

**CITY OF NEW BALTIMORE
MACOMB COUNTY, MICHIGAN
NOTICE OF ADOPTION
ORDINANCE NO. 246**

AN ORDINANCE TO AMEND THE CITY OF NEW BALTIMORE CODE OF ORDINANCES, BY ADDING CHAPTER 36, ARTICLE IV, TO REGULATE, PROVIDE DEFINITIONS, PERMITTING, APPLICATION PROCESS, FEES, PERMIT EXPIRATION, LIMITATIONS ON PERMIT TRANSFER, EXCEPTIONS, LOCATIONS HOURS OF OPERATION, OTHER REGULATION, APPEAL, VIOLATIONS AND TO PROVIDE FOR REPEALER, SEVERABILITY AND EFFECTIVE DATE.

THE CITY OF NEW BALTIMORE ORDAINS:

Section 1. Chapter 36 of the City Code of Ordinances is amended by adding Article IV as follows:

ARTICLE IV - MOBILE FOOD VENDING UNITS

Sec. 36-125 - Definitions.

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

Mobile Food Vending means vending, serving, or offering for sale food and/or beverages from a mobile food vending unit, which may include the ancillary sales of other items consistent with the food provided, such as a tee shirt that bears the name of the organization engaged in mobile food vending.

Mobile Food Vending Unit means any motorized or non-motorized vehicle, trailer, table or other similar device designed to be portable and not permanently attached to the ground from which food is vended, served, or offered for sale. This definition does not apply to vehicles which dispense food or beverages that move from place to place and are stationary in the same location for no more than 15 minutes at a time, such as ice cream trucks.

Operate means all activities associated with the conduct of business, including set up and take down and/or actual hours where the mobile food vending unit is open for business.

Vendor shall mean any individual or group of individuals engaged in the business of mobile food vending. If more than one individual is operating a single stand, cart or other means of conveyance, then vendor shall mean all individuals operating such single stand, cart or other means of conveyance.

Sec. 36-126 - Permit Required.

It shall be unlawful for any person to operate a mobile food vending unit in the City without first obtaining a permit as provided in this Article.

Sec. 36-127 - Application.

A person desiring to operate a mobile food vending unit shall make written application for a permit to the City Clerk, unless part of an approved Special Event Application. In the event of a Special Event, the Special Event Application should list what, if any, food vendors will be attending and the food vendors shall be required to register with the City and pay a fee to be established by resolution of City Council. The application for a permit shall be on forms provided by the City Clerk, and shall include the following:

- (1) Name, signature, business address, telephone number, and email contact information of the applicant.
- (2) Information on the mobile food vending unit, to include a copy of the current vehicle registration and dimensions, which shall not exceed thirty-six feet (36') in length or ten feet (10') in width.
- (3) A plan which includes information setting forth the proposed locations of operation, hours of operation, plans for power access, water supply and wastewater disposal, and written property use agreements, if applicable.
- (4) Copies of all necessary licenses or permits issued by Macomb County and the State of Michigan.
- (5) Insurance coverage:
 - (a) Proof of Commercial Liability Insurance policy with limits of no less than Two Million Dollars (\$2,000,000) combined Single Limit coverage issued by an insurer licensed to do business in this state, and which names the City as an additional insured.
 - (b) Proof of Commercial Auto Policy with bodily injury and property damage with limits of no less than Two Million Dollars (\$2,000,000) per accident issued by an insurer licensed to do business in this state.
- (6) At the time of filing the application, a fee as established by resolution to cover the cost of the review and administrative processing, no part of which shall be refundable.
- (7) A signed statement that the licensee shall indemnify and hold harmless the City, its officers, agents, and employees for any claims, damages, or injuries to persons or property which arise out of any activity by the licensee, its employees, or agents carried on under the terms of the license.

Sec. 36-128 - Review of Application and Issuance.

