

ORDINANCE NO. 1469

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES ENTITLED “LAND DEVELOPMENT REGULATIONS”, SPECIFICALLY AT SECTION 5-101, ENTITLED, “ACCESSORY USES AND STRUCTURES”, ESTABLISHING A NEW SECTION 5-1611 TO ALLOW MOBILE FOOD DISPENSING VEHICLES TO OPERATE IN PARTICULAR AREAS OF THE CITY, SUBJECT TO CERTAIN STANDARDS, SECTION 5-1903, AND ARTICLE 7, ENTITLED “DEFINITIONS”, IN ACCORDANCE WITH SECTION 509.102(2), FLORIDA STATUTES (2021), AND SECTION 3-302, AND SECTIONS 3-1004 THROUGH 3-1007 OF THE CITY OF NORTH MIAMI CODE OF ORDINANCES, CHAPTER 29, ENTITLED “LAND DEVELOPMENT REGULATIONS”; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION, AND FOR AN EFFECTIVE DATE.

WHEREAS, the City of North Miami (“City”) is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Florida Legislature recently enacted Section 509.102, Florida Statutes, which defines the term “mobile food dispensing vehicle” as any vehicle that is a public food service establishment and that is self-propelled or otherwise moveable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal; and

WHEREAS, the City recognizes that effective July 1, 2020, Section 509.102, Florida Statutes provides a limited state preemption regarding “mobile food dispensing vehicle” 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 also recognizes that Section 509.102, Florida Statutes, provides that a municipality may not prohibit mobile food dispensing vehicles from operating within the *entirety* of a municipal jurisdiction; and

WHEREAS, the City further finds that 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 hereby finds that despite Section 509.102, Florida Statutes, municipalities continue to enjoy significant home rule authority to regulate land use and zoning and operational standards related to mobile food dispensing vehicles; and

WHEREAS, under regulated circumstances, mobile food dispensing vehicles provide a valuable and convenient service to the community by providing food and beverage options at special events and other appropriate venues; and

WHEREAS, the City wishes to support convenient food and beverage options at special events and other appropriate venues and encourage and support local business and entrepreneurship by adopting uniform regulations to allow the operation of mobile food dispensing vehicles within the City consistent with the preemption provided in Section 509.102, Florida Statutes; and

WHEREAS, the City finds that the use and operation of mobile food dispensing vehicles on real property directly affects the use of land within the City, and therefore, such uses are subject to the City’s legitimate land use and zoning powers under the Florida Municipal Home Rule Powers Act, Community Planning Act and other applicable law. *See also, Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) (The concept of planning and zoning is a legitimate exercise of the police power of municipalities.); and

WHEREAS, unless the operation of mobile food dispensing vehicles within the City is limited to the industrial zoning district, or temporary special events, and subject to some level of site plan review by the City to ensure that the real property on which they operate is suitable to accommodate such use, the operation of such vehicles may negatively impact the use of real property and surrounding properties and create public nuisances; and

WHEREAS, the City desires to avoid such negative impacts and public nuisances; and

WHEREAS, the City also finds that the use and operation of mobile food dispensing vehicles should be governed by other traditional land use and zoning requirements as more

specifically stated herein in order to avoid adverse negative effects which may be cause by the operation of such vehicles on real property and safeguard the community; and

WHEREAS, the City further finds that for mobile food dispensing vehicles to successfully operate their respective businesses for profit within the jurisdictional limits of the City, such vendors must also rely upon and use City streets; and

WHEREAS, the City additionally finds and recognizes that Florida courts have long held that municipalities have the historic ability to regulate commercial use of City streets and that the use of public roads for profit is a privilege, not a right, and can be regulated and controlled by the government in furtherance of the public health, safety and welfare. *See Seaboard Air Line Ry. Co. v. Wells*, 100 Fla. 1027, 1034, 130 So. 587, 591 (Fla. 1930); *Pennington v. Quigg*, 94 Fla. 1056, 1065, 114 So. 859, 862 (Fla. 1927) (The right to use city streets for conducting private business is not an inherent right and can only be acquired by permission or license from the city); *Jarrell v. Orlando Transit Co.*, 123 Fla. 776, 778, 167 So. 664, 665 (Fla. 1936) (There is then no such thing as a natural right to use the public highways for commercial purposes. A city may grant a limited right to use the streets for private business, but such is, "...a privilege that may be restricted or withdrawn at the discretion of the granting power. The power to do so is plenary and may extend to absolute prohibition"); and

