

ORDINANCE NO. O2016-22

**AN EMERGENCY ORDINANCE ESTABLISHING SECTION 712
"MOBILE FOOD VENDING"
OF THE CODIFIED ORDINANCES OF THE
CITY OF GALLIPOLIS, OHIO**

WHEREAS, the City of Gallipolis is desirous of promoting the health and welfare of the Citizenry by establishing and enforcing certain rules relating to mobile food vending; and

WHEREAS, an integral part of the enforcement of said code provisions is the establishment and enforcement of penalties, fines, executions, and legal remedies for violations; and

WHEREAS, the City Manager has recommended in writing the passage of this Ordinance as an emergency measure as it is necessary for the immediate preservation of the public peace, health, safety and property and in order to provide for the usual operations of the municipal departments.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of Gallipolis, Ohio:

SECTION 1: That Section 712 is hereby established and shall read as follows:

Chapter 712 - Mobile Food Vending

Sections:

712.01 - Definitions.

When used in this chapter:

- (a) "Board" shall mean the Office of Code Enforcement.
- (b) "Commercial zone" shall mean a geographic area that has a combination of public right of way access, vehicular traffic patterns, pedestrian density, and mobility options, such that reasonable access for mobile food vending does not constitute an unreasonable threat to public health and safety.

- (c) "Congestion zone" shall mean a geographic area that has a combination of public right of way parking limitations, meter restrictions, vehicular traffic patterns, pedestrian density, and mobility issues, such that unrestricted access for mobile food vending constitutes an unreasonable threat to public health and safety.
- (d) "Director" shall mean the Code Enforcement Officer, or his or her designee.
- (e) "Department of Health" shall have the same meaning as "licensor" for a mobile vending health license in Ohio Revised Code 3717.01(O).
- (f) "Designated public right of way access permit" shall mean a document issued to a mobile food vending unit such that the unit may operate for a defined period of time in a specific, designated mobile food vending space in the public right of way or in a mobile food vending court, subject to the limitations and provisions of this chapter.
- (g) "Division of Fire" shall mean the Gallipolis Fire Department
- (h) "Riverfront District" shall mean the area of First Avenue immediately between the City Park and the Ohio River.
- (i) "Food" shall mean a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (j) "Food delivery operation" shall mean a food service operation from which food is ordered off-site by a customer, prepared, and delivered to the customer. "Food delivery operation" includes, by way of example and not by way of limitation, pizza delivery, sandwich delivery, restaurant delivery services, or "food delivery sales operations" as defined in Ohio Revised Code 3717.01(H).
- (k) "Food service operation" shall mean, for the purposes of a mobile food vending license, a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. As used in this subsection, "served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation and "prepared" means any action that affects a food other than receiving or maintaining it at the temperature at which it was received.
- (l) "Food trailer" shall mean any vehicle without motive power that is designed to be drawn by a motor vehicle and is specifically designed or used for food vending operations.

- (m) "Food truck" shall mean a vehicle propelled by an engine which has been specifically designed or used for mobile food vending.
- (n) "Food truck industry" shall mean both food trucks and food trailers.
- (o) "Food vending operation" shall mean a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. As used in this subsection, "served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation and "prepared" means any action that affects a food other than receiving or maintaining it at the temperature at which it was received.
- (p) "General public right of way access permit" shall mean a document issued to a mobile food vending unit such that the unit may operate in the public right of way outside designated spaces or mobile food courts in congestion or commercial zones, subject to the limitations and provisions of this chapter.
- (q) "Health license" shall mean an official document issued by a department of health pursuant to Section 3701 of the Ohio Revised Code. Such health license shall be separate from any other license required under this chapter. Such document may be either an annual health license or a temporary health license.
- (r) "Licensing period" shall mean the sixteenth (16th) day of March to the fifteenth (15th) day of March of the next succeeding year.
- (s) "Mobile food vending court" shall mean a location where the public right of way is closed for vehicular traffic on a temporary or permanent basis to allow two or more mobile food vending units to operate from such location.
- (t) "Mobile food vending license" shall mean an official document issued by the Code Enforcement Officer authorizing operation of a mobile food vending unit within the corporate limits of the city of Gallipolis. Mobile food vending license does not include a health license required by Section 3717 of the Ohio Revised Code. Unless otherwise stated, "license" shall have the same meaning as "mobile food vending license."
- (u) "Mobile food vending unit" shall mean a food service operation or retail food establishment that is operated from a food truck, food trailer, pedi-food cart, or pushcart, and that can or does routinely change location. For the purposes of a mobile food vending license, "mobile food vending unit" excludes food delivery operations and vending machines, as defined in Ohio Revised Code 3717.01(L).

