

**ORDINANCE 21-37**

**AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE II OF CHAPTER 22 OF THE WINTER GARDEN CITY CODE RELATING TO PEDDLERS, SOLICITORS AND ININERANT VENDORS TO BE CONSISTENT WITH THE RECENTLY ADOPTED STATE PREEMPTION OF LICENSING OF MOBILE FOOD DISPENSING VEHICLES AND TO CHANGE THE REGULATIONS FOR SUCH TYPE OF BUSINESSES; AMENDING SECTION 74-38, CITY CODE TO PROHIBIT MOBILE FOOD DISPENSING VEHICLES FROM CONDUCTING BUSINESS WITHIN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR CONFLICTS, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.**

WHEREAS, pursuant to Section 509.102, Florida Statutes, the licensing of mobile food dispensing vehicles is preempted to the state and are regulated as public food service establishments; and

WHEREAS, the City desires to amend Article II of Chapter 22 to make the City's regulation of mobile food dispensing vehicles consistent with Section 509.102, Florida Statutes and to amend Section 74-38, City Code to clarify that mobile food dispensing vehicles are not allowed to conduct business within public rights-of-way.

NOW THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA:

SECTION I: ADOPTION. Article II of Chapter 22 of the City of Winter Garden Code is hereby amended as set forth below (underlined language are additions; ~~stricken though~~ language are deletions; provisions not included are not being amended):

**CHAPTER 22 - BUSINESSES**

**ARTICLE II. - PEDDLERS, SOLICITORS, ITINERANT VENDORS**

**Sec. 22-26. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Agent* means a person engaged in a house-to-house canvass for the purpose of demonstrating or taking orders for any goods, wares or merchandise or taking orders from samples where goods are to be delivered later in the same manner, not in interstate commerce.

*Chief of police* shall mean the Chief of the Winter Garden Police Department or his/her designee.

*City manager* shall mean the City Manager of Winter Garden or his/her designee.

*Event sponsor* shall mean the person or entity that sponsors an open air event and has the legal authority to enter into contractual arrangements regarding such.

*Goods, wares or merchandise*, in addition to those items encompassed by the ordinary meaning of such terms, such term also may encompass and include photographs, food, beverages, and coupons or tickets good in whole or in part for a photograph or other merchandise.

*Mobile food dispensing vehicle* means any vehicle that is a licensed 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, or as may be from time to time defined in section 509.102, Florida Statutes.

*Mobile food vendor* means an open air vendor who sells prepared food or beverages, ~~or an open air vendor who is otherwise operating~~ except such does not include a mobile food dispensing vehicle as described in section 509.102, Florida Statutes Rule 61C-1.002(5)(a)2., F.A.C. All mobile food vendors shall be subject to the same requirements as open air vendors unless otherwise noted. Mobile food vending operations shall be further classified as either itinerant or stationary in the following manner:

- (a) Itinerant operations shall mean and refer to the conduct of business operations at one or more locations or properties throughout the day provided that the mobile food vendor does not remain or linger at any particular property or location for longer than 30 minutes.
- (b) Stationary operations shall mean and refer to the conduct of mobile business operations at or on a single location or property for longer than 30 minutes.

*Open air vendor* means any person who offers, for sale or lease, goods, wares or merchandise from a stand, trailer, vehicle, tent, table or other area that is not completely enclosed by a permanent structure, on real property owned, controlled, or leased by another person or entity. The following types of businesses shall not be considered open air vendors for the purposes of this article:

- (a) A person or entity whose business is principally located within a permanent structure and lawfully operates and controls an outdoor dining or sales area as part of its primary business, which outdoor dining or sales area is located adjacent to such permanent structure.
- (b) A person or entity who, upon the request and consent of the business entity in possession and control of real property, lawfully delivers and conveys ownership of pre-ordered goods, wares and merchandise via a motor vehicle to the requesting business entity, its agents, or employees.
- (c) Licensed caterers, restaurants, or permanent nonseating restaurants as defined in Rule 61C-1.002(5)(a)1. and 3., F.A.C., who prepare food or drink prior to delivering such to a contracted service location for consumption.
- (d) A person or entity operating under a valid permit issued pursuant to the requirements of article VII, chapter 62 of the City Code.
- (e) A person or entity operating at a city approved event when such person or entity has been hired or otherwise authorized by the city commission or city manager to operate at such event.
- (f) Children under the age of 16 engaged in de minimis outdoor sales activities in residential neighborhoods, provided that such children are conducting such activities of their own accord and not at the behest of any other person or entity.
- (g) A state licensed mobile food dispensing vehicle.