WHEREAS, the City deems that it is necessary to regulate mobile food dispensing vehicles operating upon streets within the City so such vendors operate in areas with sufficient pedestrian traffic, and in a manner that avoids traffic conflicts and congestion, generally protects public safety, and does not detract from the aesthetic beauty and attractiveness of the surrounding streetscape and properties; and

WHEREAS, the Mayor and City Council of the City of North Miami, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of North Miami.

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

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Council of the City of North Miami.

Section 2. Mobile Food Dispensing Vehicles. The Mayor and City Council of the City of

North Miami, Florida, hereby amend Chapter 29 of the North Miami Code of Ordinances entitled “Land Development Regulations”, by amending Article 5, entitled “Development Standards”, and Article 7, entitled “Definitions” as follows:

CITY OF NORTH MIAMI CODE OF ORDINANCES
CHAPTER 29. LAND DEVELOPMENT REGULATIONS

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ARTICLE 5. – DEVELOPMENT STANDARDS

DIVISION 1. - ACCESSORY USES AND STRUCTURES

Sec. 5-101. - Accessory uses and structures; Permits required.

A. Except as explicitly provided herein, no use designated as an accessory use in this division shall be established until after the person proposing such use has applied for and received all required development permits which may include; a building permit, zoning improvement permit (ZIP), certificate of use, and a certificate of occupancy all pursuant to the requirements of this division. No permit shall be issued for an accessory building for any use unless the principal building and established use exists on the property, or unless a permit is obtained simultaneously for both buildings and construction progress concurrently.

B. Prohibited uses. Any accessory use not specifically listed as permitted, or listed as a related use, and which the administrative official cannot categorize as similar to a permitted use or related use, shall be considered expressly prohibited.

C. Applicability of principal use and building regulations. An accessory use and building or structure shall be subject to the same regulations that apply to the principal use, building and structure in each district, except as otherwise provided.

D. Location. All accessory uses, buildings and structures, except for approved off-site parking, shall be located on the same lot as the principal or main use.

E. The following accessory use table shall be used to determine the required zoning district in which a use may be established. Unless otherwise stated, setback and spacing regulations shall adhere to the minimum requirements of this division. Additional standards shall be complied with for the establishment of the accessory use.

Zoning District/Accessory Use and Structures	R-1	R-2	R-4	R-5	R-6	C-1	C-2BE	C-2BW	C-3	M-1	PU	RO	BZ	PD	AOD	NRO
Management office, sales office	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P
Mobile food dispensing vehicles ^{1& 2}										P*						
Mobile medical, professional unit	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Multifamily recyclable material storage areas			P	P	P								P	P	P	P**
News kiosk						P	P	P	P		P			P	P	P
Off-street parking structures						P	P	P	P		P			P	P	P

Legend: P indicates permitted

P* indicates permitted through Admin. Site Plan approval

P** indicates permitted through the underlying zoning district

Blank indicates not permitted

Note: See additional standards, requirements, and criteria for specific accessory uses set forth in this division and the master permitted uses list in section 4-202.

¹ Subject to the standards in section 5-1611.

² This use may be accommodated in other zoning districts as a special event through the temporary use permit process as provided in section 5-1903.

DIVISION 16. - STANDARDS FOR SPECIFIC USES

Section. 5-1611. – Mobile food dispensing vehicles.

A. Purpose and intent. The purpose and intent of this section is to establish land use and zoning regulations for real property upon which a mobile food-dispensing vehicle (“MFDV”), e.g., “food truck” is authorized to operate within the jurisdictional limits of the city. Unless authorized by this section, or allowed under a temporary use permit, MFDVs on other real property are prohibited and unlawful. This section is intended to neither prohibit MFDVs from operating within the entirety of the city, nor regulate the licensing, registration, permitting and fees of MFDVs, preempted by the state under section 509.102, Florida Statutes.

