**ORDINANCE NO. 1396**

AN ORDINANCE AUTHORIZING MOBILE FOOD VENDORS; TO PROVIDE RULES AND REGULATIONS GOVERNING MOBILE FOOD VENDORS; TO PROVIDE FOR THE ISSUANCE OF LICENSES FOR MOBILE FOOD VENDORS; TO PROVIDE FOR FEES FOR THE ISSUANCE OF LICENSES FOR MOBILE FOOD VENDORS AND FOR THE COLLECTION THEREOF; TO PROVIDE FOR PENALTIES FOR VIOLATION OF THE PROVISIONS HEREOF.

BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, as follows:

Section 1. The Mayor and City Council of the City of La Vista desire to establish rules, regulations, and a licensing process for mobile food vendors as Section 113.11 of the La Vista Municipal Code as provided in this Ordinance.

Section 2. Section 113.11 of the La Vista Municipal Code is hereby adopted and approved as follows:

**"§ 113.11 MOBILE FOOD VENDORS**

**§ 113.11.0. – FINDINGS AND PURPOSE.**

Mobile food vendors provide a beneficial service to the general public within the city while, due to their distinct manner of operation, also presenting substantial differences of circumstances from other food retailers and vehicle users which suggest the expediency of diverse legislation. It is, thus, desirable to regulate, and require licenses for, mobile food vendors so that their transitory use of various properties and right-of-way locations can occur in a fair and safe manner, and so that public safety and welfare can be protected. The purpose of this section is to enact regulations to serve those goals.

While the city wishes to encourage the business of mobile food vendors, the city also recognizes the benefits of permanent food establishments. The owners of permanent food establishments make substantial and long-lasting capital investments in buildings, infrastructure, and the built environment. These investments benefit the city, improve real property, and provide consistent locales for the entertainment and enjoyment of city residents and visitors. The city wishes to cultivate and encourage the creation and maintenance of permanent food establishments. Accordingly, it is also the purpose of this section to encourage the co-existence of mobile food vendors and permanent food establishments, to provide appropriate places for each within the fabric of the city, and to accommodate the interests of each, toward the goal of achieving a rich and diverse community.

**§ 113.11.1. – DEFNITIONS.** As used in this section, the following words and phrases shall have the meanings ascribed to them in this subsection, except where the context clearly indicates or requires a different meaning:

*Beverage* shall mean any drinkable liquid for humans for hydration, nutrition, taste, pleasure or similar purposes, including without limitation, any such liquid that is frozen, alcoholic or nonalcoholic.

*Caterer* shall mean a person who transports ready-to-eat food from a permitted food service establishment to another location or building for service on a per event basis for hire and does not include a temporary food service event.

*City Administrator* shall mean the City of La Vista City Administrator or any designee of the City Administrator.

*City Clerk* shall mean the City of La Vista City Clerk or any designee of the City Clerk.

*Food* shall mean all edible substances, whether solid, semi-solid, liquid, concentrated, frozen, dried, dehydrated, or otherwise, for ingestion, chewing, or consumption by humans for nutrition, taste, refreshment, pleasure or similar purposes.

*Mobile food vendor* shall mean a person who by traveling from place to place upon the public ways sells or offers for sale food from public or private property to consumers for immediate delivery and consumption upon purchase. The following activities are excluded from such definition, and, alone, do not subject a vendor to being covered by such definition: (a) the sale or offer for sale of farm products produced or raised by such a vendor from land occupied and cultivated by him/her; or (b) the sale or offer for sale of food by a caterer.

*Permanent food establishment* shall mean a fixed building which a person occupies on a continual basis and from which such person sells or offers to sell food for immediate delivery and consumption upon purchase. Such term shall not include a location where a mobile food vendor sells or offers to sell food.

**§ 113.11.2. – LICENSE REQUIRED.**

It shall be unlawful for any person to sell or offer for sale food as a mobile food vendor or operate as a mobile food vendor within the city unless such person complies with the requirements and regulations of this section, including holding a valid and active mobile food vendor license issued by the City Clerk under this section.

