

**AN ORDINANCE ALLOWING FOR THE PERMITTING OF AND ESTABLISHING
REGULATIONS FOR MOBILE FOOD TRUCKS AND PUSHCARTS IN THE CITY OF
CLEVELAND, MISSISSIPPI**

Whereas, the City of Cleveland is authorized to regulate the use of public streets, sidewalks and rights-of-way for public health, safety, welfare and convenience and regulate the sale of food to its citizens to promote health and safety; and

Whereas, mobile food truck and pushcart vendors desire to use public parking spaces and other parts of public rights of way for the purpose of selling food; and

Whereas, mobile food trucks have become a popular trend in the nation, providing convenient, diverse dining opportunities for communities;

Whereas, the City of Cleveland finds it is in the interest of public health, safety, welfare and convenience to authorize the operation of mobile food trucks and pushcart vendors within the City of Cleveland, subject to regulations to protect the public.

NOW, THEREFORE, BE IT ORDAINED by the City of Cleveland, Mississippi that Chapter 22 of the City of Cleveland's Code of Ordinances is hereby amended to add a new Article as follows:

Section 1. Definitions.

The following words and phrases, whenever used herein, shall be construed as defined in this section:

"Mobile food vendor" means any person who sells food and/or beverages (other than ice cream or frozen treats, the sales of which are regulated by separate ordinance) from a mobile food truck or mobile pushcart as defined herein and whose sales occur at times and locations other than during not-for-profit festivals, events, or area-wide promotional activities or events. Such festivals or events must be approved by the Board of Aldermen as promoting tourism and bringing favorable notice to the city. If a person sells food and/or beverages at any such not-for-profit festival sponsored by the Chamber of Commerce, then that person shall only be regulated by the event sponsor and shall not be subject to the requirements of this ordinance. Mobile food vendors are not considered transient vendors and are subject only to the requirements of this ordinance for permitting and oversight.

"Mobile pushcart" means any portable vending device, pushcart or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the Department of Transportation, used for the displaying, storing or transporting of food (other than ice cream or frozen treats) offered for sale by a vendor. Said cart may be up to four feet in width, six feet in length, excluding auxiliary items such as

handles or fenders, or otherwise the cart shall not occupy space greater than a total of 24 square feet.

“Mobile food truck” means any motorized vehicle that includes a self-contained kitchen in which food is prepared, processed or stored and used to sell and dispense food to the consumer. The unit must be on wheels (excluding boats and trailers) at all times. This definition does not include pushcarts.

Section 2. Permit Requirements.

No person shall engage in the business of mobile food vending as regulated herein without first having obtained a permit to do so from the Department of Community Development.

Section 3. Permit Application.

All mobile food permits shall be filed annually and will be awarded on a first come first serve basis. The permit application shall be made with the Department of Community Development but may be reviewed by any department of the city as may be necessary for approval. Permit applications shall contain the following information:

1. The name, mailing address, physical address, telephone number(s), and email address of the applicant(s). If any applicant is anything other than a natural person, then all documents related to the creation and maintenance of the entity such as articles of incorporation and any similar relevant documents shall be included. The applicant must state specifically where the mobile food truck or mobile pushcart intends to operate.
2. A copy of a valid privilege license issued from the City of Cleveland or from the town/city where the vendor's central kitchen is located.
3. A copy of an approved food vending permit from the Mississippi Department of Health.
4. A scaled sketch plan or photograph(s) showing the proposed mobile food truck or mobile pushcart, its dimension, and other details showing the proposed set-up.
5. A list of products to be sold.
6. Proof of a valid insurance policy that provides minimum liability coverage of \$500,000.00 per mobile food truck and \$250,000.00 per mobile pushcart, with the city named as an additional insured.
7. A written indemnity agreement that will hold harmless the city, its officers, and employees, for any loss or liability or damage, including costs, for bodily injury or property damage sustained by a person as a result of the negligent installation, use, or maintenance of a permitted space.

