

ORDINANCE NO. 22-01

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTERS 33 AND 34; PERTAINING TO THE REGULATION OF MOBILE FOOD VENDORS; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

THE SPECIFIC LDC PROVISIONS THAT WILL BE AMENDED ARE: SEC. 33-1422 (FOOD VENDING CART SIGNS); SEC. 33-1432 (FOOD VENDING CARTS); SEC. 34-2 (DEFINITIONS); SEC. 34-3052 (MOBILE FOOD VENDING).

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and,

WHEREAS, Goal 4 of the Lee County Comprehensive Land Use Plan (Lee Plan) states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, the Board of County Commissioners finds that limited regulation of mobile food vending, including to define locations and provide standards of operation while mitigating impacts to surrounding locations, is in the best interest of the health, safety, and welfare of the public; and

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on November 12, 2021, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on November 10, 2021, and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on October 25, 2021, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: AMENDMENT TO LDC CHAPTER 33

Lee County Land Development Code Chapter 33 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 33 – PLANNING COMMUNITY REGULATIONS

ARTICLE V. – LEHIGH ACRES PLANNING COMMUNITY

DIVISION 2. – COMMERCIAL DESIGN STANDARDS AND SPECIFICATIONS

Sec. 33-1422. – Reserved. ~~Food vending cart signs.~~

~~Individual identification signs including sandwich signs are prohibited as well as signs listed as prohibited in this section; however, advertising signs may be permitted on the temporary food vending cart but may not extend beyond the cart.~~

DIVISION 3. – SPECIFIC USE STANDARDS

Sec. 33-1432. – Reserved. ~~Food vending carts.~~

~~(1) *Applicability.* The following regulations apply to food vending carts:~~

- ~~(a) Food vending carts may be permitted in conventional zoned commercial and industrial properties; commercial and industrial planned developments; mixed use planned developments on the commercial or industrial portions; and on properties developed with a religious facility with a place of worship, as defined in section 34-2.~~
- ~~(b) Temporary permits for food vending carts will be issued in accordance with section 34-3041.~~
- ~~(c) A food vending cart must be located on private property and not be placed within the public right-of-way.~~
- ~~(d) The temporary use permit for food vending carts will be valid for a period of one year from the date of issuance. At the end of one year, the applicant must apply for a new permit.~~

- ~~(e) Responsibility for restroom facilities for employees lies with the occupational license holder and must be detailed in the application for a temporary use permit.~~
- ~~(f) Food vending carts must be approved by the County Health Department with proof of approval provided at the time of request for a temporary use permit as well as compliance with the following conditions:
 - ~~(1) The applicant must provide a notarized letter from the property owner giving permission for the use of the property.~~
 - ~~(2) Food vending carts must be in compliance with applicable building codes and must be located in an area which does not detract from visibility at intersections, block any driveway, fire lane or fire hydrant, or cause parking problem associated with the use or patronage of the food vending cart.~~
 - ~~(3) A site plan must be submitted showing the layout of the property, including the location of existing building(s), the food vending cart, parking spaces, aisle ways for pedestrians and any seating area. Food vending carts must be located on an asphalt or concrete surface. Minimum setbacks from all applicable property lines must be shown as follows:
 - ~~(a) Street setback: 50 feet for arterials and collectors; 25 feet for local.~~
 - ~~(b) Side setback: 15 feet.~~
 - ~~(c) Rear setback: 25 feet.~~~~
 - ~~(4) Temporary permits will be issued for individual carts at specified locations and will be nontransferable. Change in ownership of a cart or location requires application and applicable fees for a new permit.~~
 - ~~(5) There must be no more than one temporary food vending cart located within one mile of another temporary food vending cart.~~
 - ~~(6) Food vending carts must not exceed 200 square feet in floor area.~~
 - ~~(7) No alcoholic beverages are to be sold or consumed from temporary vending carts.~~
 - ~~(8) Food vending carts must not be left unattended and must be removed each evening in accordance with approved hours of operation.~~~~

- ~~(g) For the purposes of this section, a food vending cart is synonymous with a van, or trailer serving food.~~
- ~~(h) Vending carts used for, but not limited to, the sale of flowers, souvenirs, goods, or paintings, that are not part of a permitted temporary special event, are prohibited.~~

SECTION TWO: AMENDMENT TO LDC CHAPTER 34

Lee County Land Development Code Chapter 34 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 34 – ZONING

ARTICLE I. – IN GENERAL

Sec. 34-2. – Definitions.

