

ORDINANCE 2020-06

(Zoning Amendment – Chapter 23 Zoning, Land Use and Development)

AN ORDINANCE OF THE CITY OF LAKE WALES, POLK COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 23, ZONING, LAND USE AND DEVELOPMENT REGULATIONS; ESTABLISHING SECTION 23-358 MOBILE FOOD VENDING/MOBILE FOOD DISPENSING VEHICLES; AMENDING TABLE 23-421 PERMITTED AND SPECIAL EXCEPTION USES ALLOWED IN ZONING DISTRICTS TO ADD MOBILE FOOD VENDING; AND AMENDING SECTION 23-802 DEFINITIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED by the City Commission of the City of Lake Wales, Polk County, Florida:

SECTION 1: Section 23-358 Mobile Food Vending/Mobile Food Dispensing Vehicles is established as follows:

§23-358 Mobile Food Vending/Mobile Food Dispensing Vehicles

The regulation of the Mobile Food Vending industry is necessary to protect the health, safety and welfare of the public. Mobile Food Vending means the practice of (1) selling or offering for sale of food and beverages from a Mobile Food Dispensing Vehicle, (2) managing or owning one or more Mobile Food Dispensing Vehicles, and/or (3) preparing food and beverages within a Mobile Food Dispensing Vehicle.

a. Mobile Food Vending prohibited without permit

1. No person or business shall engage in Mobile Food Vending within the municipal limits of the City unless the person or business possesses a valid Mobile Food Vending Permit issued pursuant to the Section and pays applicable business tax as required by Chapter 19 of this Code;

2. Any person or business in violation shall be subject to a civil penalty in an amount not-to-exceed \$500.00. Each day the violation exists shall be considered a separate violation. The penalty provided herein is cumulative to other remedies or enforcement processes the City may have, including those available under Chapter 162, Florida Statutes and this Code

3. Notwithstanding the foregoing, no person or business shall be in violation of the Section for Catering activity, Temporary Sales of Food, or Vending Machine activity in accordance with Chapter 509, Florida Statutes & Rule 61C-1.002(5)(a), Florida Administrative Code, so long as such person or business is not required to procure a license from the Florida Department of Business and Professional Regulation for service of food to the public as a Mobile Food Dispensing Vehicle.

b. Permitting requirements for Mobile Food Vending

1. *Permit, generally.* A Mobile Food Vending Permit granted under this Section authorizes a Mobile Food Vendor to conduct Mobile Food Vending activities on any improved parcel of land in the City's C-1, C-3, C-4, I-1, BP or LCI zoning districts that is properly registered and approved as provided for in this Section.

2. *Application for Permit.* Application for a permit required by this section shall be made to the City's Development Services Director, upon forms provided by the City. Such application shall be sworn or affirmed to and filed with the City's Development Services Department and shall contain or have attached the following:

A. The name, home and business address and business telephone number of the applicant.

B. A description of the type of food or beverage to be sold.

C. If available at the time of application, a license or set of licenses issued by the Florida Department of Business and Professional Regulation for the operation of one or more Mobile Food Dispensing Vehicles proposed to be operated in the City, and a copy of the most recent inspection report of such Vehicle(s).

D. A description of the proposed storage location of the Mobile Food Vending business's Mobile Food Dispensing Vehicle(s) (if within the City).

E. A description of the proposed initial Mobile Food Vending site(s), if known at time of application.

F. Proof of business insurance, issued by an insurance company licensed to do business in Florida, protecting the applicant from all claims for damages to property and bodily injury, including death, which may arise from operations under or in connection with Mobile Food Vending. Such insurance shall name the City as an additional insured and shall be in at least the amount of \$300,000.00 each occurrence for injury and \$100,000.00 per person.

3. *Issuance/Denial of Permit.* Not later than 10 business days after the filing of a completed application for a Mobile Food Vendor Permit, the applicant shall be notified by the City's Development Services Department of the decision on the issuance or denial of the permit. If the issuance of the permit is approved, the permit shall be issued. If the permit is denied, the applicant shall be provided with a statement of the reasons therefor, which reasons shall be in writing on the application. The applicant shall be entitled to an informal hearing with the City Manager, or designee, if so requested by the applicant within 10 business days of the date of the written denial. A permit issued pursuant to this section is valid for a period up to 1 year from October 1 to September 30.

