

ORDINANCE NO. 286

AN ORDINANCE REGULATING MOBILE FOOD UNITS IN THE CITY OF ELY, IOWA

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELY, IOWA:

Section 1. Purpose. The purpose of this Ordinance is to add a new Chapter 125 to the City of Ely Code of Ordinances to regulate mobile food units operating in the City.

Section 2. Amendment. The Code of Ordinances of the City of Ely, Iowa is amended as follows:

Add New Chapter:

125.01 DEFINITIONS
125.02 LICENSE REQUIRED
125.03 APPLICATION
125.04 EXCEPTIONS
125.05 GENERAL REGULATIONS
125.06 PUSH CART SPECIFIC REGULATIONS
125.07 MOBILE FOOD UNIT SPECIFIC REGULATIONS
125.08 ENFORCEMENT AND PENALTIES

125.01 Definitions:

"Commissary" means a licensed food facility regulated by a governmental entity where food is stored, prepared, portioned, packaged or any combination thereof, and where such food is intended for consumption at another location or place from a mobile food unit or pushcart.

"Food Establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption. For purposes of this chapter, "food establishment" does not include an establishment that offers only pre-packaged food that are non-potentially hazardous; a product stand which sells only whole, uncut fresh fruits and vegetables; an establishment operating in a farmers market if potentially hazardous food is not sold or distributed; a residence in which food that is non-potentially hazardous is sold for consumption off premises to a consumer customer provided the food is labeled so as to identify its preparer; a private home that receives catered or home-delivered food; child care facilities or food establishments in hospitals or health care facilities which are subject to regulation by state agencies; supply vehicles and vending machines.

"Mobile Food Unit" means motorized, a self-propelled food establishment or a trailer or vehicle towed by a motorized vehicle, that is readily movable, and which typically operates at a remote location and returns to a base of operation or commissary at the end of its daily business. Mobile food units are considered Class IV mobile food units by the Iowa Department of Inspections and Appeals.

"Pushcart" means a single axle, non-motorized cart, with top-loading capability only.

"Potentially Hazardous Food" has the same meaning as provided in Iowa Code Chapter 137F.

125.02. License required:

No person shall sell or offer for sale or otherwise engage in business as a mobile food unit or pushcart within the city without having first obtained a license to operate as such. A mobile food unit license is a special license and is required in addition to any other required city business license or state license or permit the person may hold or be required to hold. A separate mobile food unit license is required for each mobile food vehicle or pushcart from which business is conducted in the city. Mobile food unit licenses are not transferrable or assignable. The license issuance shall be approved by the city council by resolution. If said license calls for establishment or operation in a public park, then approval must be granted by the park board prior to approval by city council.

125.03. Application:

An application form available from the city clerk's office must be filled out and submitted to the city clerk for processing. The completed application must be submitted together with a copy of the applicant's Iowa retail sales tax permit and proof of liability insurance, including commercial general liability insurance coverage and automotive liability insurance coverage. Commercial general liability insurance shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence and aggregate combined single limit. Automobile liability insurance coverage shall include coverage for bodily injury, death and property damage with limits of liability of not less than one million dollars per occurrence, combined single limit. Certificates of insurance shall provide that the policy or policies have been endorsed to provide 30 days advance notice of cancellation and 45 days advance notice of non-renewal and 10 days advance notice of cancellation for non-payment of premium and that these notices shall be provided to the city clerk's office by email, facsimile or mail. Cancellation of required insurance automatically revokes and terminates the mobile food unit license to operate in Ely unless other insurance policies are provided in a timely manner to the city. The City of Ely shall be added as an additional insured. If the mobile food unit or pushcart sells food or beverages other than pre-packaged items that do not require hot or cold handling procedures, the application shall also contain a copy of the mobile food unit's license issued by the Iowa Department of Inspections and Appeals, a copy of the food establishment license issued by the Iowa Department of Inspections and Appeals for any commissary kitchen or other premises where food is prepared, copies of the food protection manager certifications, the name and address of the facility at which any waste fat, waste oil or waste grease generated by the mobile food unit or pushcart operation is disposed of, and a copy of the certificate of annual compliance issued by the fire marshal. Before a license is issued, the applicant shall pay a license fee according to the following schedule:

An annual Mobile Food Unit License is \$150.00

An annual Pushcart Food Unit License is \$75.00

A Single Event Mobile Food Unit License is \$25.00

Bona fide 501(c)(3) organizations whose general purpose is nonprofit charity and any other entities legitimately engaged in isolated charitable events may, upon request and proof of charitable status or charitable purpose in a particular case, be exempted from permitting fees under this section.

