

ORDINANCE NO. 18-1122

**AN ORDINANCE TO AMEND ORDINANCE NO. 15-1043, CODIFIED AT RED BANK CITY
CODE TITLE 9, CHAPTER 15, SECTION 101, ET SEQ., AND TO ESTABLISH
REGULATIONS FOR MOBILE FOOD VEHICLES AND PUSHCARTS IN THE CITY OF RED
BANK, TENNESSEE**

Whereas, Tennessee municipalities are authorized to regulate the use of public streets for public health, safety, welfare and convenience; and,

Whereas, no person, firm, association, or corporation is authorized or permitted to use the streets, avenues, alleys, public right-of-way of any municipality for the operation of any private enterprise, without first obtaining the consent of the proper authorities of such municipality; and,

Whereas, mobile food vehicles and food pushcart vendors often use public parking spaces, loading zones and other parts of public streets in violation of city ordinances and traffic regulations; and,

Whereas, mobile food vehicles and food pushcart vendors often operate near and affect the trade of established restaurants that have invested in property and pay taxes in the City of Red Bank; and,

Whereas, despite concerns of the potential effects on established restaurants and the interest of citizens in the use of public rights-of-way for safe and convenient travel, mobile food vehicles, pushcarts or “food trucks”, are a national trend and provide the useful service of convenient and varied dining options in business areas and in areas that lack businesses providing dietary options: and,

Whereas, the City Commission of the City of Red Bank finds it in the interest of the public health safety, welfare and convenience to authorize the operation of mobile food vehicles and food pushcart vendors within the City of Red Bank, subject to regulations to protect the safe and convenient use of public rights-of-way and to balance the rights and interests of these mobile businesses with those of established restaurant businesses.

BE IT ORDAINED by the City Commission of the City of Red Bank, Tennessee, that the Mobile Food Vehicle ordinance be enacted as follows:

Section 101 Mobile food vehicles regulated; purpose

The general purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Red Bank by requiring that new and existing mobile food vehicles and food pushcart vendors provide residents and customers with a level of cleanliness, quality and safety.

It is also the intent of these regulations to establish reasonable guidelines and restrictions for mobile food vehicles and pushcart in relationship to established restaurant businesses and encourage the safe and convenient use of the city’s public right-of-way.

Section 102 Definitions

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

"Applicant" means any person or business who applies for a license or a license renewal under the provisions of this Business License Code.

“RBPD” means the Red Bank Police Department.

“Business licenses” is the licenses required of any business to operate within the City by the license codes of the City.

“Department” means the department designated by the (City Commission or Mayor).

“Food Service Worker” means a person who works for or under the direction of, on behalf of, or as an agent of a food vehicle permittee and/or owner.

“Food Zone” is an area designated by the City Manager that has been approved for the specific operation of Mobile Food Vehicles and/or Pushcarts within the public right-of-way.

“License” is an approval that enables the holder to vend food items at authorized locations and times, for a specified period of time.

“Licensee” means the holder of a mobile food vendor business license issued by the Finance Department.

“Mobile food vehicle” means, except for pushcarts, a unit mounted on or pulled by a self-propelled vehicle where food for individual portion service is prepared, or dispensed; is self-contained with its own drinking water tank and waste water tank including prepackaged foods; is designed to be readily movable; and is moved daily to return to its commissary.

“Mobile Food Zones” means the locations and areas of the City of Red Bank within which the operation of mobile food vehicles and push carts may be allowed subject to the provisions of this Section/Ordinance. See Section 114 of this Ordinance.

“Operator” is the entity that is legally responsible for the operation of the mobile food vehicle such as the owner, the owner's agent, or other PERSON; and possesses a valid permit to operate a mobile food vehicle.

“Operating Hours” is the designated time frame mobile food vehicles are authorized to operate within the city right-of-way.

“Owner” is an individual or business entity who owns and/or operates the food vehicle used in business for the purpose of earning income.

“Pedestrian” is a person who is walking or otherwise traveling in the public right-of-way.