The following may constitute grounds for denial of a permit to operate or renewal of an application:

- A. The proposed mobile vending activity does not comply with all applicable laws including, but not limited to, the applicable building, zoning, housing, fire, safety and health regulations;
- B. The applicant has knowingly made a material misstatement in the application of a permit.
- C. The applicant does not possess clearance to operate from the Florida Department of Business and Professional Regulation.

In the event the applicant does not receive notice within 10 business days of filing a completed application for a Mobile Food Vendor Permit, the application will be deemed denied.

4. *Persons Authorized to Vend Pursuant to Permit.* Notwithstanding subsection (a) herein above, an employee of a licensed Mobile Food Vendor may perform Mobile Food Vending activities at any of his or her employer's registered sites and in any of his or her employer's registered vehicles without first obtaining a personal Mobile Food Vending Permit. The authorization granted to an employee herein is an affirmative defense to a charge of unlawful activity and in order to establish such defense in any enforcement action, including actions before a court, an employee must:

- A. present admissible proof of employment by a permittee in possession of a valid permit during the time unlawful activity is alleged (such as a paystub, IRS Form W-2 or notarized proof of employment letter); and
- B. present evidence of compliance with all applicable conditions of his or her employer's permit during the time unlawful activity is alleged.

An independent contractor under agreement with a permittee, whether oral or in writing, to operate on or more Mobile Food Dispensing Vehicles is not an employee for purposes of this affirmative defense.

c. Registration of Mobile Food Vending Sites

As a condition of permitting under this section, a Mobile Food Vendor shall register the physical site the Mobile Food Vendor intends to use for conducting Mobile Food Vending operations or for storage of Mobile Food Dispensing Vehicles with the Development Services Director either at the time of application for a new permit or not less than 30 calendar days prior to the planned start of operations on the site for a current permittee. Registration shall be made on a registration form provided by the City and a site plan of the physical site and an authorization form signed by the legal owner(s) of the physical site shall accompany such registration form when filed.

1. *Site Plan.* The required site plan shall depict to scale the principal use of the physical site and its compliance with the development regulations contained in Chapter 23 of this code, and other applicable ordinances, to include, but not be limited to, access

points, curb cuts, landscaping buffers, setbacks and parking spaces. The site plan shall also depict the size and placement of the Mobile Food Dispensing Vehicle on the physical site and proposed parking areas for the Mobile Food Vendor's patrons. For a parcel of land solely to be used for storage or exterior cleaning of Mobile Food Dispensing Vehicles, and not general Mobile Food Vending activity, the plan may omit proposed parking areas for the Mobile Food Vendor's patrons.

2. Authorization Form. Authorization from the legal owner(s) of the proposed site shall be made on a form provided by the City. In the event that the legal owner of the proposed site is a corporation, the authorization form shall be signed by an officer of the corporation or its designated agent. The authorization form shall, in addition to acknowledging that the Mobile Food Vendor has permission to conduct Mobile Food Vending activities on the proposed site from its legal owner(s).

3. Schedule of Mobile Food Vending Activity. At the time of site registration, a Mobile Food Vendor shall establish and file a proposed schedule of Mobile Food Vending activity to be conducted on the proposed site. A schedule of operation of the primary business on the site shall also be provided. Mobile Food Vending consistent with this Chapter may only occur on a site during the time that the primary business on the site is open for operation. If site registration is approved, the schedule of activity shall be appended thereto and shall be the approved times that the Mobile Food Vendor may conduct Mobile Food Vending activity on the premises.

