

ORDINANCE NO. 50-382

AN ORDINANCE CREATING CHAPTER 3.15 OF THE CODE OF THE CITY OF WICHITA, KANSAS PERTAINING TO THE LICENSING AND OPERATION OF MOBILE FOOD VENDORS AND PROHIBITED ACTS AND AMENDING SECTIONS 3.95.30 AND 3.97.020 OF THE CODE OF THE CITY OF WICHITA PERTAINING TO LICENSING OF TRANSIENT MERCHANTS AND STREET AND SIDEWALK VENDORS AND REPEALING THE ORIGINALS THEREOF.

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

SECTION 1. Chapter 3.15 of the Code of the City of Wichita, Kansas is hereby created and shall be titled “**Chapter 3.15 — Mobile Food Vendors.**”

SECTION 2. Section 3.15.010 of the Code of the City of Wichita, Kansas is hereby created to read as follows: “**3.15.010 — Definitions.** The words and phrases listed below when used in this Chapter shall have the following meanings:

- (a) ‘City’ means the City of Wichita, Kansas.
- (b) ‘City Approved Event’ means any event sponsored by the City or any community event sanctioned by a permit issued by the City pursuant to Chapter 3.11 of this Code.
- (c) ‘Food and/or Beverage’ means articles used for food or drink for humans or animals, chewing gum, and/or articles used for components of any such article, in accordance with the definition of food within K.S.A. 65-656 and amendments thereto.
- (d) ‘Mobile Food Vending’ means to conduct, hold, carry on, pursue or operate a business of vending, peddling, hawking and/or selling any food and/or beverage from a Mobile Food Unit.
- (e) ‘Mobile Food Vendor’ means any person, corporation, association, or other entity, however organized, that offers any food or beverage for sale from a Mobile Food Unit, subject to the exceptions set forth in Section 3.15.030.

(f) 'Mobile Food Unit' or 'Unit' means any self-contained vehicle, trailer, cart, wagon, or other type of conveyance from which any food and/or beverage is offered for sale.

(g) 'Person' means an individual, corporation, partnership, company, agency, institution, or any other entity.

(h) 'Public property' means any property publicly owned, including but not limited to streets, sidewalks, alleys, parks, parking lots, easements, improved or unimproved land, or any buildings or physical structures owned or managed by the City of Wichita or other governmental agency.

(i) 'Public right-of-way' means the entire width of the area from property line to property line including all area intended, designed or used for vehicular or pedestrian traffic and the area between the roadway and the abutting private property line.

(j) 'Restaurant' means an establishment where the principal business is the sale of food and beverages in a ready-to-consume state, but shall not include a Tavern or Drinking Establishment, as those terms are defined in this Code.”

SECTION 3. Section 3.15.020 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.020 — Mobile food vending – license required. It is unlawful for any person to engage in Mobile Food Vending within the corporate limits of the City of Wichita, Kansas, without obtaining a license in accordance with this Chapter.”

SECTION 4. Section 3.15.030 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.030 -- Exceptions.

(a) The provisions of this Chapter shall not apply to the following activities:

(1) Persons providing catering services to a private event and not open for the sale of food and/or beverage to the general public;

- (2) Ice cream trucks licensed and operating pursuant to Chapter 3.89 of the City Code, however an ice cream truck selling food other than ice cream food stuffs pursuant to the license required in Chapter 3.89 must obtain the license set forth in this Chapter and must comply with all provisions herein when selling food other than ice cream food stuffs;
- (3) Sidewalk vendors licensed and operating pursuant to Chapter 3.97 of the City Code; or
- (4) Door to door sales or delivery of prepared food not intended for immediate consumption.

