

Ordinance No. _____

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ADEL, BY AMENDING CHAPTER 122 – PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS FOR THE PURPOSE OF ADDING REGULATIONS REGARDING MOBILE FOOD UNITS

NOW, THEREFORE, be it Ordained by the City Council of the City of Adel, Iowa, that:

SECTION 1. Chapter 122 of the Code of Ordinances is hereby repealed and replaced as follows:

CHAPTER 122 – PEDDLERS, SOLICITORS, TRANSIENT MERCHANTS AND MOBILE FOOD UNITS

122.01 PURPOSE.

The purpose of this chapter is to protect residents of the City against fraud, unfair competition, intrusion into the privacy of their homes and to ensure the safety of residents by licensing and regulating peddlers, solicitors, transient merchants and mobile food units.

122.02 DEFINITIONS.

For use in this chapter the following terms are defined:

1. “Catered Event” means any event where a business or entity has requested the mobile food unit to provide food for a targeted audience and where the food is served to the customers within a building, structure, or facility and not directly from the mobile food unit, or where the business or entity requesting the service is paying for the food in a single lump sum payment rather than individual patrons paying for their food themselves.

2. “Catering Business” means a business, social or home catering service providing food and incidental services for a social affair, event, or for a private dwelling, which does not engage in the sale of food or beverage to individually paying patrons.

3. “Mobile Food Unit” means any type of annually licensed food establishment that is a readily movable vehicle (on wheels), that is self-propelled (driven), or can be pulled or pushed to a location and used for the vending of food or beverage items to the public.

4. “Mobile Food Unit Classification” means the type of mobile food unit based upon the type of menu items being served and preparation and storage requirements for the defined menu items based upon the Iowa Department of Inspections and Appeals mobile food unit guide.

5. “Mobile Food Vendor” means a person engaged in the business of selling food or beverages from a mobile food unit.

6. “Peddler” means any person carrying goods, merchandise or offering services who sells or offers for sale such goods, merchandise, or services from house to house or upon the public streets including any person who takes orders house to house for goods, merchandise or services for later delivery.

7. “Peddling” means the selling or offering for sale services, goods or merchandise which are carried by a person from house to house or upon the public streets including the taking of orders house to house for goods, merchandise, or services for later delivery.

8. “Person” means natural persons, corporations, firms, and organizations of any description, whether acting in person or through agents, employees, or other persons.

9. “Pushcart” means a nonself-propelled mobile food unit that is pushed or pulled by the mobile food vendor to a location and serves a limited offering of food or beverage items.

10. “Solicitor” means any person who solicits or attempts to solicit from house to house or upon the public street any contribution or donation or any order for goods, services, subscriptions or merchandise to be delivered at a future date.

11. “Special Event Permit” shall mean a permit issued by the city of Adel which authorizes the temporary use or occupation of public property in connection with the holding of a special event.

12. “State Licensing Level Classification” means the four (4) classification levels for mobile food vendors that have been established by the Iowa Department of Inspections and Appeals and that will be referenced as a part of this chapter. There are more requirements for each of the levels but in general the levels are as follows:

A. Class I: Nonrefrigerated vending units that serve only intact, nonpotentially hazardous commercially prepackaged food and beverages. Examples include chips, crackers, cookies, soda, and sweets in manufacturer's packaging.

B. Class II: Refrigerated or hot vending units that serve potentially and nonpotentially hazardous commercially prepackaged foods from an approved source. Examples include packaged sandwiches, ice cream bars, individually wrapped and cooked hot dogs. No cooking is allowed as part of a class II unit.

C. Class III: Units that serve potentially and nonpotentially hazardous packaged food and unpackaged foods with limited assembly. These units are limited to precooked foods from an approved source that may be reheated on the unit. Examples include pushcart operations, packaged salads, hot dogs, shaved ice.

D. Class IV: Units that serve potentially and nonpotentially hazardous foods that are prepared, cooked, cooled or reheated and assembled on the unit. Examples include self-contained mobile food units, food trucks and any units that are capable of preparing and producing food items from precooked and/or raw products (meat, fish, poultry, plant foods and dairy products) to finished product for consumption.

