

ORDINANCE NO. 25-1882

AN ORDINANCE OF THE CITY OF HAINES CITY, FLORIDA AMENDING CHAPTER 15, ARTICLE IV OF THE CODE OF ORDINANCES BY REPEALING SECTIONS 15-60, 15-61, 15-62, 15-63, 15-64 and 15-65 CONCERNING REGULATIONS FOR MOBILE FOOD VENDORS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR THE ADDITION OF SECTIONS 15-60, 15-61, 15-62 AND 15-63 RELATED TO MOBILE FOOD DISPENSING VEHICLES AND TEMPORARY COMMERCIAL KITCHENS TO CHAPTER 15, ARTICLE IV OF THE CODE OF ORDINANCES; PROVIDING FOR FINDINGS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND INCLUSION IN THE CODE OF ORDINANCES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2018, the City Commission of the City of Haines City, Florida (the “City Commission”) enacted Ordinance No. 18-1616 to regulate Mobile Food Trucks; and

WHEREAS, Section 509.102, Florida Statutes (Mobile food dispensing vehicles; temporary commercial kitchens; preemption) was enacted in 2020 and amended in 2022; and

WHEREAS, Section 509.032(7)(a), Florida Statutes, addresses preemption authority concerning the regulation of public food establishments, and states:

(7) PREEMPTION AUTHORITY —

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local

enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

WHEREAS, Section 509.102(2)(a), Florida Statutes, addresses preemption authority concerning the regulation of mobile food dispensing vehicles and temporary commercial kitchens, and states:

(2)(a) Regulation of mobile food dispensing vehicles, and temporary commercial kitchens, involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle or temporary commercial kitchen within the entity's jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles or temporary commercial kitchens from operating within the entirety of the entity's jurisdiction.

(b) Any mobile food dispensing vehicle or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen.

WHEREAS, **Rule** 61C-4.0161, Florida Administrative Code, provide additional requirements for Mobile Food Dispensing Vehicles and Temporary Commercial Kitchens; and

WHEREAS, the City Commission finds that the use and operation of mobile food dispensing vehicles on real property directly affects the use of land within the City, and therefore, such uses are subject to the City's legitimate land use and zoning powers under the Florida Municipal Home Rule Powers Act, Community

Planning Act and other applicable law. *See also, Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) (The concept of planning and zoning is a legitimate exercise of the police power of municipalities.); and

WHEREAS, unless the operation of mobile food dispensing vehicles within the City is limited to certain commercial and industrial zoning districts or temporary special events, and subject to some level of site plan review by the City to ensure that the real property on which they operate is suitable to accommodate such use, the operation of such vehicles may negatively impact the use of real property and surrounding properties and create public nuisances; and

WHEREAS, the City Commission desires to avoid such negative impacts and public nuisances; and

WHEREAS, the City Commission also finds that the use and operation of mobile food dispensing vehicles should be governed by other traditional land use and zoning requirements as more specifically stated herein in order to avoid adverse negative effects which may be caused by the operation of such vehicles on real property and safeguard the community; and

WHEREAS, the City Commission of the City of Haines City, Florida has determined that it is in the best interests of the public health, safety, and welfare of the citizens of Haines City to amend Chapter 15, Article IV of the Code of Ordinances related to mobile food dispensing vehicles and temporary commercial kitchens.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF HAINES CITY, FLORIDA:

Section 1. Incorporation of Recitals. The Recitals set forth above are a material part of this Ordinance and are incorporated herein by this reference.

Section 2. Repeal of Sections 15-60, 15-61, 15-62, 15-63, 15-64 and 15-65. That sections 15-60, 15-61, 15-62, 15-63, 15-64 and 15-65 of the Code of Ordinances of the City of Haines City, Florida, are hereby repealed.

Section 3. Addition on new Section 15-60, 15-61, 15-62 and 15-63. That Chapter 15, Article IV of the Code of Ordinances of the City of Haines City, Florida, is hereby amended by adding four sections, to be numbered sections 15-60, 15-61, 15-62 and 15-63, which said sections read as follows:

Article IV. Mobile Food Dispensing Vehicles and Temporary Commercial Kitchens

Sec. 15-60. Purpose.

Mobile food vending units have existed in various forms over several centuries, distinguished as much by their physical characteristics as their operational requirements. The purpose of this article is to:

- (1) Recognize this specialized market segment;
- (2) Establish appropriate standards for the purpose of safeguarding the public health, safety, and welfare; and
- (3) Establish appropriate standards allowing for the typical range of activities while mitigating any associated, undesirable impacts.

This section is neither intended to prohibit mobile food dispensing vehicles from operating within the entirety of the City nor regulate the licensing, registration, permitting and fees of mobile food dispensing vehicles preempted by the state under section 509.102, Florida Statutes.

Sec. 15-61. Definitions.

For the purposes of this article, the following definitions apply:

City issued permit in this section is limited to mean a permit issued by the city for special events, city co-sponsored events or other events, such as a food truck rally, or for parking a mobile food dispensing vehicle.

Mobile food dispensing vehicle means any vehicle that is a 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.

