

COMMISSIONERS' ORDINANCE NO. O-02-20

AN ORDINANCE AMENDING CHAPTER 111 OF THE COVINGTON CODE OF ORDINANCES, REGULATING MOBILE FOOD VENDING SERVICES.

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WHEREAS, the operation of mobile food units, commonly called "food trucks," has become a national trend and has proven to stimulate social and economic activity and enhance local commerce; and

WHEREAS, Covington previously passed Commissioner's Ordinance No. O-24-12, which regulated mobile food units on private property; and

WHEREAS, the Covington Board of Commissioners now desires to expand the mobile food units operations within the City by creating a permit system allowing mobile food units to locate upon certain City-owned property and streets; and

WHEREAS, it is necessary for the City to prescribe certain rules and regulations for mobile food units and vendors in order to protect and promote the health, safety, and welfare of the general public; and

WHEREAS, the proposed mobile food unit regulations are intended as a pilot program, which the City will monitor and amend as necessary.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF COVINGTON, KENTON COUNTY, KENTUCKY:

Section 1

Chapter 111, Sections 111.550 to 111.558, which read as follows, are added to and amend the Covington Code of Ordinances:

Title XI: BUSINESS REGULATIONS

CHAPTER 34: REGULATIONS GOVERNING SPECIFIC BUSINESSES

MOBILE FOOD VENDING SERVICES

§ 111.550 DEFINITIONS.

MOBILE FOOD VENDOR. An itinerant merchant who operates a Mobile Food Unit business.

MOBILE FOOD UNIT. A licensed, motorized vehicle permitted by the Northern Kentucky Health Department for food service, which is temporarily parked in a location to sell food and/or non-alcoholic beverage items to the general public.

MOBILE FOOD VENDING SERVICE BOUNDARIES. The following rights-of-way and City-owned parking lots are permissible parking areas for Mobile Food Units:

- Philadelphia Street from 4th Street to 7th Street**
- Madison Avenue from Rivercenter Blvd to 8th Street**
- 7th Street between Washington Street and Madison Avenue**
- Bill Cappel Sports Complex - City-owned parking lot**
- 8th Street between Greenup Street and Garrard**
- Southern Avenue between Church and Caroline Avenue**
- Main Street from West 11th Street to Martin Luther King Jr. Blvd**

§ 111.551 PERMIT REQUIRED TO OPERATE MOBILE FOOD VENDING SERVICE.

(A) A Mobile Food Unit may not operate within the City without obtaining a permit for mobile food vending services.

(B) Mobile Food Unit services on City-owned property shall be limited to the rights-of-way and defined parking lots described in the mobile food vending service boundaries. Mobile Food Unit services on other City-owned property shall be limited to areas approved on a City special event permit.

(C) Mobile food service on private property shall be limited to the zones permitted in the Covington Zoning Ordinance, and require written permission of the property owner.

(D) A Mobile Food Vendor may obtain a permit to serve customers, provided all standards identified in this section are met. If demand for Mobile Food Units exceeds available spaces within the defined locations, the City will issue permits on a first come first served basis.

(E) The granting of a permit under this section shall not constitute a property interest or right in any City-owned property, including but not limited to City rights and sidewalks. Any permit granted herein does not provide a Mobile Food Vendor or Mobile Food Unit exclusive rights to any public property or parking space.

§ 111.552 PERMIT APPLICATION & FEES.

(A) Permitting shall be on a per Mobile Food Unit basis, with each different Mobile Food Vendor requiring a separate license for each individual Mobile Food Unit.

(B) There shall be a permit application fee of \$500.00 per Mobile Food Unit per year. The application fee shall be non-refundable. Ten percent of the fee shall be remitted by the City to the Covington Motor Vehicle Parking Authority to offset loss of on-street parking revenue. The permit fee for permits issued after July 1 shall be \$250.00 per Mobile Food Unit for the remainder of that calendar year.

(C) All applications for permits shall be submitted to the City Manager and shall be accompanied with all submittal requirements on the City's application form, including the required certificate of insurance, state and county approvals, proof of health department approval, and permitting fee.

(D) Permits are valid for the calendar year the permit is issued, unless otherwise invalidated, revoked, or terminated prior to the end of the term. Mobile Food Vendors must reapply (including payment of all applicable fees) each calendar year.

