

## ORDINANCE 2020-04

**AN ORDINANCE OF THE CITY OF WINTER SPRINGS, FLORIDA, GENERALLY RELATED TO LAND USE AND ZONING REQUIREMENTS; AUTHORIZING THE OPERATION OF “MOBILE FOOD DISPENSING VEHICLES” AS A TEMPORARY ACCESSORY USE IN CERTAIN LIMITED ZONING DISTRICTS IN FURTHERANCE OF SECTION 509.102(2), FLORIDA STATUTES AND AT SPECIAL EVENTS AUTHORIZED BY THE CITY; PROVIDING GENERAL STANDARDS FOR OPERATING MOBILE FOOD DISPENSING VEHICLES; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; INCORPORATION INTO THE CODE; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, the Florida Legislature recently enacted Section 509.102, Florida Statutes, which defines the term “mobile food dispensing vehicle” as any vehicle that is a public food service establishment and that 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; and

**WHEREAS**, the City Commission recognizes that effective July 1, 2020, Section 509.102, Florida Statutes provides a limited state preemption regarding “mobile food dispensing vehicle” and that a municipality may not require a separate license, registration, or permit other than the license required by the state, or require the payment of any license, registration, or permit fee other than the fee required by the state, as a condition for the operation of a mobile food dispensing vehicle within the municipality; and

**WHEREAS**, the City Commission also recognizes that Section 509.102, Florida Statutes, provides that a municipality may not prohibit mobile food dispensing vehicles from operating within the *entirety* of a municipal jurisdiction; and

**WHEREAS**, the City Commission further finds that although Section 509.102, Florida Statutes does preempt municipalities in certain areas, Section 509.102, Florida Statutes is intended to be a partial preemption of municipal home rule authority because it expressly states that “this section may not be construed to affect a municipality, county, or other local governmental entity’s authority to regulate the operation of mobile food dispensing vehicles other than the regulations described in Section 509.102(2), Florida Statutes; and

**WHEREAS**, the City Commission hereby finds that despite Section 509.102, Florida Statutes, municipalities continue to enjoy significant home rule authority to regulate land use and zoning and operational standards related to mobile food dispensing vehicles; and

**WHEREAS**, under regulated circumstances, mobile food dispensing vehicles provide a valuable and convenient service to the community by providing food and beverage options at special events and other appropriate venues; and

**WHEREAS**, the City Commission wishes to support convenient food and beverage options at special events and other appropriate venues and encourage and support local business and entrepreneurship by adopting uniform regulations to allow the operation of mobile food dispensing vehicles within the City consistent with the preemption provided in Section 509.102, Florida Statutes; and

**WHEREAS**, the City Commission finds that the use and operation of mobile food dispensing vehicles on real property directly affects the use of land within the City, and therefore, such uses are subject to the City's legitimate land use and zoning powers under the Florida Municipal Home Rule Powers Act, Community Planning Act and other applicable law. *See also, Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926)* (The concept of planning and zoning is a legitimate exercise of the police power of municipalities.); and

**WHEREAS**, unless the operation of mobile food dispensing vehicles within the City is limited to certain commercial and industrial zoning districts or temporary special events, and subject to some level of site plan review by the City to ensure that the real property on which they operate is suitable to accommodate such use, the operation of such vehicles may negatively impact the use of real property and surrounding properties and create public nuisances; and

**WHEREAS**, the City Commission desires to avoid such negative impacts and public nuisances; and

**WHEREAS**, the City Commission also finds that the use and operation of mobile food dispensing vehicles should be governed by other traditional land use and zoning requirements as more specifically stated herein in order to avoid adverse negative effects which may be caused by the operation of such vehicles on real property and safeguard the community; and

**WHEREAS**, the City Commission further finds that for mobile food dispensing vehicles to successfully operate their respective businesses for profit within the jurisdictional limits of the City, such vendors must also rely upon and use City streets; and

**WHEREAS**, the City Commission additionally finds and recognizes that Florida courts have long held that municipalities have the historic ability to regulate commercial use of City streets and that the use of public roads for profit is a privilege, not a right, and can be regulated and controlled by the government in furtherance of the public health, safety and welfare. *See*

*Seaboard Air Line Ry. Co. v. Wells*, 100 Fla. 1027, 1034, 130 So. 587, 591 (Fla. 1930); *Pennington v. Quigg*, 94 Fla. 1056, 1065, 114 So. 859, 862 (Fla. 1927) (The right to use city streets for conducting private business is not an inherent right and can only be acquired by permission or license from the city); *Jarrell v. Orlando Transit Co.*, 123 Fla. 776, 778, 167 So. 664, 665 (Fla. 1936) (There is then no such thing as a natural right to use the public highways for commercial purposes. A city may grant a limited right to use the streets for private business, but such is “a privilege that may be restricted or withdrawn at the discretion of the granting power. The power to do so is plenary and may extend to absolute prohibition”); and

