



TOWN OF DAVIE
PLANNING & ZONING DIVISION
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MEMORANDUM

TO: Planning & Zoning Board

FROM: David Quigley, Planning & Zoning Manager 

DATE: April 5, 2021

SUBJECT: Land Development Regulations Amendment – Mobile Food Vendors
(ZBTXT21-029)

BACKGROUND

Chapter 17 of the Town Code, Peddlers, Solicitors and Seasonal Sales, addresses a variety of mobile solicitors and merchants. Chapter 17 defines non-stationary food vendors, such as ice cream vendors and lunch wagons as “peddlers”. Aside from other restrictions, Chapter 17 requires “peddlers” to obtain a Town “peddlers” license. Due to the adoption of House Bill 1193 (2020), Florida Statutes now prohibit local governments from requiring mobile food vendors to obtain a license or permit. Sec. 509.102, F.S. allows reasonable regulations of mobile food vendors but the use may not be banned entirely.

The proposed ordinance will define the various types of mobile food vendors and establish reasonable “time, place and manner regulations” necessary to protect the public. Note that regulations are necessary to address the use of private property as well as the use of public rights-of-way. The necessary amendments to Chapter 17 will be proposed by a separate ordinance.

RECOMMENDATION

Find that the proposed ordinance is consistent with and furthers the Town’s comprehensive plan and make such recommendation to Town Council.

ATTACHMENTS

- A. Draft Ordinance
- B. Examples of mobile food vendors and state requirements

ATTACHMENT "A"

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE FOLLOWING SECTIONS OF CHAPTER 12, LAND DEVELOPMENT CODE: ARTICLE III, USE REGULATIONS, SECTION 12-33, GENERAL REGULATIONS, CREATING SECTION 12-33(MM), MOBILE FOOD VENDORS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, the Town of Davie is authorized to protect the public health, safety and welfare of its residents and has the power and authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the Town Council finds it periodically necessary to amend its Land Development Code in order to update regulations and procedures to implement planning goals and objectives; and

WHEREAS, at a public hearing on April 13, 2021, the Planning and Zoning Board reviewed this ordinance and made a recommendation to Town Council; and

WHEREAS, following proper notice to the public and after having received input and participation from interested members of the public and staff, and having considered the recommendation of the Planning and Zoning Board, the Town Council finds this proposed ordinance consistent with its Comprehensive Plan, as amended, as well as with Florida and Federal law; and

WHEREAS, the Town Council finds that this Ordinance is necessary for the preservation of the public health, safety and welfare of the Town's residents; and

WHEREAS, the Town Council has held two advertised public hearings in accordance with Florida Statutes; and

WHEREAS, the Town Council deems it to be in the best interest of the citizens and residents of the Town of Davie to adopt the proposed amendments to the Land Development Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. The Town of Davie Code of Ordinances, Chapter 12, Land Development Code, is hereby amended as set forth in Exhibit “A” (new language is underlined, deleted language is struck through).

SECTION 3. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

SECTION 5. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2021

PASSED ON SECOND READING THIS ____ DAY OF _____, 2021

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2021

Approved as to Form and Legality:

TOWN ATTORNEY

EXHIBIT "A"

CHAPTER 12. LAND DEVELOPMENT CODE

ARTICLE III. USE REGULATIONS

Sec. 12-33. – General regulations.

(MM) Mobile food vendors.

(1) Purpose and intent. This section, 12-33(MM), is intended to regulate the impacts of mobile food dispensing vehicles and mobile food establishments at the location where food or beverages are actually sold or distributed. Except as otherwise provided herein, section 12-33(MM) is not intended to regulate commissaries or the parking, storage or transport of mobile food vehicles or equipment. The provisions of this section, 12-33(MM), are intended to supersede any provisions to the contrary in Sec. 12-33(X) concerning outdoor uses.

(2) Definitions.

For purposes of this Section, 12-33(MM), the following words, terms and phrases shall have the following meanings:

Commercial food service means the sale or dispensing of food or beverages to the general public by way of a mobile food dispensing vehicle.

Mobile food dispensing vehicle means any vehicle that is a public food service establishment regulated pursuant to Chapter 61C-4, Florida Administrative Code, and that is self-propelled or otherwise movable from place to place, and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

Mobile food establishment means any food establishment regulated pursuant to Chapter 5K-4, Florida Administrative Code, that is self-propelled or otherwise moveable from place to place such as a truck, trailer, or similar self-propelled conveyance or non-permanent kiosk or table where pre-packaged food and beverage products are sold.

