

ORDINANCE NO. 3338

AN ORDINANCE ADDING SECTION 3-811 TO ARTICLE 3 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, CONCERNING MOBILE FOOD VENDORS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS THAT:

SECTION 1. That Section 3-811 be added to Article 3 of the City Code of Abilene, Kansas, regarding mobile food vendors as follows:

ARTICLE 3. MOBILE FOOD VENDORS

3-811 (a) PURPOSE.

The Governing Body finds that, in order to advance the health, safety and welfare of the residents of the City of Abilene, Kansas, it is necessary to regulate various activities, including those of Mobile Food Vendors. (Ord. 3338)

(b) DEFINITIONS.

The following words, terms and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings: (Ord. 3338)

- (1) **“City Clerk,”** for the purpose of this Article, shall mean the City Clerk, the Interim City Clerk, anyone fulfilling the duties of the City Clerk on either a temporary or a permanent basis, or any designee of the City Clerk.
- (2) **“Mobile Food Vendor”** shall mean any person, corporation, association, or other entity, however organized, that offers food and/or beverage for sale from a Mobile Food Unit.
- (3) **“Mobile Food Unit”** shall mean any self-contained vehicle, trailer, cart, or other type of conveyance from which food and/or beverage is offered for sale.
- (4) **“City Approved Event”** shall mean any event sanctioned by Permit issued by the City, including but not limited to a Temporary Special Event Permit, a Temporary Use of Public Right of Way Permit, or a Parks and Recreation Special Use Permit.

(c) MOBILE FOOD VENDOR’S LICENSE REQUIRED.

No person, corporation, association, or other entity, however organized, shall operate within the corporate limits of the City as a Mobile Food Vendor without first obtaining a valid Mobile Food Vendor’s License. (Ord 3338)

(d) **MOBILE FOOD VENDOR'S LICENSE FEE.**

The application fee for a Mobile Food Vendor's License is \$200.00. The fee shall not be pro-rated or refunded for any reason, including denial of an application or revocation of a license. (Ord. 3338)

(e) **MOBILE FOOD VENDOR'S LICENSE APPLICATION.**

Application for a Mobile Food Vendor's License shall be made to the City Clerk on a form provided by the City Clerk for that purpose. In addition to paying the Mobile Food Vendor's License Fee, the applicant shall attest to the truthfulness of the application and shall complete the application in full, providing the following information: (Ord. 3338)

- (1) The applicant's full legal name, date of birth, place of birth and Social Security Number.
- (2) The applicant's permanent address, business mailing address and telephone number.
- (3) A copy of the applicant's government-issued photo identification.
- (4) The applicant's valid Kansas sales tax number
- (5) A brief description of the nature of the business and the food and/or beverage to offered for sale.
- (6) A photograph of each Mobile Food Unit and, if licensed, the license plate number of each Mobile Food Unit.
- (7) A copy of a valid State of Kansas license for food service establishments, if such is required.
- (8) Proof of general liability insurance in the amount of \$500,000.00 or more.
- (9) A statement indicating whether or not the applicant has had a Mobile Food Vendor's License, or any similar license, revoked in this jurisdiction within the preceding two (2) years.
- (10) The applicant's signature.

(f) **MOBILE FOOD VENDOR'S LICENSE ISSUANCE; DENIAL.**

- (1) The City Clerk shall review each application for a Mobile Food Vendor's License. Within five (5) business days of the application, the City Clerk shall approve the application and shall issue to the applicant a Mobile Food Vendor's License together with an official

copy for each Mobile Food Unit identified in the application unless:
(Ord. 3338)

- (a) The application is incomplete.
- (b) The application is determined to be fraudulent, to include a material misrepresentation, or to contain a false statement.
- (c) The applicant has had a Mobile Food Vendor's License revoked by the City for any reason within the preceding two (2) years.

If the application is deficient for any of the reasons set forth in Section 3-811(f) of this Article, then the City Clerk shall deny the application by giving Notice of Denial to the applicant. Notice of Denial shall be in writing, shall be mailed to the applicant at his or her given address, shall inform the applicant the reason for denial, and shall inform the applicant that he or she has fourteen (14) days from the date of the Notice of Denial in which to appeal the denial of the application to the Governing Body. The City Clerk shall maintain a copy of the Notice of Denial in his or her files (Ord. 3338)

(g) **MOBILE FOOD VENDOR'S LICENSE APPEARANCE; DURATION**
(Ord. 3338)

- (1) The Mobile Food Vendor's License shall contain the seal of the City, the name of the licensee, and the expiration date of the license.
- (2) The Mobile Food Vendor's License shall be valid for a period not to exceed one year and shall expire on December 31 of the year in which it is issued.

