

**SUBSTITUTE NO. 1 TO ORDINANCE NO. 15-038**

**AN ORDINANCE TO AMEND CHAPTER 5 AND CHAPTER 42 OF THE CITY CODE REGARDING THE CREATION OF A PILOT PROGRAM OF REGULATIONS SURROUNDING MOBILE FOOD VENDING UNITS**

Rev.1  
#4080

**Sponsors:**

**Council  
Member  
Williams  
Shabazz**

**WHEREAS**, the City Council deems it necessary and appropriate to amend Chapter 5 and Chapter 42 of the City Code to add a thorough and all-encompassing regulatory scheme that will govern the use of the public right of way, specifically, metered parking spaces for use by Mobile Food Vending Units; and

**Co-Sponsors:**

Council  
Members  
Dorsey Walker  
M. Brown

**WHEREAS**, the economic development of the City of Wilmington will benefit from a comprehensive framework for the use of the public right of way by Mobile Food Vending Units.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:**

**SECTION 1.** Chapter 42 of the City Code is hereby amended by adding the underlined language so that it reads as follows:

CHAPTER XIV: Mobile Food Vending Unit Pilot Program

Sec. 42-801. Duration: This Mobile Food Vending Unit Pilot Program and City Code Sections 42-801-through 42-817 shall be effective as of the date of passage by City Council and approval by the Mayor and shall have a duration ending on June 30, 2016.

Sec. 42-802. Definitions

- a. Mobile Food Vending Unit-A registered and licensed self-contained motorized vehicle or self-contained trailer, registered with the Delaware Department of Motor Vehicles or similar agency if licensed in a foreign jurisdiction, which sells items to the general public, which shall not be used for any purpose other than as a mobile vending unit.

- b. Unit-A Mobile Food Vending Unit as defined herein.
- c. Operator-Any person who, by traveling from place to place upon the public right of way from a Mobile Food Vending Unit, sells goods to customers.
- d. Public Right of Way-The streets or roads of the City that are held open for use by the general public.
- e. City-The City of Wilmington, Delaware.

Sec. 42-803. Operational Requirements

- a. The owner and/or operator of a mobile food vending unit shall do all of the following:
  - 1. Pay a daily use fee in the amount of \$22.00.
    - a. This fee covers the average income of two metered parking spots, which are unable to be in service to the public as a result of a food vending unit occupying the spaces. This use fee will be made in lieu of mobile food vendors paying any parking meter fees for the time of their permitted occupancy.
  - 2. Pay a Business Improvement District fee to be determined by Downtown Visions.
    - a. This fee is meant to be equivalent to the Business Improvement District fee charged to all brick and mortar businesses operating in the Business Improvement District.
  - 3. Pay a transactional fee to be established and charged by the Automated Reservation System.
    - a. This fee covers the cost of maintaining and operating the Automated Reservation System more fully discussed herein.
  - 4. Provide a trash receptacle, with attached lid, adjacent to the mobile food vending unit for deposit by customers and consumers of paper wrappings, cans, bottles, refuse, or any similar material obtained by the purchaser or consumer from such vendor as part of the purchase of such commodities;
  - 5. Maintain the area directly adjacent to the unit free and clear of any refuse generated by the operation of the unit;
  - 6. Take all refuse, whether collected outside the unit or generated and stored inside the unit, to an off-site disposal location;
  - 7. Only sell or serve food sidewalk side, if vending from a street, road, alley, or any other public right of way;
  - 8. Offer to each customer a receipt, whether through physical or electronic means; such receipt, when issued, must contain all of the following: the name, permanent address, telephone number

and electronic mail address, if any, of the owner of the mobile food vending unit, the date, a list of all items for which a charge is made, and the total amount paid;

9. Post, at the point of sale, the name, permanent address, telephone number, and electronic mail address, if available, of the owner and the operator of the mobile food vending unit;
10. Post, at the point of sale, the mobile food vending license;
11. Post, in a conspicuous place, any reservation confirmation for a designated mobile food vending space; and
12. Comply with all applicable commercial and non-commercial zone requirements.

b. The owner and/or operator of a mobile food vending unit shall not do any of the following:

