

PROPOSED
ORDINANCE NO. 22-15

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE CREATING CHAPTER 7-12 AND SECTION 7-12-1 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; ESTABLISHING REGULATIONS FOR THE OPERATION OF MOBILE FOOD DISPENSING VEHICLES; CREATING A MOBILE FOOD ESTABLISHMENT PERMIT; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 7-12-1 of the Code of the City of Pensacola, Florida, pertaining to mobile food dispensing vehicles, is hereby created to read:

Sec. 7-12-1. Mobile food dispensing vehicles.

(A) *Purpose.* To establish definitions and appropriate standards for mobile food dispensing vehicles, allowing for the typical range of activities while mitigating any associated undesirable impacts.

(B) *Definitions.* The following definitions shall apply in the interpretation and enforcement of this section:

Mobile food dispensing vehicle, for the purpose of this section, is defined by the State of Florida Division of Hotels and Restaurants in Rule 61C-4.0161.

Food truck, for the purpose of this section, includes both Food Trucks and Food Trailers, and is defined as any motorized or non-motorized vehicle that fulfills the definition for “Mobile Food Dispensing Vehicle”, excluding Food Carts, Hot Dog Carts, or Theme Park Food Carts, as defined by both the Florida Department of Business and Professional Regulation and the State of Florida Division of Hotels and Restaurants Rule 61C-4.0161.

Permit for the purpose of this section, refers to the Mobile Food Establishment Permit, unless otherwise specified.

DBPR, for the purpose of this section, refers to the State of Florida’s Department of Business and Professional Regulation.

Commissary means a place for food storage, the cleaning of the equipment, the filling of water tanks and proper disposal of waste water and grease and does not include the use of a private home as a commissary, as defined by the State of Florida Division of Hotels and Restaurants in Rule 61C-4.0161.

Palafox Place refers to the area located directly on South Palafox Street that is south of Garden Street.

Vend means to sell or offer to sell products from a mobile food dispensing vehicle.

Primary and Secondary schools refer to any schools, public or private, K-12th grades.

(C) *Mobile Food Establishment Permit.*

(1) **Applicability.** A Mobile Food Establishment Permit authorizes the applicant to engage in the vending of products from a motorized or non-motorized Food Truck in the City of Pensacola, in compliance with City and State Codes and Ordinances, and as specified within the approved terms and use of the permit as defined in this section.

(2) **Application.** An application shall include the following information:

- (a) Copy of applicant's valid Florida Driver's License;
- (b) Copy of the food truck's valid registration with the Florida Department of Motor Vehicles;
- (c) A certificate of general liability insurance in the amount of \$500,000 naming the City of Pensacola as an insured party;
- (d) Proof of commercial automobile insurance for the food truck.
- (e) Two photographs of the food truck, as close to the vehicle as possible and which when combined show a clear, unobstructed 360 degree view of the entire vehicle
- (f) All required approvals, inspections, and certificates;
 - (1) Florida Department of Business and Professional Regulation Division of Hotel and Restaurants
 - (2) Fire Department
- (g) Copy of completed DBPR form HR-7022 Commissary Notification, as on file with DBPR;
- (h) Application for Business License/Tax Receipt, to be issued concurrently with the Mobile Food Establishment Permit, contingent on approval of Permit.

(3) *Scope of Approval.* The Mayor or his or her designee shall have a maximum of fourteen (14) business days to process applications. If approved, a permit may not become active until the permit fee is paid and the permittee has met all other conditions set forth in this

section. The permittee will be issued the Mobile Food Establishment Permit concurrently with a Business License/Tax Receipt. The Mobile Food Establishment Permit authorizes the applicant to engage in the vending of products from mobile food trucks in compliance with City Code and as specified on the permit, as set forth in this section.

(4) *Term and Renewal.* Mobile Food Establishment Permits shall expire at midnight on December 31st but may be renewed on an annual basis. Renewal of a Permit will be subject to resubmittal of application as set forth in this section.

(5) *Fees.*

(a) *City of Pensacola.* There shall be a nonrefundable fee for a City of Pensacola Mobile Food Establishment Permit of \$250.00 per annum. The permit fee will be prorated for new permittees, one time only and on a monthly basis, depending on which calendar month the permit fee is paid, at a minimum pro rata of six (6) months. The fee for renewals of existing permits will not be prorated.

