

Sponsor: Vance

ORDINANCE NO. 2022-60

**AN ORDINANCE BY THE CITY OF WELLSTON LEGISLATIVE AUTHORITY  
AMENDING TITLE XI AND ESTABLISHING CHAPTER 117 OF THE WELLSTON  
CODE**

**WHEREAS**, the City of Wellston legislative authority desires to regulate mobile food vending to endure the welfare and safety of its citizenry, and:

**WHEREAS** the City of Wellston Council desires to amend Title XI: Business Regulations of the Wellston City Code by establishing Chapter 117: Mobile Food Vending, and;


**WHEREAS** a copy of the proposed amendment to Title XI of the Wellston Codified Ordinances, being the newly established Chapter 117, is attached hereto as Exhibit A

**NOW THEREFORE BE IT ORDAINED** by the Council that:

**Section One:** Title XI: Business Regulations of the Wellston Codified Ordinances is hereby amended as detailed in the attached Exhibit A so as to establish Chapter 117: Mobile Food Vending, and Chapter 117 is hereby adopted and codified as detailed in the attached Exhibit which is incorporated herein.

**Section Two:** It is hereby found and determined that all formal acts of this council concerning and relating to adoption of this Ordinance were adopted in an open meeting of this council and the deliberations of the council and any of its committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

PASSED AND ADOPTED by the legislative authority of the City of Wellston this 1st day of December, 2022.

  
\_\_\_\_\_  
Council President

ATTEST:

  
\_\_\_\_\_  
Clerk of Council

Approved this 1<sup>st</sup> day of December, 2022.



\_\_\_\_\_  
Mayor

Published in accordance with the law on 11/3/22 and 11/17/22; and posted at The Store, Wellston City Hall, Wellston Senior Citizens' Center, the Wellston Public Library and the Wellston Post Office from \_\_\_\_\_ through \_\_\_\_\_.



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Clerk of Council

Prepared by: Randy H. Dupree, Law Director, City of Wellston

## EXHIBIT A

### CHAPTER 117: MOBILE FOOD VENDING

#### Section

117.01 Definitions

117.02 License required for operation

117.03 Application for license

117.04 Application fee

117.05 Inspection for license, generally

17.06 Requirements for issuing a license

117.99 Penalty

#### § 117.01 DEFINITIONS

When used in this chapter of the Wellston City Codes:

- (a) "Food" shall mean a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (b) "Food service operation" shall mean, for the purpose of a mobile food vending license, a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. As used in this division, "served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation and "prepared" means any action that affects a food other than receiving or maintaining it at the temperature at which it was received.
- (c) "Food trailer" shall mean any vehicle without motive power that is designated to be drawn by a motor vehicle and is specifically designed or used for food vending operations.
- (d) "Food truck" shall mean a vehicle propelled by an engine which has been specifically designed or used for mobile food vending.
- (e) "Food truck industry" shall mean both food trucks and food trailers.
- (f) "Food vending operation" shall mean a place, location, site, or separate area where food intended to be served in individual portions is prepared or served for a charge or required donation. As used in this division, "served" means a response made to an order for one or more individual portions of food in a form that is edible without washing, cooking, or additional preparation and "prepared" means any action that affects a food other than receiving or maintaining it at the temperature at which it was received.
- (g) "Health license" shall mean an official document issued by a department of health pursuant to Ohio R.C. 3701. Such health license shall be separate from any other license required under this chapter. Such document may be either an annual health license or a temporary health license.

- (h) "Licensing period" shall mean the sixteenth day of March to the fifteenth day of March the next succeeding year.
- (i) "Mobile food vending court" shall mean a location where the public right-of-way is closed for vehicular traffic on a temporary or permanent basis to allow two or more mobile food vending units to operate from such location.
- (j) "Mobile food vending license" shall mean an official document issued by the City of Wellston authorizing operation of a mobile food vending unit within the corporate limits of the City of Wellston.
- (k) "Mobile food vending unit" shall mean a food service operation or retail food establishment that is operated from a food truck or food trailer, and that can or does routinely change location. For the purposes of a mobile food vending license, "mobile food vending unit" excludes food delivery operations and vending machines, as defined in Ohio R.C. 3717.01[L]
- (l) "Mobile food vendor" shall mean every corporation, association, joint stock association, person, firm or partnership, their lessees, directors, receivers, trustees, appointees by any court whatsoever, or the heirs, executors, administrators, or personal representatives or assignees of any deceased owner, owning, controlling, operating or managing any mobile food vending unit.
- (m) "Operator" shall mean the individual who manages one or more mobile food vending units whether as the owner, an employee of the owner or as an independent contractor. Each license issued is applicable to one mobile food vendor unit.
- (n) "Permanently revoke" shall, for the purposes of a mobile food vending license, mean to terminate all rights and privileges under a license for a period of 90 days or greater and to render the holder of a license ineligible to reapply for said license.
- (o) "Permitted mobile food vendor" shall mean for purposes of the City of Wellston, those mobile food vendors defined as concession trailers/trucks, frozen food trucks, soft-serve ice cream trucks, and mobile cookers and BBQ pits. Units that do not meet these descriptions will not be issued a mobile food vendor license.
- (p) "Public right-of-way" shall mean any property owned by the City of Wellston, including, but not limited to, any street, road, alley, sidewalk, vacant lot, or other tract of land.
- (q) "Revoke" shall, for the purposes of a mobile food vending license, mean to terminate all rights or privileges under a license for a period not to exceed 90 days after which the individual must reapply for a license.
- (r) "Retail food establishment" shall, for the purposes of a mobile food vending license, mean a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for sale of food to a person who is the ultimate consumer.
- (s) "Special event" shall, for the purposes of a mobile food vending license, mean any activity or gathering or assemblage of people upon public property or in the public right-of-way for which a block party, street closure, race event, parade permit, community market, or other like permit has been issued by the City of Wellston.
- (t) "Suspend" shall, for the purposes of a mobile food vending license, mean to temporarily deprive a licensee of rights or privileges under a license for a period not to exceed 90 days.

