

## ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 5.19 ENTITLED “MOBILE CART VENDORS” BY AMENDING AND RE-NAMING IT AS “MOBILE FOOD UNITS” THEREBY ADDING MOBILE FOOD TRUCKS TO MOBILE CART VENDOR REGULATIONS IN THE MUNICIPAL CODE OF DAVENPORT, IOWA.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA:

Section 1. That Chapter 5.19 entitled “Mobile Cart Vendors” is hereby amended to read as follows:

### 5.19 Mobile Food Units

- 5.19.010 Definitions.
- 5.19.020 License required.
- 5.19.030 Application.
- 5.19.040 Exceptions.
- 5.19.050 General regulations for all mobile food units and pushcarts.
- 5.19.060 Pushcart specific regulations.
- 5.19.070 Mobile food unit specific regulations.
- 5.19.080 Enforcement and penalties.

#### 5.19.010 Definitions.

A. “Commissary” means a licensed food facility regulated by a governmental entity where food is stored, prepared, portioned, packaged or any combination thereof, and where such food is intended for consumption at another location or place from a mobile food unit or pushcart.

B. “Food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. For purposes of this chapter, “food establishment” does not include an establishment that offers only pre-packaged foods that are non-potentially hazardous; a produce stand which sells only whole, uncut fresh fruits and vegetables; an establishment operating in a farmers market if potentially hazardous food is not sold or distributed; a residence in which food that is non-potentially hazardous is sold for

consumption off premises to a consumer customer provided the food is labeled so as to identify its preparer; a private home that receives catered or home-delivered food; child care facilities or food establishments in hospitals or health care facilities which are subject to regulation by state agencies; supply vehicles and vending machines.

B. “Mobile food unit” means motorized, a self-propelled food establishment or a trailer or vehicle towed by a motorized vehicle, that is readily movable, and which typically operates at a remote location and returns to a base of operation or commissary at the end of its daily business. Mobile food units are considered Class IV mobile food units by the Iowa Department of Inspections and Appeals.

C. “Mobile food unit zone” means an area of governmentally owned property that has been designated as a location upon which mobile food units and pushcarts may sell or offer for sale for immediate consumption food and/or beverages.

D. “Potentially hazardous food” has the same meaning as provided in Iowa Code Chapter 137F.

E. “Pushcart” means a non-motorized food establishment limited to serving non-potentially hazardous packaged foods with limited assembly or commercial or commissary prepared foods that are reheated on the pushcart, such as frankfurters. Pushcarts may be towed by a vehicle, but are generally capable of being moved by human power. Pushcarts are considered Class III mobile food units by the Iowa Department of Inspections and Appeals.

#### 5.19.020 License and permit required.

No person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the city without having first obtained a license to operate as such. A mobile food unit license is a special license and is required in addition to any other required city business license or state license or permit the person may hold or be required to hold. A separate mobile food unit license is required for each mobile food vehicle or pushcart from which business is conducted in the city. The exception to this requirement is a person having a license to operate as a mobile ice cream vendor need not obtain a mobile food

unit license unless that person also sells or offers for sale food and/or beverages besides selling or offering for sale frozen desserts. Mobile food unit licenses are not transferable or assignable. The license fee required shall be established by the city council by resolution.

In addition to the license, no person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the public right-of-way, either in one of the mobile unit zones or in special occurrence permit situations, without first having obtained a permit to operate as such. A separate mobile food unit permit is required for each mobile food vehicle or pushcart from which business is conducted in the city. The permit fee required shall be established by the city council by resolution.

No person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the public right-of-way, other than in a designated mobile food unit zone, unless a special occurrence permit has been obtained by the premise/property owner. The premise shall make a formal request and complete an application to the city outlining all dates/times, and special occurrence permits require city council approval. Special occurrence permits are limited to one per premise.

#### 5.19.030 Application.

An application form available from the finance department must be filled out and submitted to the finance department for processing. The completed application must be submitted together with a copy of the applicant's Iowa retail sales tax permit and proof of liability insurance, including commercial general liability insurance coverage and automotive liability insurance coverage. Commercial general liability insurance shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence and aggregate combined single limit. Automobile liability insurance coverage shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence, combined single limit. Certificates of insurance shall provide that the policy or policies have been endorsed to provide 30 days advance notice of cancellation and 45 days advance notice of non-renewal and 10 days advance notice of cancellation for non-payment of premium and that these notices shall be

provided to the city finance department by email, facsimile or mail. Cancellation of required insurance automatically revokes and terminates the mobile food unit license to operate in Davenport unless other insurance policies are provided in a timely manner to the city. If the mobile food unit sells food or beverages other than pre-packaged items that do not require hot or cold handling procedures, the application shall also contain a copy of the mobile food unit's license issued by the Iowa Department of Inspections and Appeals, a copy of the food establishment license issued by the Iowa Department of Inspections and Appeals for any commissary kitchen or other premises where food is prepared, copies of the food protection manager certifications, the name and address of the facility at which any waste fat, waste oil or waste grease generated by the mobile food unit operation is disposed of, and a copy of the certificate of annual compliance issued by the fire marshal.

