

FILED

JUN 27 2016

GENERAL ORDINANCE NO. 10, 2016

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE 25 OF THE ~~TERRE~~ CITY CLERK
HAUTE CITY CODE CREATING MOBILE FOOD VENDOR REGULATIONS.

WHEREAS the Common Council wishes to promote commerce within the City of Terre Haute; and

WHEREAS the Common Council wishes to provide adequate rules and regulations regarding said commerce as to protect the safety and wellbeing of its citizens; and

WHEREAS the Common Council wishes to provide adequate rules and regulations regarding said commerce as to maintain the prosperity of those citizens already conducting business within the City.

IT IS HEREBY ORDAINED by the Common Council of the City of Terre Haute as follows:

Section 1. *Terre Haute City Code*, Chapter 4, Article 25, is hereby created with the addition of the text as follows:

...

ARTICLE 25. MOBILE VENDORS

Sec. 4-367 Definitions

The following terms shall have the following meanings:

- a. **Beverage** means any nonalcoholic liquid, hot or cold, intended for use in whole or in part for human consumption.
- b. **City Property** means all outdoor areas which are owned, or leased as lessee, by the City or one of the City's departments, or upon which the City or one of its departments has an easement or right-of-way including, but not limited to, streets, sidewalks, plazas or other areas adjacent to buildings owned by the City or one of its departments.
- c. **Food** means any raw, cooked, frozen or processed edible substance or beverage intended for use in whole or in part for human consumption.
- d. **Mobile Food Vendor Unit** means a person who sells, serves, offers for sale, or gives away food or beverages from any self-contained mobile unit, independent with respect to water, sewer and power utilities, capable of moving or being moved, is meant to be portable and is not permanently attached to the ground, consisting of an enclosed truck, trailer, bus, or similar vehicle that contains equipment used for the sale and/or preparation of food or beverages merchandise and is closed up when not in operation. An ice cream truck that does not park or

locate in any one place for longer than ten minutes is not considered a mobile food vendor unit for purposes of this Article

e. **Private Property** means all outdoor areas which are not owned or leased by any governmental agency or entity.

f. **Special Event** is any event so designated by the City of Terre Haute.

Sec. 4-368 Operations Generally.

It is unlawful to locate a mobile food vendor unit in the City except in accordance with the provisions of this Article.

Sec. 4-369 Business License Required.

a. It is unlawful to locate a mobile food vendor unit in the City without first having secured a license to do so as provided by this Article.

b. It is unlawful to locate a mobile food vendor unit in the City without first having complied with any and all requirements and/or regulations applicable to mobile food vendors established by Vigo County, Indiana.

c. A separate license shall be required for each mobile food vendor unit.

d. This Article does not apply to any recognized participant of a Special Event.

Sec. 4-370 Business License Application.

Any person desiring a license under this Article shall submit a fully completed application to the City Controller at least fourteen (14) days prior to the proposed date of utilizing the mobile food vendor unit. The application must set forth or have attached the following information as specified:

a. The applicant's name, current physical address, telephone number, email address and date of birth; along with the names of any and all employees having use of the license.

b. The name, current physical address, and telephone number of the person, firm, limited liability company, corporation or organization which the applicant is employed by or represents, and the length of time of such employment or representation;

c. If the applicant is employed by or represents a firm, limited liability company or corporation, the applicant shall provide the name and current physical address of all members of the firm or limited liability company, or all officers of the corporation, as the case may be;

d. If the applicant is employed by or represents a corporation or limited liability company then there shall be stated on the application the date of incorporation or organization,

the state of incorporation or organization, and if the applicant is a corporation or limited liability company formed in a state other than the State of Indiana, the date on which such corporation or limited liability company qualified to transact business as a foreign corporation or foreign limited liability company in the State of Indiana.

e. The duration of the license being sought with a maximum not to exceed twelve (12) months;

f. A statement as to whether or not a license, under the provisions of this Article, or any other similar ordinance of the City of Terre Haute or any other county, town, municipality, or State has been revoked, together with the details thereof; and

g. The designation of a resident of the State of Indiana as a registered agent for purposes of receiving notices from the City of Terre Haute or other service of process, as a result of doing business in the City of Terre Haute.

Sec. 4-371 Business License Prerequisites.

An application for a license under this Article shall not be considered unless proof of the following are provided with the application:

- a. All applicable permits required by the Vigo County Health Department;
- b. Proof of registration as a business with the Indiana Secretary of State;
- c. Proof of an Employer Identification Number;
- d. Proof of insurance in accordance with the amounts established by this Article;
- e. A copy of the Indiana registration for the vehicle;
- f. Copy of a valid driver's license; and
- g. Proof of payment for, or exemption from, the applicable fee.