“DPW” means the Department of Public Works.

"Permit" means a written authorization, or permission to engage in or participate in some regulated or otherwise controlled activity. Under the provisions of this Code section, a "permit" is not equivalent to a "license", and vice-versa.

“Permittee” is the entity, person, company or corporation which has been granted a permit by the City of Red Bank to operate one or more mobile food vehicles upon the streets of the city.

“Pushcart” means a non-self-propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person. A pushcart can be used to prepare and serve only:

- a. non-potentially hazardous foods such as popcorn, lemonade, hot dogs or flavored ice;
- or
- b. foods pre-wrapped at the commissary and maintained at the required temperatures.

“Restaurant” a brick and mortar establishment where meals are generally served and eaten on premises; prepares and serves food and drink to customers in return for money, either paid before the meal, after the meal, or with a running tab.

“Person” means any natural individual, firm, partnership, association, or corporation. Whenever the word “person” is used in any section in this article prescribing a penalty or fine as applied to a partnership or association, the word shall include the partners or members thereof; such word as applied to corporations shall include the officers, agents, or employees thereof who are responsible for any violation of such section.

“Vending” is the business of selling or causing to be sold any of the following items: food product, produce, prepared foods and beverages, prepackaged foods and non-alcoholic beverages from a vehicle.

Section 103 Permit and License Required for Yearly Operation

1) All mobile food vehicles and pushcarts must submit an application for a permit yearly to the Public Works Department. The application will then be forwarded to the City Manager for review.

The application must receive approval of the City manager or his/her designee prior to the issuance of a permit.

2) Although a permit allows for the operation of the mobile food vehicle within the City limits, the permittee's activity must occur only in an area that is zoned Commercial and only at such assigned location(s) as are specifically allowed as provided in the permit; and

3) No location within the City shall be approved that is within 250 feet of any presently, or at the time of application, existing restaurant during hours of operation of the restaurant.

4) Applicant shall notify the Public Works Department within fifteen (15) days of any changes to application information.

5) The City Manager shall not approve a location where in the City Manager's sole reasonable discretion a mobile food vehicle and/or pushcart would potentially obstruct a public right-of-way, impair the movement of pedestrians or vehicles, in the opinion of the City Manager, or pose a hazard to public safety, or pose any impediment to safe movement of vehicular traffic. In the event the City Manager shall approve a location which later results in any obstruction of traffic or impairment of the movement of pedestrians, the City Manager may, in his or her discretion summarily and without right of review, revoke the permit as to any such location and assign another approved location to the permit holder.

6) The City Manager shall not approve any location which is adjacent to a handicap loading zone.

7) The grant of a permit hereunder shall not be deemed to authorize any mobile food vehicles and/or pushcart licensee/permittee to conduct business or utilize the assigned/permitted space unless the Permittee also obtains a business license from the City.

Section 104 Application for Permit

1) A single permit application shall be accepted and deemed complete on a first-come, first-served basis. Each application shall indicate on its face, in addition to other requirements as may be determined, that the following materials must be submitted:

- a) Each owner of a mobile food vehicle and/or pushcart shall be required to provide a valid copy of all necessary licenses, permits or other written proof of compliance with the regulations of the Hamilton County Health Department for each mobile food vehicle and/or pushcart.
- b) The applicant's full name, signature, address and whether the applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses.
 - i) The applicant must list the names of all food service workers that will operate the mobile food vehicle(s).
 - ii) A photograph of the Permittee and/or food service worker applicant, e.g. driver's license, passport or similar.
 - iii) Each Owner must attest that they have not knowingly employed, hired for employment, or continued to employ an unauthorized alien. Owner must attest that he/she has e-verified each of the named employee's eligibility for employment.

2) The applicant must specify their desire to, and commit only to, operate in designated and permitted Commercial Zones within the public right-of-way of the City or upon private property.