(b) The provisions of this Chapter shall apply to the sale of agricultural, farm, garden or aquacultural products or fruits grown within the State of Kansas by producers or growers and their agents. Persons engaging in such sales that also fall within the definition of a Mobile Food Vendor must obtain the license required by this Chapter, however, no fee as set forth in Section 3.15.050, and amendments thereto, shall be charged for such license. ”

SECTION 5. Section 3.15.040 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.040 — License application. Any person desiring to obtain the license required by this Chapter shall complete and submit a written license application on a form provided by the City Treasurer for each individual Mobile Food Unit. The application shall require the following information:

- (a) The full legal name, date of birth, permanent address, business mailing address, email address and telephone number of the applicant and the contact person for the business, if different from the applicant;
- (b) The name under which the Mobile Food Unit does business (“dba” name) and, if applicable, the registered name of the legal entity owning the Mobile Food Unit (corporation, limited liability company, partnership, limited partnership association, firm or other name);

- (c) The name of the owner and the type, make and vehicle identification number or other identifying number of the vehicle from which the applicant proposes to conduct business;
- (d) The applicant's valid Kansas sales tax number;
- (e) A brief description of the nature of the business and the food and/or beverage to be offered for sale;
- (f) A statement as to whether the applicant has ever had a mobile vending license or other similar license, permit or registration revoked or suspended under the Code of the City of Wichita or any similar laws of any other city or state;
- (g) A statement that the applicant understands and agrees that the license issued pursuant to this Chapter will not be used or represented in any way as an endorsement of the applicant by the City of Wichita or by any department, officer, or elected or appointed official of the City;
- (h) Proof of a valid Kansas driver's license for operation of the class of vehicle or vehicles identified in the application to be used in the business for the applicant and any agents or employees of the applicant who will be involved in driving the identified vehicle or vehicles;
- (h) Proof that the applicant has procured a policy of general liability insurance covering the mobile vending operation and vehicle or vehicles written by an insurance carrier licensed to do business in Kansas, with minimum limits of \$500,000 combined, single limit for bodily and property damage per occurrence and \$1,000,000 in the general aggregate; and evidence of compliance with these insurance requirements shall be in the form of a certificate of insurance that shall be submitted with the application;
- (i) The application shall contain a statement certifying that all of the information provided in the application is true and correct and must be signed personally and acknowledged by an individual applicant, by a partner for a partnership applicant, by an officer legally authorized to sign for a corporate application or by a member of a limited liability company legally authorized to sign company documents;

(j) The application shall also contain a statement that no person whose duties include working upon the premises of the Mobile Food Unit is a registered sex offender, and that applicant has, subject to audit, performed the necessary background check of all such persons to insure that the statement is correct;

(k) The application shall also contain a statement by the applicant that when the Mobile Food Unit associated with the license application herein is not in use, it will be stored or parked in compliance with all ordinances and regulations of the City of Wichita and that failure by the applicant to legally store the Mobile Food Unit may result in the suspension or revocation of the applicant's license; and

(l) The application shall also contain a statement by the applicant or partner, officer or member that he or she is familiar with the provisions of this chapter and is complying and will comply with all requirements set forth within.”

SECTION 6. Section 3.15.050 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.050 - Fee. An application for a Mobile Food Vending license shall be accompanied by a non-refundable fee for each vehicle from which the applicant intends to conduct business according to the following schedule and shall be valid and effective only for the dates as set out therein:

- (a) \$50 for each thirty (30) days, or portion thereof;
- (b) \$250 for six (6) months; or
- (c) \$400 for one (1) calendar year.

SECTION 7. Section 3.15.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.060 — Standards for issuance of license. (a) To receive a license to operate as a Mobile Food Vendor issued by the City Treasurer's office, an applicant must meet the following standards:

- (1) The required fees must be paid;