Temporary commercial kitchen means any kitchen that is a public food service establishment used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle-mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. The term does not include a tent.

Roadside vending market means a roadside marketplace where food is vended to the general public such as a farmers' market, community farmers' market, flea market, or other open-air market.

Vend means to sell or offer to sell products from a mobile food dispensing vehicle or temporary commercial kitchen.

Sec. 15-62. Generally.

- (a) This article shall not apply to pushcart vending or roadside vending markets.
- (b) It is a violation to vend any product from a mobile food dispensing vehicle or temporary commercial kitchen at any location except in compliance with the requirements of this section.
- (c) This article excludes a contractual or other private arrangement between the operator of a mobile food dispensing vehicle and an individual or group that wishes to have food catered to a specific location and which is not open to the public.

(d) Effective (**insert Ordinance effective date**), all vending from a mobile food dispensing vehicle or temporary commercial kitchen shall occur from properties with a Commercial General (CG), Industrial Light Warehousing (ILW), Industrial Medium (IM), Industrial Heavy (IH) or Highway Commercial (CH) zoning classification as a permitted principal use.

Sec. 15-63. Mobile food dispensing vehicles.

The following standards shall apply to all mobile food dispensing vehicles and temporary commercial kitchens, as defined by section 15-61:

- (a) Signage shall comply with the applicable requirements of Chapter 7, Article 4 (Signs Classified by Zoning District Regulations) of the Code of Ordinances.
- (b) A mobile food dispensing vehicle or temporary commercial kitchen shall not be placed in any required parking space, loading zone, landscape/buffer area or drainage area. A mobile food dispensing vehicle or temporary commercial kitchen shall be located on either an asphalt or concrete base. In addition to the asphalt or concrete base upon which the mobile food dispensing vehicle or temporary commercial kitchen is located, each mobile food dispensing vehicle or temporary commercial kitchen shall comply with Section 11.1.8 (Off-street parking space requirements) of the Land Development Regulations.
- (c) Subsequent to the time of passage of the ordinance from which this section derives and except as provided in subsection (n) below, no more than one (1) mobile food dispensing vehicle or temporary commercial kitchen shall be located on a private property parcel.
- (d) Mobile food dispensing vehicles and temporary commercial kitchens shall comply with the requirements of section 12.4.1 (related to visibility at intersections) of the Code of Ordinances.
- (e) Health and safety regulations: display of state license. A mobile food truck or temporary commercial kitchen operating within the City's municipal boundaries shall at all times comply with all federal, state, and local health and safety regulations and requirements and shall obtain and maintain any and all licenses required by any other health organization or governmental organization having jurisdiction over the same. The license under which the mobile food dispensing vehicles or temporary commercial kitchen is operating shall be firmly attached and visible on the mobile food dispensing vehicle or temporary commercial kitchen at all times and shall be produced to a law enforcement officer, or City code enforcement officer upon demand. A copy of the liability insurance shall be provided to the City and displayed at all times on the mobile food dispensing vehicles or temporary commercial kitchen.
- (f) A mobile food dispensing vehicles and temporary commercial kitchens may not be located in or on city property, city park, city right-of-way or public street, except as provided in subsection (l) below.
- (g) A temporary commercial kitchen shall comply with the requirements of Section 509.102(3)(a), Florida Statutes.

- (h) Waste containers with lids shall be provided for the deposit of food scraps, food wrappings, cups, napkins and discarded single-service articles. Trash may not be placed within public street side trash receptacles.
- (i) The operators of mobile food dispensing vehicles and temporary commercial kitchens are responsible for picking up all litter and waste within 25 feet of their unit.
- (j) *Alcohol sales.* Mobile food dispensing vehicles and temporary commercial kitchens may sell alcoholic beverages (i) in compliance with the State alcohol license requirements, and (ii) in compliance with Section 4-3 (Location of places where alcoholic beverages may be sold) of the City Code of Ordinances.
- (k) Mobile food dispensing vehicles selling or dispensing of food to customers in a moving vehicle or otherwise engaging in drive-through sales is prohibited.
- (l) Mobile food dispensing vehicles may participate in City sponsored special events or City approved special events held on City-owned real property, subject to the requirements and conditions of a city issued permit.
- (m) When the mobile food dispensing vehicle will be operating on private property a notarized affidavit signed by the property owner indicating that the vehicle has permission to operate and vend on the property. The City shall provide a form of the affidavit. The affidavit must also indicate that the property owner acknowledges the following requirements:
 - (i) The property owner shall comply with all ordinances regarding solid waste disposal and must provide the vehicle access to solid waste collection on the subject property;
 - (ii) The property owner shall require that the vehicle meet all applicable federal, state and local statutes, regulations, laws, ordinances, rules and codes including, but not limited to, applicable land use and zoning requirements regarding the subject property including set back requirements;
 - (iii) The property owner shall acknowledge that the property owner understands the regulations governing mobile food dispensing vehicles and will be held responsible, along with the vehicle owner, for any code violations; and
 - (iv) The property owner shall ensure that the property will be continuously maintained in a neat clean, and orderly manner, and that the mobile food dispensing vehicle shall be limited to operating as a temporary accessory use on the subject property.
- (n) *Grandfather provision.* Mobile food dispensing vehicles and temporary commercial kitchens existing at the time of passage of the ordinance from which section derives shall be grandfathered and allowed to remain.
- (o) *Enforcement.* Any violation of this section is punishable by a fine of \$250.00 for a first offense and \$500.00 for each offense thereafter under the provisions of Section 1-8 of the City Code, and any other remedies as provided by law, jointly and severally, including, but not limited to, suspension or revocation of a permit, or any other legal remedy as deemed appropriate by the city. The use of one remedy shall not preclude

the use of another. The City's law enforcement and code enforcement officers shall be authorized to enforce violations of this section.

