

Model Mobile Food-Vendor Freedom Act

[State Permitting Program]

May 28, 2020

Section 1. Short Title. This Act shall be known as the “Mobile Food Vendor Freedom Act.”

Section 2. Purposes. The Act’s purposes are to:

- (a) legalize mobile food vending across the state;
- (b) promote agriculture and expand economic development;
- (c) foster opportunities for small businesses and stimulate innovation;
- (d) increase consumer access to desired local foods;
- (e) simplify and standardize mobile food vending regulations; and
- (f) protect public health and safety by ensuring mobile food vendors follow clear, narrowly tailored regulations that address demonstrable health and safety risks.

Section 3. Legislative findings. The legislature finds and declares the following:

- (a) Mobile food vending provides opportunities for employment, entrepreneurship and upward mobility;
- (b) Mobile food vendors make significant contributions to local economies;
- (c) Consumers desire foods produced by mobile food vendors;
- (d) Mobile food vending contributes to a safe and dynamic public space;
- (e) Public health and safety are best ensured by local authorities regulating mobile food vending proportionally to its risks; and
- (f) It is a matter of statewide concern to create a uniform approach to regulating mobile food vendors and to remove unnecessary barriers to mobile food vending.

Section 4. Definitions. For purposes of this Act:

- (a) “Applicant” means a person applying to the Department to conduct business as a mobile food vendor.
- (b) “Customer” means any person with whom a mobile food vendor conducts business, or any person who stops to contemplate conducting business with a mobile food vendor.

- (c) “Department” means [insert name of state agency with regulatory jurisdiction].
- (d) “Food vending vehicle” means any motorized vehicle used to sell food and beverages by a mobile food vendor.
- (e) “Local authority” means any local government, including any town, city, charter city, or county.
- (f) “Mobile food vendor” means any person who dispenses food or beverages from a food vending vehicle for immediate service and/or consumption.
- (g) “Person” means any individual, group of individuals, firm, partnership, company, corporation, trustee, association, or any public or private entity and includes the individual or entity’s employees or agents.
- (h) “Prepackaged food” means any commercially labeled and processed food that is prepackaged to prevent direct human contact with the food product upon distribution from the manufacturer, a food facility, or other approved source.
- (i) “Private property” means all property that is not public property.
- (j) “Public property” means any property owned by the state or local authority and includes all rights-of-way except public sidewalks and rights-of-way in state parks or locally-owned parks.
- (k) “Sell” means to transfer or exchange for value, to expose, display or offer for sale or exchange, or to procure, store or have in one’s possession or control for the purpose of selling.

Section 5. Mobile food vending permitted; license required.

- (a) No person may operate as a mobile food vendor in this state without obtaining a mobile food vending license from the Department. A separate mobile food vending license shall be required for every food vending vehicle used by a mobile food vendor.
- (b) No local authority may bar a mobile food vendor from lawfully operating in its jurisdiction if the vendor holds a mobile food vending license and is in compliance with all other state laws and local laws not in conflict with this Act.

Section 6. License process.

- (a) **Written application.** The Department shall prepare a written application for a statewide mobile food vending license. The Department shall make the mobile food vending license application available to applicants in person and on the Department’s website.

(b) **Application requirements.** The Department shall require an applicant to provide the following information, under oath, before issuing a license:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of any associated entities or organizations that the applicant is representing and copies of documents verifying that relationship;
3. The applicant's primary residences and/or business addresses for the last five years;
4. The nature of the food or beverages that the applicant will sell for the purpose of the Department establishing the applicant's food type classification; and
5. Whether the applicant was denied a license to operate as a mobile food vendor or whether the applicant had a mobile food vending license suspended or revoked in any state or local jurisdiction and, if so, the reasons for the denial, suspension or revocation.

(c) **Requirements for each food vending vehicle.** In addition to the written application, the Department shall require an applicant to provide the following information for each food vending vehicle:

1. A list of all vehicle license numbers, vehicle descriptions, vehicle identification numbers, and vehicle registration for the food vending vehicle(s) in this state;
2. Proof of vehicle insurance for the food vending vehicle(s); and
3. [If state requires a special license or permit for commercial vehicles] A copy or proof of any additional licenses or permits required by the State for commercial vehicles for the food vending vehicle(s).

