

**ORDINANCE NO. 5140-24**

**AN ORDINANCE AMENDING CHAPTER 11 OF CITY CODE ESTABLISHING THE REGULATION AND LICENSING PROCESS FOR MOBILE FOOD VENDORS; AND REPEALING SECTION 16 OF ORDINANCE 3794 AND SECTIONS 1 THROUGH 11 OF ORDINANCE 2480.**

**WHEREAS,** The City of Newton has a growing demand for Mobile Food Vendors within the city limits;

**WHEREAS,** The City had previously enacted laws regulating mobile ice cream and frozen dessert operations which are outdated and excludes other types of Mobile Food Vendors; and

**WHEREAS,** The City has not established local laws regulating the permits, licenses, business practices, or penalties specifically addressing Mobile Food Vendors.

**THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NEWTON, KANSAS:**

**SECTION 1.** Article 10 of Chapter XI of the Code of the City of Newton, Kansas, is hereby amended as follows:

**CHAPTER XI. HEALTH**

**ARTICLE 10. MOBILE FOOD VENDORS**

**10-1001. Definitions.** Unless otherwise expressly stated or the context clearly indicates a different intention, the terms set forth this Article, have the meanings indicated.

(a) "Employee" shall mean any Person who handles Food or drink preparation, manufacturing or processing, collects payment, or who comes in contact with any utensils being used for preparation, manufacturing or processing, or who is employed in a Unit in which Food or drink is prepared, manufactured or processed.

(b) "Food" means any raw, cooked or processed edible or drinkable substance or ingredient used or intended for use or for Sale, in whole or in part, for human consumption.

(c) "Mobile Food Vending" ("Vending") means to conduct, hold, carry on, pursue or operate a business of vending or selling any Food or beverage from a Unit.

(d) "Mobile Food Vendor" ("Vendor") shall mean any Person, corporation, association, or other entity, however organized, that offers Food for Sale from a Unit.

(e) “Mobile Food Unit” (the “Unit”) shall mean any self-contained vehicle, trailer, cart, wagon, or other type of conveyance from which any Food is offered for sale.

(f) “Park” shall mean any of the public parks as owned and operated by the City of Newton.

(g) “Person” shall mean person, firm, corporation or association.

(h) “Sale” means any transfer, exchange or barter in any manner or by any means for a consideration, and includes all Sales made by any Person, whether principal, proprietor, agent, servant or Employee.

**10-1002. Mobile Food Vendor License, other licenses required.** No Person shall engage in any Sale of Food by virtue of a Unit within the corporate limits of the City without first having secured, and without having in full force and effect, an appropriate and unrevoked license for the Unit from both the State of Kansas (e.g. Department of Agriculture’s Food Establishment License) and the City.

**10-1003. Mobile Food Vendor License fees.**

(a) There is hereby levied an annual occupation or license fee of \$50.00 per Unit made payable to the City Clerk on the date of approval for the license and subsequently due for the remaining calendar year.

(b) License fees will not be prorated or refunded.

**10-1004. Injunction proceedings.** The City Attorney shall always have the power to enjoin any party from operating a Unit within the City notwithstanding said party having a City and State license if it shall appear that the operator has violated any provision or regulation of this Article or the City Code.

**10-1005. Inspections.**

(a) Before a license shall be issued, the City Manager or their designee shall have the authority to inspect any proposed Unit as to the electrical, fire prevention, fire safety, sanitary, plumbing and other provisions of this Article and the City Code. No application shall be approved unless said Unit shall conform to the provisions of this Article and of all laws, health, fire, sanitary and plumbing regulations of the City. The City Manager shall thereafter cause periodic inspections to be conducted of the Unit at any time and from time to time as deemed necessary for the enforcement of the provisions of this Article, and the licensee shall submit to all such inspections upon request.

(b) In lieu of an inspection by Newton City employees, the applicant may submit to the City Clerk a certified, unrevoked and unexpired inspection approvals from other Kansas municipalities, as well as a copy of the criteria for inspection used in the approval. This reciprocal

inspection should not differ substantially from the standards set forth in this Chapter. The City shall have the right to deny reciprocity for any reason.

**10-1006. Display of licenses.** Every Unit which has been issued a license under this Article shall cause such license to be displayed in a conspicuous place on the Unit along with any related license required and issued by the State.

**10-1007. Termination, revocation and suspension of licenses.** Any license issued under this Article, and all of the rights and privileges thereunder, may be revoked, suspended, or terminated at the City's sole discretion:

- (a) Upon the expiration of the term of such license, unless such license is renewed prior to the expiration of such term;
- (b) The violation of any prohibited unlawful acts in the City Code or State laws;
- (c) The failure or refusal of any City inspection;
- (d) The licensee has fraudulently obtained the license in the application;
- (e) the licensee has become ineligible to obtain a license; or
- (f) the non-payment of any license fees.

**10-1008 Appeals.** Within twenty (20) days after the order of the City revoking or suspending any license, the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal.

**10-1009. Licenses not transferable.**

(a) No license issued under this Article shall be transferable to any other Person, party, or Unit.