(v) "Mobile food vendor" shall mean every corporation, association, joint stock association, person, firm or partnership, their lessees, directors, receivers, trustees, appointees by any court whatsoever, or the heirs, executors, administrators, or personal representatives or assignees of any deceased owner, owning, controlling, operating or managing any mobile food vending unit.

(w) "Non-commercial zone" shall mean all areas within the corporate limits of the city of Gallipolis that have not been designated a "congestion zone" or a "commercial zone." Non-commercial zone includes any public right of way in any other zone

(x) "Operator" shall mean the individual who manages one (1) or more mobile food vending units whether as the owner, an employee of the owner or as an independent contractor.

(y) "Permanently revoke" shall, for the purposes of a mobile food vending license, mean to terminate all rights and privileges under a license for a period of ninety (90) days or greater and to render the holder of a license ineligible to reapply for said license.

(z) "Pedi-food cart" shall mean a vehicle propelled by human power which has been specifically designed or used for mobile food vending and is or may be operated on a road, street or alley.

(aa) "Public event" shall, for the purposes of a mobile food vending license, mean any public activity or gathering or assemblage of people, other than a special event, that is open to the general public for admission, requires payment for entrance, attendance or participation, and requires the issuance of a health license or temporary health license pursuant to Ohio Revised Code 3717.01 for participating mobile food vendors. "Public event" includes, by way of example and not by way of limitation, a sporting event, a street festival, a farmer's market, a fair, a concert, or a theatre production.

(bb) "Public right of way" shall mean any property owned by the city of Gallipolis, including but not limited to, any street, road, alley, sidewalk, vacant lot, or other tract of land.

(cc) "Pushcart" shall mean a vehicle propelled by human power which has been specifically designed or used for mobile food vending. Vehicles not specifically designed for mobile food vending including, by way of example and not by way of limitation, racks, wheelbarrows, dollies, grocery carts, baby carriages, tables, chairs, benches, cabinets, or other furniture and boxes, buckets, tubs, or other containers or

devices which normally rest on the ground whether or not wheels have been attached shall not be licensed as pushcarts.

(dd) "Revoke" shall, for the purposes of a mobile food vending license, mean to terminate all rights or privileges under a license for a period not to exceed ninety (90) days after which the individual must reapply for a license.

(ee) "Retail food establishment" shall, for the purposes of a mobile food vending license, mean a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for sale of food to a person who is the ultimate consumer..

(ff) "Special event" shall, for the purposes of a mobile food vending license, mean any activity or gathering or assemblage of people upon public property or in the public right of way for which a block party, street closure, race event, parade permit, community market, or other like permit has been issued by the city of Gallipolis.

(gg) "Suspend" shall, for the purposes of a mobile food vending license, mean to temporarily deprive a licensee of rights or privileges under a license for a period not to exceed ninety (90) days.

(hh) "Temporary commercial zone" shall mean the closing of one (1) or more parking locations in the public right of way between one (1) or more intersections, while maintaining vehicular traffic access on the street, road, or alley, for the purpose of conducting commercial activity, including mobile food vending.

(ii) "Vending" shall mean the sale of food to a person who is the ultimate consumer. Such sales do not include those from a vending machine, as defined in Ohio Revised Code 3717.01(L).

712.02 - License required for operation.

(a) No individual or organization shall operate, or cause to be operated, any mobile food vending unit within the corporate limits of the city of Gallipolis without a current and valid mobile food vending license issued by the Code Enforcement Officer in accordance with the provisions of this chapter and applicable general licensing requirements contained in these Codified Ordinances.

