

ARTICLE 31. - MOBILE FOOD VENDOR

3-3106 - PURPOSE

Regulate Mobile Food Vending Units operating on public and/or private property with policies that balance the operation of Mobile Food Vending Units with brick-and-mortar businesses that impact the health, safety and general welfare of the public.

3-3107 - DEFINITIONS

As used in this Article, unless the context otherwise requires:

- A. *Food*: All edible refreshment or nourishment, whether solid, semi-solid, liquid or otherwise.
- B. *Downtown District*: For the purposes of this Article, the Downtown District shall be described as beginning at the southwest corner of the intersection located at Highway 30 and 1st Avenue, thence east along the south side of Highway 30 to the east side of an alley located between A Avenue and B Avenue; thence south, along the east side of said alley to the south side of North Railroad Street; thence west from the east side of an alley located between A Avenue and B Avenue and along the south side of North Railroad Street, to the east side of A Avenue; thence south continuing along the east side of A Avenue to the south side of 18th Street; thence west from the east side of A Avenue and along the south side of 18th Street, to the west side of an alley located between 1st Avenue and Central Avenue; thence north, along the west side of said alley, to the south side of North Railroad Street; thence west, along the south side of North Railroad Street, to the west side of an alley located between 1st Avenue and 2nd Avenue; thence north, along the west side of said alley to the north side of 22nd Street; thence east, along the north side of 22nd Street, to the west side of 1st Avenue; thence north along the west side of 1st Avenue, to the point of beginning.
- C. *Mobile Food Vending Unit*: Any motorized or non-motorized vehicle, cart, stand, trailer, or other device designed to be portable and not permanently attached or affixed to the ground from which food and/or beverages are served or offered for sale which shall not be used for any purpose other than as a mobile food vending unit and that may or may not be currently licensed through a North American Department of Motor Vehicles.
- D. *Mobile Food Vendor*: The individual, company, restaurant, organization or entity operating a mobile food vending unit.
- E. *Private Property*: A lot or defined area of land which is not in the ownership of a local, state, or federal government entity.
- F. *Property Owner*: Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having a control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession or real property by a court.
- G. *Public Property*: All real property owned or controlled by the City whether in fee ownership or other interest. This definition shall not include school property or school safety zones and City owned property that is leased to a private person or another entity.
- H. *Public Right-of-Way*: All City property and the surface of a space above and below any real property in the City which the City owns or in which it holds an interest as a trustee for the public including, but not limited to, all public streets, highways, roads, alleys, easements, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the ownership or control of the City, dedicated or devoted for public utility purposes, collectively, within the City, but shall not include any property specifically exempted by Order of the City Council.
- I. *Special Event*: An event or celebration or any such activity or gathering or assemblage of people upon public property or in the public right-of-way for a street closure, race event, parade, or other like event sponsored by a civic, business, educational, government, community or veteran's organization for which a permit is granted by the City of Kearney.

3-3108 - PERMIT REQUIRED

- A. It shall be unlawful for any Mobile Food Vendor to operate a Mobile Food Vending Unit within Kearney City limits without first obtaining and possessing a valid permit issued under this Article.
- B. No permit shall be issued by the City Manager or their designee without providing a copy, at the time of application, all required State licenses or permits under the provisions of Nebraska State law to operate in Nebraska, which shall also include all permits issued by the Nebraska Liquor Control Commission pertaining to the sale of alcohol; a current State of Nebraska sales tax permit(s) and Federal Tax identification number or proof of an applicable sales tax exemption; a Certificate of Insurance listing the City of Kearney as an Additional Insured that includes the following coverages shown when locating on public property:
 - 1. Minimum General Liability coverage of \$1,000,000 per occurrence/ \$2,000,000 aggregate.
 - 2. Workers Compensation, if required by State Statute.
 - 3. Automobile policy/Trailer-Cart coverage policy.
- C. Any other such information as requested by the City Manager or their designee.
- D. Mobile Food Vending Unit permits shall expire on December 31st of each year.

A permit issued under this Article shall not be used or represented in any manner as an endorsement by the City of Kearney, or by any department, officer or employee thereof.

