ORDINANCE 2020-07

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF CUMMING, IOWA, BY AMENDING PROVISIONS PERTAINING TO CHAPTER 122 PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

**BE IT ENACTED** by the City Council of the City of Cumming, Iowa:

SECTION 1. SECTION MODIFIED, Section 122.06 of the Code of Ordinances of the City of Cumming, Iowa is repealed and the following adopted in lieu thereof:

**122.06  TRANSIENT MERCHANT BOND.**

    1. Except as provided in paragraph (3) below, no transient merchant license shall be issued until the applicant has delivered to the city clerk a cash bond for no less than $200.00. 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 article and indemnify or reimburse any purchaser of 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 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 or merchandise or any part thereof.

2. A single bond may be used for all licenses obtained by the same transient merchant.

3. The balance of the bond shall be released by the city clerk and returned to the applicant upon request by the applicant at any time more than four months after expiration of all transient merchant licenses for which the cash bond was provided, unless the city clerk has received notice of a 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.

SECTION 2. SECTION ADDED. Section 122.10 of the Code of Ordinances of the City of Cumming, Iowa, is added to Chapter 122, Peddlers, Solicitors and Transient Merchants.

**122.10  MOBILE FOOD AND BEVERAGE VENDORS**

    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 located on public property within the corporate limits of the City of Cumming without first obtaining a mobile food unit license from the city, in addition to any other state, federal, or county permits, certifications and licenses. Mobile food units located on private property are allowed with a transient merchant permit.

A. A mobile food unit license is an annual license that expires on April 15 each year and must be renewed at least 5 days prior to the first event after that date.

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

C. Although certain activities may be exempt from the licensing requirements of this chapter, any food service to the public in the City of Cumming shall comply with all other local, county and state requirements for health inspections, licensing, safety and fire code requirements.

  D. The following shall be exempt from this requirement:

  (1) Catering businesses.

  (2) Grilling and food preparation activities, including mobile food units, of brick and mortar establishments on the establishments' premises for immediate consumption by patrons or employees.

(3) Concession stands associated with sports or recreational venues that have been approved as part of a site plan.

2. License Fee: At the time of the submittal of a license application, the applicant shall pay to the city clerk’s officethe applicable license and permit fees in addition to any application fees.

 A. The city council shall establish the amount of the license fee by resolution.

B. 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.

  3. Fire Department Inspection:

A. All mobile food units that have cooking facilities with grease laden vapors (class III and class IV state licenses) shall be inspected by the Norwalk fire department prior to initiation of business operations within the city. However, at the discretion of the city clerk’s office the city may accept the inspection of the mobile food unit by another Iowa Fire Department.

B. Inspections are required annually and prior to submittal of a license application to the city. It shall be the obligation of the mobile food vendor to schedule the inspection with the fire department.

C. Upon completion of the annual fire inspection, if the fire department determines that the mobile food unit passes the inspection, the Fire Chief or his/her designee shall sign the mobile food unit vendor license application and identify any conditions for operation as deemed appropriate as a result of said inspection.

  4. Mobile Food Unit Vendor Annual Licensing Application:

A. License Required: All mobile food vendors operating on public property within the City of Cumming must obtain a mobile food vendor license from the city.

Exception: Community events sponsored by or approved by City Council. Application requests shall be filed with the city clerk’s office on the form provided by the city. No application request shall be accepted for filing and processing unless it conforms to the requirements of this title. This would include a complete and true application and all of the required materials and information prescribed, accompanied by the appropriate fees.

 B. Submission Time Frame: Applications must be submitted not less than five (5) business 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. The city clerk shall have the discretionary right to accept an application made less than five (5) business days prior to desired start date.

 C. Additional Approvals: 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.

 D. Application Contents: Application shall be made on a form provided by the city and shall include:

(1) Full name of the applicant.

(2) Applicant's contact information including mailing address, phone numbers and e-mail address.

(3) State health inspection certificate with the classification level of the state license identified.

(4) Description of the kitchen facilities, cooking facilities, preparation area, safety features (suppression system, etc.) of the mobile food unit.

(5) Photographs of the mobile food unit.

(6) Make, model and year of vehicle to be used.

(7) County, state and license plate number.

(8) The length and width of the vehicle.

(9) Fire department signature on application confirming a passing fire department inspection.

(10) Application and license fee(s)

E. 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.

F. Issuance of License: Upon completion of the review process and a determination of compliance with the applicable regulations, the city clerk will issue a mobile food unit license. The license shall be placed in the upper left (passenger side) of the front windshield or the left front side of a trailer or cart to aid in the visual verification of the licensing for that year.

 G. 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 and fire inspection shall be required.

 5. Mobile Food Units on Public Property: No mobile food unit may be operated on public property except as approved by the city clerk's office.

 6. Unattended Mobile Food Unit: No mobile food unit shall be left unattended on any site overnight, unless that property is under the ownership of the operator of the unit and in compliance with all other city code requirements. No mobile food unit shall be allowed to be stored on a site that is not zoned appropriately for storage and warehousing and/or having received prior city council approval through an entitlement process. 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.