Canteen vehicle means a self-propelled vehicle which is used for the temporary retail sale, display and accessory advertising of pre-cooked foods, pre-packaged foods and drinks, and prepared foods.

Conveyance means a food stand, a food vending cart, an ice cream truck, a canteen truck, or a mobile food dispensing vehicle as defined in Sec. 509.102, Florida Statutes.

Food stand means a temporary open air stand, kiosk or place for the retail sale, display and accessory advertising of pre-cooked food, pre-packaged food and drinks, and prepared foods. A food stand may include tents or other temporary weather protection that is portable and capable of being dismantled or removed from the sales site.

Food vending cart means any non-motorized cart, trailer, table, equipment, or apparatus which is not a structure, which is designed and intended so as to not be a permanent fixture on a lot, and which is used for the temporary retail sale, display, and accessory advertising of food. A food vending cart does not include a mobile food dispensing vehicle.

Ice cream vehicle means a self-propelled vehicle which is used for the temporary retail sale, display and accessory advertising primarily of pre-packaged frozen dairy or frozen water-based food products, soft serve or hand-dipped frozen dairy products or frozen water-based food products and pre-packaged beverages. At least seventy-five (75) percent of its inventory shall consist of ice cream products or related frozen dessert products, as more particularly defined in Florida Statutes Chapter 503, as may be amended from time to time, and offer for sale no more than twenty-five (25) percent of other pre-packaged products which are non-ice cream or non-related frozen dessert products.

Mobile food vendor means an operator offering the temporary retail sale, display and accessory advertising of fresh prepared food, pre-cooked food, pre-packaged food, and prepared food from mobile food dispensing vehicles as defined in Sec. 509.102, Florida Statutes, or from a similar self-propelled conveyances such as ice cream trucks or canteen vehicles, or non-fixed structure such as a food stand or food vending cart.

ARTICLE VII. – SUPPLEMENTARY DISTRICT REGULATIONS

Division 37. – SUBORDINATE AND TEMPORARY USES.

Sec. 34-3052. – Mobile Food Vending.

- (a) Applicability. The Lee County Board of County Commissioners recognizes that mobile food vending is temporary and mobile in nature. These regulations are intended to define locations and provide standards to allow mobile food vendors to operate while mitigating impacts to the location in which they operate, as well as adjacent properties and rights-of-way. These regulations also address other food dispensing vehicles (i.e., vehicles serving a construction site and ice cream truck) which tend to temporarily vend for a period of minutes and not days or hours. Temporary mobile food vendors are not considered a “hawker” or “peddler” as provided for in Code of Ordinances Chapter 22, Article IV.
- (b) General Standards. The following general standards apply to mobile food vendors:
- (1) It shall be a violation for any mobile food vendor to offer for retail sales, display or accessory advertising of any food or beverage product at any location except in compliance with the requirements of this section.
 - (2) This section excludes:
 - a. A written contractual or other private arrangement between a mobile food vendor and an individual or group that desires to have food or beverage catered at a specific time and location and which is not open to the public.
 - b. Mobile food vendors operating in conjunction with a permitted special event or temporary use.
 - c. Conveyances operating as an ancillary use to a licensed public lodging establishment with a valid public food service license. Such conveyances may obtain a separate license to allow operation in compliance with applicable state statutes.
 - (3) The mobile food vendor must maintain the valid license required under Section 509.241, Florida Statutes, and any other valid licenses and insurance required to operate a motor vehicle within the state.