B. Authorized locations. Subject to the terms and conditions set forth in this section, long-term MFDVs shall be allowed to operate within the jurisdictional limits of the city as an accessory use on property zoned M-1 on the city’s official zoning map. MFDVs, as part of a special event, may be accommodated in other districts through the temporary use permit as outlined in section 5-1903.

C. Land use conditions for MFVDs. With the exception of MFVDs operating as part of a special event approved under a temporary use permit, the following shall apply to all MFVDs operating within the city:

1. The property owner must obtain specific administrative site plan approval from the community planning and development department.
2. As required for all businesses operating in the City, the property owner shall assure that each MFDV obtain, and maintain a business tax license from the city, and a certificate of use, if determined necessary by the community planning and development department.
3. The subject property shall be developed with a legally operating permanent business. MFVDs shall operate only during such business' normal hours of operation.

D. Operational standards. The following operational standards shall apply to all MFVDs operating within the city, whether long-term or as part of a special event approved under a temporary use permit:

1. Unless otherwise approved under a temporary use permit, no portion of the MFDV shall extend onto an adjacent property or into any right-of-way.
2. The MFDV shall not interfere with vehicular and pedestrian movement or visibility, block access to loading/service areas, emergency access and fire lanes, driveways, sidewalks, or damage landscaped areas.
3. MFVDs must be located on a paved surface.
4. MFVDs that occupy any site parking space(s) shall only utilize those parking space(s) that are not required for the host business location, or any business-required parking space on the site. .
5. The food vendor shall provide receptacles, adjacent to the MFDV, for litter associated with the sales activity, and shall remove all litter, debris and other waste attributable to the vendor and/or customers on a daily basis.
6. The MFDV must not discharge waste, fat, oil, grease or such other similar substances from the vehicle. All such substances related to or generated from the vehicle shall be taken with the vehicle when the vehicle leaves the subject property.
7. No food shall be sold, prepared or displayed outside of the MFDV while in operation on the subject site.
8. Adequate sanitary facilities must be provided to serve employees and patrons.

9. Vendors shall not use any flashing, blinking, or strobe lights or similar effects to draw attention to the MFDV.
10. Vendors shall not use loud music, amplification devices, bullhorns, crying out, or any other audible methods to gain attention.
11. With the exception of one (1) A-frame sign located directly next to the MFDV's customer service area, there shall be no signage used by vendors except for what is allowed on the MFDV itself.
12. With the exception of dining furniture approved through the administrative site plan, vendors are prohibited from locating, placing or putting personal property outside of the MFDV, including but not limited, to fixtures, and equipment. All allowable dining furniture shall be removed at the end of daily operations.
13. Vendors shall comply with all applicable city laws, regulations, and ordinances, including those regulating noise, signage, and loitering.
14. With the exception of ancillary sales of branded items consistent with the food or vendor, such as a cup or tee shirt that bears the name of the company, restaurant or organization engaged in MFDV vending, the sale of products other than food and beverages under the permit authorized in this section is prohibited.
15. Unless otherwise approved as part of a temporary use permit issued under article 5, division 19, no more than two (2) MFDVs are allowed to operate simultaneously per site.
16. No overnight parking of the MFDV allowed on-site.
17. A MFDV shall not be located on private property upon which there are unpaid liens or open code violations.
18. MFDVs selling or dispensing of food to customers in a moving vehicle or otherwise engaging in drive-up sales is prohibited.

D. Additional permits and licenses. A copy of the appropriate license(s) issued from the Florida Department of Business & Professional Regulation (Division of Hotels and Restaurants) shall be maintained on the MFDV at all times when the vehicles is in operation on real property located within the city, and shall be made available for inspection upon request by the city's law or code compliance officers.