- (1) Upon receipt of an application, the original shall be forwarded to the City Clerk, for review as to compliance with all applicable laws and Ordinances.
- (2) If as a result of such review the application is found not to be in compliance with all applicable laws and ordinances the City Clerk shall endorse on the application disapproval and the reasons for disapproval, and shall notify the applicant that the application is disapproved and that no permit will be issued.
- (3) If as a result of such review the application is satisfactory, the City Clerk shall approve the application. The City Clerk, upon payment of the prescribed fee, shall issue a permit. All such permits shall contain the signature of the City Clerk, and show the name and address of the applicant, a description of the mobile food vending unit, the amount of the fee paid, and the expiration date of the permit.

Sec. 36-129 - Fees.

An applicant for a mobile food vending unit permit shall pay an annual fee as established by resolution of City Council.

Sec. 36-130 - Expiration.

Each mobile food vending permit shall expire on December 31st in the year of issuance. There shall be no proration of fees.

Sec. 36-131 - Limitations on Transfer of Permits.

- (1) A permit issued under this Article shall not be transferable from person-to-person, from business-to-business, from vendor-to-vendor, from member/shareholder-to-member/shareholder, or any combination thereof.
- (2) A permit is valid for one mobile food vending unit, and shall not be transferred between mobile food vending units.

Sec. 36-132 - Exceptions.

A permit issued under this Article shall not be required for any school-sponsored mobile food vending unit operating on school property. Restaurants who operate a permanent business physically present in the City are also exempt under this article while mobile vending on their own private property but they shall not subcontract or hire such vendors in an attempt to evade this Article. Mobile food vending that occurs entirely indoors, located inside a building is exempt under this Article. Groups and individuals who are exempt under this Article from permitting must still receive written permission from the City before operating on public property.

Sec. 36-133 - Locations.

- (1) Appropriate locations for mobile food vending units shall be limited to the areas as stated in a Resolution of Council or private property with a written agreement signed by the property owner. The use of other public areas, including on-street parking, is prohibited without written permission from the City without exception.
- (2) Mobile food vending units may not be parked and shall not operate within the Downtown Development District, unless part of an approved Special Event Application. This does not apply to a restaurant, already physically present in the City on a permanent basis, from mobile vending on their own private property.
- (3) Mobile food vending units are not permitted within one thousand feet (1000') of any fair, festival, special event, or civic event, or other event with City approved community event status unless written permission from the event coordinator is obtained.
- (4) The issuance of a mobile food vending unit permit does not grant or entitle the vendor to the exclusive use of any service route or space.
- (5) Mobile vending units must be setback a minimum of twenty feet (20') off the property line of any public road and must be a minimum of fifty feet (50') away from the property line of any residential property. Mobile vending units may not operate on a single-family residential property.

Sec. 36-134 - Hours of Operation.

- (1) Mobile food vending units shall be permitted to operate on public property between dawn and dusk.
- (2) A mobile food vending unit shall not be parked overnight on public property, or left unattended and unsecured at any time food is in the vehicle or at the location, unless part of an approved Special Event Application. Any mobile food vehicle unit found to be unattended shall be considered a public safety hazard and may be ticketed and impounded.
- (3) Mobile food vending units shall be permitted to operate on private property during the hours of operation of the primary use business and shall not operate as an accessory use before or after the primary use business is open for business. The private property owner may dictate mobile vending operations less than their business hours.

Sec. 36-135 - Regulations.