- (4) All mobile food vendors must have the name of the business clearly displayed on the conveyance.
- (5) A conveyance is limited to the following signs:
 - a. Signs attached to its exterior, which must be secured and mounted flat against the conveyance and may not project more than six inches from the exterior of the conveyance;
 - b. Awning signs, as defined in section 30-2, provided that the awning does not project more than five feet (60 inches) from the exterior of the conveyance; and
 - c. A sandwich sign, as defined in section 30-2, provided that the sign may not exceed six square feet in copy area.
- (6) Alcoholic beverages must not be sold or dispensed by a mobile food vendor. Consumption of alcoholic beverages by patrons of a mobile food vendor is prohibited except when a mobile food vendor is operating as an ancillary use to and on the same premises as an establishment with a valid approval for outdoor consumption on premises.
- (7) No mobile food vendor shall provide tables, chairs or other furniture or equipment intended to provide accommodations for the patrons of a mobile food vendor.
- (8) Mobile food vendors must provide or have available a trash receptacle which is clearly marked with a sign requesting its use by patrons. The mobile food vendor must remove all generated waste and trash at the end of each day or more frequently if needed to maintain the public health, safety and welfare.
- (9) Liquid waste or grease must be disposed of at an approved location and may not be placed in tree pits, storm drains, or sanitary sewers, or onto sidewalks, streets or other public or private space. If at any time evidence of the improper disposal of liquid waste or grease is discovered, the responsible mobile food vendor will be required to cease operation immediately and clean up the improperly disposed material to the reasonable satisfaction of the County. The responsible mobile food vendor may not resume operation until an alternate method of disposal has been approved.
- (10) Mobile food vendors must remove all vehicles, equipment, and other accessory items from the permitted site when vending is not taking place.

- (11) A mobile food vendor may not operate in areas designated on an approved local development order as a buffer or preserve area or within any recorded conservation easement.
- (12) Electrical service, if required, must be provided by a portable generator or by a temporary connection to an existing point of service.
- (13) The stopping, standing, or parking of any mobile food vendor within any street right-of-way or street easement in violation of stopping, standing or parking prohibitions or restrictions is prohibited.
- (14) A mobile food vendor may not conduct business within 20 feet of any fire lane, fire hydrant, fire alarm box or fire connection.
- (15) A mobile food vendor may not block access to a public facility such as a mail box, parking meter, traffic control box, driveway or other access point.
- (16) If the conveyance will operate between dusk and dawn, adequate lighting must be provided and the lighting must be directed to eliminate glare on any other use or property.
- (17) A permanent water or wastewater connection is prohibited.
- (18) Tents and tarps for the purposes of providing weather protection for patrons in the process of ordering from a conveyance may be provided; however, tents or tarps for the purposes of accommodating on-site dining for patrons are prohibited. All items must be dispensed from the conveyance.
- (19) All items related to the operation of conveyance must be kept either on or in the conveyance.

(c) Permitted locations. Mobile food vendors may be located on any lot or lots within:

- (1) Any conventionally-zoned Community Facilities, Commercial, Marine-Oriented, or Industrial zoning district;
- (2) Any agricultural zoning district provided that the mobile food vendor is associated with an agritourism activity, as defined in section 34-2;
- (3) Any common element of a conventionally-zoned Residential, Mobile Home, or Recreational Vehicle zoning district developed as a recreation facility or other similar amenity;
- (4) Any portion of a Community Facilities, Commercial, Industrial, or Mixed Use Planned Development zoning district not designated for residential use on the approved master concept plan; or

