Recommended By: Councilor Johnathan Austin
Chairman, Public Safety Committee

Submitted by: Thomas Bentley, III
Acting City Attorney

ORDINANCE NO._____

AN ORDINANCE TO ESTABLISH REGULATIONS FOR MOBILE FOOD VEHICLES AND PUSHCARTS IN THE CITY OF BIRMINGHAM, ALABAMA

Whereas, Alabama municipalities are authorized to regulate the use of public streets for public health, safety, welfare and convenience; and,

Whereas, no person, firm, association, or corporation is authorized or permitted to use the streets, avenues, alleys, public right-of-way of any municipality for the operation of any private enterprise, without first obtaining the consent of the proper authorities of such municipality. (Ala. Const. Art. XII, § 220; Ala. Code, 1975, § 11-49-1 (a).); and,

Whereas, mobile food vehicles and pushcart vendors are using public parking spaces, loading zones and other parts of public streets in violation of city ordinances and traffic regulations; and,

Whereas, mobile food vehicles and pushcart vendors are operating near and affecting the trade of established restaurants that have invested in property and pay taxes in the City of Birmingham; and,

Whereas, despite concerns of the potential effects on established restaurants and the interest of citizens in the use of public rights-of-way for safe and convenient travel, mobile food vehicles, pushcarts or "food vehicles", are a national trend and provide the useful service of convenient and varied dining options in business areas and in areas that lack businesses providing nutritional dietary options: and,

Whereas, the Council of the City of Birmingham finds it in the interest of the public health safety, welfare and convenience to authorize the operation of mobile food vehicles and pushcart vendors within the City of Birmingham, subject to regulations to protect the safe and convenient use of public rights-of-way and to balance the rights and interests of these mobile businesses with those of established restaurant businesses.

BE IT ORDAINED by the City Council of the City of Birmingham, Alabama, that the Mobile food vehicle ordinance be enacted as follows:

Section 1 Purpose

The general purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare of the citizens of Birmingham by requiring that new and existing mobile food vehicles and pushcart vendors provide residents and customers with a level of cleanliness, quality and safety.

It is also the intent of these regulations to establish reasonable guidelines and restrictions for mobile food vehicles and pushcart in relationship to established restaurant businesses and encourage the safe and convenient use of the city's public right-of-way.

Section 2 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:

"Applicant" means any person or business who applies for a license or a license renewal under the provisions of this Business License Code.

"BPD" means the Birmingham Police Department.

"Business licenses" is the licenses required of any business to operate within the City by the license codes of the City.

"Department" means the department designated by the (City Council or Mayor or ONB).

"Food Service Worker" means a person who works for or under the direction of, on behalf of, or as an agent of a food vehicle permittee and/or owner.

"Food Zone" is an area designated by the Mobile Food Vendors Committee that has been approved for the specific operation of Mobile Food Vehicles and/or Pushcarts within the public right-of-way.

"License" is an approval that enables the holder to vend food items at authorized locations and times, for a specified period of time.

"Licensee" means the holder of a mobile food vendor business license issued by the Finance Department.

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"Mobile food vehicle" means, except for pushcarts, a unit mounted on or pulled by a self-propelled vehicle where food for individual portion service is prepared, or dispensed; is self-contained with its own drinking water tank and waste water tank including prepackaged foods; is designed to be readily movable; and is moved daily to return to its commissary.

"Operator" is the entity that is legally responsible for the operation of the mobile food vehicle such as the owner, the owner's agent, or other PERSON; and possesses a valid permit to operate a mobile food vehicle.

"Operating Hours" is the designated time frame mobile food vehicles are authorized to operate within the city right-of-way.

"Owner" is an individual or business entity who owns and/or operates the food vehicle used in business for the purpose of earning income.

"Pedestrian" is a person who is walking or otherwise traveling in the public right-of –way.

"PEP" means the Department of Planning, Engineering and Permits.

"Permit" means a written authorization, or permission to engage in or participate in some regulated or otherwise controlled activity. Under the provisions of this Code section, a "permit" is not equivalent to a "license", and vice-versa.

"Permittee" is the entity, person, company or corporation which has been granted a permit by the Birmingham Police Department to operate one or more mobile food vehicles upon the streets of the city.

