

ORDINANCE NO. 15-

AN ORDINANCE OF THE CITY OF BOYNTON BEACH, FLORIDA APPROVING AMENDMENTS TO THE MOBILE VENDING UNIT REGULATIONS OF THE LAND DEVELOPMENT REGULATIONS, CHAPTER 1, ARTICLE II ENTITLED “DEFINITIONS”; CHAPTER 2, ARTICLE II, SECTION 7C, ENTITLED “MOBILE VENDOR APPROVAL”; CHAPTER 3, ARTICLE V, SECTION 10, ENTITLED “MOBILE VENDOR REGULATIONS”; TABLE 2-1 “APPLICATIONS BY CITY DEPARTMENTS”; AND, CHAPTER 3, ARTICLE IV, SECTION 3, TABLE 3-28 “USE MATRIX”; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, at the August 29, 2014 Commission Strategic Planning meeting staff was directed to modify the existing mobile vending unit regulations and return to the Commission with recommended changes; and

WHEREAS, staff is recommending that Mobile Vending Assembly be moved to the Special Event permit process to facilitate a more business friendly procedure for allowing Food Truck Rallies and other similar events to take place in the City; and

WHEREAS, the City Commission finds it to be in the best interest of the citizens and residents of the City to approve the recommendations of staff and amend the Land Development Regulations as reflected herein.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. The foregoing whereas clauses are true and correct and are now ratified and confirmed by the City Commission.

Section 2. Chapter 1, Article II of the Land Development Regulations entitled “Definitions” is hereby amended as follows:

Mobile Vendor Code Citations

Part III (LDR), Chapter 1, Article II

MOBILE VENDING UNIT (MVU) - Any movable cart, trailer, or other vehicle that is operated from an established location, from which food, flowers, and other merchandise and services, as well as non-alcoholic beverages are provided to the public with or without charge; except, however, that the provisions of this ordinance shall not apply to mobile caterers, or service providers, generally defined as a person engaged in the business of transporting, in motor vehicles, food, beverages, or service equipment to residential, business, and industrial establishments pursuant to prearranged schedules, and dispensing from the vehicles the items or services at retail, for the convenience of the personnel of such establishments. For the purposes of implementing and interpreting the mobile vendor ordinance, the following definitions shall apply:

ADULTERATED - The condition of a food that bears or contains any poisonous or deleterious substance or has been processed, prepared, packed or held under unsanitary conditions, whereby it may have become contaminated with filth, in a quantity which may render it injurious to health.

APPROVED MANNER - Method of dealing with waste, solid or liquid, which comports with adequate sanitation methods as established by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation.

APPROVED SOURCE – A licensed food processing establishment considered satisfactory by the health director and serving food products which are clean, wholesome, free from adulteration or misbranding and safe for human consumption.

ASSEMBLY – A concentration of three (3) or more MVU’s coordinated by a single applicant intended to contribute to the vitality of publicly-accessible spaces and community activities. Events of this type are ~~subject to City Commission approval and are typically held as recurring, temporary events over a fixed period of time required to obtain a Special Event Permit.~~

COMMISSARY - A food processing establishment or food service establishment approved by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation in which food, containers or supplies are kept, handled, prepared, packaged or stored for transportation by mobile vendors.

CORROSION RESISTANT MATERIAL - A material which maintains its original surface characteristics under prolonged influence of food, cleaning compounds, bactericidal solutions and other conditions-of-use environment.

EASILY CLEANABLE - Surfaces are readily accessible and made of such material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

FOOD - Any raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

FOOD HANDLER - A person, certified by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation, engaged in the preparation, handling or vending of food.

FOOD VENDOR - Any person, group of persons, firm or corporation who individually or by or through an agent or employer, offers for sale, sells, attempts to sell, exposes for sale or gives away any food intended for human consumption from any vehicle or by a person afoot.

LABEL – A display of any written, printed, or graphic matter upon the immediate container, not including package liner, of any prepackaged article in accordance with state law.

LIQUID WASTE - Fluid, resulting from wastes produced from food vending operations, composed of solids, whether dissolved or in suspension; liquids, whether in solution, in emulsion or in separate phases; and gases. The term shall also include melted ice.

MERCHANDISE - Items of clothing, jewelry (including timepieces), photos, artwork, housewares, flowers, plants, landscape materials, carpets, phones and accessories, small appliances, medicines, personal care items, books and/or magazines as well as audio or video recordings, tapes, discs or other media.

