

ORDINANCE NO. 02-21

AN ORDINANCE OF THE CITY COUNCIL OF AVON PARK, FLORIDA, PROVIDING FOR REGULATION OF MOBILE FOOD DISPENSING VEHICLES, LUNCH TRUCKS AND OTHER OUTSIDE OF BUILDING SALES OF FOOD AND BEVERAGES; ADDING ARTICLE IV TO CHAPTER 26 OF THE CODE OF CITY ORDINANCES TITLED "FOOD TRUCKS"; PROVIDING FOR AMENDING SECTION 2.03.00 "GENERAL REGULATIONS FOR COMMERCIAL/INDUSTRIAL ZONING DISTRICTS" OF THE UNIFIED LAND DEVELOPMENT CODE, BY ADDING SUBSECTION 2.03.04 "MOBILE FOOD DISPENSING VEHICLES AND LUNCH TRUCKS; PROVIDING FOR AMENDMENT OF SECTION 2.04.01 "ZONING DISTRICT SUMMARY TABLES"; PROVIDING FOR AMENDMENT OF SECTION 2.04.02 "ESTABLISHMENTS OF ZONING DISTRICTS", OF THE UNIFIED LAND DEVELOPMENT CODE, SECTION 2.04.02.07, "C-2 GENERAL COMMERCIAL"; PROVIDING FOR DEFINITIONS AND CLASSIFICATION OF VIOLATIONS FOR CLARIFICATIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY OF PROVISIONS; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR LIBERAL CONSTRUCTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida legislature has passed section 509.102, F.S., preempting some local government regulations of "mobile food dispensing vehicle" and the City Council has otherwise determined that it is appropriate to regulate sales of food and beverages from vehicles or outside of structures; and,

WHEREAS, it is the intent of the City Council to conform its regulations to avoid preempted regulations in section 509.102 F.S., and provide balanced regulations that protect the health, safety, welfare and aesthetics of the citizens of Avon Park while allowing a reasonable opportunity for food trucks to provide their services within the City; and,

WHEREAS, as a part of regulation, portions of the unified land development code are required to be modified to restrict food trucks to certain zoning districts; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AVON PARK, FLORIDA AS FOLLOWS:

Section One. Establishment of Article IV, of Chapter 26, Code of Ordinances, Titled "Food Trucks"

Article IV. Food Trucks.

Sec. 26-80. Definitions.

- (a) "Ice cream truck" shall mean every motor vehicle from which ice cream, ice milk, frozen dairy products, ice flavored with syrup, or other confections are sold at retail and shall include all vehicles subject to regulation pursuant to F.S. § 316.253, as may be amended. Ice cream truck shall not include refrigerated, retail trucks which deliver pre-ordered ice cream or other frozen dairy products to a customer's residence.

- (b) "Location" means the area where the mobile food dispensing vehicle or lunch truck is parked to vend product.
- (c) "Lunch trucks" means any vehicles that vend pre-cooked foods, pre-packaged foods, pre-packaged drinks and incidental sales of pre-packaged frozen dairy or frozen water-based food products, fruits and vegetables, traditionally concentrating on sales at active construction sites and industrial parks. No preparation or assembly of food or beverage may take place on or in the vehicle; however, the reheating of pre-cooked food is permitted.
- (d) "Mobile food dispensing vehicle or MFDV" means any vehicle licensed as a MFDV by the State of Florida Department of Business and Professional Regulation (DBPR) and complying with DBPR rules and license, that is a public food service establishment 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.
- (e) "Mobile food dispensing vehicle vendor or MFDV vendor" means a person who owns the MFDV or leases the MFDV, and is licensed by the state for such operation, or an employee who prepares, dispenses, or otherwise sells food from a mobile food truck.
- (f) "Public right-of-way" means land in which the state, the department, a county, or a municipality owns the fee interest or has an easement devoted to or required for use as a transportation facility.
- (g) "Restaurant" means a food service establishment conducting business wholly within a permanent building, except for approved seating immediately adjacent thereto, and all food is prepared within the building.
- (h) "Special Events" mean such events approved by the City, and may include carnivals, circuses, community celebrations, community events, fairs, marathons and other athletic events, parades, marches, street fairs and festivals, water activities such as boat races, air shows and fly-ins, dances, block parties, and other celebrations.

Sec. 26-81. Locations.

- (a) Mobile food dispensing vehicles shall only be located as permitted through the Table of Uses in Section 2.04.01 of the City's Unified Land Development Code.
- (b) Use of rights-of-way for vending is prohibited.
- (c) Use of city parks, cemeteries, or any city property is prohibited.
- (d) No MFDV shall be placed less than 200 feet from the nearest restaurant. The distance shall be measured by following the shortest route of ordinary pedestrian travel along the public thoroughfare from the main entrance of the restaurant to the point of sale location of the MFDV.
- (e) No MFDV shall be parked within 25 feet of any fire hydrant, fire escape or fire control device;
- (f) Additional requirements for undeveloped properties. Where mobile food dispensing vehicles are located on undeveloped properties, the following additional requirements shall apply:
 - a. The mobile food service unit must be set back at least 100 feet from any existing residential development.

