



## City of North Port

### ORDINANCE NO. 2019-04

**AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, CREATING A MOBILE FOOD VENDOR PERMIT AND ASSOCIATED FEES FOR THE OPERATION OF MOBILE FOOD VENDORS AND ICE CREAM TRUCKS WITHIN THE CITY BY AMENDING THE CODE OF THE CITY OF NORTH PORT, FLORIDA, CHAPTER 34 – LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS, BY CREATING A NEW ARTICLE III – BUSINESS PERMITS AND APPENDIX A – CITY FEE STRUCTURE; PROVIDING FOR ADOPTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, mobile food vending is a growing industry in the United States and serves as a means for individuals to start businesses or to supplement existing businesses; and

**WHEREAS**, there is an increasing demand for a greater variety of food options than are present in the City; and

**WHEREAS**, at present, mobile food vendors within the City are limited to being part of a special event held in the City; and

**WHEREAS**, on April 2, 2018 and July 5, 2018, the City Commission held properly-noticed workshops to discuss mobile food vendors in the City; and

**WHEREAS**, the City Commission has determined that the proposed amendments serve the public health, safety, and welfare of the citizens of the City of North Port, Florida.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:**

#### **SECTION 1 – FINDINGS**

1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set forth herein.

#### **SECTION 2 – ADOPTION**

2.01 The City Commission hereby approves and adopts the following amendments to the Code of the City of North Port, Florida:

**"Chapter 34 – LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS**

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**ARTICLE III. – BUSINESS PERMITS RESERVED**

**Sec. 34-54. – Definitions.**

When used in this article, the following terms and phrases shall have meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) Ice cream truck. A motorized vehicle or vehicle-mounted trailer from which only prepackaged, individually portioned frozen novelties or desserts, such as ice cream sandwiches, frozen yogurt bars, popsicles, or other frozen dessert products defined in F.S. Section 502.012, are sold.

(2) Mobile food vendor. The operator of a motorized vehicle or vehicle-mounted trailer used for the operation of food service activities or for the operation of an ice cream truck.

**Sec. 34-55. – Mobile food vendor permit.**

(a) Applicability. It is a violation of this code for a mobile food vendor to sell any product at any location or in any manner that is not in compliance with the requirements of this section. The provisions of this section shall not apply to a mobile food vendor operating pursuant to a special event permit or temporary use permit.

(b) Permit requirement. When operating in the city, a mobile food vendor must have its mobile food vendor permit available for inspection at all times and must be licensed in accordance with the rules and regulations of any state agency having jurisdiction over the mobile food vendor or the products sold therein.

(1) Duration. A mobile food vendor permit is valid for one (1) year from the date of issue.

(2) Fee. An applicant must pay the mobile food vendor permit fee when submitting an application for a mobile food vendor permit.

(3) Application. A mobile food vendor must submit a complete permit application to obtain or renew a mobile food vendor permit. The permit application must include all the following:

a. The name, address, phone number, and email address of the mobile food vendor;

b. A list or description of all food, beverages, and other items intended to be sold;

c. Proof of a valid mobile food dispensing service license or hot dog cart license issued by the Florida Department of Business and Professional Regulation, a mobile food establishment permit issued by the Florida Department of Agriculture and Consumer Services, and a license or permit from any other state agency having jurisdiction over the mobile food vendor or the products sold therein as applicable to the mobile food vendor's intended operation;

- d. The mobile food vendor's notarized signature acknowledging review of, and agreement to abide by, the regulations set forth in this code and attesting that the vendor has not held a City issued mobile food vendor permit in the previous two (2) years that was revoked for any reason;
  - e. Confirmation from City of North Port Fire Rescue indicating that the mobile food vendor has passed a fire and safety inspection based on the applicable Florida Fire Prevention Code; and
  - f. Proof of any insurance required by this section if applicable.
- (c) Location. A mobile food vendor permit allows a mobile food vendor to operate in the following locations:
- (1) City-owned property.
    - a. On the following city-owned property, total operation must be contained within the area designated for their operation by the City Manager or designee:
      - 1. Dallas White Park;
      - 2. The Garden of the Five Senses;
      - 3. Highland Ridge Park; and
      - 4. City Center Green.
    - b. No more than four (4) mobile food vendors may operate on any single city-owned property at the same time.
    - c. Conflict. A mobile food vendor may not operate at any location where the City Manager or designee determines that a conflict exists between a mobile food vendor's operation and an existing license or franchise agreement, contractual obligation, or any other public health or safety concern, including but not limited to a special event or facility rental.
  - (2) Private property.
    - a. A mobile food vendor may operate on private property located within the following zoning districts, only with the written permission of the property owner(s). Evidence of a property owner's written permission must be available for inspection by the city upon request while the mobile food vendor is operating.
      - 1. Commercial General (CG);
      - 2. Industrial Light Warehouse (ILW);
      - 3. Neighborhood Commercial High/Low (NC-HI/NC-LI);