(d) **Requirements for food vending vehicle drivers.** Any person who drives a food vending vehicle shall hold a current [classification/level required by this state for food vending vehicles] driver's license.

(e) **Requests for information.** The applicant shall complete the application and submit additional information required by the Department as allowed by this section. The applicant may submit one application for all vehicles which require a license. Failure to submit a complete application may result in denial of a license.

(f) **Health inspection.** Within 30 days of receiving a complete application, the Department, or a local authority acting under a collaborative agreement pursuant to Section 8, shall conduct a

health inspection of the applicant's food vending vehicle prior to issuing a mobile food vending license. The purpose of the inspection is to ensure the applicant's food vending vehicle is safe for preparing, handling and selling food and the applicant follows the [state's food code].

- (g) **Fees.** The Department may establish a reasonable schedule and classification of fees not to exceed two hundred dollars (\$200) for a mobile food vending license or for a license renewal. The Department may also establish an inspection fee that covers the average cost of conducting health inspections for the vendor and charge that fee in conjunction with the fee for a mobile food vending license or renewal.
- (h) **Issuance of license.** The Department shall issue a mobile food vending license to the applicant upon receipt of a complete application and the applicant's food vending vehicle(s) passing an initial inspection. Licenses shall be valid for one year.
- (i) **Substitution of licensed food vending vehicles.** Licenses are not transferable, nor shall a license authorize the activities of any person other than the licensee, except that the sale of a food vending vehicle identified in a license application, when replaced by another food vending vehicle on a one-for-one basis, will not invalidate the original license nor require a new license. When replacing a food vending vehicle with another vehicle, the licensee shall provide the Department the information required by subsection (c). The inspection shall take place as soon as practicable but no more than fourteen (14) calendar days from the Department's receipt of the information in subsection (c).
- (j) **Transfer of assets.** If a mobile food vendor transfers its mobile food vending business assets, the recipient of the assets shall, before operating in this state, apply for and obtain a new mobile food vending license.
- (k) **Renewal.** Licenses shall be renewed annually. The Department shall send notice to the licensee. The licensee shall submit the renewal annually, prior to the license's expiration date. A licensee may continue mobile food vending operations while an application for renewal is pending with the Department.
- (l) **Unlawful conduct.** It shall be unlawful for any person to intentionally provide false information or to intentionally omit requested information on an application for a license governed by this Act.
- (m) **Application guide.** The Department shall prepare a guide for applicants. The guide shall include instructions for applying for, obtaining, maintaining, and renewing a mobile food vending license and shall describe the standards used to inspect food vending vehicles. The guide shall be made available to applicants at the Department's office and on the Department's website.

Section 7. Mobile Food Vending Operations.

(a) **Compliance with state and local law.** Mobile food vendors shall follow all state and local laws governing operations in the jurisdiction where the vendor operates, including without limitation all fire codes, zoning codes, occupational tax codes, and any other applicable state or local code provisions not in conflict with this Act.

(b) **Location of operations.** A mobile food vendor may operate in the following locations:

1. **Public property.** A mobile food vendor may operate on public property, so long as the vending vehicle is not parked within twenty (20) feet of an intersection. A mobile food vendor may operate from legal parking spaces, including metered spaces upon payment of appropriate fees, on the public right of way. When operating on public property, a mobile food vendor is subject to the same parking rules and restrictions as a commercial vehicle.
2. **Private property.** A mobile food vendor may operate on private property under the following circumstances:
 - i. The property is in an Industrial, Commercial or Institutional Zoning District, and the vendor has permission of the property owner and/or his or her designee.
 - ii. The property is in a Residential Zoning District, and the mobile food vendor has been invited by a resident in that district to operate on their property for the purpose of serving food to that resident or their guests.
3. **No interference with pedestrians or vehicles.** A mobile food vendor shall not interfere with or obstruct the passage of pedestrians or vehicles along any street, sidewalk or parkway.

(c) **Operational standards.** When operating, a mobile food vendor shall:

1. Maintain a food vending vehicle in good operating order and visual appearance, including removing any graffiti that is not a part of the overall design or art featured on the vehicle;
2. Park so that its service window faces the sidewalk;
3. Serve customers through its service window;

4. Provide a waste receptacle for customers which is clearly marked and request its use by customers;
5. Pick up, remove and dispose of all refuse within twenty-five (25) feet of the vendor's operating area at the conclusion of service;
6. Submit to and pass any required health inspections pursuant to the procedures in Section 8; and
7. Display its mobile food vendor license and inspection certificate in a conspicuous location in its service window for public view.

