

Introduced by Councilmember Brown and amended by the Rules Committee and amended on the Floor of the Council:

ORDINANCE 2014-472-E

AN ORDINANCE RELATING TO MISCELLANEOUS BUSINESS REGULATIONS; AMENDING CHAPTER 250 *ORDINANCE CODE*; AMENDING SECTION 250.101 (DEFINITIONS) TO REPLACE "DOWNTOWN DEVELOPMENT AUTHORITY" WITH "DOWNTOWN INVESTMENT AUTHORITY"; TO ADD A NEW DEFINITION FOR "MOBILE FOOD DISPENSING VENDOR"; CREATING A NEW PART 12 (MOBILE FOOD DISPENSING VENDOR); CREATING A NEW SUBSECTION 250.1201 (LICENSES AND PERMITS; MOBILE FOOD DISPENSING VENDOR AREAS; BATHROOM FACILITIES); CREATING A NEW SUBSECTION 250.1202 (MOBILE FOOD DISPENSING VENDORS; DISPLAY OF PERMITS; HOURS OF OPERATION; SELF-CONTAINMENT); CREATING A NEW SUBSECTION 250.1203 (REQUIREMENTS TO OPERATE AND LOCATE MOBILE FOOD DISPENSING VEHICLES IN DOWNTOWN JACKSONVILLE); CREATING A NEW SUBSECTION 250.1204 (REQUIREMENTS TO OPERATE AND LOCATE MOBILE FOOD DISPENSING VEHICLES IN CITY PARKS); CREATING A NEW SUBSECTION 250.1205 (WASTE MANAGEMENT); CREATING A NEW SUBSECTION 250.1206 (INDEMNIFICATION); CREATING A NEW SUBSECTION 250.1207 (INSURANCE); CREATING A NEW SUBSECTION 250.1208 (VIOLATIONS AND ENFORCEMENT); PROVIDING AN EFFECTIVE DATE.

1 **WHEREAS,** the Mobile Food Vending Industry is growing and
2 continuing to expand in Jacksonville and nationwide in response to
3 citizens' desire for quick access to goods and produce; and

4 **WHEREAS,** the Mobile Food Dispensing Vendors also known as
5 "Food Trucks" are operated by small business owners whose revenue
6 provides entrepreneurial opportunities as well as job growth; and

7 **WHEREAS,** established restaurant businesses also known as
8 "brick and mortars" also contribute, substantially, to the overall
9 local Jacksonville economy, provide numerous food options as well
10 as job growth; and

11 **WHEREAS,** this Ordinance seeks to allow both the Mobile Food
12 Dispensing Vendor, and the established restaurant industry to co-
13 exist without negative financial impact to the other; and

14 **WHEREAS,** to equally promote both industries for mutual
15 economic growth to Jacksonville, the City Council seeks to regulate
16 the Mobile Food Dispensing Vendors in Jacksonville; and

17 **WHEREAS,** Section 509.032(7) (a), Fla. Stat., provides, in
18 pertinent part, that:

19
20 The regulation of public lodging establishments and
21 public food service establishments, including, but not
22 limited to, sanitation standards, inspections, training
23 and testing of personnel, and matters related to the
24 nutritional content and marketing of foods offered in
25 such establishments, is preempted to the state...; and
26

27 **WHEREAS,** the Office of General Counsel contacted the Florida
28 Department of Business of Professional Regulation, Division of
29 Hotels and Restaurants, to request its review and comment of the
30 initial draft of this Ordinance; and

31 **WHEREAS,** in response, the Division of Hotels and Restaurants

1 ("Division") advised that the state is responsible for enforcing
2 sanitation and safety regulations to protect the public from food
3 borne illnesses; and

4 **WHEREAS**, the Division also advised that it has no authority
5 over zoning, operating locations or hours of operation; and

6 **WHEREAS**, several public meetings were held on February 25,
7 2014, March 12, 2014, March 24, 2014 and April 7, 2014 to allow
8 citizens, Mobile Food Dispensing Vendors, restaurant owners and
9 City Staff to provide extensive comment to this Ordinance; and

10 **WHEREAS**, the Downtown Investment Authority, the Jacksonville
11 Parks and Recreation Department, the Risk Management Department as
12 well as Planning and Development Department and Regulatory
13 Compliance Department staff have reviewed this Ordinance, and
14 provided proposed language thereto; and now therefore