#### 5.19.040 Exceptions.

A. Temporary mobile food units or pushcarts associated with a public celebration or special event hosted by a public body, community organization, charitable organization, patriotic organization, religious organization, educational institution or similar entity are exempt from the licensing provisions of this chapter provided the unit's participation is by invitation or contract with the host or sponsoring organization and provided the unit displays proof of its authorization to operate in Iowa and required health inspection certification.

B. Temporary food units associated with a private party on private, residential property hosted by the owner of the property upon which the unit is dispensing food and/or beverage, such as a graduation party, wedding reception, birthday celebration or similar event, are exempt from the licensing provisions of this chapter provided the unit's participation is by invitation or contract with the host and provided the vendor displays proof of its authorization to operate in Iowa and required health inspection certification.

#### 5.19.050 General regulations for all mobile food units and pushcarts.

A. Mobile food units shall have, and at all times maintain, all necessary licenses and permits from the Iowa Department of Inspections and Appeals as well as the City of Davenport's required permits and licenses.

B. Mobile food units shall at all times operate in compliance with all applicable food, health and sanitation laws and shall comply with all health department regulations regarding food service, food storage and preparation, food handling and food cooking and shall have a valid inspection certificate or permit evincing health department inspection and approval on display and easily visible to the mobile food unit's or pushcart's patrons at all times in operation.

C. No mobile food unit or pushcart shall offer for sale or sell food and/or beverage between the hours of 12:00 a.m. and 6:00 a.m.

D. No mobile food unit or pushcart may operate in the right-of-way or outside of a designated mobile food vending zone established by the City of Davenport absent of the premise obtaining a special occurrence permit which must be approved by the City Council.

E. No mobile food unit or pushcart shall operate within a city park unless such operation occurs within the boundaries of a designated mobile food unit zone or a separate permit has been acquired from the director of the parks and recreation department.

F. No mobile food unit or pushcart shall park or stand its pushcart or vehicle within (1) 40 feet of a pedestrian crosswalk, or a stop sign or traffic signal light, (2) adjacent to a designated bicycle lane, or (3) absent written authorization of the restaurant, within 200 feet of any public entrance to any permanent restaurant during hours the restaurant is open for business. For purposes of this section, bars that serve food are deemed to be restaurants. Mobile food units and pushcarts that are not directly involved with the sponsor organization shall not park or stand within 1200 feet (3 city blocks) of an approved special event.

G. No mobile food unit or pushcart shall operate in a manner that violates Chapter 8.19 of the city code concerning noise. A mobile food unit or pushcart shall not call out to, cry out, shout out or otherwise communicate or make any noise or use any device to call attention to his or her unit's or cart's location and operation.

H. A mobile food unit or pushcart is responsible for keeping and maintaining the area around and within fifty feet of the mobile food unit or pushcart neat, clean and free from trash, debris, garbage and other hazardous conditions at all times regardless of whether the trash, debris or garbage originated from the operation of the unit or pushcart or was left in the area by a pedestrian passersby or natural conditions. A mobile food unit or pushcart shall provide adequate trash receptacles for the public for all garbage from its operation and from the accumulation of garbage in the area around his or her

unit or pushcart at all times the unit is in operation. At the close of its daily business the mobile food unit or pushcart must remove all garbage from the area and properly dispose of it away from the site of its operation; the garbage shall not simply be placed in nearby public garbage receptacles provided for use to the general public at large.

I. The license required by this chapter, the state sales tax permit and all licenses, permits or certificates required to be displayed by state law, shall be posted on the mobile food unit or pushcart so as to be readily visible to all persons conducting business with the mobile food unit.

J. Mobile food units and pushcarts shall only offer single service food utensils such as cups, straws, knives, forks, spoons, stirrers, plates, bowls, wrappers, containers, and similar utensils, which shall be individually wrapped if usual, and kept in a clean place and only used once in the service of food and/or beverage.

