

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

Recommended By: The Greater Birmingham Street Food Coalition

Drafted by: David R. Donaldson
Donaldson & Guin, LLC

AN ORDINANCE TO ESTABLISH REGULATIONS FOR MOBILE FOOD VEHICLES OPERATING ON PUBLIC RIGHT-OF-WAYS IN THE CITY OF BIRMINGHAM, ALABAMA

WHEREAS, many citizens in this community have expressed an interest in establishing mobile food operation ventures, while others have expressed the desire to have these additional food and location choices; and

Whereas, Alabama municipalities are authorized to regulate the use of public streets for public health, safety, welfare and convenience; to grant the City's consent to use the streets, avenues, alleys, public and right-of-ways to private enterprises, (Ala. Const. Art. XII, § 220; Ala. Code, 1975, § 11-49-1 (a).); and,

WHEREAS, the Council deems it in the best interest of the citizens of Birmingham that such mobile food operations be locally regulated as a matter of health and public safety, and for the general welfare of the people.

BE IT ORDAINED by the City Council of the City of Birmingham, Alabama, that the Mobile food vehicle ordinance be enacted as follows:

SECTION 1. Purpose

The general purpose of this Ordinance is to establish reasonable guidelines and restrictions for the operation of mobile food vehicles on the City of Birmingham's streets, avenues, alleys and public right-of-ways in order to promote the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Birmingham.

SECTION 2 Definitions

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

"Applicant" means any person or business who applies for a license or a license renewal under the provisions of this Business License Code.

"BPD" means the Birmingham Police Department.

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

“Business licenses” is the licenses required of any business to operate within the City by the license codes of the City.

“Department” means the department designated by the (City Council or Mayor or ONB).

“Health Department” shall refer to either the Jefferson County Health Department or the Shelby County Health Department.

“Mobile Food Vehicle” means a unit mounted on or pulled by a self-propelled vehicle where food for individual portion service is prepared, or dispensed; is self-contained with its own drinking water tank and waste water tank including prepackaged foods; is designed to be readily movable; and is moved daily to return to its commissary. Pushcarts are not included within the definition of Mobile Food Vehicles.,

“Operator” is the entity that is legally responsible for the operation of the mobile food vehicle such as the owner, the owner's agent, or other PERSON; and possesses a valid permit to operate a mobile food vehicle.

“Owner” is an individual or business entity who owns and/or operates a Mobile Food Vehicle.

“Pedestrian” is a person who is walking or otherwise traveling in the public right-of-way.

"Permit" means a written authorization, or permission to engage in or participate in some regulated or otherwise controlled activity.

“Permittee” is the entity, person, company or corporation which has been granted a permit by the Birmingham Police Department to operate one or more mobile food vehicles upon the streets of the city.

“Public Right of Way” refers to the public streets, avenues, alleys, public grounds and public right-of-ways within the City of Birmingham .

“Pushcart” means a non-self propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person.

“Restaurant” a brick and mortar establishment where meals are generally served and eaten on premises; prepares and serves food and drink to customers in return for money, either paid before the meal, after the meal, or with a running tab.

“Person” means any natural individual, firm, partnership, association, or corporation.

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

Whenever the word “person” is used in any section in this article prescribing a penalty or fine as applied to a partnership or association, the word shall include the partners or members thereof; such word as applied to corporations shall include the officers, agents, or employees thereof who are responsible for any violation of such section.

“Vending” is the business of selling or causing to be sold any of the following items: food product, produce, prepared foods and beverages, prepackaged foods and non-alcoholic beverages from a vehicle. (iv) liquid and solid wastes are disposed of, or potable water is obtained.

Section 3 Permit and Business License Required for Yearly Operation

- 1) All Mobile Food Vehicles must submit an application for a permit yearly to the Birmingham Finance Department in order to obtain a permit to operate on the Public Right-Of-Ways in the City of Birmingham.
- 2) A permit allows for the operation of a Mobile Food Vehicle throughout the city limits, provided that the permittee's activities comply with the provisions of this Ordinance, all applicable Health Department rules and regulations, and all other applicable laws and regulations.
- 3) The grant of a permit hereunder shall not be deemed to authorize the conducting of a Mobile Food Vehicles without the payment of the fee for a business license as may be required under the current business license code. The permittee must subsequently obtain a business license from the Director of Finance.