3) A photograph or accurate description of the mobile food vehicle and or pushcart, including the following data: The make, model and type of body; the number of cylinders; the vehicle identification number or any other identifying number as may be required by the City manager. (If this information is not known at the time of permit application, this requirement can be satisfied as a condition of obtaining a final effective permit.)

4) A statement as to whether the application is for a new permit, renewal of an existing permit, a change in hours of operation, or the addition of a Food Zone location(s).

5) A statement that the applicant or any of its food service workers has not been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business.

6) A statement that the applicant or any of its food service workers has not been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years.

7) A statement as to whether or not the applicant or any of its principals suffers from a legal disability or capacity under state or federal laws.

8) A signed statement that the applicant shall hold harmless the City and its officers and employees, and shall indemnify the City, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect vendor, property owners, and the City from all claims for damage to property or bodily injury, including death, which may arise from the operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than Three Hundred Thousand dollars (\$300,000.00) per occurrence. The policy shall further provide that it may not be cancelled except upon thirty (30) days written notice served upon the City of Red Bank. A permit issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with the Office of the City Manager.

9) A statement that the Permittee shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be the direct result of any activity of the permit holder.

10) A statement that no sales or consumption or dispensing of alcoholic beverages, wine, or beer shall be permitted under any circumstance or at any time unless the Food Truck owner has received a separate permit/license therefore from the City of Red Bank.

11) Such other additional information required by law, rule, ordinance, or that any department of the city, City Manager, City Commission, or information reasonably deemed appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.

12) A statement that the Applicant/Permittee has not had a similar food truck or pushcart license of permit revoked or suspended in any jurisdiction within the preceding five (5) years.

Section 105 Business License Purchase

Every person required to purchase a business license under this ordinance shall:

1) Purchase a City business license (which is non-transferrable to any third party) for each mobile food vehicle and/or pushcart on which it does business within the City, except as otherwise provided by the City.

Section 106 Application, license and permit fees.

Upon the filing of a completed application, the non-refundable application fee for all applicants seeking a mobile food vehicle or pushcart permit shall be \$25.00. This application fee shall be submitted with the application and shall apply to the cost of the permit only if approved.

Upon approval of an application for an operator's permit, the annual business license fee shall be \$25.00 for the owner/operator of the mobile food vehicle or pushcart.

Any applicant that wishes to operate multiple units within the City shall pay an additional yearly license fee of \$25 per additional unit.

The annual fees set forth in this section shall be prorated starting with the date the permit is issued to December 31 of the first year of operation as needed.

Any duplicate permit may be issued upon payment of a fee of \$10.00 should a permit be lost or destroyed.

Any renewal permit must be applied for not later than ten (10) working days following the expiration date of an existing operator's permit, and for any such permit applied for after such expiration date there shall be a late fee of \$50.00 in addition to the annual fees stated above.

Each such applicant shall pay to the director of finance, for the use of the city, a license fee for the privilege of engaging in such business in the amount specified in the then current license code and shall each year thereafter pay to the director of finance such amount as is specified for such business in the then current license code so long as his license is in effect.

Section 107 General Rules and Regulations

1) No person or business entity, including religious or charitable organization, shall operate a mobile food vehicle and/or pushcart upon the public right-of-way or upon any private property within the city without a permit issued by the City of Red Bank.

2) Hours of operation within the public right-of-way and/or upon private properties shall be limited to the hours between 6:00 a.m. to 11:00 p.m., Monday through Sunday within the City. It shall be unlawful to leave any approved mobile food vehicle unattended on a public right-of-way, nor remain on a public right-of-way outside of these allowed hours of operation. The City may require additional restrictions to abate nuisances.

3) All mobile food vehicle and/or pushcart vendors operating within the public right-of-way of the City shall adhere to the designated time and day requirements and shall be allotted sixty (60) minutes set-up and sixty (60) minutes breakdown time before and after stated operating hours.

4) No mobile food vehicle or pushcart operation vending shall occur within 250 feet of any restaurant during hours of operation. No mobile food vehicle or pushcart shall be permitted to operate within one (1) block of another mobile food vehicle or pushcart without a special exceptions permit from the City Manager.

