

ORDINANCE NO. 15-1043

AN ORDINANCE TO ESTABLISH REGULATIONS FOR MOBILE FOOD VEHICLES AND PUSHCARTS IN THE CITY OF RED BANK, TENNESSEE TO BE KNOWN AS THE MOBILE FOOD VEHICLE ORDINANCE AND TO BE CODIFIED AT RED BANK CITY CODE, TITLE 9, CHAPTER 15, SECTION 15-101, ET SEQ.

Whereas, Tennessee municipalities are authorized to regulate the use of public streets for public health, safety, welfare and convenience; and,

Whereas, no person, firm, association, or corporation is authorized or permitted to use the streets, avenues, alleys, public right-of-way of any municipality for the operation of any private enterprise, without first obtaining the consent of the proper authorities of such municipality; and,

Whereas, mobile food vehicles and pushcart vendors are prone to utilization of public parking spaces, loading zones and other parts of public streets in violation of city ordinances and traffic regulations; and,

Whereas, mobile food vehicles and pushcart vendors often operate near and affect the trade of established restaurants that have invested in property and pay taxes in the City of Red Bank; and,

Whereas, despite concerns of the potential effects on established restaurants and the interest of citizens in the use of public rights-of-way for safe and convenient travel, mobile food vehicles, pushcarts or "food trucks", are a national trend and provide the useful service of convenient and varied dining options in business areas and in areas that lack businesses providing dietary options: and,

Whereas, the City Commission of the City of Red Bank finds it in the interest of the public health safety, welfare and convenience to authorize the operation of mobile food vehicles and pushcart vendors within the City of Red Bank, subject to regulations to protect the safe and convenient use of public rights-of-way and to balance the rights and interests of these mobile businesses with those of established restaurant businesses.

BE IT ORDAINED by the City Commission of the City of Red Bank, Tennessee, that the Mobile Food Vehicle ordinance, codified at Title 9, Chapter 15, Section 101, et seq., be enacted as follows:

Section 101 Purpose

The general purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Red Bank by requiring that new and existing mobile food vehicles and pushcart vendors provide residents and customers with a level of cleanliness, quality and safety to establish reasonable guidelines and restrictions for mobile food vehicles and pushcarts in relationship to established restaurant businesses and encourage the safe and convenient use of the city's public right-of-way.

Section 102 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.

"RBPD" means the Red Bank Police Department.

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

"Commissary" means an off-site but licensed and Hamilton County Health Department approved food preparation site which foods are prepared suitable for sale to the public and which is otherwise operating in accordance with all applicable governmental and health department imposed standards.

"Department" means the department designated by the (City Commission or Mayor).

"Food Service Worker" means a person who works for or under the direction of, on behalf of, or as an agent of a food vehicle permittee and/or owner.

“Food Zone” is an area designated by the City Manager that has been approved for the specific operation of Mobile Food Vehicles and/or Pushcarts within the public right-of-way.

“License” is an approval that enables the holder to vend food items at authorized locations and times, for a specified period of time.

“Licensee” means the holder of a mobile food vendor business license issued by the City.

“Mobile food vehicle” means, except for pushcarts, fully operational motor vehicles licensed by the State of Tennessee, 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.

“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.

“Operating Hours” is the designated time frame mobile food vehicles are authorized to operate within the city right-of-way.

“Owner” is an individual or business entity who owns and/or operates the food vehicle used in business for the purpose of earning income.

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

“DPW” means the Department of Public Works.

"Permit" means a written authorization, or permission to engage in or participate in some regulated or otherwise controlled activity. Under the provisions of this Code section, a "permit" is not equivalent to a "license", and vice-versa.

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

“Pushcart” means a non-self-propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person. A pushcart can be used to prepare and serve only:

- a. non-potentially hazardous foods such as popcorn, lemonade, hot dogs or flavored ice;
- or
- b. foods pre-wrapped at a commissary and maintained at the required temperatures.

