

ORDINANCE NUMBER 22-6

An ordinance to amend Sections 13-38 and to add Chapter 13, Article VI, Sections 13-71, 13-72, 13-73, 13-74, 13-75, 13-76, 13-77, 13-78, 13-79, 13-80, 13-81, 13-82, 13-83, 13-84, 13-85, 13-86, 13-87, and 13-88 of the Beatrice City Code relating to Mobile Food Vending; to repeal all other conflicting ordinances or parts of ordinances; and to provide for publication in electronic form and for an effective date of this ordinance.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That Section 13-38 of the Beatrice City Code be and hereby is amended to read as follows:

“Sec. 13-38. Sale of goods on public property, streets, parking lots, parks.

It shall be unlawful for any person to sell or offer for sale or peddle goods, wares, or merchandise upon public property owned by the City of Beatrice, including, but not limited to streets, sidewalks, parking lots, parks, and within public buildings without first having obtained permission to do so from the Mayor and City Council, unless permission is otherwise granted via the City Code.”

SECTION 2. That Chapter 13, Article VI, Section 13-71 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-71. Definitions.

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

Auxiliary Equipment – Any equipment used in the serving, preparation, storage, or clean-up of food for Mobile Food Trucks or Mobile Food Vending Units including but not limited to cooking equipment, warming and holding equipment, food prep equipment, refrigeration equipment, janitorial equipment, generators, tables, seating, and umbrellas.

Food – 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 Truck – A licensed and operable vehicle or concession trailer, which is enclosed and self-contained, independent with respect to water, sewer, and power utilities, that contains equipment for the preparation and sale or service of food or beverages with or without a charge which is designed for immediate consumption. Mobile Food Trucks may connect to City power utilities if the conditions set forth by the City and Board of Public Works are satisfied.

Mobile Food Vending – The act of preparation and sale or service of food or beverages with or without charge that are designed for immediate consumption from a Mobile Food Truck or Mobile Food Vending Unit.

Mobile Food Vending Units – Any non-motorized vehicle, trailer, stand, cart, or other device designed to be portable and not permanently attached to the ground from which food is served or offered for sale, which is enclosed and self-contained, independent with respect to water, sewer, and power utilities, that contains equipment for the preparation and sale or service of food or beverages with or without a charge which is designed for immediate consumption. Mobile Food Vending Units may connect to City power utilities if the conditions set forth by the City and Board of Public Works are satisfied. Food vending machines which are designed to be unstaffed and exchange food items for money are not considered Mobile Food Vending Units.

Mobile Food Vendor – Any person or entity conducting the sale or service of food and beverage with or without charge from a Mobile Food Truck or Mobile Food Vending Unit that are designed for immediate consumption in the public right-of-way or on private property.”

SECTION 3. That Section 13-72 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-72. Permit Required.

It shall be unlawful for any person to engage in Mobile Food Vending on public property owned by the City without first obtaining a Mobile Food Vending Permit or operate under a valid Mobile Food Establishment Permit and all applicable state and city permits and licenses, unless exempted under Section 13-74.”

SECTION 4. That Section 13-73 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-73. Permit Types.

Applicants for a permit under this article may apply for an annual Mobile Food Vending Permit, a weekly Mobile Food Vending Permit, or an annual Mobile Food Establishment Permit.”

SECTION 5. That Section 13-74 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-74. Permit Exemptions.

For purposes of this article, the following activities shall be exempt from the permit requirement set forth in Section 13-72.

- (a) A Mobile Food Vendor engaging in Mobile Food Vending on private property.
- (b) The sale or offer to sell ice cream or other frozen confectionery products only from a Mobile Food Truck Vendor that drives around town and makes stops only when customers indicate that they wish to purchase said products.”

SECTION 6. That Section 13-75 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-75. Applications.

- (a) An applicant for a weekly or annual Mobile Food Vending Permit shall file with the City Clerk a signed application on a form to be furnished by the City Clerk, which shall contain the following information:
 - (1) The applicant's business name, address, phone number, and e-mail address;
 - (2) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity;
 - (3) The vehicle license plate numbers and descriptions of all vehicles from which the applicant proposes to sell food;
 - (4) The description of the general type of food items to be sold;
 - (5) Documentation (certificate) from the State of Nebraska (Dept. of Agriculture) Health Department showing its approval of the applicant's sale of food, if required;
 - (6) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption for the applicant;
 - (7) The address of the location the applicant anticipates selling from;
 - (8) A copy of the vehicle registration and proof of insurance;