(b) *Outside Agencies.* The Pensacola Mobile Food Establishment Permit does not indemnify or guarantee the permittee against any other restrictions or fees that may be accessed within the permit area from agencies or entities entitled to do so, outside of the purview of the City of Pensacola. The Mayor or his or her designee reserve the right to waive only any fees payable to the City of Pensacola in relation to the Mobile Food Establishment Permit, as part of any open enrollment incentive program offered to permittees.

(6) *Transferability.* Ownership of a Mobile Food Establishment Permit shall not be transferrable.

(7) Upon denial, suspension or revocation of the permit, the Mayor or his or her designee shall deliver notice within three (3) business days of such action to the permittee in writing, specifically citing any violated terms or conditions of the permit, as set forth in this section. The action shall be effective immediately upon receipt of notice. In the case of a denial, suspension, or revocation of permit, there shall be no full or partial refund of the annual permit fee or any other fees paid to the city for operation of a mobile food dispensing vehicle.

(a) *Suspension.* A Mobile Food Establishment Permit may be suspended for a period of up to thirty (30) days. Notice shall be given to permittee and will provide specific instructions of corrective action, if applicable, that may be required before the conclusion of the suspension period. Suspended permits must be restored to active status within the thirty (30) day period or shall automatically transfer to a status of revocation at that time. A permit issued under this section may be suspended by the city for any of the following reasons:

(1) Any required business permit, health permit, or business tax receipt for the mobile food dispensing vehicle is not displayed or has expired, been suspended, revoked or canceled.

- (2) The permittee does not have insurance in effect or proof thereof which complies with the minimum amounts and requirements described in this section.
- (3) The permittee refuses or delays without just cause the City's right to inspection.
- (4) Interfering with the normal use of the right-of-way.
- (5) Conducting business as a Permittee or as a responsible party under this section in an unlawful manner which constitutes a menace to the health, safety or general welfare of the public, or in such a manner as to constitute a breach of the peace.
- (6) Failure to adhere to all terms and conditions of the Mobile Food Establishment Permit, as set forth in this section.

(b) *Revocation.* A permit issued under this section may be revoked by the city for any of the following reasons:

- (1) Vending while under any of the terms of a suspension shall constitute an automatic revocation of the permit extending for no less than 180 days and until the following permit period beginning on October 1st.
- (2) Any violation of law by the permittee or permittee's responsible party, by an action or by neglect, either foreseeable or preventable which constitutes a menace to the health, safety or general welfare of the public, or in such a manner as to constitute a breach of the peace. Examples include but are not limited to: acts of violence, harassment, lewd or lascivious behavior, reckless endangerment, willful negligence of safety precautions or procedures.
- (3) Any multiple instances that establish a pattern of non-compliance by the permittee to the terms and conditions of the Mobile Food Establishment Permit, Florida Department of Business and Professional Regulation requirements, Pensacola City Code, Florida State Law, Federal Law, or State of Florida Division of Hotels and Restaurants Rules 61C- 4.010, 61C-4.0161, and 61C-4.023.
- (4) Inaccurate or falsified information found as part of Permittee's application for Permit.

(c) *Denial.* A Mobile Food Establishment Permit can be denied to any permittee under the following circumstances:

- (1) The permittee fails to meet all the requirements of application as described in this section or fails to agree to the terms and conditions of the permit.

(2) Inaccurate or falsified information found as part of applicant's application for permit.

(3) If after the revocation of a Mobile Food Establishment Permit, the permittee demonstrates any further non-compliance to the terms of the Mobile Food Establishment Permit, Florida Department of Business and Professional Regulation requirements, Pensacola City Code, Florida State Law, Federal Law, or State of Florida Division of Hotels and Restaurants Rules 61C-4.010, 61C-4.0161, and 61C-4.023.

(d) *Appeal.* Decisions of the Mayor or his or her designee to deny, suspend or revoke a permit may be appealed to the City Council, whose decision shall be deemed the final decision of the city. Appeals must be submitted to the Office of the City Council no later than twenty-one (21) days prior to the next regularly scheduled meeting of the Council.