125.04. Exceptions:

License fees set forth in this chapter shall be adjusted or waived, as applicable, in the following circumstances:

A. If a mobile food unit or pushcart vendor is subject to fees associated with a special event hosted by the city, and the fees for participation in the special event are equal to or greater than the fees associated with this chapter, no further fees shall be incurred by the mobile food unit or pushcart vendor for participation in such event. The mobile food unit or pushcart vendor paying such special event fees shall be entitled to operate as a mobile food unit or pushcart in the city without additional fees under this chapter. In the event a mobile food unit or pushcart vendor has already paid fees under this chapter, such vendor shall only be required to pay the difference between the fees set forth in this chapter and the special event fees in order to participate in the special event.

B. License fees under this chapter are waived for mobile food unit or pushcart vendors operating a mobile food unit or pushcart in connection with a business on the vendor's owned or leased real property upon which the vendor's brick and mortar business is located. Such vendor is subject to all fees under this chapter in the event the mobile food unit or pushcart operates outside the vendor's owned or leased real property. For avoidance of doubt, irrespective of fees, all provisions of this chapter are in full force and effect when operating a mobile food unit or pushcart in the city. All operation of mobile food units and pushcarts in the city is subject to licensing provisions set forth in this chapter.

125.05 General regulations for all mobile food units and pushcarts:

A. Mobile food units shall have, and at all times maintain, all necessary licenses and permits From the Iowa Department of Inspections and Appeals as well as the city's required permits and licenses.

B. Mobile food units shall at all times operate in compliance with all applicable food, health and sanitation laws and shall comply with all health department regulations regarding food service, food storage and preparation, food handling and food cooking and shall have a valid inspection certificate or permit evincing health department inspection and approval on display and easily visible to the mobile food unit's or pushcart's patrons at all times in operation.

C. No mobile food unit or pushcart shall offer for sale or sell food and/or non-alcoholic beverage between the hours of 12:00 a.m. and 6:00 a.m.

D. No mobile food unit or pushcart shall operate in a manner that violates the city code concerning noise, City of Ely Code of Ordinances 40.03. A mobile food unit or pushcart operator shall not call out to, cry out, shout out or otherwise communicate or make any noise or use any device to call attention to his or her unit's or cart's location and operation if it violates the city code.

E. A mobile food unit or pushcart is responsible for keeping and maintaining the area around and within fifty feet of the mobile food unit or pushcart neat, clean and free from trash, debris, garbage, and other hazardous conditions at all times regardless of whether the trash, debris or garbage originated from the operation of the unit or pushcart or was left in the area by a pedestrian passersby or natural conditions. A mobile food unit or pushcart shall provide adequate trash receptacles for the public for all garbage from its operation and from the accumulation of garbage in the area around his or her unit or pushcart at all times the unit is in operation. At the close of its daily business the mobile food unit or pushcart must remove all garbage from the area and properly dispose of it away from the site of its operation. The garbage shall not simply be placed in nearby public garbage

receptacles provided for use to the general public at large.

F. The license required by this chapter, the state sales tax permit and all licenses, permits, or certificates required to be displayed by state law, shall be posted on the mobile food unit or pushcart so as to be readily visible to all persons conducting business with the mobile food unit.

G. Mobile food units and pushcarts shall only offer single service food utensils such as cups, straws, knives, forks, spoons, stirrers, plates, bowls, wrappers, containers, and similar utensils, which shall be individually wrapped if usual, and kept in a clean place and only used once in the service of food and/or beverage.

H. No mobile food unit or pushcart shall be left at its operating location at the end of its business day and shall be removed to its base business operation location, unless associated with a multi-day event or festival.

I. No mobile food unit or pushcart shall conduct operations at a location or in a manner that hinders, impedes or restricts access to a pay phone, mail box, emergency call box, traffic control box, fire hydrant, entrance to a building or a driveway, or any other similar infrastructure.

J. A mobile food unit or pushcart operating on private property shall not encroach into any public sidewalk.

K. A pushcart and mobile food unit shall not violate parking regulations.

L. The city reserves the right to move a mobile food unit or pushcart from any location if determined to be necessary for the provision of emergency or public services or in the interest of public safety, peace, and welfare.

M. No mobile food unit or pushcart shall offer for sale or sell any liquor, beer, or wine from such unit.

N. When operating on city local right of way - city streets, parks, parking lots, and public spaces – Prior to operations and food service, mobile food units must acquire approval from City Council and shall notify all adjacent property owners of their intent to apply for mobile food service from public right of way.