K. No mobile food unit or pushcart shall be left at its operating location at the end of its business day and shall be removed to its base business operation location.

L. No mobile food unit or pushcart shall conduct operations at a location or in a manner that hinders, impedes or restricts access to a pay phone, mail box, emergency call box, traffic control box, fire hydrant, entrance to a building or a driveway.

M. A mobile food unit or pushcart operating on private property shall not encroach into any public sidewalk or public right of way. All private property owners allowing mobile food units on property must register with the city as having a mobile kitchen for public safety purposes.

N. No mobile food unit or pushcart is allowed on the grounds of any school unless it has been invited to be there as part of a school authorized function.

O. The city reserves the right to move a mobile food unit or pushcart from any location if determined to be necessary for the provision of emergency or public services or in the interest of public safety, peace and welfare.

P. No mobile food unit or pushcart shall offer for sale or sell any liquor, beer or wine from such unit.

#### 5.19.060 Pushcart specific regulations.

A. A pushcart shall not allow, cause or obstruct the passage along any sidewalk, street, alley or parking lot as a result of a congregation of people

seeking service from the pushcart or because of the size, shape or placement of the pushcart so as to interfere, inhibit or block the normal flow of pedestrian or vehicular traffic.

B. A pushcart shall not violate parking regulations.

C. A pushcart shall not sell to any person operating a vehicle on a public street while the person's vehicle is located within the traveled portion of the roadway. A pushcart may sell to a person operating or occupying a motor vehicle that is legally parked, but may only do so from the curb side of said parked vehicle.

D. No pushcart or equipment shall be allowed to remain in the public right of way at the close of business.

E. All pushcarts and equipment associated with the business shall be maintained so as to enhance the aesthetic and overall appearance of the area in which the pushcart is operated.

F. Pushcart vendors agree to indemnify and hold harmless the city from and against any and all loss, cost, damages or claims to persons or property, including property of the city, arising out of or claimed to have arisen out of the operation of a pushcart. In addition, pushcart vendors agree to defend, at no cost to the city, any such claims or lawsuits. The city may, at its option, join the defense of such claim or lawsuit without relieving the pushcart vendor from its obligations to indemnify, hold harmless and defend the city.

G. Pushcarts may operate anywhere within a designated mobile food unit zone on a paved surface, designated parking space or sidewalk subject to the other requirements of this chapter. In addition, a pushcart may operate at a requested location on private property provided application has been made for permission to operate at the requested location and that application is accompanied by a verifiable letter from the owner or person in control of the property granting permission to operate on the premises. Permission by the owner/person in control of property may be rescinded at any time by notifying the city finance department in writing that permission is rescinded. If permission is rescinded, no fees or portion of fees paid will be refunded.

H. No pushcart shall conduct business in areas of the city at which they are not permitted or authorized.

I. Pushcarts shall now be subject to the same permit and fee structure as all other mobile food units.

J. For a period of five years, pushcarts with existing location permits from the City of Davenport may continue serving at those locations. After the period of

five years, pushcarts must be only in a designated mobile food unit zone, or the premise must obtain a special occurrence permit.

5.19.070 Mobile food unit specific regulations.

A. Sales shall be conducted on the sidewalk side of the mobile food unit whenever possible away from moving vehicles.

B. No mobile food truck should provide or allow any dining area, tables, chairs, boothies, benches, bar stools, stand-up counters, or similar furniture.

C. No mobile food unit shall be used for any purpose other than as a mobile food unit offering food and/or beverage to customers.

5.19.080 Enforcement and penalties.

The Scott County Health Department, the Davenport Police Department, the Davenport Fire Department and the Finance Department of the City of Davenport are authorized to enforce this chapter. The Scott County Health Department may elect to pursue enforcement under the provisions of this chapter or under applicable state laws and regulations with the sanctions available thereunder.

The performance of any action contrary to the provisions of this chapter may be cited as a municipal infraction offense. Additionally, failure to adhere to the regulations is cause for revocation or suspension of a license to operate as a mobile food unit or pushcart.

SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason illegal or void, then the lawful provisions of this ordinance, which are separable 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.

REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

EFFECTIVE DATE. This ordinance shall be in full force and effective after its final passage and publication as by law provided.



First Consideration \_\_\_\_\_

Second Consideration \_\_\_\_\_

Approved \_\_\_\_\_

\_\_\_\_\_

Frank Klipsch  
Mayor

Attest: \_\_\_\_\_

Jackie Holecek, MMC  
Deputy City Clerk

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