*Open air event* means an outdoor or partially outdoor festival, carnival, celebration, or other special event of a temporary nature, which includes or will otherwise be serviced by open air vendors.

*Peddler* means a person who brings goods, wares or merchandise from outside the city, or where the goods, wares, or merchandise is manufactured in the city for sale at retail and is in this state at the time that all negotiations prior to and at the sale thereof are had, and the goods, wares or merchandise is not sold in original packages in interstate commerce but at retail, in small quantities, by means of house-to-house, or place-to-place canvass. Goods ordered or in transit that were so ordered without reference to particular sales shall be deemed to be in the state.

*Seasonal vendor* means any open air vendor, whose goods, wares or merchandise held for sale are seasonally themed or related to seasonal celebrations and occurrences, including but not limited to Christmas, Valentine's Day, Halloween, Thanksgiving, New Years, or the Fourth of July. Such goods, wares, or merchandise may include but shall not be limited to fireworks, Christmas trees and wreaths, flowers, roses, costumes, and other holiday-themed décor.

*Solicitor* means any agent or peddler who is otherwise permitted to do business in the city, whether or not such agent or peddler is engaged in interstate commerce; and shall include all servicemen or repairmen who engage in any activity as an agent or peddler, as defined in this section.

(Ord. No. 09-25, § 2, 9-21-09)

Sec. 22-27. - Prohibitions.

It is unlawful for any individual solicitor, agent or peddler to:

- (1) Enter the premises of a private residence, gated community or business establishment for the purpose of selling or soliciting orders for goods, wares or merchandise, personal services or information when a sign stating "no solicitors" is posted.
- (2) Remain upon any premises after the owner or occupant requests the solicitor to depart.
- (3) Conduct business before 9:00 a.m. and after 9:00 p.m. and on Sundays at any time.
- (4) Approach back or rear doors or the sides or rear of residential premises.

(Ord. No. 09-25, § 2, 9-21-09)

Sec. 22-28. - Open air vendor permit.

- (a) An open air vendor must pay applicable local business taxes as required in section 66-104. Furthermore, it shall be unlawful for any open air vendor to operate without a valid open air vendor permit granted by the city manager, and any such infraction shall be punished as set forth in chapter 2, article II of this Code. Permits for open air vendors may only be granted for business operations on commercially zoned properties or properties specifically zoned for open air vending operations.
- (b) To apply for an open air vendor permit, a vendor must submit a completed application to the city manager or his/her designee accompanied by the applicable permit processing fee and provide the city manager with the following information:
  - (1) The vendor's contact information, including the address and telephone number at which the vendor may be reached;
  - (2) The location(s) at which the vendor will be offering his/her goods, wares, or merchandise for sale;
  - (3) The name of the owner(s) of each real property upon which the vendor will offer his/her goods, wares or merchandise for sale;
  - (4) Proof of each real property owner's or lessee's permission for the vendor to use the property for the purpose of selling or leasing such vendor's goods, wares, or merchandise;
  - (5) A description of the goods, wares or merchandise the vendor will be offering for sale or lease;
  - (6) The number of days and the daily hours the vendor will be selling or leasing his/her goods, wares or merchandise at each location listed;
  - (7) If the applicant has previously held an open air vendor permit that was revoked, the facts and circumstances surrounding such revocation and any reasons or changes in circumstances as to why such permit should be reissued;

