

ORDINANCE NO. 2352

AN ORDINANCE OF THE CITY OF WAHOO, SAUNDERS COUNTY, NEBRASKA, TO AMEND TITLE XI: BUSINESS REGULATIONS OF THE MUNICIPAL CODE OF THE CITY OF WAHOO, NEBRASKA, BY CREATION OF CHAPTER 116: MOBILE FOOD VENDORS; TO PROVIDE FOR THE SEVERABILITY OF ANY SECTION, CLAUSE, OR PROVISION OR PORTION FOUND UNCONSTITUTIONAL OR INVALID; TO PROVIDE FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; TO PROVIDE FOR THE PUBLICATION OF THIS ORDINANCE IN PAMPHLET FORM AND THE EFFECTIVE DATE THEREOF. AND TO PROVIDE THAT THIS ORDINANCE SHALL BECOME AND BE MADE A PART OF THE MUNICIPAL CODE OF THE CITY OF WAHOO, NEBRASKA.

WHEREAS, on January 24, 2002, the Mayor and Council of the City of Wahoo, Nebraska, did adopt the Wahoo Municipal Code, and,

WHEREAS, the Mayor and Council of the City of Wahoo find that regulations for mobile food vendors and food trucks should be established, by creation of a new Chapter 116 of the Wahoo Municipal Code,

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF WAHOO, NEBRASKA, AS FOLLOWS:

1. That the findings hereinabove should be and are hereby made a part of this Ordinance as fully as if set out at length herein.
2. That Title XI: Business Regulations, of the Municipal Code of the City of Wahoo, Nebraska be amended to read as follows by addition of Chapter 116: Mobile Food Vendors:

§116: MOBILE FOOD VENDORS

§ 116.01 – 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 chapter 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 chapter 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. _____, passed _____-20)

§ 116.02 – DEFINITIONS

For the purpose of this chapter the following terms shall have the meanings respectively ascribed to them: Administrator shall mean the City Administrator, or his/her authorized designee.

Food shall mean any raw, cooked, or processed edible substance or beverage 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: the sale or offer for sale of farm products produced or raised by such a vendor from land either occupied or cultivated by him/her or purchased directly from a Nebraska farmer; an ice cream truck operator who is otherwise required to obtain a separate peddlers permit; and/or a minor who is selling liquid refreshments on a temporary basis in a manner akin to a lemonade stand.

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, convenience stores, grocery stores or automotive fueling stations.

(Ord. _____, passed _____-20)

§ 116.03 – 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 chapter, including holding a valid and active mobile food vendor license issued by the Administrator under this chapter.

(Ord. _____, passed _____-20)

§ 116.04 – APPLICATION

An applicant for a license pursuant to this chapter shall file with the Administrator a signed application on a form to be furnished by the Administrator, 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) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption, for the applicant together with their food and dairy permit;
- (f) A general description of the types of locations the applicant anticipates selling from;
- (g) Such other information as the Administrator may require and as requested in the said application form.

(Ord. _____, passed _____-20)

§ 116.05 – ISSUANCE OR DENIAL

- (a) Upon receipt of a complete application for a license pursuant to this chapter, the Administrator

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 Administrator 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 Administrator 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 including, but not limited to, chapter 116 of this Code.

(4) A finding that the applicant has been convicted of three or more separate violations of the provisions of this chapter within the 12 months preceding the submission of a complete application.

An application for a license under this chapter shall be accompanied by a nonrefundable processing fee of \$100.00 unless the applicant is seeking a one-day permit in which case the processing fee shall be \$50.00. (Ord. _____, passed _____-20)

§ 116.06 – RENEWAL

A license issued under this chapter shall expire on December 31 of each year, unless renewed for the following year by the permittee. The permittee shall renew the license for the following year by filing with the Administrator, by 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 Administrator. At the time of registration, the permittee shall pay a renewal fee of \$50.00 per year for each motor vehicle, trailer, cart, or other piece of mobile equipment to be utilized in the business.