15 **BE IT ORDAINED** by the Council of the City of Jacksonville:

16 **Section 1. Chapter 250 (Miscellaneous Business**
17 **Regulations), Ordinance Code, amended.** Chapter 250 (Miscellaneous
18 Business Regulations), *Ordinance Code*, is hereby amended to read as
19 follows:

20 **CHAPTER 250 MISCELLANEOUS BUSINESS REGULATIONS**

21 **PART 1. - IN GENERAL**

22 **Sec. 250.101 - Definitions.**

23 As used in this Chapter:

24 (a) *Auctioneer* means a person who manages or engages in the
25 business of selling or offering for sale at public
26 auction or public outcry tangible personal property for
27 his own gain or for a fee for services rendered.

28 (b) *Authority* means the Downtown Investment ~~Development~~
29 Authority.

30 (c) *Department* means the Regulatory Compliance Department.

31 (d) *Director* means Director of the Regulatory Compliance

1 Department.

2 (e) *Distribute* means to give, offer, provide or offer to
3 give, offer or provide, at a significantly reduced or no
4 cost, any food, beverages, merchandise or services on
5 private property or public sidewalks or property.

6 (f) *Distributor* means any person who distributes or offers to
7 distribute to the public, at a significantly reduced cost
8 or at no cost, any food, beverages, merchandise or
9 services on private property or public sidewalks or
10 property; provided however, that this definition excepts
11 and excludes (1) any person on real property owned by a
12 religious organization and motivated by *bona fide*
13 religious beliefs as protected by the First Amendment to
14 the United States Constitution, the Florida Constitution,
15 and any Religious Freedom Restoration Act of the state or
16 federal government and who is otherwise compliant with the
17 Duval County Health Department requirements or, (2) any
18 person on real property owned by such person who is
19 otherwise compliant with the Duval County Health
20 Department requirements.

21 (g) For the purposes of this Part, Duval County Health
22 Department requirements include, but are not limited to,
23 the requirement that a person shall not distribute food or
24 beverage to any person unless a trash receptacle is
25 located within 50 feet of the location of such
26 distribution of any food or beverage, and shall not
27 distribute any food or beverage to any person unless a
28 restroom facility is available for the use by such person
29 and unless the restroom facility is located within 100
30 feet of the location where the distribution of such food
31 or beverage shall occur. The foregoing requirement

1 regarding proximity to restroom facilities shall not apply
2 to the feeding of the homeless pursuant to Section
3 250.123, Ordinance Code.

4 (h) *Downtown sidewalk vendor* means any person who distributes
5 or offers to distribute, or sells or offers to sell food,
6 beverages, merchandise or services on the public sidewalks
7 in the downtown area, in accordance with Part 5.

8 (i) *Mobile Food Dispensing Vendor* means a person who is
9 operating a licensed, motorized vehicle, truck or trailer,
10 which is temporarily parked on premises, to vend, sell,
11 offer for sale, solicit orders, display or otherwise serve
12 food for human consumption to the public as authorized or
13 regulated in this Part.

14 (j) ~~(i)~~ *Peddler* means a person who sells or offers for sale
15 merchandise or services or both by carrying any such
16 merchandise if selling or offering to sell same, without
17 operation from a fixed business location for the
18 exhibition and sale of such merchandise or services or
19 both.

20 (k) ~~(j)~~ *Sidewalk vendor* means any person who distributes or
21 offers to distribute, or sells or offers to sell food,
22 beverages, merchandise or services on or near public
23 sidewalks.

24 (l) ~~(k)~~ *Solicitor* means a person engaged in soliciting as
25 that term is defined in Section 250.701(a).

26 (m) ~~(l)~~ *Street vendor* means a person engaged in the
27 activities defined in Part 6.

28 (n) ~~(m)~~ *Transient merchant* means a person who sells or
29 offers for sale merchandise at any place in the City
30 temporarily and who does not intend to become and does not
31 become a permanent merchant at such place and who, for the

purpose of carrying on such business, hires, leases or occupies, either in whole or in part, a business location for the exhibition and sale of merchandise. The activities of a transient merchant take place on private property.

