

ORDINANCE NO. 2250

**AN ORDINANCE PROVIDING FOR THE REGISTRATION OF MOBILE FOOD VENDORS WITHIN THE CITY OF DERBY, KANSAS BY AMENDING ALL OF CHAPTER 5.12 OF THE DERBY MUNICIPAL CODE AND REPEALING ALL OTHER CONFLICTING ORDINANCES AND PARTS OF ORDINANCES.**

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

**Section 1.** Chapter 5.12 – Food Vending License is hereby amended to read as follows:

**“Chapter 5.12 – MOBILE FOOD VENDING REGISTRATION**

**Sections:**

- 5.12.010 – Definitions.**
- 5.12.020 – Vending without registering with the City.**
- 5.12.030 – Registration application.**
- 5.12.040 – Fee.**
- 5.12.050 – Certificate of registration.**
- 5.12.060 – Operating conditions.**
- 5.12.070 – Certificate denial, revocation, and appeal.**
- 5.12.080 – Term and transferability.**
- 5.12.090 – Parking to dispense products in public rights-of-way.**
- 5.12.100 – Sound devices.**
- 5.12.110 – Exemption.**
- 5.12.120 – Posting.**
- 5.12.130 – Penalty for violation.**
- 5.12.140 – Severability.**

**5.12.010 – Definitions.**

The words and phrases listed below when used in this Chapter shall have the following meanings:

“City Approved Event” shall mean any event sponsored by the City, any event such as a community celebration or festival approved by the Governing Body, or any event sanctioned by a permit issued by the City, including but not limited to a Temporary Use Permit.

“Food and/or Beverage” shall mean (1) articles used for food or drink for humans or other animals, (2) chewing gum, and/or (3) articles used for components of any such article, in accordance with the definition of food within K.S.A. 65-656.

“Mobile Food Vending” shall mean 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.

“Mobile Food Vendor” shall mean any person, corporation, association, or other entity, however organized, that offers any food or beverage for sale from a Mobile Food Unit.

“Mobile Food Unit” or “Unit” shall mean any self-contained vehicle, trailer, cart, wagon, or other type of conveyance from which any food and/or beverage is offered for sale.

“Person” shall mean an individual, corporation, partnership, company, agency, institution, or any other entity.

#### **5.12.020 – Vending without registering with the City.**

It is unlawful for any person to conduct Mobile Food Vending within the corporate limits of the City of Derby, Kansas, without obtaining a certificate of registration in accordance with this Chapter.

#### **5.12.030 – Registration application.**

Any person desiring to register under this Chapter shall complete a registration application provided by the office of the City Clerk. The application shall require the following information:

- A. Name and permanent address of the applicant and the business, showing proof of identification. If the applicant is not an individual, the names and permanent addresses of the officers of the corporation or the members of the partnership, firm, association or other entity, as the case may be;
- B. The name of the owner and the type, make and registration number of the vehicle(s) to be used;
- C. A statement as to whether or not the applicant has ever had a mobile vending registration or other similar license or registration revoked or suspended under the Derby Municipal Code or the ordinances of the City of Derby or any other city. Such a revocation or suspension may result in the City’s refusal to process the requested registration.
- D. A statement that the applicant understands and agrees that registration will not be used or represented in any way as an endorsement of the applicant by the City of

Derby, Kansas or by any department, officer, or elected or appointed official of the City.

- E. Proof of a valid driver's license within the State of Kansas for operation of the class of vehicle identified in the application for the applicant and any agents or employees of the applicant who will be involved in driving the identified vehicle;
- F. Proof that the applicant has secured commercial general liability insurance for the mobile vending operation to be maintained for the entire length of the registration, 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, each occurrence and \$1,000,000 in the general aggregate. Evidence of compliance with these insurance requirements shall be in the form of a certificate of insurance that shall be submitted with the application. Such insurance certificate shall not be cancellable without prior written notice to the City; and
- G. Signatures of applicant, individually and/or by its members and officers, and any agents or employees of the applicant who will be involved in the applied-for mobile food vending certifying that all of the information provided in the application is true and correct.

#### **5.12.040 – Fee.**

All applications for mobile food vending registration certificates shall be accompanied by a non-refundable registration fee as established by resolution of the governing body of the City.

#### **5.12.050 – Certificate of registration.**

If the facts stated in the application are satisfactory and the requirements of this Chapter are met, the City Clerk may issue a mobile food vending certificate of registration to the applicant. The issuance of a certificate of registration shall not constitute approval of the business or activity or otherwise prohibit enforcement of this Chapter or any other applicable laws, city code provisions, rules or regulations.

#### **5.12.060 – Operating conditions.**

All mobile food vending registration certificates shall be subject to compliance with the following conditions:

- A. **Location.** Mobile Food Vendors may vend on property within the City as permitted by the City's then current Zoning Regulations subject to the following:
  1. Mobile food vendors may not be located on property where the Unit or a line of customers 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 feet in

width any accessible route to persons with disabilities, (5) block, hinder, or obstruct the vehicular flow within any parking lot, or (6) block or obstruct access to any driveway or access point to any property;