“Restaurant” a fixed location, a brick and mortar or other establishment contained within a permanent structure 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. 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.

Section 103 Mobile Food Zones

1) At his/her sole discretion, the City Manager may limit the number of designated Food Zones within the City, to address the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Red Bank.

Section 104 Permit and License Required for Yearly Operation

1) All mobile food vehicles and pushcarts must submit an application for a permit yearly to the Public Works Department. The application will then be forwarded to the City Manager for review.

The application must receive approval of the City manager or his/her designee prior to the issuance of a permit.

- 2) The grant of a permit may be subject to a monthly rotation of the designated Food Zones within the City.
- 3) Although a permit allows for the operation of the food vehicle throughout the city limits, the permittee's activity must occur in an area that is zoned for that type of an activity; and
- 4) City designated Food Zones will be available through assignment only. No application will be accepted for a permit to operate at a location where a current permit has been issued or a complete application is pending.
- 5) No location within the City shall be approved that is within 250 feet of any existing restaurant during hours of such restaurant's operation.
- 6) Applicant shall notify the Public Works Department within fifteen (15) days of any changes to application information.
- 7) Each owner and food service worker shall be required to apply for a mobile food vehicle permit that includes a current photo of the owner(s) and/or food service worker(s).
- 8) The City Manager shall not approve a location where, in the City Manager's sole discretion, a mobile food vehicle and/or pushcart would materially obstruct a public right-of-way, impair the movement of pedestrians or vehicles, or pose a hazard to public safety. In the event the City Manager shall approve a location which later results in obstruction of traffic or impairment of the movement of pedestrians, the City Manager may in City Manager's discretion summarily and without right of review, revoke the location approval and assign another approved location.
- 9) The City Manager shall not approve any location which is adjacent to a handicap loading zone or directly in front of a property entryway.
- 10) Under no circumstances shall any applicant, licensee, or permittee obtain any vested right in any location. Approved locations shall not be assignable.
- 11) The grant of a permit hereunder shall not be deemed to authorize the conducting of a mobile food vehicles and/or pushcart 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 City.
- 12) All mobile food vehicles (with the exception of push carts) must at all times be properly licensed as a motor vehicle by the State of Tennessee, fully operational as a motor vehicle and of movement, under its own power, or by immediately available towing vehicle, upon streets and roads of the City. All mobile food vehicles must be at all times capable of so moving, under its own power and/or by a towing vehicle, within not less than thirty (30) minutes notice by the City Manager or designee.

Section 105 Application for Permit

- 1) A single permit application shall be accepted and deemed complete on a first-come, first-served basis. Each application shall indicate on its face, in addition to other requirements as may be determined, that the following materials must be submitted:
 - a) Each owner of a mobile food vehicle and/or pushcart shall be required to provide a valid copy of all necessary licenses, permits or other written proof of compliance with the regulations of the Hamilton County Health Department for each mobile food vehicle and/or pushcart.
 - b) The applicant's full name, signature, address and whether the applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses.
 - i) The applicant must list the names of all food service workers that will operate the mobile food vehicle(s).
 - ii) The address of its commissary.
 - iii) A photograph of the Permittee and/or food service worker applicant, e.g. driver's license, passport or similar.
 - iv) Each Owner must attest that they have not knowingly employed, hired for employment, or continued to employ an unauthorized alien. Owner must attest that he/she has e-verified each of the named employee's eligibility for employment.
- 2) If applicable, the applicant must specify their desire to operate in designated Food Zones within the public right-of-way of the City.

