ORDINANCE NO. 6607

AN ORDINANCE TO AMEND CHAPTER 3.58 MOBILE FOOD VENDORS OF THE 2020 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING SECTIONS 3.58.020 "DEFINITIONS"; 3.58.030 "LICENSE REQUIRED, EXEMPTIONS"; 3.58.060 "LICENSE FEE"; 3.58.070 "RENEWAL"; 3.58.080 "SALES REGULATIONS"; 3.58.090 "REVOCATION"; 3.58.100 "PENALTY" AND 3.58.110 "SPECIAL DISTRICTS".

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

SECTION 1. That Chapter 3.58 Mobile Food Vendors of the 2020 Municipal Code of Council Bluffs, Iowa, is hereby amended by amending Sections 3.58.020 "Definitions"; 3.58.030 "License Required, Exemptions"; 3.58.060 "License Fee"; 3.58.070 "Renewal"; 3.58.080 "Sales Regulations"; 3.58.090 "Revocation"; 3.58.100 "Penalty" and 3.58.110 "Special Districts" to read as follows:

3.58.020 Definitions

For the purpose of this chapter the following terms shall have the meanings respectively ascribed to them:

CATERING BUSINESS: A business, social or home catering service providing food and incidental services for a social affair, event, or for a private dwelling, which does not use commercial vehicles that are equipped in any manner for the purpose of the distribution of food directly from such vehicles to individually paying patrons.

"City" means the City of Council Bluffs, Iowa.

"Director" means the director of the Parks and Recreation Department or his/her authorized designee.

"Food" means any raw, cooked, or processed edible substance, beverage, ingredient, ice, or water used or intended for use or for sale in whole or in part for human consumption.

"Mobile Food Vendor" shall mean a person who by traveling from place to place upon the public ways sells or offers for sale food from public or private property to consumers for immediate delivery and consumption upon purchase.

"Permanent Food Establishment" means a fixed building which a person occupies on a continual basis and from which such person sells or offers to sell food for immediate delivery and consumption upon purchase. Such term shall not include a location where a mobile food vendor sells or offers to sell food.

"Private Property" means a lot or defined area of land which is not in the ownership of a local, state, or federal government entity.

"Public Property" means a lot or defined area of land owned by a local, state or federal government entity, including, but not limited to, city parks, the public right-of-way and service area at the rear or side of buildings, generally more narrow than the street, and any land reserved for transportation purposes including public roadways, parking, sidewalks, and alleys.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019

3.58.030 License Required; Exemptions

It shall be unlawful for any person to sell or offer for sale food as a Mobile Food Vendor or operate as a Mobile Food Vendor within the City unless such person complies with the requirements and regulations of this article, including holding a valid and active Mobile Food Vendor license issued by the director under this article.

The following activities are excluded from such definition, and, alone, do not subject a Mobile Food Vendor to being covered by such definition:

Farmer's Markets – a physical retail marketplace, whether indoor or outdoor, intended to sell foods from farmers and producers directly to the public.

Farm Stands - the sale or offer for sale of farm products produced or raised by such a vendor from land occupied and cultivated by him/her, or food that is being sold or attempted to be sold on the same parcel or group of parcels under common ownership on which said food is grown.

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.

Temporary food units associated with a private party on private property hosted by the owner of the property upon which the unit is dispensing food and/or beverage.

Catering Businesses.

Non-Profit Organizations-Sales activities by a charitable, educational, or religious organization which is exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code when the proceeds thereof shall be applied to the payment of the expenses thereof and the charitable or religious object for which the charitable or religious society exists, provided that such sales are not conducted by such organization in excess of three (3) consecutive days in any seven-day period at the same location.

Mobile Food Vending Ancillary to a Permanent Food Establishment-A Mobile Food Vendor license shall not be required if the mobile food vending is ancillary to an existing Permanent food Establishment on the same parcel if all of the following conditions are met:

There is a primary land use in a building, which is constructed or which is being constructed, on the parcel in which the mobile food vending unit would be located.

Sales of food, associated with the Permanent Food Establishment on the parcel would be allowed, or is lawfully occurring on said parcel.

The Mobile Food Vendor is the owner of the Permanent Food Establishment on the parcel where the mobile food vending unit or food stand would be located.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019

3.58.060 License Fee

An application for a license under this article shall be accompanied by a nonrefundable processing fee as listed in the Schedule of Fees in CBMC 2.08 for each motor vehicle, trailer, cart or other piece of mobile equipment to be utilized in the business by a mobile food vendor. An additional nonrefundable processing fee as listed in the Schedule Of Fees in CBMC 2.08 shall be paid by a mobile food vendor who will be primarily doing business within the area zoned C4 under the CBMC 2.08. If such additional fee is paid, such fact shall be noted on the mobile food vendor's license. A mobile food vendor may primarily do business within such area only upon exhibiting a license showing payment of the additional fee.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019
Amended by Ord. 6590 on 11/13/2023