- (8) If the applicant intends to conduct stationary mobile food vending operations, a description of the access the vendor and its customers will have to onsite restroom and sanitation facilities;
  - (9) If the applicant intends to conduct itinerant mobile food vending operations, a description of the applicant's proposed routes, areas of operation, and method of service; and
  - (10) Any other appropriate information as requested by the city manager.
- (c) The city manager shall evaluate a completed application for an open air vendor permit and determine whether such applicant should be granted a permit based on whether the applicant has demonstrated compliance with the following criteria:
- (1) The vendor has the consent of the real property owner(s) or lessee(s) to conduct his/her business on the properties identified in the permit;
  - (2) The vendor's sales operations are unlikely to cause traffic or parking hazards;
  - (3) The vendor's proposed hours of business are reasonable when evaluated in light of all other city ordinances and applicable zoning criteria;
  - (4) The operation of the vendor's proposed business does not detract aesthetically from the surrounding area and is otherwise consistent with the character of the surrounding area and applicable law;
  - (5) The operation of the vendor's proposed business meets the requirements of this article and all other applicable code provisions;
  - (6) If the applicant has previously held an open air vendor permit that was revoked, the city manager or his/her designee must determine whether the applicant has presented sufficient reason and evidence of changed facts and circumstances that warrant reissuance of a permit;
  - (7) If the applicant intends to conduct stationary mobile food vending operations, the city manager or his/her designee must determine that the applicant will have suitable access to onsite restroom and sanitation facilities; and
  - (8) If the applicant intends to conduct itinerant mobile food vending operations, the city manager or his/her designee must determine that the applicant's proposed routes, areas of operation, and method of service are compatible with the character of the proposed areas of operation and applicable law.
- (d) *Mobile food vendors.* Mobile food vendors shall be subject to the same application and permitting requirements as all open air vendors, but, in addition to such requirements, shall be further subject to the following regulations:
- (1) Regardless of whether a mobile food vendor holds a valid open air vendor permit, no mobile food vendor shall simultaneously conduct business operations within 1,000 feet of another open air vendor. This restriction shall not apply to a mobile food vendor operating pursuant to an open air event permit or to a mobile food vendor engaged in bona fide itinerant mobile food vending operations pursuant to the conditions of such vendor's permit.
  - (2) Mobile food vendors may operate only in the following areas:
    - i. Areas Private property with a C-2 arterial commercial zoning designation and having frontage on State Road 50;
    - ii. ~~Properties located along the frontage of Dillard Street between the intersections of Story Road and Florida State Road 50.~~
    - iii. Itinerant mobile food vendors may service active construction areas in residential developments if properly permitted for such activity.
  - (3) The zoning restrictions specified in subsection (2) shall not apply to a mobile food vendor if such vendor is:

- i. Operating pursuant to the terms of a valid open air event permit, authorized by a city-sponsored event, events approved by city staff, or a city approved special event allowing such operations;
  - ii. Operating in an area governed by a duly enacted planned unit development or other similar development where mobile food vending operations are expressly authorized.
- (e) *Seasonal vendors.* Seasonal vendors shall be subject to the same application and permitting requirements as all open air vendors, but, in addition to such requirements, shall be further subject to the following regulations:
  - (1) Seasonal vendors shall be required to acquire a seasonal vending permit, which permit shall be obtained in the same manner as an open air vendor permit.
  - (2) A seasonal vendor permit, once granted, shall be valid for only 30 days from the date appearing on the face of the permit. A seasonal vendor may apply for a specified start date for such permit if the vendor submits his or her application sufficiently in advance of such date. Otherwise, the date of issuance shall be the date appearing on the face of the permit.
  - (3) A seasonal vendor may only receive a maximum of three seasonal vending permits within a 12-month period.
  - (4) No more than three seasonal vending permits may be issued for a single parcel of land within a 12-month period.
  - (5) Seasonal vendors may operate only in areas with the following zoning designations:
    - i. C-2 arterial commercial;
    - ii. I-1 light industrial and warehousing district;
    - iii. I-2 general industrial district.
  - (6) The zoning restrictions specified in subsection (5) shall not apply to a seasonal vendor if such vendor is:
    - i. Operating pursuant to the terms of a valid open air event permit;
    - ii. Operating in an area governed by a duly enacted planned unit development or other similar development where seasonal vending operations are expressly authorized.
- (f) *Attire.* In addition to being grounds for revocation of an open air vendor permit, failure to comply with the following rules during open air vending operations shall be punishable as a class III penalty pursuant to section 2-92 of the Winter Garden Code:
  - (1) No open air vendor or any employee, contractee, or agent thereof, shall expose to public view his or her genitals, pubic area, vulva, anus, anal cleft or cleavage, or buttocks or any simulation thereof.
  - (2) No female open air vendor or any female employee, contractee, or agent thereof shall expose to public view any portion of her breasts below the top of the areola or any simulation thereof.
  - (3) No male open air vendor or any male employee, contractee, or agent thereof shall expose to public view his covered male genitals in a discernably turgid state.
  - (4) Attire which is insufficient to comply with these requirements includes those items and applications commonly known as body paint, pasties, G-strings, T-backs, dental floss, and thongs.
- (g) An open air vendor permit shall be effective for a period of six months following its date of issuance, after which time, such permit shall expire. Such permit shall be valid only as to those locations and conditions listed in the vendor's permit application, and it shall be unlawful for the vendor to operate in contravention thereof.