8. Such other additional information required by law, rule, or ordinance, or that any department of the city or the board of aldermen or permit applicant deems appropriate to assist the city for permit approval. The applicant shall be provided reasonable time to supplement the application.

Section 4. Permit Fees.

Permit fees shall be charged for each mobile food truck or mobile pushcart as follows:

9. An annual fee of \$500.00 shall be charged for mobile food vendors operating as a secondary location to a duly licensed and permitted fixed-base restaurant within the corporate limits of Cleveland and of which the applicant is the owner.
10. An annual fee of \$1,000.00 shall be charged for mobile food vendors operating without a duly licensed and permitted fixed-base restaurant within the corporate limits of Cleveland.

It shall be understood that not-for-profit festivals, events, or area-wide promotional activities or events are not considered business or commercial activities within these regulations and are exempt from the requirements herein. Examples of such events are, but are not limited to, Octoberfest, Crosstie Festival, and not-for-profit school, youth, or charitable activities.

Section 5. General Regulations.

The following regulations apply to all mobile food vendors:

11. All mobile food trucks or mobile pushcarts shall be inspected by the City of Cleveland prior to a permit being issued.
12. No mobile food vending permit shall convey any interest in the real property under the jurisdiction of the City of Cleveland. Such permit shall only convey the right to use the property for the purposes allowed herein.
13. Permit holders may be required to remove private materials or accessories to allow street, sidewalk, or utility access for emergency and maintenance operation.
14. This permit does not allow permit holders to operate during city-appointed special events without proper authorization from the event organizers.
15. In the event the city requires a vendor to relocate for any reason, the vendor shall not receive compensation for relocating.
16. Once a mobile food vending permit is approved, the permit must be displayed in a prominent location in or on the mobile food truck or mobile pushcart at all times.
17. Permits are non-transferable.

18. A damaged or destroyed mobile food truck or mobile pushcart may be replaced only after approval and inspection by the City of Cleveland. Any such replacement food truck or pushcart must be of substantially the same type, size, and dimension and with the same general characteristics as the original. Such replacement may be disallowed if the original vendor permit would not have approved the use of the replacement food truck or pushcart.
19. Any permit granted pursuant to this article shall be nonexclusive. The city may grant any number of such permits as the city deems appropriate. The grant of a permit shall not limit or abridge any power or authority of the city and shall not limit the authority of the city to commence appropriate civil, criminal, or other enforcement actions. The city retains full authority to amend the ordinances, rules and regulations that apply to any permit.
20. The city may revoke and terminate the permit in the event the vendor violates any term, condition, or provision of the permit, the Cleveland Code of Ordinances and/or zoning ordinances, state and/or federal law, or if the business license issued by the city for the permitted activity is revoked. The procedures for revoking or terminating a permit shall be the same as revoking or terminating a business license. The revocation may be sought as a remedy in a civil action. The vendor may terminate or surrender the permit at will any time prior to the expiration of the permit by providing written notice to the Department of Community Development. Termination of the permit shall not operate to relieve the vendor of the obligation to release, hold harmless, and indemnify the city and its officers, agents, and employees.
21. Permits shall be granted annually from January 1st to December 31st. Regardless of when the permit is issued, the cost shall remain the same for each applicant. In other words, there shall be no pro rata reduction in cost for permits granted after January 1st of each year or abandoned before December 31st of each year.

Section 6. Location and Operation.

22. Mobile food trucks and mobile pushcarts shall only conduct business in designated areas approved by the Department of Community Development. These areas include but are not limited to: parking lots located on private property with the written permission of the owner of said property and where such a location shall not affect the requirement for parking for said property under the Land Development Ordinance, public parking areas specifically approved for such location by the Mayor and Board of Aldermen, and for pushcarts, city sidewalks located in the B-2 or the B-2H Zoning District as defined on the official Zoning Map of the City of Cleveland. For private property, the City will require a completed Owner's Affidavit, copies of which will be provided with a food vendor application.

