

ORDINANCE 2004

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ANKENY, IOWA, 2008, BY ADDING A NEW SECTION ENTITLED MOBILE FOOD VENDORS

BE IT ENACTED by the City Council of the City of Ankeny, Iowa:

SECTION 1. NEW CHAPTER. The Code of Ordinances of the City of Ankeny, Iowa, 2008 is amended by adding a new Chapter 124 entitled MOBILE FOOD VENDORS, is here by adopted to read as follows:

124.01 DEFINITION.

1. Mobile Food Unit may be defined as, but is not limited to, the below descriptions:
 - A. Food Cart — a non-self-propelled vehicle food establishment which facilitates the preparation, marketing, and sale of food that is whole and unprocessed, prepared, packaged, and/or non-potentially hazardous or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.
 - B. Food Stand — any article, device, fixture or equipment that is used as a place to provide food and includes, but is not limited to, food tents, food shacks, food pods or food booths that are non-motorized, with or without a mobile kitchen, and facilitates the preparation, marketing, and sale of food that is whole and unprocessed, prepared and/or not potentially hazardous. Food stands are not lawfully permitted as a permanent structure.
 - C. Food Truck — a self-propelled or non-self-propelled vehicle or trailer that is operable and currently licensed through the Department of Motor Vehicles. A food truck contains a mobile kitchen and facilitates the preparation, marketing, and sale of food that is whole and unprocessed, packaged, prepared, and/or not potentially hazardous.
2. Mobile Food Vendor: The person, corporation, entity or group obtaining the license to prepare, market or sell food from a mobile vending unit or food stand.

124.02 MOBILE FOOD UNIT.

1. Mobile Food Unit Licensing. It shall be unlawful for any person to engage in the sale of food or beverages to the public from a Mobile Food Unit within the corporate limits of the City without first obtaining a mobile food unit license from the City, in addition to any other state, federal, or county permits, certifications, and licenses.

- A. A mobile food unit license is an annual license that expires on March 31 each year and must be renewed prior to the first event after that date. A single-event mobile food unit license may be issued for a duration of no more than three (3) consecutive days.
 - B. Each mobile food unit shall be licensed separately. No license transfer is allowed.
 - C. Although certain activities may be exempt from the licensing requirements of this chapter, any food service to the public in the City is expected to comply with all other local, county and state requirements for health inspections, licensing, safety, and fire code requirements.
 - D. The following shall be exempt from this requirement:
 - (1) Catering businesses.
 - (2) Grilling and food preparation activities of brick and mortar establishments on the establishment's premises for immediate consumption by patrons or employees.
 - (3) Concession stands associated with sports or recreational venues that have been approved as part of a site plan or permitted conditional use permit for the venue.
 - (4) City-sponsored events held on City property.
 - (5) Local Residents and Farmers participating in the "Uptown Ankeny Farmers Market" from May to September each year held at the Ankeny Market & Pavilion.
2. License/Inspection Fee(s). At the time of the submittal of a license application, the applicant shall pay to the City Clerk's Office the applicable license fee in addition to any applicable inspection fee(s).
- A. The amount of the license and applicable inspections fee(s) shall be determined in accordance with an established fee schedule, which fee schedule may be modified from time to time with approval of the council.
 - B. Any licensee who surrenders their license prior to the date of expiration shall not be entitled to a refund of any portion of the fee.
3. Mobile Food Unit Licensing Application.
- A. Filing. Application requests shall be filed with the City Clerk's Office. No application request shall be accepted for filing and processing unless it conforms to the requirements of this title. This would include a complete and true application, all of the required materials and information prescribed, and is accompanied by the appropriate fees.
 - B. Timely Submittal. Unless otherwise provided herein, complete applications and all supporting documents, including background checks and operational permits (if applicable), must be submitted to the City Clerk's Office not less than ten (10) business days prior to the proposed start date of the mobile food unit

activities. The City Clerk's Office reserves the right to reject any applications that have not been timely submitted to the City Clerk's Office.

C. Applicant's Responsibility. Receiving approval of a mobile food unit license from the City Clerk's Office shall not preclude, supersede, circumvent, or waive the applicant's responsibility to obtain any additional permits, licenses, and approvals for other applicable local, state, and federal regulations.

D. Application Fee. The application fee shall be paid by the applicant for the permit upon submission of the application. The application fee shall be nonrefundable. No fee is required for a permit issued to City, State or Federal government or any governmental subdivision or agency.

