



OFFICE of the CITY ATTORNEY

legislative update

Food trucks have been a confusing business as to what, where, when and how they can be regulated. The past legislative session passed a law that addresses some of the prior issues. This bulletin describes that law and provides references and examples of regulations that may still lawfully be applied to food trucks and what regulations cannot.

HB 1193 “Deregulation of professions and occupations” passed and became effective July 1, 2020. http://laws.flrules.org/files/Ch_2020-160.pdf It is quite lengthy and section 75 specifically addresses food trucks by the creation of FS 509.102 “Mobile food dispensing vehicles.”

The effect of this new law is that permits, licenses, registrations and fees related to food trucks cannot be required by a city, county or other local governmental entity as a requirement or as a condition for a food truck to operate within their jurisdiction.

Regulations and laws that may apply to food trucks, and do not exist solely to regulate the ability of a food truck to operate within a jurisdiction simply because it is a food truck, are still applicable and enforceable. For example, parking in a no parking zone on a city street, violating a park rule prohibiting any vehicle from parking on the grass, or safety laws such as those enforced by the Fire Marshal regarding proximity requirements for food cooking equipment.

The state of Florida requires that food trucks be licensed pursuant to FS 509.241 and FS 509.251.

FS 509.241 requires public lodging and public food establishments to obtain a license from the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. It is a 2nd degree misdemeanor for such a business to operate without a license and law enforcement is directed to “provide immediate assistance in pursuing an illegally operating establishment.”

FS 509.241(3) requires that the license be displayed in the office or lobby. Food service establishments that provide catering must have their state license number displayed on all advertising for catering services.

FS 509.251 describes the fees that the State of Florida may charge and includes a definition of “public food service establishment.” That definition includes food trucks (below).

(5)(a) “Public food service establishment means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.” The definition includes certain culinary schools if food is offered to the general public (see the statute).

Exceptions

Exceptions from the state license requirements to public food service establishments are listed below. Please note that the exceptions refer to food service establishments, or for our purposes, food trucks, only include those that are “maintained and operated” by the nonprofit, school, or religious group within the event described below for which it is utilized:

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty;
- Any place maintained and operated by a public or private school, college, or university to temporarily serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization to temporarily serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests;
- Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12;
- Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation;

- Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters;
- Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule;
- Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072;
- Any research and development test kitchen limited to the use of employees and which is not open to the general public.

Even those exempted above must still provide certain records and documentation upon request to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation as provided in the statute.

Below is the new section of law in its entirety:

Section 75. Section 509.102, Florida Statutes, is created to read:

509.102 Mobile food dispensing vehicles; preemption.—

(1) As used in this section, the term “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.

(2) Regulation of mobile food dispensing vehicles 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 within the entity’s jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles from operating within the entirety of the entity’s jurisdiction.

(3) This section may not be construed to affect a municipality, county, or other local governmental entity’s authority to regulate the operation of mobile food dispensing vehicles other than the regulations described in subsection (2).

(4) This section does not apply to any port authority, aviation authority, airport, or seaport.

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