3.58.070 Renewal

A license issued under this article shall expire on December 31 of each year, unless renewed for the following year by the permittee. The permittee shall renew the license for the following year by filing with the Director, by December 31, a registration updating or confirming the information provided in the immediately preceding license application or registration. The registration shall be on a form provided by the Director. At the time of registration, the permittee shall pay a renewal fee as listed in the Schedule Of Fees in CBMC 2.08 per year for each motor vehicle, trailer, cart, or other piece of mobile equipment to be utilized in the business. An additional renewal fee as listed in the Schedule Of Fees in CBMC 2.08 shall be paid by a Mobile Food Vendor who will be primarily doing business within the area zoned C-4/Commercial District under the Council Bluffs Municipal Code. If such additional fee is paid, such fact shall be noted on the receipt or other documentation of renewal issued to the Mobile Food Vendor. A Mobile Food Vendor may primarily do business within such area only upon exhibiting a receipt or other documentation showing payment of the additional fee for that year.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019
Amended by Ord. 6590 on 11/13/2023

3.58.080 Sales Regulations

A Mobile Food Vendor shall not sell nor offer to sell food from a location within 200 feet of a public entrance used by customers to enter or exit a Permanent food Establishment during the hours food is sold within such Permanent food Establishment, unless each such Permanent food Establishment within such area has provided written consent.

A motor vehicle from which a Mobile Food Vendor sells or offers to sell food shall not exceed 40 feet in length and 96 inches in width. A Mobile Food Vendor selling or offering the sale of food from or using a trailer or other auxiliary equipment shall, during such operations, keep the trailer or auxiliary equipment hitched to an operable motor vehicle towing it, unless otherwise permitted by the City in association with an authorized street show, festival, parade, block party, or similar event. An attached trailer or other auxiliary equipment shall not exceed 96 inches in width, and the combined length of the motor vehicle and trailer or auxiliary equipment shall not exceed 60 feet.

The maximum dimensions in this subsection may be exceeded by a particular motor vehicle, trailer, or piece of equipment, if approved by the Director upon a Mobile Food Vendor's application for a waiver. If the proposed site of the Mobile Food Vendor shall be in an area designated as City right-of-way, such application for a waiver under this subsection shall also require approval of the Public Works Department, Right-of-Way Division.

A Mobile Food Vendor may sell or offer to sell food from a motor vehicle at a location in a City right-of-way open to traffic or parking, but only from a motor vehicle parked in a location where a motor vehicle is authorized to park by law, signage, or city permit. Such a motor vehicle and auxiliary equipment shall not be parked at a diagonal parking space. Such a motor vehicle and auxiliary equipment shall not be parked in a parking space adjacent to the comer of a street intersection.
A Mobile Food Vendor who sells or offers to sell food from a vehicle parked at a metered parking space shall pay the metered parking rate required, at such meter. When parking at a parking space with a meter limited to two hours, a mobile food vendor may park at such space for no longer than four consecutive hours.

A Mobile Food Vendor shall not sell or offer to sell food from a location which would involve customers to be waited on or served while standing in a portion of a street being traversed by motor vehicle traffic. A Mobile Food Vendor shall not sell nor offer to sell food from City park property unless he/she possesses the specific written consent of the Director. Mobile Food Vendors shall be limited to hard-surfaced areas of the park, but this shall not mean within any roadway or parking lot drive aisle, and shall be limited to the park hours of operation set by the City.

A Mobile Food Vendor shall not sell nor offer to sell food from a school property unless he/she possesses the written consent of an authorized representative of the school and presents such written permission at the time of application.

A Mobile Food Vendor shall not sell nor offer to sell food from a location within an area authorized for a street show, festival, parade, block party, or similar event, or within 200 feet of any boundary of such authorized area, unless the mobile food vendor is in possession of the written consent of the event permittee to sell or offer to sell food from that location and has provided such written consent as part of the application.

A Mobile Food Vendor shall possess and be able to exhibit, at all times during which the mobile food vendor is selling or offering to sell food, his/her license under this article, all required Pottawattamie County Health Department permits, a State of Iowa sales tax permit or proof of sales tax exemption, any applicable State of Iowa permits or licenses related to the inspection and operation of a mobile food unit, and any written consents or documentation required under this article.

An authorized employee of the City's Public Works or Police Departments may order a Mobile Food Vendor to move from or leave a specific location, if the operation of the Mobile Food Vendor at that location causes an obstruction to vehicular or pedestrian traffic or otherwise endangers the health, safety, or welfare of the public. The City may tow or otherwise move a Mobile Food Vendor's vehicle or other auxiliary equipment to another location if the vehicle or equipment presents a danger to public safety and the Mobile Food Vendor fails to move the same. The City shall provide to the Mobile Food Vendor a written explanation for any such order, upon written request by the mobile food vendor to the City.

An individual representative of the Mobile Food Vendor shall be present with the motor vehicle and other auxiliary equipment operated by the Mobile Food Vendor at all times that it is parked in City right-of-way or on City property, and at all times that it is parked on private property at a location where food is or will be offered for sale.

A Mobile Food Vendor may sell or offer to sell food seven days a week, but only from 6:00 a.m. to 2:30 a.m. It shall be unlawful for a Mobile Food Vendor to sell or offer to sell food at any other times. Notwithstanding this subsection, upon evidence of endangerment of public safety, the chief of police or his/her designee may further limit hours of operation for all mobile food trucks as needed for the protection of public safety.

A Mobile Food Vendor using a motor vehicle shall maintain a motor vehicle liability insurance policy for such motor vehicle as required by state law, and shall exhibit proof of such policy when requested.
A Mobile Food Vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.

It shall be unlawful for a Mobile Food Vendor to sell or offer to sell alcoholic drinks or food.
A Mobile Food Vendor shall visibly display his/her business name on his/her motor vehicle or auxiliary equipment.

A Mobile Food Vendor shall provide trash receptacles for the collection of trash and recyclable materials, in sizes sufficient to serve his/her customers. Prior to leaving a location, the Mobile Food Vendor shall pick up and properly dispose of any trash, litter, or recyclable materials within 20 feet of the location. Receptacles and their contents shall be removed from the location for proper disposal or recycling, and contents shall not be deposited in public trash or recycling containers on City right-of-way or City property.

A Mobile Food Vendor shall not place on City right-of-way or City property any freestanding sign, table, chair, umbrella, electric generator, or other fixture or equipment; provided, that a mobile food vendor may place one identification or menu sign and one table (not for seating customers) on the sidewalk or other area directly adjacent to his/her parked motor vehicle or other equipment.
A Mobile Food Vendor shall comply with all City ordinances regulating noise.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019

3.58.090 Revocation; Suspension
A license issued under this article may be revoked or suspended by the Director for any of the following reasons:

Any fraud, misrepresentation, or false statement contained in the application for license;

Any fraud, misrepresentation, or false statement made in connection with the selling of food;

Any violation of this article or any applicable laws or provisions of this Code.

Conducting the business licensed under this article in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.

The Director shall revoke a license issued under this article for any Mobile Food Vendor who is convicted of three or more separate violations of the provisions of this article within any consecutive 12-month period. For purposes of this section conviction shall mean any finding of guilt or liability on the part of the Mobile Food Vendor by a court of competent jurisdiction, and shall include any conviction that has previously been set aside.

To revoke or suspend a license, the Director shall provide written notice to the license holder stating the revocation or suspension action taken, the grounds for such action, and the availability of an appeal under this section. Such notice shall be served personally upon the license holder or sent by regular U.S. mail to the license holder's address as stated in his/her application.

A license holder aggrieved by either suspension or revocation of his/her license under this Code may appeal such decision to the Council Bluffs City Council by filing, in writing, a written request of appeal to the Director within ten (10) days of receiving written notice. Such appeal hearing shall occur at the next regularly scheduled City Council meeting, and such notice of the hearing shall be mailed to the licensee at the last known address at least five (5) days prior to the date set for the hearing. At the hearing the licensee shall be afforded the opportunity to present evidence and argument. Formal rules of evidence and procedure shall not apply. Within twenty (20) days after the conclusion of a hearing held pursuant to this section, the City Council shall make written findings which shall be based on a preponderance of the evidence as the standard of proof. Any decision rendered pursuant to this section shall be deemed a final action of the City and subject to appeal in accordance with Iowa law. Until an appeal is heard and determined by the City Council, the mobile food vendor shall cease all mobile food vending operations.

A person whose license has been revoked under this article may not re-apply for a new license for a period of one-year after the effective date of the revocation.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019

3.58.100 Penalty
Any person, firm, partnership, corporation or other legal entity found guilty of a civil violation of this chapter shall be subject to the penalties provided in § 1.95.020 of the CBMC, and may be served by any peace officer employed by the City of Council Bluffs.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019

3.58.110 Special Districts
The City finds that the City's various and diverse neighborhoods and business districts have differing characteristics, and will be affected in varying ways by the operations of Mobile Food Vendors. Thus, it is appropriate to provide for the creation of special districts subject to special rules governing mobile food vendors.

The City Council may, by Resolution, establish a special district with defined geographic boundaries, and adopt special rules governing Mobile Food Vendors to be applied, based on a reasonable showing of public health and/or public safety concerns demonstrating the need for different operation of Mobile Food Vendor, within such special district. "Special rules" shall mean rules governing Mobile Food Vendors that modify the general rules stated in § 3.58.080, within that special district only. If adopted, such special rules shall take precedence over any conflicting general rules in § 3.58.080. The special rules shall not prevent Mobile Food Vendors from operating within the special district. The general rules in § 3.58.080 shall continue to apply in a special district, unless specifically modified by the special rules.

Upon the filing of such an application, the mayor or any City councilmember may request that a Resolution establishing such a special district and special rules be forwarded to the City Council for consideration and final action.

HISTORY
Repealed & Reenacted by Ord. 6402 on 10/21/2019

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 of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its publication, as by law provided.

PASSED
AND April 22, 2024.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk

First Consideration: 4-22-24
Second Consideration: 5-6-24
Public Hearing: n/a
Third Consideration: _____