

ORDINANCE NO. 23-10

AN ORDINANCE AMENDING CHAPTER 183 (MOBILE FOOD UNITS)

BE IT ENACTED by the City Council of the City of Windsor Heights, Iowa, as follows:

SECTION 1. SECTION MODIFIED. Chapter 183 (Mobile Food Units) is amended using the following new language:

CHAPTER 183 MOBILE FOOD UNITS

183.01 Definitions	183.06 Reserved
183.02 License and Permit Required	183.07 Reserved
183.03 Application	183.08 Enforcement and Penalties
183.04 Exceptions	
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183.01 DEFINITIONS.

1. “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..

2. “Food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. For the 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.

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

4. “Potentially hazardous food” A biological (microorganism), chemical (cleansers, pesticides), or physical (fingernail, plastic) property that may cause an unacceptable consumer health risk.

5. “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 a 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.

6. Mobile Food Unit License: This is a City of Windsor Heights issued license necessary for all Mobile Food Units operating in Windsor Heights City limits, unless the mobile food unit is operating on private property as part of a private event under Code Section 183.04.

7. Special Event Permit: This is a permit necessary for all Mobile Food Units operating in the City of Windsor Heights right-of-way or in a City Park. The permit is valid for a specified period of time and at a specified location. This permit does not supersede the need for a Mobile Food Unit License.

183.02 LICENSE AND PERMIT REQUIRED.

No person shall sell or offer for sale or otherwise engage in a business as a mobile food unit 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 from which business is conducted in the City. Mobile Food Unit Licenses are not transferable or assignable. The license fee required shall be established by the City Council by resolution. Licenses expire 365 days after license issuance. No person shall sell or offer for sale or otherwise engage in business as a mobile food unit within the public right-of-way or in a City Park unless otherwise approved by the City Administrator or their designee by a Special Event Permit. The granting of a Special Event Permit is discretionary based on available space and event requirements. A Special Event fee may be charged by the City of Windsor Heights or the event host.

183.03 APPLICATION.

A Mobile Food License application form available from the Building and Zoning Department must be filled out and submitted to the City Clerk 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 thirty days advance notice of cancellation and forty-five days advance notice of non-renewal and ten 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 Windsor Heights 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 of Des Moines, Clive, Ankeny, Urbandale, Norwalk, Grimes, Altoona, Pleasant Hill, Johnston, Waukee, or West Des Moines.

183.04 EXCEPTIONS.

1. Mobile food units associated with a private party on private 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.

183.05 GENERAL REGULATIONS FOR ALL MOBILE FOOD UNITS

1. 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 Windsor Heights's required permits and licenses.

2. 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 evidencing health department inspection and approval on display and easily visible to the mobile food unit's patrons at all times in operation.

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

4. No mobile food unit may operate in the right-of-way absent of a receipt of a special event permit from City Administration or their designee.

5. No mobile food unit shall operate within a City park absent receipt of a special event permit from City Administration or their designee.

6. No mobile food unit shall park or stand 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 that are not directly involved with the sponsor organization shall not park or stand within 1,200 feet (3 City blocks) of an approved special event.

7. No mobile food unit shall operate in a manner that violates Chapter 54 of the City Code concerning noise. A mobile food unit owner or operator shall not call out to, cry out, shout out or otherwise communicate or make any noise or use any device to call attention to their cart's location and operation.

8. A mobile food unit owner or operator is responsible for keeping and maintaining the area around and within fifty feet of the mobile food unit 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 was left in the area by a pedestrian passerby or natural conditions. A mobile food unit owner or operator shall provide adequate trash receptacles for the public for all garbage from its operation and from the accumulation of garbage in the area around their unit all times the unit is in operation. At the close of its daily business, the mobile food unit owner or operator 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.

9. 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 so as to be readily visible to all persons conducting business with the mobile food unit.

10. Mobile food units 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.

11. No mobile food unit shall be left at its operating location at the end of its business day, unless it is operating as part of a multi-day special event and has approval from the City Administrator.

12. No mobile food unit 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.

13. A mobile food unit operating on private property shall not encroach into any public sidewalk or public right-of-way. The window or area where a patron orders and receives their purchase shall be located so as to not require a patron to stand, or create a line that may cause pedestrians to be in the public right of way, vehicle travel lane, including parking lot drive aisles, or similar situation that may create a potential safety hazard. Sales shall be conducted on the sidewalk or pathway side of the mobile food unit wherever possible, away from moving vehicles. All private property owners allowing mobile food units on property must maintain a food service license issued by the State of Iowa Department of Inspections & Appeals and certificate of insurance.

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

15. The City reserves the right to move a mobile food unit 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.

16. No mobile food unit shall offer for sale or sell any liquor, beer or wine from such unit unless a Liquor License has been approved by the Iowa Alcoholic Beverage Division.

17. No mobile food truck should provide or allow any dining area, tables, chairs, booths, benches, bar stools, stand-up counters, or similar furniture unless allowed by a private lease on private property.

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

19. Mobile food units shall serve patrons which are on foot only; no drive-up service to the unit itself shall be provided or allowed.

20. The mobile food unit must be located on a paved or rocked surface, unless approved as part of an event permit.

183.06 RESERVED.

183.07 RESERVED

183.08 ENFORCEMENT AND PENALTIES.

The Polk County Health Department, the Windsor Heights Police Department, the Windsor Heights Fire Department and the Windsor Heights Building and Zoning Department of the City of Windsor Heights are authorized to enforce this chapter. The Polk County Health Department may elect to pursue enforcement under the provision 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. Any license issued under the provisions of this chapter may be suspended or revoked by the City as follows:

- The vendor has violated this chapter or any other chapter of this code or has otherwise conducted his/her business in an unlawful manner.
- The vendor has conducted his/her business in such manner as to endanger the public welfare, safety, order or morals.
- The City has received and investigated three (3) or more found complaints during the license term related to the manner in which the vendor is conducting business.
- Emergency Revocation. The Police or Fire Chief may suspend or revoke any license or permit immediately, upon oral notification to the operator of the mobile food unit, in the event the mobile food unit is creating a danger to the public health or safety. In such event, the vendor shall immediately cease operations. The Police or Fire Chief will cause the notice of revocation to be served in person by a city official or by mail to the vendor's local address within twenty-four (24) hours.
- Notice of Suspension or Revocation; Right to Appeal. The Police or Fire Chief shall cause notice of the certificate revocation to be served in person by a city official or by mail to the vendor's local address, which notice shall specify the reason(s) for such action, at which time operations of the vendor must cease within the corporate limits of the City. The vendor may appeal the revocation of the certificate to the City Council at its next regularly scheduled meeting by filing with the City Clerk a written request for an appeal to the City Council at least seven (7) days prior to the meeting. The City Council may affirm, modify or reverse the decision of the Police or Fire Chief to revoke such certificate. If a certificate is revoked, no refund of any license fee paid shall be made. Upon the revocation, the vendor is not eligible for the issuance of a new permit under this chapter for a period of one year from the date the permit revocation is served in person or deposited in the U.S. mail.

SECTION 2. REPEALER. All ordinances or parts or ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval and publication as provided by law.

Passed and approved 1st Reading on this __20__th day of __November____, 2023.

Passed and approved 2nd Reading on this __4__th day of __December__, 2023.

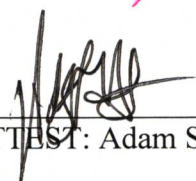
Passed and approved 3rd and final Reading on this __18__th day of __December_, 2023.




Mike Jones, Mayor

(SEAL)





ATTEST: Adam Strait, City Clerk