

"A Historic Past"



"A Bright Future"

THE CITY OF DELAWARE CITY
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**CITY OF DELAWARE CITY
DELAWARE CITY, DELAWARE
Ordinance No. 23-0123-01**

**ORDINANCE TO AMEND CHAPTER 51 OF THE CITY OF
DELAWARE CITY CODE REGARDING BUSINESSES
BY ADDING ARTICLE III TO ADDRESS MOBILE FOOD
VENDORS AND AMENDING ARTICLE I FOR CONSISTENCY**

WHEREAS, pursuant to Article V, Section 5-02(A) of The City of Delaware City Charter ("Charter"), and pursuant to the "Powers of the City," outlined in Article II, § 2-01 of the Charter, the Mayor and the Council of The City of Delaware City ("City Council") possesses the authority to adopt, amend, modify, or repeal The City of Delaware City Code ("Code"); and

WHEREAS, the Mayor and the City Council of Delaware City desire to create provisions in the Code to address Mobile Food Vendors within the City, with reasonable consideration, among other things, as to the economic, social and practical impacts within the community; and

WHEREAS, the Mayor and the City Council desire to amend Chapter 51 of the City Code by adding Article III specifically addressing Mobile Food Vendors, and revising various sections of Article I to ensure consistency therewith and with the remainder of the Code; and

NOW THEREFORE, making the express finding that the below changes enhance and perpetuate Delaware City's cultural, social, economic, religious, political or architectural history, the Mayor and Council of The City of Delaware City hereby ordain and adopt the following Code changes and revisions:

Section 1. Chapter 51 of the Code regarding Businesses is hereby amended by deleting the strikethrough language, and by adding the underlined language below, as follows:

Chapter 51 BUSINESSES

ARTICLE I. BUSINESS LICENSE ~~FEES~~

Sec. 51-1. License required.

No person shall operate, maintain or otherwise engage in any business, occupation or activity designated hereafter in this article without first obtaining a license from the City of Delaware City, including, but not limited to, mobile or transient businesses.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-2. Definitions.

As used in this article, the following terms shall have the meaning indicated:

Establishment: Building or part thereof, from which any merchandise or commodities are dispensed or facilities or services are provided to members of the general public.

Mobile business: Any motor or horse drawn vehicle, or stand that is not permanent in nature, from which any merchandise or commodities are dispensed or services are provided to members of the general public, including but not limited to, mobile food vendors, as defined in Article III.

~~*Person:* Includes firms, companies, corporations, partnerships and associations, as well as individuals.~~

Person: Any individual, firm, corporation, entity, company, partnership, joint venture or organization of any kind.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-3. License year.

The license year shall begin January 1 and end December 31 of each calendar year.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-4. License required before start of business.

Annual licenses must be obtained prior to opening, starting or continuing any business, occupation or activity as described in this chapter for any license year.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-5. License fee.

~~The cost of the annual~~ Such license fee for establishments shall be ~~\$50.00. The cost of the annual license fee for mobile businesses shall be \$150.00. set from time to time by resolution of the City Council.~~

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-6. Application for license.

Applications for licenses shall be addressed to the City of Delaware City, in writing, verified by oath or affirmation and signed by the applicant. Each applicant shall give the following information:

- (a) The home or business address of the applicant;
- (b) If the applicant is a partnership, the names and addresses of the individuals composing the partnership;
- (c) If the applicant is not an individual, the names and addresses of the principal officers of the corporation or entity;
- (d) A full description of the nature of the business or enterprise for which the license is required;
- (e) A statement that the applicant has complied with all laws and ordinances of the City of Delaware City;
- (f) A copy of a current State of Delaware business license; and
- (g) Any establishment or mobile business engaged in preparing or selling food and/or beverages, shall submit a copy of its board of health certificate.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-7. When taxes or assessments are due.

No license shall be issued under this chapter to premises upon which any taxes or assessments are outstanding and past due to the City of Delaware City.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-8. Licensed business to be lawful.

It shall be a condition to the issuance of any and all licenses under this chapter that the business, occupation or activity licensed shall be used and operated only for lawful purposes. The right of the City of Delaware City, Delaware, in its discretion, to refuse to grant any license and to revoke any license previously granted is hereby specifically reserved.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-9. ~~Prohibited practices.~~ [deleted].