**WHEREAS**, the City Commission deems that it is necessary to regulate mobile food dispensing vehicles operating upon streets within the City so such vendors operate in areas with sufficient pedestrian traffic and in a manner that avoids traffic conflicts and congestion and otherwise generally protects public safety and does not detract from the aesthetic beauty and attractiveness of the surrounding streetscape and properties; and

**WHEREAS**, the City Commission of the City of Winter Springs, Florida, hereby finds this Ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Winter Springs.

**NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF WINTER SPRINGS HEREBY ORDAINS, AS FOLLOWS:**

**Section 1.** **Recitals.** The foregoing recitals are hereby fully incorporated herein by this reference as legislative findings and the intent and purpose of the City Commission of the City of Winter Springs.

**Section 2.** **Mobile Food Dispensing Vehicles.** The City of Winter Springs Code of Ordinances, Chapter 20, Zoning, Article VIII, Mobile Food Dispensing Vehicles and Other Mobile Vendors is hereby created as set forth below (underlined type indicates additions and ~~strikeout~~ type indicates deletions):

## **CHAPTER 20 – ZONING**

### **ARTICLE VIII. MOBILE FOOD DISPENSING VEHICLES**

#### **Sec. 20-650. Mobile Food Dispensing Vehicles.**

(a) Purpose and intent. The purpose and intent of this section is to establish land use and zoning regulations for real property upon which a mobile food dispensing vehicle is authorized to operate within the jurisdictional limits of the City. Mobile food dispensing vehicles, except for those operating on real property authorized in this section, are prohibited and unlawful on other real property not so authorized. This section is neither intended to prohibit mobile food dispensing vehicles from operating within the entirety of the City nor regulate the licensing, registration, permitting and fees of mobile food dispensing vehicles preempted by the state under section

509.102, Florida Statutes.

(b) Definitions. As used in this section, the following words and phrases shall have the following meanings, unless the context clearly indicates that a difference meaning is intended:

Accessory shall mean clearly incidental or subordinate to and customary in connection with the principal building or use on a developed site and which is located on the same lot or parcel with such principal building or use.

City Manager shall mean the City Manager or designee thereof.

Developed site shall mean real property upon which a building and other permanent improvements have been legally constructed and which is currently in compliance with all land development regulations and the City Code.

Food shall mean all substances commonly used for human consumption as food, beverage, confectionery or condiments, whether simple, mixed or compound, and all substances or ingredients used in preparation thereof.

Mobile Food Dispensing Vehicle shall have the same meaning as that term is defined in Section 509.102(1), Florida Statutes, and upon the effective date of this Section means any vehicle that is a public food service establishment and that 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.

Public road shall mean any public right-of-way for cars and trucks in the city.

Special event shall mean any organized, temporary public or private celebration or gathering of people which requires a City special event permit including by way of example events relating to athletic contests, carnivals, fairs, cook-offs, entertainment, dancing, music concert, dramatic productions, art exhibitions, parades, fundraisers (such as religious, charitable, patriotic or philanthropic events), or the sale of merchandise, food or alcohol, or any combination of the foregoing.

(c) Authorized Locations. Subject to the terms and conditions set forth in subsection (d), mobile food dispensing vehicles shall be allowed to operate within the jurisdictional limits of the City in the following authorized areas:

- (1) As a temporary accessory use on property which is designated I-1, C-3 or C-2 on the City's official zoning map.
- (2) Within a clearly delineated area on City property or a public road which has

been specifically and temporarily set aside for a mobile food dispensing vehicle to operate during a special event which is open to the general public, provided the event has been lawfully permitted by the City and any mobile food dispensing vehicle has been contractually arranged by the event organizer to be part of the event.

- (3) Within a clearly delineated area on public or private school property which has been specifically and temporarily set aside for a mobile food dispensing vehicle to operate during a school sponsored event held entirely on school property which is open to the faculty and student body, provided the event has been lawfully permitted by the City and any mobile food dispensing vehicle has been contractually arranged by the school to be part of the event.
- (4) Within a clearly delineated area on private property which has been specifically and temporarily set aside for a mobile food dispensing vehicle to operate during a special event held entirely on private property which is private or open to the general public, provided the event has been lawfully permitted by the City and any mobile food dispensing vehicle has been contractually arranged by the event organizer to be part of the event. However, a mobile food dispensing vehicle shall not be allowed to operate on any existing single or multi-family residential use property unless the area being used is common area of a residential project with at least fifty (50) dwelling units. Additionally, a special event allowed on private property under this subsection shall be limited to no more than one event per calendar quarter.