4. Office, Professional, Institutional (OPI);
5. Village (V); and
6. Planned Community Development (PCD).

b. Set-back requirement. When operating on private property, a mobile food vendor may operate only if set-back at least fifty feet (50') from any abutting residential district and at least one hundred and fifty feet (150') from any exclusively single-family residential structure, unless the owner(s) of the residential structure provides the mobile food vendor with express written permission to operate. The one hundred and fifty foot (150') set-back requirement is reduced to fifty feet (50') where an intervening non-residential building, such as a commercial building, screens the operation from the direct view of the single-family residential structure.

c. Maximum number of mobile food vendors. No more than four (4) mobile food vendors shall operate on any private property at any one time, except as may be allowed by a city issued special event permit or temporary use permit.

d. Access. A mobile food vendor shall not operate or park in any location that impedes the ingress or egress of traffic, building entrances, emergency exits, or access to businesses.

(3) Construction areas. A mobile food vendor may operate on private property that has an active building permit as part of a commercial or multi-family construction site. Such operation may also occur on a site undergoing master infrastructure construction within a single-family subdivision until the first certificate of occupancy is issued.

(4) Principal structure requirement. Except as otherwise provided by this article, a mobile food vendor may only operate on a lot that has a principal structure. However, operating on a vacant lot is permitted where the vacant lot is under the same ownership as, and is abutting, a lot that has a principal structure. Lots located across a public right-of-way shall not be considered abutting.

(5) Stationary location requirement. A mobile food vendor must operate from a stationary location but may operate from multiple locations throughout the day, except as otherwise permitted in this article. An ice cream truck may operate as a moving vendor but only along a roadway defined as a local road in the Transportation Element of the North Port Comprehensive Plan.

(d) Operation.

(1) Hours. A mobile food vendor may only operate during the posted operating/business hours of the park or on-site office, business, or construction, or between the hours of 9:00 a.m. and 10:00 p.m. if no such activity is on-site. Operating hours includes time required for setup and breakdown of the mobile food vending operations.

(2) Items authorized for sale. A mobile food vendor permit only allows a mobile food vendor to sell food and beverages.

(3) Noise requirements. Amplified music or other sounds from a mobile food vendor shall comply with the noise requirements in chapter 46 of this code.

(e) Placement of items.

(1) Except as provided herein, the placement or storage of any item related to a mobile food vendor's business is prohibited from being on the street, sidewalk, or ground immediately surrounding an operating mobile food vendor. The following items may be placed in the immediate area of operation as long as they do not impede, endanger, or interfere with pedestrian or vehicular traffic:

a. Two (2) trash receptacles;

b. One (1) recycling receptacle; and

c. One (1) menu board no larger than thirty inches by fifty inches (30" x 50") in height.

(2) A mobile food vendor must provide receptacles for trash and recycling. The area immediately surrounding an operating mobile food vendor shall be kept neat and orderly at all times and garbage or trash shall be removed prior to departure of the mobile food vendor.

(3) Mobile food vendors are responsible for the proper disposal of all waste generated on-site. No grease, waste, trash, or other by-product from a mobile food vendor's business may be deposited or released onto city-owned property, including but not limited to the streets, sidewalk, into the gutter or storm drainage system, or other public place.

(4) If a generator or open-flame is utilized, a fire extinguisher must be located on-site.

(f) Limitations on sales.

(1) The sale of alcoholic beverages is prohibited unless authorized by a special event permit.

(2) The sale or display of items that are obscene, offensive, or are otherwise deemed inappropriate by the city is prohibited.

(g) Insurance.