(d) Rulemaking authority.

1. The Department may promulgate administrative rules regulating mobile food vendors to implement this Act. Any rule adopted by the Department must be narrowly tailored to address a demonstrable health or safety risk.
2. Rules adopted pursuant to this section may not:
 - i. Require a mobile food vendor to operate a specific distance from the perimeter of an existing commercial establishment or restaurant;
 - ii. Require a mobile food vendor to obtain licenses or permits for the vendor's employees;
 - iii. Require a mobile food vendor to enter into any agreement with a commercial establishment or restaurant;
 - iv. Address the operating hours of a mobile food vendor;
 - v. Require a mobile food vendor that sells only prepackaged food to have a handwashing sink in the vendor's food vending vehicle;
 - vi. Require a mobile food vendor to associate with a commissary if the vendor carries the equipment necessary to comply with [the state's food code];
 - vii. Limit the number of mobile food vendor licenses issued;
 - viii. Require a mobile food vendor to obtain any additional permits from a local authority, unless the mobile food vendor seeks to operate in a local, public park;

- ix. Require a mobile food vendor to be fingerprinted;
- x. Require a mobile food vendor to install a GPS tracking device on the vendor's vehicle;
- xi. Require a mobile food vendor to stay in constant motion except for when serving customers;
- xii. Require a mobile food vendor to maintain insurance that names a local authority as an additional insured unless the vendor is attending an event sponsored by the local authority; and
- xiii. Require a mobile food vendor to submit to inspections beyond health inspections conducted by the Department or by a local authority under a collaborative agreement, unless the Department is investigating a reported foodborne illness.

Section 8. Food safety; health inspections for mobile food vendors.

- (a) **Food hygiene standards.** Mobile food vendors shall follow [the state food code].
- (b) **Food safety certification.** At all times, at least one person working in a food vending vehicle must hold a current food safety certification.
- (c) **Mobile food vendor classifications.** Upon receipt of a complete license application, the Department shall classify a mobile food vendor into one of the following classifications for the purpose of conducting inspections:
 - 1. **Mobile Food Type I Vendor.** A vendor who dispenses prepackaged foods and/or non-time/temperature control for safety (non-TCS) beverages or poses a low risk of harm to the public shall be classified as a Mobile Food Type I Vendor.
 - 2. **Mobile Food Type II Vendor.** A vendor who dispenses food that requires limited handling and preparation shall be classified as a Mobile Food Type II Vendor.
 - 3. **Mobile Food Type III Vendor.** A vendor who prepares, cooks, holds and serves food from the food vending vehicle shall be classified as a Mobile Food Type III Vendor.
- (d) **Changing classifications.** The Department shall specify the categories of foods or beverages that mobile vendors in each food type classification may serve. If a mobile food vendor seeks to serve food or beverages that may require the vendor to be reclassified, the mobile food vendor shall notify the Department of the nature of the food or beverages to be sold, and the Department may conduct a health inspection and reclassify the mobile food vendor.