(d) *Conditions of Land Use and Operational Standards.* The following land use and operational standards shall apply to all mobile food dispensing vehicles operating within the City:

- (1) When the mobile food dispensing vehicle will be operating on private property, a notarized affidavit signed by the property owner indicating that the vehicle has permission to operate and vend on the property. The affidavit must also indicate that the property owner acknowledges the following requirements:
  - a. The property owner shall comply with all ordinances regarding solid waste disposal and must provide the vehicle access to solid waste collection on the subject property;
  - b. The property owner shall require that the vehicle meet all applicable federal, state and local statutes, regulations, laws, ordinances, rules and codes including, but not limited to, applicable land use and zoning requirements regarding the subject property including site plan requirements;
  - c. The property owner shall acknowledge that the property owner

understands the regulations governing mobile food dispensing vehicles and will be held responsible, along with the vehicle owner, for any code violations; and

d. The property owner shall ensure that the property will be continuously maintained in a neat, clean, and orderly manner, and that the mobile food dispensing vehicle shall be limited to operating as a temporary accessory use on the subject property.

- (2) The subject property must be a developed site. The subject property must not be vacant or unimproved.
- (3) No more than one (1) mobile food dispensing vehicle shall be parked or in operation on a single property at any given time, except multiple mobile food dispensing vehicles may be allowed with express written permission of the City during an authorized special event.
- (4) A mobile food dispensing vehicle may operate at a single location up to a maximum of four (4) days per week but no more than three (3) consecutive days, or if operation is allowed as part of a special event permit, said vehicles may operate in accordance with the duration of the special event permit.
- (5) Except with the express written permission of the City during an authorized special event, hours of operation shall be limited between 7a.m. and 10p.m. The person in charge of the mobile food dispensing vehicle when in operation on the developed site must be present at all times during hours of operation.
- (6) When the mobile food dispensing vehicle will be operating on private property, the vehicle must be parked when in operation within an area on the property specifically authorized for accessory temporary outdoor sales on the property owner's master site plan previously approved by the City Commission. If the property owner does not have specific site plan approval for accessory temporary outdoor sales on the master site plan, the property owner shall be required to obtain supplemental site plan approval by the City Manager before the mobile food dispensing vehicle may operate as an accessory use on the subject property. For purposes of obtaining supplemental site plan approval, the property owner shall submit a site plan or detailed sketch depicting the proposed location of temporary mobile food dispensing vehicle operations; all parking spaces, entrances and exits to and from the site; and distances from any buildings or structures, sidewalks, rights-of-way, fire hydrants, fire lanes and landscaped areas, and such other information or documentation deemed by the City Manager to be reasonably necessary to authorize outdoor accessory temporary sales on the

subject property in a manner that is compatible with the existing uses on the subject property and the surrounding area and protects the public health, safety and welfare of the citizens of the City. The mobile food dispensing vehicle temporary sales area must be on a paved surface and not exceed an area of 600 square feet unless the City Manager determines more area is required and the subject property clearly has ample space to support a larger sales area. The approved area must not adversely affect existing uses on the subject property or the flow of pedestrian and vehicular traffic on the developed site. There must be an adequate number of parking spaces available for the general public visiting the developed site. Supplemental site plan approval granted by the City Manager under this subsection is subject to being suspended or revoked pursuant to subsection (e) or at such time the master site plan is revoked or modified by the City Commission.

- (7) Outdoor dining areas are prohibited including, but not limited to, tables, chairs, booths, bar stools, benches, and standup counters, except if dining areas are allowed with express written permission of the City during an authorized special event.
- (8) Mobile food dispensing vehicles selling or dispensing of food to customers in a moving vehicle or otherwise engaging in drive-up sales is prohibited.
- (9) A mobile food dispensing vehicle shall not be located on private property upon which uncorrected code violations exist, or which is under citation for code violations.
- (10) Mobile food dispensing vehicles and all materials associated with such vehicles must physically be moved at least daily and cannot remain on the subject property outside the approved hours of operation unless otherwise allowed by the City for special events. Overnight parking of mobile food dispensing vehicles is prohibited unless located within an enclosed garage or on property zoned for an authorized open storage use and said storage complies with the requirements set forth in section 20-256 of the City Code.
- (11) Mobile food dispensing vehicles shall not sell alcohol unless specifically approved as part of a special event or other permit approved by the City. The alcohol-related restrictions of Chapter 3 of the City Code are applicable unless otherwise authorized by the City Code, or, expressly waived by the City.
- (12) The operation of a mobile food dispensing vehicles must not obstruct or interfere with vehicular or pedestrian traffic, building access, fire lanes, crosswalks, driveways, fire hydrants, loading areas, stormwater drainage systems, or landscape buffers associated with the principal use.