- (9) Proof of insurance with a minimum coverage amount of one million dollars (\$1,000,000) together with an insurance certificate listing the City of Beatrice as an additional insured. The insurance certificate shall remain valid for the duration of the permit;
 - (10) A traffic flow plan, if applicant will operate a drive through;
 - (11) A parking lot layout, if applicant will operate in an established parking lot;
 - (12) A signed waiver of liability described in Section 13-79;
 - (13) A nonrefundable application fee shall accompany all applications; and
 - (14) Such other information as the City Clerk may require and as requested in the said application form.
- (b) Application for a weekly Mobile Food Vending Permit may be issued by the City Clerk for a future date of use. In the event a weekly Mobile Food Vending Permit is issued for a future date of use the Applicant shall confirm with the City Clerk that there has been no material change to the information contained in their application at least one (1) business day before the Applicant's Mobile Food Vending Permit is set to begin.
- (c) An applicant for a Mobile Food Establishment Permit shall file with the City Clerk a signed application on a form to be furnished by the City Clerk, which shall contain the following information:
- (1) The applicant's business name, address, phone number, and e-mail address;
 - (2) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity;
 - (3) The address of the location the applicant will have the Mobile Food Vendor operate;
 - (4) Proof of insurance with a minimum coverage amount of one million dollars (\$1,000,000) together with an insurance certificate listing the City of Beatrice as an additional insured. The insurance certificate shall remain valid for the duration of the permit;
 - (5) A traffic flow plan, if Mobile Food Vendor will operate a drive through;
 - (6) A parking lot layout, if Mobile Food Vendor will operate in an established parking lot;
 - (7) A signed waiver of liability described in Section 13-79;
 - (8) A nonrefundable application fee shall accompany all applications; and

- (9) Such other information as the City Clerk may require and as requested in the said application form.
- (d) Applicants for a Mobile Food Establishment Permit must provide the following information to the City Clerk at least one (1) business day before a Mobile Food Vendor operates under their Mobile Food Establishment Permit:
 - (1) The vehicle license plate numbers and descriptions of all vehicles from which the Mobile Food Vendor proposes to sell food;
 - (2) The description of the general type of food items to be sold;
 - (3) Documentation (certificate) from the State of Nebraska (Dept. of Agriculture) Health Department showing its approval of the Mobile Food Vendor's sale of food, if required;
 - (4) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption for the Mobile Food Vendor; and
 - (5) A copy of the vehicle registration and proof of insurance of the Mobile Food Vendor.
- (e) Mobile Food Establishment Permits may only be applied for by business, organizations, or property owners for a location adjacent to their business or property or if they have written authorization from the adjacent property owners."

SECTION 7. That Section 13-76 of the Beatrice City Code be and hereby is added to read as follows:

"Sec. 13-76. Issuance or Denial.

- (a) Upon receipt of a complete application for a permit pursuant to this article, the City Clerk shall verify that the information provided is accurate and to determine whether the applicant is in compliance with the provisions of all applicable laws and this Code.
- (b) After receipt of the completed application and application fee, the City Council shall either approve or deny the annual Mobile Food Vending Permit and the annual Mobile Food Establishment Permit applications and the City Clerk shall either approve or deny weekly Mobile Food Vending Permit applications. 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 any provisions of this Code;
 - (4) A finding that the applicant has an inadequate traffic flow plan or parking lot layout, if applicable;
 - (5) A finding that the statements within the application are materially untrue or incorrect;
 - (6) Previous revocations or suspensions of a Mobile Food Vending Permit or a Mobile Food Establishment Permit;
 - (7) When the location for the permit requested is within an area authorized for a city sanctioned event or within four hundred (400) feet of any boundary of such authorized area, unless the Mobile Food Vendor possesses the written consent of the event organizer to sell or offer to sell food from that location; or
 - (8) When the location for the permit requested is within a City park, unless the Mobile Food Vendor possesses the written consent of the City Administrator or his/her designee.
- (c) The City Clerk shall keep a permanent record of Mobile Food Vending Permits and Mobile Food Establishment Permits issued.”

SECTION 8. That Section 13-77 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-77. Transferability.

Permits issued under this article shall be nontransferable and no such permit shall be used at any time by any person other than the one to whom it was issued.”

SECTION 9. That Section 13-78 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-78. Permit Fee.

An application fee for a permit under this article shall be established by resolution adopted by the City Council.”

SECTION 10. That Section 13-79 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-79. Waiver of Liability.