3-3109 - EXEMPTIONS

The provisions of this Article shall not apply to, nor shall the terms Mobile Food Vendor or Mobile Food Vending Unit be construed to include the following:

- A. Individuals, groups, organizations, or businesses considered an Itinerant Merchant, Peddler, or Solicitor as defined in Section 3-2902 of this Code who shall make application for an Itinerant Merchant, Peddler, or Solicitor Permit pursuant to Article 29 of this Code.
- B. Individuals, groups, organizations, or businesses selling or offering food or beverages for sale within an established farmers market.
- C. Individuals, groups, organizations, or businesses selling or offering food or beverages for sale who qualify as a nonprofit organization under Section 501(c) of the Internal Revenue Code or which are organized and operated exclusively for nonprofit, religious, charitable, educational or civic purposes.
- D. Mobile caterers who are hired for private catering purposes to serve guests of a catered event, so long as the mobile caterer is parked entirely on private property; service is limited to the guests of the catered event only, and no payment transaction occurs for individual orders taken by the mobile caterer.
- E. Any other Individual, group, organization, or business at the discretion of the City Manager or their designee.

3-3110 - APPLICATION

All Mobile Food Vendors pursuant to this Article shall file with the City Clerk an application, that shall contain the following information and be accompanied by the following documentation:

- A. Local and permanent address, phone number, and email address of the applicant.
- B. Name, permanent address, phone number, and email address of any additional owners of partnerships, firm, or corporations who also have an interest in the Mobile Food Vending Unit.
- C. Copy of current Driver's License.
- D. Copy of current registration for Mobile Food Vending Units required to be licensed through a North American Department of Motor Vehicles.
- F. Certificate of Insurance with coverage as outlined in Section 3-3108(B) of this Article.

- G. Copy of current State and Federal Sales Tax permit.
- H. Copy of all applicable State of Nebraska licenses required to operate within the State of Nebraska.
- I. Description of the nature of food and/or beverage to be sold or offered for sale by the Mobile Food Vendor.
- J. Any such other information as may be required or requested by the City Manager or their designee.

3-3111 - ISSUANCE

- A. Upon receipt of such application, the City Clerk or their designee shall review the application to determine the compliance of this Article. The City Clerk or their designee may request and take into consideration the recommendations of other affected City Departments prior to the City Manager or their designee's approval of the application.
- B. No permit shall be issued or renewed for any Mobile Food Vendor for the following reason(s):
 - 1. Submittal of incomplete application.
 - 2. Application submitted without accompanying required documentation and fees.
 - 3. False or misleading information contained in the application.
 - 4. Cancellation of any required State of Nebraska permit throughout the permitted year.
 - 5. Three or more separate violations of this Article within the preceding 12 months of the application's submission.
 - 6. Outstanding or unpaid local Restaurant and Drinking Place Occupation Tax.
 - 7. Conducting business in an unlawful manner or in such a manner as to threaten the health, safety, or general welfare of the public that is in direct conflict of this Article.

3-3112 - PERMIT FEE

- A. All Mobile Food Vendors selling or offering for sale food or beverages shall submit a non-refundable processing fee as set forth in the City of Kearney Comprehensive Fee Schedule.
- B. All Mobile Food Vendors selling or offering for sale food or beverages shall pay the City of Kearney Restaurant and Drinking Place Occupation Tax in accordance with Article 30 of this Code. No proration of the Kearney Restaurant and Drinking Place Occupation Tax provided for by this article shall be permitted.

3-3113 - PERMIT RENEWAL

A permit issued under this Article shall expire on December 31 of each year unless such permit is renewed for the upcoming year prior to expiration. Renewal of such permit shall consist of an application updating or confirming the information on file with the City Clerk and payment of the non-refundable annual processing fee as set forth in the City of Kearney Comprehensive Fee Schedule.

3-3114 - GENERAL OPERATIONAL STANDARDS

- A. Permit shall be posted in a conspicuous place at all times.
- B. All trash or debris accumulating within twenty (20) feet of any Mobile Food Vending Unit operating location shall be collected by the Mobile Food Vendor and deposited in a trash container provided by the Mobile Food Vendor adjacent to or as a part of their Mobile Food Vending Unit.
- C. Discharging or dumping material, trash, or waste of any kind into or onto public property is prohibited.
- D. Devices that produce loud noise such as loudspeakers, public address systems, radios, sound amplifiers, or similar devices to attract public attention, unless previously authorized by the City Manager or their designee is prohibited.

