

**Sale of Food and Merchandise Ordinance
of the
Town of Mount Desert**

Enacted May 5, 2015

Amended May 2, 2017

Amended May 7, 2019

Amended August 11, 2020

Article I – Purpose

Sec. 1. The purpose of this Ordinance is to regulate businesses in Mount Desert which offer food and/or merchandise for sale to persons using public property, public streets, sidewalks and other public ways within Mount Desert, so as to prevent, to the extent possible, the congestion of pedestrian and/or vehicular traffic on said ways; and so as to keep said ways as clean as possible and free of discarded food, merchandise, wrappings, bags, packages and other items of litter.

Article II – Definitions

Sec. 2. **Bakery.** ‘Bakery’ means a business in which bread, biscuits, pretzels, crackers, buns, rolls, macaroni, cakes, pies or any food products, of which flour or meal is a principal ingredient, which are prepared on the premises where sold.

Sec. 3. **Business.** ‘Business’ includes any activity engaged in or caused to be engaged in by any person with the object and purpose of economic gain, benefit or advantage, either direct or indirect.

Sec. 4. **Merchandise.** ‘Merchandise’ includes the wares, goods, and/or commodities customarily bought and sold, either at retail or wholesale, by merchants in the exercise of trade or business.

Sec. 5. **Mobile Food Vendor.** A mobile food vendor is a self-contained food service operation, located in a readily movable motorized wheeled or towed vehicle, used to store, prepare, display or serve food intended for individual portion service.

Sec. 6. **Mobile Merchandise Vendor.** A mobile merchandise vendor is a self-contained operation selling merchandise from a readily moveable motorized or otherwise moveable or non-permanent conveyance.

Sec. 7. **Mobile Vending Unit.** A mobile motorized wheeled or towed vehicle used to store or display merchandise and/or prepare and serve food.

Sec. 8. **Mobile Vending License.** A document issued by the Town of Mount Desert that authorizes mobile vending.

Sec. 9. **Parking Space.** A parking space is a location that is designated for parking, either paved or unpaved. It is usually designated by a white-paint-on-tar rectangle indicated by three lines at the top, left and right of the designated area.

Sec. 10. **Person.** As used in this ordinance, the word 'person' includes corporate as well as natural.

Sec. 11. **Structure.** 'Structure' means anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground.

Sec. 12. **Town Owned Parking Facility.** A town-owned parking facility is a parking lot owned and maintained by the Town of Mount Desert.

Article III – Requirements

With the exceptions noted in Article IV below, any person or persons conducting or causing to be conducted any business within the Town of Mount Desert, which offers for sale either at retail or wholesale items of food or merchandise shall conform to the standards outlined below:

1. All sales must be conducted within a structure permanently attached to the land on which it is located;
2. In the case of food sales, an area and/or means of consuming food on the premises must be provided.

With the exceptions noted in Article IV below, it shall be unlawful for any person or persons, conducting or causing to be conducted, any business within the Town of Mount Desert, to offer for sale, either at retail or wholesale, any merchandise in such a manner as to require or permit said sales to be made to persons who are using public property, public streets, sidewalks or other public ways while in the act of purchasing said merchandise.

Article IV – Exceptions

Sec. 1. The provisions of this Ordinance shall not be construed so as to apply to businesses which are in the nature of grocery stores, markets or bakeries.

Sec. 2. The provision of this Ordinance shall not apply to sales conducted by eleemosynary, educational and philanthropic organizations with the written permission of the Board of Selectmen of Mount Desert, which permission shall be given by said Board upon finding that:

1. the organization conducting the sales is in fact eleemosynary, educational or philanthropic;
2. the sale will be of a temporary nature lasting not more than two (2) days;
3. the sale will not be conducted in such a manner and/or place as to create congestion of the public streets, sidewalks or other public ways; and
4. said sale would not be in violation of any State statute, or other local ordinance, rule or regulation.

Sec. 3. The provisions of this Ordinance shall not apply to businesses which were in operation on or before March 3, 1986, and which were conducted from a structure or structures which were and are permanently attached to the land on which they were and are located and not of a movable or portable nature. Further, this exception shall not apply to said businesses if at any time they cease to be in operation for a period of thirty (30) continuous days in any two (2) year period; and with respect to businesses which are operated on a seasonal basis, this exception shall not apply if at any time said businesses cease to be in operation for a period of thirty (30) continuous days in any one season.

Sec. 4. The provisions of this Ordinance shall not apply to mobile food vendors who obtain a license pursuant to Article V below. This exception shall not apply or extend to mobile merchandise vendors.

Article V – Mobile Vending License

Sec. 1. License Required

1. All Mobile Vendors must have a license issued by the Code Enforcement Officer of the Town of Mount Desert, Maine. Additionally, for all Mobile Food Vendors in the Rural Woodland District, a conditional use permit shall be obtained from the Town of Mount Desert Planning Board.
2. A Mobile Vendor's license may be issued only for the sale of food and non-alcoholic beverages.
3. In addition to these regulations, the Mobile Vendor is responsible for obtaining all other necessary licenses, permits or authority required by law.
4. License certificates shall be attached to the Mobile Vending unit where they are readily visible.
5. Mobile Vending Licenses for all Mobile Food Vendors in the Rural Woodland District shall be valid for one (1) year from the date of issuance.
6. Mobile Vending Licenses for all Mobile Food Vendors in the Shoreland Commercial District shall be valid for three (3) years from the date of issuance and must be renewed annually.