The City Manager may, however, allow multiple food trucks/pushcarts if it is determined that additional food vehicles or pushcarts can be accommodated without negatively impacting existing businesses on the block face. For example, where there are few or no occupied buildings on the block face. Special exceptions may be granted or denied for festivals, fairs, or special events for time periods not to exceed seventy-two (72) hours by determination of the City Manager based on all circumstances then and there existing.

Increasing the size of a food vehicle/pushcart zone does not prevent the City from exercising the inherent authority to regulate uses of the public right-of-way and/or vending from mobile food vehicles located on private property and reduce the size of the food vehicle/pushcart zone at a later date. No licensed permit holder shall have, obtain, or accrue any vested right of or with respect to any particular location(s) under any circumstance(s).

5) Mobile food vehicle and/or pushcart vendor shall not operate within five hundred (500) feet of any fair, stadium, carnival, circus, festival, special event, civic event, or other like event that is licensed or sanctioned by the City, unless they are authorized participants in such event, except that the provisions shall not be interpreted to disallow continued operation for any person then holding a previously issued and valid permit for operation within any such area.

6) It shall be unlawful for any vendor to operate a mobile food vehicle and/or pushcart in or within two hundred and fifty (250) feet of any public or private school located within the City or any public park(s) without first obtaining specific written authorization from the City Manager.

7) The permit may contain additional limitations on hours and days that the City determines are appropriate, including limitations to prevent conflict with special events.

8) No mobile food vehicle and/or pushcart shall use or maintain any sound amplifying equipment, lights, pulsating or flashing lights, or noisemakers, such as bells, horns, or whistles or similar devices to attract customers.

A mobile food vehicle and/or pushcart may use battery operated lights with appropriate protective shields for the purpose of illuminating merchandise.

9) With the exception of trash bin receptacles, no mobile food vehicle shall use external signage, seating, or place other equipment not contained within the vehicle on the public sidewalks or right-of-way or upon any adjacent private property.

10) Other than as permitted within the City, no mobile food vehicle and/or pushcart shall have any exclusive and/or perpetual or length-of-time oriented right(s) to any location(s) upon the streets, alleys, or public grounds of the City.

11) No mobile food vehicle and/or pushcart operating within the city designated locations shall be of a size as to interfere in any way with the city or public's use of any public ways, streets or sidewalks.

12) No mobile food vehicle and/or pushcart shall vend in any congested area where the operation will impede pedestrian or vehicle traffic; including customer queues, accessory units, or signage.

13) No mobile food vehicle and/or pushcart shall make or solicit any sales to occupants of vehicles or engage in any activities which impede vehicular traffic. Drive through sales of merchandise are not permitted under any circumstances or at any time.

14) Permittee shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a public right-of-way or remove the mobile food vehicle or pushcart entirely from the public right-of-way or adjacent property if necessary to avoid such congestion or obstruction.

15) The mobile food vehicle and/or pushcart must prominently display the name and address of the owner and the permit number.

16) Any power required for the mobile food vehicle and/or pushcart located on a public way shall be self-contained and shall not draw its power from the public right of way. No power cable or equipment shall be extended at grade or overhead on, across any public street, alley or sidewalk.

17) Permittee and/or Licensee shall contain all refuse, trash, and litter within the mobile food vehicle or a small moveable trash can maintained by the permittee and/or licensee, and located adjacent to the mobile food vehicle and/or pushcart in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The owner/operator of the mobile food vehicle and/or pushcart shall be responsible for properly disposing of such refuse, trash, and litter as would any business, and shall not place it in any public trash container, or in any private container without proper permission.

18) A mobile food vehicle (including pushcarts) must allow for a pedestrian visual corridor at least 6 feet wide with a 4-foot-wide pedestrian walkway.

a) Mobile food vehicles (including pushcarts) must always be located on a paved or concrete surface. The location must be on the street side of the sidewalk and the pushcart must maintain an 18 inch setback from the curb.

b) Pedestrian walkways of no less than four (4) feet must be maintained around the mobile food vehicle and/or pushcart.