(b) No individual or organization shall operate, or cause to be operated, any mobile food vending unit within the corporate limits of the city of Gallipolis without a current

and valid health license issued in accordance with laws, rules and regulations established in the Ohio Revised Code, the Ohio Administrative Code, or the Gallipolis City Codes, whichever is applicable.

(c) No commercial sales, commercial sales promoter, or itinerant vendor license shall be required for the operation of a mobile food vending unit.

(d) Mobile food vending units that only operate as part of a special event or public event shall not require a mobile food vending license. Such units must comply with any health licensing requirements of the State.

(e) Nothing in this chapter shall be construed as superseding, supplanting, or otherwise replacing any duty imposed by Ohio Revised Code Chapter 3701 or 3717, or rules or regulations promulgated thereunder, upon an applicant for a health license, or upon a department of health in the conduct of its responsibilities relative to mobile food vending units.

712.03 - Application for license.

(a) An application packet for a mobile food vending license and a health license must be submitted by the owner of the unit to the Code Enforcement Officer. A separate application packet must be submitted for each unit. Application for a mobile food vending license shall be on a form prescribed by the Code Enforcement Officer and shall substantially comply with subsection (b). Application for a health license shall be on a form approved by the State and shall be provided forthwith to Gallipolis Code Enforcement Officer; if, however, the owner of a unit has received a current and valid health license from a department of health other than Gallipolis Code Enforcement Officer, proof of such license must be submitted in lieu of a health license application.

(b) Application for a mobile food vending license shall be made under oath and shall contain the following information and/or material:

- (1) Name, permanent address, telephone number, electronic mail address, date of birth, and driver's license number of the mobile food vending unit owner;
- (2) Business name or DBA, permanent address, and telephone number, if different from the owner information;
- (3) Proof of Ohio Department of Taxation Itinerant Vendors License, if required;
- (4) Proof of insurance, as required by this chapter, or by any city, state, or federal law, rule, or policy;

- (5) A physical description of the unit proposed to be licensed for mobile food vending;
 - (6) Current and valid state vehicle registration information for the unit proposed to be licensed for mobile food vending;
 - (7) Proof of a city income tax filing number or exemption from the city of Gallipolis Division of Income Tax;
 - (8) Proof that the applicant is current and compliant in the payment of any city of Gallipolis taxes on payroll and net profits at the time such proof is submitted; or if the applicant is not current and compliant in the payment of any city of Gallipolis taxes on payroll and net profits, that applicant has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted;
 - (9) Proof of a filing number or exemption from the Ohio Department of Taxation;
 - (10) Affirmation that, upon issuance of a license, the applicant will conduct a criminal background check prior to allowing any person to operate the mobile food vending unit in the public right of way;
 - (11) Affirmation that, upon issuance of a license, the applicant will provide to the Code Enforcement Officer written documentation of any change in the information required by this chapter, as well as written documentation of any modification, damage, destruction, or decommissioning of the unit, within ten (10) calendar days of any such change; and
 - (12) Any other information required by the Code Enforcement Officer or the department of health.
- (c) The Code Enforcement Officer must examine all applications for a mobile food vending license filed under this chapter and make, or cause to be made, any further investigation into the application as is deemed necessary in order to make a timely determination regarding the application.
- (d) The Code Enforcement Officer shall provide a written determination to each applicant. If a complete application for a mobile food vending license is not approved, any reason(s) for that determination must be provided to each applicant in writing.
- (e) Upon approval of the application(s), each unit proposed to be licensed for mobile food vending shall be inspected as provided for herein prior to the issuance of any mobile food vending license or health license. Nothing in this section shall limit the

authority of a department of health to conduct an inspection as otherwise allowed by the State.

(f) Any rules or ordinances that contain information related to the license process or operation of a mobile food unit shall be provided to the applicant.

712.04 - Application fee.

(a) Each application for a mobile food vending license shall be accompanied by a non-refundable application fee in the amount of one hundred dollars (\$100.00).

712.05 - Inspection for license, generally.

(a) Prior to the issuance of a mobile food vending license, every unit must be inspected as provided for herein. Prior to the issuance of a health license, every unit must be inspected as provided for in Ohio Revised Code Chapter 3717 and rules promulgated under such code. If a unit has received a health license from a jurisdiction other than the city of Gallipolis, such unit may be inspected by Gallipolis Code Enforcement Officer, as provided for in Ohio Revised Code Sections 3717.27 and 3717.47.