"Pushcart" means a non-self propelled mobile food unit that is lightweight enough, designed, and intended to be moved by one person. A pushcart can be used to prepare and serve only:

i. non-potentially hazardous foods such as popcorn, lemonade, hot dogs or flavored ice;
or
ii. foods pre-wrapped at the commissary and maintained at the required temperatures.

"Restaurant" a brick and mortar establishment where meals are generally served and eaten on premises; prepares and serves food and drink to customers in return for money, either paid before the meal, after the meal, or with a running tab.

"Person" means any natural individual, firm, partnership, association, or corporation. Whenever the word "person" is used in any section in this article prescribing a penalty or fine as applied to a partnership or association, the word shall include the partners or members thereof; such word as applied to corporations shall include the officers, agents, or employees thereof who are responsible for any violation of such section.

"Vending" is the business of selling or causing to be sold any of the following items: food product, produce, prepared foods and beverages, prepackaged foods and non-alcoholic beverages from a vehicle.

Section 3 **Mobile Food Vendors Committee**

1) There shall be within the City of Birmingham a Mobile Food Vendors Committee consisting of the Traffic Engineering Department, the Planning Engineering and Permits Department, the Police Department, the Economic Development Department and Operation New Birmingham for the purpose of reviewing applications for mobile food vending permits, approval of the locations for operation and establishing rules and regulations as appropriate.

2) At its sole discretion, the Mobile Food Vendors Committee may limit the number of designated Food Zones within the City Center, to address the health, safety, comfort, convenience, prosperity and general welfare of the citizens of Birmingham.

Section 4 **Permit and License Required for Yearly Operation**

1) All mobile food vehicles and pushcarts must submit an application for a permit yearly to the Birmingham Police Department. The application will then be forwarded to the Mobile Food Vendors Committee for review. The application must receive approval from each Department represented within the committee prior to its final approval and the issuance of a permit.

2) The grant of a permit may be subject to a monthly rotation of the designated Food Zones within the City Center.

3) Although a permit allows for the operation of the food vehicle throughout the city limits, the permittee's activity must occur in an area that is zoned for that type of an activity; and

4) City designated Food Zones will be available through assignment only. No application will be accepted for a permit to operate at a location where a current permit has been issued or a complete application is pending.

5) No location within the City Center shall be approved that is within one (1) block of any existing restaurant during hours of operation.

6) Applicant shall notify the Birmingham Police Department within fifteen (15) days of any changes to application information.

7) Each owner and food service worker shall be required to apply for a mobile food vehicle permit that includes a current photo of the owner and/or food service worker.

8) The Mobile Food Vendors Committee shall not approve a location where in their sole discretion a mobile food vehicle and/or pushcart would substantially obstruct a public right-of-way, impair the movement of pedestrians or vehicles, or pose a hazard to public safety.

9) The Mobile Food Vendors Committee shall not approve any location which is adjacent to a bus stop, taxi stand, or handicap loading zone or directly in front of a property entryway.

10) The grant of a permit hereunder shall not be deemed to authorize the conducting of a mobile food vehicles and/or pushcart without the payment of the fee for a business license as may be required under the current business license code. The permittee must subsequently obtain a business license from the Director of Finance.

Section 5 **Application for Permit**

1) A single permit application shall be accepted and deemed complete on a first-come, first-served basis. Each application shall indicate on its face, in addition to other requirements as may be determined, that the following materials must be submitted:

   a) Each owner of a mobile food vehicle and/or pushcart shall be required to provide a valid copy of all necessary licenses, permits or other written proof of compliance with the regulations of the Jefferson County Health department for each mobile food vehicle and/or pushcart.

   b) The applicant's full name, signature, address and whether the applicant is an individual, firm, or corporation, and, if a partnership, the names of the partners, together with their addresses.

      i) The applicant must list the names of all food service workers that will operate the mobile food vehicle(s).

      ii) The address of its commissary.

      iii) A photograph of the permittee and/or food service worker applicant, e.g. driver's license, passport or similar.

      iv) Each Owner must attest that they have not knowingly employed, hired for employment, or continued to employ an unauthorized alien. Owner must attest that he has e-verified each of the named employee's eligibility for employment.

