

Amended by  
CCIO No. 1290  
of 11/1/16 (SM)

ORDINANCE NO. 40930

1 AN ORDINANCE to amend Omaha Municipal Code Chapter 11 by adding a new Article X  
2 entitled "Mobile Food Vendors," consisting of new sections 11-331 through 11-341; to  
3 regulate, and require licenses for, mobile food vendors; and to provide the effective date  
4 thereof.

5 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

6 Section 1. That Omaha Municipal Code Chapter 11 entitled "Food and Food Handlers"  
7 is hereby amended to add a new Article X entitled "Mobile Food Vendors," reading as follows:

8 **ARTICLE X. MOBILE FOOD VENDORS**

9 **Sec. 11-331. Findings and purpose.**

10 Mobile food vendors provide a beneficial service to the general public within the city  
11 while, due to their distinct manner of operation, also presenting substantial differences of  
12 circumstances from other food retailers and vehicle users which suggest the expediency of  
13 diverse legislation. It is, thus, desirable to regulate, and require licenses for, mobile food vendors  
14 so that their transitory use of various properties and right of way locations can occur in a fair and  
15 safe manner, and so that public safety and welfare can be protected. The purpose of this article is  
16 to enact regulations to serve those goals.

17  
18 While the city wishes to encourage the business of mobile food vendors, the city also  
19 recognizes the benefits of permanent food establishments. The owners of permanent food  
20 establishments make substantial and long-lasting capital investments in buildings, infrastructure,  
21 and the built environment. These investments benefit the city, improve real property, and provide  
22 consistent locales for the entertainment and enjoyment of city residents and visitors. The city  
23 wishes to cultivate and encourage the creation and maintenance of permanent food  
24 establishments. Accordingly, it is also the purpose of this article to encourage the co-existence of  
25 mobile food vendors and permanent food establishments, to provide appropriate places for each  
26 within the fabric of the city, and to accommodate the interests of each, toward the goal of  
27 achieving a rich and diverse community.

28  
29 **Sec. 11-332. Definitions.**

30 For the purpose of this article the following terms shall have the meanings respectively  
31 ascribed to them:

32  
33 Director shall mean the director of the public works department, or his/her authorized  
34 designee.

1  
2 Food shall mean any raw, cooked, or processed edible substance, beverage, ingredient,  
3 ice, or water used or intended for use or for sale in whole or in part for human consumption.

4  
5 Mobile food vendor shall mean a person who by traveling from place to place upon the  
6 public ways sells or offers for sale food from public or private property to consumers for  
7 immediate delivery and consumption upon purchase. The following activities are excluded from  
8 such definition, and, alone, do not subject a vendor to being covered by such definition: (a) the  
9 sale or offer for sale of farm products produced or raised by such a vendor from land occupied  
10 and cultivated by him/her; or (b) the sale or offer for sale of food by a caterer as defined in  
11 section 11-256 of this Code.

12  
13 Permanent food establishment shall mean a fixed building which a person occupies on a  
14 continual basis and from which such person sells or offers to sell food for immediate delivery  
15 and consumption upon purchase. Such term shall not include a location where a mobile food  
16 vendor sells or offers to sell food.

17  
18 **Sec. 11-333. License required.**

19 It shall be unlawful for any person to sell or offer for sale food as a mobile food vendor  
20 or operate as a mobile food vendor within the city unless such person complies with the  
21 requirements and regulations of this article, including holding a valid and active mobile food  
22 vendor license issued by the director under this article.

23  
24 **Sec. 11-334. Application.**

25 An applicant for a license pursuant to this article shall file with the director a signed  
26 application on a form to be furnished by the director, which shall contain the following  
27 information:

- 28  
29 (a) The applicant's business name, address, and phone number; and e-mail address, if  
30 any;  
31  
32 (b) If the applicant is a corporation, partnership, or other entity, the names of all  
33 officers and managers of such entity;  
34  
35 (c) If food is to be sold from any motor vehicle, the vehicle license numbers and  
36 descriptions of all vehicles from which the applicant proposes to sell food, and the  
37 names of all persons expected to drive such vehicles;  
38  
39 (d) The description of the general type of food items to be sold;  
40

- 1           (e) Documentation from the Douglas County health department showing its approval
- 2                   of the applicant's sale of food, if required;
- 3
- 4           (f) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales
- 5                   tax exemption, for the applicant;
- 6
- 7           (g) A general description of the types of locations the applicant anticipates selling
- 8                   from;
- 9
- 10          (h) Such other information as the director may require and as requested in the said
- 11                   application form.
- 12

**Sec. 11-335. Issuance or denial.**

14           (a) Upon receipt of a complete application for a license pursuant to this article, the

15 director shall make or cause to be made any inquiry or investigation that may be necessary to

16 determine whether the applicant is in compliance with the provisions of all applicable laws and

17 this Code. The director may request and take into consideration the recommendations of other

18 affected departments of the city.

