

ORDINANCE NO. 1468

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, PROVIDING FOR THE REPEAL OF CHAPTER 11, ARTICLE V OF THE CODE OF ORDINANCES, ENTITLED "MOBILE VENDORS AND PEDDLERS," SPECIFICALLY AT SECTIONS 11-101 THROUGH 11-115, TO ELIMINATE THE REGULATION AND ENFORCEMENT OF MOBILE FOOD DISPENSING VEHICLES PURSUANT TO FLORIDA STATUTE SECTION 509.102; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION, AND FOR AN EFFECTIVE DATE.

WHEREAS, on July 12, 2011, the City of North Miami ("City") adopted Ordinance No. 1319 providing for the establishment of regulations and permits to allow mobile food service operations within the City's jurisdiction; and

WHEREAS, the Florida Legislature recently enacted Section 509.102, Florida Statutes, which provides a limited state preemption regarding "mobile food dispensing vehicles" and, that a municipality may not require a separate license, registration, or permit other than the license required by the state, or require the payment of any license, registration, or permit fee other than the fee required by the state, as a condition for the operation of a mobile food dispensing vehicle within the municipality; and

WHEREAS, the City recognizes that due to this state preemption, many of the provisions contained within sections 11-101 through 11-115 of the City's Code may no longer be enforced; and

WHEREAS, although Section 509.102, Florida Statutes, does preempt municipalities in certain areas, Section 509.102, Florida Statutes, is intended to be a partial preemption of municipal home rule authority because it expressly states that "this section may not be construed to affect a municipality, county, or other local governmental entity's authority to regulate the operation of mobile food dispensing vehicles other than the regulations described in Section 509.102(2), Florida Statutes; and

WHEREAS, the City has proposed an amendment to Chapter 29, of the City Code entitled “Land Development Regulations” to provide for mobile food dispensing vehicles to operate as an accessory use and to establish zoning standards for this use; and

WHEREAS, City Administration has determined that it would be in the best interest of the City to remove any provisions of the Code which are now preempted by state law and which will conflict with the City’s new zoning standards for mobile food dispensing vehicles.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. Amendment of Code. Whereas the Mayor and City Council of the City of North Miami, Florida hereby repeal Chapter 11, Article V, of the City Code of Ordinances, entitled “Mobile Vendors and Peddlers,” specifically at Sections 11-101 through 11-115, to eliminate the regulation and enforcement of mobile food dispensing vehicles, which shall read as follows:

CHAPTER 11. - LICENSES AND BUSINESS REGULATIONS

ARTICLE V. MOBILE VENDORS AND PEDDLERS

Sec. 11-101. Definitions.

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Center median* means any area in the middle of any street or highway, designed to provide a barrier to keep traffic on one (1) side of the street from going to the other side of the street. A center median may be a raised concrete strip or a grass strip.~~

~~*City sponsored event* means any event which the city has either financially sponsored or sponsored by way of in-kind donations.~~

~~*Mobile food service operation* means the preparation/cooking, serving and/or sale of food conducted from a portable stand, vehicle or trailer. Each such portable stand, vehicle, or trailer shall be considered a mobile food service operation.~~

~~*Mobile vending vehicle* means any vehicle, cart or apparatus used for the displaying storing or transporting of articles offered for sale by a mobile vendor.~~

~~*Mobile vendor* means any person, firm, corporation or other entity engaged in the selling or offering for sale any and all goods, wares, beverages or merchandise including specifically food or food products outdoors from a mobile vending vehicle or from his person.~~

Mobile vendor special event means a special event consisting of a concentration of mobile vendors which have been properly licensed and permitted by the city in conformance with the provisions in sections 11-104 and 11-107 of the Code of Ordinances of the City of North Miami.

Mobile vendor special event coordinator means the person designated to coordinate the placement/positioning of individual mobile vendor vehicles; maintaining the inspection of the mobile vendor special event site including, but not limited to, proof of insurance and licensing; and assure of compliance with hours, clean-up and other city requirements during a mobile vendor special event.

Peddler means any person traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products, ice cream or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers; or a person who solicits orders and as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddlers subject to the provisions hereof. The word "peddler" shall include the words "hawker" and "huckster." A peddler shall not be permitted to maintain a stationary location within the public right-of-way. Ice cream vendors are hereby restricted to the sale of prepackaged ice cream and other related frozen, consumable products.

Street means any road, street, highway or other way in the city.

See. 11-102. Mobile vendors requirements.

