

Model Mobile Food-Vendor Freedom Ordinance

May 1, 2020

A BILL REGULATING MOBILE FOOD VENDORS:

WHEREAS, mobile food vending is a popular and diverse part of local economies across the United States;

WHEREAS, [XXX Municipality] desires to support economic development, foster opportunities for small businesses and encourage mobile food vending;

WHEREAS, [XXX Municipality] seeks to increase consumer access to desired local foods;

WHEREAS, [XXX Municipality] aspires to simplify food vending regulations; and

WHEREAS, [XXX Municipality] seeks to protect public health and safety by ensuring mobile food vendors follow clear, narrowly tailored regulations that address demonstrable health and safety risks.

NOW, THEREFORE, BE IT ORDAINED BY THE [LEGISLATIVE BODY] OF [XXX MUNICIPALITY] AS FOLLOWS:

SECTION 1. DEFINITIONS.

The following words and phrases in this section shall have the meanings given, except where the context clearly indicates a different meaning:

- A. Applicant: A person applying to [XXX Municipality] to operate as a mobile food vendor.
- B. Customer: 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. Food Vending Vehicle: Any motorized vehicle used to sell food or beverages by a mobile food vendor.
- D. Mobile Food Vendor: Any person who dispenses food or beverages from a food vending vehicle for immediate service and/or consumption.
- E. Prepackaged Food: 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.
- F. Private Property: All property that is not public property.

- G. Public Property: Any property owned and operated by [XXX Municipality]. Public property includes all rights-of-way except public sidewalks and rights-of-way in city-owned parks.
- H. Sell: To transfer or exchange for value, to expose or offer for sale or exchange, or to procure, store, keep or have in one's possession or control for the purpose of selling.
- I. Person: 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.

SECTION 2. MOBILE FOOD VENDING BUSINESS PERMITTED.

- A. No person may operate as a mobile food vendor in [XXX Municipality] without obtaining a mobile food vending license under this chapter and any other licenses or permits that may be required by other applicable state or county law.
- B. A separate mobile food vending license shall be required for each food vending vehicle operated by a mobile food vendor.
- C. A violation of this Chapter may result in the suspension or revocation of a mobile food vending license and civil penalties.

SECTION 3. LICENSE APPLICATION AND GENERAL STANDARDS.

- A. **Application requirements.** An applicant shall submit a written application, under oath, to [Pertinent Licensing Agency] on a form provided by [Pertinent Licensing Agency] for a mobile food vending license. The application shall contain the following information:
 - 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 residence and/or business addresses for the past five years;
 - 4) The nature of the food or beverages that the applicant will sell for the purpose of the [Pertinent Licensing Agency] 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 and, if so, the reasons for the denial, suspension or revocation.
- B. **Requirements for each food vending vehicle.** In addition to the written application, an applicant shall 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);
- 2) Proof of vehicle insurance for the food vending vehicle(s); and
- 3) [If the state or municipality requires a special license or permit for commercial vehicles] A copy or proof of any additional licenses or permits required by the State or municipality for the food vending vehicle(s).

C. **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.

D. **Requests for information.** The applicant shall complete the application and submit additional information requested by the [Pertinent Licensing Agency] as allowed by this section. The applicant may submit one application for all vehicles which require a license but shall pay a separate licensing fee for each license. Failure to submit a complete application may result in denial of a license.

E. **Health inspection.** Within 30 days of receiving a complete application, the [Pertinent Health Agency] or its designee 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 [state's food code]. Upon passage of a health inspection, the applicant shall receive a health certificate for the food vending vehicle.

F. **Issuance of License.** The [Pertinent Licensing Agency] 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.

G. **Substitution of licensed food vending vehicles.** Licenses are not transferable, nor shall a license authorize the activities licensed by 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 application. When replacing a food vending vehicle with another vehicle, the licensee shall provide the [Pertinent Licensing Agency] the information required by subdivision B of this section. The health inspection of a replacement vehicle shall take place as soon as practicable but no more than fourteen (14) calendar days from the [Pertinent Licensing Agency's] receipt of the information in subdivision B of this section.

- H. **Transfer of assets.** If a mobile food vendor transfers its mobile food vending business assets, the recipient of the assets shall, before operating, apply for and obtain a new mobile food vending license from the [Pertinent Licensing Agency].
- I. **Fees.** The [Pertinent Licensing Agency] is authorized to establish a reasonable schedule and classifications of fees not to exceed two hundred dollars (\$200) for a mobile food vending license. An applicant shall pay license fee established by the [Pertinent Licensing Agency] unless otherwise exempted.
- J. **Renewal.** Licenses shall be renewed annually. The [Pertinent Licensing Agency] shall send notice to the licensee. The licensee shall submit the renewal annually, prior to the license's expiration date. A licensee may continue operations while an application for renewal is pending with the [Pertinent Licensing Agency].
- K. **Unlawful conduct.** It is unlawful for any person to intentionally provide false information or to intentionally omit information on an application for a license under this Chapter.
- L. **Application guide.** The [Pertinent Licensing Agency] 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 [Pertinent Licensing Agency's] office and on [XXX Municipality's] website.

SECTION 4. MOBILE FOOD VENDING VEHICLE OPERATIONS.