Sec. 2. Application

1. Each applicant for a Mobile Vending license shall provide a specific description of the business, the goods to be sold, the equipment to be used and the proposed hours of operation, as well as a photo of the Mobile Vending Unit.
2. The license fee for a Mobile Vending License shall be determined by the Town of Mount Desert Board of Selectmen on an annual basis.
3. All new and renewal applications are due on or before February 1st of each year.
4. If all of the designated locations within Town-owned parking lots in the Shoreland Commercial District are not licensed by March 1st, late applications will be considered by the Board of Selectmen on a first come, first serve basis.
5. No applicant's license shall be issued without the applicant first filing with the Town Clerk a Certificate of Insurance that evidences public liability insurance of \$1,000,000 and naming the town as an additional insured. The policy shall also provide for notice to the Clerk not less than thirty (30) days prior to any cancellation of insurance. Such insurance shall be maintained at all times while applicant is engaged in mobile vending activities.

Sec. 3. Conditions of Operation for Mobile Vendors in the Shoreland Commercial District.

1. Mobile Vendors may operate only in designated locations within town-owned parking lots in the Shoreland Commercial District.
2. No more than five (5) Mobile Vendor licenses shall be in effect at any one time.
3. If the number of applications exceeds the available locations, vendors will be selected via an annual lottery based on vendor's preferred location for the season and order of selection. Lottery selection will occur at the second Board of Selectmen's meeting in February each year.
4. Approved vendors may operate from 6:00 a.m. until 10:00 p.m. If a vendor fails to operate for more than one (1) week in any month from June through September, his/her license may be revoked. The Town of Mount Desert Police Department has the right to close down a mobile vending unit where in the opinion of the Department, the unit is causing or contributing to an imminent public safety hazard.
5. When not in operation, Mobile Vending Units must be removed from the site.
6. Mobile Vendors must operate in a clean and neat manner and must supply a trash receptacle and one recycling receptacle in a convenient location that does not impede pedestrian or vehicular traffic and is sufficient in size to collect all waste generated by customers and staff of the mobile vending operation. All trash and debris generated by customers and staff shall be collected by the Mobile Vendor and removed from the site each day.
7. Mobile Vendors shall not use stakes, rods, or any method of support that is required to be drilled, driven, or otherwise fixed in asphalt pavement, curbs, sidewalks or buildings.
8. Mobile Vendors shall not provide or allow any dining area, including, but not limited to tables, chairs, benches, or stand up counters.
9. No amplified music or other sounds from Mobile Vendors are permitted.

10. Mobile Vendors shall not solicit business from pedestrians or persons in vehicles, and shall not conduct business with persons in vehicles.
11. Mobile Vendors shall not have lighting except localized lighting that is used on or inside the mobile vending unit for the purpose of product preparation and menu or product list illumination.
12. The Mobile Vendor sales area shall not exceed more than three (3) parking spaces or up to 600 square feet in area.
13. Vinyl wrapping, decals, stickers, painted text and/or graphics and menu boards affixed to the **Mobile Vending Unit** shall be the only signs permitted for Mobile Vendors.
14. Any umbrellas or coverings shall not extend more than two (2) feet beyond the outer edge of the **Mobile Vending Unit** or vehicle.
15. Size limitations: Mobile Vending Units must not exceed twelve (12) feet in width, including any side extensions or awnings. Mobile Vending Units parking in parking spaces on town-owned property must not exceed thirty (30) feet in length, including the length of any trailer hitch, trailer, or other extension.

Sec. 4. Conditions of Operation for Mobile Vendors in the Rural Woodland District.

1. Mobile Vendors may operate only as approved by the Planning Board as part of a Conditional Use Approval.
2. Approved vendors may operate from 6:00 a.m. until 10:00 p.m. The Town of Mount Desert Police Department has the sole discretion to require a cessation in operations of a mobile vending unit where, in the opinion of the Department, the unit is causing or contributing to a breach of the peace or other adverse public safety conditions.

Failure to adhere to these conditions of operation is cause for revocation or suspension of a Mobile Vending License by the Code Enforcement Officer.

Article VI – Penalty and Enforcement

Sec. 1. Any person or corporation who violates, disobeys, refuses to comply with, or resists the enforcement of any provision of this ordinance shall upon conviction, be fined not less than One Hundred Dollars (\$100), or more than Two Thousand Five Hundred Dollars (\$2,500) for each offense. Each violation shall be deemed a separate offense.

In addition, pursuant to the Maine Revised Statutes, Title 30-A, Part 2 Subpart 6-A, Chapter 187, Subchapter 5 (30-A M.R.S.A. § 4452), the Town may recover all costs of enforcement of this ordinance, including reasonable attorney fees.

This ordinance shall be enforced by the Code Enforcement Officer of the Town of Mount Desert.

Sec. 2. In addition to any other penalty provided by the law, the commission of acts prohibited by this Ordinance shall constitute a nuisance and may be abated by the Town seeking an injunction to prohibit further and continued violation thereof.

Article VII – Separability

Sec. 1. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

Article VIII – Miscellaneous Provisions

Sec. 1. This ordinance is adopted pursuant to the Maine Revised Statutes, Title 30-A, Part 2 subpart 4, Chapter 141 (30-A.M.R.S.A. § 3001, et seq.).

Sec. 2. The effective date of this Ordinance is May 5, 2015.