- (h) *Permit conditions.* The city may impose reasonable restrictions and conditions on the granting of open air vendor permits, including but not limited to restrictions and conditions pertaining to the hours and days of operation, display of goods and merchandise, and positioning of the vendor's sales area. In the absence of any more specific restrictions contained in the permit, the following shall apply:
- (1) No open air vendor shall open or otherwise commence vending operations prior to 9:00 a.m., and each open air vendor shall close and conclude vending operations prior to 9:00 p.m.
  - (2) When not open for business, open air vendors shall secure and enclose all portable displays or signs, goods, wares, or merchandise in a location out of the sight of passers-by.
- (i) *Enforcement.*
- (1) *Suspension or revocation:* The approval of a permit under this section is conditional and grant thereof permissive at all times. Such permit may be suspended or revoked upon the occurrence of any of the following events in which the permittee or business owner has:
    - (i) Provided false information or fraudulently misrepresented information in the permit application;
    - (ii) Violated this Code, any local, state, federal law or any regulations of the county health department or other applicable regulatory agency;
    - (iii) Failed to comply with the requirements of this section, the terms under which the permit is issued, or an order of the code enforcement board relating to the use of the public way;
    - (iv) Operated under the permit in such a manner as to create a public nuisance, constitute any hazard to the public health, safety or welfare, or destroy or otherwise damage public property;
    - (v) Failed to post conspicuously the permit at all times at the location where the activity is permitted; or
    - (vi) Had any necessary business or health permit suspended, revoked or cancelled.
  - (2) *Notice to permit holder:* If the city has knowledge that an open air vendor has engaged or is engaged in conduct warranting the suspension or revocation of his/her open air vendor permit, the city shall serve the permittee by certified mail or hand delivery at his/her business address as disclosed in the application for the permit or at the permitted premises a written statement of violation or a civil citation which affords reasonable notice of facts or conduct warranting the intended action. The statement of violation or civil citation shall state the action required to remedy the violation, if any. An adequate opportunity to request a hearing or appeal of the decision by the planning and zoning board shall be afforded to the permittee. A first time violation may result in a fine of up to \$250.00 per day. A second violation within 12 months may result in an additional fine as well as the revocation of the vendor's open air permit.
  - (3) *Emergency suspension or revocation:* If the city manager or his/her designee determines, in writing, that a permittee's operation of his/her open air vendor business poses an immediate and substantial risk to the health, safety, and welfare of the public, the city manager (or his/her designee) shall issue an emergency suspension or revocation of such vendor's open air vendor permit. In the case of such emergency suspension or revocation, the permittee shall immediately be advised of the city's actions and afforded a prompt post-suspension or revocation hearing in accordance with the procedures set forth in this Code. From the time such vendor is notified of the emergency suspension or revocation of his/her permit and continuing until a final decision is made as to whether such permit shall be reinstated, the vendor's continued operation of an open air vending business shall be deemed a violation of section 22-28(a) and shall be punishable as set forth in chapter 2, article II of this Code.
  - (4) *Appeals:* Any permittee whose open air vendor permit is suspended or revoked, or any applicant whose application for an open air vendor permit is denied pursuant to this section shall receive a statement, in writing, outlining the reasons for such suspension, revocation, or denial of the permit. An applicant may appeal such suspension, revocation or denial of the permit to the city

commission by filing a written request for appeal with the city clerk, accompanied by the administrative appellate fee as periodically determined by the clerk's office, within ten days after the date of the written suspension, revocation or denial. Appeals from decisions of the city manager's office, including decisions of revocation or suspension, made pursuant to this article shall be addressed by the city commission. When timely filed, an appeal shall be heard at the next regularly scheduled city commission meeting, which meeting is scheduled at least 14 days after the filing of such appeal. Appeals from the decisions of the city commission shall be as provided in section 98-32 of this Code.