- (13) Mobile food dispensing vehicles must not enter or park upon playgrounds, playing fields and courts, sidewalks, footpaths or bicycle paths.
- (14) Mobile food dispensing vehicles must not enter or park upon any “no parking” area, loading zone, driveway, handicapped parking space, or designated public safety lane (e.g., fire lanes) or within twenty (20) feet of a crosswalk or within fifteen (15) feet of a fire hydrant or storm drainage structure.
- (15) No additional signage shall be permitted on the developed site related to the mobile food dispensing vehicle except as to signage permanently affixed and displayed on the vehicle.
- (16) Amplified music or other sounds from any mobile food dispensing vehicle or from audio equipment installed on the developed site by the property owner or person in charge of the vehicle for purposes of vending, attracting or encouraging the congregation of customers shall be prohibited.
- (17) Mobile food dispensing vehicles shall maintain an appropriate number and size of operable fire extinguishers.
- (18) The operation of a mobile food dispensing vehicles shall not create or cause nuisance conditions to include, but not be limited to, displaying flags or unauthorized signage, loud noises, visual glare, flashing or animated lights, shouting or amplified music or sound, excessive fumes or smoke, environmental hazards, and any vehicular or pedestrian hazard.
- (19) The grounds around the mobile food dispensing vehicle and within the vending space shall be kept free of litter, trash, paper and waste at all times. Waste containers shall be provided and all trash shall be taken with the vehicle when the vendor leaves or with the permission of the property owner, placed inside a commercial dumpster in use and located on the developed site.
- (20) Mobile food dispensing vehicles must not discharge waste, fat, oil, grease or such other similar substances from the vehicle. All such substances related to or generated from the vehicle shall be taken with the vehicle when vehicle leaves the subject property.
- (21) Mobile food dispensing vehicles must comply, as applicable, with the standards specified by Chapter 5K-4.002, Florida Administrative Code, and the U.S. Food and Drug Administrative 2001 Food Code, as such codes may be amended from time to time. It is also prohibited and unlawful for a



mobile food dispensing vehicle to fail to comply with all state and City traffic and parking, and stopping and standing laws, codes, ordinances, rules and regulations.

(22) A copy of the appropriate license(s) issued from the Florida Department of Business & Professional Regulation (Division of Hotels and Restaurants) shall be maintained on the mobile food dispensing vehicle at all times when the vehicle is in operation on real property located within the City, and shall be made available for inspection upon request by the City's law or code enforcement officers.

(e) Penalties.

(1) Owners and operators of mobile food dispensing vehicles, and property owners on which such vehicles operate, shall be joint and severally liable for any violations of this section. The penalty provisions set forth in section 1-15 of the City Code shall apply to violations of this section.

(2) In addition to the penalties authorized by subsection (1), the City Manager may also suspend or revoke the property owner's site plan approval for accessory temporary outdoor sales and/or special event permit, as may be applicable, upon a finding that a mobile food dispensing vehicle was operating on the subject property in violation of this section. Prior to suspending or revoking the applicable site plan approval and/or special event permit, the City Manager shall:

(i) Afford the property owner notice of the violation(s) and a reasonable, informal opportunity to be heard regarding the violation(s);

(ii) Consider the property owner's past record of compliance with this section and related laws; and

(iii) Consider the degree of risk to public health, safety, and welfare arising from the alleged violation(s) in evidence.

(3) The City Manager's decision under subsection (2) shall be rendered in writing and shall be deemed final.

(4) Any site plan approval or special event permit suspended or revoked pursuant to this subsection shall immediately be void and of no further use and effect to any person. If revoked, the property owner shall be prohibited from seeking subsequent site plan approval for accessory temporary outdoor sales or a special event permit for the subject property for a period

of one (1) year from the date of the revocation.

- (5) The operation of a mobile food dispensing vehicle without a valid site plan approval for accessory temporary outdoor sales or special event permit (including if operated during a period of license suspensions or revocation) shall subject the owner of the property and the owner of the vehicle and operator thereof to code enforcement action, civil action, or action as otherwise allowed by state law or the City Code.