E. Penalties and appeals.

1. Owners and operators of MFDVs, property owners on which such vehicles operate, and the temporary use permittee, shall be jointly and severally liable for any violations of this section. The code compliance department shall revoke the property owners' MFVD site plan or the temporary use permit if any MFDV vendor ceases to meet any requirement of this section; or, who violates any other federal, state or local law, ordinance or regulation; or conducts activity in a manner that is adverse to the protection of the public health, safety, and welfare.
2. If the MFDV site plan approval is denied or revoked, the property owner may appeal the decision to the zoning appeals board pursuant to article 2, division 5, "Zoning Appeals Board".

DIVISION 19. - TEMPORARY USES

Sec. 5-1903. - Permit and Standards.

No temporary use shall be established on private or public property without obtaining a temporary use permit from the city manager or designee, establishing compliance with the following standards:

- A. The temporary use will not create hazardous vehicular or pedestrian traffic conditions.
- B. The design and installation of all practicable temporary traffic control devices including signage to minimize traffic congestion.
- C. Adequate sanitary facilities, utility, drainage, refuse management, emergency services and access, and similar necessary facilities and services will be available to serve employees, patrons or participants.
- D. Where a tent or similar structure is to be used, such structure shall:
 1. Comply with the requirements of the fire marshal.
 2. Provide the city with a certificate of insurance to cover the liability of the applicant or sponsor.
 3. Demonstrate that the tent is flame resistant by providing a certificate of flame resistance or other assurance that the structure has been properly treated with flame retarder and has been maintained as such.
- E. Signage, pursuant to 5-1501, related to the temporary use, including signs attached to vehicles associated with the use, shall not exceed twenty-four (24) square feet of sign face area and no more than one (1) sign face per street frontage shall be permitted. During the period of a declared disaster, additional allowances for banners and other removable signage may be considered.

F. Mobile food-dispensing vehicles (MFDVs), proposed as part of the temporary use permit, may be accommodated in all zoning districts, subject to the requirements herein, and the applicable standards outlined in section 5-1611.

No temporary use shall be permitted which allows the sale of Christmas trees or fireworks.

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ARTICLE 7. – DEFINITIONS

Sec. 7-101. - Definitions.

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Mixed-use development means a development that encompasses three (3) or more uses.

Mobile food dispensing vehicle, e.g., “food trucks”, shall have the same meaning as that term is defined in section 509.102(1), Florida Statutes, and upon the effective date of this section, means, “... a vehicle that is a public food service establishment that is self-propelled or otherwise moveable from place to place, and includes self-contained utilities, included, but not limited to, gas, water, electricity, or liquid waste disposal.”

Mobile home means a residential living unit, ten (10) feet or more in width, movable and equipped with a chassis, designed to be transported to and affixed to a site in accordance with Florida Statutes, where it is to be occupied as a dwelling, containing any of the following mechanical systems and equipment: plumbing, heating, electrical, cooking and refrigeration.

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Section 3. **Repeal.** All Ordinances and part of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

Section 4. **Conflicts.** All Ordinances or parts of ordinances in conflict herewith the provisions of this Ordinance are repealed.

Section 5. **Severability.** The provisions of this Ordinance are declared to be severable. If any section, paragraph, sentence, phrase, clause or word of this Ordinance shall, for any reason, be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, phrases, clause or words of this Ordinance, but they shall remain in

effect, it being the legislative intent that this Ordinance shall notwithstanding the invalidity of any part.

Section 6. Scrivener's Errors. The City Attorney may correct scrivener's errors found in this Ordinance by filing a corrected copy with the City Clerk.

Section 7. Codification. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or any other appropriate word.

Section 8. Effective Date. This Ordinance shall become effective ten (10) days after 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 BIEN-AIME
MAYOR

ATTEST:



VANESSA JOSEPH, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: COUNCILMAN GALVIN

CO-SPONSORED BY: COUNCILWOMAN TIMOTHE

Moved by: Estimé-Irvin

Seconded by: Timothe

Vote:

Mayor Philippe Bien-Aime
Vice Mayor Scott Galvin
Councilwoman Kassandra Timothe, MPA
Councilwoman Mary Estimé-Irvin
Councilman Alix Desulme, Ed.D.

<u>X</u>	(Yes)	<u> </u>	(No)
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