- (a) It shall be unlawful to sell, offer to sell, or exhibit for sale any good or merchandise, including, but not limited to, fruit, nuts, popcorn, ice cream or sandwiches, or otherwise operate or conduct business, from any parked vehicle, cart, stand, or other apparatus, upon any street or sidewalk in the city, or from the exteriors of buildings licensed for sales, without first securing a permit by completing a permit application on a form provided by the City of North Miami and paying the necessary permit application fee, as approved by the city council and amended from time to time.
- (b) No mobile vendor shall station itself upon any public street or right-of-way, or upon any private property, except with the express permission of the property owner and in a manner, which does not impede the flow of traffic on public streets or rights-of-way, nor block pedestrian access to public streets or rights-of-way, unless participating in a city approved and permitted mobile vendor special event or a city sponsored event.
- (c) No mobile vendor shall be permitted to operate in any congested area where the vendor's operations might impede or inconvenience the public; with the exception of those participating in a city approved and permitted mobile vendor special event or a city sponsored event. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.
- (d) No mobile vendor shall remain in any one (1) site longer than thirty (30) minutes, except in the case of a special event exhibition, exposition, art show and/or festival not to exceed five (5) days. In such instance, the mobile vendor shall secure a special event permit.
- (e) With the exception of ice cream mobile vendors, mobile vendors are prohibited in the city except in the M-1 zoning district or upon construction sites where work is actively in progress, for the purpose of selling there from any food products unless participating in a city sponsored event;

and/or a city approved and permitted mobile vendor special event; or pursuant to a special event permit.

(f) All mobile vendors must provide for their own trash and garbage removal such that no trash or garbage remains on the premises upon which the sale or vending transaction was conducted.

(g) No mobile vendor shall wave, flag or motion to vehicles on the street.

(h) No mobile vendor may vend or conduct business in such a manner as to restrict or interfere with the ingress or egress of the abutting property owner or tenant or create or become a public nuisance, increase traffic congestion or delay or constitute a hazard to traffic, life or property or an obstruction to adequate access to fire, police or sanitation vehicles.

See. 11-103. License required.

It shall be unlawful for any person to engage in the business as a mobile vendor, as defined in this article, within the city without first obtaining a license as provided herein.

See. 11-104. Application for vending license.

Applicants for a vending license shall complete an application with the city clerk's office on an approved form provided by the City of North Miami and shall provide the following information:

- (1) The name, home and business address of the applicant and the name and address of the owner, if other than the applicant, of the vending business or vending vehicle to be used in the operation of the vending business.
- (2) A description of the type of food, beverage or merchandise to be sold.
- (3) A description of the proposed location of the vending business and the official business address of the vending business.
- (4) A description and photograph of any equipment or vending vehicle to be used in the operation of the business, including a photocopy of the license and registration of the motor vehicle.
- (5) Proof of insurance, issued by an insurance company licensed to do business in the State of Florida, for all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with the license. Such insurance shall provide a minimum amount of coverage of three hundred thousand dollars (\$300,000.00) for injury for each occurrence and one hundred thousand dollars (\$100,000.00) per person. The city shall be named as an additional insured. All insurance must be in a form acceptable to the city's risk management division. No material change or cancellation of such insurance shall be effective without thirty (30) days prior written notice to the city. The insurance shall include automobile insurance and comprehensive general liability.
- (6) A health certificate, issued by the county health department, if vending food or beverage.
- (7) An affidavit or notarized statement from the property owner granting the mobile vendor to locate on their property.
- (8) Along with a processing fee of fifty dollars (\$50.00).

See. 11-105. Background investigation and approval of council.

Prior to the issuance of a license, the city clerk shall forward the application to the police department which shall provide a background investigation for each applicant and shall report the results of such investigation to the city manager. The background investigation shall include a national search of the list of registered sexual offenders and sexual predators. The provisions of this article shall apply to each person engaged in the activity of mobile vendor as well as business,

~~if any, by which the mobile vendor is employed. When there is a complaint filed concerning any mobile vendor during the license year, council approval shall be required prior to the renewal of the license for the peddler.~~

Sec. 11-106. Exhibition of license and local business tax receipt.

(a) ~~Mobile vendors are required to obtain and exhibit their licenses and business tax receipt at the request of any city official and/or any citizen, unless exempted by F.S. Ch. 205.~~

(b) ~~In addition to displaying their current business tax receipt, mobile vendors selling any ice cream, frozen confections, candy or similar food products must display on the back of the vehicle in clearly legible six inch letters the words "Caution Watch Out for Children" and "Ice Cream Vendor." In the event ice cream is not offered for sale, but other products within the scope of this article are offered, the "ice cream vendor" portion of the required cautionary words may be appropriately substituted with other language or be deleted.~~

Sec. 11-107. Mobile vendor special event.

~~A mobile vendor special event shall be permitted without a public hearing provided:~~

(1) ~~The mobile vendor special event shall be limited:~~

~~a. To one (1) event, between Monday and Thursday, per week per calendar year at the same location;~~

~~b. Be permitted to operate as an accessory use to any culinary institute;~~

~~e. Operate no later than 10:00 p.m., Monday through Thursday. Up to four (4) days per year, a mobile vendor special event may operate until midnight, Monday through Thursday, provided that these four (4) dates are included as part of the schedule of events provided in the application for the permit.~~

~~(2) A special event permit shall be obtained for each mobile vendor special event site on an annual basis. The special event permit package shall include all of the following:~~

~~a. Notarized letter from property owner of record authorizing the mobile vendor special event and designating a mobile vendor special event coordinator; schedule of events~~

~~c. Notification and sign-off from North Miami Police Department;~~

~~d. A traffic safety and security plan;~~

~~e. Narrative describing the hours of operation, estimated public attendance; and description of other amenities provided;~~

~~f. Copies of state licenses and local vending license of each of the individual mobile vendors participating;~~

~~g. The maximum number of individual mobile vendors which may be present at the mobile vendor special event. This maximum number shall be indicated on the special event permit;~~

~~h. Site plan or survey indicating the general placement of the individual mobile vendors; location of refuse facilities, if not hauled away; location of sanitation facilities; location of on-site and off-site parking; lighting fixtures, if applicable; and rights-of-way, internal circulation and ingress/egress;~~

~~i. Whether or not live music or pre-recorded music will be provided during the special event;~~

j. Accompanied by a permit fee in an amount to be determined by resolution by the mayor and city council. Proceeds from the permit fee shall be designated for economic redevelopment in the area where the mobile vendor special event occurs.