- 3) A photograph or accurate description of the mobile food vehicle and or pushcart, including the following data: The make, model and type of body; the number of cylinders; the vehicle identification number or any other identifying number as may be required by the City Manager. (If this information is not known at the time of permit application, this requirement can be satisfied as a condition of obtaining a final effective permit.)
- 4) A statement as to whether the application is for a new permit, renewal of an existing permit, a change in hours of operation, or the addition of a Food Zone location(s).
- 5) A statement that the applicant or any of its food service workers has not been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business.
- 6) A statement that the applicant or any of its food service workers has not been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years.
- 7) A statement as to whether or not the applicant or any of its principals suffers from a legal disability or capacity under state or federal laws.
- 8) A signed statement that the applicant shall hold harmless the City and its officers and employees, and shall indemnify the City, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect vendor, property owners, and the City from all 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 occurrence. The policy shall further provide that it may not be cancelled except upon thirty (30) days written notice served upon the City of Red Bank. A permit issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with the Office off the City Manager.
- 9) A statement that the Permittee shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be the direct result of any activity of the permit holder.
- 10) A statement that no sales or consumption or dispensing of alcoholic beverages, wine or beer shall be permitted under any circumstances or at any time.
- 11) Such other additional information required by law, rule, ordinance, or that any department of the city, City Manager, City Commission, or information reasonably deemed appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.
- 12) A statement that the Applicant/Permittee has not had a similar food truck or pushcart license or permit revoked or suspended in any jurisdiction within the preceding five (5) years by reason of any violation of ordinances or regulations applicable in such former instances.

Section 106 Business License Purchase

Every applicant, upon approval is required to purchase a business license under this ordinance and shall:

- 1) Purchase a business license for each mobile food vehicle and/or pushcart with which it does business within the City, except as otherwise provided by the City.
- 2) Except as provided in Section 7 Application, license and permit fees.

Upon the filing of a completed application, the non-refundable application fee for all applicants seeking a mobile food vehicle or pushcart permit shall be not less than \$50.00 but may be in an amount of not to exceed \$200.00 as the City Manager may adjust for uniform applications from time to time. This application fee shall be submitted with the application and shall apply to the cost of the permit only if approved.

Upon approval of an application for an operator's permit, the annual permit fee shall be \$500.00 for the owner/operator of the mobile food vehicle or pushcart.

Any applicant that wishes to operate multiple units within the City shall pay an additional yearly fee of \$300.00 per additional location.

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.

Any duplicate permit may be issued upon payment of a fee of \$25.00 should a permit be lost or destroyed.

Any renewal permit must be applied for not later than ten (10) working 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 \$25.00 in addition to the annual fees stated above.

Each such applicant shall pay to the director of finance, for the use of the city, a license fee for the privilege of engaging in such business in the amount specified in the then current license code and shall each year thereafter pay to the director of finance such amount as is specified for such business in the then current license code so long as his license is in effect.

Section 107 (Reserved)

Section 108 General Rules and Regulations

1) No person or business entity, including religious or charitable organization, shall operate a mobile food vehicle and/or pushcart upon the public right-of-way within the city without a permit issued by the City of Red Bank.

2) Hours of operation within the public right-of-way shall be limited to the hours between 11:30 a.m. to 2:00 p.m. and 5:00 p.m. and 8:00 p.m., Monday through Saturday within the City. It shall be unlawful to leave any approved mobile food vehicle unattended on a public right-of-way, nor remain on a public right-of-way outside of these allowed hours of operation. The City may require additional restrictions to abate nuisances.

3) All mobile food vehicle and/or pushcart vendors operating within the public right-of-way of the City shall adhere to the designated time and day requirements and shall be allotted fifteen (15) minutes set-up and fifteen (15) minutes breakdown time before and after stated operating hours.

4) No mobile food vehicle or pushcart vending shall occur within two hundred and fifty (250) feet of any restaurant during hours of such restaurant's operation. No mobile food vehicle or pushcart shall be permitted to operate within two hundred and fifty (250) feet of another mobile food vehicle or pushcart without a special exceptions permit from the City Manager.

The City Manager may, however, increase the size of the food vehicle/pushcart zone(s) if it is determined that additional food vehicles or pushcarts can be accommodated without negatively impacting existing businesses on the block face. For example, where there are few or no occupied buildings on the block face.

The City Manager may issue special events permits for short duration events of 2 days or less and as to which all or some of the distance restrictions of this Ordinance shall not be applicable for the stated duration of such special event(s).