* * *

PART 12. - MOBILE FOOD DISPENSING VENDORS

Sec. 250.1201. - Licenses and permits; Mobile Food Dispensing vending areas.

(a) **Licenses and permits.** Mobile Food Dispensing vendors shall apply for, obtain and clearly display all required State of Florida, and City of Jacksonville permits, licenses and business tax receipts for the temporary location of a mobile food dispensing vehicle vending area. This location shall meet the standards set forth in this Part. Any such application shall be reviewed by the Department to assure compliance with this Part before being submitted to the Tax Collector for payment.

(b) Vending Areas.

(i) Downtown Jacksonville - Mobile Food Dispensing Vendors are allowed in all zoning districts as a permitted use.

(ii) All areas in Jacksonville other than Downtown - Mobile Food Dispensing Vendors may vend food or nonalcoholic beverages from a mobile food dispensing vehicle in all zoning districts except the Commercial Neighborhood (CN) zoning district subject to the issuance of a zoning exception pursuant to the Zoning Code.

(c) The Mobile Food Dispensing Vendor shall not vend in residential zoning districts without first obtaining written consent of the owner of the residential property, and vending shall not occur before 6:00 a.m., or after 10:00 p.m.

(d) The Mobile Food Dispensing Vendor shall not impair, impede, endanger or interfere with pedestrian or vehicle traffic.

(e) Except where already designated in the Downtown Area and City Parks as set forth in Sections 250.1203 and 250.1204 of this Part, a Mobile Food Dispensing Vendor is not allowed to locate:

(1) On any divided road which does not have curbs and sidewalks alongside such road; on or in any median in any road; within any area which would block the view of traffic or traffic signals or traffic signs;

(2) Within 15 feet of any crosswalk; any building entrance or exit or any walk which leads directly from a building entrance or exit;

(3) Within 20 feet of any bus stop;

(4) Within 25 feet of any intersection of a public street, right-of-way, driveway or alleyway;

(5) Within 75 feet of any vendor who has been granted an assigned location permit pursuant to Section 250.301(a);

(6) Within 15 feet in all directions of any fire hydrant;

(7) Within 50 feet from a brick and mortar business or on any property on which is located any established permanent business which sells the same types of products or services as requested to be sold by the Mobile Food Dispensing Vendor, unless the property owner or business owner of the established permanent business provides written consent to allow the Mobile Food Dispensing Vendor to locate and operate on the established permanent business.

(f) **Bathroom facilities.** Due to their temporary use, Mobile Food Dispensing Vehicles shall not be required to provide public bathroom facilities. 61C-4.010(7) (a), F.A.C.

Section 250.1202. Mobile Food Dispensing Vendors; Display of Permits; Hours of Operation; Self-containment.

(a) If propane or a combustible fuel is used, the mobile food

1 dispensing vendor shall properly display the required permits from
2 the Duval County Health Department and the Jacksonville Fire
3 Department.

4 (b) The Mobile Food Dispensing Vendor shall maintain and display
5 all required state and local permits and business licenses.

6 (c) Except where already specified in Sections 250.1203 (Downtown
7 Jacksonville) and 250.1204 (City Parks) of this Part, the hours of
8 operation for a Mobile Food Dispensing Vendor shall cease at 3:00
9 a.m. eastern time, and shall resume its hours of operation no
10 earlier than 6:00 a.m. eastern time, unless it has a Special Events
11 Permit.

12 (d) All Mobile Food Dispensing Vendors shall be limited to a self-
13 contained Truck/Trailer or be assigned to a licensed Commissary.

14 **Section 250.1203. Requirements to operate and locate Mobile Food**
15 **Dispensing Vehicles in Downtown Jacksonville.**

16 (a) Downtown Jacksonville is defined as that area designated
17 within the boundaries of the Downtown Overlay Zone as
18 depicted on the map as referenced in Section 656.361.2,
19 Ordinance Code, and incorporated herein also including all
20 Downtown Overlay districts.

21 (b) **Distance and location requirements for the Downtown Area.**
22 Within Downtown Jacksonville, Mobile Food Dispensing
23 Vendors are not allowed to locate:

24 (1) As set forth in sections 250.1201 (e) (2)-(6) of
25 this Part.

26 (2) Within 15 feet of any vendor who has been granted a
27 permit pursuant to Section 250.301(a) and Part 10 of this
28 Chapter.