(b) At least once per licensing period, it shall be the duty of the Code Enforcement Officer to coordinate with Fire Department to establish a single location for the simultaneous inspection and testing of mobile food vending units.

(c) If a complete application for a mobile food vending license is submitted outside the time established in Section 712.05(b), it shall be the duty of the Code Enforcement Officer to coordinate with the Fire Department to establish a single location for the simultaneous inspection and testing of the mobile food vending unit, as applicable. Such inspection must take place within ten (10) days.

(d) If a mobile food vending unit fails any inspection required by this chapter, the owner of such unit may request a re-inspection after responding to and/or correcting any findings, notices, or corrective actions resulting from the inspection. Only the inspection(s) failed must be repeated at a subsequent re-inspection. It shall be the duty of the Code Enforcement Officer to coordinate with Fire Department to establish a single location for the simultaneous re-inspection and testing of the mobile food vending unit, as applicable. Such re-inspection shall take place within ten (10) days of the owner's request for re-inspection.

(e) The Code Enforcement Officer may require the re-inspection of a licensed mobile food vending unit based on information required to be provided under Section 712.03(b)(11). The reason(s) for the re-inspection shall be stated in writing and provided to the owner.

(f) Nothing in this section shall limit periodic inspections by the city of Gallipolis at the discretion of the inspecting authority.

573.06 - Inspection process.

(a) Every mobile food vending unit shall be inspected by the Code Enforcement Officer and Fire Department at least once per licensing period.

(b) During each inspection or re-inspection conducted under this chapter, the city department conducting the inspection or re-inspection shall do all of the following:

(1) Fully and completely inspect each mobile food vending unit; and

(2) Document, in writing, any findings, notices, or corrective actions resulting from the inspection or re-inspection, providing such documentation to the affected owner within a reasonable time.

573.07 - Re-Inspection and license fees.

(a) If a re-inspection is necessary, the initial re-inspection will require no additional fees or charges. For all subsequent re-inspections during a licensing period, the re-inspection fee shall include any fees assessed by Code Enforcement Officer, as well as one hundred dollars (\$100.00) for the Code Enforcement Officer.

(b) For each mobile food vending unit that may operate in the public right of way at the City Park, at the City Pool, and at the City Ball Fields the owner shall pay to the Code Enforcement Officer a non-refundable public right of way license fee, in addition to the fee under Section 712.07(a), for each licensing period. The fee for a license at the City Park shall be one thousand five hundred dollars (\$1500.00) per unit for each licensing period the owner receives such license. The fee for a license at the City Pool shall be seven hundred and fifty dollars (\$750.00) per unit for each licensing period the owner receives such license. The fee for a license at the City Ball Fields shall be seven hundred and fifty dollars (\$750.00) per unit for each licensing period the owner receives such license.

(c) For all private property mobile food vendors, each such applicant shall pay the application fee described above in addition to a license fee of fifteen hundred dollars (\$1500).

(d) There shall be no proration, reduction, or refund of such fees.

712.08 - Requirements for issuing a license.

(a) The Code Enforcement Officer shall issue a mobile food vending license and corresponding decal(s) required by this chapter to an applicant who meets all of the following requirements and in accord with with the lottery system in 712.08(b):

- (1) Who has received approval of an application as provided for in Section 712.03;
- (2) Whose mobile food vending unit has passed the inspections required under this chapter;
- (3) Whose mobile food vending unit is in compliance with all applicable requirements of this chapter and has obtained any permits, licenses or prior approval required by any city, state or federal agency;
- (4) Who has not been denied a license under this chapter within the immediate past year, unless the applicant can and does show to the satisfaction of the License Section that the reasons for such earlier denial no longer exist;
- (5) Who has paid all applicable application and license fees; and
- (6) Who is not otherwise refused a license under the requirements of this chapter.

(b) The Code Enforcement Officer shall choose, by lottery, from all of those applications received by a date to be determined by the Code Enforcement Officer, three applications for licenses at the City Park, one application for a license for the City Pool, and one application for a license at the City Ball Fields.