Increasing the size of a food vehicle/pushcart zone does not prevent the City from exercising the inherent authority to regulate uses of the public right-of-way and reduce the size of the food vehicle/pushcart zone at a later date. No licensed permit holder shall have, obtain or accrue any vested right of or with respect to any location(s) under any circumstance(s).

5) Mobile food vehicle and/or pushcart vendor shall not operate within five hundred (500) feet of any fair, stadium, carnival, circus, festival, special event, civic event, or other like event that is licensed or sanctioned by the City, unless they are authorized participants in such event and are permitted, in writing, by the City Manager.

6) It shall be unlawful for any vendor to operate a mobile food vehicle and/or pushcart in or within two hundred and fifty (250) feet of any public or private school located in the City of Red Bank, or within two hundred and fifty (250) feet of any public park(s) without first obtaining written authorization and permit from the City Manager.

7) The permit shall contain additional limitations on hours and days that the City determines are appropriate, including limitations to prevent conflict with special events.

8) No mobile food vehicle and/or pushcart shall use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns, or whistles or similar devices to attract customers.

A mobile food vehicle and/or pushcart may use battery operated lights with appropriate protective shields for the purpose of illuminating merchandise.

9) With the exception of trash bin receptacles, no mobile food vehicle shall use external signage, seating, or any other equipment not contained within the vehicle on the public sidewalks.

10) Other than as permitted within the City, no mobile food vehicle and/or pushcart shall have any vested, exclusive and/or rights with respect to any duration of time of or with respect to any location upon the streets, alleys, or public grounds of the City.

11) No mobile food vehicle and/or pushcart operating within the city designated locations shall be of a size, as determined in the discretion of the City Manager, as to interfere with the city or public's use of any public ways.

12) No mobile food vehicle and/or pushcart shall vend in any congested area where in the discretionary determination of the City Manager or designee the operation will or could possibly impede pedestrian or vehicle traffic; including customer queues, accessory units, or signage.

13) No mobile food vehicle and/or pushcart shall make or solicit any sales to occupants of vehicles while in traffic or engage in any activities which impede vehicular traffic.

14) Even if a permit be issued for a specific location, all Permittee(s) shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a public right-of-way or remove the mobile food vehicle or pushcart entirely from the public right-of-way or adjacent property if necessary to avoid such congestion or obstruction.

15) The mobile food vehicle and/or pushcart must prominently display the name and address of the owner and the permit number.

16) Any power required for the mobile food vehicle and/or pushcart located on a public way shall be self-contained and shall not draw its power from the public right of way. No power cable or equipment shall be extended at grade or overhead across any public street, alley or sidewalk or other public or City owned space or locale.

17) Permittee and/or Licensee shall contain all refuse, trash, and litter within the mobile food vehicle or a small moveable trash can maintained by the permittee and/or licensee, and located adjacent to the mobile food vehicle and/or pushcart in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The owner/operator of the mobile food vehicle and/or pushcart shall be responsible for properly disposing of such refuse, trash, and litter as would any business, and shall not place it in any public trash container, or in any private container without proper permission. Nor shall garbage, waste, rubbish, or refuse be allowed to accumulate so as to be unsightly or pose a health hazard or to emit any obnoxious odor, all as determined in the discretion of the City Manager or his designee.

18) A mobile food vehicle and/or pushcart must allow for a pedestrian visual corridor at least 6 feet wide with a 4-foot-wide pedestrian walkway.

a) Pushcarts must be on a paved or concrete surface. The location must be on the street side of the sidewalk and the pushcart must maintain an 18 inch setback from the curb.

b) Pedestrian walkways of no less than four (4) feet must be maintained around the mobile food vehicle and/or pushcart.

19) The proposed mobile food vehicle and/or pushcart vending activity shall not violate the Americans with Disabilities Act.

20) If an existing mobile Food Zone conflicts with the requirements set forth in this ordinance, the City Manager shall make a determination if it will be feasible to issue a new permit when the existing permit expires.