E. Application Contents. Application shall be made on a form provided by the City Clerk's Office and shall include:

- (1) Full name of the applicant.
- (2) Applicant's contact information including mailing address, phone numbers, and e-mail address.
- (3) Regulatory authorities, such as State or County, inspection certificate.
- (4) Description of the kitchen facilities, cooking facilities, preparation area, and safety features (such as, but not limited to, suppression system) of the mobile food unit.
- (5) Vehicle registration, if applicable.
- (6) Photographs of the mobile food unit from the front, side, and back.
- (7) Overall size of the vehicle (length and width).
- (8) Copy of the Ankeny Fire Department inspection certificate for all Class II, III and IV type food vendors. Classifications are determined by the Iowa Department of Inspections and Appeals Guideline.
- (9) Written consent of the property owner (s) or lessee (s) to use the property on which they propose to operate and acknowledging property owner or lessee is jointly and severally, with the vendor, responsible for compliance with this chapter and to ensure the safety of pedestrians and access of emergency vehicles to and around the site.
- (10) Proof of general liability insurance in the amount of at least \$500,000 per occurrence /\$1M aggregate and \$500,000 for property damage. A certificate of insurance naming the City of Ankeny as a "Certificate Holder" shall be delivered to the City Clerk's Office prior to the issuance of a mobile food vendor license.
- (11) Permit application fee(s).

F. Character of Applicant. Upon receipt of the complete application as required by this chapter, the applicant shall be required to complete a background check through a preferred vendor of the City of Ankeny. Upon completion of the background check, Ankeny Police Department shall investigate the applicant as deemed necessary for the protection of the public's health, safety, welfare, and good.

(1) Satisfactory Character and Business Responsibility. If, as a result of such investigation, the applicant's character and business responsibility are found to be satisfactory, the City Clerk's Office may endorse approval on the application and a license may be issued.

(2) Unsatisfactory Character and Business Responsibility. If, as a result of such investigation, the applicant's character and business responsibility are found to be unsatisfactory such that would harm the public good, the police chief or the chief's designee may endorse on such application disapproval and state reasons for disapproval and return the application to the City Clerk's Office. The City Clerk's Office shall notify the applicant in writing that the application has been disapproved, state the reasons for the denial, and the applicant's right to appeal under 124.02 section 4. The following are character requirements for obtaining a Mobile Food Unit License:

a. Applicant must possess a valid driver's license, unless the applicant will not be utilizing a motor vehicle for food vending purposes.

b. The applicant has not had any misdemeanor convictions, excluding traffic law violations, in the past 2 years.

c. The applicant has not had any felony level criminal charges regardless of conviction status in the past 5 years.

d. The applicant has not been convicted of, pled guilty to or stipulated to the facts of any felony level crime in the past 10 years.

e. The applicant has not been convicted of, pled guilty to or stipulated to the facts of any forcible felony, including any felony child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree or burglary in the first degree, or any sexually motivated crime.

4. Right to Appeal. Any applicant whose application for license was disapproved under section 3(E)(2) may appeal to the City Council at its next regularly scheduled meeting by filing with the City Clerk's Office a written request for an appeal to the City Council at least seven (7) days prior to the meeting. As a result of this appeal, the City Council may affirm, modify or reverse the decision of the Clerk not to issue the license. If the application for license is denied, the applicant is not eligible for the issuance of a license under this chapter for a period of one year from the date of notification that the license application was disapproved, was served in person or deposited in U.S. mail.

A. Applications Deemed Withdrawn. Any application received shall be deemed withdrawn if it has been held in abeyance awaiting the submittal of additional requested information from the applicant and if the applicant has not communicated in writing with the City Clerk's Office and made reasonable progress within thirty (30) days from the last written notification from the City Clerk's Office to the applicant. The application fee is nonrefundable. Any application deemed withdrawn shall require submission of a new application and fees to begin a new review and approval process.

B. Issuance of License. Upon completion of the review process and a determination of compliance with the applicable regulations, the City Clerk's Office will issue a mobile food unit license.

C. Modification of License after Issuance. Should the mobile food vendor change the food or beverage being offered during the term of an issued license that would change the designation of the mobile food unit to a higher state licensing level classification, a new application and fire inspection shall be required. If a mobile food vendor changes locations within the permitted time, it is the vendor's responsibility to submit a new written consent of the property owner or lessee to use the property on which they propose to operate.

