

ORDINANCE 2020-14

AN ORDINANCE OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA; RELATING TO MOBILE FOOD DISPENSING OPERATIONS; AMENDING ARTICLE II, SECTION 1-2.6.C.14 OF THE LAND DEVELOPMENT CODE OF THE TOWN PROVIDING FOR DEFINITIONS, RULES AND REGULATIONS REGARDING LOCATIONS FOR MOBILE FOOD DISPENSING OPERATIONS; AMENDING ARTICLE XX, LANGUAGE AND DEFINITIONS, OF THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 14 OF THE TOWN CODE BY ADDING A NEW SECTION 14-40.1; PROVIDING FOR AN APPLICATION AND OPERATIONAL PROCEDURES FOR MOBILE FOOD DISPENSING OPERATIONS; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Mobile food dispensing is a growing industry in the United States and serves as a means for individuals to start businesses or to supplement existing businesses; and

WHEREAS, there is an increasing demand for a greater variety of food options than are present in the Town; and

WHEREAS, at present, there are no rules or regulations pertaining to mobile food dispensing vehicle, vendors and operations in the Town Code; and

WHEREAS, on November 17, 2020, the Malabar Planning and Zoning Board held a publicly advertised meeting to discuss and recommend such amendments to the Town Code; and

WHEREAS, Town Council has determined that the proposed amendments serve the public health, safety and welfare of the citizens of the Town of Malabar, Florida.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Malabar, Brevard County, Florida:

SECTION 1. Article II SECTION 1-2.6-C. 14 of the Town Land Development Code is hereby amended to include new subsections (c), (d) and (e) to read as follows:

...

“(c) Mobile Food Dispensing Vehicle means any vehicle that is licensed by the State of Florida as a public food service establishment {See F.S. 509.013 (5) for definition of a public food service establishment} and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(d) Mobile Food Dispensing Vendor – The operator of a Mobile Food Dispensing Vehicle.

(e) Location of mobile food dispensing vehicle/vendor. A mobile food dispensing vendor may operate a mobile food dispensing operation in the following locations:

1. Town-Owned Property

- A. On the following Town-owned property, total operation must be contained within the area designated for their operation by the Town Manager or designee:
1. Malabar Community Park
 2. Sandhill Trailhead Park
 3. Town Hall
- B. Access. A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, building entrances, pedestrian ingress or egress, emergency exits, or access to businesses. Notwithstanding anything to the contrary herein, a mobile food dispensing vendor may only operate on Town-Owned Property in areas so designated by the Town.
- C. Conflict. A mobile food dispensing vendor may not operate on or at any location where the Town Manager or designee determines that a conflict exists between a mobile food dispensing vendor's vehicle or operation and an existing license or franchise agreement, contractual obligation, or any other public health or safety concern, including but not limited to a special event or rental facility.

2. Improved Property

- A. A mobile food dispensing vendor may operate on improved private property located within the following zoning districts, only with the written permission of the property owner(s). Evidence of a property owner's written permission must be available for inspection by the Town upon request while the mobile food dispensing vendor is operating.
1. Commercial General (CG)
 2. Industrial (IND)
 3. Residential/Limited Commercial (R/LC)
 4. Office Institutional (OI)
 5. Commercial Limited (CL)

6. Institutional (INS)

- B. Set-back Requirement. When operating on private property, a mobile food dispensing vendor may operate only if set-back at least fifty feet (50') from any abutting residential district and at least one hundred and fifty feet (150') from any exclusively single family residential structure, unless the owner(s) of the residential structure immediately abutting such proposed location provides the mobile food dispensing vendor with express written permission to operate. The one hundred and fifty-foot (150') set-back requirement is reduced to fifty feet (50') where an intervening non-residential building, such as a commercial building, screens the operation from the direct view of the single-family residential structure.
- C. Access. A mobile food dispensing vendor shall not operate or park in any location that impedes the ingress or egress of traffic, pedestrian ingress or egress, building entrances, blocks a public or private right-of-way, emergency exits, or access to businesses. A mobile food dispensing vendor may locate upon a public or private utility easement area; provided, however, that such location may be terminated by the town Manager if it is determined that such location has cause a deterioration to such easement or utility service needs unrestricted access to the easement area.
3. Construction areas. A mobile food dispensing vendor may operate on private property that has an active building permit as part of a commercial or multi-family construction site. Such operation may also occur on a site undergoing master infrastructure construction within a single-family subdivision until the first certificate of occupancy is issued.
4. Principal structure requirement. A mobile food dispensing vendor may only operate on a lot that has a permitted principal structure.

Stationary location requirement. A mobile food dispensing vendor must operate from a stationary location, but may operate from multiple locations throughout the day, except as otherwise permitted in this article.”

SECTION 2. ARTICLE XX of the TOWN Land Development Code is hereby amended to include the following definition:

“Improved Property - property upon which a principal residential, commercial, or other principal building has been built”

SECTION 3. Chapter 14 of the TOWN Code of Ordinances is hereby amended to include a new Section 14.40.1:

“Section 14-40. 1 Application process for Mobile Food Dispensing Vendors; Operational Procedures for Mobile Food Dispensing Vendors.

(a) A mobile food dispensing vendor must submit a complete application to obtain or renew a business tax receipt. The application must include all the following:

1. The name, address, phone number and email address of the mobile food vendor;
2. Proof of a valid license issued by the Florida Department of Business and Professional Regulation, a mobile food establishment permit issued by the Florida Department of Agriculture and Consumer Services, and a license or permit from any other state agency having jurisdiction over the mobile food dispensing vendor or the products sold therein as applicable to the mobile food dispensing vendor’s intended operation;
3. Confirmation from the Town of Malabar Fire Department indicating that the mobile food dispensing vendor has passed a fire and safety inspection based on the applicable Florida Fire Prevention Code; and
4. Proof of any insurance required by this section if applicable

(b) Operational Procedures for Mobile Food Dispensing Vendors

1. Hours. A mobile food dispensing vendor may only operate during the posted hours on the authorized Town-Owned property, or for all other approved locations between the hours of one-half hour before sunrise and nine (9) p.m. the same day. Operating hours include the time required for setup and breakdown of the mobile food dispensing operation.