19) The proposed mobile food vehicle and/or pushcart vending activity shall not violate the Americans with Disabilities Act.

20) If an existing mobile Food Zone conflicts with the requirements set forth in this ordinance, the City Manager shall make a determination if it will be feasible to issue a new permit for a different location and provide a reasonable amount of time for the vendor to move to the new location.

21) Mobile food vending shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

22) No mobile food vehicle shall provide or offer drive-through service of any kind.

23) The decibels on any generator(s) or other equipment or amenities of any mobile food vehicle used may not exceed "60dBA". The operator must provide the manufacturer's specs on decibels generated by any particular generator or other equipment. The Department of Public Works will make the final determination if power generators or other equipment used by mobile food vehicle constitute a noise violation.

24) The use of the permitted operating location for mobile food vehicle and/or pushcart vending must be compatible with the public interest in use of the public right-of-way. In making such determination, the City Manager shall consider the width of the public way, parking issues and traffic congestion, the weight that can be supported by the paving or street surface at the proposed location, the proximity and location of existing street furniture, including, but not limited to, utility poles, parking meters, benches, street trees, news racks, as well as the presence of truck loading zones or other businesses or approved mobile food vehicles to determine whether the requested location would result in pedestrian or street congestion.

25) Any new business that opens or moves near an existing mobile food vehicle or pushcart zone shall be deemed to have accepted the proximity of the existing mobile food vehicle and/or pushcart in operation for the duration of the mobile food vehicle location permit. The City shall maintain the inherent authority to regulate uses of the public right-of-way and reduce the size and/or location of the food vehicle/pushcart zone at a later date.

Section 108 Temporary Curb Spacing Permit

(1) A temporary curb space vending permit authorizes vending from a curb space within the public right-of-way that is not designated as a mobile food vehicle zone. The permit is effective for no more than one day during a calendar year. The temporary curb space vending permit may be issued under the following requirements:

a) The permittee shall reserve the curb space with the City Manager.

b) The temporary curb space vending permit shall only be issued for an event located on private property abutting the curb space or an event located in an adjoining public place.

c) The vending shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

(2) The permittee shall obtain and maintain in effect all required permits and business licenses and display the food vehicle zone or temporary curb space vending permit at the vending site in a manner approved by the City Manager.

3) Temporary curb space permit vending sites shall not be located in driveways or within one block of a food establishment entrance or exit during its hours of operation.

4) The City Manager, as deemed appropriate, approve or deny the issuance of a temporary curb space vending permit based on the:

a) Hours of operation and dates of use;

b) To ensure access to the use complies with the Americans with Disabilities Act;

- c) Impacts associated with the vending activity from: lighting, noise, emissions to the air, the placement of signage, or equipment such as generators;
 - d) Impacts to the abutting business displays, business signage, or intake vents from the proposed vending activity; and
 - e) Pedestrian circulation, traffic management, or any other public use purpose.
- 5) If the proposed Temporary Curb Space or food vehicle zone vending will occur within 200 feet of a park, the City Manager will decide whether the vending site should be approved or denied based on the following considerations:
- a) Public safety or access within the park;
 - b) Conflicts with existing businesses and concessionaires, permitted events, or other special activities occurring in the park; or
 - c) The need to encourage park activities.

Section 109 Food service workers

- 1) The owner of a mobile food vehicle and/or pushcart shall:
 - a) Allow only food service workers and persons authorized by the Hamilton County Health Department to be present or operate in the mobile food vehicle and or pushcart; and
 - b) Ensure that all food service workers in the mobile food vehicle or operating the pushcart have current workers permits.