(3) If the mobile vendor special event permit application is incomplete or if the mobile vendor special event is operating in a manner not consistent with the representations made in the application for special event permit or the mobile vendor special event coordinator fails to comply with the provisions of this section, the city has the authority to deny or revoke the special event permit.

(4) The designated mobile vendor special event coordinator shall:

- a. Assist in the placement/positioning of individual mobile vendors during the special event;
- b. Maintain for inspection at the special event all pertinent documentation provided by the individual mobile vendors such as proof of licensing and insurance;
- c. Assure compliance with hours, clean-up and other permit requirements.

Sec. 11-108. Loud noises and speaking devices.

(a) No mobile vendor, with the exception of an ice cream vendor, shall shout, make any cry out, blow a horn, ring a bell or use any sound device, including any loud speaking radio or sound-amplifying system upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced there from to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell.

(b) An ice cream vendor is permitted to utilize music to alert potential customers that it is in the area for the purpose of selling its product. The playing of music is only permitted during the hours of 10:00 a.m. and 5:00 p.m. The music shall not be played at a level to constitute a nuisance.

(c) A mobile vendor special event coordinator is permitted to have live musical performances or pre recorded music in conjunction with the mobile vendor special event. Intent to provide live or pre-recorded music must be stated in the application package for the special event permit and must comply with the city's noise ordinance set forth in chapter 12 of the Code of Ordinances.

Sec. 11-109. Prohibited acts.

No person shall stand, sit or remain on or within six (6) feet of the traveled portion of a street or highway or upon any center median strip, for the purpose of selling, offering for sale or advertising any product, property or service to the driver or passenger of any motor vehicle using the street or highway, unless participating in a city sponsored event and/or a city approved and permitted mobile vendor special event.

Sec. 11-110. Duty of police to enforce.

(a) It shall be the duty of any police officer of the city to require any mobile vendor to produce their mobile vendor's license and to enforce the provisions of this article against any person found to be violating the same. Nothing in this section shall create any private right of action and the question of enforcement shall remain a discretionary law enforcement activity in accordance with law.

(b) When requested by any police officer of the city, the mobile vendor special event coordinator can be required to produce the special event permit for the event.

See. 11-111. Records.

The chief of police shall report to the clerk all convictions for violation of this chapter and the clerk shall maintain a record for each license issued and record the reports of violation therein.

See. 11-112. Revocation of license.

(a) Licenses issued under the provisions of this chapter may be revoked by the city council after notice and hearing, for any of the following causes:

(1) Fraud, misrepresentation, or false statement contained in the application for license;

(2) Fraud, misrepresentation or false statement made in the course of carrying on his business as peddler;

(3) Any violation of this chapter;

(4) Conviction of any crime or misdemeanor involving moral turpitude;

(5) Conducting the business of peddling in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public.

(b) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for hearing.

See. 11-113. Appeals.

(a) Any person aggrieved by the action of the chief of police or the clerk in the denial of an application for a license as provided in this article, or in the decision which reference to the revocation of a license as provided herein shall have the right of appeal to the city council. Such appeal shall be taken by filing with the council, within fourteen (14) days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. (b) The city council shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant in the same manner as provided in this article for notice of hearing on revocation. The decision and order of the city council on such appeal shall be final and conclusive.

See. 11-114. Prohibition from participating in mobile vendor special event.

Any mobile vendor whose license has been revoked pursuant to the provisions of section shall be prohibited from participating in any mobile vendor special event until such time as the license has been reinstated.

See. 11-115. Reserved.

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Section 2. Repeal. All ordinances or parts of ordinances in conflict or inconsistent are repealed.

Section 3. Conflict. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are repealed.

Section 4. Severability. If any word, clause, phrase, sentence, paragraph or Section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or Section of this Ordinance.

Section 5. Codification. The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 24th day of August, 2021.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 28th day of September, 2021.



PHILIPPE BIÉN-AIME
MAYOR

ATTEST :



VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Estimé-Irvin
Seconded by: Timothe

Vote:

Mayor Philippe Bien-Aime

(Yes) _____ (No)

Vice Mayor Scott Galvin

(Yes) _____ (No)

Councilwoman Kassandra Timothe, MPA

(Yes) _____ (No)

Councilwoman Mary Estimé-Irvin

(Yes) _____ (No)

Councilman Alix Desulme, Ed.D.

(Yes) _____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.