21) Mobile food vending shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

22) The mobile food vehicle shall not have drive-through service.

23) Under no circumstances shall any beer, wine or alcoholic beverage be sold or dispensed from or be allowed to be consumed in or within a twenty-five (25) foot radius any such mobile food vehicle or push cart.

24) The decibels on any generator(s) used may not exceed "60dBA". The operator must provide the manufacturer's specs on decibels generated by his particular generator. The City Manager or the Department of Public Works will make the final determination if power generators used by mobile food vehicle constitute a noise violation. The noise generated for engines or generators shall not exceed 60 decibels when measured at a distance of twenty-five (25) feet or more from any such mobile foot vehicle or push cart and shall further not exceed 90 decibels when measured from the outside of any dwelling or structure in any residential zoned property in the City of Red Bank.

25) The use of the permitted operating location for mobile food vehicle and/or pushcart vending must be compatible with the public interest in use of the public right-of-way. In making such determination, the City Manager 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, benches, street trees, news racks, as well as the presence of truck loading zones or other businesses or approved mobile food vehicles to determine whether the requested location would result in pedestrian or street congestion.

26) Any new business that opens or moves near an existing mobile food vehicle or pushcart zone shall be deemed to have accepted the proximity of the existing mobile food vehicle and/or pushcart in operation. The City shall maintain the inherent authority to regulate uses of the public right-of-way and reduce the size and/or location of the food vehicle/pushcart zone at a later date.

Section 109 Temporary Curb Spacing Permit

(1) A temporary curb space vending permit authorizes vending from a curb space within the public right-of-way that is not designated as a mobile food vehicle zone. The permit is effective for no more than two specified days during a calendar year. The temporary curb space vending permit may be issued under the following requirements:

a) The permittee shall reserve the curb space with the City Manager provided the City Manager shall at all times retain the discretionary authority to refuse, limit and set rules and regulations governing such temporary permits.

b) The temporary curb space vending permit shall only be issued for an event located on private property abutting the curb space or an event located in an adjoining public place.

c) The vending shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

(2) The permittee shall obtain and maintain in effect all required permits and business licenses and display the food vehicle zone or temporary curb space vending permit at the vending site in a manner approved by the City Manager.

3) Temporary curb space permit vending sites shall not be located in driveways or within one block of a food establishment entrance or exit during its hours of operation.

4) If located in the public right-of-way abutting private property, the vending activity shall end by 10:00 p.m. This restriction may be waived or varied as the circumstances merit by the City Manager or his/her designee.

5) The City Manager, as deemed appropriate, approve or deny the issuance of a temporary curb space vending permit based on the:

a) Hours of operation and dates of use;

b) To ensure access to the use complies with the Americans with Disabilities Act;

c) Impacts associated with the vending activity from: lighting, noise, emissions to the air, the placement of signage, or equipment such as generators;

d) Impacts to the abutting business displays, business signage, or intake vents from the proposed vending activity; and

e) Pedestrian circulation, traffic management, or any other public use purpose.

6) If the proposed Temporary Curb Space or food vehicle zone vending will occur within 200 feet of a park, the City Manager will decide whether the vending site should be approved or denied based on the following considerations:

a) Public safety or access within the park;

b) Conflicts with existing businesses and concessionaires, permitted events, or other special activities occurring in the park; or

c) The need to encourage park activation.

Section 110 Food service workers

- 1) The owner of a mobile food vehicle and/or pushcart shall:
 - a) Allow only food service workers and persons authorized by the Hamilton County Health Department to be present or operate in or about the mobile food vehicle and or pushcart; and
 - b) Ensure that all food service workers in or about the mobile food vehicle or operating the pushcart have current workers permits and shall produce same for inspection upon any inquiry by the Health Department and/or the City Manager or his designee.
 - c) The permittee must immediately notify the City of the hiring or dismissal of any food service worker of their mobile food vehicle(s) and/or the expiration or non-renewal or revocation of any Health Department permit.