2) The applicant must specify their desire to operate in designated Food Zones within the public right-of-way of the City Center.

3) A photograph or accurate description of the mobile food vehicle and or pushcart, including the following data: The make, model and type of body; the number of cylinders; the vehicle identification number or any other identifying number as may be required by the Mobile Food Vendors Committee. *(If this information is not known at the time of permit application, this requirement can be satisfied as a condition of obtaining a final effective permit.)*

4) A statement as to whether the application is for a new permit, renewal of an existing permit, a change in hours of operation, or the addition of a Food Zone location(s).

5) A statement that the applicant or any of its food service workers has not been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business.

6) A statement that the applicant or any of its food service workers has not been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years.

7) A statement as to whether or not the applicant or any of its principals suffers from a legal disability or capacity under state or federal laws.

8) A signed statement that the applicant shall hold harmless the City and its officers and employees, and shall indemnify the City, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect vendor, property owners, and the City from all claims for damage to property or bodily injury, including death, which may arise from the operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than Three Hundred Thousand dollars ($300,000.00) per occurrence. The policy shall further provide that it may not be cancelled except upon thirty (30) days written notice served upon the City of Birmingham Law Department. A permit issued pursuant to the provisions of this section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with the Birmingham Police Department.

9) A statement that the permittee shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which may be the direct result of any activity of the permit holder.

10) Such other additional information required by law, rule, ordinance, or that any department of the city, Mobile Food Vendors Committee, City Council, or information reasonably deemed appropriate to assist the city in determining whether the permit should be granted. The applicant shall be provided reasonable time to supplement the application.

Section 6 **Business License Purchase**

Every taxpayer required to purchase a business license under this ordinance shall:

1) Purchase a business license for each mobile food vehicle and/or pushcart on which it does business within the City, except as otherwise provided by the City.

2) Except as provided in Section 11-51-193 of the Code of Alabama, with respect to taxpayers subject to state licensing board oversight, be classified into one or more of the 2002 North American Industrial Classification System ("NAICS") sectors and applicable sub-sectors, industry groups, industries and U. S. industries.

(Ord. No. 07-233, art. II, § 2(2.11), 12-18-2007; Ord. No. 08-241, art. II , § 2(2.11), 12-22-2008)

Section 7 **Application, license and permit fees.**

Upon the filing of a completed application, the non-refundable application fee for all applicants seeking a mobile food vehicle or pushcart permit shall be $100.00. This application fee shall be submitted with the application and shall apply to the cost of the permit only if approved.

Upon approval of an application for an operator's permit, the annual permit fee shall be $500.00 for the owner/operator of the mobile food vehicle or pushcart and $25.00 for each food service worker.

Any applicant that wishes to operate within the City Center shall pay an additional yearly fee of $300.00 per location.

The annual fees set forth in this section shall be prorated starting with the date the permit is issued to December 31 of the first year of operation as needed.

Any duplicate permit may be issued upon payment of a fee of $20.00 should a permit be lost or destroyed.

Any renewal permit must be applied for not later than five working days following the expiration date of an existing operator's permit, and for any such permit applied for after such expiration date there shall be a late fee of $5.00 in addition to the annual fees stated above.

(Ord. No. 04-96, § 1(12-19-14), 9-7-2004)

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Each such applicant shall pay to the director of finance, for the use of the city, a license tax for the privilege of engaging in such business in the amount specified in the then current license code and shall each year thereafter pay to the director of finance such amount as is specified for such business in the then current license code so long as his license is in effect.

(Code 1964, § 29-49; Code 1980, § 12-11-69)

Section 8 **General Rules and Regulations**

1) No person or business entity, including religious or charitable organization, shall operate a mobile food vehicle and/or pushcart upon the public right-of-way within the city without a permit issued by the Birmingham Police Department.

2) Hours of operation within the public right-of-way shall be limited to the hours between 11:30 a.m. to 1:30p.m., Monday through Friday within the City Center. It shall be unlawful to leave any approved mobile food vehicle unattended on a public right-of-way, nor remain on a public right-of-way outside of these allowed hours of operation. The City of Birmingham may require additional restrictions to abate nuisances.

