

ORDINANCE NO. 2017-2126

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR AMENDMENT OF CHAPTER 13 OF THE NEW PORT RICHEY CODE OF ORDINANCES, PERTAINING TO LICENSES AND BUSINESS REGULATION; PROVIDING FOR A NEW ARTICLE XII, PERTAINING TO MOBILE FOOD VENDING; PROVIDING DEFINITIONS OF TERMS; PROVIDING FOR LICENSES; PROVIDING FOR REGULATIONS; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, within the City limits of the City of New Port Richey, Florida the use of mobile food vending vehicles will enhance the quality of life in the City;

WHEREAS, this ordinance is being adopted in accordance with the police power of the City to control activities occurring on public and private property;

WHEREAS, mobile food vending will provide the public with access to food and beverages without increasing traffic congestion in the City; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City.

NOW, THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA HEREBY ORDAINS:

Section 1. Chapter 13 of the Code of Ordinances, pertaining to licenses and business regulation, is hereby amended by adding Article XII thereto, pertaining to mobile food vendors, as follows (strikeout text is deleted and underlined text is added):

ARTICLE XII. MOBILE FOOD VENDORS.

Sec. 13-558. Short title.

This article may be known and cited as the “City of New Port Richey Mobile Food Vendor Ordinance”.

Sec. 13-559. Purpose.

The purpose of this article is to establish licensing procedures and governing regulations for mobile food vending businesses operating in the City. These regulations are intended to recognize this special market segment, establish appropriate operational standards and mitigate any associated undesirable impacts.

Sec. 13-560. Definitions.

For the purpose of this article, the following terms shall have the following definitions:

Ancillary items. Those items used in conjunction with, but not attached to or a part of a mobile food unit.

Developed site. A parcel of real property on which permanent improvements have been legally constructed in accordance with the Land Development Code, and which is currently and actively open and in use by a business authorized at the site.

Food. All substance used for human consumption as food, non-alcoholic drink, confectionery or condiments, whether simple, mixed or compound, and all substances or ingredients used in preparation thereof.

Mobile food unit. Any vehicle used for the service of food, whether self-propelled or otherwise designed to be movable from place-to-place, including but not limited to, push carts, vending carts, mobile kitchens, hot dog carts, mobile trailers, ice cream trucks and food trucks.

Mobile food vendor. Any person or entity who offers for sale or distribution any food from a mobile food unit. A mobile food vendor operating from a stationary mobile food unit, shall be considered a stationary mobile food vendor.

Public property. All real property owned or controlled by the City, county, state or federal governments, except public ways.

Public ways. All areas legally open to public use and used for or intended for use for vehicular or pedestrian traffic, including public streets, alleys, sidewalks and roadways.

Stationary mobile food unit. Any mobile food unit that remains in one location for more than fifteen (15) consecutive minutes, or is located in any part of the same two hundred (200) square foot area more than once in a twenty-four (24) hour period.

Sec. 13-561. License requirement.

- (a) It shall be prohibited and unlawful for any person or entity to engage in the sale or distribution of food as a mobile food vendor without first obtaining a license as a mobile food vendor from the city.

- (b) A license fee for each mobile food unit to be operated by a mobile food vendor shall be paid prior to the issuance of a license. The license fee shall be established from time to time by resolution adopted by the City Council.

Sec. 13-562. License applications.

All mobile food vendors applying for a mobile food vendor license shall provide the following:

- (a) An application for mobile food vendor license, including:
1. The applicant's full name and address;
 2. The business name under which the applicant will be operating;
 3. A description of the food to be sold or distributed;
 4. The license or registration number of each vehicle or mobile food unit from which sales will be made that is required to be licensed to travel on public roads;
 5. The type of mobile food unit to be utilized;
 6. Evidence as to the age, condition and manufacturer's specifications pertaining to the mobile food unit to be utilized; and
 7. Current photographs of the mobile food unit to be utilized.
- (b) A dimensioned and scaled site plan (minimum 11" x 17" in size), showing the following:
1. The proposed location of mobile food operations, including the area where the public being served shall congregate and any ancillary items will be placed;
 2. The location of all parking spaces, including handicap spaces in the mobile vending area or to be utilized in the mobile vending operations;
 3. The entrances and exits to and from the site;
 4. The distances from any buildings or structures, sidewalks, rights-of-way, fire hydrants, fire lanes and landscaped areas;
 5. The locations of suitable trash containers readily accessible to the public, where the mobile food vendor's customers may deposit any trash related to the mobile food vendor's operations; and
 6. The location, type and description of all ancillary items to be used in the mobile food vending operation.
- (c) Proof that all other appropriate licenses required by any governmental entity, having jurisdiction over the mobile food vendor's operations, have been acquired and are current at the time of issuance of the mobile food vendor license;
- (d) Proof that a current City business tax receipt, Pasco County business tax receipt and Pasco Health Department license have been obtained, if applicable, each of which shall be displayed on each mobile food unit at all times, along with the mobile food vendor license issued hereunder;

- (e) A signed hold harmless agreement and proof of insurance, meeting the requirements of Sec. 13-563, if applicable; and
- (f) Such additional information and documentation as the city manager, or designee, may determine to be reasonably necessary to accomplish the purposes of this article and to protect the public health, safety and welfare.