29 (3) Within 50 feet of a permanent establishment selling
30 food for on-premises consumption, as measured from a
31 primary entrance of the permanent establishment to the

Mobile Food Dispensing Vendor.

(4) Within 50 feet of a residential unit, unless that residential unit is development part of a vertically mixed-use structure with ground floor non-residential, as measured from the front door of that residential unit to the Mobile Food Dispensing Vendor.

(5) On any city Right-of-Way or metered parking space.

(c) Hours of operation in the Downtown area are unlimited.

(d) Signage. Free-standing signage in the Downtown area shall be a single menu board not to exceed three feet in height, and six square feet in area, which shall be located within five feet of the Mobile Food Dispensing Vehicle.

Section 250.1204. Requirements to operate and locate in City Parks.

(a) Prior to locating or operating in City Parks for regular or re-occurring use, a Mobile Food Dispensing Vendor shall submit a response and application to a public notice for invitations to bid from the City of Jacksonville Procurement Department.

(b) To operate and locate for special uses and during athletic events, the Mobile Food Dispensing Vendor shall apply to the City of Jacksonville Parks, Recreation and Community Services Department for a temporary vendor permit.

Section 250.1205. Waste Management.

The Mobile Food Dispensing Vendor is responsible for the proper disposal of all waste and trash associated with the permitted operation. Vendors must maintain all areas within 15 feet of the Mobile Food Dispensing Vehicle at any time. The Mobile Food Dispensing vendor shall properly remove any waste or trash within 15 feet of the Mobile Food Dispensing Vendor at the end of each day or as needed to maintain the health and safety of the public whether or not caused by the vendor or any customer.

Sec. 250.1206. Indemnification

The Mobile Food Dispensing Vendor shall provide to the Director an agreement pursuant to which the Mobile Food Dispensing Vendor releases and forfeits any right of action against the City or its members, officials, employees and agents from any liabilities, claims for damages, losses, and costs which arise out of or in connection with their vending operations (including all costs for investigation and defenses thereof, such as court costs, reasonable expert witness and attorney fees) and to the fullest extent permitted by law, indemnifies, defends and saves the City and City's members, officials, officers, employees and agents harmless against all liability, claims for damages, and suits for or by reason of (1) any injury to any person, including death, (2) damage to any property for every cause in any way connected with their vending operations irrespective of negligence, actual or claimed, upon the part of the City, its agents and employees, except where caused by the willful and wanton acts of City officials, officers, employees and agents and (3) environmental damages, claims or citations due to Food Truck/Trailer Vendor's operations violating any environmental law, ordinance, rule or regulation.

Sec. 250.1207. Insurance.

Before any vending activity begins, on City owned or City-leased property, each Mobile Food Dispensing Vendor shall, without limiting vendor's liability:

(a) Procure and maintain at Mobile Food Dispensing Vendor's sole expense, insurance of the types, coverages and amounts not less than stated below:

<u>Schedule</u>	<u>Limits</u>
-----------------	---------------

<u>Commercial General Liability -No more restrictive than ISO Form CG0001 (including property damage, personal injury, products / comp. ops. agg., premises, operations, and blanket contractual liability)</u>	<u>\$1,000,000 Each Occurrence</u> <u>\$2,000,000 Products & Completed Ops Aggregate</u> <u>\$1,000,000 Personal Injury and Advertising</u> <u>\$1,000,000 General Aggregate</u> <u>\$50,000 Property Damage</u> <u>\$5,000 Med. Expense</u>
---	---

(The City of Jacksonville and City's members, officials, officers, employees and agents, shall be named as additional insureds under all of the above Commercial General Liability coverage).