(Ord. _____, passed _____-20)

§ 116.07 – 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 150 feet of a permanent food establishment's property line, 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 requirements of this subsection may be relaxed, if approved by the Administrator upon a mobile food vendor's application for a waiver.

(c) A mobile food vendor shall not sell or offer to sell food from a motor vehicle at a location in a City right-of-way or public parking unless approved by the Administrator upon a mobile food vendor's application for a waiver. This necessarily shall include a location which would involve customers being waited on or served while standing in a portion of a street.

(d) A mobile food vendor shall not sell or offer to sell food from an area that is not zoned either C-1 (Downtown Commercial), C-2 (Highway Commercial), C-3 (General Commercial), NRC (Neighborhood Residential Commercial), I-1 (Light Industrial) or I-2 (Heavy Industrial) in its form unless approved by the Administrator upon a mobile food vendor's application for a waiver.

(e) A mobile food vendor who sells or offers to sell food from a location on private property shall first obtain and possess, and be able to exhibit upon request, written consent of the owner of such property.

(f) A mobile food vendor shall not sell nor offer to sell food from City park property unless approved by the Administrator upon a mobile food vendor's application for a waiver.

(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 county public property unless he/she possesses the written consent of an authorized representative of the county.

(i) 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 500 feet of any boundary of such authorized area, unless the mobile food vendor is in possession of the written consent of the event permittee to sell or offer to sell food from that location.

(j) A mobile food vendor shall possess and be able to exhibit his/her license under this chapter, a State of Nebraska sales tax permit or proof of sales tax exemption, approvals from the Nebraska Department of Agriculture as required, and any other written consents or documentation required under this chapter, at all times during which the mobile food vendor is selling or offering to sell food.

(k) An authorized employee of the City or police departments 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.

(l) 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 where food is or will be offered for sale.

(m) A mobile food vendor may sell or offer to sell food seven days a week, but only from 7:00 a.m. to Midnight. 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, as needed for the protection of public safety.

(n) 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.

(o) A mobile food vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.

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

(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 30 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.

(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 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. _____, passed _____-20)

(a) Grounds. A license issued under this chapter may be revoked or suspended by the Administrator 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 chapter or any applicable laws or provisions of this Code including, but not limited to, chapter 116 of this Code; or
- (4) Conducting the business licensed under this chapter 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) Conviction of violation of chapter. The Administrator shall revoke a license issued under this chapter for any mobile food vendor who is convicted of two or more separate violations of the provisions of this chapter 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 Administrator 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 sent by both regular U.S. mail and certified mail (although return receipt is not required to prove service) to the license holder's address as stated in his/her application.

(d) Appeal. A license holder aggrieved by the decision of the Administrator under this section may file an appeal with the City to be heard either before a hearing officer or the city council as the Administrator deems appropriate.

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

(Ord. _____, passed _____-20)

§ 116.09 – PENALTY

It shall be unlawful for any person to violate the provisions of this chapter. Any violation shall be punishable as provided in section 10.99 of this Code.

(Ord. _____, passed _____-20)

§ 116.10 – SEVERABILITY

If any provision, clause, sentence, paragraph or other portion of this chapter 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 chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Ord. _____, passed _____-20)

3. That should any section, paragraph, sentence or word of this Ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the Mayor and Council of the City of Wahoo, Nebraska that it would have passed all other portions of this Ordinance independent of the elimination herefrom of any such portion as may be declared invalid.

4. That all ordinances and parts of ordinances passed and approved prior to the passage, approval, and publication of this Ordinance, in conflict herewith, are hereby repealed.

5. That this Ordinance shall be published in pamphlet form and shall be in full force and take

effect from and after its passage, approval, as provided by law.

1. That it is the intention of the Mayor and Council of the City of Wahoo, Nebraska, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Municipal Code of the City of Wahoo, Nebraska, and the sections of this Ordinance may be renumbered to accomplish such intention.

PASSED AND APPROVED this 23rd day of July, 2020.

CITY OF WAHOO, NEBRASKA

By: _____
Gerald D. Johnson, Its Mayor

ATTEST:

Lucinda J. Morrow, Its Clerk

(SEAL)