3) All mobile food vehicle and/or pushcart vendors operating within the public right-of-way of the City Center shall adhere to the designated time and day requirements and shall be allotted fifteen (15) minutes set-up and fifteen (15) minutes breakdown time before and after stated operating hours.

4) No mobile food vehicle or pushcart vending shall occur within one (1) block of any restaurant during hours of operation. No mobile food vehicle or pushcart shall be permitted to operate within one (1) block of another mobile food vehicle or pushcart. The Traffic Engineering Department may, however, increase the size of the food vehicle/pushcart zone if it is determined that additional food vehicles or pushcarts can be accommodated without negatively impacting existing businesses on the block face; for example, where there are few or no occupied buildings on the block face. Increasing the size of a food vehicle/pushcart zone does not prevent Traffic Engineering from exercising the inherent authority to regulate uses of the public right-of-way and reduce the size of the food vehicle/pushcart zone at a later date.

5) Mobile food vehicle and/or pushcart vendor shall not operate within five hundred (500) feet of any fair, stadium, carnival, circus, festival, special event, civic event, or other like event that is licensed or sanctioned by the City, unless they are authorized participants in such event.

6) It shall be unlawful for any vendor to operate a mobile food vehicle and/or pushcart in or within two hundred (200) feet of a Birmingham school or public parks without first obtaining written authorization from the Mobile Food Vendors Committee.

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7) The permit shall contain additional limitations on hours and days that the City Departments determine are appropriate, including limitations to prevent conflict with special events.

8) No mobile food vehicle and/or pushcart shall use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns or whistles or similar devices to attract customers. A mobile food vehicle and/or pushcart may use battery-operated lights with appropriate protective shields for the purpose of illuminating merchandise.

9) With the exception of trash bin receptacles, no mobile food vehicle shall use external signage, seating, or any other equipment not contained within the vehicle on the public sidewalks.

10) Other than as permitted within the City Center, no mobile food vehicle and/or pushcart shall have any exclusive and/or perpetual right to any location upon the streets, alleys, or public grounds of the City.

11) No mobile food vehicle and/or pushcart operating within the city designated locations shall be of a size as to interfere with the city or public's use of any public ways.

12) No mobile food vehicle and/or pushcart shall vend in any congested area where the operation will impede pedestrian or vehicle traffic; including customer queues, accessory units, or signage.

13) No mobile food vehicle and/or pushcart shall make or solicit any sales to occupants of vehicles or engage in any activities which impede vehicular traffic.

14) Permittee shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a public right-of-way or remove the mobile food vehicle or pushcart entirely from the public right-of-way or adjacent property if necessary to avoid such congestion or obstruction.

15) The mobile food vehicle and/or pushcart must prominently display the name and address of the owner.

16) Any power required for the mobile food vehicle and/or pushcart located on a public way shall be self-contained and shall not draw its power from the public right of way. No power cable or equipment shall be extended at grade or overhead across any public street, alley or sidewalk.

17) Permittee and/or Licensee shall contain all refuse, trash, and litter within the mobile food vehicle or a small moveable trash can maintained by the permittee and/or licensee, and

located adjacent to the mobile food vehicle and/or pushcart in such a manner as not to block or otherwise obstruct pedestrian or vehicular traffic. The owner/operator of the mobile food vehicle and/or pushcart shall be responsible for properly disposing of such refuse, trash, and litter as would any business, and shall not place it in any public trash container, or in any private container without proper permission.

18) If located in the Downtown City Center as established in the Comprehensive Plan, a mobile food vehicle and/or pushcart must allow for a pedestrian visual corridor at least 6 feet wide with a 4-foot-wide.

    a) Pushcarts must be on a paved or concrete surface. The location must be on the street side of the sidewalk and the sidewalk must be at least 10.5 feet wide. This should allow for an 18 inch setback of the pushcart from the curb.

    b) Pedestrian walkways of no less than six (6) feet must be maintained around the mobile food vehicle and/or pushcart.

19) The proposed mobile food vehicle and/or pushcart vending activity shall not violate the Americans with Disabilities Act.