23. The mobile food vendor is responsible for initiating a request to utilize such locations, and the Department of Community Development shall have complete discretion as to which locations to approve considering the needs of traffic, pedestrians, public safety, public works, public convenience, the general uses of adjacent private property, and any other factor that is proper and lawful for the city to consider in approving or disapproving such locations.
24. The Department of Community Development shall have continuing authority to approve locations, grant conditions for approval, revoke prior approval of locations, make conditional revocations of approved locations, require adjustments by the mobile food vendor in setup or location to accommodate public safety and convenience, and to otherwise maintain full lawful control over all public ways of the city.
25. The City of Cleveland Police and Fire Departments shall have concurrent authority to oversee locations and setup of mobile food trucks and mobile pushcarts. If an applicant is denied and wishes to appeal his grievance, he may request an appeal before the Mayor and Board of Aldermen at a regular scheduled meeting.
26. All mobile food vendors must be located at least 150 feet in all directions from the entrance to any non-mobile business selling food unless the owner of the other business gives written permission for the infringement of the no-vending area. Proof of said permission must be filed with the Department of Community Development.
27. No mobile food truck, or mobile pushcart shall be locked or attached to trees, garbage receptacles, or street furniture.
28. No mobile food truck shall be located within twenty (20) feet of a building or structure. No mobile pushcart shall be located within three (3) feet of a building or structure.
29. Mobile food trucks and mobile pushcarts shall not locate within any area which would block the view of traffic, traffic signals, or traffic signs.
30. No mobile food truck or mobile pushcart shall be located within ten (10) feet of any fire hydrant.
31. Mobile food trucks and mobile pushcarts must conform to all other applicable guidelines of the city's Land Development Ordinance.
32. No mobile food truck or mobile pushcart, display device, or accessory container shall be located inside any public building or structure or at any place the general public is prohibited.
33. Mobile food trucks and mobile pushcarts may only be operated between the hours of 8:00 a.m. and 10:00 p.m. Cleanup and removal of the food truck or pushcart must be completed by 10:30 p.m.

34. The operator(s) of mobile food trucks or mobile pushcarts must be present at all times the vehicle is on site.
35. Mobile food vendors are responsible for all waste and trash removal. The containment area must be kept clear of grease, trash, paper, cups or cans associated with the operation. No liquid waste or grease is to be disposed of in tree pits or onto sidewalks, streets, or other public places.
36. The mobile food vendor shall not provide stands, shelves, bins, equipment, signs, covers, or any kind of accessory or feature unless the same was accurately described and included in the application, and was fairly included in the picture or other graphics required as part of the application.
37. The mobile food vendor shall contain all refuse, trash and litter within the mobile food service unit or within a small moveable trash can supplied and maintained by the vendor, and located adjacent to the mobile food truck or mobile pushcart in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The vendor shall be responsible for the proper disposal of such refuse, trash, and litter, and shall place it in the public trash container, or in any private container with proper permission. The vendor is responsible for all litter and trash within fifteen (15) feet of the mobile food truck or mobile pushcart at any time the vendor is selling or offering to sell any merchandise or service.
38. The mobile food truck or mobile pushcart must have self-contained utilities and shall not use the city's utilities or private utilities that are not self-contained and integral to the vendor unit. Vendors shall, at all times, abide by the terms of the city's Sewer Use Ordinance and specifically agree to abide by the terms of said ordinance for the disposal of any grey water generated by the food truck or pushcart.
39. No mobile food vendor shall sell or attempt to sell any item to the occupant of any motor vehicle, unless it is parked in a lawful parking space.
40. Every mobile food vendor shall keep records utilizing generally accepted accounting practices for the purposes of compliance with all federal, state and local tax laws.
41. All approved mobile food trucks and mobile pushcarts must pay the nine percent (9%) sales tax required by all food providers in the City of Cleveland, along with all other tax and licensing fees required by the State of Mississippi.
42. All approved mobile food trucks and mobile pushcarts must be licensed businesses within the City of Cleveland with all operations pertinent to the food truck or pushcart operated within the City of Cleveland.
43. All mobile food trucks and mobile pushcarts must be issued a State tax number by the Mississippi Department of Revenue designating them as a City of Cleveland business.

