

ORDINANCE 597

AN ORDINANCE OF THE CITY OF PORT ST. JOE, FLORIDA, AMENDING THE CITY OF PORT ST. JOE LAND DEVELOPMENT REGULATIONS BY CREATING ARTICLE IX, "MOBILE FOOD DISPENSING VEHICLES"; PROVIDING REGULATIONS FOR MOBILE FOOD DISPENSING VEHICLES OPERATING WITHIN THE CITY; ESTABLISHING A ZONE FOR OPERATION OF MOBILE FOOD DISPENSING VEHICLES; ESTABLISHING PROHIBITIONS; ESTABLISHING OPERATING REQUIREMENTS; ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Governor of the State of Florida signed into law the Occupational Freedom and Opportunity Act (SB474/HB1171) ("Act"), which became effective on July 1, 2020; and

WHEREAS, the Act created Florida Statutes Section 509.102-Mobile Food Dispensing Vehicle ("MFDV") preemption in which a municipality, county or other local government entity may not require a separate license, registration, permit or fee from MFDVs and may not prohibit MFDVs from operating within the entirety of the jurisdiction; and

WHEREAS, the City currently does not have an ordinance or regulation specifically regulating MFDVs and has relied on other Land Development Regulations to regulate them; and

WHEREAS, MFDVs can provide opportunities for entrepreneurs and small businesses to startup and operate at relatively low cost. They may add interest, vibrancy, and activity to the City. However, without proper regulation they can have potentially negative effects by posing a threat to brick-and-mortar restaurants, blocking of public rights-of-way, creating traffic, negatively impacting the function and flow of parking facilities, posing a fire risk and life safety risk, etc.; and

WHEREAS, THE City Commission held public workshops on January 18, 2022 and February 22, 2022, to provide recommendations regarding the regulation of MFDVs; and

WHEREAS, the City Commission finds it is in the best interest of health, safety, and the welfare of the public to adopt standards for the location and operation of MFDVs within the City to address and mitigate the potential negative effects as recited above; and

WHEREAS, the City of Port St. Joe finds and determines that this addition to the City's Land Development Regulations are consistent with all applicable policies including the Land Development Regulations and the City's adopted Comprehensive Plan and not in conflict with public interest.

NOW THEREFORE, BE IT ENACTED BY THE COMMISSION OF THE CITY OF PORT ST. JOE, FLORIDA:

SECTION 1. The foregoing whereas clauses are incorporated herein as legislative findings by this reference and made a part hereof for all intents and purposes.

SECTION 2. DEFINITIONS:

Mobile Food Dispensing Vehicles. Is a vehicle that is a public food service establishment and 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, sometimes referred to as a food truck or trailer or food cart, and otherwise regulated by the Department of Business and Professional Regulation (DBPR) requiring a mobile food vendor license subject to F.S. Section 509.102 and in compliance with this Ordinance. Mobile Food Dispensing Vehicles are stationary for periods greater than 10 minutes while foodstuffs are prepared, served and/or sold. A Mobile Food Dispensing Vehicle does not include roving vehicles, like ice cream truck, that periodically travel through residential neighborhoods selling pre-prepared or prepackaged food items, or street peddler of unprepared foodstuffs, makeshift, standalone restaurants or buffets such as a food tent, or mobile vendor selling anything other than food/foodstuffs.

SECTION 3. This Ordinance is added to the City's Land Development Regulations to regulate MFDVs within the City limits as follows:

A. Mobile Food Dispensing Vehicles. This Ordinance applies to vendors operating MFDVs as defined in Florida Statute and herein can operate in compliance with the following requirements:

1. Provide a copy of the following documents to the City:
 - a. The Department of Business and Professional Regulation (DPBR) mobile food dispensing license.
 - b. A notarized authorization of property owner permitting the operations of a food truck on eligible private property. The authorization shall include a phone number contact for the property owner and an acknowledgment the owner shall be responsible for any infractions associated with the food truck operator/owner including a fine of no less than \$500.00 per infraction.
 - c. A notarized affidavit attesting that all sales tax collected within the city limits of Port St. will be remitted to the Florida Department of Revenue as collected in Gulf County, Florida.
2. A site plan at least a scale of 1" = 100' depicting the location of the truck in relation to all on-site improvements including buildings, drive aisles, parking places, pedestrian facilities, etc. The site plan shall depict all property boundaries, parking on site, driveway cuts, buildings and improvements

and related dimensions as applicable. The basis for the site plan can be a scaled aerial photo downloaded from the internet.

3. In order to provide a high level of food safety, the Vendor shall provide a menu of food or list of food stuffs being sold.

4. Location Standards.

a. MFDVs may operate on property developed with existing, active commercial use in Mixed Use zoning districts. Vacant, undeveloped lots/parcels or non-active commercial use areas are not eligible for MFDV operation.

b. Commercially zoned properties used principally for residential are not eligible.

c. MFDVs may be allowed within an PUD zoned and commercially/industrially developed properties if a food truck is listed as permitted use within the associated Development Agreement.

d. Actively used and developed house of worship properties, regardless of zoning classification, may be used for MFDVs consistent with the requirements set forth in this Ordinance unless there are specific conditions prohibiting or regulating mobile food dispensing activities under an approved Conditional Use.

e. MFDVs must be placed on a paved surface only.

f. MFDVs shall not be located within any public right-of-way or otherwise obstruct any drive aisle, driveway throat, or cross access area associated with any parking facility or obstruct any sight triangle or otherwise be situated in an unsafe manner.

g. MFDVs may not be located at eligible facilities where parking is not adequate to serve the business facility as per the Land development Regulations.

h. MFDVs may not occupy, obstruct/impede access to any handicapped parking spots.

i. MFDVs may not set up tents, chairs or tables.

j. MFDVs and related operations shall be consistent with the Florida Fire Prevention Code to include, but not limited to, the following:

i. MFDVs shall not be less than 10 feet from all buildings;

ii. MFDVs shall not be less than 10 feet from all other vehicles;

- iii. MFDVs shall not be less than 10 feet from combustible materials;
 - iv. Access to fire lanes and/or fire prevention devices shall be maintained;
 - v. L/P gas and generator storage and use shall be consistent with the Florida fire Prevention Code;
 - vi. The location and/or operation of the MFDVs inconsistent with any of the above provisions shall be enforced via the City Code Enforcement procedures.
5. MFDVs shall not be associated with any hazardous or unsafe condition and shall not produce excess noise, vibration, electronic interference, excess heat or glare, etc. Noise levels from a generator must not exceed manufacture specifications.
 6. No more than one MFDV may operate on a single parcel of property unless part of a City Special Event where special event rules and regulations and permitting fees apply.
 7. Advertising will be limited to identifying copy depicted on a single vehicle or trailer engaged in the mobile vending activity. No signs, banners, flags, sandwich boards, or similar will be allowed in any City right-of-way or on private property- including all prohibited signs under Article VI of the Land Development Regulations. In no cases shall people hold signs, merchandise or attempt to advertise for a MFDV within a public right-of-way. In addition, no other attention getting devices such as lighting beyond normal illumination, music noise or scintillating lights or material shall be used in conjunction with any MFDV.

B. Exemptions. MFDVs operating under an approved special event permit shall operate under the terms of the special event permit including date, hours of operation, location, and compliance with all codes as applicable.

C. Enforcement. This Ordinance shall be enforced by the Port St. Joe Police Department and/or the City Code Enforcement Officer.

Any operator of a MFDV who violates any provision of this Ordinance will be required to immediately cease all operations and leave the location. If there is a refusal to comply with the cease-and-desist determination of the St. Joe Police Department, the Department may issue a citation to the Operator of the MFDV with a \$150.00 (one hundred and fifty dollar) fine/penalty, which will be issued and enforced pursuant to Chapter 316.1967 Florida Statutes in conjunction with the Gulf County Clerk of Court via Chapter 28.2402 Florida Statutes.

The provisions of this Ordinance may also be enforced against the landowner by the City of Port St. Joe code Enforcement Officer. MFDVs operating in non-compliance with any of the provisions herein will be required to immediately cease all operations. If there is a refusal to comply with the cease-and-desist determination the City Code Enforcement Officer, he/or she shall follow the City Code Enforcement procedures to enforce this Ordinance against the

landowner. The City's Special Magistrate for Code Enforcement may order up to a \$500.00 fine/penalty per each infraction.

SECTION 4. GRANDFATHER CLAUSE: The current owners of Gulf County Parcel ID No.: 05769-050R were previously granted permission from the City Commission to operate a MFDV on that specific parcel. They are hereby grandfathered in and will be allowed to continue operating the MFDV even in the event that that particular location does not meet with the requirements of this ordinance. However, upon the transfer of ownership of the parcel, whether that be from a sale or via inheritance or any other method of transfer, then this clause will immediately be voided, and the parcel will have to conform with all provisions of this ordinance to continue the operation of a MFDV.

SECTION 5. REPEAL: All ordinances or parts or ordinances in conflict herewith are hereby repealed.

SECTION 6. SEVERABILITY: If a Court of Competent jurisdiction shall hold any of the provisions hereof invalid the remaining provisions shall remain in full force and effect.

SECTION 7. EFFECTIVE DATE: This Ordinance shall take effect immediately upon its final adoption by the City Commission of Port St. Joe, Florida.

PASSED AND ADOPTED BY THE CITY COMMISSION OF PORT ST. JOE, FLORIDA
THIS 5th DAY OF April 2022.

BY:




REX BUZZETT, MAYOR

ATTEST:



CHARLOTTE PIERCE, CITY CLERK

APPROVED AS TO FORM:



CLINTON T. McCAHILL, City Attorney