

(Summary First Published in the Times Sentinel  
on the 1<sup>st</sup> day of October 2020.)

ORDINANCE NO. 1065

AN ORDINANCE REGULATING MOBILE FOOD TRUCK  
VENDORS WITHIN THE CORPORATE LIMITS OF THE CITY OF  
CLEARWATER, KANSAS; AMENDING CHAPTER 5 OF THE  
CLEARWATER CITY CODE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CLEARWATER, SEDGWICK  
COUNTY, KANSAS, THAT:

**Section 1.** Chapter 10 - Business is hereby amended to add and establish a new Article 3.-  
Mobile Food Vending to read as follows:

**ARTICLE III. - MOBILE FOOD VENDING**

<b>Sec. 10-40</b>	<b>Definitions.</b>
<b>Sec. 10-41</b>	<b>Vending without City License</b>
<b>Sec. 10-42</b>	<b>License application</b>
<b>Sec. 10-43</b>	<b>Fee</b>
<b>Sec. 10-44</b>	<b>License</b>
<b>Sec. 10-45</b>	<b>Operating conditions</b>
<b>Sec. 10-46</b>	<b>Term and transferability</b>
<b>Sec. 10-47</b>	<b>Parking to dispense products in public rights-of-way</b>
<b>Sec. 10-48</b>	<b>Sound devices</b>
<b>Sec. 10-49</b>	<b>Exemption</b>
<b>Sec. 10-50</b>	<b>Approval</b>
<b>Sec. 10-51</b>	<b>Penalty for violation</b>

**Sec. 10-40 Definitions – Mobile Food Vending**

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

- a) "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.
- b) "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.

- c) "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 stopped in one location for a period of more than 5 minutes.
- d) "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 to conduct Mobile Food Vending.
- e) "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.
- f) "Person" shall mean an individual, corporation, partnership, company, agency, institution, or any other entity.

**Sec. 10-40 Vending without City License.**

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

**Sec. 10-42 License application**

No person shall engage in activities coming under this article within the city without first obtaining a license. Any applicant for a license under this article shall file with the city clerk a sworn application on a form furnished by the city clerk, which shall give information, or provide documentation as follows:

- a) Name, date of birth, phone number, copy of state or government issued identification card, and permanent address of the applicant and the business;
- b) The name of the owner and the type, make and registration number of the vehicle(s)/mobile food unit to be used;
- c) Date(s) and time(s) for which the license is desired;
- d) Address (or description) of Location and nature of the business;
- e) Description (with dimensions) or any temporary structures to be erected, constructed, and used by all persons or employees;
- f) A statement as to whether the applicant has ever had a mobile vending license or other similar license, or registration revoked or suspended under the Clearwater Municipal Code or the ordinances of the City of Clearwater or any other city. Such a revocation or suspension may result in the City's refusal to process the requested license;
- g) A statement as to whether all persons or employees has within two (2) years prior to the date of the application been convicted of any felony or misdemeanor of any kind;
- h) A statement that the applicant understands and agrees that the license will not be

used or represented in any way as an endorsement of the applicant by the City of Clearwater, Kansas or by any department, officer, or elected or appointed official of the City.

- i) 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;
- j) Proof of a current sales tax license from the State of Kansas or proof of exempt status from state sales tax;
- k) Proof of Food Service Permit issued by the State of Kansas;
- l) Proof that the applicant has secured commercial general liability insurance for the mobile vending operation to be maintained for the entire length of the license, 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
- m) 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 the information provided in the application is true and correct.

**Sec. 10-43 Fee**

All applications for mobile food vending license certificates shall be accompanied by a non-refundable license fee as in the City's fee schedule.

**Sec. 10-44 License**

If the facts stated in the application are satisfactory and the requirements of this article are met, the City Clerk may issue a mobile food vending license to the applicant. The issuance of a license shall not constitute approval of the business or activity or otherwise prohibit enforcement of this article or any other applicable laws, city code provisions, rules, or regulations. Vendor shall possess all applicable health and safety licenses, food handling licenses or the like as required by local, state, and federal laws, rules, or regulations.

**Sec. 10-45 Operating conditions**

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

- a) Location. Mobile Food Vendors may vend on property within the City subject to the following:
  - 1. Mobile food vendors may vend in the following zoning classifications: C-1 and C-2 to include public, governmental, church and city property (in accordance with the provisions of this article, as well as property;
  - 2. 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;
3. Mobile food vendors shall not locate on any City or public property without first securing approval from the City Administrator;
  4. Mobile food vendors shall not locate within 500 feet of an otherwise Approved City Event unless approval is given by the City Administrator;
  5. Every Unit shall be stationary while vending; and
  6. 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 one hundred (100) 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 article.
  - 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 10:00 p.m. Mobile food vendors are always prohibited from selling or offering for sale alcoholic beverages, cereal malt beverages, or tobacco products without first being properly licensed pursuant to any applicable federal, state, or local laws.
  - 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. One sign, within fifteen (15) feet of the associated Unit, may be displayed and shall not be greater than 16 square feet in total area. The sign may not interfere with vehicle access, pedestrian movement, or handicap-accessible routes to and around the Unit. Streamers, pennants, search lights and any device with flashing, blinking, rotating, or moving actions or messages are prohibited. No signage shall be placed in a public right-of-way.
  - 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 Administrator with enforcement of this article.

- h) Safety. All mobile food vending units shall be maintained in good repair, shall be free from peeling or flaking paint, and shall be clean and sanitary to not pose a threat to public health, safety, or welfare. All units shall be connected safely to electricity and other necessary utilities, so they do not pose a threat to public health, safety, or welfare.

**Sec. 10-46 Term and transferability**

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

**Sec. 10-47 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; 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 for the purpose of mobile food vending.

The mobile food vendor shall obtain a location that provides adequate parking for customers or other persons going to and from the activity or business.

**Sec. 10-48 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.

**Sec. 10-49 Exemption**

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

- a) The sale of farm or garden products or fruits grown by the seller or his or her employer or recognized Farmers Market;
- b) Vendors selling as part of a Special Event sponsored in part by the City, civic organizations, not-for-profit organizations, charitable organizations, public or private schools;
- c) Individuals providing catering services to a private event and not open for the sale of food and/or beverage to the general public;
- d) Auctions;
- e) Garage sales at private residences;
- f) Lemonade stands;
- g) Brick and Mortar Restaurants already operating as a business with a City of Clearwater, Kansas address.

**Sec. 10-50 Approval**

Any person registered under this article must keep their approved application inside the unit used for mobile food vending. Such certificate must be current and may be used only by the registered person.

**Sec. 10-51 Penalty for violation**

Penalty for any person or entity in violation of this Code shall be as set forth in Sec. 1-14.

**Section 2. Repeal**

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. Effective Date**

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

Passed by the City Council this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Approved by the Mayor this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Mayor, Burt Ussery

SEAL

ATTEST:

\_\_\_\_\_  
City Clerk, Courtney Zollinger