Sec. 13-563. Indemnification and insurance.

Prior to the issuance of a mobile food vendor license for any mobile food unit to be operated on public property, including public ways, the applicant shall provide the following:

- (a) A signed agreement on a form provided by the city that the licensee shall hold harmless the city, its officers, officials, employees and agents and shall indemnify the city, its officers, officials, employees and agents for, from and against any and all claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the mobile food vendor license; and
- (b) Proof of insurance for public liability, food products liability, and property damage liability for all claims and damage to property or bodily injury including, but not limited to, death, which may arise from operations under the mobile food vendor license or in connection therewith, as follows:
 - 1. Such insurance shall provide coverage of not less than \$100,000.00 for bodily injury, property damage, or any claims or injuries respectively per occurrence; and
 - 2. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insured the city, its officers, officials, employees and agents, and shall further provide that the policy shall not terminate or be cancelled prior to the completion of the mobile food vendor license period without 45 days' written notice to the city at the address shown in the permit.

Sec. 13-564. Standards for mobile food vendor licenses on private property.

A mobile food vendor license may be issued to any mobile food vendor meeting the requirements of this section for operation on private property.

- (a) Zoning. Stationary mobile food vendors shall only operate on properties designated with a commercial, industrial or mixed use planned development zoning classification, licensed and operating as a use authorized under one of said zoning classifications. The property from which the mobile food vendor operates shall not abut any single-family, duplex or multi-family use or zoning district. No stationary mobile food vendor shall operate on any private property used as a motel or hotel, or automobile sales or repair business.

- (b) Developed sites. Operation of mobile food units is prohibited on any property which is not a developed site, except for special event permits issued to mobile food vendors operating during special events in the Downtown zoning district.
- (c) Owner permission. Stationary mobile food vendors shall only be allowed to operate on private property with the written permission of the property owner set forth on a form provided by the City.
- (d) Frequency. Except where a special event mobile food vendor license has been issued, stationary mobile food units shall not be operated on the same property more than two (2) times in any seven (7) day period.
- (e) Parking. No handicap or required off-street parking spaces shall be utilized for mobile vending operations, including the placement of mobile food units and ancillary items, or the congregation of patrons of the mobile food vendor.
- (f) Location. No mobile food unit shall be placed in any location that impedes the ingress or egress of any business or building, emergency exit or handicap access area.
- (g) Proximity to businesses. No stationary mobile food unit shall be operated within 150 feet of the property line of any licensed restaurant located in a permanent structure during the time said restaurant is open for business.

Sec. 13-565. Standards for mobile food vendor licenses on public property.

A mobile food vendor license may be issued to any mobile food vendor meeting the requirements of this section for operation on public property.

- (a) Locations. Stationary mobile food units shall only be operated on public property or public ways at such times and locations specifically authorized by City Council by resolution or by special event permit.
- (b) Exclusivity. Issuance of a mobile food vendor license shall not entitle the mobile food vendor licensee to conduct business exclusively at any specific location on any public property or way.
- (c) Registration and equipment. Mobile food units shall be registered as required by state law, and it is prohibited and unlawful for a mobile food vendor to operate, move, park, stop or stand any mobile food unit on a public way unless the vehicle is equipped as required by state law.
- (d) Traffic. No mobile food vendor shall operate on any public way or public property so as to impede normal pedestrian or vehicular traffic.

- (e) Safety. No mobile food vendor shall create or contribute to a potential safety or hazardous situation or condition on public or private property, including without limitation the emission of excessive exhaust or any fluids of any kind.
- (f) Compliance with laws. All mobile food vendors shall comply with all state and city traffic and parking, stopping and standing laws, codes, ordinances, rules and regulations.

Sec. 13-566. Standards for mobile food units on any property.

The requirements of this section shall apply to any mobile food unit, regardless of whether it is located on public or private property.