- (e) **Health inspections; collaborative agreements.** For the purpose of protecting public health and safety, the Department shall ensure that mobile food vendors are inspected on an ongoing, randomized basis pursuant to the frequency set forth in subdivision (h) of this section based on the vendor's classification and inspection grade. The Department, upon a local authority's request, may enter into a collaborative agreement with the local authority for conducting health inspections. The Department shall reimburse the local authority acting under a collaborative agreement for the cost of conducting inspections using funds from inspection fees collected from licensees pursuant to subsection (j) of this section.
- (f) **Recordkeeping.** The Department shall establish and maintain a statewide database for the Department and local authorities to use to record the names of licensees, inspections, inspection reports and public complaints. The database shall also permit mobile food vendors to provide periodic itineraries to the Department.
- (g) **Inspection criteria and grading.** Health inspections shall be conducted by the Department or a local authority acting under a collaborative agreement using statewide inspection criteria and a score-based grading system established by the Department based on objective factors. The inspection criteria shall provide a letter-grade format that rates the vendor with an "A," "B," "C," or "F" grade, based on the score received during the inspection. If a vendor receives two consecutive "A" grades, it shall be given a certificate of excellence. If a vendor receives an "F" grade, the Department may suspend the vendor's license until the vendor corrects the violations, is re-inspected and receives a grade of "A," "B," or "C."
- (h) **Inspection certificate.** Upon completion of an inspection, the Department, or local authority operating under a collaborative agreement, shall issue a certificate to the mobile food vendor displaying the vendor's letter grade or achievement of excellence and record the grade in the state's database. The mobile food vendor shall display its certificate indicating its letter grade or achievement of excellence in a conspicuous place in its service window for public view.
- (i) **Frequency of Inspections.** Health inspections shall occur on a randomized basis, pursuant to the following frequency, based on the mobile food vendor's classification.
1. **Mobile Food Type I Vendors.** A Mobile Food Type I Vendor shall be inspected only upon the Department or a local authority being notified of a public health or safety complaint regarding the vendor. If the inspection reveals a violation of law, the vendor shall become subject to inspections at the frequency set for a Mobile Food Type II Vendor until the vendor obtains a certificate of excellence.
 2. **Mobile Food Type II Vendors.** A Mobile Food Type II Vendor shall be inspected once per calendar year. If a Mobile Food Type II Vendor receives a certificate of excellence, it shall become subject to inspections at the frequency set for Mobile Food Type I Vendors. If a Mobile Food Type II Vendor holding a certificate of

excellence receives a score lower than an “A” on a subsequent inspection, the vendor shall lose its certificate of excellence and return to being inspected once per year.

3. **Mobile Food Type III Vendors.** A Mobile Food Type III Vendor shall be inspected twice per calendar year. If a Mobile Food Type III Vendor receives a certificate of excellence, it shall be inspected at the frequency set for Mobile Food Type II Vendors. If a Mobile Food Type III Vendor holding a certificate of excellence subsequently receives a score lower than an “A,” the vendor shall lose its certificate of excellence and return to being inspected twice per calendar year.

(j) **Notice of location for inspections; administrative warrant.** The mobile food vendor may provide the locations where the vendor operates on social media. A mobile food vendor who does not provide the locations where the vendor operates on social media shall submit periodic itineraries to the Department using the statewide database. The mobile food vendor may request the Department or local authority obtain an administrative warrant prior to conducting an inspection.

(k) **Inspection costs; reimbursement.** The Department shall determine the average cost of conducting a health inspection. If the Department has entered into a collaborative agreement with a local authority, the Department shall consult with the local authority and determine the average cost of conducting health inspections in that jurisdiction. The Department shall charge the mobile food vendor an inspection fee when the vendor applies for or renews a license, based on the average cost of conducting an inspection, multiplied by the number of annual inspections required for the upcoming year under this section. A mobile food vendor may request reimbursement for an inspection that was not conducted at the expiration of the mobile food vending license or when the vendor renews a license. The Department shall reimburse the vendor for any inspection that was not conducted in the previous year within thirty (30) calendar days following receipt of a mobile food vendor’s request.

Section 9. Regulation by Local Authority

(a) **Local regulation permitted.** The local authority may regulate state-licensed mobile food vendors in accordance with this Act. In relation to the operations of a state-licensed mobile food vendor, a local authority may:

1. Restrict the operation of noisemaking devices during specific times of day;
2. Restrict a mobile food vendor from operating in a public park or require a special permit and payment of fees to operate in a public park;
3. Prohibit a mobile food vendor that is operating on private property from blocking ingress or egress from that property;

4. Develop a mobile food vendor metered parking pass for a fee that permits a mobile food vendor to operate from metered parking spaces for longer than the vendor would otherwise be permitted;
5. Investigate reports of foodborne illnesses;
6. Report a mobile food vendor's suspected violation(s) of this Act to the Department and recommend the Department suspend or revoke a mobile food vending license; and
7. Cite mobile food vendors and issue penalties for violations of local law not inconsistent with this Act.

