

**ORDINANCE NO. 2154**

**AN ORDINANCE OF THE CITY OF GERING, NEBRASKA TO AMEND TITLE XI: BUSINESS REGULATIONS, CHAPTER 114: PEDDLERS, ITINERANT MERCHANTS, AND SOLICITORS, SUBSECTION 114.13. MOBILE FOOD/BEVERAGE VENDING; AS PART OF THE GERING CODE OF ORDINANCES; AMENDING, REPEALING, AND ADDING ORDINANCES OR PARTS OF ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE HEREOF.**

Be it ordained by the Mayor and Council of the City of Gering, Nebraska that:

**Section 1.** That Chapter 114, Peddlers, itinerant merchants, and solicitors, Subsection 114.13 be added as follows:

§114.13 MOBILE FOOD/BEVERAGE TRUCK/TRAILER VENDING

**(A) Definitions.** For the purpose of this article, the following terms shall have the meanings respectively ascribed to them:

(1) *Mobile food/beverage truck/trailer:* A licensed and operable *vehicle* or *concession trailer*, which is enclosed and self-contained, independent with respect to water, sewer, and power utilities, that contains equipment for the preparation and sale or service of food or beverages with or without a charge which is designed for immediate consumption. This includes any mobile food vehicle as defined by the 2018 International Fire Code.

(2) *Mobile food/beverage vending:* The act of preparation and sale or service of food or beverages with or without charge that are designed for immediate consumption from a mobile food/beverage truck or mobile food/beverage vending unit/trailer.

**(B) Permit required.**

(1) It shall be unlawful for any person to engage in mobile food/beverage vending on public property owned by the City or on City public right of way without first obtaining a mobile food/beverage vending permit and all applicable state and city permits and licenses, unless exempted under Section D, below.

(2) In the event that a *mobile* food/beverage vendor, selling from a mobile food/beverage truck/trailer, participates at a special event held in Gering under a special event permit obtained by the event organizer, the mobile food/beverage vendor must also obtain, if they haven't already, a Mobile Food/Beverage Vending Permit from the City of Gering prior to participating with any special event held in the city limits of the City of Gering. The event organizer may charge an additional fee to said vendor, which is not under the purview of the City of Gering.

**(C) Permit types.**

- (1) Applicants for a permit under this article may apply for:
- (a) Annual mobile food/beverage (truck/trailer) vendor permit;
  - (b) Weekly mobile food/beverage (truck/trailer) vendor permit;

**(D) Permit exemptions.**

(1) For purposes of this article, the following activities shall be exempt from the permit requirement.

- (a) Mobile food/beverage vending on private property, except that a vendor on private property is still required to comply with all local, state, and federal code, including 2018 IFC and Nebraska Department of Agricultural. In addition, a vendor is exempt from obtaining a Mobile Food/Beverage Vending Permit only if applicant has an executed contract with the City leasing City-owned property and has agreed to indemnify and hold the City harmless for any and all liability related to the

operation of mobile food/beverage trucks or mobile food/beverage vending. Insurance certificate shall remain valid for the duration of the permit.

- (b) Children's neighborhood beverage stand, so long as the stand is: Operated by a child or children 18 years of age or younger; is located in a neighborhood zoned for single family or multi-family residential use; provides beverages only; and is operated on a temporary basis which does not obstruct the public right of way.

**(E) Applications.**

(1) An applicant for an Annual or weekly Mobile Food/Beverage Vendor Permit shall file with the city clerk a signed application on a form to be furnished by the city clerk, not less than two business days prior to issuance, which shall contain the following information:

- (a) The applicant's business name, address, phone number, and e-mail address;
- (b) The vehicle license plate numbers and descriptions of all vehicles from which the applicant proposes to sell food or beverages;
- (c) The description of the general type of food/beverage items to be sold;
- (d) A copy of the vehicle registration and proof of insurance;
- (e) Proof of commercial liability insurance with a minimum coverage amount of one million dollars (\$1,000,000) together with an insurance certificate listing the City of Gering as an additional insured;
- (f) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption for the mobile food/beverage vendor;
- (g) A signed waiver of liability holding harmless the City of Gering and indemnifying the City, its officials, and employees, for any claims for damages to property or injury to persons, which may occur in connection with any activity carried or pursuant to any activities associated with mobile food/beverage vending;
- (h) Proof of State of Nebraska Food Establishment Inspection;
- (i) A nonrefundable application fee shall accompany all applications; and
- (j) Such other information as the city clerk may require and as requested in the application form.
- (k) **Proof of current inspection by the City of Gering Fire Marshal or his/her designated agent (if applicable) or proof of current inspection from another Nebraska municipality. Inspections are required annually.**

At the discretion of the City Administrator or his/her designee, applications received less than two business days prior to issuance may be denied.