- A. **Compliance with state and local law.** Mobile food vendor shall follow any applicable state and local laws, including without limitation all fire codes, zoning codes, occupational tax codes, and any other applicable state or local code provisions.
- 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 food 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, restrictions, and obligations that a commercial vehicle would be subject to if not used by a mobile food vendor.
 - 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; and
- 7) Display its mobile food vendor license and health certificate in a conspicuous location in its operating window for public view.

D. Rulemaking authority.

- 1) The [Pertinent Licensing Agency] may promulgate administrative rules regulating mobile food vendors and mobile food vending vehicles to implement this Chapter. Any rule adopted by the [Pertinent Licensing Agency] 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) Impose operating hours that differ from the operating hours imposed on restaurants;

- (iii) Require a mobile food vendor to enter into any agreement with a commercial establishment or restaurant;
- (iv) Require a mobile food vendor that only serves prepackaged food to have a handwashing sink in the vendor's food vending vehicle;
- (v) Require a mobile food vendor to associate with a commissary if the vendor carries all the equipment necessary to comply with health and safety standards and [the state food code];
- (vi) Limit the number of mobile food vendor licenses issued;
- (vii) Require the mobile food vendor to obtain any additional permits from [XXX Municipality], unless the mobile food vendor seeks to operate in a local, public park;
- (viii) Require a mobile food vendor to be fingerprinted;
- (ix) Require a mobile food vendor to install a GPS tracking device on the vendor's vehicle;
- (x) Require a mobile food vendor to stay in constant motion except for when serving customers;
- (xi) Require a mobile food vendor to maintain insurance that names [XXX Municipality] as an additional insured unless the vendor is attending an event sponsored by [XXX Municipality]; and
- (xii) Require a mobile food vendor to submit to inspections beyond the number and scope of the health inspections conducted by the [Pertinent Health Licensing Agency] unless there is an investigation of a reported foodborne illness.

SECTION 5. FOOD SAFETY; HEALTH INSPECTIONS AND CERTIFICATES

- 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 [Pertinent Health Licensing Agency] shall classify a mobile food vendor into one of the following three classifications for the purpose of conducting inspections:

(i) **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.

(ii) **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.

(iii) **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. **Health inspections.** For the purpose of protecting public health and safety, the [Pertinent Health Licensing Agency] 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 their classification and inspection grade.

E. **Recordkeeping.** [XXX Municipality] shall establish and maintain a database to record the names of licensees, inspections, inspection reports and public complaints. The database shall also allow mobile food vendors to provide periodic itineraries to the [Pertinent Health Licensing Agency].

F. **Inspection criteria and grading.** Health inspections shall be conducted by the [Pertinent Health Licensing Agency] using inspection criteria based on the state food code and a score-based grading system established by [Pertinent Health Licensing Agency] 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 [Pertinent Licensing Agency] may suspend the vendor’s license until the vendor corrects the violations, is re-inspected and receives a grade of “A,” “B,” or “C.”

G. **Health certificate.** Upon completion of an inspection, the [Pertinent Health Licensing Agency] shall issue a health certificate to the mobile food vendor displaying the vendor’s letter grade or achievement of excellence and record the grade in the database.

H. **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 [XXX Municipality] 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 receives a score lower than an “A” on a subsequent inspection, the vendor shall lose its certificate of excellence and return to being inspected twice per calendar year.
- I. **Changing classifications.** The [Pertinent Health Licensing Agency] shall specify the categories of foods or beverages that mobile vendors in each 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 [Pertinent Health Licensing Agency] of the nature of the food or beverages to be sold, and the [Pertinent Health Licensing Agency] shall reclassify the mobile food vendor.
 - 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 [Pertinent Health Licensing Agency] using the database created under Section 5E. The mobile food vendor may request the [Pertinent Health Licensing Agency] obtain an administrative warrant prior to conducting an inspection.
 - K. **Inspection costs; reimbursement.** The [Pertinent Licensing Agency] shall determine the average cost of conducting a health inspection. The [Pertinent Licensing Agency] shall charge the mobile food vendor an inspection fee at the time the mobile food 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 as required by 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 [Pertinent Licensing Agency] 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 6. LICENSE DENIAL, SUSPENSION, REVOCATION AND APPEALS

- A. The Director of the [Pertinent Licensing Agency] may deny, suspend or revoke a license issued under this Chapter. A license may be denied, suspended or revoked 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.
 - 3) Any facts or conditions that would justify the denial of the original application.
 - 4) Three (3) or more violations of this chapter 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 appeal to the [Pertinent Administrative Review Board] within fourteen (14) calendar days of receipt of said notice. Other than as described in subdivision 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 [Pertinent Administrative Review Board] 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 [Pertinent Licensing Agency] may immediately suspend or revoke a mobile food vending license. The mobile food vendor may request a hearing before the [Pertinent Administrative Review Board] 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 [Pertinent Licensing Agency] receives a mobile food vendor’s request for a hearing. The [Pertinent Administrative Review Board] shall issue findings of fact, conclusions of law and a decision.
- D. It is unlawful for a mobile food vendor whose license has been suspended or revoked to operate. If the [Pertinent Licensing Agency] suspends or revokes a license, the mobile food vendor shall immediately cease all food vending operations.
- E. A mobile food vendor aggrieved by an order issued by the [Pertinent Administrative Review Board] may appeal the order to state district court.

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