- (5) Any portion of a Residential, Commercial, or Mixed Use Planned Development zoning district designated on the approved master concept plan as a recreation facility or other similar amenity.
- (d) Prohibited locations. Mobile food vendors must not be located:
- (1) Within any street right-of-way or street easement;
 - (2) Within any required preserve or landscape buffer;
 - (3) In a manner inconsistent with section 34-3131;
 - (4) Within 50 feet of a residential lot unless separated and screened by an existing, permitted opaque wall that is a minimum of six (6) feet in height; or
 - (5) On undeveloped property.
- (e) Minimum setbacks. Mobile food vendors must meet the following minimum setbacks as measured from the closest part of the exterior of the conveyance:
- (1) 50 feet from the boundary of any outdoor dining area when open or from the main entrance into any non-residential enterprise;
 - (2) 20 feet from a street right-of-way or street easement; and
 - (3) A minimum setback of ten feet from any internal drive or permitted curb cut, provided that the location is in conformance with section 34-3052(d)(3). Mobile food vendors operating within a designated parking space are exempt from this requirement.
- (f) Ice cream vehicles.
- (1) Locations. An ice cream vehicle may operate within public rights-of-way and must stop as far to the right of the street as far as possible before serving customers, but may not stop or park within any open drainage conveyance.
 - (2) Standards. The following standards shall apply:
 - a. Ice cream vehicles are allowed to operate between 9:00 a.m. and dusk in all zoning districts.
 - b. Ice cream vehicles are permitted to play music from the vehicle to draw the attention of customers; however, this music must be turned off anytime the ice cream vehicle is stopped serving customers.

SECTION THREE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION FOUR: SEVERABILITY

It is the Board of County Commissioner’s intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FIVE: CODIFICATION AND SCRIVENER’S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word “ordinance” can be changed to “section,” “article,” or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SIX: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION SEVEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Commissioner Ruane made a motion to adopt the foregoing ordinance, seconded by Commissioner Hamman. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 18th day of January 2022.

ATTEST:
LINDA DOGGETT, CLERK

BY: *Melina Butler*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Cecil L Pendergrass*
Cecil L Pendergrass, Chair



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: *Chadler*
Office of the County Attorney

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee

COUNTY ORDINANCE #: 22-01

(e.g., 93-001)

PRIMARY KEYFIELD

DESCRIPTOR: Zoning

SECONDARY KEYFIELD

DESCRIPTOR: _____

OTHER KEYFIELD

DESCRIPTOR: _____

ORDINANCE DESCRIPTION: Mobile Food Vendors Ord

(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: _____ AMENDMENT #2: _____

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: _____ ; REPEAL #3: _____

REPEAL #2: _____ ; REPEAL #4: _____

(Others Repealed: List All That Apply): _____

(FOR OFFICE USE ONLY): COUNTY CODE NUMBER: _____

KEYFIELD 1 CODE: _____ KEYFIELD 2 CODE: _____

KEYFIELD 3 CODE: _____



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

January 19, 2022

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Melissa Butler

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 22-01, which was filed in this office on January 19, 2022.

Sincerely,

Anya Owens
Program Administrator

AO/lb

RECEIVED

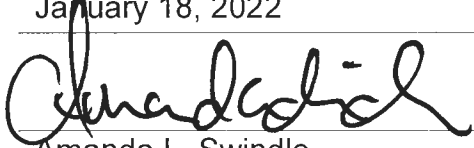
By mbutler at 3:21 pm, Jan 19, 2022

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA HAND DELIVERY

DATE: January 18, 2022

TO: Commissioner Pendergrass
Chair, Board of County
Commissioners

FROM: 
Amanda L. Swindle
Assistant County Attorney, Senior

RE: **Ordinance No. 22-01
LDC Amendments to Chapter 33 & 34, Mobile Food Vendors
Agenda Item PH3, January 18, 2022**

Attached, approved as to form, please find the original of the above-referenced ordinance adopted by the Board of County Commissioners on January 18, 2022.

The original ordinance is attached to the memorandum for execution. Kindly execute the ordinance at your earliest convenience and then forward to the Minutes Department for filing and transmittal to Tallahassee.