13. “Transient merchant” means any person who engages in a temporary or itinerant merchandising business and in the course of such business hires, leases or occupies any building or structure whatsoever, or who operates out of a vehicle which is parked anywhere within the City limits. Temporary association with a local merchant, dealer, trader or auctioneer, or conduct of such transient business in connection with, as a part of, or in the name of any local merchant, dealer, trader or auctioneer does not exempt any person from being considered a transient merchant.

122.03 LICENSE REQUIRED.

Any person engaging in peddling, soliciting, or in the business of a transient merchant, or as a mobile food vendor in the City without first obtaining a license as herein provided is in violation of this chapter.

122.04 APPLICATION FOR LICENSE.

An application in writing shall be filed in person with the City Clerk for a license required under this chapter. The applicant shall provide the following information:

1. Applicant's name, email address, if any, and local phone number or cell phone number;
2. Permanent and local address, business address, business email address and phone number, if any;
3. Physical description and a government-issued photo identification card;
4. Applicant's employer, if any, and the employer's address, email address and phone number;
5. The nature of the applicant's business;
6. The last three places of such business;
7. The length of time sought to be covered by the license;
8. Applicant's Federal identification number and the Federal identification number for any business applicant is peddling under as an agent, employee or otherwise;
9. An Iowa sales tax permit number or a letter from the Iowa Department of Revenue confirming a sales tax permit is not required;
10. A Department of Criminal Investigation criminal history report/record for applicant from the state of applicant's residence for the previous five years to include pending charges; such report or record must be dated no more than 30 days prior to the application;
11. Whether applicant has been listed on any sex offender registry within the last five years;
12. Whether applicant has had a peddler's, solicitor's, transient merchant's, or mobile food unit license suspended, revoked or denied by this or any other city in the last five years and the reasons therefor;
13. The dates of any previous peddlers' licenses issued by the City Clerk.

122.05 APPLICATIONS DEEMED WITHDRAWN.

Any application received shall be deemed withdrawn if it has been held in abeyance, awaiting the submittal of additional requested information from the applicant, and if the applicant has not communicated in writing with the city and made reasonable progress within thirty (30) days from the last written notification from the city to the applicant. The application fee is nonrefundable. Any application deemed withdrawn shall require submission of a new application and fees to begin a new review and approval process.

122.06 ISSUANCE OF LICENSE; FEES.

The City Clerk, upon review of the license application with the police department and any other appropriate department or agency, shall determine whether a license will be issued to the applicant. A waiting period of not less than three business days from the date of the application shall be in effect to provide sufficient time for the City Clerk's fact gathering process to be completed in a reasonable period. Mobile food unit license applications must be submitted not less than ten (10) calendar days prior to the proposed start date of the mobile food unit activities. In making his/her decision, the Clerk shall consider the following factors:

1. The information in the application is found to be correct;
2. All information required has been provided and the application is complete;
3. The required bond is paid, where applicable;
4. Applicant does not have a transient merchant, solicitor, peddler, or mobile food unit license under suspension or revocation under this chapter.

Upon the City Clerk deciding the factors have been satisfied by the applicant, a license shall be issued upon payment of the bond, where applicable, and the non-refundable fee in advance as set in the schedule of fees adopted by the City Council by resolution annually. Any licensee who surrenders their license prior to the date of expiration shall not be entitled to a refund of any portion of the fee.

122.07 BOND REQUIRED.

1. Transient Merchant. Before a license under this chapter is issued to a transient merchant, an applicant shall provide to the Clerk evidence that the applicant has filed a bond with the Secretary of State in accordance with Chapter 9C of the Code of Iowa.

2. Peddlers. No peddler's license shall be issued until the applicant has delivered to the City Clerk a cash bond for no less than \$200.00 per license or \$1,000.00 for an employer employing a group of five or more license applicants.

A. The bond shall be held to indemnify and pay the City any penalties or costs incurred in the enforcement of any of the sections of this chapter and indemnify or reimburse any purchaser of services, goods, wares, merchandise or stock for any judgment which may be obtained by a purchaser for damages in any action commenced within three months from the date of purchase, due to misrepresentations as to the kind, quality or value of such services, goods, wares, merchandise or stock, whether the misrepresentations were made by the owner or by his or her servants, agents or employees, either at the time of making the sale or through any advertisement of any character, printed or circulated, with reference to such stock of goods, wares, merchandise, services or any part thereof.