Private event catering means a situation in which a mobile food dispensing vehicle is invited by the owner or lessee of a specific parcel of land to provide on-site food and beverage service for the patrons of the principal

use of such parcel during a defined event, where such event does not involve the sale or distribution of food and beverages to the general public.

(3) Mobile food establishments. [AKA “LUNCH WAGONS”]

- a. Mobile food establishments shall display all required state license and registration tags and comply with all state licensing requirements.
- b. Mobile food establishments shall not sell or distribute alcoholic beverages or retail items unrelated to the sale of pre-packaged food and beverages.
- c. Mobile food establishments may sell or distribute pre-packaged food and beverages on:
 - 1. Private property within zoning districts B-1, B-2, B-3, UC,O, CC, C-1, RO, B-2M, BP, TS, M-1, M-2, M-3, M-3 County and M-4 County; and
 - 2. Any private property which is actively under construction or development pursuant to an active Town development permit.
- d. No mobile food establishment shall sell or distribute food or beverages within public rights-of-way.
- e. No mobile food establishment shall visit the same parcel more than two (2) times per day or operate from a single parcel for more than one (1) hour in total per day.
- f. A mobile food vendor shall only operate from a non-permanent structure, such as a kiosk, booth or table, where the Town has approved a Temporary Use Permit, Special Permit or Site Plan specifically authorizing such mobile food vendor use on private property.

(4) Mobile food dispensing vehicles. [AKA “FOOD TRUCKS”]

Mobile food dispensing vehicles may conduct commercial food service as set forth in paragraph “a”, below.

a. Permitted locations and conditions.

<u>Location</u>	<u>Permitted Use</u>	<u>Conditions</u>
<u>Town of Davie public right-of-ways</u>	<u>Yes</u>	<u>Permitted only as part of a Town-sponsored event and with written authorization of the Town Administrator or designee.</u>

<u>Location</u>	<u>Permitted Use</u>	<u>Conditions</u>
<u>State, County and all other public right-of-ways</u>	<u>No</u>	<u>N/A</u>
<u>Town of Davie property</u>	<u>Yes</u>	<u>Permitted only as part of a Town-sponsored event and with written authorization of the Town Administrator or designee.</u>
<u>All other government - owned property</u>	<u>Yes</u>	<u>Permitted only as part of a government-sponsored event and with written authorization of the appropriate government entity.</u>
<u>AG, A-1, R-1, R-2 through R-5, RM (all), MH (all)</u>	<u>No</u>	<u>N/A</u>
<u>B-1, B-2,</u>	<u>No</u>	<u>N/A</u>
<u>B-3, UC</u>	<u>Yes</u>	<u>Minimum lot size of 5 acres.</u>
<u>O, CC, C-1, RO, B-2M, BP, TS</u>	<u>No</u>	<u>N/A</u>
<u>M-1, M-2, M-3</u>	<u>No</u>	<u>N/A</u>
<u>RS</u>	<u>Yes</u>	<u>Permitted only as part of a Town-sponsored event and with written authorization of the Town Administrator or designee</u>
<u>CR</u>	<u>Yes</u>	<u>Minimum lot size of 5 acres.</u>
<u>NCF, CF</u>	<u>No</u>	<u>N/A</u>
<u>U</u>	<u>No</u>	<u>N/A</u>
<u>Griffin Corridor</u>	<u>No</u>	<u>N/A</u>
<u>Regional Activity Center (all)</u>	<u>No</u>	<u>N/A</u>
<u>Regional Activity Center – Academical Village</u>	<u>No</u>	<u>N/A</u>

b. Restrictions on operations. All mobile food dispensing vehicles:

1. Shall display all required state license and registration tags and comply with all state licensing requirements.
2. Shall conduct business only between the hours of 7:00a.m. and 9:00p.m.

3. Shall provide sufficient trash receptacles for patrons and properly collect and dispose of any trash resulting from the mobile food vendor operation.
4. Shall not conduct business within any public right-of-way.
5. Shall not conduct business in any manner that disrupts the proper flow of vehicular or pedestrian access.
6. Shall not sell, provide or distribute alcoholic beverages.
7. Shall not conduct retail sales or other business activity unrelated to the provision of food and non-alcoholic beverages.
8. Shall not operate closer than 250ft of the nearest property zoned or used exclusively for residential purposes.
9. Shall not operate within 1,200ft of the nearest property line of any K-12 school.
10. Shall not operate on land without the written authorization of the landowner or legal tenant of the land. Failure of a mobile food vendor to produce written authorization of the landowner or legal tenant when requested by Town police or code compliance inspectors shall constitute a violation of this paragraph.
11. Shall not remain on the site of operation between the hours of 10:00p.m and 6:00a.m.

c. Landowner responsibilities.

