

**ORDINANCE NO. 1528**

**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 ARTICLE 5, ENTITLED "DEVELOPMENT STANDARDS", SECTION 5-1611, TO ALLOW ICE CREAM TRUCKS TO OPERATE WITHIN THE CITY LIMITS, SUBJECT TO CERTAIN STANDARDS, IN ACCORDANCE WITH SECTION 166.041(3)(C), FLORIDA STATUTES (2024), SECTIONS 3-1004 THROUGH 3-1007, AND SECTION 3-302 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, which includes food trucks; 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 industrial zoning districts, construction sites, 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 caused 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**, on September 28, 2021, the City of North Miami (“City”) adopted Ordinance No. 1469 establishing uniform regulations to allow the operation of mobile food dispensing vehicles (“MFDVs”) within the City consistent with the preemption provided in Section 509.102, Florida Statutes; and

**WHEREAS**, Councilmember Scott Galvin desires to support additional entrepreneurial opportunities within the City, and requests that the Mayor and City Council expand the operation of certain MFDVs whereas Ice Cream Trucks may operate within the jurisdictional limits of the city; and

**WHEREAS**, pursuant to the requirements of Article 3, Division 10, Section 3-1006 of the City LDRs, the Planning Commission has reviewed the proposed Amendment to the LDRs and

issued a recommendation to the Mayor and the City Council to take the appropriate action and adopt the proposed Amendment by passage of this ordinance; and

**WHEREAS**, pursuant to Article 3, Section 3-1007 of the LDRs, the Mayor and City Council have jurisdiction to adopt the proposed LDR text amendment, and after two (2) duly noticed public meetings (first reading and second reading), have determined that the amendments are in the best interest of City residents.

**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**

\* \* \* \* \*

**ARTICLE 5. – DEVELOPMENT STANDARDS**

\* \* \* \* \*

**DIVISION 16 – "STANDARDS FOR SPECIFIC USES"**

\* \* \* \* \*

**Sec. 5-1611. - Mobile food dispensing vehicles including ice cream trucks.**

**A.** **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 and to allow ice cream trucks to operate under certain conditions~~ 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. Definition.**

**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.”

**Ice cream trucks**. These vehicles vend pre-packaged frozen dairy or frozen water-based food products or hand-dipped frozen dairy, and pre-packaged beverages and snack foods.

**Vend** means to sell or offer to sell products from a mobile food truck.

**C. Ice cream truck operations generally.**

1. **Operator. An ice cream truck operator:**

a. **Shall ensure that each ice cream truck obtains and maintains a business tax receipt from the city, and a certificate of use, if determined necessary by the development services department.**

b. **Is not required by any governmental jurisdiction to register as a sexual offender, sexual predator, or such other similar classification as may exist in the state or territory of conviction; and shall ensure the same for each driver;**

c. **Shall ensure that each vehicle has a valid Florida license plate affixed; and that all drivers:**

i. **Possess a current Florida Driver's License and;**

ii. **That no driver has convictions within the preceding three years in any governmental jurisdiction for reckless driving, driving under the influence, or such similar offenses as may exist in the jurisdiction of conviction; and**

iii. **Has no more than three (3) total convictions during his or her lifetime in any governmental jurisdiction for reckless driving, driving under the influence, or such similar offenses as may exist in the jurisdiction of conviction.**

d. **A state and national criminal history record check shall be utilized by the development services department, to either approve or deny the ice cream truck BTR and CU approval or renewal, as set forth in this Section.**

2. **Vehicle.**

a. **The vehicle must be clean, inside and outside, painted, and in good condition. The service window for customers must be on the curbside of the vehicle.**

- b. The vehicle must be equipped with left and right outside rear-view mirrors along with two wide-angle mirrors, one located in the front and one located in the back of the vehicle.
- c. The vehicle must be equipped with signs reading WATCH FOR CHILDREN and/or STOP FOR CHILDREN in 3" letters on both the front and the back of the vehicle. It is recommended that signs be present on all four (4) sides of the vehicle.
- d. The vehicle must have the business name and Certificate of Use ("CU") number permanently affixed on both sides in three inch (3") letters prior to operating within the city.
- e. All vehicles must be equipped with operable four-way hazard lights and at least one permanently affixed flashing amber light on the top of the vehicle.
- f. As may be applicable based on the vehicle body type, it is recommended that a shield be installed along the rear bumper to prohibit children from standing or jumping on it.

