

TOWN COUNCIL OF KIRKLIN, INDIANA

ORDINANCE NO. 2024-6-2

AN ORDINANCE CREATING A NEW CHAPTER 112 OF TITLE XI OF THE TOWN OF KIRKLIN CODE OF ORDINANCES

WHEREAS, the Town Council of Kirklin, Indiana is concerned for the health, safety, peace, and welfare of the citizens of the Town of Kirklin (the "Town"); and

WHEREAS, the Clinton County Health Department has established Temporary Food Establishment Guidelines which pertain to Food Truck vendors and are specifically incorporated herein by reference and must be adhered to; and

WHEREAS, the primary purpose of the public streets and sidewalks is the use by vehicular and pedestrian traffic; and

WHEREAS, in order to protect the unique character of the Town, the Town finds it necessary to regulate mobile vendor units inside of the Town's jurisdictional limits; and

WHEREAS, to defray the costs of regulating mobile food vendors, reasonable fees should be imposed; and

WHEREAS, one of the primary purposes of this ordinance is to promote the public interest by enhancing the attractiveness of the Town and by providing opportunities for creative and pedestrian-focused commercial activities; and

WHEREAS, the ordinance opens the opportunity for food trucks to operate in areas within the public right-of-way and on private property as well as on off-street public property during special events and the Town Council foresees benefits in having them congregate in certain of those areas as hereby regulated; and

NOW, THEREFORE, be it ordained by the Town Council of the Town of Kirklin, Indiana, that Title XI of the Code of Ordinances be amended to add Chapter 112 as follows:

Chapter 112 - Mobile Food Vendors

112.01 Definitions.

The following terms shall have the following meanings:

"Beverage" means any nonalcoholic liquid, hot or cold, intended for use in whole or in part for human consumption.

"Town property" means all outdoor areas which are owned, or leased as lessee, by the Town or one of the Town's departments, or upon which the Town 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 Town or one of its departments.

"Food" means any raw, cooked, frozen or processed edible substance or beverage intended for use in whole or in part for human consumption.

"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 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 chapter.

"Private property" means all outdoor areas which are not owned or leased by any governmental agency or entity, including, but not limited to, streets, sidewalks, plazas, parking lots, or other areas adjacent to buildings not owned by a governmental agency or entity.

"Special Event" means any event so designated by the Town Council.

112.02 Operations generally.

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

112.03 Business license - Required.

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

(b) A separate license shall be required for each mobile food vendor unit.

(c) This chapter does not apply to any recognized participant of a Special Event.

(d) It is not necessary to obtain a temporary use permit in order to obtain a license for a mobile food vendor unit under this chapter.

112.04 Business license – Application.

Any person desiring a license under this chapter shall submit a fully completed application to the Clerk-Treasurer at least 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;

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

(c) If the applicant is employed by or represents a partnership, limited liability company or corporation, the applicant shall provide the name and current physical address of the executive officers and beneficial owners of the partnership or limited liability company, or 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 type of products to be sold and the hours of the day the applicant plans to conduct Business, provided however no Mobile Food Vendor shall commence operations before 7:00 a.m. and shall cease operations no later than 10:00 p.m. or the time a Special Event terminates as determined by the Town Council as provided in 112.14;

(f) The place or places where said business may be conducted, and a written statement, if applicable, from the owner of any private property wherein the business may be conducted authorizing the applicant to use the property;

(g) The duration of the license being sought;

(h) A statement as to whether or not a license, under the provisions of this chapter, or any other similar ordinance of the Town or any other county, town, municipality, or State has been revoked, together with the details thereof; and

(i) The designation of a resident of the State of Indiana as a registered agent for purposes

of receiving notices from the Town or other service of process, as a result of doing business in the Town.

112.05 Business license – Prerequisites.

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

- (a) All applicable permits required by the Clinton County Health Department, including but not limited to, a food service establishment license or a certified food handler certificate;
- (b) Proof of registration as a business with the Indiana Secretary of State;
- (c) Proof of an employer identification number;
- (d) If business is to be conducted on Town property, a resolution from the Town Council;
- (e) If business is to be conducted on or in property owned or managed by the Town Parks Department, a letter of approval from said department;
- (f) If any type of spark, flame, or fire will be produced, proof of an open burn permit issued by the Town Fire Department;
- (g) Proof of insurance in accordance with the amounts established by this chapter;
- (h) A copy of the Indiana registration for the vehicle;
- (i) A copy of a valid driver's license;
- (j) Copy of an Indiana Driver's Record and/or equivalent of whatever state has issued the applicant his/her driver's license;
- (k) Proof of an independent safety inspection of all vehicles to be used in business in accordance with the provisions of this chapter;
- (l) A scaled site plan showing the location of the proposed mobile food vendor unit and the properties: drives, parking access aisles, fire lanes, sidewalks and accessible routes; and
- (m) Proof of payment for, or exemption from, the applicable fee.