(c) The Code Enforcement Officer may refuse to issue licenses for operation as required by this chapter to any person:

- (1) Who has been convicted of a felony, misdemeanor or code violation involving a sex offense, traffic in controlled substances, or any offense of violence as defined in the Ohio Revised Code, such conviction being entered within the seven (7) years preceding the date of application; or

(2) Who has been convicted of fraud, deceit, or misrepresentation, or of a theft offense as defined in the Ohio Revised Code, within seven (7) years preceding the date of application.

(d) Decals provided in Section 573.08(a) of this chapter shall reflect the corresponding license number and shall be affixed to the mobile food vending unit in a conspicuous place, as provided for by rules under this chapter.

(e) The Code Enforcement Officer shall keep a record of the identification number of every unit and the date of inspection in its office.

(f) A copy of each unit's health license shall be forwarded to the Code Enforcement Officer, which shall keep a record of the identification number of every unit and the date of inspection.

712.09 - Expiration and renewal of license.

(a) Each license issued under this chapter shall expire on the fifteenth (15th) day of March following the date of issue.

(b) Each licensee must comply with the application and inspection requirements of this chapter to receive a new license for the succeeding licensing period.

(c) Each health license shall expire on the date established by law.

(d) Each health licensee must comply with the application and inspection requirements established by the State, pursuant to Ohio Revised Code Chapter 3717 to receive a health license for the succeeding licensing period.

712.10 - Transfer of license prohibited.

No mobile food vending license or decal issued under this chapter shall be transferred or assigned by the named licensee to any other individual or organization, or to any other mobile food vending unit, nor shall any health license be transferred or assigned by the named licensee to any other individual or organization, or to any other mobile food vending unit. Should a change in ownership of a mobile food vending unit occur at any time, the succeeding owner must comply with the application, inspection and fee requirements of this chapter, as well as any application, inspection and fee requirements for a health license.

712.11 - Insurance required for operation.

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

(a) Providing to the Code Enforcement Officer a certificate of general liability insurance from an insurance company duly licensed to transact such business in the State or of an insurance company not authorized to transact business in this state, provided such insurance is written through a citizen of this state duly licensed as provided by Ohio Revised Code Sections 5905.03, et seq., in the amount of no less than

- (1) One million dollars (\$1,000,000.00) for food trucks;
- (2) One million dollars (\$1,000,000.00) for food trailers;
- (3) Three-hundred-thousand dollars (\$300,000.00) for pedi-food carts; and
- (4) Three-hundred-thousand dollars (\$300,000.00) for pushcarts.

(b) Affirming, in writing, that the individual or organization will forever indemnify and hold harmless the City and all of its agents, employees and representatives from and against all claims, damages, losses, suits and actions, including attorney's fees, arising or resulting from operation of a mobile food vending unit in the City of Gallipolis.

712.12 - Mobile food vending unit size, description, requirements, and prohibited equipment.

(a) A food truck, food trailer, or pedi-food cart operating in the public right of way shall be thirty (30) feet or less in length.

(b) A pushcart operating in the public right of way shall be:

- (1) Four (4) feet or less in width, including wheels;
- (2) Nine (9) feet or less in length, of which not more than six (6) feet of length shall be used for the display storage, or preparation of items for sale or barter; and
- (3) Six and one-half (6½) feet or less in height.

(c) A mobile food vending unit operating in the public right of way utilizing a generator shall meet one (1) of the following:

- (1) The generator shall be wholly enclosed inside the frame of the mobile food vending unit; or
- (2) The generator shall be external to the unit, but fully enclosed other than space necessary for ventilation, securely affixed to the unit during operation, placed in a location as prescribed or approved by the Division of Fire, and, during operation, produce less than an average of sixty-six (66) decibels of sound as measured nine (9) feet from the generator.

(d) For mobile food vending units, the Code Enforcement Officer or designee shall promulgate such rules regarding mobile food vending unit size, description, construction, requirements, and prohibited equipment as may be necessary to protect the public health, safety, sanitation and general welfare.

712.13 - General operational requirements.

