



# City of North Port

## ORDINANCE NO. 2021-09

**AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING AND REPEALING PORTIONS OF CHAPTER 34, ARTICLES I AND III OF THE CODE OF THE CITY OF NORTH PORT, FLORIDA, RELATING TO MOBILE FOOD VENDORS AND ICE CREAM TRUCKS; AMENDING APPENDIX A – CITY FEE STRUCTURE; PROVIDING FOR FINDINGS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Ordinance No. 2019-04 created Section 34-55 of the Code of the City of North Port, Florida (“City Code”) to regulate the operation of mobile food vendors and ice cream trucks and a to provide for associated fees in Appendix A; and

**WHEREAS**, effective June 30, 2020, Section 509.102(2), Florida Statutes was amended to preempt municipalities, counties, and other local governmental entities from requiring a separate license, registration, or permit other than the license required under Section 509.241, and from charging any permit fee;

**WHEREAS**, as a result of the state law changes, this ordinance removes all references in the City Code to permits and fees related to mobile food vendors and relocates the remaining regulations from Chapter 34, Article III. – Business Permits to Chapter 34, Article I. – In General;

**WHEREAS**, the City Commission finds that these 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 herein as findings of fact.

### **SECTION 2 – REPEAL**

2.01 Section 34-55 of the Code of the City of North Port, Florida is hereby repealed in its entirety.

**SECTION 3 – ADOPTION**

3.01 Section 34-54 of the Code of the City of North Port, Florida is hereby amended to read as follows:

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

...

**ARTICLE III. – BUSINESS PERMITS**

**Sec. 34-54. – Definitions.**

...

~~(3) *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. § 502.012, are sold.~~

...

*[Re-number subsections (4) and (5)]*

~~(6) *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.”~~

3.02 Section 34-1 of the Code of the City of North Port, Florida is hereby created to read as follows:

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

**ARTICLE I. – IN GENERAL**

**Sec. 34-1. – Mobile food vendor.**

(a) *Definitions.* When used in this section, 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. § 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.

(b) *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 and the requirements of state law. The provisions of this section shall not apply to a mobile food vendor operating pursuant to a special event permit or temporary use permit.

(c) *Location.* A mobile food vendor is authorized to operate in the following locations:

(1) City-owned property.

- a. Location. A mobile food vendor may operate on city-owned or public property and the total operation must be contained within the area designated for their operation by the city manager or designee:
  1. Dallas White Park, a maximum of four designated spaces;
  2. The Garden of the Five Senses, a maximum of four designated spaces;
  3. Highland Ridge Park, a maximum of one designated space;
  4. City Center Green, a maximum of four designated spaces;
  5. Blue Ridge Park, a maximum of two designated spaces;
  6. McKibben Park, a maximum of two designated spaces; and
  7. Atwater Park, a maximum of two designated spaces near the splashpad, except during Little League games.
- b. 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. Permission. 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 (NC)
  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 50 feet from any abutting residential district and at least 150 feet 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 150 foot set-back requirement is reduced to 50 feet where an intervening nonresidential 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 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.
  - (3) Items authorized for sale. A mobile food vendor is only permitted to sell food and beverages.
  - (4) Noise requirements. Amplified music or other sounds from a mobile food vendor shall comply with the noise requirements in chapter 46 of this code.

(5) State license. At any time during operation, upon request, a mobile food vendor must provide the city a valid state license issued pursuant to F.S. § 509.241.

(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 trash receptacles;

b. One recycling receptacle; and

c. One menu board no larger than 30 inches by 50 inches 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 as an additional insured.

a. Commercial general liability insurance. The policy must include a minimum limit of \$300,000.00 for each accident, \$600,000.00 for general aggregate,

\$600,000.00 for products and completed ops, and \$100,000.00 damage to rented premises.

b. Commercial auto liability insurance. The policy must include a minimum limit of \$1,000,000.00 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 \$100,000.00 for each accident, \$100,000.00 for each employee, a \$500,000.00 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 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."

3.03 Appendix A of the Code of the City of North Port, Florida is hereby amended to read as follows:

**"APPENDIX A – CITY FEE STRUCTURE**

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**B. PLANNING AND ZONING FEES**

PLANNING AND ZONING FEES	
...	
Mobile food vendor permit	\$100.00
..."	

**SECTION 4 – CONFLICTS**

4.01 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 5 – SEVERABILITY**

5.01 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 of the ordinance.

**SECTION 6 – CODIFICATION**

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

**SECTION 7 – EFFECTIVE DATE**

7.01 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 8th day of December 2020.

PASSED and ADOPTED by the City Commission of City of North Port, Florida on second and final reading in public session this \_\_\_\_ day of February 2021.

CITY OF NORTH PORT, FLORIDA

\_\_\_\_\_  
GISELE "JILL" E. LUKE  
MAYOR

ATTEST

\_\_\_\_\_  
HEATHER TAYLOR, CMC  
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

\_\_\_\_\_  
AMBER L. SLAYTON  
CITY ATTORNEY