- (2) The application must be complete and provide all information required by Section 3.15.040 and amendment thereto;
 - (3) The applicant must not have knowingly made a false or misleading statement of a material fact in the application;
 - (4) The applicant must be at least eighteen years of age;
 - (5) The applicant has certified, subject to audit, that he/she has performed the necessary background check to insure that no person whose duties include working upon the premises of the mobile food unit is a registered sex offender;
 - (6) The applicant has provided a statement that the Mobile Food Unit associated with the license application will be stored or parked in compliance with all ordinances and regulation of the City of Wichita; and
 - (7) The applicant must not have had a similar type of license in any jurisdiction previously suspended or revoked for good cause within two (2) years immediately preceding the date of the filing of the application.
- (b) If a license is denied for providing false information or making any false statement on an application, the applicant, any partnership, corporation, limited liability company or other business entity of which the applicant is an officer or member thereof shall be ineligible to reapply for a license under this chapter for one (1) calendar year from the date of the license denial.
- (c) The issuance of a license shall not constitute approval of the business or activity or otherwise prohibit enforcement of this Chapter or any other applicable ordinances, laws, rules or regulations.”

SECTION 8. Section 3.15.070 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.070 — Operating conditions. All Mobile Food Vendors operating within the city limits of the City of Wichita shall comply with the following conditions:

- (a) Location. Mobile Food Vendors may vend on property within the City as permitted by the Wichita/Sedgwick County Unified Zoning Code and subject to the following:
- (1) Mobile Food Vendors may not be parked or operate on public or private property where the Unit, signage, a line of customers or any other aspect of the Unit's operation would: (1) hinder the flow of traffic on any street, (2) hinder the flow of bicycles within any bike lane or route, (3) hinder the flow of pedestrians along any sidewalks, (4) block or reduce to less than five (5) feet in width any accessible route to persons with disabilities, or (5) block or obstruct access to any driveway or access point to any property. Provided, however, this provision shall not apply when a Mobile Food Unit is operating on a street that is closed pursuant to valid permit in association with a community event that is approved as required in Chapter 3.11 of this Code.
 - (2) For fire safety purposes, a Mobile Food Unit that is utilizing flammable liquids or gases shall maintain a minimum separation distance of ten (10) feet from any other Unit and a minimum separation distance of twenty (20) feet from any building openings such as doors and windows. The distance from building openings may be reduced to ten (10) feet if written consent is obtained from the building property owner.
 - (3) No Mobile Food Vendor shall vend on public property within 150 feet as measured from the front door of any restaurant which is open for business unless authorized in writing by the owner or manager of any such restaurant. Such written authority to operate within 150 feet of a restaurant or restaurants shall be maintained on the premises of the Mobile Food Unit at all times it is operating pursuant thereto and produced upon request by the Chief of Police or designee or other public officer authorized to enforce the provisions of this Chapter.

- (4) No Mobile Food Vendor shall vend on public property within 500 feet of the location for which a community event permit has been issued during the hours of the event as specified in the event permit, unless authorized in writing by the event promoter. Distance shall be measured from the boundary of the event footprint nearest to the location proposed to be used for mobile food vending. Any written authority to operate within 500 feet of a community event shall be maintained on the premises of the Mobile Food Unit at all times it is operating pursuant thereto and produced upon request by the Chief of Police or designee or other public officer authorized to enforce the provisions of this Chapter.
 - (5) Every Unit shall be stationary while vending.
 - (6) Whenever any vehicle is used for mobile food vending upon a street, alley, sidewalk or other public right-of-way within the City, such vehicle must be legally parked and no mobile food vendor shall sell any food to any person standing in the street. Provided, however, this provision shall not apply when a Mobile Food Unit is operating on a street that is closed pursuant to valid permit in association with a community event that is approved as required in Chapter 3.11 of this Code.
 - (7) No Mobile Food Vendor shall vend on Park property except as allowed by the Park Regulations as set forth in Chapter 9.03 of this Code and specifically in compliance with the provisions of Section 9.03.200 of this Code and any amendments thereto.
- (b) Written Permission of Property Owner. All Mobile Food Vendors operating on private property or on public property other than public right-of-way shall acquire the written permission of the property owner, manager, tenant or other person in charge of the property allowing the use and location of the Mobile Food Unit on said

property. For public property owned by the City of Wichita, written permission shall be obtained from the City Manager or designee. Any written permission required by this subsection shall be kept on the premises of the Mobile Food Unit and produced upon request by the Chief of Police or designee or other public officer authorized to enforce the provisions of this Chapter.