(e) *Amendment.* The Mayor or his or her designee reserve the right to petition the City Council to amend policies, procedures, terms, and conditions of the Mobile Food Establishment Permit as needed. Any changes to this the Permit terms and conditions shall be voted on and approved by City Council prior to execution.

(D) *Variances.*

(1) Food trucks may operate in commercial loading zones in the rights-of-way, excluding the days and times set forth in this section.

(2) No additional requests for variances shall be allowed.

(E) *Inspection and Identification.*

(1) *Inspection.* The Mayor or his or her designees reserve the right of inspection of all food trucks with a Mobile Food Establishment Permit operating in the City of Pensacola. Permittees will be required to subject the food truck to inspection for the purpose and limited basis of determining permit compliance. The City of Pensacola's process of inspection shall be implemented in the most systematic, efficient way deemed possible by the Mayor's office, with the goal of mitigating any associated undesirable impacts to the City, the permittee, and the general public. A checklist and inspection report will be made available to the permittee upon completion of any inspection.

(2) *Identification.* Each Food Truck shall prominently display the appropriate business tax receipt, state license and county health certificate, and the Mobile Food Establishment Permit, as follows:

(a) The business tax receipt and county health certificate should be prominently displayed within the food truck. The VIN number of the food truck shall match the VIN number on the approved Mobile Food Establishment Permit application and business tax receipt.

- (b) The Florida Department of Business and Professional Regulation permit should be affixed on the exterior of the vehicle, in plain sight of view.
 - (c) The Mobile Food Establishment Permit should be affixed directly adjacent to the DBPR permit.
 - (d) The business name and state license number should be prominently displayed and affixed to the food truck, in at least two inch letters and in a contrasting color to the background, as required by the Department of Business and Professional Regulation.
 - (e) Any structural or aesthetic modifications made to the food truck after initial application approval must comply with City Code. New photographs must be taken and submitted to the Mayor's office within three days of any modifications.
- (F) *Restrictions.* The following restrictions apply to the Mobile Food Establishment Permit:
- (1) A food truck shall not operate:
 - (a) When parked in the right of way within 20 feet of any intersection, stop sign, flashing beacon, yield sign, or other traffic control signal located on the side of a roadway;
 - (b) Within 3 feet of any public or private driveway, wheelchair ramp or bicycle ramp;
 - (c) In groups of three (3) or more food trucks without a special event permit issued as set forth in Chapter 11-4, Article VI of this Code, entitled Special Events;
 - (d) On Palafox Place, also known as South Palafox Street, except as part of a permitted special event;
 - (e) In angle, diagonal, or perpendicular parking spot configurations while vending in the public right-of-way.
 - (f) In commercial loading zones during the following times:
 - (1) Monday through Saturday from 4 a.m. to 6 p.m.
 - (2) Sunday from 4 a.m. to 12 p.m. noon.
 - (2) Food trucks shall not be in operation while in motion. Before moving, all equipment must be shut off and secured for transport, portable generators must be shut off and disconnected.
 - (3) No vendor may sell alcoholic beverages, controlled substances, or any other illegal item.
 - (4) No furniture, tables, chairs, or any other objects can be placed in the right-of-way, except a self-provided trash receptacle of size adequate to accommodate all trash generated during the term of vending.

- (5) All vendors must provide an appropriately sized trash receptacle within ten (10) feet of the food truck, subject to additional terms set forth in this section. Permittees, their respective agents and employees shall not utilize public trash receptacles for disposal of trash or refuse generated during operation.
- (6) Amplified music or other sounds from any Food Truck shall comply with the noise requirements in Section 8-1-16 of this Code.
- (7) Open flame cooking is prohibited; except that such activity may take place if permitted by the fire department.
- (8) All food trucks shall maintain at all times an updated and current commissary agreement with a state licensed facility, for the proper disposal of grease and wastewater, available upon request by the city.
- (9) All signage must comply with Chapter 12-4 of this Code and other sections as applicable to the location.
- 10) Food trucks shall comply with all state and local business tax regulations.