O. When operating on private property mobile food unit shall notify all adjacent property owners of their intent to apply for mobile food service on private property and shall submit documentation of approval from owner of property that the mobile unit will be placed.

P. Mobile food units or pushcarts -participating in a private party pursuant to invitation or contract on private, residential property hosted by the owner of the property, such as a graduation party, wedding reception, birthday celebration or similar event, are required to display proof of its authorization to operate in Iowa and required health inspection certificate. Mobile food units or pushcarts participating in a public celebration or special event hosted by a public body, community organization, charitable organization, patriotic organization, religious organization, educational institution or similar entity pursuant to invitation or contract must comply with the licensing provisions of this chapter and must

display proof of its authorization to operate in Iowa and required health inspection certification.

Q. Pushcart and mobile food unit vendors agree to indemnify and hold harmless the city from and against any and all loss, cost, damages or claims to persons or property, including property of the city, arising out of or claimed to have arisen out of the operation of a pushcart. In addition, pushcart vendors agree to defend, at no cost to the city, any such claims or lawsuits. The city may, at its option, join the defense of such claim or lawsuit without relieving the pushcart vendor from its obligations to indemnify, hold harmless and defend the city.

R. No pushcart or mobile food unit shall conduct business in areas of the city at which they are not permitted or authorized.

S. No pushcart or mobile food unit shall operate in a manner detrimental to city planning documents such as landscape, streetscape, PUD's/overlays, etc.

125.06 Pushcart specific regulations:

A. A pushcart shall not allow, cause or obstruct the passage along any sidewalk, street, alley or parking lot as a result of a congregation of people seeking service from the pushcart or because of the size, shape or placement of the pushcart so as to interfere, inhibit or block the normal flow of pedestrian or vehicular traffic.

B. A pushcart shall not sell to any person operating a vehicle on a public street while the person's vehicle is located within the traveled portion of the roadway. A pushcart may sell to a person operating or occupying a motor vehicle that is legally parked, but may only do so from the curb side of said parked vehicle.

C. No pushcart or equipment shall be allowed to remain in the public right of way at the close of business unless associated with a multi-day event or festival.

D. Pushcarts may operate on a paved surface, designated parking space or sidewalk subject to the other requirements of this chapter. In addition, a pushcart may operate at a requested location on private property provided application has been made for permission to operate at the requested location and that application is accompanied by a verifiable letter from the owner or person in control of the property granting permission to operate on the premises. Permission by the owner/person in control of property may be rescinded at any time by notifying the city clerk's office in writing that permission is rescinded. If permission is rescinded, no fees or portion of fees paid will be refunded.

E. Pushcarts shall be subject to the same permit and fee structure as all other mobile food units.

125.07 Mobile food unit specific regulations:

A. Sales shall be conducted on the sidewalk side of the mobile food unit whenever possible away from moving vehicles.

B. No mobile food unit shall be used for any purpose other than as a mobile food unit offering food and/or non-alcoholic beverage to customers.

125.08 Enforcement and penalties:

A. The Linn County Public Health Department, the Linn County Sheriff's Office, Ely Code Enforcement Officials, and the City Clerk are authorized to enforce this chapter. The Linn County Public Health Department may elect to pursue enforcement under the provisions of this chapter or under applicable state laws and regulations with the sanctions available thereunder. The performance of any action contrary to the provisions of this chapter may be cited as a municipal infraction offense. Additionally, failure to adhere to the regulations is cause for revocation or suspension of a license to operate as a mobile food unit or pushcart.

B. This ordinance shall be in full force and effect from the date of passage and publication as required by law.

C. This ordinance shall be construed to repeal any prior ordinance inconsistent herewith.

D. If any section, subsection, sentence, clause, phrase or portion of this ordinance be held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion hereof.

E. Any person, firm, or corporation who violates this chapter shall be guilty of a municipal infraction and shall be penalized as set forth in Chapter 3 of the Municipal Code of the City of Ely, Iowa.

Section 3. Repealer. All other sections of this Ordinance in conflict with these provisions shall be repealed.

Section 4. Severability. If any section, provisions or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall have no effect on the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 5. Effective Date. This Ordinance shall be in full force and effect from and after its adoption and publication as provided by law.



Eldrew Miller, Mayor

Attest: 

Luanne Miller, City Clerk

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First Reading: 03/09/2020

Second Reading: 06/08/2020

Third Reading: Waived

Posted: 06/11/2020

I certify the foregoing was posted and published as Ordinance 286 on the 8th day of
June, 2020, as required by law.


Adam Thompson, City Administrator

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