(E) The Mobile Food Vendor must submit proof of a valid insurance policy through an insurance carrier authorized or eligible to do business in the Commonwealth of Kentucky for any damage to the public right-of-way and for any damages for which the City might incur liability for property damage, personal injury, or death arising out of the Mobile Food Vendor's operations. The minimum liability limit of the policy shall be one million dollars (\$1,000,000.00). The City of Covington shall be listed as an additional insured as its interests may appear on all Certificates of Insurance.

(F) By submitting a permit application, the Mobile Food Vendor agrees to abide by all terms and conditions of this ordinance, and agrees that it shall hold the City, its employees, agents, and elected officials harmless and indemnify them for any loss, liability, damage and costs and expenses arising from its operations. The City is not liable for any business loss, property loss, or other damage that may result from use of the permit, or suspension or revocation of the permit, relocation of the Mobile Food Unit, or the discontinuance of the practice of permitting such activity, and no such Mobile Food Vendor shall maintain any claim or action against the City and/ or its officials, officers, employees, or agents on account of any suspension, relocation, revocation, or discontinuance. The indemnifications required herein shall include, but not be limited to, injury or death resulting from a slip and fall of the Mobile Food Vendor's employees or customers due to grease, debris, snow, or ice in the queue areas of the Mobile Food Vending Unit.

§ 111.553 REVIEW CRITERIA.

(A) When considering a permit application, the City Manager or his/her designee shall consider the following criteria:

- 1. Impact on local economy.**
- 2. Impact on public health and safety.**
- 3. Impact on transportation and traffic.**
- 4. Completeness of the application and accuracy of information.**
- 5. Compliance with the terms of this ordinance, and other City, county, state, and federal laws, ordinances, rules, and regulations.**
- 6. Outstanding delinquent accounts or liabilities, if any, to the City.**
- 7. The existing number of Mobile Food Unit permits operating within the City rights-of-way.**
- 8. If demand exceeds appropriate and available space.**

§ 111.554 AUTHORIZED LOCATIONS AND LOCATIONS RESTRICTIONS FOR MOBILE FOOD UNIT VENDING SERVICES.

(A) The Mobile Food Unit may only be parked within the Mobile Food Unit Service Boundaries or upon private property in an authorized zone.

(B) If located upon private property, the Mobile Food Unit shall comply with all setback, sightline, and other City Zoning Code regulations regarding the location of an accessory structure.

(C) In order to preserve sufficient public parking, and to prevent potential traffic congestion on City streets and sidewalks which may present a risk to public health and safety and the right to quiet enjoyment of property, at any one time no more than three Mobile Food Units may be located on a single street within the Mobile Food Unit Service Boundaries.

(D) Mobile Food Vendors must be actively engaged in vending operations at all times while occupying any public property.

(E) All Mobile Food Units must be situated to allow at least five (5) feet of unobstructed space for pedestrians on sidewalks, pedestrian paths, and other locations intended primarily for pedestrian travel. If any applicable law, including the Americans with Disability Act, shall require a greater distance, the greater distance shall apply.

(F) Mobile Food Units may not be parked in a location that prohibits or restricts access to a private property or public facility. A

minimum five (5) foot spacing is required from any driveway, measured from the driveway apron.

(G) Mobile Food Vendors may not operate in any manner that blocks, obstructs, or restricts the free passage of vehicles or pedestrians in the lawful use of the sidewalks or highways or ingress or egress to the abutting property.

(H) The Mobile Food Unit must be located at least five (5) feet from any utility box, utility vault, handicapped ramp, or emergency call box. The Mobile Food Unit must be located at least fifteen (15) feet from all fire hydrants.

(I) Mobile Food Units may not be parked upon a sidewalk, in grass, or on any other unpaved surface unless specifically authorized in an applicable City permit.

(J) Mobile Food Units shall not park on public right-of-way during designated street sweeping times, or when a road is closed or blocked, including for maintenance. Mobile Food Units and Vendors shall comply with all ordinances, laws, and regulations, including but not limited to those regarding traffic and parking.

§ 111.555 OPERATING RESTRICTIONS, NUISANCE PREVENTION, AND PUBLIC HEALTH AND SAFETY.

A Mobile Food Unit must comply with the following standards at all times during operation:

(A) The Mobile Food Vendor must dispose of all waste associated with the Mobile Food Unit operation, and must make waste and recycling receptacles available to its customers. City receptacles may not be utilized. No liquid waste or grease may be poured into any tree pit, storm drain, gutter pan, sidewalk or any other public space, or in a manner inconsistent with the City's solid waste disposal regulations or nuisance code. Grease cannot be released into the City's sanitary sewer system. The Mobile Food Vendor shall make available hand sanitizer to its customers.