B. The balance of the bond shall be released by the City Clerk and returned to the applicant or employer upon request by the applicant or employer at any time more than four months after expiration of the peddler's license for which the cash bond was provided, unless the City Clerk has received notice of pending action in the State or federal courts seeking a judgment upon a

claim eligible for payment from the bond. Except as otherwise provided by court order, the City Clerk shall not release any bond during the pendency of any such action.

122.08 DISPLAY OF LICENSE.

Each solicitor or peddler shall keep such license in possession at all times while doing business in the City and shall, upon the request of prospective customers, exhibit the license as evidence of compliance with all requirements of this chapter. Each transient merchant shall display publicly such merchant's license in the merchant's place of business. The operator of a mobile food unit shall display their city license in full view of the public in or on the unit.

122.09 LICENSE NOT TRANSFERABLE.

Licenses issued under the provisions of this chapter are not transferable in any situation and are to be applicable only to the person filing the application.

122.10 TIME RESTRICTION.

All peddler's and solicitor's licenses shall provide that said licenses are in force and effect only between the hours of 8:00 a.m. and 7:00 p.m.

122.11 REGULATIONS SPECIFIC TO MOBILE FOOD UNITS

1. Mobile Food Unit Licensing: It shall be unlawful for any person to engage in the sale of food or beverages to the public from a temporary or mobile facility within the corporate limits of the city of Adel without first obtaining a mobile food unit license from the city, in addition to any other state, federal, or county permits, certifications and licenses.

A. Each mobile food unit shall be licensed separately. No license transfer is allowed.

B. Although certain activities may be exempt from the licensing requirements of this chapter, any food service to the public in the city of Adel is expected to comply with all other local, county and state requirements for health inspections, licensing, safety and fire code requirements.

C. The following shall be exempt from this requirement:

i. Catering businesses.

ii. Grilling and food preparation activities of brick and mortar establishments on the establishment's premises for immediate consumption by patrons or employees.

iii. Concession stands associated with sports or recreational venues that have been approved as part of a site plan or permitted conditional use permit for the venue.

2. Mobile Food Unit Licensing Application:

A. Timely Submittal: Unless otherwise provided herein, applications must be submitted not less than ten (10) calendar days prior to the proposed start date of the mobile food unit activities. The city reserves the right to reject any applications that have not been timely submitted to the city.

B. Applicant's Responsibility: Receiving approval of a mobile food unit license from the city shall not preclude, supersede, circumvent, or waive the applicant's responsibility to obtain any additional permits, licenses, and approvals for other applicable local, state, and federal regulations.

C. Application Contents: In addition to those items required in Section 122.04 herein, the Application for a Mobile Food Unit License shall include:

- i. State-issued health inspection certificate and mobile food unit license, where applicable, with the classification level of the state license.
- ii. Description of the kitchen facilities, cooking facilities, preparation area, safety features (such as, but not limited to, suppression system) of the mobile food unit.
- iii. Clear photographs of the mobile food unit.
- iv. Make, model and year of vehicle to be used and the license plate number.
- v. Overall size of the vehicle; length and width.
- vi. 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. Cancellation of required insurance automatically revokes and terminates the mobile food unit license to operate in Adel unless other insurance policies are provided in a timely manner to the city.

D. Modification Of License After Issuance: Should the mobile food vendor change the food or beverage being offered during the term of an issued license that would change the designation of the mobile food unit to a higher state licensing level classification, a new application shall be required.

E. Exemptions from Licensing Requirement: A mobile food unit shall be exempt from these licensing requirements if the mobile food unit is operating at an event which has received a Special Event Permit from the city or if the mobile food unit is operating at a Catered Event.

3. Mobile Food Units On Public Property: No mobile food unit may be operated on public property except as part of an approved event under a special event permit issued by the city of Adel or as authorized by the director of parks and recreation, within a city park or greenway. Requests for authorization to vend within a city park or greenway (not as part of a city permitted special event) may be submitted no less than five (5) days and no more than fifteen (15) days prior to the requested day of vending.