(a) The owner and/or operator of a mobile food vending unit shall abide by all of the following:

- (1) For any refuse collected from the operation of the unit, refrain from causing or allowing the disposal of such refuse in or beside any public trash container at any time, or the disposal of such refuse in or beside any private trash container without permission;
- (2) For any recycling collected from the operation of the unit, refrain from causing or allowing placement of such recyclable materials in or beside any private recycling container without permission, or the placement of such recyclable materials in or beside any public recycling container, provided that recyclable materials may be placed in a public bulk drop-off recycling bin;
- (3) Refrain from causing or allowing the illegal disposal or release of oils or greases;
- (4) Refrain from causing or allowing to be placed in the public right of way any seating, signage, flower pots, or other temporary structures, with the exception of trash receptacles, structures necessary to meet requirements under Section 712.13(b)(6), or licensed pushcarts;

- (5) Post, at the point of sale, the name, permanent address, telephone number, and electronic mail address of the owner of the mobile food vending unit;
 - (6) Post, at the point of sale, the mobile food vending license;
 - (7) Post, at the point of sale, the most recent health license from any department of health;
 - (8) Post, at the point of sale, the telephone number to report complaints to the city of Gallipolis; and,
 - (9) Refrain from otherwise causing or allowing the operation of a mobile food vending unit in a manner that violates this chapter or applicable sections of the Gallipolis City Codes.
- (b) The owner and/or operator of a mobile food vending unit shall abide by all of the following requirements when vending from or on the public right of way:
- (1) Maintain a twenty-five (25) foot radius around the unit free and clear of any refuse, and, at the conclusion of vending operations each day, collect and dispose of any refuse within the aforementioned radius as provided for herein;
 - (2) Provide sufficient, accessible, private refuse disposal to maintain sanitary conditions in and about the mobile food vending unit, provided that private recycling container(s) may also be used to supplement this purpose;
 - (3) Post, in a conspicuous place, a notice to customers requesting that they use the refuse and/or recycling receptacle(s) provided;
 - (4) Legally dispose of all refuse and/or recyclable materials collected under this section;
 - (5) Only sell or serve food sidewalk side, if vending from a street, road or alley;
 - (6) Comply with applicable provisions of the Americans with Disabilities Act related to pedestrian use of city sidewalks;
 - (7) Post, in a conspicuous place, any reservation confirmation required for mobile food vending in the public right of way;
 - (8) Offer to each customer a receipt; such receipt must be given by either physical or electronic means unless declined by the customer, and must contain, at a minimum, the name and telephone number of the mobile food vending unit or owner, the date of purchase, and the amount of purchase;
 - (9) Comply with all applicable congestion, commercial, and non-commercial zone requirements;

- (10) Comply with all established parking rules and regulations, including prompt and timely payment of any applicable parking meter fees;
- (11) Refrain from causing or allowing any unauthorized person to enter an enclosed unit during operating hours;
- (12) Refrain from causing or allowing the projection of music from a mobile food vending unit except when temporarily operating from a street, alley or road.
- (13) Refrain from causing or allowing the use of any sound system to announce the availability of goods.

712.131 - Operation in the public right of way.

(a) No individual or organization shall operate or cause to be operated any mobile food vending unit in the public right of way within the corporate limits of the city of Gallipolis unless issued a license by the Code Enforcement Officer.

(b) Mobile food vending units operating in the public right of way shall comply with the requirements of Titles 9 and 21, where applicable. No individual or organization shall cause or allow the operation of a mobile food vending unit in any of the following:

- (1) A handicap parking space;
- (2) A valet zone during hours of normal operation;
- (3) A loading zone during hours of normal operation;
- (4) Any metered parking space with a maximum parking time of thirty (30) minutes or less;
- (5) Any taxi stand during hours of operation;
- (6) Any bus stop at any time;
- (7) The public right of way abutting a commercial establishment utilizing a current and valid sidewalk dining permit, as this constitutes unreasonable interference with pedestrian traffic;
- (8) The public right of way abutting public or city permitted bicycle parking, a fire hydrant, or a public trash or recycling receptacle;
- (9) Any non-commercial zone without a temporary commercial permit;
- (10) Anywhere in the public right of way when a street and/or sidewalk closure has been issued by the city of Gallipolis for construction, maintenance, or any other

permitted purpose, unless authorized by written agreement with the individual or entity requesting the closure;