44. Mobile food trucks and mobile pushcarts shall not be stored, parked or left overnight on any city property.

Section 7. Design standards for Mobile Food Trucks and Mobile Pushcarts.

All mobile food trucks and mobile pushcarts must meet the following design standards:

45. All, mobile food trucks and mobile pushcarts must be self contained. This requires that the food truck or pushcart is not connected or attached to any building or structure, and does not receive power from any building by means of wires, hoses, or other connections.
46. All mobile food trucks must be equipped with a working carbon monoxide detector.
47. All mobile food trucks shall have at least one (1) ABC fire extinguisher with a minimum classification of 2A:10BC rating. If grease laden vapors are produced in the vehicle, then a Class K rated portable extinguisher shall be required. Mobile food trucks are also generally subject to a fire inspection by the City of Cleveland.
48. Umbrellas or canopies must be attached to the food truck or pushcart and must not exceed eight (8) feet in height above grade. Maximum diameter of canopies and umbrellas shall not exceed six (6) feet and shall not interfere with pedestrian movement. No, mobile food truck or mobile pushcart shall have more than two (2) umbrellas.
49. Signage on mobile pushcarts shall be no greater than twelve (12) square feet and for mobile food trucks no greater than thirty-two (32) square feet. No free-standing signage is permitted.
50. Mobile food trucks and mobile pushcarts must comply with all local, state, and federal rules regarding sanitation and protection of food from airborne contamination.
51. Sales of goods are limited to food and beverage.
52. Mobile food trucks may place a maximum of three (3) coolers within their containment area so long as the coolers are neatly stacked to avoid visual clutter. Mobile pushcarts are not permitted to have coolers independent of their pushcart.
53. No accessory container shall be more than three (3) feet from the unit. Accessory containers must be made of hard substances such as hard plastic or a metal and may not be made by expanded polystyrene plastic, paper, paperboard, or cardboard.
54. Two (2) chairs are permitted for the vendor's use.
55. All Mobile food vendors shall operate at a decibel level that is not considered a public nuisance and is in compliance with any City of Cleveland Noise Ordinance

regulations. At no time, shall the decibel level generated by the mobile food vendor exceed "80DbA." No mobile food vendor shall use or maintain any outside sound amplifying equipment, lights or noisemakers, such as bells, horns or whistles to attract customers.

Section 8. Violations and Penalties for all Vendors in this Article.

The following penalties apply to all vendors addressed in this Article. For any violation, the vendor shall receive:

56. First, a verbal or written warning from the City.

57. If the Vendor does not comply after such warning, the vendor shall be fined three hundred dollars (\$300.00) for the violation and, at the discretion of the City of Cleveland, a cease and desist notice may be issued.

Any offense shall be considered a misdemeanor and is subject to being cited by any authorized law enforcement official with authority to do so in the City of Cleveland.

Violation of this article may result in the suspension or revocation of any city permit or license issued to the owner or operator of the mobile food truck or mobile pushcart, at the total discretion of the City.

Each day on which an infraction of the ordinance occurs shall be considered a separate and distinct violation.

All fines collected shall go to the City's general fund.

Alderman Paul Janoush moved and Alderman Danny Abraham seconded the motion to adopt the foregoing resolution, and the question being put to a roll call vote, the result was as follows:

Alderman Danny Abraham	voted:	Yea
Alderman Theodore R. "Ted" Campbell	voted:	Yea
Alderman Gary Gainspoletti	voted:	Yea
Alderman Paul Janoush	voted:	Yea
Alderman J. Kirkham Povall	voted:	Yea
Alderman Robert Sanders, Jr.	voted:	Yea
Alderman Maurice Smith	voted:	Yea

The motion having received the affirmative vote of a majority of the members present, the Mayor declared the motion carried and the resolution adopted this the 20th day of February, 2017.

s/Billy Nowell
Billy Nowell, Mayor

ATTEST:
s/Dominique Green
Dominique Green, City Clerk