

ORDINANCE NO. 1208

AN ORDINANCE AUTHORIZING MOBILE FOOD VENDORS; TO PROVIDE RULES AND REGULATIONS GOVERNING MOBILE FOOD VENDORS; TO PROVIDE FOR THE ISSUANCE OF LICENSES FOR MOBILE FOOD VENDORS; TO PROVIDE FOR FEES FOR THE ISSUANCE OF LICENSES FOR MOBILE FOOD VENDORS AND FOR THE COLLECTION THEREOF; TO PROVIDE FOR PENALTIES FOR VIOLATION OF THE PROVISIONS HEREOF.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF RALSTON, NEBRASKA.

On the 4th day of April, 2017, the Ralston City Council conducted a regularly scheduled public hearing at which it considered authorizing mobile food vendors within the corporate boundaries of the City of Ralston. Upon consideration of said proposed authorization, the Ralston City Council approved the following enactment:

Section 1.

Article 18 - Mobile Food Vendors

§ 10-1801. - **Findings and purpose.** Mobile food vendors provide a beneficial service to the general public within the city while, due to their distinct manner of operation, also presenting substantial differences of circumstances from other food retailers and vehicle users which suggest the expediency of diverse legislation. It is, thus, desirable to regulate, and require licenses for, mobile food vendors so that their transitory use of various properties and right-of-way locations can occur in a fair and safe manner, and so that public safety and welfare can be protected. The purpose of this article is to enact regulations to serve those goals.

While the city wishes to encourage the business of mobile food vendors, the city also recognizes the benefits of permanent food establishments. The owners of permanent food establishments make substantial and long-lasting capital investments in buildings, infrastructure, and the built environment. These investments benefit the city, improve real property, and provide consistent locales for the entertainment and enjoyment of city residents and visitors. The city wishes to cultivate and encourage the creation and maintenance of permanent food establishments. Accordingly, it is also the purpose of this article to encourage the co-existence of mobile food vendors and permanent food establishments, to provide appropriate places for each within the fabric of the city, and to accommodate the interests of each, toward the goal of achieving a rich and diverse community.

(Ord. No. 1208, 5-16-2017)

§ 10-1802. - **Definitions.** For the purpose of this article the following terms shall have the meanings respectively ascribed to them:

Caterer shall mean a person who transports ready-to-eat food from a permitted food service establishment to another location or building for service on a per event basis for hire, and does not include a temporary food service event.

City Clerk shall mean the City Clerk of the city of Ralston, Nebraska or his/her authorized designee.

Food shall mean 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. The following activities are excluded from such definition, and, alone, do not subject a vendor to being covered by such definition: (a) 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 (b) the sale or offer for sale of food by a caterer; or (c) the sale or offer to sell ice cream or other frozen confectionary products only from a vehicle that makes stops only when customers indicate that they wish to purchase said products.

Permanent food establishment shall mean 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.

(Ord. No. 1208, 5-16-2017)

§. 10-1803. - **License required.** 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 City Clerk under this article. *Copy of registration and proof of insurance.*

(Ord. No. 1208, 5-16-2017)

§ 10-1804. - **Application.** An applicant for a license pursuant to this article 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:

- (a) The applicant's business name, address, and phone number; and e-mail address, if any;
- (b) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity;
- (c) 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;
- (d) The description of the general type of food items to be sold;

- (e) Documentation from the Douglas County Health Department showing its approval of the applicant's sale of food, if required;
- (f) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption, for the applicant;
- (g) A general description of the types of locations the applicant anticipates selling from;
- (h) A copy of the vehicle registration and proof of insurance;
- (i) Such other information as the City Clerk may require and as requested in the said application form.

(Ord. No. 1208, 5-16-2017)

§. 10-1805. - **Issuance or denial.**

(a) Upon receipt of a complete application for a license pursuant to this article, the City Clerk 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 City Clerk may request and take into consideration the recommendations of other affected departments of the city.

(b) After receipt of the completed application and application fee, the City Clerk 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.

(Ord. No. 1208, 5-16-2017)

§. 10-1806. - **License fee.** An application for a license under this article shall be accompanied by a nonrefundable processing fee of \$100.00, provided, however, that the processing fee for the remainder of calendar year 2017 shall be \$25.00.

(Ord. No. 1208, 5-16-2017)

§. 10-1807. - **Renewal.**

A license issued under this article shall expire on December 31 of each year, unless renewed for the following year by the licensee. The licensee shall renew the license for the following year by filing with the City Clerk, on or before 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 City Clerk. At the time of registration, the licensee 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.

(Ord. No. 1208, 5-16-2017)

§. 10-1808. - **Sales regulations.** Mobile food vendors shall comply with the following regulations:

(a) A mobile food vendor shall not sell nor offer to sell food from a location within 50 feet of the main 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.

(b) 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 City Clerk upon a mobile food vendor's application for a waiver.

(c) 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, unless specifically authorized by the City. Such a motor vehicle and auxiliary equipment shall not be parked in a parking space adjacent to the corner of a street intersection.

(d) 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.

(e) A mobile food vendor who sells or offers to sell food from a location on property other than a parking space or city right-of-way shall first obtain and possess, and be able to exhibit upon request, each of the following:

- (1) Written consent of the owner of such property; and
- (2) A temporary use permit issued by the Public Works Director or his/her designee, where same permanent uses are permitted under the Ralston Zoning Code; provided, that a temporary use permit shall not be required if the mobile food

vendor is present as an authorized part of a private event or an event authorized by another city permit.