MISLABELED AND MISBRANDED - The presence of any written, printed or graphic matter upon or accompanying any food or container of food which is false or misleading and which is not presented in the English language as stipulated by the Food and Drug Act, Title 21, Chapter 1-101.15 or which violates any applicable federal, state or local labeling requirements.

PERISHABLE FOOD - Food, including shelled eggs, of a type or in such condition that it will become adulterated unless kept at a temperature which will maintain product quality and wholesomeness.

PERMIT – A site specific license to operate a mobile vending unit which shall be issued by the Planning and Zoning Division of the City’s Department of Development for a stated fee and shall be carried by a vendor or food handler at all times while vending.

POTENTIALLY HAZARDOUS FOOD - Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.5 or below or a water activity (AW) value of 0.85 or less.

PUBLIC WAYS - Include all portions of public streets, alleys, sidewalks, trails and parking lots of the City of Boynton Beach and, in addition, shall include privately owned streets, roads, alleys, sidewalks, trails, and parking lots that are provided for public use or access.

SAFE TEMPERATURES - As applied to potentially hazardous food, shall mean temperatures of forty-five (45) degrees Fahrenheit (seven (7) degrees Celsius) or below, or one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Celsius) or above and zero degrees Fahrenheit (minus seventeen (17) degrees Celsius) or below for frozen

food storage.

SANITIZE - Effective bactericidal treatment of cleaned surfaces of equipment and utensils by a process which has been approved by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation as being effective in destroying microorganisms including pathogens.

SERVICES - Personal services to include portraits, body art, and hair braiding; the cleaning and detailing of vehicles including automobiles, trucks, vans, and motorcycles; and repairing household goods, tools, and equipment.

SINGLE SERVICE ARTICLES - Cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and similar articles intended for one-time, one-person use and then discarded.

~~**STICKER**—A decal issued by the Planning and Zoning Division of the City's Department of Development shall be displayed on the mobile vending unit.~~

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UTENSIL - Any implement used in the storage, preparation, transportation or serving of food.

VEHICLE - Every device in, upon, or by which any persons, food or other commodity is or may be transported, pushed or drawn.

WHOLESOME - In sound condition, clean, free from adulteration and otherwise suitable for use as human food.

Part III (LDR), Chapter 2, Article II, Section 7.C.

C. Mobile Vendor Approval.

1. General.

a. Purpose and Intent. The purpose and intent of this subsection is to set forth well-defined application processes, review criteria, and information to guide in the processing and review of mobile vending units (MVU) submittals.

b. Applicability. This subsection is applicable to any MVU proposed within the City in accordance with Chapter 3, Article V, Section 10. It shall be unlawful for anyone to operate an MVU in the City without first obtaining the necessary approvals as contained herein.

Portable or mobile kitchens necessary to provide temporary food services in connection with permitted construction work are not subject to the removal requirement or size restrictions. Such temporary units must be removed immediately upon completion of work.

2. Submittal Requirements. See Section 1.D above for the submittal requirements of this application. Because of minimum separation requirements between each MVU, in those instances when more than one (1) application has been submitted for the same location, the earliest application shall be processed and forwarded to either the Planning and Development Board or the Community Redevelopment Agency, whichever is applicable.

3. Review Criteria. The MVU shall comply with the regulations and requirements of Chapter 3, Article V, Section 10. Site constraints and site plan functionality shall be satisfactorily addressed to justify the request.

4. Approval Process. Staff shall review the proposed location and dimensions of each MVU to ensure compliance with the review criteria contained herein, and provide a recommendation. ~~If the application is for an Assembly, the application is forwarded to the City Commission, who shall take the following action: 1) approve; 2) approve with conditions; 3) table or defer their decision to a subsequent meeting in order to collect additional information or conduct further analyses; or 4) deny the request for an assembly of MVU's.~~ Once an individual or assembly MVU application is approved, a permit fee shall be paid by the applicant, and Business Tax Receipt or Certificate of Use received, prior to the operation of the MVU.

5. Expiration. Each approval for an MVU shall be effective for one (1) year, from October 1 until September 30, subject to annual renewal. Assembly permits are ~~issued on a quarterly basis, subject to City Commission conditions~~ subject to the Special Event Permit regulations.

6. Fees. The annual renewal fees for an MVU shall be paid to the Business Tax Division in accordance with the fee schedule as adopted by the City. ~~Assembly permits are paid per quarter, subject to City Commission conditions.~~

7. **Suspension.** Approval of an MVU or Assembly permit may be temporarily suspended by the City under the following circumstances: 1) when necessary to clear sidewalk areas for a “community or special event” authorized by the City; 2) when street, sidewalk, or utility repairs necessitate such action; or 3) when the City may cause the immediate removal or relocation of all or parts of the MVU or assembly in emergency situations.