Section 110 Prohibition against the transfer of a permit and/or license

- 1) No permit or license is transferable without approval of the City Manager.
- 2) No person holding a permit and/or license for a mobile food vehicle shall sell, lend, lease or in any manner assign transfer a mobile food vehicle permit and/or license. Any attempted assignment or transfer of any kind without prior notice to and consent by the City of Red Bank shall be absolutely null and void and shall automatically result in immediate administrative revocation of the existing license.
- 3) A permit and/or license holder may transfer a permit and/or license as part of the sale of a majority of the stock in a corporation holding such permit and/or license, as part of the sale of a majority of the membership interests of a limited liability company holding such permit and/or license, or as part of the sale of a business or substantially all of its assets; provided that there shall be no allocated or actual value for the transfer of the permit and/or license.
 - a) Prior to any such transfer, the transferor shall notify the City Manager in writing and the transferee shall submit a mobile food vehicle permit application for approval to the City Manager.
 - b) Any such transfer shall be subject to the terms and conditions of the original permit.
- 4) Any unauthorized transfer or attempt to transfer a permit shall automatically void such permit. Whoever violates this provision, including both the transferor and transferee, shall be subject to a fine of three hundred (\$300.00) dollars. The unauthorized transfer or attempt to transfer of each permit shall constitute a separate violation.

Section 111 Denial, Revocation, Suspension or Permit and/or Business License

An application or approved permit and/or business license may be denied, revoked, suspended, or not renewed for any of the following reasons:

- 1) The permittee and/or licensee or any of its principals fails to satisfy any qualification or requirement imposed by this chapter, or other local, state or federal laws or regulations that pertain to the particular license; or
- 2) The permittee and/or licensee or any of its principals is or has engaged in a business, trade or profession without having obtained a valid license, permit or work card when such applicant or principal knew or reasonably should have known that one was required; or
- 3) The permittee and/or licensee or any of its principals has been subject, in any jurisdiction, to disciplinary action of any kind with respect to a license, permit or work card to the extent that such disciplinary action reflects upon the qualification, acceptability or fitness of the applicant or principal to conduct such a business; or
- 4) The permittee and/or licensee or any of its principals has been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business; or
- 5) The permittee and/or licensee or any of its principals has been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years; or
- 6) The motor food vehicle on which the business is proposed to be conducted does not satisfy all local, state or federal laws or regulations which relate to the activity that is to be licensed; or
- 7) The licensee or any of its principals is in default on any payments owed to the city; or
- 8) The application contains material omissions or false, fraudulent, or deceptive statements;

or

- 9) The motor food vehicle is operated in such a manner as constituting a public nuisance per the Red Bank City Code or state statutes; or
- 10) The proposed operation is in violation of any federal, state, or local laws including, but not limited to, the provisions of this Ordinance pertaining to food, fire prevention, public health or safety.
- 11) The licensee or his agents or employees interfere with an inspection of the food establishment by a Hamilton County Health Department employee; or
- 12) There are repeated or serious violations of the applicable portions of this article; or
- 13) There are repeated or serious violations of federal or state food laws or laws regulating food establishments as defined in this article; or
- 14) The Hamilton County Health Department denies, revokes or suspends the license of the mobile food vehicle; or
- 15) There is a violation of any section of this Ordinance.

The provisions of this section are not exclusive. This section shall not preclude the enforcement of any other provisions of this Ordinance or state and federal laws and regulations. The Hamilton County Health Department may impose additional requirements related to the operation of a mobile food vehicle or food push cart.

Section 112 Actions of City Manager Final

The actions of the City Manager in denying, revoking or suspending any permit or license and/or in imposing a civil penalty as provided herein shall be final. Upon any denial, revocation or suspension of a mobile food vehicle permit and/or business license by the City Manager, the applicant or permittee and/or licensee may appeal the actions of the City Manager only to the Chancery Court of Hamilton County, Tennessee via statutory writ of certiorari as provided in the Tennessee Code Annotated.