**Section 3. Repeal of Prior Inconsistent Ordinances and Resolutions.** All prior inconsistent ordinances and resolutions adopted by the City Commission, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

**Section 4. Incorporation Into Code.** This Ordinance shall be incorporated into the Winter Springs City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

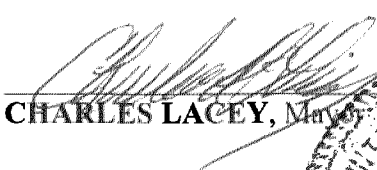
**Section 5. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

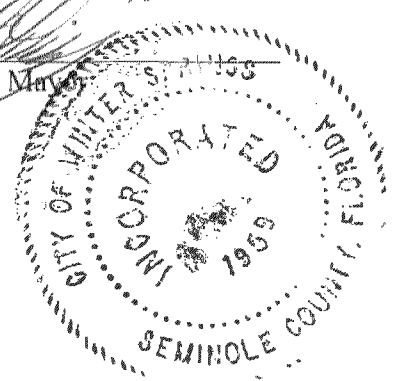
**Section 6. Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Springs, Florida, and pursuant to the City Charter.

**ADOPTED** by the City Commission of the City of Winter Springs, Florida, this 10<sup>th</sup> day of August, 2020.

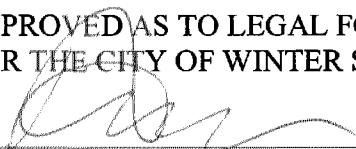
ATTEST:

  
CHRISTIAN GOWAN, Interim City Clerk

  
CHARLES LACEY, Mayor



APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
FOR THE CITY OF WINTER SPRINGS ONLY.



**ANTHONY A. GARGANESE**  
City Attorney

First Reading: June 8th, 2020  
Second Reading: August 10th, 2020  
Effective Date: August 10th, 2020

**CITY OF WINTER SPRINGS NOTICE OF CITY  
COMMISSION PUBLIC HEARING**  
NOTICE IS HEREBY GIVEN THAT  
THE CITY COMMISSION  
PROPOSES TO CONSIDER:

**ORDINANCE NO. 2020-04**

AN ORDINANCE OF THE  
CITY OF WINTER SPRINGS,  
FLORIDA, GENERALLY  
RELATED TO LAND USE AND  
ZONING REQUIREMENTS;  
AUTHORIZING THE OPERATION  
OF "MOBILE FOOD DISPENSING  
VEHICLES" AS A TEMPORARY  
ACCESSORY USE IN CERTAIN  
LIMITED ZONING DISTRICTS  
IN FURTHERANCE OF  
SECTION 509.102(2), FLORIDA  
STATUTES AND AT SPECIAL  
EVENTS AUTHORIZED BY THE  
CITY; PROVIDING GENERAL  
STANDARDS FOR OPERATING  
MOBILE FOOD DISPENSING  
VEHICLES; PROVIDING FOR  
THE REPEAL OF PRIOR  
INCONSISTENT ORDINANCES  
AND RESOLUTIONS;  
INCORPORATION INTO THE  
CODE; SEVERABILITY; AND AN  
EFFECTIVE DATE.

**PUBLIC HEARING  
FOR SECOND READING  
WILL BE HELD ON**

**MONDAY, AUGUST 10, 2020 AT 6:30  
P.M. OR SOON THEREAFTER IN  
THE COMMISSION CHAMBERS  
LOCATED AT THE WINTER  
SPRINGS CITY HALL, 1126 EAST  
STATE ROAD 434, WINTER  
SPRINGS, FLORIDA. THE  
CITY COMMISSION RESERVES  
THE RIGHT TO POSTPONE  
OR CONTINUE THE PUBLIC  
HEARING ON THIS ORDINANCE  
AT THIS MEETING WITHOUT  
FURTHER NOTICE.**

The proposed ordinance may be inspected by interested parties between 8 a.m. and 5 p.m., Monday through Friday, at the City's Clerk's Office, located at 1126 East State Road 434, Winter Springs, Florida. For more information call (407) 327-1800, Extension 253. Interested parties may appear at the meeting and be heard with respect to the proposed ordinance. Persons with disabilities needing assistance to participate in any of these proceedings should contact the Employee Relations Department Coordinator, 48 hours in advance of the meeting at (407) 327-1800, Extension 236. This is a public hearing. If you decide to appeal any recommendation/ decision made by the City Commission with respect to any matter considered at this meeting, you will need a record of the proceedings, and for such purposes, you may need to ensure that a verbatim record of the proceedings is made upon which the appeal is based. Interested parties are advised that they may appear at the meeting and be heard with respect to the proposed ordinance.