20           (b) After receipt of the completed application and application fee, the director shall

21 either approve or deny the application. Grounds for denial may include, but are not limited to,

22 the following:

- 24           (1) A finding that the application is incomplete;
- 25
- 26           (2) The nonpayment of applicable fees;
- 27
- 28           (3) A finding that the application is not in conformance with any applicable laws or
- 29                   this Code including, but not limited to, chapter 11 of this Code.
- 30
- 31           (4) A finding that the applicant has been convicted of three or more separate
- 32                   violations of the provisions of this article within the twelve (12) months preceding
- 33                   the submission of a complete application.
- 34

**Sec. 11-336. License fee.**

36           An application for a license under this article shall be accompanied by a non-refundable

37 processing fee of \$100. An additional non-refundable processing fee of \$100 shall be paid by a

38 mobile food vendor who will be primarily doing business within the boundaries of any business

39 improvement district located in whole or in part within the area zoned central business district

40 (CBD). If such additional fee is paid, such fact shall be noted on the mobile food vendor's

41 license. A mobile food vendor may primarily do business within such area only upon exhibiting

1 a license showing payment of the additional fee. The additional fees paid under this section shall  
2 be forwarded by the city over to the said business improvement district, to offset expenses  
3 incurred by the district for cleaning, security, sanitation, and other mobile food vendor-  
4 associated maintenance expenses within the boundaries of the said district.

5  
6 **Sec. 11-337. Renewal.**

7 A license issued under this article shall expire on December 31 of each year, unless  
8 renewed for the following year by the permittee. The permittee shall renew the license for the  
9 following year by filing with the director, by December 31, a registration updating or confirming  
10 the information provided in the immediately preceding license application or registration. The  
11 registration shall be on a form provided by the director. At the time of registration, the permittee  
12 shall pay a renewal fee of \$100 per year for each motor vehicle, trailer, cart, or other piece of  
13 mobile equipment to be utilized in the business. An additional renewal fee of \$100 shall be paid  
14 by a mobile food vendor who will be primarily doing business within the boundaries of any  
15 business improvement district located in whole or in part within the area zoned central business  
16 district (CBD). If such additional fee is paid, such fact shall be noted on the receipt or other  
17 documentation of renewal issued to the mobile food vendor. A mobile food vendor may  
18 primarily do business within such area only upon exhibiting a receipt or other documentation  
19 showing payment of the additional fee for that year. The additional fees paid under this section  
20 shall be forwarded by the city over to the said business improvement district, to offset expenses  
21 incurred by the district for cleaning, security, sanitation, and other mobile food vendor-  
22 associated maintenance expenses within the boundaries of the said district.

23  
24 **Sec. 11-338. Sales regulations.**

25 Mobile food vendors shall comply with the following regulations:

26  
27 (a) A mobile food vendor shall not sell nor offer to sell food from a location within  
28 50 feet of the main entrance used by customers to enter or exit a permanent food  
29 establishment during the hours food is sold within such permanent food  
30 establishment, unless each such permanent food establishment within such area  
31 has provided written consent.

32  
33 (b) A motor vehicle from which a mobile food vendor sells or offers to sell food shall  
34 not exceed 40 feet in length and 96 inches in width. A mobile food vendor selling  
35 or offering the sale of food from or using a trailer or other auxiliary equipment  
36 shall, during such operations, keep the trailer or auxiliary equipment hitched to an  
37 operable motor vehicle towing it, unless otherwise permitted by the city in  
38 association with an authorized street show, festival, parade, block party, or similar  
39 event. An attached trailer or other auxiliary equipment shall not exceed 96 inches  
40 in width, and the combined length of the motor vehicle and trailer or auxiliary  
41 equipment shall not exceed 60 feet. The maximum dimensions in this subsection

1 may be exceeded by a particular motor vehicle, trailer, or piece of equipment, if  
2 approved by the director upon a mobile food vendor's application for a waiver.