4. Approval of Registration Required. To be valid, a registration must be approved by the City's Development Services Director, or designee, prior to initiating site operations. Upon receipt of the registration form, proper site plan, and authorization form, the City's Development Services Director, or designee, shall review the filed documents to determine:

- A. that the physical site is compliant with the current development regulations contained in Chapter 23 of this code, and other applicable ordinances;
- B. that the proposed placement of the Mobile Food Dispensing Vehicle does not impact the public's safe ingress and egress to and from the physical site by blocking visibility triangles at access points and driveways;
- C. that the proposed placement of the Mobile Food Dispensing Vehicle, including all necessary outdoor space for patron service and patron parking does not impact the general on-site traffic flow of the principal use;
- D. that only registered Mobile Food Dispensing Vehicles will be utilized on the proposed site; and
- E. that the legal owner(s) of the proposed site have given permission for the Mobile Food Vendor to establish operations on such proposed site.

Not later than 10 business days after receipt of a registration form, proper site plan and authorization form for a particular proposed site, the permittee shall be notified by the Development Services Department of the decision on the approval of the registration. If the registration is approved, the Mobile Food Vendor may begin operating. If the registration is denied, the applicant shall be provided with a statement of the reasons therefore, which reasons shall be entered in writing on the registration form.

5. Authority of Development Services Director to Authorize Administrative Variances. The City's Development Services Director, or designee, may, in the process of reviewing a site registration for approval, administratively grant a variance to the technical parking requirements of Chapter 23 of the Code required for the site's principal use during the proposed vending hours listed in the schedule of Mobile Food Vending activity if not greater than 20% of the number of required parking spaces is reduced by site space occupied by the Mobile Food Vendor and Mobile Food Dispensing Vehicles.

6. Maximum Number of Registered Sites. A permittee may only register five sites for Mobile Food Vending activity at any one time. In the event that a permittee submits registration paperwork for a site in excess of five, and does not direct the Development Services Department to cancel an existing and active registration, the Development Services Director may either:

A. summarily reject the proposed registration; or

B. approve the new registration and revoke an existing registration as the Development Services Director may discretionarily choose.

d. Local Registration of Mobile Food Dispensing Vehicles

As a condition of permitting under this section a Mobile Food Vendor shall annually register each Mobile Food Dispensing intended to be used in the City for Mobile Food Vending activities with the City's Development Services Director, or designee. To be eligible for registration in the City, a Mobile Food Dispensing Vehicle (hereafter "MFDV" in this subsection) must meet the following standards:

(1) The MFDV must be licensed by the Florida Department of Business and Professional Regulation.

(2) The MFDV must be entirely self-reliant for necessary gas, water, wastewater and electric provisions. No MFDV may connect to permanent utilities.

(3) The MFDV shall be constructed for the specific use of preparing and selling food and beverage obtained from a licensed commissary. An open bed truck, van, or converted automobile is not an MFDV and may not be registered as such in the City.

- (4) The MFDV shall be constructed so that any equipment installed in any part of the vehicle may be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- (5) The MFDV must be covered under a currently effective agreement with a Florida-licensed food commissary (hereafter referred to as "commissary") for restocking, interior cleaning and proper water and wastewater disposal and must maintain commissary logs inside the MFDV showing the date and time of each restocking and interior cleaning required by state law, rules and regulations.

Registration shall be made on a form provided by the City and shall include a written description of the MFDV, 4 or more photographs (showing different exterior views) of the MFDV and any exterior-operated equipment, the Florida Department of Highway Safety and Motor Vehicles license tag number and registration number if applicable, a current health certificate issued by the appropriate state or county authority as may be required under Florida law, all current licenses required for operation by Florida state and county agencies, and copies of the most recent inspections performed by Florida state and county agencies as applicable. Registration of the vehicle shall be complete upon filing. At registration, the City's Development Services Director, or designee, shall issue proof on registration to be placed on the MFDV for the applicable registration year.

Registration of an MFDV may only be undertaken by a person or business in possession of a valid Mobile Food Vendor Permit. A MFDV may only be registered by its legal owner.

e. Certain Conduct Prohibited.

No Mobile Food Vendor shall:

- (1) Vend for more than a single 72-hour period per week at any one location.
- (2) Vend in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant or create or become a public nuisance, increase traffic congestion or delay or constitute a hazard to traffic, life or property or an obstruction to adequate access to fire, police or sanitation vehicles.
- (3) Vend on a vacant lot.
- (4) Vend without an available litter receptacle for patron use.
- (5) Leave any location without first picking up, removing and disposing of all trash, materials or refuse remaining from Mobile Food Vending activities.
- (6) Allow any fluids to be discharged from a Mobile Food Dispensing Vehicle.
- (7) Sell anything other than that which he is licensed to vend.