- (c) Hours of Operation. Mobile Food Vendors are prohibited from operating during the hours of 1:00 a.m. to 6:00 a.m.
- (d) Fire Safety. All Mobile Food Units are subject to annual fire safety inspections and shall comply with the following requirements:
 - (1) Propane shall be limited to a maximum quantity of one hundred (100) pounds. Propane cylinders must be secured from tipping over and must be protected from impact dangers.
 - (2) Mobile Food Units which produce grease laden vapors shall have a Type I hood system for commercial cooking operation with a fire suppression system in the hood. Mobile Food Units which use other warming apparatus or produce steam shall have a Type II hood system. No hood system is required for those Mobile Food Units which do not perform cooking or use heat producing devices. Mobile Food Units shall be in compliance with this requirement no later than twelve (12) months from the date of adoption of this ordinance.
 - (3) The hood system grease collection must be cleaned frequently to minimize grease build up. Type I hood systems shall be serviced every six (6) months.
 - (4) One minimum size 2A-10BC class fire extinguisher is required for each Mobile Food Unit and shall be serviced annually.
- (e) Prohibited Sales. Mobile Food Vendors are prohibited at all times from selling or offering for sale alcoholic beverages, cereal malt beverages, or tobacco products without first being properly licensed pursuant to any applicable federal, state or local laws.

- (f) Lights. No flashing lights are permitted on the Mobile Food Unit. No direct light from a Mobile Food Unit may be shined on adjacent property or cause a glare or distraction for vehicles, bicycles, or pedestrians.
- (g) Signs. Signage mounted on the side of a Mobile Food Unit shall not exceed the dimensions of the Unit by more than one (1) foot in any direction.
- (h) Sound devices. The production of amplified music or chimes from a Mobile Food Unit is allowed between the hours of 10:00 AM and 8:30 PM provided that the sound from the amplified music or chimes is inaudible at any distance greater than three hundred (300) feet from the vehicle.
- (i) Trash and Site Cleanup. All Mobile Food Vendors shall ensure that a trash receptacle shall be provided with each Mobile Food Unit. Such receptacle must be attached to the Unit or located within fifteen (15) feet of the Unit and cannot interfere with vehicle access, pedestrian movement or accessible routes to and around the Unit. Immediately upon the cessation of vending, the Mobile Food Vendor shall remove and properly dispose of all trash and litter accumulated at the vending site.
- (j) Seating. No seating and/or tables shall be permitted that hinder the flow of traffic on any street, hinders the flow of bicycles within any bike lane or route, hinders the flow of pedestrians along any sidewalks, blocks or reduces to less than five (5) feet in width any accessible route or blocks or obstructs access to any driveway or access point to any property.
- (k) Licenses and Permits. All Mobile Food Vendors and employees thereof shall acquire and maintain all required licenses, permits and inspections applicable to the use and operation of Mobile Food Units from all applicable jurisdictions. Evidence of such licenses, permits and/or inspections applicable to any vehicle, equipment, operator or employee shall be kept in the Unit and produced upon request by the

Chief of Police or designee or other public officer authorized to enforce the provisions of this Chapter.

- (l) Food Handling. No Mobile Food Vendor or any employee, agent, or representative thereof shall vend food and/or beverages without meeting the conditions set forth in Chapter 7.20 of this Code and specifically in compliance with the provisions of Section 7.20.020 of this Code and amendments thereto.
- (m) Wastewater Disposal. No wastewater resulting from the Mobile Food Vending operation shall be disposed of on the ground or in a stormwater drain. All wastewater must be disposed of in accordance with Chapter 16.32 of this Code and specifically in compliance with Section 16.32.030 of this Code and amendments thereto.