(b) **Limitation on local regulation.** In relation to the operations of a state-licensed mobile food vendor, a local authority may not:

1. Prohibit or restrict a mobile food vendor from operating in a lawful manner provided for in this Act;
2. Address the operating hours of a mobile food vendor;
3. Require a mobile food vendor to receive any special permit from the local authority in addition to a state mobile food vending license or permit to operate as a commercial vehicle, unless the mobile food vendor seeks to operate in a local, public park;
4. Require a mobile food vendor to obtain licenses or permits for the vendor's employees;
5. Require a food vending vehicle to receive a fire inspection if the vehicle can demonstrate that it has passed a state or local fire inspection within the previous year;
6. Restrict the duration of time a mobile food vendor may operate on private property in Industrial, Commercial or Institutional Zoning Districts;
7. Require a mobile food vendor to operate a specific distance from restaurants or commercial establishments;
8. Require a mobile food vendor to enter into any agreement with a commercial establishment or restaurant;
9. Regulate the equipment requirements for a food vending vehicle;
10. Require a mobile food vendor to associate with a commissary;

11. Require a mobile food vendor to be fingerprinted;
12. Require a mobile food vendor to install a GPS tracking device on its vehicle;
13. Require a mobile food vendor to stay in constant motion except for when serving customers;
14. Require a mobile food vendor to maintain an insurance policy that names the local authority as an additional insured unless the vendor is attending an event sponsored by the local authority; and
15. Require a mobile food vendor to submit to inspections beyond health inspections conducted under a collaborative agreement with the Department, unless the local authority is investigating a reported foodborne illness.

Section 10. Investigation

- (a) The Department or a local authority may investigate a mobile food vendor upon reasonable suspicion the vendor is violating the law or upon receipt of a health or safety complaint. Any complaint shall be recorded in the state's mobile food vending database. The local authority shall report suspected violations of state law to the Department and may recommend the Department suspend or revoke a mobile food vending license.
- (b) The mobile food vendor shall cooperate with the Department or local authority during an investigation. Failure to cooperate with the Department or local authority may result in suspension or revocation of a license.
- (c) Nothing in this Act shall be construed to impede the Department or local authority in any investigation of a reported foodborne illness.

Section 11. License denial, suspension or revocation; penalties

- (a) The Department may deny, suspend or revoke a license issued under this Act only for the following reasons:
 1. Fraud, misrepresentation or a false statement contained in the application for a license.
 2. Fraud, misrepresentation or a false statement made in connection with the selling of food or beverages.
 3. Any facts or conditions that would justify the denial of an application for a license.

4. Three (3) or more violations of this Act over a period of twelve (12) months.
 5. The receipt of an “F” grade during an inspection or an investigation in response to a complaint.
- (b) Any person who has been notified regarding the denial of their mobile food vending application or the possible suspension or revocation of their mobile food vending license may request a hearing in accordance with [state’s administrative procedures act] within fourteen (14) calendar days of receipt of said notice. Other than as described in subsection (c) of this section, no license shall be suspended or revoked prior to a hearing if a mobile food vendor requests a hearing within the 14-day period required. Upon receipt of a request for a hearing, the Department shall hold a hearing within fourteen (14) calendar days and issue findings of fact, conclusions of law and a decision.
- (c) When circumstances demonstrate that continued operation by a mobile food vendor poses an imminent threat to the public’s health and safety, the Department may immediately suspend or revoke a mobile food vending license. The mobile food vendor may request a hearing regarding the suspension or revocation within fourteen (14) calendar days of receiving notice of the suspension or revocation. Any hearing regarding the summary suspension or revocation of a license shall be given priority over all potential license denial, suspension or revocation proceedings and shall be held within seven (7) calendar days from the date the Department receives a mobile food vendor’s request for a hearing. At the conclusion of the hearing, the Department shall issue findings of fact, conclusions of law and a decision.
- (d) It is unlawful for a mobile food vendor whose license is suspended or revoked to operate. The Department may issue civil penalties to a mobile food vendor who operates with a suspended license or after a license is revoked.

Section 12. Right to appeal. A mobile food vendor aggrieved by an agency decision following a hearing has the right to appeal the decision under [the state’s administrative procedures act].

Section 13. Preemption. This Act preempts local authorities from prohibiting mobile food vending and regulating mobile food vending in conflict with this Act.

Section 14. Construction. This Act shall not be construed require a local authority to enter into a collaborative agreement with the Department to conduct health inspections, to adopt a program regulating mobile food vendors, or to modify its existing program regulating mobile food vendors, provided the local authority’s regulations do not conflict with this Act.

For more information, contact:

Robert Frommer
Senior Attorney
Institute for Justice
(703) 682-9320
rfrommer@ij.org

Meagan Forbes
Legislative Counsel
Institute for Justice
(612) 435-3451
mforbes@ij.org