(8) Vend without required insurance coverage.

(9) Vend without appropriate licensure from all state agencies with jurisdiction or vend without appropriate payment of state and local business taxes.

(10) Set up tables and chairs to be utilized by patrons as part of the vending operation.

(11) Dump wastes or wastewater on site, into the City's stormwater system, or at any other place in the City other than the licensed commissary depicted in the application.

(12) Use temporary signs of any kind.

(13) Conduct Mobile Food Vending activities without first registering and obtaining site approval.

(14) Conduct Mobile Food Vending activities without displaying a valid Mobile Food Dispensing Vehicle registration sticker.

(15) Vend between the hours of 9:00 p.m. and 6:00 a.m.

(16) Fail to comply with any requirements imposed in this section, including quarterly filing of commissary logs and inspection reports.

f. Renewal

All permits issued under this section are valid for the entire licensing period unless revoked prior to expiration. An application to renew a license may be made not later than 60 calendar days before the expiration of the current license. All current documentation required for initial permit issuance shall be submitted with each renewal.

g. Revocation of Permit or Registration.

Any permit or registration issued under this section may be revoked by sending a "Notice of Revocation" to the permittee stating both the facts and legal conclusions constituting cause to revoke. Within 10 business days' of the "Notice of Revocation," the permittee may request a hearing before the City Manager, or designee, by submitting a written request and response to the Notice to the City Clerk. At the hearing before the City Manager, or designee, the issue shall be whether cause to revoke is present based on either permittee misconduct or the permittee's failure to comply with registration requirements. The City Manager, or designee, shall allow the permittee to present any defenses the permittee may have and shall, after all of the evidence has been presented, issue a determination in writing. Any party aggrieved by the decision of the City Manager or designee may appeal the decision to a court of competent jurisdiction by petition for writ of certiorari.

h. Schedule of Fees

Each permittee shall pay the corresponding fee for each service performed by City staff pursuant to this section:

- (1) Permit, Initial issuance/renewal: \$50.00
- (2) Site registration: \$50.00
- (3) Mobile Food Dispensing Vehicle registration: \$5.00

SECTION 2: Table 23-421 Permitted and Special Exception Uses allowed in Zoning Districts

Add Mobile Food Vending/Mobile Food Dispensing Vehicles to the following districts as a condition use subject to Section 23-358.

C-1, C-3, C-4, I-1 BP or LCI

SECTION 3: Section 802 Definitions is amended as follows:
§ 23-802 Definitions

Mobile Food Dispensing Vehicle - any conveyance, or any vehicle or structure mounted on a conveyance or designed to be pulled or pushed by a conveyance, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises, called for or taken out by patrons, or prepared prior to being delivered to another location for consumption.

Mobile Food Vending – the practice of (1) selling or offering for sale of food and beverages from a Mobile Food Dispensing Vehicle, (2) managing or owning one or more Mobile Food Dispensing Vehicles, and/or (3) preparing food and beverage within a Mobile Food Dispensing Vehicle for sale to a patron.

Mobile Food Vending Permit – a permit granted by the City to a Mobile Food Vendor to conduct Mobile Food Vending from Mobile Food Dispensing Vehicles on certain zoned lands within the municipal limits of the City.

Mobile Food Vendor – any person or business engaged in (1) selling or offering for sale of food and beverages from a Mobile Food Dispensing Vehicle, (2) managing or owning one or more Mobile Food Dispensing Vehicles, and/or (3) preparing food and beverages within a Mobile Food Dispensing Vehicle for sale to a patron.

SECTION 4: Severability: If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining

portion of said ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated.

SECTION 5: Effective date: This ordinance shall become effective immediately upon its passage by the city commission.

CERTIFIED AS TO PASSAGE this _____ day of _____ 2020.

By: _____
Mayor/Commissioner
City of Lake Wales, Polk County, FL

ATTEST: _____
City Clerk