Section 4 Application for Permit

- 1) Each applicant shall be required to provide a valid and current copy of a permit issued by a Health Officer of an Alabama County for each Mobile Food Vehicle.
- 2) The application shall state the applicant's full name, signature, address and whether the applicant is an individual, limited liability company, corporation, or other business entity. If the applicant is a partnership, the names and addresses of the partners must be provided.
- 3) The address of the applicant's commissary must be provided.
- 4) Each application shall contain a statement as to whether the application is for a new permit or the renewal of an existing permit.
- 5) Each Permittee shall furnish evidence of liability insurance and shall maintain general liability, food products liability, and property damage insurance insuring the Permittee against claims for damage to property or bodily injury, including death, which may arise from the operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than Three Hundred Thousand dollars (\$300,000.00) per

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

occurrence. A permit issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained.

- 6) Applicants shall be provided reasonable time to supplement their applications.

Section 5 Business License Purchase

Every taxpayer required to purchase a business license under this ordinance shall purchase a business license for each mobile food vehicle on which it does business within the City, except as otherwise provided by the City.

Section 6 Application, license and permit fees.

- 1) Upon the filing of a completed application, the non-refundable application fee for all applicants seeking a mobile food vehicle permit shall be \$100. This application fee shall be submitted with the application and shall apply to the cost of the permit only if approved. In order to receive a permit, an applicant must provide:
 - a. Evidence that the applicant has obtained a valid health department license,
 - b. Proof of insurance as required by this Ordinance.
 - c. A current, valid vehicle registration; and
 - d. A current City of Birmingham business license.
- 2) Upon approval of an application for an operator's permit, the annual permit fee shall be \$200.00 for the owner/operator of the mobile food vehicle. The \$100 application fee shall apply toward the cost of the permit.
- 3) The annual fees set forth in this section shall be prorated starting with the date the permit is issued to December 31 of the first year of operation as needed.
- 4) Any duplicate permit may be issued upon payment of a fee of \$20.00 should a permit be lost or destroyed.
- 5) Any renewal permit must be applied for not later than ten business days following the expiration date of an existing operator's permit, and for any such permit applied for after such expiration date there shall be a late fee of \$5.00 in addition to the annual fees stated above.

Section 7 General Rules and Regulations

The operation of Mobile Food Vehicles on the Public Right-Of-Ways within the City of Birmingham shall comply with the following provisions:

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

- 1) No person or business entity, including religious or charitable organization, shall operate a Mobile Food Vehicle upon the Public Right-of-Way within the city without a permit issued by the City of Birmingham.
- 2) All Mobile Food Vehicles business activities on the Public Right-of-Way must be conducted in areas that are zoned for commercial business;
- 3) No Mobile Food Vehicle's business activities shall not be conducted in any location which obstructs a bus stop, taxi stand, or handicap loading zone.
- 4) No Mobile Food Vehicle business activity shall be conducted directly in front of any Restaurant entryway; nor shall any such activity be conducted in a manner designed to interfere with pedestrian or vehicular traffic to or from any Restaurant or other business.
- 5) It shall be unlawful to leave any Mobile Food Vehicle unattended on a Public Right-of-Way.
- 6) No Mobile Food Vehicle shall have any exclusive and/or perpetual right to any location upon the Public Right-of-Way .
- 7) No Mobile Food Vehicle operating on the Public Right-Of-Way shall be of a size as to interfere with the city or public's use of any public ways.
- 8) No Mobile Food Vehicle shall vend on the Public Right-Of-Way in any congested area where the operation will impede pedestrian or vehicle traffic; including customer queues, accessory units, or signage.
- 9) No Mobile Food Vehicle operating on the Public Right-Of-Way shall make or solicit any sales to occupants of vehicles or engage in any activities which impede vehicular traffic.
- 10) Any power required for the Mobile Food Vehicle located on a on the Public Right-Of-Way shall be self-contained and shall not draw its power from the on the Public Right-Of-Way. No power cable or equipment shall be extended at grade or overhead across any public street, alley or sidewalk.
- 11) Mobile Food Vehicles shall not violate the Americans with Disabilities Act.
- 12) Mobile food vending shall only occur from the side of a Mobile Food Vehicle that is parked abutting and parallel to the curb.
- 13) The Mobile Food Vehicle shall not have drive-through service.
- 14) No Mobile Food Vehicle's business activities on the public right-of way shall not be conducted in a manner that obstructs any Public Right-of-Way, impairs the movement of pedestrians or vehicles, or poses a hazard to public safety.