3  
4 (c) A mobile food vendor may sell or offer to sell food from a motor vehicle at a  
5 location in a city right of way open to traffic or parking, but only from a motor  
6 vehicle parked in a location where a motor vehicle is authorized to park by law,  
7 signage, or city permit. Such a motor vehicle and auxiliary equipment shall not be  
8 parked at a diagonal parking space. Such a motor vehicle and auxiliary equipment  
9 shall not be parked in a parking space adjacent to the corner of a street  
10 intersection. A mobile food vendor operating from a parking space on city right of  
11 way which is unmetered but which is limited by sign or other designation to two  
12 hours parking may park at such location up to, but not exceeding, four  
13 consecutive hours.

14  
15 (d) A mobile food vendor who sells or offers to sell food from a vehicle parked at a  
16 metered parking space shall pay the metered parking rate required, at such meter.  
17 Section 36-172 of this Code shall not apply to a mobile food vendor operating in  
18 compliance with this article. When parking at a parking space with a meter  
19 limited to two hours, a mobile food vendor may park at such space for no longer  
20 than four consecutive hours. The city may designate, by signage, bagging, or  
21 otherwise, that a specific meter is either (1) reserved for the exclusive use of  
22 mobile food vendors, or (2) prohibited for use by mobile food vendors.

23  
24 (e) A mobile food vendor shall not sell or offer to sell food from a location which  
25 would involve customers to be waited on or served while standing in a portion of  
26 a street being traversed by motor vehicle traffic.

27  
28 (f) A mobile food vendor who sells or offers to sell food from a location on property  
29 other than a metered parking space or city right of way shall first obtain and  
30 possess, and be able to exhibit upon request, each of the following:

- 31  
32 (1) Written consent of the owner of such property; and  
33  
34 (2) A temporary use permit issued by the planning director or his/her  
35 designee, where same permanent uses are permitted under chapter 55 of  
36 this Code; provided, that a temporary use permit shall not be required if  
37 the mobile food vendor is present as an authorized part of a private event  
38 or an event authorized by another city permit.

39  
40 (g) A mobile food vendor shall not sell nor offer to sell food from city park property  
41 unless he/she possesses the written consent of the city parks director.

42  
43 (h) A mobile food vendor shall not sell nor offer to sell food from a school property

1 unless he/she possesses the written consent of an authorized representative of the  
2 school.

3  
4 (i) A mobile food vendor shall not sell nor offer to sell food from a location within  
5 an area authorized for a street show, festival, parade, block party, or similar event,  
6 or within 200 feet of any boundary of such authorized area, unless the mobile  
7 food vendor is in possession of the written consent of the event permittee to sell  
8 or offer to sell food from that location.

9  
10 (j) A mobile food vendor shall not sell nor offer to sell food within the College  
11 World Series area during the College World Series period, unless the mobile food  
12 vendor is in possession of written consent from the director authorizing the  
13 specific location and times for such sales activities, or is in possession of written  
14 consent from an authorized representative of the NCAA or the Metropolitan  
15 Entertainment & Convention Authority. For purposes of this subsection, the terms  
16 “College World Series area” and “College World Series period” shall have the  
17 same meanings as set forth in section 38-82 of this Code.

18  
19 (k) A mobile food vendor shall possess and be able to exhibit his/her license under  
20 this article, all required Douglas County health department permits, a State of  
21 Nebraska sales tax permit or proof of sales tax exemption, and any other written  
22 consents or documentation required under this article, at all times during which  
23 the mobile food vendor is selling or offering to sell food.

24  
25 (l) An authorized employee of the public works or police departments may order a  
26 mobile food vendor to move from or leave a specific location, if the operation of  
27 the mobile food vendor at that location causes an obstruction to vehicular or  
28 pedestrian traffic or otherwise endangers the health, safety, or welfare of the  
29 public. The city may tow or otherwise move a mobile food vendor’s vehicle or  
30 other auxiliary equipment to another location if the vehicle or equipment presents  
31 a danger to public safety and the mobile food vendor fails to move the same. The  
32 city parking division manager shall provide to the mobile food vendor a written  
33 explanation for any such order, upon written request by the mobile food vendor to  
34 the parking division manager.

35  
36 (m) An individual representative of the mobile food vendor shall be present with the  
37 motor vehicle and other auxiliary equipment operated by the mobile food vendor  
38 at all times that it is parked in city right of way or on city property, and at all  
39 times that it is parked on private property at a location where food is or will be  
40 offered for sale.