Sec. 4-372 Business License Duration and Fee.

a. Each applicant shall pay a license fee in accordance with the schedule set forth below (all licenses are for a consecutive period of time):

- (1) One (1) Day License: \$25.00;
- (2) Three (3) Day License: \$30.00;
- (3) Seven (7) Day License: \$50.00;

- (4) Thirty (30) Day License: \$75.00
- (5) Three (3) Month License: \$150.00;
- (6) Six (6) Month License: \$200.00; and
- (7) One (1) Year License: \$350.00.

b. The following listed organizations and/or entities while required to obtain a license under this Article are exempt from having to pay any fees, with appropriate supporting documentation to be reviewed and determined by the City Controller, so long as the proceeds thereof are to be used exclusively for religious, charitable, educational or scientific purposes:

- (1) Churches;
- (2) Schools;
- (3) Benevolent organizations;
- (4) Fraternal organizations; and
- (5) Other similarly situated organizations.

c. Pursuant to Ind. Code 25-25-2-1, while all honorably discharged veterans are required to obtain a license under this Article they are exempt from having to pay any fees.

Sec. 4-373 Application Fee Refund on Denial.

An applicant shall pay an application fee in the minimum amount of \$25.00, unless exempted under the above section. In the event the license is granted, the application fee shall be retained by the City and applied toward the license fee. In the event the license is denied, \$20.00 of the application fee shall be retained to defray the administrative expense incurred in investigating and processing the application and any remainder shall be refunded to the applicant.

Sec. 4-374 Effect of Cessation of Business.

No deductions shall be allowed from the fee for a license issued pursuant to this Article for any part of the term of which the licensee does not engage in such business.

Sec. 4-375 Business License Insurance and Indemnity.

a. Each applicant for a license shall provide a certificate of liability insurance with the application, insuring the applicant, and naming the City of Terre Haute as "additional

insured” against the following liabilities and in the following minimum amounts relative to such activity:

- (1) Personal injury: \$100,000.00 per occurrence and \$300,000.00 in the aggregate;
 - (2) Property damage: \$25,000.00 per occurrence and \$50,000.00 in the aggregate;
- and
- (3) Indiana minimum, at least, for motor vehicle insurance coverage.

Sec. 4-376 Business License Issuance.

a. The Controller shall within fourteen (14) days of receipt of the completed application issue the business license to the applicant if the Controller finds the following:

- (1) Compliance with all provisions of this Article;
- (2) The applicant has not had a prior license issued under this Article, or any other similar license authorized by a different governmental entity, suspended or revoked; and
- (3) The applicant has not been previously found to be in violation of this Article, or any other similar law promulgated by a different governmental entity.

b. The Controller may, upon a finding of appropriateness, issue a business license to an applicant who has been found to meet the terms of the above sections.

c. Failure of the Controller to issue a license within fourteen (14) days of completion of the application constitutes denial of the application. The applicant may appeal the denial by filing a written statement to the City’s Board of Public Works and Safety within ten (10) days after passage of those fourteen (14) days. The Board of Public Works and Safety shall, within the next thirty (30) days, determine whether the applicant has complied with all requirements of licensure, and if so, shall authorize the Controller to issue the license if there is such compliance. Prior to this determination, which is final and conclusive, the applicant will have an opportunity to be heard regarding the denial.

Sec. 4-377 Business License Transferability.

A license issued pursuant to this Article shall not be transferable to another licensee.

Sec. 4-378 Business License Identification.

a. All licenses issued by the Controller under this Article shall be prominently displayed on the mobile food vendor unit and shall be shown to any person who requests to see the license.

b. Failure to display or exhibit a license in accordance with this Section may be grounds for suspension or revocation of said license.

Sec. 4-379 Business License Safety Inspection Required.

a. If, at any time, the City of Terre Haute has probable cause to believe that a mobile food vendor unit is unsafe or in a mechanically unsound condition, the Chief of Police or his/her designee may order a mobile food vendor unit licensed under this Article to undergo an immediate safety inspection. The immediate safety inspection must occur within five (5) business days and a copy of the safety inspection report shall be promptly submitted to the Chief of Police or his/her designee. If the safety inspection reveals deficiencies with the mobile food vendor unit, the mobile food vendor unit cannot be used until such time as the deficiencies have been remedied.

Sec. 4-380 Location Restrictions.