- b. The property available to the MFDV shall have a minimum area of at least 1,000 square feet for parking to accommodate at least three vehicles.
- (g) Mobile food dispensing vehicles shall conspicuously display at a location visible to patrons a signed approval to use a private property location and all licensing, permits and sanitary certificates required by law.
- (h) A mobile food dispensing vehicle shall not be placed upon or operate from:
 - (1) any yard required by the City Unified Land Development Code;
 - (2) any setback required by the City Unified Land Development Code;
 - (3) any open space required by the City Unified Land Development Code; or,
 - (4) any area required to be landscaped by the City Unified Land Development Code.
- (i) A mobile food dispensing vehicle shall not be placed upon or operate from any required parking spaces. This provision shall be construed to mean that if a plot includes a greater number of parking spaces than required pursuant to zoning requirements, a mobile food dispensing vehicle may be placed upon or operate from parking spaces equal to or lesser than the number of parking spaces that exceed those required. Provided, however, in no event shall a mobile food dispensing vehicle be placed upon, obstruct, or operate from any handicapped parking spaces.

Sec. 26-82. Location property management.

- (a) The mobile food dispensing vehicle and the location private property owner shall be concurrently responsible for ensuring that:
 - (1) no litter or debris escapes the property;
 - (2) no solids or fluids remain on the ground after removal of the mobile food dispensing vehicle other than clean water.
 - (3) Wheels shall not be removed, and the mobile food dispensing vehicle shall always be capable of being driven from the location at the conclusion of its allowable hours of operation. No vehicle skirting or other elaborations indicating permanent location shall be allowed.
 - (4) All sound and smoke shall conform to City, (county, if applicable), and State law, and shall otherwise not create a nuisance to neighboring properties.

Sec. 26-83. Parking time allowed.

- (a) Mobile food dispensing vehicles shall be allowed to locate within the City seven (7) days a week.
- (b) Mobile food dispensing vehicle shall only set up and operate between the hours of 7:00 am and 9:00 pm and shall be removed outside those hours.

Sec. 26-84. General prohibitions and regulations.

- (a) Any dispensing of food or beverages of any type not regulated in this Article, and not regulated by the Florida Department of Business and Professional Regulation as mobile food dispensing vehicles, shall require prior review and approval of the City Manager, and licensing or permitting as required by City Code.
- (b) Mobile food dispensing vehicles are prohibited from the following:

- (1) Selling or distributing alcoholic beverages;
- (2) Operating outside of the permitted zoning districts listed in the Table of Uses in Section 2.04.01 of the City's Unified Land Development Code;
- (3) Selling or dispensing food to customers in a moving vehicle or otherwise engaging in drive up sales.
- (c) Mobile food dispensing vehicle general regulations:
 - (1) Shall not exceed ten feet in width and 24 feet in length, including the length of any trailer hitch and trailer. Awnings may extend up to five feet outward from a mobile food truck, but in no case shall a mobile food dispensing vehicle and any extensions exceed a total of 15 feet in width.
 - (2) Except for portable seating removed after closing, shall be self-contained when operating (including all utilities: power, water, cooking fuel sources), except for the required trash and/or recycling receptacles, which must be attached to the mobile food dispensing vehicle.
 - (3) Shall not impede free movement of automobiles or pedestrians.
 - (4) Mobile food dispensing vehicles operating at a site for a duration of more than three hours shall have a written agreement, available upon request, which confirms that employees have access to a flushable permanent restroom within 300 feet of the operation site during the hours of operation.
 - (5) MFDVs shall be operated only by the MFDV vendor.
 - (6) Mobile food trucks may display one folding movable menu or display board, not exceeding four square feet of display space on either side. The menu or display board must not be located more than five feet from the mobile food truck or in any designated pedestrian path, must be placed inside when the food truck is not in operation, and must comply with all applicable signage regulations in the City's Unified Land Development Code.

Sec. 26-85. Exceptions.

- (a) Lunch trucks are excepted from this Article so long as they do not park in any zoning district other than as permitted in the Table of Uses in Section 2.04.01 of the City's Unified Land Development Code, or any active construction site, and do not park in same location for more than one-half hour per day, and the lunch truck has any necessary permits required by the state and county, and shall otherwise conform to all city, county and state laws, rules and ordinances.
- (b) Ice cream trucks are excepted from this Article, provided that its activities are transient, and the vehicle does not park for more than five (5) minutes at any location.
- (c) Exceptions from this Article may be made for Special Events if deemed appropriate by the City Council under the circumstances of that event.