~~(a) A mobile business is prohibited from selling its products, merchandise, food and/or beverages, or wares within the C-1 District (Central Commercial) and C-2 District (General Commercial) of the City of Delaware City.~~

~~(Ord. No. 14-0616-01, 7-21-2014)~~

Sec. 51-10. Issuance of license.

- (a) Upon the receipt of an application completed in good order, the city manager shall examine such application and shall ascertain by such examination whether the activities indicated and described are in accordance with the requirements of this chapter and all other pertinent laws and ordinances.
- (b) If the city manager is satisfied, the activities described in the application for a license and the information filed therewith conform to the requirements of this chapter and other pertinent laws and ordinances, the city manager shall issue a license to applicant.
- (c) If the application for a license describes an activity or contains information which does not conform to the requirements of this chapter or other pertinent laws or ordinances, the city manager shall not issue a license, but shall return the application to the applicant with his refusal

to issue such license. Such refusal shall, when requested, be in writing and shall contain the reasons therefore.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-11. Suspension or revocation of license.

Any license issued pursuant to this chapter shall be subject to suspension or revocation by the city manager for violation or any provision of this chapter or for any grounds that would warrant the denial or issuance of such license in the first place. The city manager, upon revocation or suspension, shall state his reasons in writing and specify the particular grounds for such revocation or suspension.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-12. Posting of licenses.

All licenses issued under this chapter shall be posted in a public place in the establishment or mobile business for which it is issued, or, as the case may be, shall be carried on the person of the licensee. Establishments and mobile businesses engaged in preparing or selling food and/or beverages shall also post a copy of its board of health certificate.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-13. Form of license.

The City of Delaware City shall prescribe the form of the license certificate to be issued to applicants.

(Ord. No. 14-0616-01, 7-21-2014)

Sec. 51-14. Violations and penalties.

Whoever shall violate any provisions of this article shall be subject to a fine of not more than \$100.00. Each day that a business, occupation or activity is carried on, prosecuted, conducted or engaged in without a proper license having been obtained pursuant to this article or any other applicable law shall be deemed to be a separate offense.

(Ord. No. 14-0616-01, 7-21-2014)

Secs. 51-15—51-20. Reserved.

ARTICLE III - MOBILE FOOD VENDORS

Sec. 51-41. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Mobile food vendor means a food establishment operated within a self-propelled vehicle or within a trailer, kiosk or cart (or something similar) that is pulled by a vehicle, where food or beverage is cooked, prepared and/or served in a ready-to-consume condition in individual portion sizes.

Public property means any parcel of land or any street, sidewalk, alley, parking lot, or right-of-way owned or controlled by the City of Delaware City.

Sec. 51-42. Mobile Food Vendor License.

- (1) Each operator of a mobile food vendor shall secure a mobile food vendor license issued by the City authorizing the operation of their mobile food service business within the City. Such license shall not be transferable. Each license issued shall be signed by an authorized representative of the mobile food vendor and shall contain the following: name of the mobile food vendor, the permit number, the fee paid, the issue date, the expiration date, and the name of each individual who will be operating under the license.
- (2) Prior to the City issuing a mobile food vendor license, the operator of the mobile food vendor shall provide the City with proof of insurance and such license, certificate, or other documentation from the State of Delaware evidencing that the mobile food vendor has obtained all necessary approvals and inspections from the State of Delaware. Such evidence, along with the license issued by the City, shall at all times be prominently displayed in a publicly visible location on the mobile food vendor.

Sec. 51-43. License year.

The license year shall begin January 1 and end December 31 of each calendar year.

Sec. 51-44. License fee.

Such license fee for mobile food vendors shall be set from time to time by resolution of the City Council.

Sec. 51-45. Restrictions

(1) *Location restrictions.* Mobile food vendors shall be subject to the following restrictions.