20) If an existing mobile Food Zone conflicts with the requirements set forth in this ordinance, the Mobile Food Vendors Committee shall make a determination if it will be feasible to issue a new permit when the existing permit expires.

21) Mobile food vending shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

22) The mobile food vehicle shall not have drive-through service.

23) The decibels on any generator(s) used may not exceed "60dBA". The operator must provide the manufacturer's specs on decibels generated by his particular generator. The Birmingham Police Department will make the final determination if power generators used by mobile food vehicle constitute a noise violation.

24) The use of the permitted operating location for mobile food vehicle and/or pushcart vending must be compatible with the public interest in use of the public right-of-way. In making such determination, the Mobile Food Vendors Committee shall consider the width of the public way, parking issues and traffic congestion, the weight that can be supported by the paving or street surface at the proposed location, the proximity and location of existing street furniture, including, but not limited to, utility poles, parking meters, bus shelters, benches, street trees, news racks, as well as the presence of bus stops, truck loading zones, taxi stands or other businesses or approved mobile food vehicles to determine whether the requested location would result in pedestrian or street congestion.

25) Any new business that opens or moves near an existing mobile food vehicle or pushcart zone shall be deemed to have accepted the proximity of the existing mobile food vehicle and/or pushcart in operation. Traffic Engineering and P.E.P. shall maintain the inherent authority to regulate uses of the public right-of-way and reduce the size and/or location of the food vehicle/pushcart zone at a later date.

Section 9 **Temporary Curb Spacing Permit**

(1) A temporary curb space vending permit authorizes vending from a curb space within the public right-of-way that is not designated as a mobile food vehicle zone. The permit is effective for no more than one day during a calendar year. The temporary curb space vending permit may be issued under the following requirements:

a) The permittee shall reserve the curb space with the Birmingham Police Department.

b) The temporary curb space vending permit shall only be issued for an event located on private property abutting the curb space or an event located in an adjoining public place.

c) The vending shall only occur from the side of a food vehicle that is parked abutting and parallel to the curb.

(2) The permittee shall obtain and maintain in effect all required permits and business licenses and display the food vehicle zone or temporary curb space vending permit at the vending site in a manner approved by the Mobile Food Vendors Committee.

2) Temporary curb space permit vending sites shall not be located in driveways or within one block of a food establishment entrance or exit during its hours of operation.

3) If located in the public right-of-way abutting private property, the vending activity shall end by 1:00 a.m. This restriction may be waived by the City Engineer and City Traffic Engineer or his/her designee.

4) The Mobile Food Vendors Committee may, as deemed appropriate, approve or deny the issuance of a temporary curb space vending permit based on the:

a) Hours of operation and dates of use;

b) To ensure access to the use complies with the Americans with Disabilities Act;

c) Impacts associated with the vending activity from: lighting, noise, emissions to the air, the placement of signage, or equipment such as generators;

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d) Impacts to the abutting business displays, business signage, or intake vents from the proposed vending activity; and

e) Pedestrian circulation, traffic management, or any other public use purpose.

5) If the proposed Temporary Curb Space or food vehicle zone vending will occur within 200 feet of a park, the Director of the Parks and Recreation may recommend to Traffic Engineering whether the vending site should be approved or denied based on the following considerations:

a) Public safety or access within the park;

b) Conflicts with existing businesses and concessionaires, permitted events, or other special activities occurring in the park; or

c) The need to encourage park activation.

<u>Section 10</u> Food service workers

11) The owner of a mobile food vehicle and/or pushcart shall:

a) Allow only food service workers and persons authorized by the Health Department to be present or operate in the mobile food vehicle and or pushcart; and

b) Ensure that all food service workers in the mobile food vehicle or operating the pushcart have current workers permits.

c) The permittee must immediately notify the Birmingham Police Department of the hiring or dismissal of any food service worker of their mobile food vehicle(s).

<u>Section 11</u> Prohibition against the transfer of a permit and/or license

1) No permit or license is transferable without approval of the BPD or Finance Department.

2) No person holding a permit and/or license for a mobile food vehicle shall sell, lend, lease or in any manner transfer a mobile food vehicle permit and/or license for value.