1. Cause or allow to be placed in the public right of way any seating, signage, flower pots, licensed pushcarts, other temporary structures, with the exception of trash receptacles, structures necessary to meet requirements under the Americans with Disability Act.;
2. Cause or allow any unauthorized person to enter any mobile food vending unit during operating hours. For the purposes of this section an unauthorized person is anyone other than the unit owner or representative, operator, or employee(s); authorized city, county, state, or federal representatives; or persons authorized to repair or otherwise service the mobile food vending unit;
3. Cause or allow the illegal disposal or release of oils, greases, or other refuse required to be disposed of off-site;
4. Cause or allow any person to operate or work from a mobile food vending unit in the public right of way if that person has been convicted of a felony or misdemeanor involving a mobile food vending unit; or
5. Otherwise cause or allow the operating of a mobile food vending unit in a manner that violates this chapter or other applicable sections of the City Code.
6. Fail to comply with the City's regulations and laws surrounding the payment of wage tax and gross-receipts tax.

Sec. 42-804. Operation in the public right of way

- a. No individual or organization shall operate or cause to be operated any mobile food vending unit in the public right of way within the corporate limits of the City without meeting the licensing and fee requirements of this chapter.
- b. Mobile food vending units operating in the public right of way shall comply with all parking or sidewalk regulations applicable to that location. No individual or organization shall cause or allow the operation of a mobile food vending unit in any of the following:
  1. A handicap parking space;
  2. A loading zone during hours of normal operation;
  3. Any taxi stand during hours of operation;
  4. A bus stop;
  5. The public right of way abutting a commercial establishment utilizing a current and valid sidewalk dining permit, as this constitutes unreasonable interference with pedestrian traffic;
  6. The public right of way abutting public or city permitted bicycle parking, a fire hydrant, or a public trash receptacle;
  7. The public right of way within two hundred (200) feet of any pre-K-12 school;
  8. A sidewalk unless the unit is a pushcart; or
  9. The public right of way if the unit is not parallel to the curb.
  10. Any parking spot not specifically dedicated for the use of mobile food vending units.

Sec. 42-805. Operation in a designated Mobile Food Vending Unity parking spot

- a. The permitted operational spots for mobile food vending shall be established by regulations promulgated by the Commissioner of Public Works in consultation with City Council and the Office of the Mayor.
- b. Mobile Food Vending Unit vending shall not occur in any area of the public right of way other than those permitted operational spots established by the Commissioner of Public Works, except vending performed in conformance with Section 42-807(c) herein or by a

Mobile Food Vending Unit whose usage of the public right of way for the sale of goods is done so in a fleeting and temporary manner, such as but not limited to Ice Cream vendors.

1. Violation of subparagraph (b) above by those Operators who have secured a Mobile Food Vending License may result in the loss of the Mobile Food Vending Unit License.
  2. Violation of subparagraph (b) above by those who have not secured a Mobile Food Vending License shall be punished in accordance with City Code Section 5-55(e).
- c. The Commissioner of Public Works, shall, in consultation with the City Council and the Office of the Mayor, establish and maintain, within the City, **no more than 6 but no less than 3** parking locations designated for the exclusive use of mobile food vending units in the public right of way.
1. Such parking locations shall be clearly marked “Mobile Food Vending Parking Only.”
  2. Any impermissible use of such designated parking location shall be subject to penalties under Wilmington City Code Section 37-66 and 37-67.
- d. From 7:00 a.m. to 3:00 p.m., mobile food vending units may operate in the public right of way, other than sidewalks, within a designated Mobile Food Vending Unit spot provided that all of the following requirements are met:
1. The unit is licensed to operate in the public right of way; and
  2. The unit occupies and operates from a parking space that otherwise complies with the requirements of this chapter.
- e. The Commissioner of Public Works, in consultation with City Council and the Mayor shall have the ability to create alternative times for Mobile Food Vending Unit operation other than the times provided for in Section 42-805(d) above. This subsection is intended to empower the Public Works Commissioner to create spots for night time operation in the public right of way as demand for such operation may warrant.