112.06 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 chapter, are exempt from having to pay any fees 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 I.C. § 25-25-2-1, while all honorably discharged veterans are required to obtain a license under this chapter they are exempt from having to pay any fees.

112.07 Application fee – Refund on Denial.

An applicant shall pay an application fee in the minimum amount of \$25.00, unless exempted under section 112.06 of this chapter. In the event the license is granted, the application fee shall be retained by the Town and applied toward the license fee. In the event that 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.

112.08 Effect of cessation of business.

No deductions shall be allowed, or refunds given, from the fee for a license issued pursuant to this chapter for any part of the term of which the license does not engage in such business.

112.09 Business license – Insurance and indemnity.

(a) Each applicant for a license shall provide a certificate of liability insurance to the Clerk-Treasurer, insuring the applicant, and naming the Town as co-insured, against the following liabilities and in the following 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.

(b) Each applicant shall provide a document approved by the Town Attorney for the Town, in which the applicant agrees to indemnify and hold harmless the Town for losses or expenses arising out of the operation of his/her business.

112.10 Business license – Transferability.

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

112.11 Business license – Identification.

(a) All licenses issued by the Clerk-Treasurer under this chapter 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.

112.12 Business license – Safety inspection required.

(a) No license shall be issued to locate a mobile food vendor unit unless each vehicle to be used by the business has undergone an independent safety inspection within the last two years. A copy of the safety inspection report shall be included with the application.

(b) It is unlawful to locate a mobile food vendor unit which has not undergone and passed an independent safety inspection in accordance with this section.

(c) If, at any time, the Town has reason to believe that a mobile food vendor unit is unsafe or in a mechanically unsound condition, the Town Marshal or his/her designee may order a mobile food vendor unit licensed under this chapter to undergo an immediate safety inspection. The immediate safety inspection must occur within five business days and a copy of the safety inspection report shall be promptly submitted to the Town Marshal 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.

112.13 Location restrictions.

Licensed mobile food vendor units shall be subject to the following location restrictions:

(a) No mobile food vendor unit shall locate in any parking lot, parking space, or parking facility owned, leased, or managed by the Town unless approval has been given by the Town Council.

(b) No mobile food vendor unit shall locate within 100 feet of any façade of a ground level establishment that also sells food and beverages, or locate within 100 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 an hour before the opening time to an hour after the closing time posted by a ground level establishment on the façade of its building.

(c) No mobile food vendor unit shall locate in an alleyway, unless approval is given by the Town Council.

(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.

(e) Mobile food vendor units shall only be located on private property if the private

property owner has provided the business operator written permission for the mobile food vendor unit to locate on said property.

(a) No mobile food vendor unit shall locate within a one block radius of a Special Event unless prior approval has been granted by either the operator of the Special Event or the Town Council.

(b) No mobile food vendor unit shall be located in a manner which would significantly impede or prevent the use of any Town property, or which would endanger the safety or property of the public.

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

(d) No mobile food vendor unit shall locate within any zoning district except the following: Businesses (B-2, B-4, B-5), Industrial (I-1, I-2), or upon any real estate owned by the Town of Kirklin or other public or tax exempt entity with the written consent of the owner.

(e) No mobile food vendor unit 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 Town's zoning code.

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

(g) 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 or violates the sight line/setbacks required by the Clinton County Unified Development Ordinance as adopted by the Town of Kirklin.

112.14 Prohibited hours.

No mobile food vendor unit shall be located on any public property or be in operation within the Town of Kirklin except between the hours of 7:00 a.m. and 10:00 p.m. other than when the Town Council, for a Special Event, authorizes other hours of operation.

112.15 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, including noise of such volume as to be in violation of any applicable noise ordinance;

(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 lights);

(c) No mobile food vendor unit may be permanently or temporarily affixed to any object, including but not limited to buildings, trees, telephone poles, streetlight poles, traffic signals, 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) Each mobile food vendor unit shall be limited to one sandwich board sign that meets the provisions of any applicable ordinances regardless of the zoning district in which it locates;

(f) No mobile food vendor unit may make use of any public or private electrical outlet while in operation;

(g) 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 Town;

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

(h) 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 feet of the mobile food vendor unit.