(Ord. 2022-60)

§ 117.02 LICENSE REQUIRED FOR OPERATION

- (a) No individual or organization shall operate, or cause to be operated, any mobile food vending unit within the corporate limits of the City of Wellston without a current and valid mobile food vending license issued in accordance with the provisions of this chapter.
- (b) No individual or organization shall operate, or cause to be operated, any mobile food vending unit within the corporate limits of the City of Wellston without a current and valid health license issued in accordance with laws, rules and regulations established in the Ohio Revised Code, the Ohio Administrative Code, or the Wellston City Codes, whichever is applicable. Further, the city requires that the valid health license be issued by the Jackson County Health Department.
- (c) Mobile food vending units that only operate as part of a special event or public event may not require a mobile food vending license, pursuant to the approval of City Council. Such units must comply with any health licensing requirements of the State of Ohio.
- (d) Nothing in this chapter shall be construed as superseding, supplanting, or otherwise replacing any duty imposed by Ohio R.C. Chapter 3701 or 3717, or rules or regulations promulgated thereunder, upon an applicant for a health license, or upon a department of health in the conduct of its responsibilities relative to mobile food vending units.
- (e) Each mobile food vending license shall identify the license plate number of the mobile food vending unit for which the license has been issued.
- (f) Landowners that own mobile food vendor units are exempt from permit fees to operate their mobile food vendor units on their own property. An application is still required to be completed to register the mobile food vendor unit. If the landowner chooses to operate the mobile food vendor unit on property other than the landowner's property, then the applicable fees will apply.
- (g) Mobile Food Vending is allowed only in the Downtown Enterprise (DE) and Community Business District (CB) as outlined in the City of Wellston's Zoning Map.

(Ord. 2022-60)

§ 117.03 APPLICATION FOR A LICENSE

- (a) An application packet for a mobile food vending license must be submitted by the owner of the unit to the Service Director or his or her designee. A separate application packet must be submitted for each unit. Application for a mobile food vending license shall be on a form prescribed by the City of Wellston and shall substantially comply with division [b] of this section. The owner of a unit must show proof of a current and valid health license from a Department of Health from Jackson County, Ohio.
- (b) Application for a mobile food vending license shall be made under oath and shall contain the following information and/or material:
  - (1) Name, permanent address, telephone number, electronic mail address, date of birth, and driver's license number of the mobile food vending unit owner;
  - (2) Business name or DBA, permanent address, and telephone number, if different from the owner information;

- (3) Proof of Ohio Department of Taxation Itinerant Vendors License, if required;
  - (4) Proof of insurance, as required by this chapter, or by any city, state, or federal law, rule, or policy;
  - (5) A physical description of the unit proposed to be licensed for mobile food vending;
  - (6) Current and valid state vehicle registration information for the unit proposed to be licensed for mobile food vending;
  - (7) Proof of a city income tax filing number or exemption from the City of Wellston division of income tax;
  - (8) Proof that the applicant is current and compliant in the payment of any City of Wellston taxes on payroll and net profits at the time such proof is submitted; or if the applicant is not current and compliant in the payment of any City of Wellston taxes on payroll and net profits, that applicant has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted;
  - (9) Proof of a filing number or exemption from the Ohio Department of Taxation;
  - (10) Affirmation that, upon issuance of a license, the applicant will conduct a criminal background check prior to allowing any person to operate the mobile food vending unit in the public right-of-way;
  - (11) Affirmation that, upon issuance of a license, the applicant will provide to the license section written documentation of any change in the information required by this chapter, as well as written documentation of any modification, damage, destruction, or decommissioning of the unit, within ten calendar days of any such change;
  - (12) A description of the source of potable water for the mobile food vending unit as well as a description of where waste water will be held and discharged as it pertains to mobile food vending unit services; and
  - (13) Any other information required by the City of Wellston or the Department of Health.
- (c) The Service Director or his or her designee must examine all applications for a mobile food vending license filed under this chapter and make, or cause to be made, any further investigation into the application as is deemed necessary in order to make a timely determination regarding the application.
  - (d) The city shall provide a written determination to each applicant. If a complete application for a mobile food vending license is not approved, any reason(s) for that determination must be provided to each applicant in writing.
  - (e) Upon approval of the application(s), each unit proposed to be licensed for mobile food vending is subject to inspection as provided for herein prior to the issuance of any mobile food vending license or health license. Nothing in this section shall limit the authority of a Department of Health to conduct an inspection as otherwise allowed by the State of Ohio.
  - (f) Any rules or ordinances that contain information related to the license process or operation of a mobile food unit shall be provided to the applicant.