(11) The public right of way between the hours of 4:00 p.m. and 10:00 a.m.;

(12) The public right of way within two hundred (200) feet of any pre-K-12 school, provided that nothing herein shall prohibit operation on school property at the discretion of the school;

(13) The public right of way on either side of the portion of a street, road or alley that abuts any city of Gallipolis Recreation and Parks facility, other than administrative facilities or facilities within the City Park, without a temporary commercial permit or as part of a special event or public event;

(14) A sidewalk unless the unit is a pushcart;

(15) Within one-thousand (1,000) feet of any special event, except as follows: with the express written permission of the event organizer; as an authorized participant in said event; or utilizing a designated mobile food vending access permit in an area not impacted by a street closure;

(16) The public right of way if the unit is not parallel to the curb;

(17) The public right of way on any bridge or other elevated roadway;

(18) The public right of way so as to unreasonably impede the flow of pedestrian traffic, including pedestrian ingress and egress from a building abutting such right of way;

(19) The public right of way so as to unreasonably impede the flow or operation of vehicular traffic; or

(20) A parking space unavailable for mobile food vending, as provided for in subsection (c).

(c) The Code Enforcement Officer, in consultation with the director of public safety or designee, may designate parking spaces as unavailable for mobile food vending if operation of a mobile food vending unit at such location would constitute a threat to public health and safety. Such designation may be initiated by the department; at the request of the director of public safety or designee; or as follows:

(1) A property owner or occupant-tenant abutting such location may submit to the director of public service or designee a written request for such designation.

- (2) Such request must be on a form prescribed by the Code Enforcement Officer, setting forth the specific reasons for the request and any supporting information required by the director or designee.
- (3) To submit such request, an occupant-tenant must possess a current and valid lease.
- (4) To submit such request, an occupant-tenant must attest that either the governing lease requires the occupant-tenant to take such action, or he or she has made a good faith effort to obtain the property owner's permission prior to submitting such request, whichever is applicable.
- (5) For the purposes of this subsection, "good faith effort" includes, by way of example and not by way of limitation, an electronic or physical request for permission which is dated at least seven (7) days prior to the date of request, or an affidavit stating that the owner was contacted at least seven (7) days prior to the date of request, but such owner refused or failed to respond to the request.
- (6) The decision of the Code Enforcement Officer shall be rendered in a reasonable amount of time, as established by rules, and shall be final.
- (7) Once decided, no additional requests for designation or removal of designation for such location may be considered within twelve (12) consecutive months.
- (d) The Code Enforcement Officer shall establish, modify and change from time to time, rules and regulations for subsection (c) and reasonable costs associated with such request.

712.132 - Operation in a non-commercial zone.

- (a) No mobile food vending unit may operate in the public right of way in a non-commercial zone.

712.133 - Special events and public events operation, licensed mobile food vending units.

- (a) No mobile food vending license shall be required for any mobile food vending unit that operates exclusively within special events and/or public events.

- (b) If a mobile food vending unit operates in the public right of way solely due to its participation in a special event or public event, such unit shall not be required to obtain a public right of way license.
- (c) No mobile food vending unit with a current and valid license shall require an inspection or inspection fee by Gallipolis Public Health, the License Section or the Division of Fire in order to participate in a special event.
- (d) Proof of current and valid license shall be offered to the event organizers upon application.
- (e) Nothing in this section shall limit periodic inspections by the city of Gallipolis at the discretion of the inspecting authority.

712.134 - Operation on private property.

- (a) No individual or organization shall operate or cause to be operated any mobile food vending unit on private property within 500 feet of any brick and mortar restaurant or other establishment which derives at least 30% of its revenue from the sale of food.

712.14 - Record of mobile food vending unit rental.