5. Mobile Food Units on Public Property. No mobile food unit may be operated on public property except as part of an approved special event permit issued by the City Clerk's Office, within a City park or greenway.
6. Unattended Mobile Food Unit. No mobile food unit shall be left unattended or stored on any site overnight, unless that property is under the ownership or control of (by way of a lease or other contractual agreement) the operator of the unit and is being done so in compliance with all other City code requirements or the mobile food unit is a participant in a multiple-day (consecutive) City permitted special event. Any mobile food unit found unattended shall be considered in violation of these regulations and subject to license revocation, municipal infraction, towing, or any other action legally allowed.
7. Music and Sound-Making Devices. The use of music or sound-making devices as a part of a mobile food unit shall be prohibited, unless expressly allowed as part of an approved event.
8. Mobile Food Unit Performance Standards. Persons conducting business from a mobile food unit must do so in compliance with the following standards:
 - A. The mobile food vendor must obtain expressed written consent of the property owner or lessee to use the property on which they propose to operate. The written consent must be kept in the unit at all times that the unit is on the property. Written consent does not excuse or permit the violation of any other impossible regulations.
 - B. The operator of the mobile food unit shall display their City license in full view of the public in or on the unit.
 - C. Mobile food units shall only be allowed on nonresidential properties, except in the case of an approved residential block party or private catering arrangement,

so long as it is in compliance with all other City code requirements related to residential property.

D. Mobile food units that are within three hundred feet (300') of a residential use or residentially zoned property shall be limited to hours of operation between seven o'clock (7:00) A.M. and ten thirty o'clock (10:30) P.M.

E. A mobile food unit operating on nonresidential property (excluding those operating as part of "special event") may only do so during the usual posted business hours of the consenting business(es) of the property the mobile food unit is utilizing or during the posted hours of the City Park being utilized. Mobile food units may enter a nonresidential property in order to set up to conduct business up to one-half (1/2) hour (30 minutes) prior to the usual posted opening time of the corresponding business or City Park and must depart from the property no later than one-half (1/2) hour (30 minutes) after the usual posted closing time of the corresponding business or City Park. In the case of operating a mobile food unit on nonresidential property where the corresponding business(es) does not have usual posted business operating hours or operates on a twenty-four (24) hour type basis, the mobile food unit may not remain on the premises for longer than eighteen (18) hours and must depart for at least six (6) hours before reentering unless operating under an approved public property special event permit.

F. A mobile food unit operating on nonresidential property as part of a special event may only do so during the granted time period for the event.

G. Mobile food units must maintain a minimum separation between units of fifteen feet (15').

H. Mobile food unit operation is not a generally acceptable use of a nonresidential parking lot and may only be allowed if doing so does not diminish the usable number of parking spots within the lot to below the minimum threshold needed as established by the City site plan for the property. It is the joint responsibility of the property owner or lessee and mobile food unit owner to ensure that this provision is not violated. Exceptions to this rule may be applied for by way of a City approved temporary site plan amendment.

I. Mobile food units shall serve patrons which are on foot only; no drive-up service to the unit itself shall be provided or allowed.

J. The mobile food unit must be located on a paved surface, unless approved as part of a special event permit or through a temporary site plan amendment.

K. No mobile food unit may be located on a vacant property or lot with a vacant building. Exceptions to this rule may be granted by City staff after a review of the particular property and the vendor has been able to make arrangements to ensure safe and sanitary conditions. This would include, but is not limited to: employee access to restrooms, adequate access for fire and police personnel/vehicles, and that the site in general is free from hazards or dangerous conditions.

L. No mobile food unit may operate within one hundred feet (100') of a permanent restaurant or business offering food or beverage services unless they

receive expressed written consent of the restaurant or business owner. A City approved special event may be exempt from this provision.

M. All mobile food units shall maintain a minimum separation from buildings – five feet (5') for State IA Class I and II units and fifteen feet (15') for State IA Class III and IV units, as measured to the closest building element including awnings or canopies, tents, or membrane structures. Location of the food unit shall not impede pedestrians entering or exiting a building.

N. The window or area where a patron orders and receives their purchase shall be located so as to not require a patron to stand or create a line that may cause pedestrians to be in the public right of way, vehicle travel lane, including parking lot drive aisles, or similar situation that may create a potential safety hazard. Adequate safe space for patrons waiting for their order must be available on the property where the mobile food unit is located.