SECTION 9. Section 3.15.080 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.080 – Right to close or relocate a Mobile Food Vendor. Any law enforcement officer has the right to close down or request a Mobile Food Unit to relocate, where, in the opinion of such officer, the Mobile Food Unit is causing or contributing to an imminent public safety hazard. Such hazards shall include, but not be limited to, situations where the operation of a Mobile Food Vending Unit is causing a traffic hazard, a fire hazard, is impeding free or uninterrupted passage of vehicles and/or pedestrians upon public streets, sidewalks or alleyways, selling food or beverages that are not safe for human consumption or operating a Mobile Food Unit without the license required by this Chapter.”

SECTION 10. Section 3.15.090 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.090 — License denial, revocation, and appeal. (a) If a license is not issued, the City Treasurer or designee shall indicate in writing the reason(s) for denial and inform the applicant of the applicant's right to an appeal of the denial in accordance with the provisions of this Section.

(b) A license may be suspended for up to 30 days or revoked by the Chief of Police or designee or other city personnel authorized to enforce the provisions of this Chapter for any of the following reasons:

- (1) The licensee fails to provide true and correct information on the application;
- (2) The licensee fails to continuously maintain insurance upon the Mobile Food Unit in accordance with requirements of this chapter;
- (3) The licensee allows a registered sex offender to work upon the premises of the Mobile Food Unit;
- (4) The licensee or any employee or agent thereof commits a violation of any provision of this Chapter or any federal, state, or local law, rule or regulation applicable or related to mobile food vending; or
- (5) The licensee becomes otherwise ineligible to hold a Mobile Food Vending license.

Notice of such suspension or revocation shall be shall be mailed by the City Treasurer or designee to the licensee's address as shown on the license application form and/or personally served upon the licensee. Such notice shall be in writing and shall set forth the reason(s) for revocation and the licensee's right to an appeal in accordance with the provisions of this Section, provided, however, any appeal of a license suspension or revocation shall not suspend or revoke the license during the pendency of the appeal.

(c) Appeal process.

- (1) Upon the denial of an application for, or suspension or revocation of a mobile food vending license, the applicant or licensee shall have the right to appeal such action within ten (10) business days of the notice of denial, suspension or revocation being mailed to the applicant's address as shown on the license application form, and/or personal service upon the applicant or licensee. Such

an appeal must be in writing and filed with the City Clerk, setting forth the grounds for the appeal. Upon receipt of a complete and timely filed Notice of Appeal, the City Clerk shall schedule a hearing before the City Council, no later than thirty (30) days from the date of the filing of the Notice of Appeal with the City Clerk. Any appeal shall stay a suspension or revocation of the license or permit until the matter is heard by the City Council.

- (2) The City Council may approve the denial, suspension or revocation, overrule the denial, suspension, or revocation or modify the decision to deny, suspend or revoke a license made by any city personnel authorized to enforce the provisions of this Chapter.
- (3) In any hearing before the City Council pursuant to this section, a certified copy of a conviction from any local, state, or federal court for any violation, is prima facie evidence of such violation.
- (4) The City Council's decision may be appealed to the Eighteenth Judicial District Court of the State of Kansas pursuant to K.S.A. 60-2101 and any amendments thereto. Any such appeal to the District Court shall not stay the denial, suspension or revocation of the license, or any modification imposed thereupon by the City Council.
- (6) If a license is revoked for any reason, the applicant, any partnership or any business entity of which the applicant is an officer or member thereof shall be ineligible to reapply for a license under this chapter for two (2) calendar years from the date of the license revocation."

SECTION 11 Section 3.15.100 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.100 - Term and transferability. Licenses issued under this Chapter are available for periods of one (1) month, six (6) months or one (1) year. A license must be obtained for each individual vehicle being used in a mobile food vending operation. Licenses may not be transferred between persons or vehicles.”