(b) In the event a licensee changes managers during the terms of the license, the licensee shall immediately file with the City Clerk a statement setting forth the name and address of the new manager and the information as to such manager as designated in the applicable license application requirements.

**10-1010. Application.** Any Person desiring to obtain the license required by this Article shall complete and submit a written license application on a form provided by the City Clerk for each individual Unit. The application shall require the following information:

(a) The full legal name, date of birth, permanent address, business mailing address, e-mail 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 Unit does business (“dba” name) and, if applicable, the registered name of the legal entity owning the 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 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 Newton 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 Article will not be used or represented in any way as an endorsement of the applicant by the City of Newton 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;

(i) 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;

(j) 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;

(k) The application shall also contain a statement that no Person whose duties include working upon the premises of the Unit is a registered sex offender, and that applicant has, subject to audit, performed the necessary background check of all such Persons to ensure that the statement is correct;

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

(m) 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 Article and is complying and will comply with all requirements set forth within.

**10-1011. Hours of Operation.** Vendors are prohibited from operating or occupying right-of-way during the hours of 1:00 a.m. to 6:00 a.m. without the City's prior approval.

**10-1012. Location restrictions.**

(a) Units 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:

- i. hinder the flow of traffic on any street,
- ii. hinder the flow of bicycles within any bike lane or route,
- iii. hinder the flow of pedestrians along any sidewalks,
- iv. block or reduce to less than five (5) feet in width any accessible route to Persons with disabilities, or
- v. block or obstruct access to any driveway or access point to any property.

Provided, however, this provision shall not apply when a Unit is operating on a street that is closed pursuant to valid permit in association with a community event that is approved by the City pursuant to City Code.

(b) For fire safety purposes, a 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.

(c) No Unit shall operate on public property or right-of-way 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 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 Article.

(d) No 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 organizer. Distance shall be measured from the boundary of the event footprint nearest to the location proposed to be used for Vending. Any written authority to operate within 500 feet of a community event shall be maintained on the premises of the 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.

(e) Every Unit shall be stationary while vending.

(f) Whenever any vehicle is used for Vending upon a street, alley, sidewalk or other public right-of-way within the City, such vehicle must be legally parked, and no Vendor shall sell any Food to any Person standing in the street. Provided, however, this provision shall not apply when a Unit is operating on a street that is closed pursuant to valid permit in association with a community event that is approved as by City Code.

(g) No Vendor shall vend on Park property except as allowed by the Park Regulations as set forth in Chapter XV of this Code or by approval of the City.

**10-1013. Fire Safety.** All Units are subject to both annual and periodic fire safety inspections by Newton Fire/EMS.

**10-1014. Prohibited Sales.** Vendors are always prohibited 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.

**10-1015 Lights.** No flashing lights are permitted on the Unit. No direct light from a Unit may be shined on adjacent property or cause a glare or distraction for vehicles, bicycles, or pedestrians.

**10-1016 Intentionally Omitted**

**10-1017 Sound Devices.** The production of amplified music or chimes from a 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 fifty (50) feet from the vehicle.

**10-1018 Trash and Site Cleanup.** All Vendors shall ensure that a trash receptacle shall be provided with each 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 Vendor shall remove and properly dispose of all trash and litter accumulated at the vending site.

**10-1019 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.

**10-1020 Food Handling.** No Vendor or any Employee, agent, or representative thereof shall sell Food without meeting the applicable conditions set forth in Chapter XI of this Code as well as the Kansas Department of Agriculture.

**10-1021 Wastewater Disposal.** No wastewater resulting from the Vending operation shall be disposed of on the ground or in a stormwater drain. All wastewater must be disposed of in accordance with Chapter XIX of this Code and specifically in compliance with Article 3 of this Code and amendments thereto.

**10-1022 Mobile Units.** All Units shall meet the following requirements:

(a) Unless otherwise stated in this Article, all Units must comply with Chapter 17 of the *National Fire Protection Associations (NFPA) 96: Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations*.

(b) No containers, wrappers or packaging material shall be kept in the driver's compartment of any Mobile Unit unless enclosed and unopened in its original container. The driver compartment shall be separated by a complete partition from the area used for service or storage.

(c) Mobile units shall be always kept clean, and the product protected against contamination.

(d) The equipment used in the Unit shall be cleaned and sanitized after each days' operation.

**10-1023 Penalties.** Violation of any provision of this Article as to which there is not otherwise a prescribed penalty shall be punishable by a fine not to exceed \$500, or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment. The minimum fine for the violation of any provision shall be \$100. Such penalties shall be in addition to and not in substitution of any other prescribed consequences of such violation, such as suspension or revocation of a license issued under this Article, or the rendering of a Person as being ineligible for a license under this Article.

**SECTION 2. 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 3. Repealer.** Section 16 of Ordinance 3794 and Sections 1 Through 11 of Ordinance 2480 are hereby repealed.

**SECTION 4. Effective Date.** This Ordinance shall take effect and be in force on January 1, 2025 after its adoption and its summary's publication in THE NEWTON KANSAN, the official newspaper of the City.

**PASSED AND ADOPTED** this 27<sup>th</sup> day of February, 2024.

  
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Rod Kreie, Mayor

ATTEST:

  
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Denise R. Duerksen, City Clerk