O. With the exception of pushcarts as allowed herein, no mobile food unit shall be placed on a public or private sidewalk. Pushcarts may locate on or adjacent to a private sidewalk or public sidewalk only as part of an approved public property special event permit. However, a minimum forty-eight inch (48") open walkway must be maintained for passing pedestrians. The placement of the pushcart shall be in such a manner so as to minimize encroachment into the forty-eight inch (48") walkway by patrons waiting in line for service from the pushcart.

P. Signs are limited to those that are attached to the exterior of the mobile unit and must be mounted flat against the unit and not project more than six inches (6") from the exterior of the unit. No freestanding signs, banners, flags, or similar items are allowed. Off premises signs directing patrons to the mobile food unit are prohibited.

Q. During business hours, the mobile food vendor shall provide a trash receptacle for use by customers.

R. The mobile food vendor shall keep the area around the mobile food unit clear of litter and debris at all times.

S. All mobile food units shall be located in such a manner as to not create a safety hazard, such as blocking emergency access to buildings and the site, obstructing access to fire hydrants, impeding entering and exiting from a building, creating a visual impediment for the motoring public at drive entrances, intersections, pedestrian crossings, or similar movement and access.

9. Property Owner/Lessee Responsibility. By allowing the mobile food unit on their property, the property owner or lessee jointly and severally with the vendor are responsible for compliance with this chapter and to ensure the safety of pedestrians and access of emergency vehicles to and around the site. Failure to do so could result in the property owner or lessee being party to any enforcement actions or penalties allowed by law.

124.03 UNLAWFUL ACTS.

1. Fraudulent Representation/Harassment. No licensee shall falsely or fraudulently misrepresent the quality, character, or quantity of any article, item, or commodity offered

for sale, or sell any unwholesome or tainted food or foodstuffs. No licensee shall harass, intimidate, coerce, or threaten any individual to induce a sale.

2. Failure to Maintain Licenses and Permits. Failure of any applicant to maintain the appropriate county, State and federal licenses and permits during the term of the local license or permits shall be considered an unlawful act and subject to revocation or any other penalties available to the City.

124.04 SUSPENSION OR REVOCATION OF LICENSE.

1. Any license issued under the provisions of this chapter may be suspended or revoked by the City as follows.
 - A. Grounds. The City Clerk's Office may suspend or revoke any license issued under this chapter for any of, but not limited to, the following reasons:
 - (1) The licensee has made fraudulent statements in his/her application for the license or in the conduct of his/her business.
 - (2) The licensee has violated this chapter or any other chapter of this code or has otherwise conducted his/her business in an unlawful manner.
 - (3) The licensee has conducted his/her business in such a manner as to endanger the public welfare, safety, order, or morals.
 - (4) The City Clerk's Office has received and investigated three (3) or more found complaints during the licensed period related to the manner in which the licensee is conducting business.
 - B. Notice of Suspension or Revocation; Right to Appeal. The City Clerk or Clerk's designee shall cause notice of the license revocation to be served in person by a City official or by mail to the licensee's local address, which notice shall specify the reason(s) for such action, at which time operations of the licensee must cease within the corporate limits of the City. The licensee may appeal the revocation of the license to the City Council at its next regularly scheduled meeting by filing with the Clerk a written request for an appeal to the City Council at least seven (7) days prior to the meeting. The City Council may affirm, modify or reverse the decision of the Clerk to revoke such license. If a license is revoked, no refund of any license fee paid shall be made. Upon the revocation of a license, the licensee is not eligible for the issuance of a new license under this chapter for a period of one year from the date the license revocation is served in person or deposited in the U.S. mail.

124.05 PENALTY. Unless another penalty is expressly provided by this chapter for any particular provision or section, violations of this chapter are simple misdemeanors subject to a fine of not more than five hundred dollars (\$500.00) and may also be punishable as municipal infractions subject to a civil penalty as set forth in this Code. Each day a municipal infraction occurs and/or is permitted to exist constitutes a separate offense. Police officers, code enforcement officers or the Police Chief's designees shall have the authority to issue citations for violations of this chapter and shall have the discretion to enforce this chapter as either a simple misdemeanor or municipal infraction.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

PASSED AND APPROVED this _____ day of _____, 2020.

Gary Lorenz, Mayor

ATTEST:

Denise L. Hoy, City Clerk

**PUBLISHED IN THE
DES MOINES REGISTER
ON THE 27th DAY OF March, 2020**

**1st Con 3/2/20
2nd Con 3/16/20
3rd Con 3/23/20**