3) A permit and/or license holder may transfer a permit and/or license as part of the sale of a majority of the stock in a corporation holding such permit and/or license, as part of the sale of a majority of the membership interests of a limited liability company holding such permit and/or license, or as part of the sale of a business or substantially all of its assets; provided that there shall be no allocated or actual value for the transfer of the permit and/or license.

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a) Prior to any such transfer, the transferor shall notify the Birmingham Police Department in writing and the transferee shall submit a mobile food vehicle permit application for approval to the Mobile Food Vendors Committee.

b) Any such transfer shall be subject to the terms and conditions of the original permit.

4) Any unauthorized transfer or attempt to transfer a permit shall automatically void such permit. Whoever violates this provision, including both the transferor and transferee, shall be subject to a fine of three hundred ($300.00) dollars. The unauthorized transfer or attempt to transfer of each permit shall constitute a separate violation.

Section 12 Enforcement

Any person vending without a duly issued permit, license and personal identification or found in violation of any of the regulatory provisions of this chapter shall be guilty of an infraction.

Any person found guilty of an infraction, of which person has been given notice, shall not be punished by imprisonment but may be fined.

1) *Enforcement*. The provisions of this section or any rules and regulations may be enforced jointly by the Birmingham Police Department and the Department or Traffic Engineering.

2) *Fine for Violation*. Any permit holder operating a mobile food vehicle or service in violation of any provision of this section or any rules and regulations promulgated by the Mobile Food Vendors Committee may be subject to a fine of three hundred ($300.00) dollars per day. Each day of violation shall constitute a separate and distinct offense.

   a) The BPD or Traffic Engineering may suspend a permit and/or license for no more than three (3) days without a notice or hearing, if there is a probability of serious or repetitive violation of public safety, health or order.

3) *Revocation, Suspension, Modification*. Once a permit and/or license have been issued it may be revoked, suspended, modified, or not renewed by the City Council for failure to comply with the provisions of this section or any rules and regulations promulgated by the Mobile Food Vendors Committee.

   a) With the exception of 2a) above, no permit and/or license shall be revoked, suspended, modified, or not renewed without a hearing before the City Council, prior to which hearing the council shall give reasonable notice of the time and place of the hearing and the specific grounds of the proposed action. The decision resulting therefrom shall be final and subject only to judicial review.

4) Any permit and/or license holder found in violation of this section or any rules and regulations may be issued a ticket for violation and the mobile food vehicle may be impounded.

5) Any mobile food vehicle being operated without a valid mobile food vehicle permit and/or license issued by the Mobile Food Vendors Committee shall be deemed a public safety hazard and may be ticketed and impounded.

6) No mobile food vehicle shall be parked on the street overnight, or left unattended and unsecured at any time. Any mobile food vehicle which is found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.

7) A mobile food vehicle operating within the City Center at an unauthorized location or beyond the hours for which the operation has been permitted shall be deemed operating without a permit and/or license in violation of this section and may be subject to enforcement.

Section 13 Denial, Revocation, Suspension or Permit and/or Business License

An application or approved permit and/or business license may be denied, revoked, suspended, or not renewed for any of the following reasons:

1) The permittee and/or licensee or any of its principals fails to satisfy any qualification or requirement imposed by this chapter, or other local, state or federal laws or regulations that pertain to the particular license; or

2) The permittee and/or licensee or any of its principals is or has engaged in a business, trade or profession without having obtained a valid license, permit or work card when such applicant or principal knew or reasonably should have known that one was required; or

3) The permittee and/or licensee or any of its principals has been subject, in any jurisdiction, to disciplinary action of any kind with respect to a license, permit or work card to the extent that such disciplinary action reflects upon the qualification, acceptability or fitness of the applicant or principal to conduct such a business; or

4) The permittee and/or licensee or any of its principals has been convicted of any crime that involves any local, state or federal law or regulation arising out of the operation of a similar business; or

5) The permittee and/or licensee or any of its principals has been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last ten years; or

6) The motor food vehicle on which the business is proposed to be conducted does not

satisfy all local, state or federal laws or regulations which relate to the activity that is to be licensed; or

7) The licensee or any of its principals is in default on any payments owed to the city; or

8) The application contains material omissions or false, fraudulent, or deceptive statements; or

9) The motor food vehicle is operated in such a manner as constituting a public nuisance per the Birmingham City Code or state statutes; or

10) The proposed operation is in violation of any federal, state, or local laws including, but not limited to, the provisions of this Ordinance pertaining to food, fire prevention, public health or safety.