4. Unattended Mobile Food Unit: No mobile food unit shall be left unattended or stored on any site overnight, unless that property is under the ownership or control of (by way of a lease or other contractual agreement) the operator of the unit and is being done so in compliance with all other city code requirements or the mobile food unit is a participant in a multiple (contiguous) day, city permitted, special event. Any mobile food unit found unattended shall be considered in violation of these regulations and subject to license revocation, municipal infraction, towing, or any other action legally allowed.

5. Music And Sound Making Devices: The use of music or sound making devices as a part of a mobile food unit shall be prohibited, unless expressly allowed as part of an approved special event.

6. Mobile Food Unit Performance Standards: Persons conducting business from a mobile food unit must do so in compliance with the following standards:

A. The mobile food vendor must obtain expressed written consent of the property owner or lessee to use the property on which they propose to operate. The written consent must be kept in the unit at all times that the unit is on the property. Written consent does not excuse or permit the violation of any other imposable regulations.

B. Mobile food units shall only be allowed on nonresidential properties, except in the case of an approved residential block party or private catered event, so long as it is in compliance with all other city code requirements related to residential property.

C. Mobile food units that are within three hundred feet (300') of a residential use or residentially zoned property shall be limited to hours of operation between seven o'clock (7:00) A.M. and ten thirty (10:30) P.M. However, a mobile food unit operating as part of a city permitted special event may operate during the granted time period for the event.

D. A mobile food unit operating on nonresidential property as part of a city permitted special event may only do so during the granted time period for the event.

E. Mobile food units must maintain a minimum separation between units of fifteen feet (15').

F. Mobile food unit operation in a nonresidential parking lot is allowed if doing so does not diminish the usable number of parking spots within the lot to below the minimum threshold needed as established by the city for the property. It is the joint responsibility of the property owner or lessee and mobile food unit owner to ensure that this provision is not violated.

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

H. The mobile food unit must be located on a paved or gravel surface, unless approved as part of a special event permit.

I. No mobile food unit may operate within one hundred feet (100') of a permanent restaurant or business offering food or beverage services unless they receive expressed written consent of the restaurant or business owner or unless the city has approved a special event permit for the area.

J. All mobile food units shall maintain the following minimum separation from buildings: five feet (5') for state IA class I and II units and fifteen feet (15') for state IA class III and IV units, as measured to the closest building element including awnings or canopies, tents or membrane structures. Location of the food unit shall not impede pedestrians entering or exiting a building.

K. The window or area where a patron orders and receives their purchase shall be located so as to not to 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. Adequate safe space for patrons waiting for their order must be available on the property where the mobile food unit is located.

L. With the exception of pushcarts as allowed herein, no mobile food unit shall be placed on a public or private sidewalk. Pushcarts may locate on or adjacent to a private sidewalk or public

sidewalk only as part of an approved special event permit. However, a minimum forty-eight inch (48") open walkway must be maintained for passing pedestrians. The placement of the pushcart shall be in such a manner so as to minimize encroachment into the forty-eight-inch (48") walkway by patrons waiting in line for service from the pushcart.

M. Signs are limited to those that are attached to the exterior of the mobile food unit and must be mounted flat against the unit and not project more than six inches (6") from the exterior of the unit. No freestanding signs, banners, flags, or similar items are allowed. Off premises signs directing patrons to the mobile food unit are prohibited.

N. During business hours, the mobile food vendor shall provide a trash receptacle for use by customers.

O. The mobile food vendor shall keep the area around the mobile food unit clear of litter and debris at all times.

P. All mobile food units shall be located in such a manner as to not create a safety hazard, such as blocking emergency access to buildings and the site, obstructing access to fire hydrants, impeding entering and exiting from a building, creating a visual impediment for the motoring public at drive entrances, intersections, pedestrian crossings, or similar movement and access.

7. Property Owner/Lessee Responsibility: By allowing the mobile food unit on their property, the property owner or lessee jointly and severally with the vendor are responsible for compliance with this chapter and to ensure the safety of pedestrians and access of emergency vehicles to and around the site. Failure to do so could result in the property owner or lessee being party to any enforcement actions or penalties allowed by law.