Section 4. Findings. In adopting this Ordinance, the City Commission hereby makes and expresses the following findings, purposes, and intent:

- (1) Article VIII, Section 2(b) of the Florida Constitution provides, in part, as follows:

POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law....

- (2) In *State v. City of Sunrise*, 354 So. 2d 1206, 1209 (Fla. 1978), the Florida Supreme Court stated:

Article VIII, Section 2, Florida Constitution, expressly grants to every municipality in this state authority to conduct municipal government, perform municipal functions, and render municipal services. The only limitation on that power is that it must be exercised for a valid "municipal purpose." It would follow that municipalities are not dependent upon the Legislature for further authorization. Legislative statutes are relevant only to determine limitations of authority.

- (3) Section 166.021, Florida Statutes, provides for municipal powers, and states, in part, as follows:

(1) As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

(2) "Municipal purpose" means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the constitution;

(c) Any subject expressly preempted to state or county government by the constitution or by general law; and

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality or any changes in a special law or municipal charter which affect the creation or existence of a municipality, the terms of elected officers and the manner of their election except for the selection of election dates and qualifying periods for candidates and for changes in terms of office necessitated by such changes in election dates, the distribution of powers among elected officers, matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, without approval by referendum of the electors as provided in s. 166.031. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(4) Section 1.01 (Existence and powers) of the City's Charter, states, in part, as follows:

The City of Haines City, Florida, shall have all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by the laws of the State of Florida and this Charter.

- (5) Chapter 15, Article IV of the Haines City Code of Ordinances provides regulations for mobile food vendors.
- (6) The purpose of this Ordinance is to repeal portions of Ordinance No. 18-1616, and amend the regulations for this specialized market segment, and establish appropriate standards allowing for the range of activities while mitigating any associated, undesirable impacts.
- (7) It has been found that mobile food dispensing vehicles and temporary, either nonconforming or conforming, are incompatible with permitted uses in all zoning districts, except the Commercial General (CG), Industrial Light Warehousing (ILW), Industrial Medium (IM), Industrial Heavy (IH) or Highway Commercial (CH) zoning classifications.
- (8) The City Commission hereby determines that it is in the best interest of the City to prohibit mobile food dispensing vehicles and temporary commercial kitchens in all zoning classification except the Commercial General (CG), Industrial Light Warehousing (ILW), Industrial Medium (IM), Industrial Heavy (IH) or Highway Commercial (CH) zoning classifications, or as provided in subsection 15-62(e).
- (9) The City Commission hereby determines that it is in the best interest of the City to allow an existing mobile food dispensing vehicles and temporary kitchens which have (i) received a site-specific zoning official determination issued before the effective date of this ordinance, and (ii) which remains in

compliance with all applicable licensing requirements of Section 509.102, Florida Statutes, to be made conforming and lawful under this ordinance, and that this exception shall sunset on October 1, 2025 unless extended by the City Commission by ordinance.

- (10) In an exercise of its home rule authority, the City Commission hereby determines it necessary and desirable to amend Chapter 15, Article IV of the Code of Ordinances of the City of Haines City, Florida to (i) harmonize the City's Code provisions with the preemption authority stated in Section 509.032(7)(a), Florida Statutes, and Section 509.102(2)(a), Florida Statutes, and (ii) safeguard the public health, safety and welfare.

Section 5. Severability. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full effect.

Section 6. Codification. It is the intention of the City Commission and it is hereby provided that the provisions of this Ordinance shall be made a part of the Code of Ordinances of the City of Haines City; and that the sections of this Ordinance may be numbered, renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section", "article", or other appropriate designation, all as may be necessary or useful to ensure proper codification.

Section 7. Repeal of Ordinances in Conflict. All other ordinances of Haines City or portions thereof which conflict with this or any part of this Ordinance are hereby repealed.

Section 8. Effective Date. This Ordinance shall become effective immediately upon its passage and approval as a non-emergency ordinance at two regular meetings of the City Commission.

INTRODUCED AND PASSED on first reading in regular session of the City Commission of the City of Haines City, this ____ day of _____, 2025.

ATTEST:

APPROVED:

Sharon Lauther, MMC, City Clerk

Morris L. West, Mayor

PASSED on second and final reading by the City Commission of the City of Haines City, Florida, at regular session this ____ day of _____, 2025.

ATTEST:

APPROVED:

Sharon Lauther, MMC, City Clerk

Morris L. West, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Fred Reilly, City Attorney