- (a) Mobile food vending unit owners shall keep a record of all leases and rentals of such units for operation by any individual or organization other than the owner or owner's operator. This record shall include the date of rental or lease, length of rental or lease, and name, address, date of birth, telephone number and commercial sales license number, if applicable, of the lessee or renter.
- (b) The owner of the mobile food vending unit must provide the lessee or renter with a copy of all applicable rules, regulations and ordinances regarding mobile food vending, and the contact numbers for the related inspecting authorities.
- (c) The renter or lessee must comply with all sections of this chapter, and all rules, regulations and ordinances that relate to the operation of a mobile food vending unit.
- (d) The mobile food vending unit shall be made available for inspection by the city of Gallipolis regardless of any rental or lease.

712.15 - Suspension, revocation or permanent revocation of license.

(a) The department of health may suspend or revoke the health license of any mobile food vending unit and/or owner pursuant to local and state rules and regulations. "Suspend" and "revoke" shall have the same meaning as Ohio Revised Code Chapter 3717 for the purpose of this subsection.

(b) The Code Enforcement Officer may suspend, revoke, or permanently revoke the license of any mobile food vending unit and/or owner who engages in any of the following conduct:

- (1) Obtaining a license by a false statement in his or her application;
- (2) Failing to comply with the mobile food vending unit operation and vehicle standards established in this chapter;
- (3) Misrepresenting or otherwise making false statements in his or her affidavit that he or she would conduct criminal background checks on all employees;
- (4) Failing to post and maintain required decal(s) and information;
- (5) Failing to offer receipts to customers or to supply receipts when the customer answers in the affirmative;
- (6) Receiving citations for impeding the flow or operation of pedestrian and vehicle traffic, creating unsanitary conditions, becoming an attractive nuisance for children or any other infraction of the Gallipolis City Codes;
- (7) Repeated violations of Titles 9 or 21;
- (8) Failing to pay parking meters or obtain reservations when applicable;
- (9) Failing to comply with Section 573.14;
- (10) Failing to appear before the director when properly notified to do so;
- (11) Verbally threatening or attempting to intimidate any employee of the city of Gallipolis for actions taken in the enforcement of the provisions of this chapter;
- (12) Failing to maintain general liability insurance for each mobile food vending unit;
- (13) Conviction for any crime committed in or from the mobile food vending unit;
- (14) Any other form of misconduct, which shall mean conduct apart from the generally accepted practices of mobile food vending unit owners and employees, which demonstrates personal, corporate, managerial, ethical or professional characteristics or disposition rendering a person unsuitable to own or work in a mobile food vending unit.

712.16 - Appeals.

(a) Any individual or organization who has been refused a license or renewal of a license under this chapter or has had a license issued under this chapter suspended or revoked, may appeal such decision to the City Commission which appeal shall be heard at the next scheduled meeting of the Commission and decided by majority of present members of the Commission.

(b) Any individual or organization who has been refused a health license or renewal of a health license may appeal such decision as provided by local and state rules and regulations.

712.17 - Severability clause.

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

712.99 - Penalties.

A violation of any section of this chapter shall be deemed a criminal violation as follows:

(a) Whoever violates Section 712.02 shall be guilty of misdemeanor of the first degree. Any such violation shall constitute a separate offense on each successive day continued. Strict liability is intended to be imposed for a violation of this section.

(b) Whoever violates any of the following sections shall be guilty of a minor misdemeanor: [Subsections] 712.13(a)(1), (a)(2), (a)(3), (b)(1), (b)(2), (b)(3), or (b)(4). Strict liability is intended to be imposed for a violation of these sections.

(c) A violation of any other section of Chapter 712 may be grounds for the suspension, revocation or permanent revocation of the MFV unit license or in the case of a new application may be grounds to refuse to issue such license for a determinate period of time up to ninety (90) days or permanently, in addition to any other penalties established for such violation in applicable sections of the Gallipolis City Codes.

BE AND HEREBY IS ESTABLISHED, AND;

SECTION 2: That this Ordinance shall take effect and be in full force upon passage as an emergency measure.

PASSED: May 3, 2016

ATTEST:

Annette M. Landers
Clerk of the City Commission
Annette M. Landers

Tony Gallagher
President of the City Commission
Tony Gallagher

The foregoing Ordinance is hereby approved as to form.

Adam R. Salisbury
Gallipolis City Solicitor
Adam R. Salisbury