122.12 SUSPENSION, REVOCATION OR DENIAL OF LICENSE.

Any license issued pursuant to this chapter shall be either summarily suspended or revoked by the City Clerk for violation of this chapter, conducting business in an otherwise unlawful manner, misrepresentation of facts in the application, failing to meet the factors set forth in this chapter, and/or conducting business in such a manner as to endanger the public welfare, safety, order or morals.

122.13 NOTICE.

A summary suspension, revocation or denial shall be promptly communicated to the applicant or the applicant's representative by phone at the phone number provided in the application. Written notice shall also be mailed by U.S. mail to the applicant at the business address identified in the application informing the applicant of the suspension, revocation or denial, the reasons therefor, and the applicant's right to appeal to a hearing before the City Council. The only issue on the appeal to the Council shall be whether the suspension, revocation or denial is supported by a preponderance of the evidence.

122.14 HEARING; APPEAL.

Upon receipt of the applicant's suspension, revocation or denial of license, the applicant or applicant's representative may request in writing a hearing before the Council within 30 days of

receiving notice of the suspension, revocation or denial. The Council shall convene a hearing at its next regularly scheduled meeting following receipt of applicant's request for a hearing.

122.15 RECORD AND DETERMINATION.

The Clerk shall make and record findings of fact and conclusions of law at the hearing and shall carry out the decision of the Council.

122.16 EFFECT OF REVOCATION.

Revocation of any license shall bar the licensee from being eligible for any license under this chapter for a period of one year from the date of the revocation.

122.17 LICENSE EXEMPTIONS.

The following are excluded from the application of this chapter.

1. No license shall be required for any person to sell, or attempt to sell, or to take or attempt to take orders for, any product grown, produced, cultivated, or raised on any farm. No license shall be required of any person going from house-to-house, door-to-door, business-to-business, street-to-street, or other type of place-to-place when such activity is for the purpose of exercising that person's state or federal constitutional rights (i.e., freedom of speech, press, religion, etc.), except that this exemption may be lost if the person's exercise of constitutional rights is merely incidental to a commercial activity.

2. For the purpose of the requirements of this chapter, the terms "solicitor," "peddler," and "transient merchant" shall not apply to any person who makes initial contacts with other people for the purpose of establishing or trying to establish a regular customer delivery route for the delivery of perishable food and dairy products such as baked goods and milk, nor shall they apply to any person making deliveries of perishable food and dairy products to the customers on his or her established regular delivery route. In addition, persons conducting the type of sales commonly known as garage sales, rummage sales, or estate sales, as well as those persons participating in an organized multiperson bazaar or flea market, shall be exempt from the definitions of solicitors, peddlers, and transient merchants, as shall be anyone conducting an auction as a properly licensed auctioneer, or any officer of the court conducting a court ordered sale. Exemption from the definitions for the scope of this ordinance shall not excuse any person from complying with any other applicable statutory provision or local ordinance.

122.18 PROHIBITED ACTS.

No solicitor or peddler shall conduct any soliciting or peddling in the following manner:

1. With any person situated in a motor vehicle upon any public street, alley, driveway access, or public way;
2. Upon any part of the public right-of-way along a parade route on the day of any permitted parade;

3. Within 1,000 feet of the perimeter of a street closure, or inside such perimeter, for an event where a street use permit/special event permit has been issued unless written permission is obtained from the permit holder;

4. Conduct soliciting or peddling between the hours of 7:00 p.m. and 8:00 a.m.;

5. Conduct business or attempt to conduct business upon any property on which has a posted notice prohibiting soliciting or peddling;

6. Harass, intimidate, coerce or threaten any individual to induce a sale;

7. Falsely or fraudulently misrepresent the quality, character or quantity of any article, item or commodity offered for sale or sell any unwholesome or tainted food or foodstuffs.

SECTION 2. Effective Date. This ordinance shall be effective from and after the publication of this ordinance, as required by law.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion hereof.

SECTION 4. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

First Reading Passed: _____

Second Reading Passed: _____

Third Reading Passed: _____

Passed and adopted this _____ day of _____, 2020.

James F. Peters, Mayor

ATTEST:

Angela Leopard, City Clerk