41  
42 (n) A mobile food vendor may sell or offer to sell food seven days a week, but only  
43 from 6:00 a.m. to 2:30 a.m. It shall be unlawful for a mobile food vendor to sell or

1 offer to sell food at any other times. Notwithstanding this subsection, upon  
2 evidence of endangerment of public safety, the chief of police or his/her designee  
3 may further limit hours of operation for all mobile food trucks within the Old  
4 Market District (defined as that area from Harney to Howard Streets, Tenth to 13<sup>th</sup>  
5 Streets, and Howard to Jackson Streets, Tenth to 12<sup>th</sup> Streets, inclusive), as  
6 needed for the protection of public safety, for a period of no more than 30  
7 consecutive days at a time.

8  
9 (o) A mobile food vendor using a motor vehicle shall maintain a motor vehicle  
10 liability insurance policy for such motor vehicle as required by state law, and shall  
11 exhibit proof of such policy when requested.

12  
13 (p) A mobile food vendor shall maintain in operable condition all fire suppression  
14 equipment or devices as required by local, state or federal law.

15  
16 (q) It shall be unlawful for a mobile food vendor to sell or offer to sell alcoholic  
17 drinks or food.

18  
19 (r) A mobile food vendor shall visibly display his/her business name on his/her motor  
20 vehicle or auxiliary equipment.

21  
22 (s) A mobile food vendor shall provide trash receptacles for the collection of trash  
23 and recyclable materials, in sizes sufficient to serve his/her customers. Prior to  
24 leaving a location, the mobile food vendor shall pick up and properly dispose of  
25 any trash, litter, or recyclable materials within 20 feet of the location. Receptacles  
26 and their contents shall be removed from the location for proper disposal or  
27 recycling, and contents shall not be deposited in public trash or recycling  
28 containers on city right of way or city property.

29  
30 (t) A mobile food vendor shall not place on city right of way or city property any  
31 freestanding sign, table, chair, umbrella, electric generator, or other fixture or  
32 equipment; provided, that a mobile food vendor may place one identification or  
33 menu sign and one table (not for seating customers) on the sidewalk or other area  
34 directly adjacent to his/her parked motor vehicle or other equipment.

35  
36 (u) A mobile food vendor shall comply with all city ordinances regulating noise.

37  
38 **Sec. 11-339. Revocation or suspension.**

39 (a) Grounds. A license issued under this article may be revoked or suspended by the  
40 director for any of the following reasons:

1           (1) Any fraud, misrepresentation, or false statement contained in the application for  
2           license;

3  
4           (2) Any fraud, misrepresentation, or false statement made in connection with the  
5           selling of food;

6  
7           (3) Any violation of this article or any applicable laws or provisions of this Code  
8           including, but not limited to, chapter 11 of this Code; or

9  
10          (4) Conducting the business licensed under this article in an unlawful manner or in  
11          such a manner as to constitute a breach of the peace or a menace to the health,  
12          safety, or general welfare of the public.

13  
14          (b) The director shall revoke a license issued under this article for any mobile food  
15          vendor who is convicted of three or more separate violations of the provisions of this article  
16          within any consecutive twelve (12) month period. For purposes of this section conviction shall  
17          mean any finding of guilt or liability on the part of the mobile food vendor by a court of  
18          competent jurisdiction, and shall include any conviction that has previously been set aside.

19  
20          (c) Notice. To revoke or suspend a license, the director shall provide written notice  
21          to the license holder stating the revocation or suspension action taken, the grounds for such  
22          action, and the availability of an appeal under this section. Such notice shall be served personally  
23          upon the license holder or sent by regular U.S. mail to the license holder's address as stated in  
24          his/her application.

25  
26          (d) Appeal. A license holder aggrieved by the decision of the director under this  
27          section may file an appeal with the administrative appeals board pursuant to section 2-185 of this  
28          Code.

29  
30          (e) Re-application. A person whose license has been revoked under this article may  
31          not re-apply for a new license for a period of six months after the effective date of the  
32          revocation.

33  
34  
35          **Sec. 11-340. Penalty.**

36                 It shall be unlawful for any person to violate the provisions of this article. Any violation  
37                 shall be punishable as provided in section 1-10 of this Code.

38  
39          **Sec. 11-341. Severability.**

40                 If any provision, clause, sentence, paragraph or other portion of this article or the  
41                 application thereof to any person or circumstances shall be held to be invalid, that invalidity shall



1 not affect the other provisions of this article which can be given effect without the invalid  
2 provision or application, and to this end the provisions of this article are declared to be severable.