Before a weekly Mobile Food Vending permit, annual Mobile Food Vending Permit, or an annual Mobile Food Establishment Permit is granted, the applicant shall sign a waiver of liability holding harmless the City of Beatrice and indemnifying the City, its officials, and employees, for any claims for damages to property or injury to persons, which may occur in connection with any activity carried on pursuant to any activities associated with Mobile Food Vending.”

SECTION 11. That Section 13-80 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-80. Change in Operating Area.

Permits issued pursuant to this article shall be valid only when used at the operating area designated on the permit. The operating area may be changed by amending the permit application and paying the applicable fee which shall be set by resolution adopted by the City Council.”

SECTION 12. That Section 13-81 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-81. Permit Renewal.

(a) Annual Mobile Food Vending Permits and Mobile Food Establishment Permits issued under this article shall expire on December 31 of each year. The permit holder may renew the permit for the following year by filing with the City Clerk a renewal application updating or confirming the information provided in the immediately preceding permit application. At the time of permit renewal, the permit holder shall pay a renewal fee established by resolution adopted by the City Council.

(b) Weekly Mobile Food Vending Permits issued under this article shall expire at 5:00 p.m. on the sixth (6th) calendar day after the permit begins. The permit holder may renew the permit for an additional six (6) calendar days by filing a renewal application updating or confirming the information provided in the immediately preceding permit application. At the time of permit renewal, the permit holder shall pay a renewal fee established by resolution adopted by the City Council.”

SECTION 13. That Section 13-82 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-82. Sales Regulations.

(a) All Mobile Food Vendors shall comply with the following regulations:

- (1) Mobile Food Vending is allowed in any zoning district when a Mobile Food Vendor has the permission of a political subdivision to engage in Mobile Food Vending on that political subdivision's property.
- (2) While engaging in Mobile Food Vending, Mobile Food Vendors shall not be in violation of any City ordinances including any zoning, health, fire, building, or safety requirements.
- (3) A Mobile Food Vendor shall not sell or offer to sell food from a location which would involve customers to wait in line, to be waited on, or to be served while standing in a portion of a street that is open to be traversed by motor vehicle traffic.
- (4) The City may order a Mobile Food Vendor to move from or leave a specific location if the Mobile Food Vending 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, at the vendor's expense, any vehicles or equipment of a Mobile Food Vendor if the vehicle or equipment presents a danger to public safety and the Mobile Food Vendor fails to move the same; or if a Mobile Food Vendor is engaged in Mobile Food Vending without a valid Mobile Food Vending permit where such permit is required.
- (5) A Mobile Food Vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.
- (6) It shall be unlawful for a Mobile Food Vendor to sell or offer to sell alcoholic drinks without obtaining the appropriate permits
- (7) A Mobile Food Vendor shall provide trash receptacles for the collection of trash, in sizes sufficient to serve his/her customers. On a daily basis, and prior to leaving a location, the Mobile Food Vendor shall pick up and properly dispose of any trash and litter within twenty-five (25) feet of the location. Receptacles and their contents shall be removed from the location for proper disposal and contents shall not be deposited in public trash containers on City right-of-way or City property.
- (8) No Mobile Food Vendor shall utilize any electricity or power without the prior written authorization of the electrical customer; no power cable or similar device shall be extended at or across any street or sidewalk except in a safe manner. If a Mobile Food Vendor requires electric service, an application must be submitted to the Beatrice Board of Public Works.
- (9) Minimum of three (3) marked parking spaces must be available within one hundred and fifty (150) feet of the Mobile Food Vendor.

(b) The following regulations apply only to Mobile Food Vendors engaging in Mobile Food Vending on public property owned by the City:

- (1) A Mobile Food Vendor may sell or offer to sell food from a Mobile Food Truck or Mobile Food Vending Unit at a location in a City right-of-way open to traffic or parking, but only from a Mobile Food Truck or Mobile Food Vending Unit parked in a location where a Mobile Food Truck or Mobile Food Vending Unit is authorized to park by law, signage, or city permit. Such a Mobile Food Truck or Mobile Food Vending Unit and Auxiliary Equipment shall not be parked in a parking space adjacent to the corner of a street intersection. No Mobile Food Truck, Mobile Food Vending Unit, or Auxiliary Equipment shall be parked in any parking stall designated for handicap parking.
- (2) An individual representative of the Mobile Food Vendor shall be present with the Mobile Food Truck, Mobile Food Vending Unit, and Auxiliary Equipment of the Mobile Food Vendor at all times that it is engaged in Mobile Food Vending.
- (3) Upon evidence of endangerment of public safety, the Chief of Police or his/her designee may limit hours of operation for any Mobile Food Vendor within the City, as needed for the protection of public safety.
- (4) A Mobile Food Vendor using a Mobile Food Truck 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.
- (5) A Mobile Food Vendor shall visibly display his/her business name on his/her Mobile Food Truck, Mobile Food Vending Unit, and Auxiliary Equipment."