1

<u>Automobile Liability (all automobiles-owned, hired or non-owned)</u> <u>(Including any necessary endorsement and/or coverages to ensure that any liabilities associated with vending from a Trailer are covered) .</u>	<u>\$1,000,000 Combined Single Limit</u>
--	--

2

<u>Workers Compensation</u>	<u>Florida Statutory</u>
-----------------------------	--------------------------

<u>Including coverage for any appropriate Federal Acts (e.g. Longshore and Harbor Workers Compensation Act, 33 USC §§ 901-952, and the Jones Act, 46 USC §§ 688 et seq.) where activities include liability exposures for events or occurrences covered by Federal statutes.</u>	<u>Coverage</u>
<u>Employer's Liability</u>	<u>\$100,000 Each</u> <u>Accident</u> <u>\$500,000 Disease</u> <u>Policy Limit</u> <u>\$100,000 Each</u> <u>Employee/Disease</u>

1 Mobile Food Dispensing Vendor is solely responsible for
2 determining whether it needs workers' compensation insurance as
3 defined in Chapter 440, Florida Statutes. The Mobile Food
4 Dispensing Vendor will provide evidence of workers' compensation
5 insurance or exemption as required by Florida Workers Compensation
6 Law as defined in Chapter 440, Florida Statutes.

7 (b) Primary and Non-Contributory - The Mobile Food Dispensing
8 Vendor's insurance will apply on a primary basis and will not
9 require contribution from any insurance or self-insurance
10 maintained by the City.

11 (c) Deductibles - The deductibles of the insurance policies
12 applicable to the special event shall be deemed customary and the
13 responsibility of the Mobile Food Dispensing Vendor and any named
14 insureds.

15 (d) Additional Insured - The Mobile Food Dispensing Vendor's
16 insurance, except workers' compensation and any additional
17 coverages where it is unavailable, will name the City of

1 Jacksonville and City's members, official, officers, employees and
2 agents, as additional insureds under all insurance coverages
3 required for their vending activity.

4 (e) Duration - Notwithstanding anything to the contrary, the Mobile
5 Food Dispensing Vendor's liabilities intended to be covered by the
6 insurance coverage(s) required under this section shall survive and
7 not be terminated, reduced or otherwise limited by any expiration
8 or termination of particular policies for insurance coverages.

9 (f) Financial Responsibility - Mobile Food Dispensing Vendor shall
10 obtain insurance by an insurer holding a current certificate of
11 authority pursuant to Chapter 624, Florida Statutes, or a company
12 that is declared as an approved Surplus Lines carrier under Chapter
13 626, Florida Statutes. Such insurance shall be written by an
14 insurer with an A.M. Best Rating of A-VII or better. Mobile Food
15 Dispensing Vendor must maintain continuation of the required
16 insurance throughout the vending activity, which includes load-in,
17 setup, tear down, and load-out.

18 (g) Evidence of Financial Responsibility - Mobile Food Dispensing
19 Vendor must provide a certificate of insurance to the City's
20 Division of Risk Management, demonstrating the maintenance of the
21 required insurance including the additional insured endorsement, no
22 later than 10 days before the intended vending date. Upon written
23 request, the Mobile Food Dispensing Vendor shall make its insurance
24 policies and endorsements available to the City's Division of Risk
25 Management. The City's Division of Risk Management shall approve
26 the Mobile Food Dispensing Vendor's insurance if it complies with
27 this section's requirements, including, if any, additional
28 insurance coverages deemed necessary by the Division of Risk
29 Management. No material alteration or cancellation, including
30 expiration and non-renewal of Mobile Food Dispensing Vendor's
31 insurance, shall be effective until 30 days after receipt of

1 written notice by the City from the Mobile Food Dispensing Vendor
2 or the Mobile Food Dispensing Vendor's insurance company.

3 **Sec. 250.1208 Violation and Enforcement.**

4 (a) It shall be unlawful and a class D offense against the
5 City to sell, or offer for sale, any food or beverage, from a
6 Mobile Food Dispensing Vehicle within the City of Jacksonville
7 without first obtaining the required state license, and local
8 permit therefor from the Tax Collector as provided in Part 1 of
9 this Chapter.

10 (b) In accordance with the procedures set forth in Section
11 609.104, Ordinance Code, the Officer designated by the Director of
12 the Regulatory Compliance Department shall enforce this Part by
13 issuing a warning or citation to the owner or operator of the
14 Mobile Food Dispensing Vehicle for a violation of this Part.

15 * * *

16 **Section 2. Effective Date.** This ordinance shall become
17 effective upon signature by the Mayor or upon becoming effective
18 without the Mayor's signature.

19
20 Form Approved:

21
22 /s/ Cherry A. Shaw

23 Office of General Counsel

24 Legislation Prepared By: Cherry A. Shaw

25 G:\SHARED\LEGIS.CC\2014\Ord\2014-472-E.doc