(B) Permitted Mobile Food Units may operate every day of the week from the hours of 6:00 a.m. to 10:00 p.m. The Mobile Food Unit may not operate or park within the Mobile Food Vending Service Boundaries before 5:30 a.m. and must cease operation and leave the permitted parking space by 10:30 p.m.

(C) Mobile food vending units shall not exceed thirty-one feet (31') in length or eight feet, five inches (8'5") in width. If parked within a public right-of-way, the Mobile Food Unit shall comply with all applicable parking regulations, and shall not occupy more than one marked parking space.

(D) The Mobile Food Vendor shall not utilize tables or chairs on public property, including City sidewalks or streets, in conjunction with the Mobile Food Unit. All equipment shall be contained within or on the Mobile Food Unit. This section shall not prevent an approved special event permit from specifically authorizing the use of tables, chairs, and other free standing equipment on public property.

(E) Mobile Food Vendors shall not utilize the City's electrical outlets, unless specifically authorized by the City in writing.

(F) Every Mobile Food Vendor to whom a permit is issued shall, at all times while engaged in that business, have the applicable permit in his or her possession, prominently displayed in the front windshield of the vehicle, for public viewing, and shall produce the same at the request of any City official or at the request of any individual to whom the Mobile Food Vendor is exhibiting his or her food or attempting to sell the same.

(G) Mobile Food Vendors must comply with all other applicable ordinances, laws, and regulations, including but not limited to applicable ordinances regulating "License Fees and Taxes."

(H) During operation, Mobile Food Vendors shall be required to keep the vending area adjacent to the Mobile Food Unit free from ice, snow, oil, or other material that may cause a slip and fall hazard.

§ 111.556 SUSPENSION OR REVOCATION OF PERMIT.

The City Manager or his/her designee may suspend or revoke any permit issued under this section, or require a Mobile Food Vendor to relocate its Mobile Food Unit, for any of the following reasons:

(A) To allow for construction, maintenance, or repair of any street, curb, gutter, sidewalk, storm drain inlet, or any other similar facility.

(B) Failure to comply with all terms of this ordinance, or other applicable local, state, and federal regulations.

(C) Revocation of any required permit to conduct the mobile food service operations, including revocation by the Northern Kentucky Health Department or other issuing entity.

(D) Excessive noise.

(E) Improper disposal of solid waste, grease, oil, or other materials from the Mobile Food Unit.

(F) When the desired location of the Mobile Food Unit is closed, or during special events.

(G) In the event this ordinance is amended or repealed as to render the Mobile Food Vendor's activities inconsistent with the City's Mobile Food Unit regulations.

(H) To maintain the comfort, health, safety and welfare of the public.

If the City Manager or his/her designee exercises the right to suspend or revoke a permit issued under this section, written notice shall be provided to the Mobile Food Vendor at the address on file for the permit. The City's delay or failure to issue a suspension or revocation of any permit shall not constitute a waiver of this section. No reimbursement for any portion of the permit fee shall be made in the event a Mobile Food Unit permit is suspended or revoked, or if a Mobile Food Unit is required to relocate temporarily or permanently.

§ 111.557 TERMINATION OR AMENDMENT OF MOBILE FOOD VENDING.

The Covington Board of Commissioners may amend, revise, or terminate mobile food service by ordinance duly enacted. The City shall retain the entire fee paid for the permit by the permit holder; no refund shall be issued to any Mobile Food Unit permit issued that is no longer valid because of an amendment, revision, or termination.

§ 111.558 APPEALS.

Any person aggrieved by a decision of the City Manager or his/her designee regarding denial, suspension, or revocation of a Mobile Food Vending Service permit shall have the right to appeal any such decision to the Board of Commissioners by filing a written notice of appeal with the City Clerk within five (5) days after the written decision is rendered. The appeal shall be heard: no later than twenty (20) days after the notice of appeal is filed. The appeal shall be based on the record, except when the Board of Commissioners, in its sole discretion, requests additional evidence from the interested parties or other witnesses. No appeals will be considered if an appeal is not filed in a timely manner.

Section 2

Section 111.999 of the Covington Code of Ordinances is amended to read as follows:

§ 111.999 PENALTY.

(A) *Advertising.* Any person found guilty of violating any provision of §§ 111.003 through 111.005 shall be deemed guilty of a violation and shall be fined not less than \$10 nor more than \$100.