(h) **MOBILE FOOD VENDOR'S LICENSE SUBSEQUENT MOBILE FOOD UNIT.**
In the event that a license Mobile Food Vendor begins using a Mobile Food Unit that was not identified in an application for the Mobile Food Vendor's License, the Mobile Food Vendor shall, before using said Mobile Food Unit, present to the City Clerk a photograph of the Mobile Food Unit, the license plate number, if licensed, and a copy of the original Mobile Food License. Upon receipt of that information, the City Clerk shall issue to the licensee an official copy of the Mobile Food License for the new Mobile Food Unit. (Ord. 3338)

(i) **MOBILE FOOD VENDOR'S LICENSE DISPLAYED.**
Mobile Food Vendors shall display the Mobile Food Vendor's License in a prominent place on a Mobile Food Unit at all times that the Mobile Food Unit is engaged in any of the activities licensed by this Article. (Ord. 3338)

(j) **MOBILE FOOD VENDOR'S LICENSE NON-TRANSFERABLE.**

No Mobile Food Vendor's License issued in accordance with the provisions of this Article shall be used by any person other than the person, corporation, association, or other entity, however organized, to whom it was issued. (Ord. 3338)

(k) **MOBILE FOOD VENDOR'S LICENSE RESTRICTIONS.**
(Ord. 3338)

- (1) Mobile Food Vendors shall obtain the permission of the property owner before engaging in any activities licensed by this Article.
- (2) Mobile Food Vendors may only engage in activities licensed by this Article on improved surfaces in commercial, industrial, and nonresidential special purpose zoning districts as defined in Chapter 3, Article 8 of the code of the City of Abilene.
- (3) Mobile Food Vendors are prohibited from offering for sale any food and/or beverage from a public right of way, except as part of a City Approved Event.
- (4) Mobile Food Vendors are prohibited from offering for sale any food and/or beverage from any unoccupied or vacant lot, except as part of a City Approved Event or pursuant to a City-approved Site Plan establishing a location for Mobile Food Vendors as a permanent or seasonal element of the site in accordance with subsection (7) of this Section.
- (5) No more than two (2) Mobile Food Units may be operated at the same time on any single property, except as part of a City Approved Event or pursuant to a City-approved Site Plan establishing a location for Mobile Food Vendors as a permanent or seasonal element of the site in accordance with subsection (7) of this Section.
- (6) Mobile Food Vendors are prohibited from offering for sale any food and/or beverage from a single property for more than three (3) hours out of every day, except as part of a City Approved Event or pursuant to a City-approved Site Plan establishing a location for Mobile Food Vendors as a permanent or seasonal element of the site in accordance with subsection (7) of this Section.
- (7) The City may approve a Site Plan establishing a location for Mobile Food Vendors as a permanent or seasonal element of a site only when the following conditions are met:
 - (a) The owner must submit to the City, for its approval, a standard Site Plan showing, among other things, the location on the site of Mobile Food Vendors as either a permanent or seasonal element of the site;

- (b) The proposed Site Plan must meet all requirements of the Zoning Code of the City of Abilene, as amended, and the provisions of this Article.

(l) **MOBILE FOOD UNIT STANDARDS**

All Mobile Food Units shall comply with the following standards:

- (1) All Mobile Food Units shall be maintained in good, operable condition and shall, at all times, be capable of being moved.
- (2) The exterior of all Mobile Food Units shall be maintained in good repair, shall be sound, shall be free from peeling or flaking paint, and shall be clean and sanitary so as not to pose a threat to the public health, safety and welfare.
- (3) All Mobile Food Units, unless completely self-contained, shall be located in close proximity to and shall be connected safely to electricity and other necessary utilities, such that they do not pose a threat to the public health, safety, and welfare.
- (4) Signs shall be limited to those that may be mounted or incorporated on the Mobile Food Unit. Signs shall not exceed the dimensions of the Mobile Food Unit by more than one (1) foot in any direction. No flashing signs shall be permitted. Illuminated signs are permitted, provided that the signs are only illuminated when the Mobile Food Unit is stationary, that such signs are only illuminated during hours that the Mobile Food Unit is being operated, and that any such signs, within five hundred (500) feet of any traffic signal, are not green, amber, or red in color. When the sign is illuminated by a light or lights reflected upon it, direct rays of light shall not beam upon any residential building or into any residential neighborhood or street.