The following location restrictions apply:

a. No mobile food vendor unit shall locate in any parking lot, parking space or parking facility owned, leased or managed by the City of Terre Haute unless approval has been given by the City's Board of Public Works and Safety.

b. No mobile food vendor unit shall operate within fifty (50) feet of any façade of a ground level establishment that also sells food or beverages, or operate within fifty (50) feet of the perimeter of such an establishment's outdoor seating area, regardless of whether or not the mobile food vendor unit is currently conducting business. The distance restriction only applies from one hour before the opening time to an hour after the closing time posted by the ground level establishment on the façade of its building.

c. No mobile food vendor unit shall locate in an alleyway.

d. Mobile food vendor units shall be located a reasonable distance from all posted bus stops, crosswalks, driveways, alleyways, right-of-way lines of two or more intersecting streets and building entrances or walk-up windows while complying with any and all state and local traffic codes.

e. Mobile food vendor units shall operate only in areas that are designated as commercially zoned unless provided approval pursuant to Sec 4-380(a) above.

f. Mobile food vendor units shall only be located on private property if the private property owner has provided the business operator ongoing approval in writing.

g. No mobile food vendor unit shall locate within a two block radius of a Special Event unless prior approval has been granted by either the operator of the Special Event, if the Special Event is not operated and/or organized by the City, or the City's Board of Public Works and Safety.

h. No mobile food vendor unit shall be located in a manner which would significantly impede or prevent the use of any City of Terre Haute property, or which would endanger the safety or property of the public.

i. No mobile food vendor unit shall be located within fifteen (15) feet of any fire hydrant.

j. No mobile food vendor operating on private property shall displace required parking or landscaping nor block any drives, parking access aisles, fire lanes, sidewalks, or accessible routes required for the private parking by the City's zoning code.

k. No mobile food vendor unit shall be located more than one (1) foot away from the curb of the street on which it is parked.

l. No mobile food vendor unit shall park near an intersection and in a manner that blocks the line-of-sight of drivers using adjacent roadways.

Sec. 4-381 Prohibited Hours.

No mobile food vendor unit shall be located on any public property between the hours of 4:30 a.m. and 6:30 a.m.

Sec. 4-382 Standards of Conduct.

All mobile food vendor unit operators shall conform to the following standards of conduct:

a. Mobile food vendor unit operators shall conduct themselves at all times in an orderly and lawful manner, and shall not make, or cause to be made, any unreasonable noise of such volume as to be in violation of the City of Terre Haute Noise Ordinance as stated in Sec. 6-163 and Sec. 6-164.

b. A device may not be used which would amplify sounds nor may attention be drawn to the mobile food vendor unit by an aural means or a light-producing device (examples of such devices may include, but are not limited to the following: bull horns and strobe light).

c. No mobile food vendor unit may be permanently or temporarily affixed to any object, including but not limited to buildings, trees, telephone poles, street light poles, traffic signal poles, or fire hydrants.

d. No mobile food vendor unit may be used to advertise any product which is not authorized to be sold from that unit.

e. No mobile food vendor unit may make use of any public or private utility while in operation.

f. Each mobile food vendor unit shall protect against littering and shall have both an adequate trash receptacle and a separate receptacle for recyclable materials:

(1) The trash and recyclable receptacles shall be emptied sufficiently often to allow disposal of litter and waste by the public at any time;

(2) The trash and recyclable receptacles on the mobile food vendor unit shall not be emptied into trash or recyclable receptacles owned by the City of Terre Haute; and

(3) Liquid from the mobile food vendor unit shall not be discharged on or in a City sewer or drain or elsewhere on City property, nor on private property without the express written consent of the owner thereof.

g. Before leaving any location each mobile food vendor unit shall first pick up, remove and dispose of all trash, refuse and/or recyclable materials, including products spilled on the ground within twenty (20) feet of the mobile food vendor unit.

h. No mobile food vendor unit shall expose any pedestrian to any undue safety or health hazards nor shall it be maintained so as to create a public nuisance.

i. Each mobile food vendor unit shall be maintained free and clear of dirt, and finishes shall not be chipped, faded or unduly marred; and the body of the vehicle shall be in reasonable condition.

j. Foods or beverages which present a substantial likelihood that liquid matter or particles will drop to the street or sidewalk during the process of carrying or consuming the food or beverage shall be sold in proper containers so as to avoid falling to the street or sidewalk.

k. Mobile food vendor units which utilize a grill or device that may result in a spark, flame or fire shall adhere to the following additional standards:

(1) Be placed approximately twenty (20) feet from a building or structure;

(2) Provide a barrier between the grill or device and the general public;

(3) The spark, flame or fire shall not exceed twelve (12) inches in height;

(4) An operable fire extinguisher shall be within reaching distance of the mobile food vendor unit operator at all times.

l. Mobile food vendor unit operators shall be required to obey the commands of law enforcement officers or fire officials with respect to activity carried out inside of the City's jurisdictional limits, including, where possible, the removal of the mobile food vendor unit and cessation of such sales.