SECTION 12. Section 3.15.110 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.110 - Posting. Any person licensed under this Chapter must keep their license posted in a conspicuous place inside the vehicle used for mobile food vending. Such license must be current and may be used only by the licensee.”

SECTION 13. Section 3.15.120 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.120 – Enforcement – Personnel authorized. In addition to all law enforcement officers, the following personnel employed by the City shall have the power to enforce the provision of this chapter:

- (a) Fire Department personnel;
- (b) The Director of Public Works and Utilities or designee;
- (c) The Traffic Engineer or designee;
- (d) The Zoning Administrator or designee; and
- (e) Metropolitan Area Building and Construction Department Inspectors.”

SECTION 14. Section 3.15.130 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.130 - Penalty for violation. Any person convicted of a violation of this Chapter shall be guilty of a misdemeanor and shall be punished by a fine not to exceed five hundred dollars (\$500.00). Each day that any violation of this chapter occurs, shall constitute a separate offense and shall be punishable as a separate offense.”

SECTION 15. Section 3.15.140 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

“3.15.140 - Severability. Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.”

SECTION 16. Section 3.95.0030 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

“3.95.030 - Exceptions. (a) A person engaging in the following activities shall not be considered a transient merchant for the purposes of this chapter, and the licensing provisions required herein shall not apply:

- (1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- (2) Sales of merchandise by exhibiting samples, or by catalogue or brochure for future delivery;
- (3) Sales conducted within trade centers, convention centers, shopping malls and exhibition halls located in hotels or motels;
- (4) Sales or displays at fairs, expositions, or promotional events where such activity is sponsored by the City, or another governmental entity;
- (5) Sales or displays at sales, events, bazaars, athletic events, or concessions sponsored or operated by public or private schools, educational institutions, civic organizations, or not-for-profit organizations provided that:
 - (a) Such sale is conducted wholly by members of the nonprofit group, and
 - (b) Such sale is conducted upon any school, church, or nonprofit organization’s property, or
 - (c) Within a building, or

- (d) Under a roof canopy or projection, or within ten (10) feet of such canopy or projection, or
 - (e) Within ten (10) feet of the exterior walls of a building.
- (6) Auctions, as regulated by Chapter 3.36 of this Code;
 - (7) Garage, or miscellaneous sales, as regulated by Chapter 3.44 of this Code;
 - (8) Sales of Christmas trees and other seasonal items as regulated by Chapter 3.44 of this Code;
 - (9) Sales that are considered Street and Sidewalk vending, and are regulated by Chapter 3.97 of this Code;
 - (10) Sales by Mobile Food Vendors that are regulated by Chapter 3.15 of this Code;
 - (11) Sales of agricultural products, nursery products and foliage plants through an organized farmer's market;
 - (12) Isolated sales upon public sidewalks for which a permit has been issued as required by Section 10.04.131 of the City Code; and
 - (13) Sales of newspapers.
- (b) A transient merchant not otherwise exempted from the provisions of this Chapter shall not be relieved or exempted from the provisions of this Chapter by reason of temporary association with any local dealer, auctioneer, trader, contractor or merchant or by conducting a temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.”

SECTION 17. Section 3.97.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

3.97.020 – Exceptions. This chapter shall not apply to:

- (a) Ice cream street vendors, as defined and covered in Chapter 3.89 of this Code.
- (b) Persons who take orders for merchandise or food when such merchandise or food is to be delivered to the ultimate consumer on a day subsequent to the date of the sale.

- (c) Mobile operations conducted by any milk delivery persons operating in compliance with the law pertaining to such activity.
- (d) Selling of merchandise as regulated by Section 10.04.130 of this Code and for which a permit is required as set forth in Section 10.04.131.
- (e) Sales by Mobile Food Vendors that are regulated by Chapter 3.15 of this Code.”

SECTION 18. The originals of Sections 3.95.030 and 3.97.020 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 19. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of December, 2016.

Jeff Longwell, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Jennifer L. Magaña, City Attorney and
Director of Law