8. **Denial or Revocation.** The ~~Building Board of Adjustment and Appeal City Magistrate,~~ for Business Tax Receipt and Certificate of Use, ~~or the City Commission, for Assembly permits,~~ shall have the power and authority to deny or revoke the issuance or renewal of any application for MVU or Assembly under the provisions of these regulations. In such instances, the applicant shall be notified in writing of the denial of an application or the suspension or revocation of an existing approval, and the grounds thereof. Upon such notification, the operation shall cease and desist until final action or outcome of the ~~Board or City Commission~~ Magistrate. An application approved under these regulations may be recommended for suspension or revocation by staff, based on one (1) or more of the following:

- a. **Florida Department of Business and Professional Regulation.** Cancellation of the Vendor’s permit issued by the Division of Hotels and Restaurants of the Florida Department of Business and Professional Regulation.
- b. **Expiration.** Expiration, suspension, revocation or cancellation of any other business tax receipt, Certificate of Use or permit required by the vendor.
- c. **Fraud.** The permit was procured by fraud or false representation of fact.
- d. **Consent.** The abutting property owner or tenant withdraws consent, in writing, for the mobile vending unit.
- e. **Violations.** Violations of this or any other ordinance, the City’s municipal code, conditions of permit, or when conditions exist that present a threat to the public health, safety, or welfare.
- f. **Miscellaneous.** If determined to be noncompliant with the review criteria contained herein or otherwise inconsistent with the original approval, or changing conditions warrant the removal of the unit from the ~~public right of way site~~

9. **Appeal.** Applicants who have been denied a request for an MVU or assembly permit or who have had their approval revoked may formally appeal such denial or revocation to the City Commission in accordance with Chapter 1, Article VIII.

Part III (LDR), Chapter 3, Article V, Section 10.

Section 10. Mobile Vendor Regulations.

A. Purpose and Intent. The purpose of this section is to provide for the regulation of mobile vending activities, including Assembly, on public and private property, in certain commercial and mixed-use zoning districts of the City in order to promote the public interest by contributing to an active and attractive pedestrian environment. In recognition thereof, reasonable regulation of mobile vending is necessary to protect the public health, safety, and welfare and the interests of the City in the primary use of public streets, sidewalks, and parking areas, for use by vehicular and pedestrian traffic.

B. Definitions. See Chapter 1, Article II for specific definitions applicable to Mobile Vending Units (MVU).

C. Approval Required. It shall be unlawful for any establishment or organization to engage in or carry on the business of vending food, goods, or services, upon public or private property ~~or the public ways of in~~ the City without first having secured a permit or permits as required by this section. See Chapter 2, Article II, Section 7.C for the process and procedure to obtain approval for an MVU.

It is not the intent of these regulations to be applied to mobile vendors temporarily approved in conjunction with a special sales event or Special Event Permit. See Section 6 above for additional regulations regarding Special Sales Events.

D. Districts. The operating area of an MVU shall be entirely located in the following zoning districts: C-1, C-2, C-3, C-4, CBD, PCD, SMU, MU-L1, MU-L2, MU- L3, MU-H, M-1, PU, REC, PUD, and PID

E. Compatibility. The use of an MVU shall be compatible with the public interest. In making such a determination, staff shall consider the type and intensity of use, the width of ~~the sidewalk pedestrian walkways~~, the width and type of ~~right-of-way drive isles~~; location of fire lanes; fire hydrants; distance from intersections and major driveways; the proximity and location of existing street furniture, including but not limited to traffic control devices, signposts, lampposts, parking meters, benches, phone kiosks, mailboxes, fire hydrants, landscaping, trees, buffer yards, public art and refuse containers, as well as the presence of truck loading zones. Staff shall also consider established and emerging pedestrian and vehicular traffic patterns, as well as other factors it deems relevant in determining whether or not the proposed use would diminish required parking or result in congestion of the public and private ways, on-site traffic circulation patterns, or the creation of a safety hazard.