(1) When operating on city-owned property, a mobile food vendor must maintain insurance and coverage in occurrence form, as required by this section. The mobile food vendor must also have a current certificate of insurance on file with the city, naming the City of North Port, Florida as an additional insured.

- a. Commercial General Liability Insurance. The policy must include a minimum limit of \$300,000 for each accident, \$600,000 for general aggregate, \$600,000 for products and completed ops, and \$100,000 damage to rented premises.
  - b. Commercial Auto Liability Insurance. The policy must include a minimum limit of \$1,000,000 for each accident for property damage and bodily injury with contractual liability coverage.
  - c. Workers' Compensation Insurance. The policy must include a minimum limit of \$100,000 for each accident, \$100,000 for each employee, a \$500,000 policy limit for diseases; coverage must apply for all employees at the statutory limits provided by state and federal laws. Including proof of current Workers' Compensation Coverage or Workers' Compensation Exemption (notarized affidavit).
- (2) Upon the cancellation or lapse of any policy of insurance required by this section a mobile food vendor is prohibited from operating on city owned property. A mobile food vendor must notify the city within three (3) business days of any changes in the insurance coverage required by this section.
- (3) At all times, a mobile food vendor must maintain all insurance policies required by local, state, and federal law and regulation.
- (h) Enforcement. Any code enforcement officer or sworn law enforcement officer may initiate enforcement proceedings for a violation of this section. This section shall be enforced by the city's hearing officer pursuant to chapter 2, article IX of this code.
- (1) The City Manager or designee may immediately revoke a mobile food vendor permit by providing written notice to the mobile food vendor upon the occurrence of any of the following:
- a. The state agency having jurisdiction over the mobile food vendor or the products sold therein revokes or terminates the license or permit allowing for the mobile food vendor's continued operation; or
  - b. Pursuant to order of the city's hearing officer.
- (2) The city's hearing officer may order any penalty authorized under chapter 2, article IX of this code if the hearing officer determines that a mobile food vendor has failed to abide by the regulations set forth herein and may also order the revocation of a mobile food vendor's permit upon finding any of the following:
- a. A repeat violation of this code within the preceding twelve (12) months;
  - b. The mobile food vendor no longer qualifies for the issuance of a new mobile food vendor permit;

c. The state agency having jurisdiction over the mobile food vendor or the products sold therein revokes or terminates the license or permit allowing for the mobile food vendor's continued operation; or

d. The City issued the permit based upon the mobile food vendor providing false information, a misrepresentation of material fact, or a mistake of fact or law.

(3) Upon the effective date of revocation of a mobile food vendor permit, a mobile food vendor shall not qualify for a new mobile food vendor permit for a period of twenty-four (24) months.

Secs. ~~34-56 34-54~~ – 34-100. - Reserved.”

2.02 The City Commission hereby approves and adopts the following amendments to the Code of the City of North Port, Florida:

**“APPENDIX A – CITY FEE STRUCTURE**

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**B. PLANNING AND ZONING FEES**

| PLANNING AND ZONING FEES         |                 |
|----------------------------------|-----------------|
| ...                              |                 |
| FEMA research letter             | \$100.00        |
| <u>Mobile food vendor permit</u> | <u>\$100.00</u> |
| ...”                             |                 |

**SECTION 3 – CONFLICTS**

3.01 In the event of any conflict between the provisions of this ordinance and any other ordinance or portions thereof, the provisions of this ordinance shall prevail to the extent of such conflict.

**SECTION 4 – SEVERABILITY**

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

**SECTION 5 – CODIFICATION:**

5.01 In this ordinance, additions are shown as underlined and deletions as ~~strikethrough~~. Any additional codification information and notations appear in *italics*. These editorial notations shall not appear in the codified text.

**SECTION 6 – EFFECTIVE DATE**

6.01 This ordinance shall take effect immediately upon adoption by the City Commission of the City of North Port, Florida.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida in public session the 25th day of June 2019.

PASSED and ADOPTED by the City Commission of City of North Port, Florida on second and final reading in public session this 9th day of July 2019.

CITY OF NORTH PORT, FLORIDA

  
CHRISTOPHER HANKS  
MAYOR

ATTEST:

  
KATHRYN WONG  
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS:

  
AMBER L. SLAYTON  
CITY ATTORNEY