(B) *Alcoholic beverages.*

(1) Any person found guilty of violating any provision of §§ 111.021, 111.024 through 111.028, 111.030, or 111.031, except § 111.025(R), shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for not more than 90 days, or both fine and imprisonment in the discretion of the court. This penalty may be imposed in addition to any administrative penalty imposed by the City Alcoholic Beverage Control Administrator or the State Alcoholic Beverage Control Board.

(2) Any person, firm, or corporation convicted of violating § 111.025(R) shall be deemed guilty of a misdemeanor and shall be fined not less than \$25 nor more than \$500 in the discretion of the District Court.

(3) Any person, firm, corporation, whether for profit or not for profit, or any officer or individual or agent or employee of the corporation who violates any of the provisions of § 111.029 shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$500 in the District Court or any other court of appropriate jurisdiction, in the discretion of the court.

(4) Any person who violates any provision of § 111.032 shall be deemed guilty of a misdemeanor and shall be fined in an amount of not less than \$50, nor more than \$500, or imprisoned for not more than 90 days, or both fine and imprisonment for each violation, in the discretion of the court. The criminal penalty shall be in addition to any penalty imposed by revocation or suspension of the 2:30 a.m. Permit by the City of Covington Alcoholic Beverage Control Board.

(5) Any person found to be in violation of the provisions of § 111.033 shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than \$500 or six months in jail, or both so fined and imprisoned, at the discretion of a court of appropriate jurisdiction.

(6) Any person found to be in violation of § 111.034 shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than \$500 or imprisoned for not more than six months in jail, or both so fined and imprisoned at the discretion of the court of appropriate jurisdiction.

(7) Any person found to be in violation of the provisions of § 111.035 shall be deemed guilty of a violation and shall be subject to a fine of \$25 for each violation.

(8) Any person found to be in violation of the provisions of § 111.036 shall be deemed guilty of a violation and shall, upon conviction thereof, be fined not less than \$10 nor more than \$100 for each offense.

(C) *Auctions.* Any person who violates any provision of §§ 111.050 or 111.051 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than six months, or both fined and imprisoned.

(D) *Charitable solicitations.* Any person who violates any provisions of §§ 111.060 through 111.076 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than six months, or both fined and imprisoned.

(E) *Detective and guard agencies.* Any person who violates any provision of §§ 111.090 through 111.102 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than six months, or both fined and imprisoned.

(F) *Festival vendor license.* Any person who violates any provision of § 111.260 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500. Each day of continued violation shall be deemed a separate offense.

(G) *Horse-drawn vehicle/carriage businesses.* In addition to any other remedy, any person, firm, or corporation found guilty of violating the provisions of §§ 111.400 through 111.404 shall be deemed guilty of a misdemeanor and shall be fined not less than \$50 nor more than \$200 for each offense (a separate offense shall be deemed committed on each day during or on which a violation occurs or continues), or may be imprisoned for not less than 60 days, or both.

(H) *Itinerant vendors.* Any person, firm, or corporation found to be in violation of the provisions of § 111.141 shall be deemed guilty of a misdemeanor and shall be fined in a sum not more than \$500 or six months in jail, or both so fined and imprisoned, at the discretion of a court of appropriate jurisdiction.

(I) *Junk, scrap metal, precious metal and secondhand dealers, secondhand stores and pawn shops.* Any violation of any provision in §§ 111.150 through 111.161 is classified as a civil offense, pursuant to the authority of KRS 65.8808. The City Code Enforcement Board shall have power to issue remedial orders and impose civil fines to enforce this section. Enforcement of this section shall be in accordance with the procedures outlined in the Code Enforcement Board guidelines located in §§ 92.16 through 92.23. Civil fines for violations of this section shall be those set forth in § 92.99. The city shall possess a lien on property, real or personal, for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing this code, and the cost of placing of a lien on a parcel of real property pursuant to this code. The lien shall be superior to and have

priority over all other liens, except state, county, school district, and city taxes if all legal requirements are satisfied. In addition to the above civil penalties, a person who violates of any provision in §§ 111.150 through 111.161 may be charged with a Class A misdemeanor, and, upon conviction, shall be subject to a fine and/or jail time in accordance with the penalties for a Class A misdemeanor provided for in the Kentucky Revised Statutes.

(J) *Marriage brokers.* Any person convicted of violating the provisions of § 111.170 shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than \$250 or imprisonment for a period not to exceed 30 days, or both, for the first day's violation. Each day's continued violation shall constitute a separate offense.