- (a) Hours of operation. No mobile food vendor shall operate between the hours of 3:00 a.m. and 8:00 a.m.
- (b) Trash. Prior to moving a mobile food unit from a sales location, a mobile food vendor shall pick up and remove all litter, trash and waste related to the mobile vendor's sales or distributions and within an area encompassing a radius of 100 feet from the sales or distribution area. Mobile food units shall be equipped with, or operate in an area with, a suitable trash container readily accessible to the public, in which the mobile food vendor's customers may deposit any litter, trash or waste related to the vendor's sales or distributions.
- (c) Signs. No mobile food vendor shall display any signs which are not attached to the mobile food unit, and no sign shall be displayed that extends more than 36 inches above the mobile food unit.
- (d) Noise. No mobile food vendor shall provide any amplified music or sound at the mobile food unit.
- (e) Space. The mobile food vendor sales or distribution area, including the area where the public being served shall congregate and any ancillary items are placed, shall not exceed an area of 200 square feet.
- (f) Ancillary items. On stationary mobile food units, ancillary items shall be limited to a total combined size of thirty (30) cubic feet, and shall not include displays, tables, racks, cases or similar items. No other ancillary items shall be used in conjunction with any mobile food unit.
- (g) Removal. All mobile food vendors shall remove each mobile food unit and ancillary items at the close of each business day.
- (h) Grills. Barbecue grills and smokers shall not be allowed as mobile food units, except for special events permitted by the City.

Sec. 13-567. - Display of license.

Each mobile vendor shall attach the mobile food vendor license issued pursuant to this article to each mobile food unit, at a location conspicuous to the public at all times.

Sec. 13-568. Grounds for revocation of license.

- (a) A mobile food vendor's license may be revoked by the City Manager, or designee, for any of the following reasons, and said licensee shall immediately remove the mobile food unit and all ancillary items:
- (1) The mobile food vendor or any of the mobile food vendor's agents or employees engages in any fraudulent, deceptive or unlawful business practice in connection with the mobile food vendor's business;
 - (2) Any false statements were made on the mobile food vendor license application;
 - (3) Changing conditions of pedestrian or vehicular traffic cause congestion on the public property or public way for which the license was issued, creating a potential danger to the health, safety or general welfare of the public;
 - (4) The mobile food vendor or any of the mobile food vendor's agents or employees fails to abide by one or more of the terms, provisions, covenants or conditions of this article;
 - (5) The mobile food vendor or any of the mobile food vendor's agents or employees fails to comply with any state health or food vending regulations;
 - (6) Revocation by any governmental jurisdiction of any other required license or permit held by the mobile food vendor;
 - (7) The mobile food vendor or any of the mobile food vendor's agents or employees operating the mobile food unit is convicted in any jurisdiction of any felony or crime of moral turpitude or pleads nolo contendere to such felony or crime;
 - (8) The mobile food vendor or any of the mobile food vendor's agents or employees operates the mobile food unit in a manner that violates state or City traffic, parking, stopping and standing laws, code, ordinances, rules or regulations or otherwise creates or contributes to a potential safety or hazardous situation or condition on public or private property; or
 - (9) The mobile food vendor or any of the mobile food vendor's agents or employees fails on two (2) or more occasions to restore the public way or public property to its original condition upon the close of business each day.

- (b) If a mobile food vendor's license is revoked, said licensee shall not be eligible for a renewal of said license and shall submit a new application for a mobile food vendor license.

Sec. 13-569. License expiration.

A mobile food vendor license shall be issued and valid for a period of one (1) year from the date of issuance and may be renewed upon the same terms and conditions as the original license upon the filing of a new license application in accordance with this article. A renewal applicant shall be required to update any expired information contained in the original application and provide any information that has changed from the original application. Temporary mobile food vendor licenses may be issued for periods of less than one (1) week for special events conducted in the city, in locations approved by the City Council for such events.

Sec. 13-570. Violations, penalties and code enforcement.

- (a) It is prohibited and unlawful to violate the provisions of this article.
- (b) The provisions of this article may be enforced by any means of code enforcement as may be permitted under controlling law or the code of ordinances.
- (c) Penalties for violations of this article shall be as set forth in the applicable fine ordinance of the city.

Sec. 13-571. City Council; appeal.

The City Council may designate by resolution such public ways and public properties, or parts thereof, where mobile vending may be permitted by the City Manager, or designee. If the designation of any public property or public way is removed by the City Council, any mobile food vendor license issued for such area shall be immediately deemed revoked and of no further force or effect. Any person aggrieved by any decision of the City Manager to revoke a license pursuant to Section 13-568 may appeal said decision to the City Council on an application filed with the City Clerk within thirty (30) days of the revocation of said license.

Section 2. Conflict with Other Ordinances and Codes. All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 3. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall take effect immediately upon its adoption as provided by law.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this ____ day of _____, 2017, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this ____ day of _____, 2017.

ATTEST:

By: _____
Judy Meyers, City Clerk

By: _____
Robert Marlowe, Mayor

(Seal)

APPROVED AS TO FORM AND
LEGALITY FOR THE SOLE USE AND
RELIANCE OF THE CITY OF NEW PORT
RICHEY, FLORIDA:

Timothy P. Driscoll, City Attorney