Sec. 42-806. Automated Reservation System

- a. The Commissioner of Public Works shall establish a web-based Automated Reservation System to allow access to the designated mobile food vending locations established herein. Reservations must be made by a mobile food vending unit licensed to operate in the public right of way. Access and use of the web-based Automated Reservation System shall only be granted to a user after all requisite permits have been issued.
- b. Licensing Process: In order for a Mobile Food Vending Unit to operate in the public right of way, a Unit must :
  1. First, the Wilmington Fire Department must inspect and approve of the Mobile Food Vending Unit.
  2. Second, obtain a City Business License from the Finance Department.
  3. Submit the Fire Department inspection approval, valid City Business License, along with all other necessary documentation including but not limited to insurance documentation and state health inspection documentation to the Department of Licenses & Inspections. The Department of Licenses & Inspections will review the documentation, and if all required documentation is in place, they will approve that Unit to utilize the City's Automated Reservation System, and issue them a Mobile Food Vending Unit License.

Sec. 42-807. License required for operation

- a. Shall any required license or permit become invalid for any reason, no individual or organization shall operate, or cause to be operated, any mobile food vending unit within the corporate limits of the City, until such invalidation has been remedied and the Department of Licenses and Inspections has been notified of such remedy.
- b. No commercial sales or itinerant vendor license shall be required for the operation of a mobile food vending unit.
- c. Mobile food vending units that only operate as part of a special event shall not require a mobile food vending license.

Sec. 42-808. Fire Inspection

- a. Prior to the issuance of a business license from the city, Mobile Food Vendors must pass a fire safety inspection by the Fire Marshal's Office. The Fire Marshal shall make available an inspection check list for all Mobile Food Vendors.
- b. Mobile Food Vendors must comply with applicable State of Delaware health and safety requirements and must obtain any necessary permits to operate from the State of Delaware.
- c. Mobile Food Vendors shall abide by any and all regulations promulgated by the City Fire Marshall regarding inspection and re-inspection.

Sec. 42-809. Changes in Ownership

- a. Should a change in ownership of the mobile food vending unit occur at any time, the new owner must reapply for a mobile food vending license and must pay all fees associated with such application, inspection and licensing. The new owner must adhere to any requirements under state or local laws or regulations for the transfer of a health license.
- b. There shall be no proration, reduction, or refund of such fees.

Sec. 42-810. Requirements for issuing a license

- a. The License Section shall keep a record of the identification number of every unit that has applied and approved for the issuance of a Mobile Food Vending Unit License.

Sec. 42-811. Expiration and renewal of Mobile Food Vending Unit License

- a. Each license issued under this chapter shall expire exactly one year from the date of issuance.
- b. Each licensee must comply with the application and inspection requirements of this chapter to receive a new license for the succeeding licensing period.
- c. Each health licensed shall expire on the date established by law.

Sec. 42-812. Transfer of license prohibited

No license or decal issued under this chapter shall be transferred or assigned by the named licensee to any other individual or organization, or to any other mobile

food vending unit, unless otherwise allowed for health licenses under applicable local or state rules or regulations.

Sec. 42-813. Insurance required for operation

No individual or organization shall operate, or cause to be operated, any mobile food vending unit within the corporate limits of the City without doing both of the following:

- a. Providing to the Department of Licenses and Inspections a certificate of general commercial liability insurance from an insurance company duly licensed to transact such business in the State, with a minimum coverage amount of \$1,000,000.00 and that names the City as an “additional insured”.
- b. Affirming, in writing, that the individual or organization will forever indemnify and hold harmless the City and all of its agents, employees and representatives from and against all claims, damages, losses, suits and actions, including attorney’s fees, arising or resulting from operation of a mobile food vending unit in the public right of way.

Sec. 42-814. Mobile food vending unit size, description, requirements, and prohibited equipment

- a. The Commissioner of Licenses and Inspection shall have the power to reject or repeal a Mobile Food Vending Unit License if Licensee’s vehicle unreasonably interferes with the public right of way or creates an unreasonable risk to public safety.