(K) *Massage therapists and persons providing massages in exchange for money.* Any person who violates any provision of §§ 111.180, 111.181 shall be guilty of a Class B misdemeanor and shall be subject to a fine and/or jail time in accordance with the penalties for a Class B misdemeanor provided for in the Kentucky Revised Statutes.

(L) *Pool and billiard halls.* Any person who violates any provision of §§ 111.200 through 111.212 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than six months, or both fined and imprisoned.

(M) *Public markets.* Any person who violates any provision of §§ 111.250 through 111.256 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than six months, or both fined and imprisoned.

(N) *Rental agencies.* No rental agency, agent, or employee shall violate nor participate in the violation of any of the provisions of §§ ~~111.330~~ et seq. governing rental agencies. Whoever violates the provisions thereof shall be deemed guilty of a misdemeanor and shall be fined not more than \$250 and/or imprisoned for not more than 90 days. Each transaction that violates any provision of §§ 111.330 et seq. governing rental agencies shall constitute a separate violation.

(O) *Sexually oriented businesses.* Any person violating the provision of §§ 111.600 et seq. shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$500 or imprisonment for a period not to exceed one year, or both.

(P) *Taxicabs.* Any person who violates any provisions of §§ 111.270 through 111.292 shall be deemed guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than six months, or both fined and imprisoned.

(Q) *Vending cart sales.* Any person, firm, or corporation found guilty of violating the provisions of §§ 111.500 through 111.508 shall be deemed guilty of a misdemeanor and shall be fined not less than \$300 or imprisoned for not more than 60 days, or both, for the first offense, and fined not less than \$500 or imprisoned for not more than 90 days,

or both, for each offense after the first in the same calendar year, plus mandatory revocation of license with the second offense.

(R) *Temporary sale or display of motor vehicles.* Any person who violates any provision of §§ 111.700 through 111.705 shall be guilty of a violation and on conviction shall be punished by a fine of not less than \$100 or more than \$250 for each offense. Each day of such violation shall constitute a separate offense, and no additional notice other than notice of the original offense shall be required to convict a person for violations resulting from a continuation of such offense.

(S) *Garage and yard sales.*

(1) *Civil penalty.* Any violation of §§ 111.801 through 111.806 and § 111.808 is classified as a civil offense pursuant to the authority of KRS 65.8808. Any person who violates §§ 111.801 through 111.806 and § 111.808 shall be subject to a civil fine of not less than \$100 per day per violation but not more than \$500 per day per violation, or the cost to the city to abate the violation of §§ 111.801 through 111.806 and § 111.808, or both. Each day that a violation of §§ 111.801 through 111.806 and § 111.808 continues shall be deemed a separate offense to a maximum of \$10,000 per citation.

(2) *Liens and costs.* The city shall possess a lien on property for all fines, penalties, charges, attorney's fees, and other reasonable costs associated with enforcing this code and placing of a lien on a parcel of real property pursuant to this code. The lien shall be superior to and have priority over all other liens filed subsequently, except state, county, school board, and city taxes.

(3) *Code enforcement officers.* Code enforcement officers are hereby granted authority to issue citations for violations of this §§ 111.801 through 111.806 and § 111.808, but shall not have the powers of peace officers to make arrests or carry deadly weapons. The person receiving a notice of violation shall appear within a designated time pursuant to the citation.

(T) *Commercial quadricycles.* In addition to any other remedy, any person, firm, or corporation found guilty of violating the provisions of §§ 111.040 through 111.044 shall be deemed guilty of a violation and shall be fined not less than \$15 nor more than \$200 for each offense. In addition, the Covington Police Department is hereby authorized to tow any commercial quadricycle for violation of any parking regulation set forth in Chapter 75 of the Covington Code of Ordinances. Nothing herein shall preclude the appropriate citation of an operator or passenger for violation of any other law.

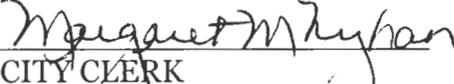
(U) Mobile Food Vendors. A violation of §§ 111.550 through 111.558 shall be a civil offense. Any person who violates §§ 111.550 through 111.558 shall be subject to a civil fine of \$200 per day per violation.

Section 3

That this ordinance shall take effect and be in full force when passed, published, and recorded according to law.


MAYOR

ATTEST:


CITY CLERK

Passed: 1-14-20 (Second Reading)

12-17-19 (First Reading)

Meeting Date:					
ORD.: 1ST		2ND			
OR:					
	Bowman	Downing	Smith	Williams	Meyer
Yeas	✓	✓	✓	✓	✓
Nays					
Present, not Voting					