3  
4 **Sec. 11-342. Special districts.**

5 (a) The city finds that the city's various and diverse neighborhoods and business  
6 districts have differing characteristics, and will be affected in varying ways by the operations of  
7 mobile food vendors. Thus, it is appropriate to provide for the creation of special districts subject  
8 to special rules governing mobile food vendors.

9  
10 (b) The city council may by ordinance establish a special district with defined  
11 geographic boundaries, and adopt special rules governing mobile food vendors to be applied,  
12 based on a reasonable showing of public health and/or public safety concerns demonstrating the  
13 need for different operation of mobile food vendors, within such special district. "Special rules"  
14 shall mean rules governing mobile food vendors that modify the general rules stated in section  
15 11-338, within that special district only. If adopted, such special rules shall take precedence over  
16 any conflicting general rules in section 11-338. The special rules shall not prevent mobile food  
17 vendors from operating within the special district. The general rules in section 11-338 shall  
18 continue to apply in a special district, unless specifically modified by the special rules.

19  
20 (c) An application for the establishment of a special district may be submitted to the  
21 public works director by a neighborhood association that is registered as such with the planning  
22 department, or by a business improvement district. The proposed special district must lie within  
23 the geographic boundaries of such neighborhood association or business improvement district.  
24 An application by a neighborhood association or business improvement district shall contain:

- 25  
26 (1) A map indicating the boundaries of the proposed special district;  
27 (2) The name of the proposed special district;  
28 (3) The text of the proposed special rules to be applicable in the special district;  
29 (4) A copy of the signed resolution of the governing body of the business  
30 improvement district or neighborhood association approving the proposed special  
31 district and special rules;  
32 (5) Documentation showing that an official of the business improvement district or  
33 neighborhood association discussed the proposed special district and special rules  
34 with mobile food vendors who primarily operate in the proposed special district;  
35 and  
36  
37 (6) Enumeration of the specific reason(s) for expansion or limitation of mobile food  
38 vendor activity based upon public health and/or public safety concerns.  
39

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Upon the filing of such an application, the mayor or any city councilmember may request that an ordinance establishing such a special district and special rules be forwarded to the city council for consideration and final action.

**Sec. 11-343. Periodic review.**

The mayor or his/her designee may, in conjunction with the public works director and chief of police or their designees, a representative from the city council, a representative of the mobile food vendor industry, and other stakeholders as necessary, perform an annual review of mobile food vendor operations, the general rules in this article, and any special rules adopted under this article, and make recommendations as needed to the city council for amendment of this article.

Section 2. That this Ordinance shall be in full force and take effect 15 days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

Ben S. Bray

APPROVED BY:

Tom Stothel 11/3/2016  
MAYOR OF THE CITY OF OMAHA DATE

PASSED NOV - 1 2016 as amended 7-0

ATTEST:

Dexter Brown 11/3/2016  
CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

Ally Stalk 11-2-16  
DEPUTY CITY ATTORNEY DATE

1290

ORDINANCE NO. 40933

**AN ORDINANCE** to amend Omaha Municipal Code Chapter 11 by adding a new Article X entitled "Mobile Food Vendors," consisting of new sections 11-331 through 11-341; to regulate, and require licenses for, mobile food vendors; and to provide the effective date thereof.

P\LAW - CITY COUNCIL  
DOCUMENTS\2016\30112dlm

53 ✓

**PRESENTED TO COUNCIL**

1st Reading SEP 20 2016 - Hearing  
9/27/16

Hearing SEP 27 2016 - Motion to  
lay over the third reading is  
made for 10/13/16 and continue  
the public hearing for 7-0  
Final Reading OCT 18 2016

Ordinance read  
Amendment 4-3 - Motion that  
the Amendment be approved  
10-3-3

Years: Berglund, **BUSTER BROWN**  
Melton, Thompson City Clerk  
May's, Fosterben, Serram,  
Wahls, Gray

*Motion to lay over succeeds to  
11/1/16 Carried 4-3  
Years: Fosterben, Serram, Wahls, Gray  
May's, Serram, Melton, Thompson  
NOV - 1 2016 - Ordinance read  
Amendment "3" - Approved 7-0  
Amendment "4" - Approved 7-0  
Passed as amended 7-0*

add 5

**PUBLICATIONS**

PUBLICATION OF HEARING  
Date 9-23-16

PUBLICATION OF ORDINANCE

Date \_\_\_\_\_