Sec. 26-86. Penalty.

- (a) A violation of this article is a civil infraction enforceable against the MFDV vendor or the location property owner or lessee in any manner allowed by law.

- (b) For the purposes of enforcement by civil citation, violations shall be classified as class II violations.
- (c) The provisions of this section are an additional and supplemental means of enforcing the city's codes and ordinances. Nothing contained in this section shall prohibit the city from enforcing its code and ordinances by any other lawful means.

Section Two. Amending Section 2.03.00 "General Regulations for Commercial/Industrial Zoning Districts" of the Unified Land Development Code, by adding subsection 2.03.04 "Mobile Food Dispensing Vehicles and Lunch Trucks".

2.03.04 Mobile Food Dispensing Vehicles and Lunch Trucks

Mobile food Dispensing Vehicles and lunch trucks are permitted to operate within certain zoning districts as established in Table 2.04.01(B) of the City's Unified Land Development Code and in accordance with the standards and requirements established in Article IV of Chapter 26 of the Code of Ordinances of the City of Avon Park.

Section Three. Amendment of Section 2.04.01 "Zoning District Summary Tables", of the Unified Land Development Code, Table 2.04.01(B), "Table of Development Standards".

Category/Use	R-1AA	R-1A	R-1	R-2	R-3	C-1	C-2	C-3	C-4	I-1	I-2	PI	PR	PC	PUD
Retail Commercial, Outdoor Storage and Display Permitted															
Antique shop							P		P						P
Appliance repair							P			P	P				P
BIG BOX retailer w/ outdoor storage							C								P
Boat ramps , docks & marinas, commercial						D	D		D	P	P		P	P	P
Commercial parking lot							D								P
Day Care Center, commercial							D	D	D						
Flea market											D				
General retail							P								P
Home Improvement Center, Building supply, with outdoor storage and displays							P			P	P				P
Manufactured (mobile) home sales										P	P				
<u>Mobile Food Dispensing Vehicles</u>						P	P	P	P	P	P				
<u>Mobile Food Dispensing Vehicles – Lunch Trucks</u>										P	P				
Plant nursery							P			P	P	P			P
Recycling center (outdoor)											P	P			
Repair shops, no vehicles										P	P				
RV campground							D						D		P
Shopping center or stand-alone store of less than 150,000 s.f.						D	D		D						P

Shopping center or BIG BOX of more than 150,000 s.f.							C								P
Truck stop							D				D	D			P
Used Equipment sales							P			P	P				
Veterinary clinic w/kennel; or kennel							P				P	P			P

Section Four. Amendment of Section 2.04.02 "Establishments of Zoning Districts", of the Unified Land Development Code, Section 2.04.02.07, "C-2 General Commercial".

2.04.02.07 C-2 General Commercial:

(c) Permitted Principal Uses & Structures

- (5) Outdoor sales of food products or other products are permitted when part of a permanent building or as allowed through mobile food dispensing vehicles.

Section Five. Severability.

If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section Six. Conflicts.

Any ordinance in conflict with this ordinance is repealed.

Section Seven. Scrivener's Errors

The correction of typographical errors which do not affect the intent of the ordinance may be authorized by the City Clerk or the Clerk's designee, without public hearing.

Section Eight. Ordinance to be Liberally Construed.

This ordinance shall be liberally construed in order to effectively carry out the purposes hereof which are deemed not to adversely affect public health, safety, or welfare.

Section Nine. Codification.

The provisions of this Ordinance shall become and be made part of the Code of the City. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section Ten. Effective Date.

This Ordinance shall be effective upon passage.

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IN WITNESS WHEREOF, the City of Avon Park, Florida, has duly adopted this Ordinance and caused it to be executed by the officers below as follows:

This Ordinance was read for the first time at the regular ☒ special ☐ session of the City Council held on April 26, 2021. The vote was as follows:

	Yes	No	Abstain	Absent
Mayor Anderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deputy Mayor Barnard	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilmember Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilmember Sutherland	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilmember Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

On the 24 day of May, 2021 the Ordinance was read for the second time at a public hearing, and the vote was:

	Yes	No	Abstain	Absent
Mayor Anderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deputy Mayor Barnard	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Councilmember Gray	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilmember Sutherland	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilmember Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(Seal)

ATTEST:

By:

Danielle Phillips 1926
City Clerk
County, Florida

CITY OF AVON PARK
SEAL
CITY OF AVON PARK, FLORIDA

By:

Garrett Anderson, Mayor

APPROVED AS TO FORM:

Gerald Buhr
Gerald Buhr, City Attorney