2. Noise requirements. Mobile Food Dispensing Vendors shall comply with Article X of this Land Development Code.
3. Placement of items. Except as otherwise provided herein, the placement or storage of any items is prohibited on the public/private right-of-way, street, sidewalk, or ground area immediately surrounding the ~~an~~ mobile food dispensing operation. The following are the only items which may be placed in the immediate area of such operation as long as they do not impede, endanger, or interfere with pedestrian or vehicular traffic:
 - a. Two (2) trash receptacles;
 - b. One (1) recycling receptacle; and
 - c. One (1) menu board no larger than thirty inches by fifty inches (30" x 50") in height.
4. Waste collection. A mobile food dispensing vendor must provide receptacles for trash and recycling. The area immediately surrounding an operating mobile food dispensing vendor shall always be kept neat and orderly and garbage or trash shall be removed prior to departure of the mobile food dispensing vendor. Mobile food dispensing vendors are responsible for the proper disposal of all waste generated on-site. No grease, waste, trash, or other by-product from a mobile food dispensing vendor's business may be deposited or released onto Town-Owned property, included but not limited to the streets, sidewalks, into the gutter or storm drainage system, etc.

(c) Limitation on sales.

1. The sale of alcoholic beverages is prohibited unless authorized by a special event permit.
2. The sale of non-food related items is prohibited, such as, but not limited to, T-Shirts, ball caps and hats, novelty items, etc.

(d) Insurance

1. When operating on Town-owned property, a mobile food dispensing vendor must maintain insurance and coverage in occurrence form, as required by this section. The mobile food vendor must also have a current certificate of insurance on file with the Town, naming the Town of Malabar, Florida as an additional insured.

- a. Commercial General Liability Insurance. The policy must include a minimum limit of \$300,000 for each accident, \$600,000 for general aggregate, \$600,000 for products and completed ops, and \$100,000 damage to rented premises.
 - b. Commercial Auto Liability Insurance. The policy must include a minimum limit of \$1,000,000 for each accident for property damage and bodily injury with contractual liability coverage.
2. Upon the cancellation or lapse of any policy of insurance required by this section a mobile food vendor is prohibited from operating on Town-owned property. A mobile food vendor must notify the Town within three (3) business days of any changes in the insurance coverage required by this section.
 3. At all times, a mobile food dispensing vendor must maintain all insurance policies required by local, state, and federal law and regulation.

(e) Enforcement

1. The location of a mobile food dispensing operation on Town-Owned property or on any public right of way or public easement without the permission of the Town is deemed a trespass. Upon the discovery of such violation the Town Manager or designee may enlist the assistance of a law enforcement officer to cause the mobile food dispensing operation to cease and be removed from such unauthorized location and should the mobile food dispensing vendor remain and disobey the command to cease and remove the operation then the continued trespass shall be deemed a trespass after warning and enforced according to law.
2. Any mobile food dispensing operation located on property which is not either Town-Owned property or public property without the proper authority is hereby deemed to present a serious threat to the public health, safety, and welfare. The Town Manager or designee may immediately notify the violator that a violation exists and demand the operation cease and desist and may immediately schedule a code enforcement magistrate hearing. Any mobile food dispensing operation found in violation herein shall be fined by the Code Enforcement Special Magistrate in the amount of \$250.00, plus administrative expenses which shall include attorney fees.
3. Upon a violation being found by the Special Magistrate, the Town Manager shall provide a copy of such Finding and Order to the State Agency which regulates mobile food dispensing vendors.

(f) In the event that the State of Florida determines that a mobile food dispensing operation does not need a business tax receipt, any mobile food dispensing operation desiring to operate within the corporate limits of the town, shall submit documentation containing the information required in section 14-40.1 (a); and shall comply with the remaining provisions of Section 14-40.1 and shall in all respects comply with Article II SECTION 1-2.6 C.14 (e) of the Town Land Development Code.

SECTION 4. Severability. If any provisions of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the other portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

SECTION 5. Conflicting Provisions. In the case of a direct conflict between any provisions of this ordinance and a portion or provision of any other appropriate federal, state, or town law, rule, code or regulations, the more restrictive shall apply.

SECTION 6. Inclusion in Code. It is intention of the Town Council that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the Town of Malabar.

SECTION 7. Effective Date. This Ordinance shall take effect ninety (90) days after the adoption of this Ordinance.

The foregoing Ordinance was moved for adoption by Council Member Scardino. The motion was seconded by Council Member White and, upon being put to a vote, the vote was as follows:

Council Member Marisa Acquaviva	Aye
Council Member Brian Vail	Aye
Council Member Steve Rivet	Excused
Council Member David Scardino	Aye
Council Member Danny White	Aye

This ordinance was then declared duly passed and adopted this 21st day of December 2020.

TOWN OF MALABAR

original signed
Mayor Patrick T. Reilly, Council Chair

ATTEST:

Debby K. Franklin, C.M.C., Town Clerk/Treasurer

(seal)

Approved for Legal Sufficiency:

Karl Bohne, Jr, Town Attorney

Heard at P&Z: 11/17/2020

First Reading at Council: 12/07/2020 Vote: 4 to 0.

Second Reading at Council: 12/21/2020