11) The licensee or his agents or employees interfere with an inspection of the food establishment by a Health Department; or

12) There are repeated or serious violations of the applicable portions of this article; or

13) There are repeated or serious violations of federal or state food laws or laws regulating food establishments as defined in this article; or

14) The Jefferson County Health Department denies, revokes or suspends the license of the mobile food vehicle; or

15) There is a violation of any section of this Ordinance.

The provisions of this section are not exclusive. This section shall not preclude the enforcement of any other provisions of this Ordinance or state and federal laws and regulations. The Jefferson County Health Department may impose additional requirements to protect against health hazards related to the operation of a mobile food vehicle.

<u>Section 14</u> Appeal to council upon denial, revocation or suspension

Upon any denial, revocation or suspension of a mobile food vehicle permit and/or business license by the Birmingham Police Department or the Mobile Food Vendors Committee, the applicant or permittee and/or licensee may appeal the denial to the council by filing a written statement of appeal with the city clerk within 10 days following the denial, revocation or suspension and a hearing shall be held thereon by the council at a regular meeting of the City Council or a continuance thereof not later than 14 days thereafter. The applicant or permittee, during the appeal, may be represented by counsel.

1) Prior to revocation, written notice shall be given to the permittee and/or licensee or person in charge. The notice shall set forth:

   a) The grounds upon which the city will seek denial, revocation or suspension of the permit and/or license;

   b) The specific violations of this article or of federal or state law upon which the city will rely in seeking denial, revocation or suspension of the permit and/or license;

   c) That a hearing will be held before the Birmingham City Council;

   d) The date, time and place of the hearing; and

   e) That the permittee and/or licensee may appear in person and/or be represented by counsel and may present testimony.

2) The hearing shall be held in accordance with this section. If the permit and/or license holder fails to appear at the hearing at the time, place and date specified, the city shall present sufficient evidence to establish a prima facie case showing that an act or acts have been committed or omitted that constitutes grounds for denial, revocation or suspension of a permit and/or license.

3) After completion of the hearing, the City Council shall make written findings as to whether or not grounds exist for denial, revocation or suspension of the permit and/or license. If the City Council finds that grounds do exist for denial, revocation or suspension, it shall deny, revoke or suspend the permit and/or license temporarily for up to 180 days or permanently.

4) A copy of the written findings shall be sent by certified mail, return receipt requested, to the permittee and/or licensee. If the address of the licensee is unknown, or if the findings are returned undelivered, the findings shall be served on the person in charge of the commissary or mobile food vehicle.

5) If the City Council revokes the permit and/or license, written notice of the revocation shall be served on the permittee and/or licensee or the person in charge with a copy of the findings.

6) Upon service of a written notice that the permit and/or license have been revoked as provided herein, all food operations shall cease immediately.

7) Whenever a permit and/or license are revoked, the Jefferson County Health Department shall be notified.

8) In the event a permit and/or license are revoked, the city shall not be liable to the permittee and/or licensee for any refund of any part of the permit and/or license fee.

Reinstatement of a permittee and/or licensee that has been revoked shall require application and payment of a permit and/or license fee as if it were an initial application. No new permit and/or license application shall be considered for an establishment or mobile food vehicle where the permit and/or license have been revoked until the expiration of the revocation period.

Section 15 Service of notices

Any notice provided for in this article may be served by personal delivery, certified mail, return receipt requested or publication if found necessary.

Section 16 Requesting Additional Vendor Locations

1) The use of the permitted operating location for mobile food vehicles or pushcart vending must be compatible with the public interest in use of the public right-of-way.

   a) A permittee may submit a request for use of the public right-of-way in other locations not designated by the Mobile Food Vendors Committee. Each submitted request will require a non-refundable location inspection fee of two hundred ($200.00) dollars. If the location is approved, the fee shall apply to the cost of the permit for the new location.

Section 17 Severability

If any provision of this section is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

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