- a. No mobile food vendor shall be located within 100 feet of the primary entrance (e.g. front doors) of a restaurant, measured in a straight line from the mobile food vendor to the primary entrance of the restaurant, unless the mobile food vendor is legally located on private property, without the express written consent of the owner of the restaurant.
- b. No mobile food vendor, except ice cream trucks, shall operate in a zoned C-1 district.
- c. No mobile food vendor shall violate any building setback line or be located beneath any overhead utilities.
- d. A mobile food vendor may be parked or otherwise situated on public property in conjunction with a public event when authorized by the City of Delaware City pursuant to the public event procedures outlined herein.
- e. A mobile food vendor may be parked or otherwise situated on public property as long as the mobile food vendor (and any associated vehicle) complies with all parking restrictions and motor vehicle laws. A mobile food vendor shall not be situated on public property in such a way that it, or its customers, impedes the flow of traffic or makes it difficult for two cars to pass in opposite directions in the vicinity of the mobile food vendor.
- f. A mobile food vendor shall not be parked on sidewalks but may serve food from a location on a street to customers standing on an abutting sidewalk.

- g. Locations on public property where mobile food vendors may operate shall be available on a first come, first served basis. In the event two or more mobile food vendors are routinely seeking to park at the same public property location, the City may use a lottery system to determine a schedule for that particular location.
- (2) *Trash receptacles.* All mobile food vendors shall have sufficient trash receptacles to accommodate the trash generated by their customers. No mobile food vendor shall use a City provided trash receptacle for refuse.
- (3) *Dining areas.* Mobile food vendors may provide tables, chairs, benches, stools, and/or any other furniture for use as a dining area as long as such furniture is located within ten feet of the mobile food vendor and does not impede pedestrian or vehicular traffic.
- (4) *Self-contained.* All mobile food vendors must be self-contained with all cooking equipment, fuel sources, electric power, or other facilities being part of the mobile food vendor unit. No external generators shall be permitted except during public events.
- (5) *Public events.* When participating in a public event sponsored or supported by the City of Delaware City, mobile food vendors may be located on public property provided that mobile food vendors shall only operate at those locations and during those hours specifically designated by the City for mobile food vendors at the public event. For any such event, the City may place a limit on the number of mobile food vendors that are permitted to participate if, given the circumstances surrounding the event and the event's location, limiting the number of mobile food vendors is necessary to promote the health, safety, and welfare of the City or to promote a diversification of goods being sold at a particular event. If the City places a limit on the number of mobile food vendors permitted to participate in a public event, the City shall use a lottery system to determine which mobile food vendors may participate, and any mobile food vendor(s) not selected shall be given first priority at the next public event in which the mobile food vendor seeks to participate. If two or more mobile food vendors are not selected and seek priority status at the same subsequent public event, a lottery system shall again be used as outlined herein.
- (6) *Insurance requirements.* Mobile food vendors shall provide the City with a certificate of a general liability insurance policy in the amount of at least \$100,000.00 before a license will be issued to the mobile food vendor, which insurance shall be maintained for the duration of the

license, including any subsequent license renewals. The insurance policy shall list the City as an additional insured and shall include a provision prohibiting the cancellation of the policy without prior advanced notice to the City.

(7) *Hours of operation.* Such hours of operation for mobile food vendors shall be set from time to time by resolution of the City Council.

(8) *Signs.* No more than three temporary standalone signs shall be displayed by the mobile food vendor establishment, and the maximum aggregate display surface area of the temporary standalone signs shall not exceed 30 square feet.

(9) *Lighting.* Only self-contained lighting is allowed. High intensity lights or lighting that spills over from the site sufficient to cause glare, distract drivers, or obstruct vision is prohibited.

(10) *Sales of non-food items.* Items offered for sale must be primarily food-related. Selling merchandise unique to the mobile food vendor, such as clothing or other items containing the mobile food vendor's logo, is allowed as long as such activities are ancillary to the selling of food.

Sec. 51-46. Revocation.

Any license issued pursuant to this chapter shall be subject to suspension or revocation by the city manager for violation or any provision of this chapter or for any grounds that would warrant the denial or issuance of such license in the first place. The city manager, upon revocation or suspension, shall state his reasons in writing and specify the particular grounds for such revocation or suspension.

Sec. 51-47. Penalties.

Any person violating any of the provisions of this chapter shall be subject to a fine of not less than \$200.00 nor more than \$500.00. Each day a violation continues shall be considered an additional violation under the ordinance, which shall be subject to additional penalties.

Sec. 51-48 to 51-50 Reserved.

Section 2. Severability. The provisions of this Ordinance shall be severable. If any provisions of this Ordinance are found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that City Council would have enacted the remaining valid provisions without the unconstitutional or void provision; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the City Council's intent.

ADOPTED BY THE MAYOR AND COUNCIL, this 15 day of MAY, 2023.

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