**(F). Issuance or denial.**

(1) After receipt of the completed application and application fee, the City Administrator or his/her designee shall either approve or deny the annual or weekly mobile food/beverage vendor permit. Grounds for denial may include, but are not limited to, the following:

- (a) A finding that the application is incomplete;
- (b) The nonpayment of applicable fees;
- (c) A finding that the application is not in conformance with any applicable laws or any provisions of this Code;
- (d) A finding that the statements within the application are materially untrue or incorrect;
- (e) Previous revocations or suspensions of a mobile food/beverage vending permit;
- (f) When the location for food/beverage vending is within an area authorized for a City sanctioned event, or an event for which the City has issued a special event

permit, or within three hundred (300) feet of any boundary of such authorized area or within City right of way or on City property, unless the mobile food/beverage vendor possesses written consent from the event organizer to sell or offer to sell food/beverages from that location; or

- (g) When the location for the permit requested is within a City park, unless the mobile food/beverage vendor possesses the written consent of the City Administrator or his/her designee.

**(G) Transferability.**

- (1) Permits issued under this article shall be nontransferable and no such permit shall be used at any time by any person other than the one to whom it was issued.

**(H) Permit fee.**

- (1) A weekly Mobile Food/Beverage Vending Permit fee shall be \$25.00.
- (2) An Annual Mobile Food/Beverage Vending Permit fee shall be \$100.00 and shall renew on a calendar year regardless of date of issue. Permit fees may not be prorated.

**(I) Waiver of liability.**

- (1) Before a weekly or annual mobile food/beverage vending permit is granted, the applicant shall sign a waiver of liability holding harmless the City of Gering and indemnifying the City, its officials, and employees, for any claims for damages to property or injury to persons, which may occur in connection with any activity carried or pursuant to any activities associated with mobile food/beverage vending.

**(J) Permit renewal.**

- (1) Annual mobile food/beverage vending permits issued under this article shall expire on December 31 of each year. The permit holder may renew the permit for the following year by filing with the city clerk a renewal application updating or confirming the information provided in the immediately preceding permit application. At the time of permit renewal, the permit holder shall pay a renewal fee adopted by the City Council.
- (2) Weekly mobile food/beverage vending permits issued under this article shall expire at 5:00 p.m. on the sixth calendar day after the permit begins. The permit holder may renew the permit for an additional six (6) calendar days by filing a renewal application updating or confirming the information provided in the immediately preceding permit application. At the time of permit renewal, the permit holder shall pay a renewal fee adopted by the City Council.

**(K) Sales regulations.**

- (1) All mobile food/beverage vendors shall comply with the following regulations:
  - (a) Mobile food/beverage vending is allowed within the corporate limits of the City of Gering unless otherwise prohibited under City Zoning Regulations and this ordinance.
  - (b) While engaging in mobile food/beverage vending, mobile food/beverage vendors shall not be in violation of any City ordinances including any zoning, health, fire, building, or safety requirements.
  - (c) A mobile food/beverage vendor shall not sell or offer to sell food/beverages from a location which would involve customers to wait in line, to be waited on, or to be served while standing in a portion of a street that is open to be traversed by motor vehicle traffic.
  - (d) The City may order a mobile food/beverage vendor to move from or leave a specific location if the mobile food/beverage vending at that location causes an obstruction to a business or obstruction to vehicular or pedestrian traffic or otherwise endangers the health, safety, or welfare of the public. The City may tow or otherwise move, at the vendor's expense, any vehicles or equipment of a mobile food/beverage vendor if the vehicle or equipment presents a danger to public safety and the mobile food/beverage vendor fails to move the same; or if a mobile food/beverage vendor is engaged in mobile food/beverage

vending without a valid mobile food/beverage vending permit where such permit is required.

- (e) A mobile food/beverage vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law and keep their vehicle in operable condition and comply with all local, state and federal code, including 2018 IFC and Nebraska Department of Agricultural.
- (f) It shall be unlawful for a mobile food/beverage vendor to sell or offer to sell alcoholic drinks without obtaining the appropriate permits.
- (g) A mobile food/beverage vendor shall provide trash receptacles for the collection of trash, in sizes sufficient to serve his/her customers. Prior to leaving a location, the mobile food/beverage vendor shall pick up and properly dispose of any trash and litter.
- (h) No mobile food/beverage vendor shall utilize any electricity or power without the prior written authorization of the electrical customer; no power cable or similar device shall be extended at or across any street or sidewalk except in a safe manner. If a mobile food/beverage vendor requires electric service, a request must be submitted to the City of Gering Electric Department.
- (i) The following regulations apply only to mobile food/beverage vendors engaging in mobile food/beverage vending on public property owned by the City or on City right of way:

(i) A mobile food/beverage vendor may sell or offer to sell food/beverage from a mobile food/beverage truck or mobile food/beverage vending unit at a location on a City right-of-way open to traffic or parking, but only from a mobile food/beverage truck or mobile food/beverage vending unit parked in a location where a mobile food/beverage truck or mobile food/beverage vending unit is authorized to park by law, signage, or City permit. Such a mobile food/beverage truck or mobile food/beverage vending unit and auxiliary equipment shall not be parked in a parking space adjacent to the corner of a street intersection. No mobile food/beverage truck, mobile food/beverage vending unit, or auxiliary equipment shall be parked in any parking stall designated for handicap parking.

(ii) An individual representative of a mobile food/beverage vendor shall be present with the mobile food/beverage truck, mobile food/beverage vending unit, and auxiliary equipment of the mobile food/beverage vendor at all times that it is engaged in mobile food/beverage vending.

(iii) Upon evidence of endangerment of public safety, the chief of police or his/her designee may limit hours of operation for any mobile food/beverage vendor within the city, as needed for the protection of public safety.

**(L) Penalty.**

(1) It shall be unlawful for any person to violate the provisions of this article. Any person found guilty of violating any of the provisions of this article shall, upon conviction be fined according to City Code, General Penalty 10.99.

**(M) Notice of violations.**

(1) For purposes of revocation or suspension of mobile food/beverage vending permits or upon discovery of any violation under this article, the city clerk, or his/her designee, shall provide written notice to the permit holder of such violation. Such notice shall be served personally upon the permit holder or shall be sent by regular U.S. mail to the permit holder's address as stated in his/her application.

**(N) Revocation or suspension.**

(1) A permit issued under this article may be revoked or suspended by the city clerk or his/her designee for any of the following reasons:

- (a) Any fraud, misrepresentation, or false statement contained in the application for permit;

- (b) Any fraud, misrepresentation, or false statement made in connection with the selling of food/beverages;
- (c) Receipt of notices of violations; or
- (d) Mobile food/beverage vending in an unlawful manner or in such a manner as to constitute a breach of the peace or a menace to the health, safety, or general welfare of the public.

**(O) Notice of revocation or suspension; re-application.**

- (1) Notice to revoke or suspend a permit, the city clerk or his/her designee shall provide written notice to the permit holder stating the revocation or suspension action taken, the grounds for such action, and the availability of an appeal under this section. Such notice shall be served personally upon the permit holder or sent by regular U.S. mail to the permit holder's address as stated in his/her application.
- (2) The city clerk or his/her designee shall revoke a permit issued under this article for any mobile food/beverage vendor who has received notice for one (1) or more violations of the provisions of this article on three (3) separate occasions, or who has received notice of three (3) or more violations of the provisions of this article in total, or any combination thereof, within any consecutive twelve-month period.
- (3) A person whose permit has been revoked under this article may not re-apply for a new permit for a period of six (6) months after the effective date of the revocation.

**(P) Appeal hearing.**

- (1) Violations. A permit holder aggrieved by the decision of the city clerk or his/her designee under this section may file an appeal with the city administrator or his/her designee. Such request for appeal shall be in writing to the city clerk or his/her designee. Such appeal shall be heard by the city administrator or his/her designee. The city administrator or his/her designee shall set such hearing within thirty (30) calendar days from the date of receipt the written request.
- (2) Denials, suspensions, or revocations of permits, mobile food/beverage vendors whose permits under this article have been denied, suspended, or revoked may file an appeal of such decision within twenty (20) calendar days of receipt of the notice. Such request for appeal shall be in writing to the city clerk or his/her designee. Such appeal shall be heard by the City Council. The City Council shall set such hearing within thirty (30) calendar days from the date of receipt the written request.
- (3) A written notice of the decision by the City Administrator or his/her designee, or the City Council, decision following the hearing shall be sent to the mobile food/beverage vendor by regular U.S. mail or shall be provided at the conclusion of the meeting.

**(Q) Severability.**

- (1) If any provision, clause, sentence, paragraph or other portion of this article or the application thereof to any person or circumstances shall be held to be invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

**Section 2.** Any ordinance or part of any ordinance in conflict with this ordinance is hereby repealed to the extent of such conflict and should any part or section of this ordinance be declared void and unenforceable, such declaration shall not render any other part void and unenforceable. This ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

Passed and approved this 10th day of February 2025.

ATTEST:

Kathy J. Welfl, City Clerk

*Kathy J. Welfl*



Kent E. Ewing, Mayor