Sec. 42-815. Suspension, revocation or permanent revocation of license

The Commissioner of Licenses & Inspection may suspend, revoke, or permanently revoke the license of any mobile food vending unit and/or owner pursuant to local and state rules and regulations. The Commissioner of Licenses & Inspection may suspend, revoke, or permanently revoke the license of any mobile food vending unit and/or owner who engages in any of the following conduct:

- a. Obtaining a license by making a false statement or affirmation in his or her application;
- b. Failing to comply with the mobile food vending unit operation and vehicle standards established in this chapter or regulations promulgated by the

Commissioner of the Department of Licenses and Inspection;

- c. Misrepresenting or otherwise making false statements in his or her affidavit that he or she would conduct criminal background checks on all employees;
- d. Failing to post and maintain any required decal(s), information, or disclosures;
- e. Failing to supply receipts to customers, whether physically or through an electronic means; such receipts, when issued, must contain the name of the owner of the mobile food vending unit, its identification number, the date, a list of all items for which a charge is made, and the total amount paid;
- f. Verbally threatening or attempting to intimidate any employee of the City for actions taken in the enforcement of the provisions of this chapter;
- g. Failing to maintain general liability insurance for each mobile food vending unit;
- h. Conviction for any crime committed in or from the mobile food vending unit;
- i. Any other form of misconduct, which shall mean conduct apart from the generally accepted practices of mobile food vending unit owners and employees, which demonstrates personal, corporate, managerial, ethical or professional characteristics or disposition rendering a person unsuitable to own or work in a mobile food vending unit.

Sec. 42-816. Appeals

Any individual or organization who has been refused a license or renewal of a license under this chapter or has had a license issued under this chapter suspended or revoked, may appeal such decision to the City's Board of Licenses and Inspections Review.

Sec. 42-817. Severability clause

If any particular portion of this chapter is declared to be invalid by a court of competent jurisdiction, such declaration of invalidity shall be limited to that particular portion declared invalid. This declaration of invalidity shall not affect or impair the remainder of this chapter, and to this end, the provisions are

severable.

**SECTION 2.** Chapter 5 of the City Code is hereby amended by adding the underlined language so that Section 5-31 is to include the following definition:

Mobile Food Vendor means a person operating a self-contained food service operation, located in a readily movable motorized vehicle with wheels or in a vehicle with wheels, designed for the preparation, display and service of food or beverages to patrons.

**SECTION 3.** Chapter 5 of the City Code is hereby amended by adding the underlined language to create a new section currently reserved as Section 5-87 to read as follows:

Sec. 5-87. Mobile Food Vendors.

(a) Mobile Food Vendors, who are not seeking a special events permit under City Code section 5-107, shall obtain a city annual business license and pay a per year license fee of \$151.00.

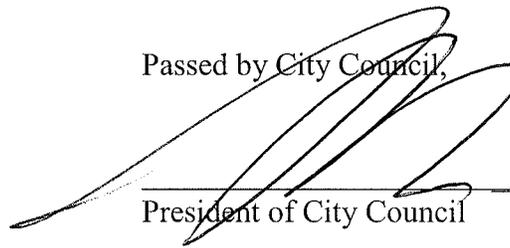
**SECTION 4.** Chapter 5 of the City Code is hereby amended by adding the underlined language under the subheading of ‘Retailers:’ within Section 101 so as to read as follows:

Retailers—Mobile Food Vendor .....151.00

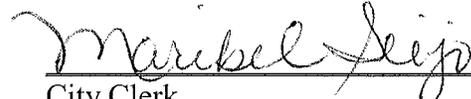
**SECTION 5.** Effective date. This Ordinance shall become effective immediately upon its date of passage by the City Council and approval of the Mayor.

First Reading...September 3, 2015  
Second Reading...September 3, 2015  
Third Reading .....November 19, 2015

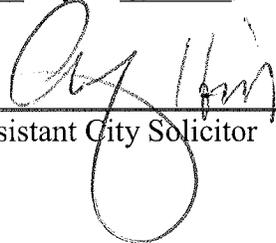
Passed by City Council, Nov. 19, 2015

  
\_\_\_\_\_  
President of City Council

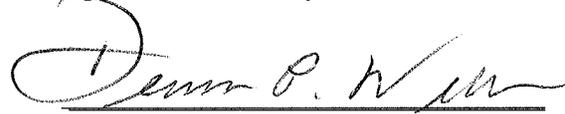
Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form this  
19<sup>th</sup> day of November, 2015

  
\_\_\_\_\_  
Assistant City Solicitor

Approved this \_ day of 20, 2015.

  
\_\_\_\_\_  
Mayor

**Synopsis:** This Ordinance amends Chapter 5 and Chapter 42 of the City Code to incorporate a comprehensive regulatory framework to allow Mobile Food Vending Units to operate their business from the public right of way.