Section 111 Prohibition against the transfer of a permit and/or license

No permit or license is transferable. Upon proper application by prospective new owners, the City Manager may preapprove new applicants to facilitate transfers/sales of mobile food vehicles and push carts.

- 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. Any transfer of ownership of a mobile food vehicle must apply for and obtain her, his or its separate permit prior to commencing operations and sales in the City of Red Bank.
- 3) 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; provided that there shall be no allocated or actual value for the transfer of the permit and/or license.
 - a) Prior to any such transfer, the transferor shall notify the City Manager in writing and the transferee shall submit a mobile food vehicle permit application for approval to the City Manager.
 - b) the issued Original permit of the prospective seller shall not transfer, but each prospective new owner of any mobile food vehicle is required to make proper application for and to have his, her or its own permit prior to operation in the City by any purchaser of the mobile food vehicle.
- 4) 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 (\$500.00) dollars. The unauthorized transfer or attempt to transfer of each permit shall constitute a separate violation.
- (5) No licensee or permittee shall, under any circumstance, have or acquire any vested right in any assigned or permitted location(s).

Section 112 Enforcement

Any person or permittee vending without a duly issued permit, license and personal identification or found in violation of any of the regulatory provisions of this chapter 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 subject to imposition of a civil penalty.

- 1) Enforcement. The provisions of this section or any rules and regulations may be enforced jointly by the Red Bank Police Department, Director of Public Works, and the Codes Enforcement Officer.
- 2) Civil Penalty for Violation. Any permit holder operating a mobile food vehicle or service in violation of any provision of this section or any rules and regulations promulgated by the City Manager may be subject to a civil penalty of up to five hundred (\$500.00) dollars per day. Each day of violation shall constitute a separate and distinct offense.
 - a) The RBPD or the Codes Enforcement Officer may suspend a permit and/or license for no more than three (3) days without a notice or hearing to be held before the City Manager, 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 Manager for failure to comply with the provisions of this section or any rules and regulations promulgated by the City Manager.
 - a) With the exception of 2a) above, no permit and/or license shall be revoked, suspended, modified, or not renewed without a hearing before the City Manager or Codes Hearing Officer as the City shall determine to proceed, prior to which hearing the City shall give reasonable notice of the time and place of the hearing and the specific

grounds of the proposed action. The decision resulting therefrom shall be final and subject only to judicial review.

- 4) Any permit and/or license holder found in violation of this section or any rules and regulations may be issued a ticket for violation and the mobile food vehicle may be impounded.
- 5) Any mobile food vehicle being operated without a valid mobile food vehicle permit and/or license issued by the City Manager shall be deemed a public safety hazard and may be ticketed and impounded.
- 6) No mobile food vehicle shall be parked on the street overnight, or left unattended and unsecured at any time. Any mobile food vehicle which is found to be unattended shall be considered abandoned and a public safety hazard and may be ticketed and impounded; with all costs thereof to be paid by the Owner thereof upon proof of ownership and prior to release of any such impounded vehicle.
- 7) A mobile food vehicle operating within the City at an unauthorized location or beyond the hours for which the operation has been permitted shall be deemed operating without a permit and/or license in violation of this section and may be subject to enforcement via civil penalty, temporary suspension or revocation of the permit and/or any combination of the above.