F. Location Criteria. An MVU shall be permitted to operate throughout the City in approved zoning districts once a Business Tax Receipt or Certificate of Use has been issued; utility service connections are only permitted once an approved Building permit has been issued. In addition, an MVU must comply with the following location criteria, whichever is applicable:

1. ~~Public Property and Rights-of-Way.~~ An MVU, located on public property ~~or within a right-of-way~~, shall comply with the following requirements:

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a. **Maximum Area.** An MVU shall not occupy an operating area of more than ~~310 four-hundred-twenty (420)~~ square feet of space, including the unit, operator, trash receptacle, signage, merchandise, and covering, if applicable, per ~~one-half (0.5) acre~~ site. A single entity may request approval for more than one (1) MVU per ~~every one-half (0.5) acre of~~ site.

b. **Maximum Dimensions.** An MVU shall not exceed ten (10) feet in width by ~~twenty-five (25)~~ forty (40) feet in length

c. **Maximum Height.** The maximum height of an MVU, including any covering, such as its canopy, umbrella, and / or transparent enclosure, shall not exceed fifteen (15) feet, excluding venting equipment,

d. **Sidewalks.** An MVU vendor located on a public sidewalk shall not:

- (1) Vend at any location where the sidewalk is less than 10 feet in width;
- (2) Vend within 20 feet of an entrance to any building, bus stop sign, driveway, stop sign, or cross walk of any intersection; and
- (3) Obstruct the view of any directional sign, traffic control sign, or device.

2. **Private Property.** An MVU is allowed on private property, provided that it complies with the following regulations

a. **Class “A” MVU.** An MVU is considered “Class ‘A’” if it is less than seven (7) feet in height, including its canopy, umbrella, and / or transparent enclosure and if the operating area is seventy-two (72) square feet or less, including the unit, operator, and trash receptacle. This class includes carts and small trailers.

A Class “A” MVU may be placed within off-street parking spaces but shall be restricted to excess parking spaces only. It shall not obstruct or impede critical vehicular use movements or otherwise create a hazard.

b. **Class “B” MVU.** An MVU is considered “Class ‘B’” if it is either greater than seven (7) feet in height or in excess of seventy-two (72) square feet in operating area, or both. This class includes carts, trailers and vehicles in excess of the size limitations of a Class “A” MVU

A Class “B” MVU shall be allowed on all sites greater than one-half (0.5) acre in size. No more than one (1) MVU per one-half (0.5) acre shall be permitted.

Both Class “A” and “B” MVU’s are allowed on improved property only, and if placed within walkways or right-of-ways, shall not obstruct or impede

pedestrian movement or cause noncompliance with ADA accessible route requirements. A minimum clear passage of four (4)-feet must be maintained for pedestrian travel at all times.

G. Removal. Each MVU shall be removed daily. An MVU shall not remain on any public or private property, or within any rights-of-way between the hours of midnight and 6:00 AM.

H. Maintenance. The mobile vending unit, including any canopies, umbrellas, or transparent enclosures, must be clean, and well maintained. The vending site itself must also be clean and orderly at all times, and the vendor must provide a refuse container for use by his patrons. The container shall be removed after the unit has departed for the day. Vendor wastes of any kind shall not be deposited or permitted to be deposited upon the ground, sidewalk, streets, city waste receptacles, or private dumpsters.

I. Separation.

1. Between Units. An MVU shall not be placed within 100 feet from another MVU of a different vendor for which a permit had been granted unless requested as a condition of permit.

2. From Selected Land Uses.

a. An MVU shall not be placed within ~~200~~-100 feet from the property line of any single-family residential zoning district.

b. An MVU shall not be placed within ~~150~~-100 feet from the property line of any establishment that sells or provides similar foods, merchandise, or services as that of the MVU without the prior written consent of the similar establishment.

J. Display.

1. Display of Permit and License. All vendors must display the permit issued by the City in a prominent and visible manner. In addition, an MVU capable of operating within public rights-of-way shall display a current Florida Department of Highway Safety & Motor Vehicles (DHSMV) license plate.

2. Display of Merchandise. No merchandise shall be displayed using street structures (planters, trees, trash containers, signposts, etc.) or placed upon the sidewalk or right-of-way. Merchandise may be displayed outside the MVU on private property with the written permission of the Property Owner provided that it does not intrude upon the accessible area around the unit, or otherwise impede parking or access to structures within the site.

K. Emergencies. Vendors shall obey any lawful order from a police or fire department official during an emergency or to avoid congestion or obstruction of the sidewalk.

