. Each outdoor 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 the City.
7. Mobile food vehicle operators shall not engage in food preparation if the vending operation 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.
8. All food service equipment utilized by the mobile food vehicle operator shall be maintained in good repair and a clean condition.
9. Routine inspections may be conducted by code enforcement inspectors, building code inspectors, or public safety officers at any mobile food vehicle operation at any time and at any frequency deemed appropriate by the City.

(e) Operating requirements.

1. Mobile food vehicles shall not operate on a site for more than twelve (12) consecutive hours.
2. Mobile food vehicles shall be permitted to operate between the hours of 7:00 a.m. and 10:00 p.m., provided however, mobile food vehicles on construction sites shall be limited to operate between the hours of 7:00 a.m. and 3:30 p.m.
3. Mobile food vehicles shall be self-contained when operating, except for the required trash and/or recycling receptacles that shall be attached to the vehicle and shall not impede free movement of automobiles or pedestrians.
4. No more than one (1) mobile food vehicle shall operate on any property at any one time, except as may be authorized by a special event permit or development agreement approved by the City Council.
5. Mobile food vehicles may operate in required side and rear yards provided however mobile food trucks shall maintain a distance of at least 50 feet from all residential properties.
6. When seating is provided in direct connection with an operating mobile food vehicle, American with Disability Act (ADA), restroom and other controlling law requirements shall apply.
7. Mobile food vehicles and operations shall be operated only by an authorized employee of the mobile food service license holder.
8. If at any time the Florida Department of Business and Professional Regulation revokes or suspends the mobile food vehicle's license, the City's outdoor food vending permit and/or authorization shall be deemed to have been simultaneously revoked or suspended.

SECTION THREE: ENFORCEMENT AND PENALTIES.

(a). It is prohibited and unlawful for any person to fail to comply with the requirements of this Ordinance.

(b). Notwithstanding subsection (b), the City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

(c). The penalties for violation of this Ordinance shall be as set forth in the code enforcement method asserted by the City under the *Code of Ordinances of the City of Daytona Beach Shores, Florida*, or as may be available under the controlling provisions of State law.

(d). Nothing herein shall be interpreted to reduce or otherwise diminish the authority of the chief of public safety, the fire marshal, or any other city official to enforce health, safety, and welfare standards under any and all applicable laws, statutes, codes, regulations, or other similar authority.

SECTION FOUR: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to mobile food vehicles are hereby ratified and affirmed.

SECTION FIVE: CODIFICATION. The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Four, Five, Six, Seven and Eight shall not be codified. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION SIX: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION SEVEN: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION EIGHT: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

NANCY MILLER, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

JOHN CARY, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2021.

Adopted on second reading this _____ day of _____, 2021.