(i) Mobile food dispensing vehicle. Pursuant to section 509.102, Florida Statutes, mobile food dispensing vehicles are not subject to the same application and permitting requirements as open air vendors. However, mobile food dispensing vehicles are subject to and must comply with the following regulations:

- (1) Mobile food dispensing vehicles may only conduct business on privately owned property having an I-1 or I-2 industrial zoning designation. Mobile food dispensing vehicles may not conduct business upon any property zoned with any residential or commercial zoning designation. A mobile food dispensing vehicle conducting business must be separated by a distance of at least 250 feet from another mobile food dispensing vehicle conducting business.
- (2) The zoning restrictions specified in subsection (1) shall not apply to a mobile food dispensing vehicles if:
  - i. Operating pursuant to the terms of a valid open air event permit, an authorized by a city-sponsored event, or a city approved special event allowing such operations; or
  - ii. Operating in an area governed by a duly enacted planned unit development or other similar development where mobile food dispensing vehicles operations are expressly authorized.
- (3) Mobile food dispensing vehicles must have and maintain a valid state license as a public food establishment and shall at all times operate and conduct business in compliance with state law and regulations.
- (4) Mobile food dispensing vehicles must have a local business tax receipt from the city.
- (5) Mobile food dispensing vehicle may not conduct business on any city owned or controlled property or public right-of-way, unless expressly authorized in writing by the city.
- (6) Mobile food dispensing vehicles may not operate on any private property without the prior written consent of the property owner.

SECTION II: ADOPTION. Section 74-38 in Chapter 74, Article II of the City of Winter Garden Code is hereby amended as set forth below (underlined language are additions; ~~stricken through~~ language are deletions; provisions not included are not being amended):

Chapter 74 – Traffic and vehicles.

Art. II - STOPPING, STANDING, PARKING

Sec. 74-38. - Certain purposes prohibited.

No person shall stand or park a vehicle upon a public or private street, unpaved portion of public right-of-way, public parking lot or any other public property for the purpose of:

- (1) And intent of displaying such vehicle thereon for sale, hire or rental.

- (2) Painting, greasing or repairing such vehicle, except repairs necessitated by an emergency.
- (3) Washing or polishing such vehicle or any part thereof.
- (4) Displaying advertising.
- (5) Selling merchandise from the motor vehicle, except in a duly established marketplace or when so authorized or licensed under the laws of the city.
- (6) Conducting business from a mobile food dispensing vehicle, except as duly authorized for a city sponsored or approved special event.

SECTION III. CONFLICTS. If any ordinances or parts of ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION IV. 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 V. CODIFICATION. That Section I and Section II of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; the word "Ordinance" may be changed to "Section", "Article", or other appropriate word. The City Clerk is given liberal authority to correct typographical errors and to renumber the sections and subsections. Grammatical, typographical and similar like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the City Charter may be freely made.

SECTION VI. EFFECTIVE DATE. This Ordinance shall become effective upon adoption by the City Commission at its second reading.

FIRST READING:

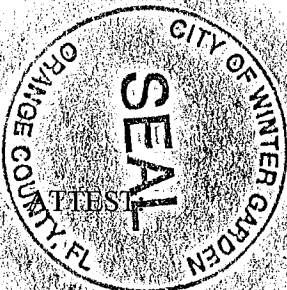
OCTOBER 14, 2021

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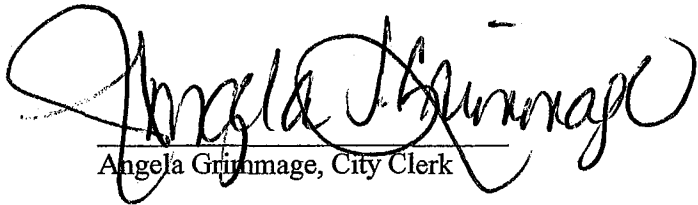
OCTOBER 28, 2021

APPROVED:

  
John Rees, Mayor/Commissioner





  
Angela Grinnage, City Clerk