- 1) Prior to revocation, written notice shall be given to the permittee and/or licensee or person in charge. The notice shall set forth:
 - a) The grounds upon which the city will seek denial, revocation or suspension of the permit and/or license;
 - b) The specific violations of this article or of federal or state law upon which the city will rely in seeking denial, revocation or suspension of the permit and/or license;
 - c) That a hearing will be held before the Red Bank City Administrative Hearing Officer;
 - d) The date, time and place of the hearing; and
 - e) That the permittee and/or licensee may appear in person and/or be represented by counsel and may present testimony.
- 2) The hearing shall be held in accordance with this section. If the permit and/or license holder fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing that an act or acts have been committed or omitted that constitutes grounds for denial, revocation or suspension of a permit and/or license. The burden of proof shall be upon the Appellant, and the standard of proof shall be abuse of discretion, or arbitrary and capricious decision, inherent credible evidence.
- 3) After completion of the hearing, the City Administrative Hearing Officer shall make written findings as to whether or not grounds exist for denial, revocation or suspension of the permit and/or license. If the City Administrative Hearing Officer finds that grounds do exist for denial, revocation or suspension, it shall deny, revoke or suspend the permit and/or license temporarily for up to 180 days or permanently.
- 4) A copy of the written findings shall be sent by certified mail, return receipt requested, to the permittee and/or licensee. If the address of the licensee is unknown, or if the findings are returned undelivered, the findings shall be served on the person in charge of the mobile food vehicle.
- 5) If the City Administrative Hearing Officer determines that the Appeal is not sustained and upholds the revocation or suspension the permit and/or license, written notice of the revocation shall be served on the permittee and/or licensee or the person in charge with a copy of the findings.
- 6) Upon service of a written notice that the permit and/or license have been revoked as provided herein, all food operations shall cease immediately.
- 7) Whenever a permit and/or license are revoked, the Hamilton County Health Department shall be notified.
- 8) In the event a permit and/or license are revoked, the City shall not be liable to the permittee and/or licensee for any refund of any part of the permit and/or license fee.

Reinstatement of a permittee and/or licensee that has been revoked shall require application and payment of a permit and/or license fee as if it were an initial application.

No new permit and/or license application shall be considered for an establishment or mobile food vehicle where the permit and/or license have been revoked until the expiration of the revocation period.

Section 113 Requesting Additional Vendor Locations

- 1) The use of the permitted operating location for mobile food vehicles or pushcart vending must be compatible with the public interest in use of the public right-of-way.
 - a) A permittee may submit a request for use of the public right-of-way in other locations not designated by the City Manager. Each submitted request will require a non-refundable location inspection fee of one hundred (\$100.00) dollars. If the location is approved, the fee shall apply to the cost of the permit for the new location.

Section 114) Mobile Food Service Vehicle Zone

- A) The following are designated areas of the City of Red Bank where mobile food service vehicles and pushcarts may be lawfully operated pursuant to the provisions of the Ordinance:
 - 1) Those areas defined and limited to all Commercial Zones as defined in the Red Bank Zoning Ordinance, exclusive of those areas otherwise specified and elsewhere excluded or restricted in this Ordinance.
 - 2) At his/her sole discretion, the City Manager may limit the number of designated Food Zones within the City, to address the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Red Bank.
 - 3) No location within the City shall be approved that is within 250 feet of any presently, or at the time of application, existing restaurant during hours of operation of the restaurant.
 - 4) Mobile food vehicle and/or push cart vendor shall not operate within five hundred (500) feet of any fair, stadium, carnival, circus, festival, special event, civic event, or other like event that is licensed or sanctioned by the City, unless they are authorized participants in such event, except that the provisions shall not be interpreted to disallow continued operation for any person then holding a previously issued and valid permit for operation within any such area.
 - 5) It shall be unlawful for any vendor to operate a mobile food vehicle and/or push cart in or within two hundred and fifty (250) feet of any public or private school located within the City or any public park(s) without first obtaining specific written authorization from the City Manager.
- B) Although the permit allows for the operation of the mobile food vehicle within the City limits, the permittee's activity must occur only in an area that is zoned Commercial and only at such assigned location(s) as are specifically allowed as provided in the permit.
- C) In all other Zones, and areas and locations the operation of mobile food service vehicles and pushcarts shall be unlawful and prohibited.