- m. No mobile food vendor unit shall ever be left unattended while in operation.
- n. Mobile food vendor units shall not be stored, parked or left overnight on any City property unless parked legally and not in operation.
- o. Foods, oils and greases shall never be discharged into the City's sewer or storm drains.
- p. All mobile food vendor unit operators are required to collect and pay all applicable and appropriate sales taxes.
- q. No mobile food vendor shall provide customer seating unless approval has been provided by the City's Board of Public Works and Safety.
- r. No mobile food vendor shall have a drive thru.

Sec. 4-383 Safety Requirements.

All mobile food vendor units shall comply with the following safety requirements:

- a. All equipment installed shall be secured in order to prevent movement during transit and to prevent detachment in the event of a collision or overturn.
- b. All utensils shall be stored in a manner to prevent their being hurled about in the event of a sudden stop, collision or overturn. A safety knife holder shall be provided by the vendor to avoid loose storage of knives and other sharp or bladed instruments.
- c. All foods and beverages to be used, prepared, cooked, displayed, sold, served, offered for sale or stored in a mobile food vendor unit, or during transportation to or between locations shall be from sources approved by the health authorities of the point of origin and must be clean, wholesome, free from spoilage, adulteration, contamination or misbranding and safe for human consumption. The standards for judging wholesomeness for human food shall be those promulgated and amended from time to time by the United States Food and Drug Administration, United States Department of Agriculture, the State Department of Health, the State Department of Agriculture, and the Vigo County Health Department and published in the United States Code of Federal Regulations, the Indiana Code Annotated or the Indiana Administrative Code, and the Vigo County Code.
- d. Each mobile food vendor unit shall be constructed so that the portions of the unit containing food shall be covered so that no dust or dirt will settle on the food and such portions of the unit which are designed to contain food shall be at least eighteen (18) inches above the surface of the public way while the unit is being used for the conveyance of food.
- e. The food storage areas of each mobile food vendor unit shall be kept free from rats, mice, flies and other insects and vermin. No living animals, birds, fowl, reptiles or amphibians shall be permitted in any area where food is stored.

f. Hazardous non-food items such as detergents, insecticides, rodenticides, plants, paint and paint products that are poisonous or toxic in nature shall not be stored in the food area of the mobile food vendor unit.

Sec. 4-484 Enforcement; Penalties; Revocation of License.

a. The Board designates officers of the City of Terre Haute Police Department and City Code Enforcement Officers to inspect and enforce the provisions of this Article.

b. Each mobile food vendor unit licensee, licensed mobile food vendor unit, and the records thereof is subject to random inspection by the City to ensure compliance with the provisions contained within this Article and any other applicable federal, state, or local regulations.

c. Any license holder found to be in violation of any provision of this Article shall, in addition to the possible suspension or revocation of the license be subject to a fine not to exceed Two Thousand Five Hundred dollars (\$2,500) for each separate violation.

d. In addition, the Controller's Office shall, after notice and hearing before the City Court, suspend or revoke, by written order, any license issued hereunder if the Court finds:

(1) The licensee has violated any provision of this Article or any rule or regulation lawfully made under and within the authority of this Article;

(2) The licensee is operating the mobile food vendor unit licensed under this Article in a manner contrary to State or local code; or

(3) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have permitted the Controller's Office to refuse originally to issue such license.

e. Any person charged with violating the provisions of this Article may, in the discretion of the enforcement officer, be issued an official warning. If an official warning is issued it shall be considered as affording the violator one opportunity to comply with this Article's provisions.

Sec. 4-485 Restriction on Use and Licenses.

The City of Terre Haute has exclusive authority to restrict the use of mobile food vendor units and the issuance of business licenses for mobile food vendor units under the following conditions:

a. The City may restrict the use of mobile food vendor units in certain designated areas of the City in the event of an emergency declared by the Mayor, the Chief of Police, the Fire Chief, and/or any of the aforementioned duly appointed designees.

b. Absent any emergency as described above, the City may restrict the use of mobile food vendor units in certain designated areas of the City provided the City has given each mobile food vendor unit licensee written notice of the restriction at least seventy-two (72) hours in advance of the restriction going into effect.

...

Section 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.

Section 4. This ordinance shall be in full force and effect from and after its passage by the Common Council of Terre Haute, Indiana and approval of the Mayor and publication as required by law.

Introduced by: Todd Nation, Todd Nation, Councilman

Passed in open Council this 21st day of July, 2016.

Todd Nation Todd Nation, President

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk

Presented by me to the Mayor this 25th day of July, 2016.

Charles P. Hanley Charles P. Hanley, City Clerk

Approved by me, the Mayor, this 25th day of July, 2016.

Duke A. Bennett Duke A. Bennett, Mayor

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk