ORDINANCE NO. 6402

AN ORDINANCE TO AMEND TITLE 3 BUSINESS REGULATIONS AND LICENSES OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY REPEALING EXISTING CHAPTER 3.58 "STREET SALES" AND REPLACING IT WITH A NEW CHAPTER 3.58 ENTITLED "MOBILE FOOD VENDORS".

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

SECTION 1. That Title 3 Business Regulations and Licenses of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended by repealing existing Chapter 3.58 "Street Sales" and replacing it with a new Chapter 3.58 entitled "Mobile Food Vendors" to read as follows:

Chapter 3.58 – Mobile Food Vendors.

3.58.010-Adoption; Scope.

This ordinance shall be known as the Council Bluffs Mobile Food Vendor Code and shall apply to Mobile Food Vendors within the city limits of Council Bluffs, Iowa.

3.58.020-Definitions.

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

(1) "City" means the City of Council Bluffs, Iowa.

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

(3) "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.

(4) "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.

(5) "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.

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

(7) "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.

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:

(1) 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.

(2) 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.

(3) 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:

(a) 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.

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

(c) 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.

3.58.040-Application.

An applicant for a license pursuant to this article shall file with the Director a signed application on a form to be furnished by the Director, which shall contain the following information:

(1) The applicant's business name, address, and phone number; and e-mail address, if any.
(2) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity.
(3) If food is to be sold from any motor vehicle, the vehicle license numbers and descriptions of all vehicles from which the applicant proposes to sell food, and the names of all persons expected to drive such vehicles.
(4) The description of the general type of food items to be sold.
(5) Documentation from the Pottawattamie County Health Department showing its approval of the applicant's sale of food, if required.
(6) A copy of the State of Iowa sales tax permit, or proof of an applicable sales tax exemption, for the applicant.
(7) A copy of all certification required by any applicable local, state or federal fire, safety and/or hazardous guidelines related to the sale of food, and the preparation, storage or cooking process thereof.
(8) A general description of the types of locations the applicant anticipates selling from;
(9) All necessary written consent from property owners, Permanent food Establishment owners or any other written consent required under this Code.
(10) Proof of general liability insurance, including products liability coverage, in the amount of $1,000,000 or more per occurrence and $1,000,000 for property damage.
(11) Such other information as the Director may require and as requested in the said application form.

3.58.050-Issuance; Denial.

Upon receipt of a complete application for a license pursuant to this article, the Director shall make or cause to be made any inquiry or investigation that may be necessary to determine whether the applicant is in compliance with the provisions of all applicable laws and this Code. The Director may request and take into consideration the recommendations of other affected departments of the City.

After receipt of the completed application and application fee, the Director shall either approve or deny the application. Grounds for denial may include, but are not limited to, the following:

(1) A finding that the application is incomplete.
(2) The nonpayment of applicable fees.
(3) A finding that the application is not in conformance with any applicable laws or this Code.
(4) A finding that the applicant has been convicted of three or more separate violations of the provisions of this article within the 12 months preceding the submission of a complete application.

3.58.060-License Fee.

An application for a license under this article shall be accompanied by a nonrefundable processing fee of $100.00. An additional nonrefundable processing fee of $100.00 shall be paid by a Mobile Food Vendor who will be primarily doing business within the boundaries of any business improvement district located in whole or in part 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 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. The additional fees paid under this section shall be forwarded by the City over to the said business improvement district, to offset expenses incurred by the district for cleaning, security, sanitation, and other Mobile Food Vendor-associated maintenance expenses within the boundaries of the said district.

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 of $100.00 per year for each motor vehicle, trailer, cart, or other piece of mobile equipment to be utilized in the business. An additional renewal fee of $100.00 shall be paid by a Mobile Food Vendor who will be primarily doing business within the boundaries of any business improvement district located in whole or in part 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. The additional fees paid under this section shall be forwarded by the City over to the said business improvement district, to offset expenses incurred by the district for cleaning, security, sanitation, and other Mobile Food Vendor -associated maintenance expenses within the boundaries of the said district.

3.58.080-Sales Regulations.

(1) 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.

(2) 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.

(3) 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.

(4) 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 corner of a street intersection.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) A Mobile Food Vendor shall possess and be able to exhibit 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, and any other written consents or documentation required under this article, at all times during which the mobile food vendor is selling or offering to sell food.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) A Mobile Food Vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.

(16) It shall be unlawful for a Mobile Food Vendor to sell or offer to sell alcoholic drinks or food.

(17) A Mobile Food Vendor shall visibly display his/her business name on his/her motor vehicle or auxiliary equipment.

(18) 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.

(19) 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.

(20) A Mobile Food Vendor shall comply with all City ordinances regulating noise.

3.58.090-Revocation; Suspension.

(1) A license issued under this article may be revoked or suspended by the director for any of the following reasons:
   (a) Any fraud, misrepresentation, or false statement contained in the application for license;
   (b) Any fraud, misrepresentation, or false statement made in connection with the selling of food;
   (c) Any violation of this article or any applicable laws or provisions of this Code.
   (d) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

3.58.090-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 Section 1.95.020 of the Council Bluffs Municipal Code.

3.58.100-Special Districts.

(1) 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 Vendor s. Thus, it is appropriate to provide for the creation of special districts subject to special rules governing mobile food vendors.

(2) 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 section 3.58.080, within that special district only. If adopted, such special rules shall take precedence over any conflicting general rules in section 3.58.080. The special rules shall not prevent Mobile Food Vendors from operating within the special district. The general rules in section 3.58.080 shall continue to apply in a special district, unless specifically modified by the special rules.

(3) An application for the establishment of a special district may be submitted to the Director by a neighborhood association that is registered as such with the planning department, or by a business improvement district. The proposed special district must lie within the geographic boundaries of such neighborhood association or business improvement district. An application by a neighborhood association or business improvement district shall contain:
   (a) A map indicating the boundaries of the proposed special district.
   (b) The name of the proposed special district.
   (c) The text of the proposed special rules to be applicable in the special district.

(4) A copy of the signed resolution of the governing body of the business improvement district or neighborhood association approving the proposed special district and special rules.

(5) Documentation showing that an official of the business improvement district or neighborhood association discussed the proposed special district and special rules with Mobile Food Vendors who primarily operate in the proposed special district.

(6) Enumeration of the specific reason(s) for expansion or limitation of Mobile Food Vendor activity based upon public health and/or public safety concerns.

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.

3.58.110-Periodic Review.

The mayor and/or Director may, in conjunction with the Public Works and Police Departments, a representative from the City Council, a representative of the Mobile Food Vendor industry, and/or other stakeholders as necessary, perform an annual review of Mobile Food Vendor operations, the general rules in this article, and any special rules adopted under this article, and make recommendations as needed to the City Council for amendment of this article.

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 final passage and publication, as by law provided.

PASSED
AND October 7, 2019.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk

First Consideration: 9-23-19
Second Consideration: 10-7-19
Public Hearing: N/A
Third Consideration: _____