### 3. Vending.

- a. All ice cream must be pre-wrapped, sealed, labeled, and obtained from an approved source as determined by an applicable regulatory agency, e.g. Florida Department of Agriculture and Consumer Services.
- b. Pre-packaged candy, chips, and soft drinks must be sold in single-portion units.
- c. A trash receptacle must be available to the customer from outside of the vehicle.
- d. No vending before 10:00 a.m. or after sunset;
- e. No vending on public roads where the speed limit exceeds thirty (30) miles per hour;
- f. Vending is allowed only at locations where the view of the roadway is clear and unobstructed for at least two hundred (200) feet both ahead of and behind the vehicle;
- g. No vending within five hundred (500) feet of any property used as a school from one hour before the start of the regular school day to one hour after the end of the regular school day; except on days when school is not attended by children or when such vending occurs on school property pursuant to the written approval of the school's principal or other chief administrator;
- h. Vending is allowed only when the ice cream truck is lawfully parked or stopped pursuant to this section and all other applicable laws;
- i. Vending is allowed only from the side of the truck away from moving traffic and as near as possible to the curb or edge of the public road;
- j. No vending to a person standing in the roadway;

- k. No stopping on the left side of any public road to vend or attempt to vend; and

1. The operator of an ice cream truck that is stopped on a public road for the purpose of vending shall actuate the signal lamps. Such lights shall not be used when the truck is in motion nor at any time the truck is stopped for a purpose other than vending.

4. Sound amplification.

#### 4. Sound amplification.

If used, shall be restricted to the playing of nonvocal music, shall not be used while the vehicle is stopped or parked, shall not be audible at a distance exceeding five hundred (500) feet, and shall not be used within five hundred (500) feet of hospitals, schools, or houses of worship.

#### D. MFVD standards.

1. 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 as follows:

a.1. On property zoned C-1, accessory to a permitted primary use of a mechanical car wash, providing it is separated by a minimum of five hundred (500) linear feet from another MFDV. Notwithstanding the foregoing, MFDVs approved under a temporary use permit shall not be included for the purposes of calculating the required distance separation.

b. 2. On property zoned M-1.

c. 3. MFDVs, as part of a special event, may be accommodated in other districts through the temporary use permit as outlined in section 5-1903.

**€2. 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:

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

**D3. Operational standards.** The following operational standards shall apply to all MFDVs operating within the city, whether long-term or as part of a special event approved under a temporary use permit, and violation of which shall subject the vendor to revocation of a business tax receipt and/or certificate of use, and temporary use permit:

- 1.a. 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.b. 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.c. MFDVs must be located on a paved surface.
- 4.d. MFDVs 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.e. 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.f. The MFDV must not discharge waste, fat, oil, grease or 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.g. No food shall be sold, prepared or displayed outside of the MFDV while in operation on the subject site.
- 8.h. Adequate sanitary facilities must be provided to serve employees and patrons.
- 9.i. Vendors shall not use any flashing, blinking, or strobe lights or similar effects to draw attention to the MFDV.
- 10.j. Vendors shall not use loud music, amplification devices, bullhorns, crying out, or any other audible methods to gain attention.
- 11.k. 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.l. 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.m. Vendors shall comply with all applicable city laws, regulations, and ordinances, including those regulating noise, signage, and loitering.
- 14.n. 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.o.** 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.p.** No overnight parking of the MFDV is allowed on-site.
- 17.q.** An MFDV shall not be located on private property upon which there are unpaid liens or open code violations.
- 18.r.** MFDVs selling or dispensing of food to customers in a moving vehicle or otherwise engaging in drive-up sales is prohibited.
- 19.s.** 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.
- 20.t.** 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".

**DE.** 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.

**EF.** 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~~ neighborhood services department shall revoke the property owners' MFDV 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".

**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.

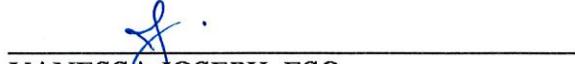
**PASSED AND ADOPTED** by a 4 - 1 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 24th day of September, 2024.

**PASSED AND ADOPTED** by a 4 - 0 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 22nd day of October, 2024.



ALIX DESULME, ED.D.  
MAYOR

ATTEST:



VANESSA JOSEPH, ESQ.  
CITY CLERK

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:



JEFF P. H. CAZEAU, ESQ.  
CITY ATTORNEY

SPONSORED BY: COUNCILMAN SCOTT GALVIN

Moved by: Charles

Seconded by: Galvin

**Vote:**

Mayor Alix Desulme, Ed.D.	<u>      </u> (Yes) <u>      </u> (No) <u>Absent</u>
Vice Mayor Mary Estimé-Irvin	<u>X</u> (Yes) <u>      </u> (No)
Councilman Scott Galvin	<u>X</u> (Yes) <u>      </u> (No)
Councilwoman Kassandra Timothe, MPA	<u>X</u> (Yes) <u>      </u> (No)
Councilman Pierre Frantz Charles, M.Ed.	<u>X</u> (Yes) <u>      </u> (No)