- (f) A mobile food vendor shall not sell nor offer to sell food from city park property unless he/she possesses the written consent of the Public Works Director.
- (g) 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.
- (h) 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 licensee to sell or offer to sell food from that location.
- (i) A mobile food vendor shall possess and be able to exhibit his/her license under this article, all required Douglas County Health Department permits, a State of Nebraska 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.
- (j) An authorized employee of the public works or police department 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 Clerk 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 Clerk.
- (k) 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.
- (l) 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 within the city, as needed for the protection of public safety, for a period of no more than 30 consecutive days at a time.
- (m) 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.
- (n) A mobile food vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.

(o) It shall be unlawful for a mobile food vendor to sell or offer to sell alcoholic drinks or food containing alcohol.

(p) A mobile food vendor shall visibly display his/her business name on his/her motor vehicle or auxiliary equipment.

(q) 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.

(r) 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.

(s) A mobile food vendor shall comply with all city ordinances regulating noise.

(Ord. No. 1208, 5-16-2017)

Sec. 10-1809. - Revocation or suspension.

(a) Grounds. A license issued under this article may be revoked or suspended by the City Clerk for any of the following reasons:

- (1) Any fraud, misrepresentation, or false statement contained in the application for license;
- (2) Any fraud, misrepresentation, or false statement made in connection with the selling of food;
- (3) Any violation of this article or any applicable laws or provisions of this Code;
- (4) 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.

(b) Multiple convictions of violation of this article or of any similar article. The City Clerk 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 or of any similar article in effect in any other jurisdiction 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.

(c) Notice. To revoke or suspend a license, the City Clerk 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.

(d) Appeal. A license holder aggrieved by the decision of the City Clerk under this section may file an appeal with the City Council.

(e) Re-application. A person whose license has been revoked under this article may not re-apply for a new license for a period of six months after the effective date of the revocation.

(Ord. No. 1208, 5-16-2017)

§. 10-1810. - **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) in addition to the penalties set forth herein.

(Ord. No. 1208, 5-16-2017)

§. 10-1811. - **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.

(Ord. No. 1208, 5-16-2017)

Sec. 10-1811. - **Special districts.**

(a) 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.

(b) The city council may by ordinance 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 vendors, within such special district. "Special rules" shall mean rules governing mobile food vendors that modify the general rules stated in Sec. 10-1808, within that special district only. If adopted, such special rules shall take precedence over any conflicting general rules in Sec. 10-1808. The special rules shall not prevent mobile food vendors from operating within the special district. The general rules in Sec. 10-1808 shall continue to apply in a special district, unless specifically modified by the special rules.

(c) An application for the establishment of a special district may be submitted to the public works City Clerk 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:

- (1) A map indicating the boundaries of the proposed special district;
- (2) The name of the proposed special district;
- (3) 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; and
- (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 an ordinance establishing such a special district and special rules be forwarded to the city council for consideration and final action.

(Ord. No. 1208, 5-16-2017)

§. 10-1813. - **Periodic review.** The mayor or his/her designee may, in conjunction with the City Clerk, Director of Public Works and Chief of Police or their designees, a representative from the city council, a representative of the mobile food vendor industry, and 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.

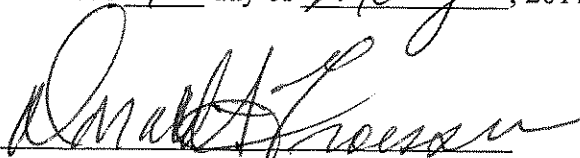
(Ord. No. 1208, 5-16-2017)

Section 2 – Repealer: Any and all Ordinances or portions thereof, which are in conflict herewith are hereby repealed.

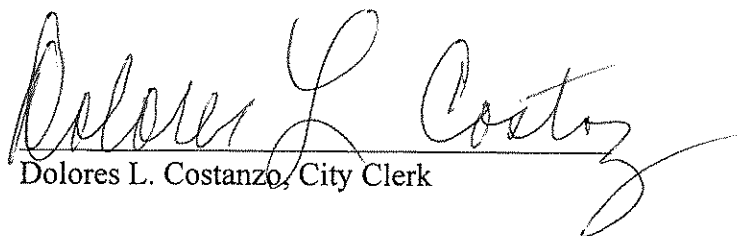
Section 3 – Pamphlet form: This Ordinance shall be published in pamphlet form.

Section 4 – Effective date: This Ordinance shall take effect and be in full force from and after its passage, approval and publication.

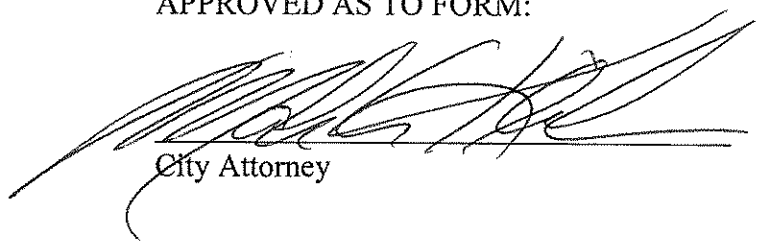
ADOPTED by the Mayor and City Council this 9th day of May, 2017.


Donald A. Groesser, Mayor

ATTEST:


Dolores L. Costanzo, City Clerk

APPROVED AS TO FORM:


City Attorney