- (1) Customers of mobile food vending units shall be provided with single service articles such as plastic utensils and paper plates.
- (2) All mobile food vending units shall provide a waste container for public use which the vendor shall empty at its own expense. All on-site trash and garbage originating from the operation of mobile food vending units shall be collected and disposed of off-site by the operators each day, and in such a manner so as to not allow overflowing containers during the course of operations. Spills of food or food by-products shall be cleaned up, and no dumping of gray water is permitted.
- (3) No mobile food vending unit shall make or cause to be made any unreasonable or excessive noise. The operation of all mobile food vehicles shall meet the City noise ordinance, including generators. No loud music, other high-decibel sounds, horns, "crying out" or any other audible methods to gain attention are permitted.
- (4) Signage is permitted when placed on mobile food units, so long as it does not extend above or beyond the mobile vending unit itself. One free-standing temporary sign of no more than six square feet (6') in residential districts or twenty-four square feet (24') in commercial or industrial districts is permitted but the signage must be located entirely within twenty feet (20') of the mobile vending unit. The vendor must otherwise follow the City's sign ordinance, including sandwich board signs.
- (5) No flashing or blinking lights, or strobe lights, are allowed on mobile food vending units or related signage at any time, unless part of an approved Special Events Application. All exterior lights with over sixty (60) watts shall contain opaque hood shields to direct the illumination downward.
- (6) Awnings for mobile food vehicles shall have a minimum clearance of seven feet (7') between the ground level and the lowest point of the awning. Seating, tables, waste disposal or cleaning apparatus of the vendor shall be located within twenty feet (20') of the vending unit and shall not constitute a danger or impedance to the public.
- (7) Any power required for the mobile food vending unit shall be self-contained, and a mobile food vending unit shall not use utilities drawn from the public right-of-way. Mobile food vending units on private property may use electrical power drawn from the property being occupied or an adjacent property, but only if the property owner provides written consent to do so. No power cable or equipment shall be extended at or across any City street, alley, or sidewalk.
- (8) The vendor shall make the mobile food vending unit permit available for inspection by any member of law enforcement or to the Mayor or City Clerk at any time the vendor is operating.

- (9) The vendor shall follow all local, state and federal laws, rules and regulations in their operation of the mobile vending unit. A permit obtained under this Article shall not relieve the vendor of the responsibility of obtaining any other permit or authorization required by other ordinance, statute or administrative rule.
- (10) The vendor shall not represent the granting of a permit under this article to be in any way an endorsement by the City.
- (11) All permits and licenses shall be prominently displayed on the mobile food vending unit.

Sec. 36-136 - Revocation.

- (1) Permits issued under the provisions of this Article may be revoked by the Mayor after notice and hearing, by a preponderance of the evidence for any of the following causes:
 - (a) Fraud, misrepresentation, or false statement contained in the application for permit or made in the course of operating a mobile food vending unit; or
 - (b) Conducting the business of a mobile food vending unit in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety, or general welfare of the public; or
 - (c) Any violation of this Article; or
 - (d) Failure to possess or maintain any required food safety licensure.
- (2) Notice of the hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the applicant at the address provided at least five days prior the date set for the hearing.
- (3) Permits issued under the provisions of this Article may be immediately suspended by any law enforcement or health safety officer or the Mayor prior to notice and hearing if continued operations of the mobile vending unit would be harmful to the health or safety of the general public. Any permit suspended under this section shall remain suspended until such time as a notice and hearing may take place regarding the truth of the accusation made regarding the health or safety effects of the mobile vending unit.

Sec. 36-137 - Appeals.

Any person aggrieved by the action of the Mayor, City Clerk, law enforcement or health safety officer in the denial of an application for a mobile vending permit, or in the decision with reference to the revocation or suspension of a permit as provided in this article shall have the right of appeal to the City Council. Such appeal shall be taken by filing with the Council, within 14 days after notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for the appeal. The City Council shall set a time and place for a hearing on such appeal, and a notice of such hearing shall be given the appellant in the same manner as provided for notice of a hearing on revocation. The decision and order of the City Council on such appeal shall be final and conclusive.

Sec. 36-138 - Violations.

Except as otherwise provided by state law, persons who violate any of the provisions of this Article are responsible for a municipal civil infraction punishable by a fine of \$500. Each day that a violation exists shall be considered a new and separate offence and shall have imposed a new a separate municipal civil infraction.

Section 2. Repealer Clause. Any ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 3. Validity and Severability. Should any portion of this Ordinance be found invalid for any reason, such a holding shall not be construed as affecting the validity of the remaining portions of the Ordinance.

Section 4. Effective Date. This Ordinance shall be effective twenty (20) days from and after its adoption by the City of New Baltimore City Council.

Publish: The Voice Newspaper – August 11, 2021
Marcella Shinska, City Clerk
City of New Baltimore