2. No more than three (3) mobile food units may locate on any zoning lot at any given time except as part of a City Approved Event;
  3. Mobile food vendors shall not locate on any City or public property without first applying for and securing a permit from the City in accordance with the provisions of Chapter 5.06 of the Derby Municipal Code;
  4. Every Unit shall be stationary while vending; and
  5. Whenever any vehicle is used for mobile food vending upon a street, alley, sidewalk or other public right-of-way within the City, the transaction shall occur on the right side of any such vehicle with the right wheels of the vehicle located next to the curb and the Unit shall not locate within two hundred (200) feet of any public street intersection.
- B. **Written Permission of Property Owner.** All mobile food vendors operating on private property shall acquire and maintain the written permission of the property owner for the use of and location of the Unit on said property. Written permission of the property owner shall be kept in the Unit and produced upon request by the Chief of Police or designee or other public officer charged by the City Manager with enforcement of this Chapter.
- C. **Hours of Operation.** Mobile food vendors are prohibited from offering for sale any food or beverage outside the hours of 6:00 a.m. to 11:00 p.m. Mobile food vendors are prohibited at all times from selling or offering for sale alcoholic beverages, cereal malt beverages, or tobacco products.
- D. **Lights.** In accordance with the City Zoning Regulations, no flashing lights or attention attracting devices are permitted on or in association with the use of 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.
- E. **Signs.** Signage mounted on a Mobile Food Unit shall not exceed the dimensions of the Unit by more than one (1) foot in any direction. No sign on a Mobile Food Unit may be illuminated. A maximum of one (1) detached "A" frame sign may be permitted with a maximum area of eight (8) square feet and a maximum height of four (4) feet. "A" frame signs must be located within fifteen (15) feet of the associated Unit and may not interfere with vehicle access, pedestrian movement, or handicap-accessible routes to and around the Unit.
- F. **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 handicap-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.

- G. **Licenses and Permits.** All mobile food vendors shall acquire and maintain all required licenses and permits applicable to the use and operation of Mobile Food Units from all applicable jurisdictions. Evidence of such licenses and/or permits shall be kept in the Unit and produced upon request by the Chief of Police or designee or other public officer charged by the City Manager with enforcement of this Chapter.

**5.12.070 – Certificate denial, revocation, and appeal.**

- A. If a certificate of registration is not issued, the City Clerk 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 certificate of registration may be revoked if the applicant fails to provide true and correct information on the application, the applicant fails to continuously maintain insurance in accordance with requirements of this chapter, or upon a violation by the applicant or any involved agents or employees of any provision of this Chapter, City Code or any federal, state, or local law, rule or regulation applicable or related to the registered mobile food vending. Notice of such revocation shall be mailed by the City Clerk or designee to the applicant's address as shown on the registration application form, or to the applicant's last known address, indicating in writing the reason(s) for revocation and informing the applicant of the applicant's right to an appeal of the revocation in the same manner as a denied application; however, any appeal of a certificate revocation shall not suspend the revocation during the pendency of the appeal.
- C. Upon the City's denial of an application for or revocation of a mobile food vending certificate of registration, the applicant shall have the right to appeal such action within fourteen (14) days of the denial or revocation being mailed to the applicant's address as shown on the registration application form, or to the applicant's last known address. Such an appeal must be in the form of a written request, filed with the City Clerk, setting forth the grounds for the appeal. Upon receipt of such a written request, the City Clerk shall schedule the appeal hearing to take place during the next ten (10) days, before the City Manager. Notice of the appeal hearing shall be given to the appellant in the same manner as provided for in the mailing of the notice of certificate denial or revocation. The decision of the City Manager on the appeal shall be final and binding on all parties.

**5.12.080 - Term and transferability.**

Certificates of registration issued under this Chapter are available for periods of one week, one month, or six months. Such certificates may not be transferred.

**5.12.090 - Parking to dispense products in public rights-of-way.**

It is unlawful for the operator of any mobile food unit to stop, stand or park such vehicle in any street, alley, or sidewalk or other public right-of-way for the purpose of mobile food vending, so as to obstruct the free flow of vehicular traffic or within any zoning district of the City of Derby which does not specifically permit mobile food vending to occur; except that an operator may temporarily stop, stand or park such vehicle with its right wheels next to the curb for a period of time not to exceed five minutes at any one location, other than upon or along an arterial or collector street, within any zoning district in the City of Derby for the purpose of mobile food vending.

**5.12.100 - 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.

**5.12.110 - Exemption.**

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

- The sale of farm or garden products or fruits grown by the seller or his or her employer;
- Vendors selling as part of a City Approved Event or recognized Farmers Market; and
- Individuals providing catering services to a private event and not open for the sale of food and/or beverage to the general public.

**5.12.120 - Posting.**

Any person registered under this Chapter must keep their certificate of registration posted in a conspicuous place inside the vehicle used for mobile food vending. Such certificate must be current and may be used only by the registered person.

**5.12.130 - Penalty for violation.**

Any person operating in violation of this Chapter shall be charged with an Unclassified Public Offense in accordance with Chapter 9.04 of the Derby Municipal Code and may be requested by the Chief of Police or designee or other public officer charged by the City Manager with enforcement of this Chapter to leave the premises on which they are conducting business. The fine for a violation of this Chapter shall be not more than five hundred dollars (\$500.00).

**5.12.140 – Severability**

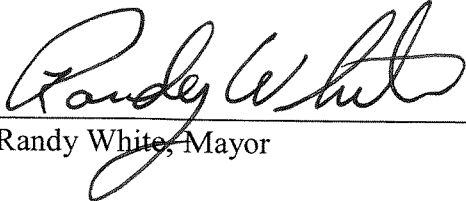
Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

**Section 2.** All other ordinances or parts of other ordinances in conflict herewith are repealed. However, any section of an existing ordinance not in conflict herewith is not repealed and remains in full force and effect.

**Section 3.** This Ordinance shall take effect and be in force from and after publication in the official city newspaper.


**ADOPTED BY THE GOVERNING BODY** this 27<sup>th</sup> day of October, 2015.



  
Randy White, Mayor

  
Karen Friend, City Clerk

Approved as to form:

  
Jacqueline R. Butler, City Attorney