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ORDINANCE NO. 674

**AN ORDINANCE PROVIDING FOR THE REGISTRATION OF MOBILE FOOD VENDORS WITHIN THE CITY OF ROSE HILL, KANSAS BY AMENDING CHAPTER 5 OF THE ROSE HILL MUNICIPAL CODE WITH NEW ARTICLE 4 ENTITLED "MOBILE FOOD VENDORS".**

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

**Section 1.** Chapter 5 Article 4 of the Rose Hill Code is hereby created to read as follows:

**Article 1 - MOBILE FOOD VENDING REGISTRATION**

**Sections:**

- 5-401 - Definitions.**
- 5-402 - Vending without registering with the City.**
- 5-403 - Registration application.**
- 5-404 - Fee.**
- 5-405 - Standards for Issuance of certificate of registration.**
- 5-406 - Operating conditions.**
- 5-407 - Certificate denial, revocation, and appeal.**
- 5-408 - Term and transferability.**
- 5-409 - Parking to dispense products in public rights-of-way.**
- 5-410 - Sound devices.**
- 5-411 - Exemption.**
- 5-412 - Posting.**
- 5-413— Enforcement.**
- 5-414 - Penalty for violation.**
- 5-415 - Severability.**

**5-401 - Definitions.**

The words and phrases listed below when used in this Article 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.

#### **5-402 — 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 Rose Hill, Kansas, without obtaining a certificate of registration in accordance with this Chapter.

#### **5-403 — 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. 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, firm or other name);
- C. The name of the owner and the type, make and registration number of the vehicle(s) to be used;
- 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, permit or registration revoked or suspended under the Rose Hill Municipal Code or any similar laws of other city or state. Such a revocation or suspension may result in the City's refusal to process the requested registration.
- G. A statement that the applicant understands and agrees that the registration issued pursuant to this Chapter will not be used or represented in any way as an endorsement of the applicant by the City of Rose Hill 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; 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 ensure 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 registration application herein is not in use, it will be stored or parked in compliance with all ordinances and regulations of the City of Rose Hill, Kansas and that failure by the applicant to legally store the Mobile Food Unit may result in the suspension or revocation of the applicant's registration; 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.

#### **5-404 — 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.

#### **5-405 — Standards for issuance of certificate of registration**

To receive a certificate of registration to operate as a Mobile Food Vendor issued by the City Clerk, an applicant must meet the following standards:

- A. The required fees must be paid;
- B. The application must be complete and provide all information required by Section 5-403 and amendment thereto;
- C. The applicant must not have knowingly made a false or misleading statement of a material fact in the application;

- D. The applicant must be at least eighteen years of age;
- E. The applicant has certified, subject to audit, that he/she has performed the necessary background check to ensure that no person whose duties include working upon the premises of the mobile food unit is a registered sex offender;
- F. The applicant has provided a statement that the Mobile Food Unit associated with the registration application will be stored or parked in compliance with all ordinances and regulation of the City of Rose Hill, Kansas; and
- G. If a registration 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 registration under this chapter for one (1) calendar year from the date of the registration denial.
- H. 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.

**5-406 — 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 5-405 of the Rose Hill Municipal Code;
  4. Every Unit shall be stationary while vending;
  5. 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.

6. 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.
7. 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.
8. 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 Administrator with enforcement of this Chapter.

C. **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.

D. **Public Health Regulations.** All Mobile Food Vendors must comply with all public health regulations for food service establishments.

- E. **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.
- F. **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.
- G. **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.
- H. **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.
- I. **Licenses, Permits and Registrations.** All mobile food vendors shall acquire and maintain all required licenses, permits and registrations 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 Administrator with enforcement of this Chapter.

#### **5-407 - Certificate denial, revocation, and appeal.**

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.

- 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 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 registration.

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. Appeal process.

1. 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 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 registration until the matter is heard before 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 registration 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 appropriate 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 registration, or any modification imposed thereupon by the City Council.
  5. Reserved.
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6. If a registration 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 registration under this chapter for two (2) calendar years from the date of the revocation.

**5-408 - 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.

**5-409 - 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.

**5-410 - Exemption.**

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

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

**5-412 - 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.

**5-413— 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:

1. Fire Department personnel;
2. The Director of Public Works and Utilities or designee;
3. The City Engineer or designee;
4. The Zoning Administrator or designee.

**5-414 - 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.



**5-415 — Severability**

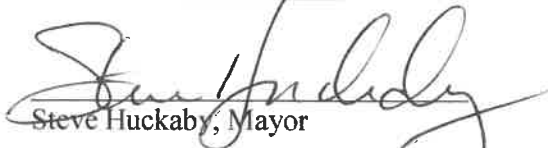
Should any section, clause, sentence, or phrase of this ordinance be found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any remaining provisions herein.

**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 4th day of March, 2019.



  
Steve Huckaby, Mayor

ATTEST:

  
Kelly Mendoza, City Clerk