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

- 15) Birmingham City Police Officers shall have the right to determine whether any Mobile Food Vehicle on the Public Right-Of-Way is being operated in a manner that creates congestion or obstruction of a Public Right-of-Way or is otherwise incompatible with the public use of the Public Right-Of-Way. In making such determinations, police officers shall consider the width of the public way, parking issues and traffic congestion, the weight that can be supported by the paving or street surface at the proposed location, the proximity and location of existing street furniture, including, but not limited to, utility poles, parking meters, bus shelters, benches, street trees, news racks, as well as the presence of bus stops, truck loading zones, taxi stands or other businesses or approved mobile food vehicles to determine whether the requested location would result in pedestrian or street congestion. All Mobile Food Truck operators shall obey lawful orders of a police officers to move to a different location.
- 16) Power generators shall be enclosed within the mobile food vehicle by a cover or other noise-reducing structure or mechanism.

Section 8 Prohibition against the transfer of a permit and/or license

- 1) No permit or license is transferable without approval of the City of Birmingham Finance Department.
- 2) No person holding a permit and/or license for a mobile food vehicle shall sell, lend, lease or in any manner transfer a mobile food vehicle permit and/or license for value without the permission of the Health Department and the City of Birmingham. A permit and/or license holder may transfer a permit and/or license as part of the sale of a majority of the stock in a corporation holding such permit and/or license, as part of the sale of a majority of the membership interests of a limited liability company holding such permit and/or license, or as part of the sale of a business or substantially all of its assets. Any such transfer shall be subject to the terms and conditions of the original permit.
- 3) Any unauthorized transfer or attempt to transfer a permit shall automatically void such permit. Whoever violates this provision, including both the transferor and transferee, shall be subject to a fine of three hundred (\$300.00) dollars. The unauthorized transfer or attempt to transfer of each permit shall constitute a separate violation.

Section 9 Enforcement

Any person operating a Mobile Food Vehicle in violation of any of the regulatory provisions of this Ordinance shall be guilty of an infraction. Any person found guilty of an infraction, of which person has been given notice, shall not be punished by imprisonment but may be fined.

- 1) *Enforcement.* The provisions of this Ordinance may be enforced jointly by the Birmingham Police Department and the Department or Traffic Engineering.
- 2) *Fine for Violation.* Any person operating a Mobile Food Vehicle in violation of any provision of this Ordinance may be subject to a fine of three hundred (\$300.00) dollars per occurrence. Each violation shall constitute a separate and distinct offense. The BPD may suspend a permit

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

and/or license for no more than three (3) days without a notice or hearing, if there is a probability of serious or repetitive violation of public safety, health or order.

- 3) *Revocation, Suspension, Modification.* Once a permit and/or license have been issued it may be revoked, suspended, modified, or not renewed by the City Council for failure to comply with the provisions of this section. With the exception of (2) above, no permit shall be revoked, suspended, modified, or not renewed without a hearing before the City Council, prior to which hearing the council shall give reasonable notice of the time and place of the hearing and the specific grounds of the proposed action. The decision resulting there from shall be final and subject only to judicial review.
- 4) No Mobile Food Vehicle shall be parked on the street overnight, or left unattended and unsecured at any time without due cause and/or prior written authorization. Any mobile food vehicle which is found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.