- E. Public Sidewalks shall remain open to pedestrian traffic and in compliance with all Americans with Disability Act (ADA) requirements.
- F. Locations that cause customers to form a line, waited on, or be served, in a portion of a street being traversed by motor vehicle traffic are prohibited.
- G. Fire suppression equipment or devices in operable condition as required by local, state, or federal law shall be present in Mobile Food Vending Unit at all times.
- H. Mobile Food Vending Unit shall not be parked adjacent to the corner of a street intersection or driveway access point that would hinder vehicular traffic and visibility.
- I. The sale, transfer, or assignment of a Mobile Food Vending Unit permit is expressly prohibited.
- J. Written authorization to operate within R-1, R-1D, and R-2 zoning districts from the Neighborhood Association, or Homeowner's Association shall be provided to the City Clerk's office prior to locating in such zoning districts. If such an organization does not exist or is not currently active, written authorization from neighboring property owners shall be provided instead.
- K. Any Mobile Food Vendor operating on private property shall have the ability to provide written consent from the property owner or their designee to locate on their property at the request of the City Manager or their designee.
- L. The City Manager or their designee may require a Mobile Food Vending Unit to move locations if such location causes an obstruction or otherwise endangers the health or safety of the general public, may prohibit locations where Mobile Food Vending Units may park at any time within publicly-owned property or public right-of-way, and shall have the discretion to revoke the Mobile Food Vending Unit's permit if provisions of this Article are violated.

3-3115. DOWNTOWN DISTRICT PERMIT

- A. Mobile Food Vendors operating in the Downtown District as described in Section 3-3107 of this Article shall meet the following conditions as applicable:
 1. Hold a current City of Kearney Mobile Food Vending Unit permit.
 2. Operating as part of a City-approved special event.
 3. Operating as part of a City-approved Downtown business owner-sponsored event and shall be located directly in front of the Downtown business owner's business.
 4. In receipt of prior approval from the City Manager or their designee to locate in a public parking lot.
- B. Mobile Food Vending Units located next to a City-approved special event but not a part of the special event shall require a separate permit.

3-3116. PERMIT FEE; DOWNTOWN DISTRICT

- A. Mobile Food Vendors shall choose to pay either a non-refundable per day or annual fee as set forth in the City of Kearney Comprehensive Fee Schedule when at least one of the conditions are met in Section 3-3115 of this Article.
- B. Mobile Food Vendors shall be exempt from payment of the additional Downtown District Fee if:
 1. Mobile Food Vending Unit is part of a city-approved special event and located within the special event boundary area shown on the special event application map.
 2. Operating on private property within the Downtown District.

3-3117 - DENIAL, SUSPENSION OR REVOCATION

- A. Permits issued pursuant to this Article may be suspended or revoked by the City Manager or their designee, for violating any provisions of this Article, City Ordinance, or State or Federal Law after notice has been issued. Said notice shall include the City Manager's reasoning for such revocation.

Notice shall be sent by registered mail, postage prepaid, to the permittee at their last known permanent address.

- B. A suspension or revocation shall result after three (3) violations of this Article occur within a 12-month timeframe. Upon revocation, the Mobile Food Vendor shall immediately surrender their City of Kearney Mobile Food Vending Unit permit to the City Clerk's office.
- C. Re-application by a Mobile Food Vendor whose permit has been revoked under this Article may not re-apply for a new permit for a period of six (6) months after the effective date of the revocation.

3-3118 - APPEAL OF DENIAL OR SUSPENSION/REVOICATION

Any person aggrieved by the decision of the City Manager or their designee in regard to the denial of an application for a permit under this Article or in connection with the suspension or revocation of a permit shall have the right to appeal to the City Council. Such appeal shall be taken by filing with the Council, within fourteen (14) days after notice of the decision has been mailed to such Mobile Food Vendor's last known permanent address, a written statement setting forth the grounds for appeal. The Council shall set the time and place for a hearing on such appeal and notice of such hearing shall be sent by registered mail, postage prepaid, to the Mobile Food Vendor at their last known permanent address. The order of the Council on such appeal shall be final.

3-3119 VIOLATIONS OF ARTICLE; PENALTY

Any Mobile Food Vendor or a partner or member of a firm or corporation who own a Mobile Food Vending Unit violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished in accordance with Section 1-111 of this Code. Each distinct act or violation of the terms of this Article shall constitute a separate offense.