(Ord. 2022-60)

#### § 117.04 APPLICATION FEE

(a) The following non-refundable licenses are available for mobile food vendor units:

- (1) Single day license: Twenty dollars (\$20.00) for the operation of the mobile food vendor unit for one approved day;
- (2) Annual license: One hundred fifty dollars (\$150.00) for the operation of the mobile food vendor unit for a 12-month period from March 16 of the issuing year to March 15 of the following year.

(b) A non-refundable surcharge of 10% will be added to each license to cover the cost of refuse removal from city trash receptacles in the following amounts: single day license- two dollars (\$2.00); annual license- fifteen dollars (\$15.00).

(c) City Council designates the Mayor or City Service/Safety Director the right to waive any of the above licensing fees for special events, as well as charitable and/or nonprofit organizations upon a request for a waiver of fees.

(d) City Council reserves the right to modify this fee structure after the first annual license period.

(Ord. 2022-60)

#### § 117.05 INSPECTION FOR LICENSE, GENERALLY

(a) Prior to the issuance of a mobile food vending license, every unit must be inspected as provided for in Ohio R.C. Chapter 3717, and a health license from the Jackson County Health Department.

(b) Nothing in this section shall limit periodic inspections by the City of Wellston at the discretion of the Service Director or his or her designee.

(Ord. 2022-60)

#### § 117.06 REQUIREMENTS FOR ISSUING A LICENSE

(a) A license shall be issued in accordance with this chapter to an individual or entity:

- (1) Who has received approval of an application as provided for in §117.03 of this chapter;
- (2) Whose mobile food vending unit has passed the inspections required under this chapter;
- (3) Whose mobile food vending unit is in compliance with all applicable requirements of this chapter and has obtained any permits, licenses or prior approval required by any city, state, or federal agency;
- (4) Who has not been denied a license under this chapter within the immediate past year, unless the applicant can and does show to the satisfaction of the Service Director or his or her designee that the reasons for such earlier denial no longer exist;
- (5) Who has paid all applicable application and/or license fees; and

(6) Who is not otherwise refused a license under the requirements of this chapter.

(b) If the applicant intends to operate in the public right-of-way, the city may refuse to issue licenses for operation in the public right-of-way as required by this chapter to any person:

- (1) Who has been convicted of a felony, misdemeanor or code violation involving a sex offense, traffic in controlled substances, or any offense of violence as defined in Wellston City Codes, such conviction being entered within seven years;
- (2) Obtaining a license by a false statement in his or her application;
- (3) Failing to comply with the mobile food vending unit operation and vehicle standards established in this chapter;
- (4) Misrepresenting or otherwise making false statements in his or her affidavit that he or she would conduct criminal background checks on all employees;
- (5) Failing to post and maintain required decal(s) and information;
- (6) Failing to offer receipts to customers or to supply receipts when the customer answers in the affirmative;
- (7) Receiving citations for impeding the flow or operation of pedestrian and vehicle traffic, creating unsanitary conditions, becoming an attractive nuisance for children or any other infraction of the Wellston City Codes;
- (8) Verbally threatening or attempting to intimidate any employee of the City of Wellston for actions taken in the enforcement of the provisions of this chapter;
- (9) Failing to maintain general liability insurance for each mobile food vending unit; and
- (10) Conviction for any crime committed in or from the mobile food vending unit.

(Ord. 2022-60)

#### § 117.99 PENALTY

A violation of any section of this chapter shall be deemed a criminal violation as follows:

- (a) Whoever violates §117.02 shall be guilty of a misdemeanor of the first degree. Any such violation shall constitute a separate offense on each successive day continued. Strict liability is intended to be imposed for a violation of this section.
- (b) Whoever violates §117.05 or §117.06 shall be guilty of a minor misdemeanor. Strict liability is intended to be imposed for a violation of these sections.
- (c) A violation of any other section of Chapter 117 may be grounds for the suspension, revocation, or permanent revocation of the mobile food vending unit license or in the case of a new application may be grounds to refuse to issue such license for a determinate period of time up to 90 days or permanently, in addition to any other penalties established for such violation in applicable sections of the Wellston City Code.

(Ord. 2022-60)