Section 113 Denial, Revocation, Suspension or Permit and/or Business License

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

- 1) The permittee and/or licensee or any of 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 and/or licensee or any of its principals is or has engaged in a business, trade or profession without having obtained a valid license, permit or work card when such applicant or principal knew or reasonably should have known that one was required; or
- 3) The permittee and/or licensee or any of its principals has been subject, in any jurisdiction, to disciplinary action of any kind with respect to a license, permit or work card to the extent that such disciplinary action reflects upon the qualification, acceptability or fitness of the applicant or principal to conduct such a business; or
- 4) The permittee and/or licensee 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
- 5) The permittee and/or licensee or any of its principals has been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years; or
- 6) 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
- 7) The licensee or any of its principals is in default on any payments owed to the city; or
- 8) The application contains material omissions or false, fraudulent, or deceptive statements; or
- 9) The motor food vehicle is operated in such a manner as constituting a public nuisance per the Red Bank City Code or state statutes; or
- 10) 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, fire prevention, public health or safety.
- 11) The licensee or his agents or employees interfere with an inspection of the food establishment by a Hamilton County Health Department employee; or
- 12) There are repeated or serious violations of the applicable portions of this article; or
- 13) There are repeated or serious violations of federal or state food laws or laws regulating food establishments as defined in this article; or
- 14) The Hamilton County Health Department denies, revokes or suspends the license of the mobile food vehicle; or
- 15) 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 Hamilton County Health Department may impose additional requirements to protect against health hazards related to the operation of a mobile food vehicle.

Section 114 Appeal to City Manager or Codes Hearing Officer upon denial, revocation, or suspension

Upon any denial, revocation or suspension of a mobile food vehicle permit and/or business license by any official of the City of Red Bank, the applicant or permittee and/or licensee may appeal the denial to the City Manager or Codes Hearing Officer as the City shall determine by filing a written statement of appeal with the City Recorder within 10 days following the denial, revocation, or suspension and a

hearing shall be held thereon by the City Manager or Codes Hearing Officer as the City shall determine at a date and time during regular business hours at City Hall 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 City Manager or before the Codes Hearing Officer as the City shall determine;
 - 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 Manager or Codes Hearing Officer as the City shall determine 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 Manager or Codes Hearing Officer as the City shall determine 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 returned undelivered, the findings shall be served on the person in charge of the commissary or mobile food vehicle.
- 5) If the City Manager or Codes Hearing Officer as the City shall determine 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 Hamilton County 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.

Any such action of the City Manager or Codes Hearing Officer as the City shall determine shall be final and shall not be subject to review except via applicable judicial process.

Section 115 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 116 Requesting Additional Vendor Locations

- 1) The use of the permitted operating location for mobile food vehicles or pushcart vending must be compatible with the public interest in use of the public right-of-way.
 - a) A permittee may submit a request for use of the public right-of-way in other locations not designated by the City Manager. Each submitted request will require a non-refundable location inspection fee of one hundred (\$100.00) dollars. If the location is approved, the fee shall apply to the cost of the permit for the new location.

Section 117 Mobile Food Service Vehicle Zone

A) The following are designated areas of the City of Red Bank where mobile food service vehicles and pushcarts may be lawfully operated pursuant to the provisions of the Ordinance:

1) Those areas defined as Zone C-2 in the Red Bank Zoning Ordinance that adjoin and are immediately adjacent to Dayton Boulevard and bounded on the South end by Newberry Street and includes frontage properties on both the East and West sides of Dayton Boulevard and extending North on the East side of Dayton Boulevard to Woodrow Avenue on the West side of Dayton Boulevard to a point that is North of the property line of 4039 Dayton Boulevard (Tax Map #1091 E 002) situated somewhat across from Woodrow Avenue and shall also include all frontage properties on the South and North sides of Morrison Springs Road extending West to U.S. 27.

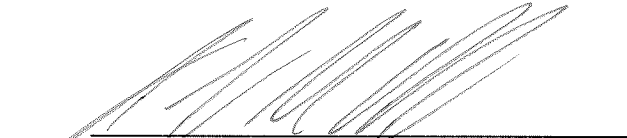

B) In all other zones, and areas and locations the operation of mobile food service vehicles and pushcarts shall be unlawful and prohibited.

Section 118 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.

Section 119 Effective date

This ordinance shall take effect upon the date of its passage upon second and final reading, the welfare of the citizens of the City of Red Bank requiring it.


MAYOR
CITY RECORDER
PASSED ON FIRST READING
PASSED ON SECOND AND FINAL READING

APPROVED AS TO FORM:


CITY ATTORNEY