7. 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 event.

8. 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 to use the business 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.

B. The operator of the mobile food unit shall display their city license in full view of the public in the unit.

C. Mobile food units 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 nine thirty o'clock (9:30) P.M.

D. Mobile food units shall be limited to a maximum duration of 12 hours per day on any site, unless part of an approved event permit. A mobile food unit shall be at one location a maximum of five (5) consecutive days per week.

E. Only one mobile food unit shall be allowed on a property, unless part of an approved event or the property has received a multiple vendor permit. Mobile food units not under a multiple vendor permit and on adjacent properties must maintain a minimum separation between units of twenty (20) feet.

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

G. The mobile food unit must be located on a paved surface, unless approved by the city clerk’s office.

H. No mobile food unit may be located on a vacant property or lot with a vacant building.

I. No mobile food unit may operate within two hundred feet (200') of a permanent restaurant or business that primarily engages in food services without the written permission of that business.

J. No alcoholic beverages may be sold as a part of a mobile food unit.

K. Except in zone C-2 any mobile food unit shall maintain a minimum fifteen-foot (15') separation from a building as measured to the closest building element including awnings or canopies, tents or membrane structures. Location of the mobile food unit shall not impede pedestrian entering or exiting of a building. In zone C-2 the distance shall be seven (7) feet.

L. Mobile food vendors shall be placed no closer than 15’ from a front property line.

M. Signs are limited to those that are attached to the exterior of the mobile unit and must be mounted flat against the unit and not project more than six inches (6") from the exterior of the unit. Only two off premise signs directing patrons to the mobile food unit is allowed.

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 and fire department connections, impeding entering and exiting from a building, creating a visual impediment for the motoring public at drive entrances, intersections, pedestrian crossings, etc.

 Q. No mobile food unit shall be parked in or otherwise impact access to/from ADA parking stalls.

9. Other Licenses and Permits to Be Maintained: Failure of any applicant to maintain the appropriate county, state and federal licenses and permits, during the term of the local license or permits shall be considered an unlawful act and subject to revocation or any other penalties available to the city.

10. Suspension or Revocation of License: Any license issued under the provisions of this chapter may be suspended or revoked by the city as follows:

A. Grounds: The city clerk may suspend any license issued under this chapter, pending the outcome of an administrative hearing, for any of the following reasons:

(1) The licensee has made fraudulent statements in his/her application for the license or in the conduct of his/her business.

(2) The licensee has violated this chapter or any other chapter of this code or has otherwise conducted his/her business in an unlawful manner.

(3) The licensee has conducted his/her business in such manner as to endanger the public welfare, safety, order, or morals.

(4) The city clerk has received and investigated three (3) or more found complaints during the licensed period related to the manner in which the licensee is conducting business.

B. Notice: The city clerk shall have the licensee served with notice either in person or by regular mail to the licensee's address shown on the license application notifying them of the license suspension, the specific reason(s) for such action, and date and time of hearing with the city clerk to review the particulars of the suspension. The licensee shall be prohibited from any further activities covered by the license until such time that the hearing has been held and a determination of suspension and revocation resolved.

C. Hearing: A hearing shall be conducted by the city clerk not more than five (5) business days after he/she has suspended a license. The licensee and any complainants may be present to determine the truth of the alleged violation of this chapter. Should the licensee or his/her authorized representative fail to appear without good cause, the city clerk may proceed with the hearing and make his/her findings.

D. Revocation: After the city clerk has reviewed the facts, he/she shall revoke a license if he/she finds by the preponderance of the evidence that a violation has occurred. The revocation shall be effective immediately.

E. Appeal: If the city clerk revokes or refuses to issue a license, the licensee or the applicant shall have a right to a hearing before the municipal code hearing officer as provided in Section 122.15 of this code. The municipal code hearing officer may reverse, modify, or affirm the decision of the city clerk.

F. Effect of Revocation: Revocation or denial of any license shall bar the licensee or applicant from being eligible for any license under this chapter for a period of one year from the date of the revocation or denial. There shall be no refund of any fees for any revocation.

11. Penalty: Unless another penalty is expressly provided by this chapter for any particular provision or section, violations of this chapter are simple misdemeanors subject to a fine of not more than five hundred dollars ($500.00) and may also be punishable as municipal infractions subject to a civil penalty as set forth in this code. Each day a municipal infraction occurs and/or is permitted to exist constitutes a separate offense. Police officers, code enforcement officers and the police chief's designees shall have the authority to issue citations for violations of this chapter, and shall have the discretion to enforce this chapter as either a simple misdemeanor or municipal infraction.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. This ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

Passed and Approved by the Council the 12th day of October, 2020.

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Tom Becker, Mayor

ATTEST:

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Robert Fagen, City Administrator/Clerk

First Reading: 9/14/20

Second Reading: 9/28/20

Third Reading: 10/12/20

I certify that the foregoing was published as Ordinance 2020-07 on the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2020.

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Angie Ritchie, Deputy Clerk