

CHAPTER 22 - MOBILE FOOD VENDORS

Ord. 22-1. - Applicability.

This article shall apply to all mobile food vendors licensed to sell food and/or beverages in the City of New Albany where permitted to do so and hereby may be referred to as the mobile food vending ordinance.

Ord. 22-2. - Definitions.

The following words and phrases, whenever used herein, shall be construed as defined in this section:

Mobile food vendor means any person who sells food and/or beverages from a mobile pushcart or motorized mobile food preparation vehicle on a consistent basis and for a period of more than 15 days each calendar year.

Mobile food preparation vehicle means any motorized vehicle that includes a self-contained kitchen in which food is prepared, processed or stored and used to sell and dispense food to the consumer. The unit must be on wheels (excluding boats and trailers) at all times. This definition does not include pushcarts.

Mobile pushcart means any portable vending device, pushcart or other wheeled vehicle or device which may be moved without the assistance of a motor and which is not required to be licensed and registered by the department of transportation, used for the displaying, storing or transporting of food offered for sale by a vendor.

Ord. 22-3. - Mobile pushcarts. Mobile pushcarts are prohibited except upon express authority of the Board of Aldermen, or as allowed by the organizers of festivals or special events approved by the Board of Aldermen.

Ord. 22-4. - Permits required.

(a) The following are exceptions to this provision:

- (1) mobile food preparation vehicles stored in the City of New Albany or operating out of central kitchens located in the City of New Albany, but not serving food in the City out of such vehicles; and
- (2) mobile food preparation vehicles approved by the organizers of festivals or special events within the City, which events have been specifically approved by the Board of Aldermen, **the New Albany Tourism Department, the Union County Board of Supervisors or the New Albany Main Street Association** to allow un-permitted mobile food vendors.

- (b) All other mobile food preparation vehicles must obtain and maintain a permit for each mobile food preparation vehicle operated. All applications for permit renewal must be filed yearly. The application shall be filed with the Municipal Clerk. The application may be reviewed by the Code Enforcement Officer to determine whether the application is complete or whether the permit should be granted. Permit applications shall contain the following information:
- (1) The name, mailing address, physical address, telephone number(s), and email address of the applicant(s). If any applicant is anything other than a natural person, then all documents related to the creation and maintenance of the entity such as articles of incorporation and any similar relevant documents shall be included.
 - (2) A valid City of New Albany business privilege license.
 - (3) A food service permit from the Mississippi Department of Health.
 - (4) A scaled sketch plan or photograph showing the proposed mobile pushcart or mobile food preparation vehicle dimensions, along with the applicable license or registration and vehicle identification number of any vehicle licensed or registered with the state.
 - (5) A list of products to be sold.
 - (6) Proof of a valid insurance policy that provides minimum liability coverage of \$500,000.00 per mobile food preparation vehicle, **with the city named as an additional insured.**
 - (7) A **written indemnity agreement** that will hold harmless the city, its officers, and employees, for any loss or liability or damage, including costs, for bodily injury or property damage sustained by a person as a result of the negligent installation, use, or maintenance of a permitted space.
 - (8) Copies of all letters and other notices from any governmental, quasi-governmental, professional, or business association or entity, related directly or indirectly to alleged or actual improper conduct in the food service business, issued to applicant or any person who will have responsibility for operations of the mobile pushcart or mobile food preparation vehicle for which a permit is requested. This shall include all related response and follow-up documents showing any results, findings or actions.

- (9) The dates, jurisdiction, court, and disposition of the following:
- a. All felony charges related to the applicant or any principal of the applicant; and
 - b. All misdemeanors and violations directly or indirectly related to food, food preparation, permit operations, business operations, fraud, dishonesty or false statements related to the applicant or any principal of the applicant.
- (10) Such other additional information required by law, rule, or ordinance, or that any department of the city or city council, or the permit applicant reasonably deems appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.
- (c) No public vending permit or public vending management contract shall convey any interest in the real property under the jurisdiction of the City of New Albany which is identified in any permit or contract and such permit shall only convey the right to use the property for the purposes allowed in this article. **All food trucks must pay a \$25 transient fee every 90 days.**
 - (d) Permits cost \$250.00 per year **or \$50 per day** which covers the administrative cost of processing the application and regulating each mobile food preparation vehicle. **All food trucks must pay a \$25 license fee.**
 - (e) Permit holders may be required to remove private materials or accessories to allow street, sidewalk, or utility access for emergency and maintenance operation or both.
 - (f) This permit does not allow permit holders to operate within **300 feet** of any public space during city appointed special events without proper notarized written authorization from the special event organizers. This notarized written authorization shall be posted while operating during the special event. **This prohibition shall not apply to any applicant who regularly operates at the location in question.**
 - (g) The vendor shall not receive compensation for relocating.
 - (h) The permit must be displayed on the mobile food preparation vehicle at all times.
 - (i) Permits are non-transferable.

- (j) **No permit shall issue until the Fire Department inspection pursuant to Section 22-5(q) and determination of compliance with the New Albany Fire Department rules and regulations.**
- (k) A damaged or destroyed mobile food preparation vehicle may be replaced if and only if approval for its replacement is obtained from the departments planning and development. Any such replacement vehicle must be of substantially the same type, size, and dimension and with the same general characteristics as the original. Such replacement may be disallowed if the original vendor permit would not have approved the use of the replacement food preparation vehicle.
- (l) Any permit granted pursuant to this article shall be nonexclusive. The city may grant any number of such permits as the city deems appropriate. The grant of a permit shall not limit or abridge any power or authority of the city and shall not limit the authority of the city to commence appropriate civil, criminal, or other enforcement actions. The city retains full authority to amend the ordinances, rules and regulations that apply to any permit.
- (m) The city may revoke and terminate the permit in the event the vendor violates any term, condition, or provision of the permit, the New Albany Code of Ordinances and/or zoning ordinances, state and/or federal law, or if the business license issued by the city for the permitted activity is revoked. The procedures for revoking or terminating a permit shall be the same as revoking or terminating a business license. The revocation may be sought as a remedy in a civil action. The vendor may terminate or surrender the permit at will any time prior to the expiration of the permit by providing written notice to the signs and license division of the office of code services in the planning and development department. Termination of the permit shall not operate to relieve the vendor of the obligation to release, hold harmless, and indemnify the city and its officers, agents, and employees.
- (n) **All permit applicants must operate an existing licensed restaurant within the City of New Albany or have a central kitchen approved by the Mississippi Department of Health for food service.**

Ord. 22-5. - Location and operation.

- (a) **Mobile food preparation vehicles are generally allowed in C2 and Industrial districts only. Operation in all other areas must receive prior approval by the Board of Aldermen.** The mobile food vendor is responsible for initiating a request to utilize such locations, and the City shall have complete

discretion as to which locations to approve considering the needs of traffic, pedestrians, public safety, public works, public convenience, the general uses of adjacent private property, and any other factor that is proper and lawful for the city to consider in approving or disapproving such locations. The City of New Albany Police and Fire Departments shall have concurrent authority to oversee locations and setup of mobile pushcarts and mobile food preparation vehicles. If an applicant is denied and wishes to appeal his grievance, he may request an order approving his application to the city council at a regular scheduled meeting and said item will be considered "approved or disapproved."

- (b) Mobile food preparation vehicles shall conform to the following regulations regarding location and operation:
- (1) Mobile food preparation vehicles must be located at least **150 feet in all directions from the entrance to any non-mobile business selling food** unless the owner of the other business gives notarized written permission for the infringement of the no-vending area. Proof of said permission must be filed with the signs and licenses division.
 - (a) For the purpose of this provision, the definition of "non-mobile business selling food" shall **specifically exclude convenience stores or other stores which sell only pre-packaged, non-heated food items not prepared on-site.**
 - (2) **Mobile food preparation vehicles must not be located within fifty (50) feet of a gas pump, fuel island, fuel tank fill port or venting equipment.**
 - (3) Mobile food preparation vehicles must not be locked or attached to trees, garbage receptacles, or street furniture.
 - (4) Mobile food preparation vehicles may not locate within twenty feet of a building or structure.
 - (5) Mobile food preparation vehicles may not locate within any area which would block the view of traffic or traffic signals or traffic signs.
 - (6) Mobile food preparation vehicles may not locate within ten feet of any fire hydrant.
- (c) Sales of goods are limited to food and beverages.
- (1) The sale of alcoholic beverages is prohibited, **except as allowed by state law.**

- (d) **Mobile Food Vendors operating in all districts shall operate Thursday through Sunday between the hours of 6:00 a.m. and 10:00 p.m.**
- (1) The New Albany Board of Aldermen may specifically approve exceptions to these restrictions as to permitted days or operation, permitted hours of operation, or the requirement for over-night removal, separately or in combination, for special events and festivals.
- (e) The operators must be present at all times.
- (f) Mobile food vendors are responsible for all waste and trash removal. The containment area must be kept clear of grease, trash, paper, cups or cans associated with the operation. No liquid waste or grease is to be disposed of in tree pits or onto sidewalks, streets, or other public places.
- (g) Mobile food vendors shall not vend from mobile vending units within 300 feet of elementary, middle or high school grounds from one hour before schools starts, during the time school is in session, or one hour after regular school hours ends.
- (h) The mobile food vendor shall contain all refuse, trash and litter within the mobile food service unit or within a small moveable trash can maintained by the vendor, and located adjacent to the mobile pushcart or mobile food preparation vehicle in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The vendor shall be responsible for the proper disposal of such refuse, trash, and litter, and shall place it in the public trash container, or in any private container with proper permission. The vendor is responsible for all litter and trash within 15 feet of the mobile food preparation vehicle at any time the vendor is selling or offering to sell any merchandise or service.
- (i) Mobile food preparation vehicles must have self-contained utilities and shall not use the city's utilities or private utilities that are not self-contained and integral to the vendor unit.
- (1) The New Albany Board of Aldermen or New Albany Light, Gas & Water Department may specifically approve exceptions to this provision.
- (j) No mobile food vendor shall sell or attempt to sell any item to the occupant of any motor vehicle, unless it is parked in a lawful parking space. Parking a mobile vending unit on commercially zoned, private property is permitted with written, notarized, permission from the owner and toilet facilities that are available and convenient. The mobile food preparation vehicle may not be stored in such location

overnight, unless excepted pursuant to section (d)(1) of this ordinance.

- (k) Every mobile food vendor shall keep records utilizing generally accepted accounting practices for the purposes of compliance with all federal, state and local tax laws.
- (l) All approved mobile food preparation vehicles must pay the two percent sales tax required by all food providers in the City of New Albany, along with all other tax and licensing fees required by the State of Mississippi.
- (m) All approved mobile food preparation vehicles must have a valid privilege license within the City of New Albany.
- (n) All mobile food preparation vehicles must be issued a state tax number by the Mississippi Department of Revenue.
- (o) Exterior speakers or noise production devices are disallowed. Interior speakers or noise production devices on a mobile food truck may only operate at a decibel level appropriate for listening within the food preparation vehicle.
- (p) Mobile food vendors may not create a nuisance, through excessive sound, traffic disruption, noxious fumes or odors, uncontrolled trash or any other behavior so disruptive to neighbors or the community as a whole as to create a public or private nuisance.
- (q) **Mobile food preparation vehicles shall have at least one fire extinguisher approved by the New Albany Fire Department and shall abide by all Fire Department Rules and Regulations. A copy of current Fire Department Rules and Regulations will be kept in the Office of the Code Enforcement Officer and shall be provided prior to issuance of a permit or upon request. Also prior to issuance of a permit, the Chief of the New Albany Fire Department or his designee shall inspect all food trucks for which a permit is sought to ensure compliance with these rules and regulations. The Fire Department Chief, or his designee, shall have five (5) business days to make such inspection or to make arrangements with the registrant for an alternate time of inspection if an agreed time for the inspection cannot be arranged occur within such five (5) day period.**
- (r) Mobile food preparation vehicles shall abide by sewer regulations for the disposal of waste water or any other waste into the sewer system.
- (s) Except as provided in section (d)(1) of this ordinance, mobile food preparation vehicles may not operate, be stored, parked or left overnight on city or other public property without

express permission of the Board of Aldermen or, if applicable, the governmental entity which owns the property.

All permitted mobile food preparation vehicles must meet the following design standards:

- (a) All mobile food preparation vehicles must be independently capable of providing all necessary utilities for operation, unless excepted per Ordinance 22-5(d)(1).
- (b) Umbrellas or canopies must be attached to the vehicle and must not exceed eight feet in height above grade. Maximum diameter of canopies and umbrellas shall not exceed six feet and shall not interfere with pedestrian movement. No mobile food preparation vehicle shall have more than two umbrellas.
- (c) All signage on mobile food preparation vehicles shall comply with the City of New Albany Sign Ordinance.
- (d) Mobile food preparation vehicles must comply with all local, state, and federal rules regarding sanitation and protection of food from airborne contamination.
- (e) Mobile food vendors may place a maximum of three coolers within their containment area so long as the coolers are neatly stacked to avoid visual clutter.
- (f) No accessory container shall be more than three feet from the unit.
- (g) Accessory containers must be made of hard substances such as hard plastic or a metal and may not be made by expanded polystyrene plastic, paper, paperboard, or cardboard.

Ord. 22-7. - Violations and penalties.

- (a) All mobile food vending must be performed in compliance with said ordinance. Failure to abide by said ordinance shall result in the following:
 - (1) A fine not exceeding \$150.00 for a first violation.
 - (2) A fine not exceeding \$250.00 for a second violation within one year of any prior violation.
 - (3) A fine not exceeding \$500.00 for a third or more violation within one year of the first.
- (b) Any offense shall be considered a misdemeanor and is subject to being cited by any authorized law enforcement official in the City of New Albany or with authority to do so in the City of New Albany.

- (c) Violation of this article may result in the suspension or revocation of any city permit or license issued to the owner or operator of the mobile pushcart or mobile food preparation vehicle.
- (d) Each day on which an infraction of the ordinance occurs shall be considered a separate and distinct violation.
- (e) All fines collected shall go to the city's general fund.

Ord 22-8 Limitation.

It is the intent of the City of New Albany that its ordinances conform to all state statutes, rules and regulations now in force or as hereafter amended, repealed, modified or later created. Nothing in this article shall be construed as overruling or limiting the applicability of state laws, rules and regulations. Any provision of any ordinance herein which shall be interpreted by a court of competent jurisdiction as being in conflict with any applicable state law, rule or regulation governing food trucks is superseded by the conflicting state law, rule or regulation, and the remainder of the ordinance shall remain in full force and effect.