(i) 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;

(j) Each mobile food vendor unit shall be maintained free and clear of dirt, and finishes shall not be chipped, faded or unduly marred;

(k) 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;

(l) 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 at least 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 12 inches in height;

(4) A fire extinguisher shall be within reaching distance of the mobile food vendor unit at all times;

(m) 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 Town's jurisdictional limits, including, where possible, the removal of the mobile food vendor unit and cessation of such sales;

(n) No mobile food vendor unit shall ever be left unattended;

(o) Mobile food vendor units shall not be stored, parked, or left overnight on any Town Property, except for multi-day Special Events;

(p) All mobile food vendor units shall install an approved grease interceptor or grease trap. Foods, oils, and greases shall never be discharged into the Town's sewer or storm drains;

(q) All mobile food vendor unit operators are required to collect and pay all applicable and appropriate sales taxes;

(r) No mobile food vendor shall provide customer seating unless approval has been provided by the Town Council;

(s) All mobile food vendors shall comply with applicable lighting standards in the Town's Municipal Code;

(t) All mobile food vendors shall comply with applicable vision clearance standards in the Town's Municipal Code;

(u) No mobile food vendor unit shall have a drive-thru; and

(v) The decibels of any generator(s) associated with a mobile food vendor unit shall not

exceed "70dBA."

(1) Such noise measurement shall be made at a height of at least four feet above the ground and at a point approximately 25 feet away from where the noise is being emitted on a sound level meter operated on the "A" weighting network (scale).

(2) No person other than the operators shall be within 25 feet of the sound level meter during the sample period.

(3) Sound measurements shall be conducted at that time of day or night when the relevant noise source is emitting sound.

(4) The sound level measurement shall be determined as follows:

(A) Calibrate the sound level meter within one hour before use.

(B) Set the sound level meter on the "A" weighted network at slow response.

(C) Set the omnidirectional microphone in an approximately 70-degree position in a location which complies with subsections (1) and (2) herein. The operator of the sound level meter shall face the noise source and record the meter's instantaneous response.

(D) Recalibrate the sound level meter after use.

(5) It shall be unlawful for any person to interfere, through the use of sound or otherwise, with the taking of sound level measurement.

112.16 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 Clinton County Health Department and published in the United States Code of Federal Regulations, the Indiana Code Annotated or the Indiana Administrative Code, and the Clinton 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 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.

112.17 Penalties – Revocation of license.

(a) Any person, partnership, limited liability company or corporation which violates any provision of this chapter, shall be subject to the following penalties:

(1) Operating a mobile food vendor unit without a license:

First offense \$2,500.00

Second offense within any 12-month period \$5,000.00

Third offense, or each thereafter, within any 12-month period \$7,500.00

(2) Failure to comply with any other provision of this chapter:

First offense \$250.00

Second offense within any 12-month period \$500.00

Third offense, or each thereafter, within any 12-month period \$1,000.00

(b) In addition, the Town Council shall, after notice and hearing, suspend or revoke, by

written order, any license issued hereunder if the Town Council finds:

- (1) The licensee has violated any provision of the chapter or any rule or regulation lawfully made under and within the authority of this chapter;
 - (2) The licensee is operating the mobile food vendor unit licensed under this chapter 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 Town Council to refuse originally to issue such license.
- (c) Any person charged with violating the provisions of this chapter 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 the provisions in this chapter.

112.18 Restrictions on use and licenses.

The Town 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 Town may restrict the use of mobile food vendor units in certain designated areas of the Town in the event of an emergency declared by the Town Council, the Town Marshal, the fire chief, and/or any of the aforementioned duly appointed designees.

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

112.19 Appeal.

Any applicant or licensee aggrieved by the action of the Town Council in the denial, suspension, or revocation of a license or any person who is issued a citation shall have the right of appeal to the Town Council. Such appeal shall be taken by filing with the Town Council within 10 business days of the action complained of, a written statement setting forth fully the grounds for appeal. The decision and order of the Town Council on such appeal shall be final and conclusive.

Passed and adopted this 8th day of July, 2024 by the Town Council of the Town of Kirklin, Indiana.

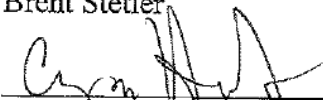
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Walt Minnick


Jerry Faucett


Brent Stetler


Craig Hudzinski

ATTEST:


Tara Walker, Clerk-Treasurer