L. Prohibitions.

- 1. Solicitations.** An MVU approved and located within a right-of-way shall not solicit or conduct business with persons in motor vehicles.
- 2. Advertisements.** Vendors shall not make loud noises, use mechanical audio, noise-making devices, moving objects, or lighting systems to advertise his or her product.
- 3. Unattended.** No MVU shall be left unattended.
- 4. Miscellaneous.**
 - a.** Vendors shall not hinder or impede the use of any phone kiosk, mailbox, parking meter, fire alarm, fire hydrant, or traffic control device.
 - b.** No tables, chairs, or umbrellas are to be set up for use by customers, with the exception for those located on private properties ~~and utilized in connection with a Class “B” MVU.~~
 - c.** Freestanding signs, flags, banners, tents, tarpaulins, canopies, or awnings shall be allowed in connection with an MVU as a condition of permit. All signs, flags, banners, tents, tarpaulins, canopies, or awnings shall be either attached to, centered over, resting against the vending vehicle / equipment, or located within a designated area from the MVU based on permit condition in accordance with the requirements of Land Development Regulations Chapter 3, Article V, Section 10.M.2 b
 - d.** Live entertainment, defined as performances, shows or other forms of entertainment consisting of one (1) or more persons, amplified or non-amplified music or other related sounds or noise, including but not limited to entertainment provided by musicians, disc jockey (DJ), master of ceremonies (MC), or karaoke shall not exceed sixty (60) decibels at a distance of one-hundred (100) feet from the source as measured by a sound level meter. ¶
 - e.** MVU’s utilizing portable generators shall not exceed sixty (60) decibels at a distance of one-hundred (100) feet from the source as measured by a sound level meter.

M. 1. AUTO/CAR WASH (POLISHING, WAXING, DETAILING). An AUTO/CAR WASH (POLISHING, WAXING, DETAILING) type of MVU shall not be allowed on public property or within any right-of-way. This type of MVU is only allowed on private property and shall comply with the location criteria of paragraph “F” above. One (1) freestanding canopy may be allowed for this type of MVU in addition to another canopy that is either attached to, centered over, or resting against the vending vehicle or equipment. In all instances, the size of the freestanding canopy shall be the minimum necessary to accommodate one (1) parked vehicle, but not to exceed 20 feet in width by 20 feet in length, and must be removed daily.

Section 5. Chapter 2, Article I, Section 2 of the Land Development Regulations entitled “Types of Land Development Applications” is hereby amended as follows:

Part III (LDR), Chapter 2, Article I, Section 2

Section 2. Types of Land Development Applications

A. Table 2-1. Applications by City Departments.

APPLICATION TYPE	CODE SECTION	REVIEWING AUTHORITY (STAFF)	APPROVING AUTHORITY	PUBLIC HEARING REQUIRED?
Other Applications				
Certificate of Conformity	Art. II, Sec. 7.A.	Director of P&Z	Director of P&Z	No
Lot Line Modification	Art. II, Sec. 7.B.	Director of P&Z	Director of P&Z	No
Mobile Vendor Approval	Art. II, Sec. 7.C.	Director of P&Z	Director of P&Z	No
Mobile Vendor Assembly	Art. II, Sec. 7.C.	Director of P&Z See <u>Special Events</u>	CC See <u>Special Events</u>	Yes <u>No</u>

Section 6. Chapter 3, Article IV, Section 3 of the Land Development Regulations entitled “Use Regulations” is hereby amended as follows:

...

D. *Use Matrix (Table 3-28).* Section 6. Chapter 3, Article IV, Section 3 of the Land Development Regulations entitled “Use Regulations” is hereby amended as follows:

D. *Use Matrix (Table 3-28).*

See attached Exhibit “A”

Section 7. Should any section or provision of this Ordinance or any portion thereof be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the remainder of this Ordinance.

Section 8. This Ordinance shall become effective immediately on second.

FIRST READING this ____ day of _____, 2015.

SECOND, FINAL READING AND PASSAGE this ____ day of _____, 2015.

CITY OF BOYNTON BEACH, FLORIDA

	YES	NO
Mayor – Jerry Taylor	_____	_____
Vice Mayor – Joe Casello	_____	_____
Commissioner – David T. Merker	_____	_____
Commissioner – Mack McCray	_____	_____
Commissioner – Michael M. Fitzpatrick	_____	_____

VOTE _____

ATTEST:

Janet M. Prainito, MMC
City Clerk

(Corporate Seal)

EXHIBIT A

D. Use Matrix (Table 3-28).

	Residential									Commercial						Mixed-Use					Industrial		Misc	
	R-1-AAB	R-1-AA	R-1-A	R-1	R-2	R-3	IPUD √	PUD	MHP	C-1	C-2	C-3	C-4	CBD	PCD	SMU	MU-L1	MU-L2	MU-L3	MU-H	M-1	PID	PU	REC
Mobile Vending Unit (MVU)								<u>P 54</u>		<u>P 54</u>	<u>P 54</u>	P 54	P 54	P 54	P 54	P 54	P 54	P 54	P 54	P 54	<u>P 54</u>	P 54	<u>P 54</u>	★ P 54

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