1. No property owner shall allow a mobile food dispensing vehicle to operate in violation of the standards set forth in Sec. 12-33(MM)(4).
2. No property owner shall allow more than one (1) mobile food dispensing vehicle to operate on a parcel of land at the same time.
3. No property owner shall allow mobile food dispensing vehicle operations to occur on a parcel of land for more than three (3) consecutive days, nor more than twelve (12) days total per parcel, per calendar year.

(5) Exceptions.

- a. Town-sponsored events. The Town Administrator or designee shall be authorized to waive or modify any of the standards set forth in Sec. (12-33(MM)(3) or (4), above, as may be necessary to allow mobile food vendors to serve the public by operating on Town property or Town right-of-way as part of a Town-sponsored event.

b. Private event catering. Despite any provision to the contrary in Sec. 12-33(MM)(4)a, a mobile food dispensing vehicle may provide private event catering services on private property, including the property of a home or property owner's association, provided that:

1. The mobile food dispensing vehicle complies with all of the operational standards set forth in Sec. 12-33(MM)(4)b.
2. The property owner or legal tenant of the property has specifically contracted or arranged for the mobile food dispensing vehicle to provide event catering.
3. The mobile catering service is conducted only between the hours of 7:00a.m. and 10:00p.m.
4. Mobile catering service is conducted on any single parcel of land no more frequently than one (1) day per calendar month.

ATTACHMENT "B"

Types of Mobile Food Vendors and Applicable State Regulations

Type	Example	Characteristics	Licenses Required
Lunch Wagon (pre-packaged foods)		Sale of pre-packaged food and drinks only. Moves frequently from location to location where retail options are limited, such as industrial areas and construction sites.	FADCS Mobile Food Vendor License
Hot Dog Cart		A mobile vendor that sells only pre-cooked hot dogs or sausages and pre-packaged food and drinks.	Florida DBPR Hot Dog Cart License

Type	Example	Characteristics	Licenses Required
Ice Cream/Dessert Truck		Operates mostly from right-of-way, including residential neighborhoods but can also operate similar to a food truck.	Florida DBPR Mobile Food Dispensing Vehicle License May be Florida FDACS if only pre-packaged foods are sold.
Food Truck – Event Catering		Invited by an event coordinator to a specific location to serve event patrons.	Florida DBPR Mobile Food Dispensing Vehicle License

Type	Example	Characteristics	Licenses Required
Food Truck – Planned Location		Invited to operate at a particular location (public or private) that has been outfitted specifically to accommodate food trucks and their patrons.	Florida DBPR Mobile Food Dispensing Vehicle License
Food Truck – Unplanned Location		Operates within a parking lot or other part of a commercial that was not specifically designed for commercial activity or food trucks. May or may not have the permission of the landowner.	Florida DBPR Mobile Food Dispensing Vehicle License

Summary of State Licensing

Florida Department of Agricultural and Consumer Services (FDACS). FDACS generally regulates whole-sale food operations, convenience stores, grocery stores, food processing operations, food storage/warehouse operations and non-alcoholic beverage operations (such as juice or smoothie bars and coffee houses). FDACS also regulates mobile food vendors who sell only prepackaged foods or non-potentially hazardous food items, including:

- >Foods that are not temperature controlled for safety, including ice confections, coffee, tea, soft drinks, pastry products, popcorn and candies;
- >Raw fish products that include no processing on site; and
- >Fresh-squeezed juice meeting specific requirements.

Florida Department of Business and Professional Regulation (DBPR). DBPR regulates restaurants, most mobile food vehicles, caterers, and most public food service events. In the case of mobile food vendors, DBPR regulates both the vending vehicle and the commissary (the catering operation, restaurant or grocery store that supports the vending vehicle). Once licensed, DBPR Division personnel inspect as often as necessary for enforcement of the provisions of law and rule, and the protection of the public's health, safety, and welfare. Operators must permit division personnel right of entry at any reasonable time to observe food preparation and service. If necessary, division personnel may examine records of the unit to obtain pertinent information regarding food and supplies purchased, received or used.

**Both DBPR and FDACS rely upon the Florida Department of Health (FDOH) to certify that the mobile unit meets public health standards for hand washing, utilities, etc.*