Section 115 Enforcement, Violations

Any person vending without a duly issued permit, license and personal identification or found in violation of any of the regulatory provisions of this chapter shall be guilty of a violation of this Ordinance.

- a) Any person found guilty of a violation of this Ordinance shall, in addition to the possible revocation or suspension of all applicable operating permit(s) and/or license(s) be subject to the imposition of civil penalties as hereinafter provided.
 - 1) Enforcement. The provisions of this section or any rules and regulations may be enforced separately or jointly by the Red Bank Police Department and/or the Codes Enforcement Officer.
 - 2) Civil Penalty for Violation. Any permit holder operating a mobile food vehicle or service in violation of any provision of this section or any rules and regulations promulgated by the City Manager may be subject up to a civil penalty of up to five hundred (\$500.00) dollars per day. Each day of violation shall constitute a separate and distinct offense.
 - a) The RBPD or the Codes Enforcement Officer may suspend a permit and/or license for no more than three (3) days without a notice or hearing, if there is a probability of serious or repetitive violation of public safety, health or order.
 - 3) Revocation, Suspension, Modification. Once a permit and/or license have been issued it may be revoked, suspended, modified, or not renewed by the City Manager for failure to comply with the provisions of this section or any rules and regulations promulgated by the City Manager.

a) With the exception of 2a) above, no permit and/or license shall be revoked, suspended, modified, or not renewed without a hearing before the City Administrative Hearings Officer, prior to which hearing the City shall give reasonable notice of the time and place of the hearing and the specific grounds of the proposed action. The decision resulting therefrom shall be final and subject only to judicial review via certiorari.

4) Any permit and/or license holder found in violation of this section or any rules and regulations may be issued a ticket for violation and the mobile food vehicle may be impounded.

5) Any mobile food vehicle being operated without a valid mobile food vehicle permit and/or license issued by the City Manager shall be deemed a public safety hazard and may be ticketed and impounded.

6) No mobile food vehicle shall be parked on the street overnight, or left unattended and unsecured at any time. Any mobile food vehicle which is found to be unattended shall be considered abandoned and a public safety hazard and may be ticketed and impounded.

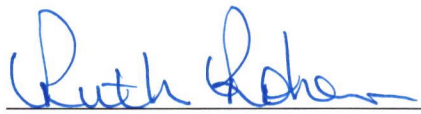
7) A mobile food vehicle operating within the City at an unauthorized location or beyond the hours for which the operation has been permitted shall be deemed operating without a permit and/or license in violation of this section and may be subject to enforcement.

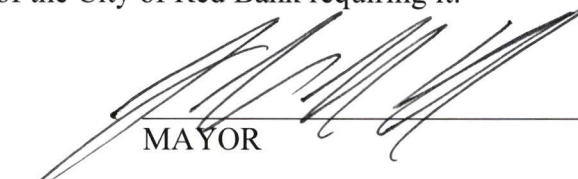
b) Nothing contained herein is intended or shall be construed to supercede any misdemeanor or other penalties otherwise applicable in the event any permittee or employee or of any vendor or permittee shall violate any laws of the State of Tennessee, other Ordinances of the City of Red Bank and/or rules of the Hamilton County Health Department.

Section 116 Severability

Every section, sentence, clause, and phrase of this Ordinance is separable and severable. Should any section, sentence, clause or phrase be declared unconstitutional or invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not effect or impair any other section, sentence, clause, or phrase.

Section 117. This Ordinance shall take effect from and after the date of its final passage the health, safety and welfare of the citizens of the City of Red Bank requiring it.


CITY RECORDER


MAYOR

¹⁷
May 15, 2018
PASSED ON FIRST READING

June 5, 2018
PASSED ON SECOND AND FINAL READING

APPROVED AS TO FORM:


CITY ATTORNEY