(m) **MOBILE FOOD VENDOR'S LICENSE REVOCATION**
(Ord. 3338)

- (1) The City Clerk may revoke any Mobile Food Vendor's License issued under this Article for one or more of the following reasons:
 - (a) Fraud, misrepresentation, or false statement contained in the application for the Mobile Food Vendor's License;
 - (b) Any violation of the provisions of this Article;
 - (c) Conducting a licensed activity in an unlawful manner, in a manner that disturbs the peace, or in a manner that is injurious to the health, safety, or welfare of the residents of the City;

- (d) Unauthorized use of a public right of way;
- (e) Violation of a site plan requirement for an existing land use or for any other violation of the zoning code; or
- (f) Revocation or denial of any license issued by the State of Kansas for food service establishments.

(2) Notice of Revocation shall be in writing, shall be mailed to the applicant at his or her given address, shall inform the licensee of the reason for revocation, and shall inform the licensee that he or she has fourteen (14) days from the date of the Notice of Revocation to appeal the revocation to the Governing Body. The City Clerk shall maintain a copy of the Notice of Revocation in his or her files.

(n) **MOBILE FOOD VENDOR'S LICENSE APPEAL.**

Any person aggrieved by the action of the City Clerk in denying an application for a Mobile Food Vendor's License or in revoking a Mobile Food Vendor's License shall have the right to appeal that action to the Governing Body. Such appeal shall be taken by filing with the City Clerk a Notice of Appeal within fourteen (14) days of the date of the Notice of Denial or the Notice of Revocation. The Notice of Appeal must be in writing and must set forth why the applicant or the licensee believes that the denial or the revocation is erroneous. After the Notice of Appeal is filed, the Governing Body shall set a time and place for hearing the appeal. Notice of the hearing shall be given to the applicant or licensee in the same manner as the Notice of Denial or the Notice of Revocation. The Governing Body's decision and order on such appeal shall be the final order of the City.

(o) **MOBILE FOOD VENDOR'S LICENSE MUNICIPAL OFFENSE.**

Operating as a Mobile Food Vendor without a Mobile Food Vendor's License shall be a municipal offense. Any person, upon an adjudication of guilt or the entry of a plea of no contest, shall be subject to a fine of a minimum of \$500.00 and a maximum of \$1,000.00. The municipal court judge shall have no authority to suspend all or any portion of the minimum fine.

(p) **MOBILE FOOD VENDOR'S LICENSE EXEMPTIONS.**

The provisions of this Article shall not apply to the following activities:

- (1) Ice cream vendors licensed under Article 8, Chapter 3 of the City of the City of Abilene.
- (2) Vendors selling at the Dickinson County or Abilene Fairgrounds.
- (3) Vendors selling at the Farmers' Market.

(4) Vendors selling on school campuses.

(5) Vendors selling as part of a City Approved Event.

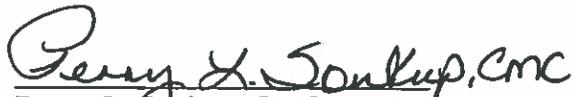
Section 2. REPEAL. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

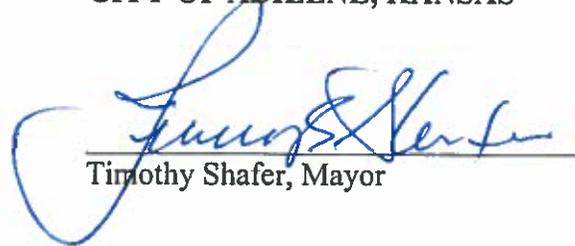
Section 3. EFFECTIVE DATE. This Ordinance shall be effective upon its publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 25th day of September, 2017.

CITY OF ABILENE, KANSAS

ATTEST:


Penny L. Scukup, CMC
City Clerk


Timothy Shafer, Mayor

APPROVED AS TO FORM:


Mark Guilfoyle, City Attorney