(G) *Exclusions.*

- (1) This section excludes a contractual or other private arrangement between a Mobile Food Dispensing Vehicle and an individual or group to cater events on private property which are not open to the public. Under this exclusion, food trucks must operate within the boundaries of the area set forth for private events and must not extend into the public space or right-of-way unless authorized by an approved License-to-Use by the City of Pensacola.
- (2) Mobile Food Dispensing Vehicles authorized to operate at special events as set forth in Chapter 11-4, Article VI of this Code are allowed without a Mobile Food Establishment Permit. Special Events are permitted through a separate process as set forth in that section.
- (3) This section shall not apply to pushcart vending, hot dog carts, theme park carts, and other food carts. Cart operations and food truck operations will be considered separate and unique entities. Cart operations are not authorized by use of the City of Pensacola Mobile Food Establishment Permit, but are subject to Section 12-12-7 of this Code.
- (4) This section shall not apply to roadside vending markets or vending on city park property which is subject to other regulations.

(H) *Rights of way.* The operation of a food truck within rights-of-way shall be subject to the following conditions:

- (1) *Traffic Laws.* Food trucks are subject to the same local, state and federal traffic laws and privileges and are required to follow the same rules of the road as other vehicles, unless otherwise specifically expressed otherwise by any local, state, or federal traffic laws and ordinances.

- (2) Driving over barrier-style curbs or onto sidewalks is prohibited. Food trucks must stay within the areas in the right-of-way designated for vehicles at all times. Vending from food trucks from the right-of-way must occur on a smooth, flat paved surface.
- (3) *Parking.* At locations where food trucks are allowed to operate, a food truck may stop, stand or park in any area of the right-of-way not provided for vehicular travel (e.g. parking areas) subject to the conditions of this section. A food truck may not reserve, withhold, or otherwise impede the public from normal use of any of the right-of-way not being occupied by the food truck. Food trucks must adhere to any parking controls, fees, and posted time allowances legally enforced in the right-of-way.
- (4) The City of Pensacola reserves the right to deny permittee's access of the public right-of-way to facilitate projects or events within the right-of-way without notice as deemed necessary.

(I) *Private property.* The vending of products from a Food truck on private property within all zoning districts allowing retail uses or restaurants and bars shall be allowed, subject to the following conditions:

- (1) Food trucks must have the written permission of the owner of the property on which they are located. Written permission shall be provided to the Mayor's office prior to operation on any private property, using the city-approved form.
- (2) *Vacant properties.* Operation of a food truck is prohibited on vacant or undeveloped property, unless the property is located in a C-2 or C-3 zone and all other conditions are met.

(J) *Environmental Considerations.* Food trucks shall operate responsibly and ethically in the reduction and mitigation of negative environmental impacts due to a food truck business operation. Combustible or toxic materials shall be stored properly in original or otherwise approved containers, separate from food service areas. Any littering or spillages while operating in the public right-of-way requires immediate cleanup and mitigation. Per Section 11-4-71, it is unlawful to allow any oil waste from motors, gasoline pumps or filling stations, or any other liquid waste, or inflammable or combustible material or substance, to run or to be poured or emptied upon or into the ground of any premises or street.

(K) *Insurance requirements.*

- (1) Operating in the right-of-way:
 - (a) The Permittee owner or operator shall at all times maintain any insurance which the city determines to be necessary, which may include but is not limited to, general liability insurance, commercial automobile liability insurance, worker's compensation insurance, and environmental liability insurance, issued by an insurance company licensed to do business in the State of Florida, in the amounts established by the city which shall be reasonably based on industry standards and the risk determined to exist.

- (b) The insurance policy shall be in occurrence form and the City of Pensacola shall be named as an additional insured on the certificate of insurance.
- (c) The permittee, owner or operator shall furnish the city with a certificate of insurance which shall be accepted by the city only after approval by the Mayor or his or her designee.
- (d) The permittee, owner, or operator shall notify the city within three business days of any changes in the insurance coverage. Upon the cancellation or lapse of any policy of insurance as required by this section, the permit shall be immediately suspended unless, prior to the expiration or cancellation date of insurance policy, another insurance policy meeting all the requirements of the city is obtained and a new certificate of insurance is provided to the Mayor or his or her designee.

(2) Operating in all other locations not in rights-of-way:

- (a) A food truck shall obtain at a minimum the insurance as required by any local, state, or federal laws and regulations.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

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

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Passed: _____

Approved: _____
 President of City Council

Attest:

 City Clerk