Section 10 Denial, Revocation, Suspension or Permit and/or Business License

An application or approved permit may be denied, revoked, suspended, or not renewed for any of the following reasons:

- 1) The permittee or its principals fails to satisfy any qualification or requirement imposed by this chapter, or other local, state or federal laws or regulations that pertain to the particular license; or
- 2) The permittee or any of its principals has been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business; or
- 3) The motor food vehicle on which the business is proposed to be conducted does not satisfy all local, state or federal laws or regulations which relate to the activity that is to be licensed; or
- 4) The application contains material omissions or false, fraudulent, or deceptive statements; or
- 5) The motor food vehicle is operated in such a manner as constituting a public nuisance per the Birmingham City Code or state statutes; or
- 6) The proposed operation is in violation of any federal, state, or local laws including, but not limited to, the provisions of this Ordinance pertaining to food, public health or safety.
- 7) The licensee or his agents or employees interfere with an inspection of the food establishment by a Health Department; or
- 8) There are repeated or serious violations of the applicable portions of this article; or
- 9) There are repeated or serious violations of federal or state food laws or laws regulating food establishments as defined in this article; or
- 10) The Health Department denies, revokes or suspends the license of the mobile food vehicle; or

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

11) There is a violation of any section of this Ordinance.

The provisions of this section are not exclusive. This section shall not preclude the enforcement of any other provisions of this Ordinance or state and federal laws and regulations. The Jefferson County Health Department may impose additional requirements to protect against health hazards related to the operation of a mobile food vehicle.

Section 11 Appeal to council upon denial, revocation or suspension

Upon any denial, revocation or suspension of a Mobile Food Vehicle permit and/or business license, the applicant or permittee and/or licensee may appeal the denial to the council by filing a written statement of appeal with the city clerk within 10 days following the denial, revocation or suspension and a hearing shall be held thereon by the council at a regular meeting of the City Council or a continuance thereof not later than 14 days thereafter. The applicant or permittee, during the appeal, may be represented by counsel.

- 1) Prior to revocation, written notice shall be given to the permittee and/or licensee or person in charge. The notice shall set forth:
 - a) The grounds upon which the city will seek denial, revocation or suspension of the permit and/or license;
 - b) The specific violations of this article or of federal or state law upon which the city will rely in seeking denial, revocation or suspension of the permit and/or license;
 - c) That a hearing will be held before the Birmingham City Council;
 - d) The date, time and place of the hearing; and
 - e) That the permittee and/or licensee may appear in person and/or be represented by counsel and may present testimony.
- 2) The hearing shall be held in accordance with this section. If the permit and/or license holder fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing that an act or acts have been committed or omitted that constitutes grounds for denial, revocation or suspension of a permit and/or license.
- 3) After completion of the hearing, the City Council shall make written findings as to whether or not grounds exist for denial, revocation or suspension of the permit and/or license. If the City Council finds that grounds do exist for denial, revocation or suspension, it shall deny, revoke or suspend the permit and/or license temporarily for up to 180 days or permanently.
- 4) A copy of the written findings shall be sent by certified mail, return receipt requested, to the permittee and/or licensee. If the address of the licensee is unknown, or if the findings are

DRAFT FOR DISCUSSION PURPOSES ONLY

December 13, 2012 2:30 P.M.

returned undelivered, the findings shall be served on the person in charge of the commissary or mobile food vehicle.

- 5) If the City Council revokes the permit and/or license, written notice of the revocation shall be served on the permittee and/or licensee or the person in charge with a copy of the findings.
- 6) Upon service of a written notice that the permit and/or license have been revoked as provided herein, all food operations shall cease immediately.
- 7) Whenever a permit and/or license are revoked, the Health Department shall be notified.
- 8) In the event a permit and/or license are revoked, the city shall not be liable to the permittee and/or licensee for any refund of any part of the permit and/or license fee. Reinstatement of a permittee and/or licensee that has been revoked shall require application and payment of a permit and/or license fee as if it were an initial application. No new permit and/or license application shall be considered for an establishment or mobile food vehicle where the permit and/or license have been revoked until the expiration of the revocation period.
- 9) Any revocation of suspension of a permit or license may be appealed within 30 days to the Jefferson County Circuit Court.

Section 12 Service of notices

Any notice provided for in this article may be served by personal delivery, certified mail, return receipt requested or publication if found necessary.

Section 13 Severability

If any provision of this section is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.