SECTION 14. That Section 13-83 of the Beatrice City Code be and hereby is added to read as follows:

"Sec. 13-83. Penalty.

It shall be unlawful for any person to violate the provisions of this article. Any person found guilty of violating any of the provisions of this article shall, upon conviction be fined a sum of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00). Each day that a violation of any of the provisions of this section continues shall constitute a distinct offense and shall be punishable as such."

SECTION 15. That Section 13-84 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-84. Notice of Violations.

For purposes of revocation or suspension of Mobile Food Vending Permits or Mobile Food Establishment Permit, upon discovery of any violation under this Article, the City Clerk, or his/her designee, shall provide written notice to the permit holder of such violation. Such notice shall be served personally upon the permit holder or shall be sent by regular U.S. mail to the permit holder's address as stated in his/her application.”

SECTION 16. That Section 13-85 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-85. Revocation or Suspension.

- (a) A permit issued under this article may be revoked or suspended by the City Clerk or his/her designee for any of the following reasons:
- (1) Any fraud, misrepresentation, or false statement contained in the application for permit;
 - (2) Any fraud, misrepresentation, or false statement made in connection with the selling of food;
 - (4) Receipt of notices of violations pursuant to Section 13-86(b); or
 - (5) Mobile Food Vending 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.”

SECTION 17. That Section 13-86 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-86. Notice of Revocation or Suspension; Re-application.

- (a) Notice to revoke or suspend a permit, the City Clerk or his/her designee shall provide written notice to the permit 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 permit holder or sent by regular U.S. mail to the permit holder's address as stated in his/her application.
- (b) The City Clerk or his/her designee shall revoke a permit issued under this article for any Mobile Food Vendor who has received notice for one (1) or more violations of the provisions of this article on three (3) separate occasions, or who has received notice of three (3) or more violations of the provisions of this article in total, or any combination thereof, within any consecutive twelve (12) month period.

- (c) A person 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.”

SECTION 18. That Section 13-87 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-87. Appeal Hearing.

- (a) Violations. A permit holder aggrieved by the decision of the City Clerk or his/her designee under this section may file an appeal with the City Administrator or his/her designee. Such request for appeal shall be in writing to the City Clerk or his/her designee accompanied by the non-refundable appeal fee. The appeal fee shall be set by resolution adopted by the City Council. Such appeal shall be heard by the City Administrator or his/her designee. The City Administrator or his/her designee shall set such hearing within twenty (20) calendar days from the date of receipt the written request.
- (b) Denials, Suspensions, or Revocations of Permits. Mobile Food Vendors whose permits under this article have been denied, suspended, or revoked may file an appeal of such decision within twenty (20) calendar days of receipt of the notice. Such request for appeal shall be in writing to the City Clerk or his/her designee accompanied by the non-refundable appeal fee. The appeal fee shall be set by resolution adopted by the City Council. Such appeal shall be heard by the City Council. The City Council shall set such hearing within twenty (20) calendar days from the date of receipt the written request.
- (c) A written notice of the decision by the City Administrator or his/her designee’s, or the City Council, decision following the hearing shall be sent to the property owner by regular U.S. mail or shall be provided at the conclusion of the meeting.”

SECTION 19. That Section 13-88 of the Beatrice City Code be and hereby is added to read as follows:

“Sec. 13-88. Severability.

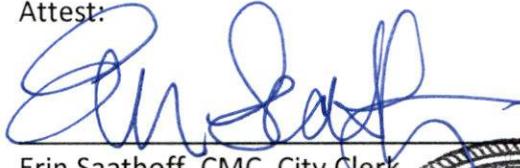
If any provision, clause, sentence, paragraph or other portion of this article or the application thereof to any person or circumstances shall be held to be invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.”

SECTION 20. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

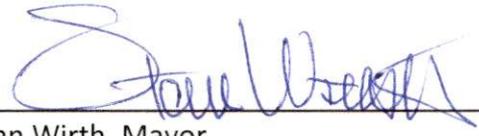
SECTION 21. That this ordinance shall be in full force and effect from and after its passage, approval, and publication in electronic form as provided by law.

PASSED AND APPROVED this 7th day of March, 2022.

Attest:



Erin Saathoff, CMC, City Clerk



Stan Wirth, Mayor