By copy of this memorandum to Eileen Gabrick, I request that a clerk attest to the Chair's signature on the attached ordinance and return the fully executed copy with all exhibits to my attention via email.

Insofar as State Statute mandates that the ordinance reach Tallahassee within ten (10) days of the adoption, please expedite the above request so that the ordinance arrives in Tallahassee no later than January 28, 2022.

Also attached please find the Data Retrieval form. Kindly include this ordinance in the Lee County Ordinance History.

Thank you for your prompt attention to this matter.

ALS:tlb

MB1-19-22

Attachments

VIA EMAIL ONLY:

Laurel Chick, Manager, Internal Services
Joyce Conatser, Senior Fiscal Officer
Samantha Westen, Executive Assistant
Rose Bahena, Administrative Specialist, Senior
Eileen Gabrick, Office Manager, Minutes Department
Tina Boone, Legal Administrative Specialist, Senior (for LDC Municode)
Andrea Eggen, Legal Administrative Specialist (for ordinance history)

2022 JAN 19 PM 12:19

FILED



AGENDA ITEM REPORT

DATE: January 18, 2022
DEPARTMENT: County Attorney
REQUESTER: Amanda Swindle
TITLE: 2nd Public Hearing: Ordinance Amending LDC Ch. 33 & 34, Mobile Food Vendors

I. MOTION REQUESTED

Conduct second public hearing to adopt an ordinance amending the Lee County Land Development Code, Chapters 33 and 34, to provide limited regulation of mobile food vendors.

II. ITEM SUMMARY

The proposed revisions will establish county-wide regulations of mobile food vendors that are in compliance with the State's preemption law, including to define locations and provide standards of operation while mitigating impacts to surrounding locations. This item was continued from the 12/7/21 Board agenda.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

During the 2020 state legislative session, Florida Statutes section 509.102 was enacted as a preemption of local government regulation of mobile food vendors. While prohibiting the county from regulating the permitting, licensing, or registration requirements for mobile food vendors, the statute does allow the county to enact certain limited regulations.

On October 5, 2021, the Board of County Commissioners authorized the crafting of food truck regulations that could be applied County-wide. Staff developed the attached draft regulations, working from regulations from other jurisdictions and from Lehigh Acres, while attempting to be consistent with recent state legislative limitations on local regulation of food trucks.

These amendments were reviewed and recommended by the Land Development Code Advisory Committee on November 12, 2021, the Executive Regulatory Oversight Committee on November 10, 2021, and the Local Planning Agency on October 25, 2021.

On November 16, 2021, at a 5:00pm hearing, the Board forwarded the Ordinance to a second and public hearing.

On December 7, 2021, the Board voted to continue the hearing until January 18, 2022, in order to allow additional time for public input.

Satisfies the Board policy to hold two public hearings to amend allowable uses under the LDC.

B) Policy Issues

C) BoCC Goals

D) Analysis

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	No funding required.
B)	Is this item approved in the current budget?	N/A
C)	Is this a revenue or expense item?	N/A
D)	Is this Discretionary or Mandatory?	N/A
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	
F)	Fund: Program: Project: Account Strings:	
G)	Fund Type?	N/A

H)	Comments:
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V. **RECOMMENDATION**
 Approve

VI. **TIMING/IMPLEMENTATION**

VII. **FOLLOW UP**

ATTACHMENTS:

Description	Upload Date	Type
Ordinance	1/11/2022	Ordinance
FAIS Form	12/15/2021	Backup Material
Staff Comments	1/11/2022	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
County Attorney	Wesch, Richard Wm.	Approved	12/27/2021 - 11:19 AM
Budget Services	Henkel, Anne	Approved	1/5/2022 - 11:20 AM
Budget Services	Winton, Peter	Approved	1/5/2022 - 12:58 PM
County Attorney	Swindle, Amanda	Approved	1/7/2022 - 3:58 PM
County Manager	Salyer, Glen	Approved	1/11/2022 - 1:46 PM