**§ 113.11.3. – APPLICATION.**

An applicant for a license pursuant to this section shall file with the City Clerk a signed application on a form to be furnished by the City Clerk, which shall contain the following information:

(a) The applicant's business name, address, and phone number; and e-mail address;

(b) If the applicant is a corporation, partnership, or other entity, the names of all officers and managers of such entity;

(c) The vehicle license numbers and descriptions of all vehicles from which the applicant proposes to sell food, and the names of all persons expected to drive such vehicles;

(d) A copy of the vehicle registration and proof of insurance;

(e) The description of the general type of food items to be sold;

(f) Documentation from the Nebraska Department of Agriculture showing its approval of the applicant's sale of food, if required;

(g) A copy of the State of Nebraska sales tax permit, or proof of an applicable sales tax exemption, for the applicant;

(h) A general description of the types of locations the applicant anticipates selling from;

(i) Such other information as the City Clerk may require and as requested in the said application form.

**§ 113.11.4. – ISSUANCE OR DENIAL.**

(a) Upon receipt of a complete application for a license pursuant to this section, the City Clerk shall make or cause to be made any inquiry or investigation that may be necessary to determine whether the applicant is in compliance with the provisions of all applicable laws and this Code. The City Clerk may request and take into consideration the recommendations of other affected departments of the city.

(b) After receipt of the completed application and application fee, the City Clerk shall either approve or deny the application. Grounds for denial may include, but are not limited to, the following:

(1) A finding that the application is incomplete;

(2) The nonpayment of applicable fees;

(3) A finding that the application is not in conformance with any applicable laws or this Code;

(4) A finding that the applicant has been convicted of three or more separate violations of the provisions of this section within the 12 months preceding the submission of a complete application.

**§ 113.11.5. – LICENSE FEE.**

An application for a license under this section shall be accompanied by a nonrefundable processing fee as set forth in the Master Fee Schedule, provided, however, that the processing fee for the remainder of 2020 calendar year alone shall be $75.00. Mobile food vendors who have already paid for an occupation license in 2020 do not have to pay the processing fee.

**§ 113.11.6. – RENEWAL.**

A license issued under this section shall expire on December 31 of each year, unless renewed for the following year by the licensee. The licensee shall renew the license for the following year by filing with the City Clerk, on or before December 31, a registration updating or confirming the information provided in the immediately preceding license application or registration. The registration shall be on a form provided by the City Clerk. At the time of registration, the licensee shall pay a renewal fee as set forth in the Master Fee Schedule per year for each motor vehicle, trailer, cart, or other piece of mobile equipment to be utilized in the business.

**§ 113.11.7. – SALES REGULATIONS.**

Mobile food vendors shall comply with the following regulations:

(a) A mobile food vendor shall not sell nor offer to sell food from a location within 50 feet of the main entrance used by customers to enter or exit a permanent food establishment during the hours food is sold within such permanent food establishment, unless each such permanent food establishment within such area has provided written consent.

(b) A motor vehicle from which a mobile food vendor sells or offers to sell food shall not exceed 40 feet in length and 96 inches in width. A mobile food vendor selling or offering the sale of food from or using a trailer or other auxiliary equipment shall, during such operations, keep the trailer or auxiliary equipment hitched to an operable motor vehicle towing it, unless otherwise permitted by the city in association with an authorized street show, festival, parade, block party, or similar event. An attached trailer or other auxiliary equipment shall not exceed 96 inches in width, and the combined length of the motor vehicle and trailer or auxiliary

equipment shall not exceed 60 feet. The maximum dimensions in this subsection may be exceeded by a particular motor vehicle, trailer, or piece of equipment, if approved by the City Clerk upon a mobile food vendor's application for a waiver.

(c) A mobile food vendor may sell or offer to sell food from a motor vehicle at a location in a city right-of-way open to traffic or parking, but only from a motor vehicle parked in a location where a motor vehicle is authorized to park by law, signage, or city permit. Such a motor vehicle and auxiliary equipment shall not be parked at a diagonal parking space, unless specifically authorized by the City. Such a motor vehicle and auxiliary equipment shall not be parked in a parking space adjacent to the corner of a street intersection.

(d) A mobile food vendor shall not sell or offer to sell food from a location which would involve customers to be waited on or served while standing in a portion of a street being traversed by motor vehicle traffic.

(e) A mobile food vendor who sells or offers to sell food from a location on property other than a parking space or city right-of-way shall first obtain and possess, and be able to exhibit upon request, each of the following:

(1) Written consent of the owner of such property; and

(2) A temporary use permit issued by the Community Development Director or his/her designee, where same permanent uses are permitted under the La Vista Zoning Ordinance; provided, that a temporary use permit shall not be required if the mobile food vendor is present as an authorized part of a private event or an event authorized by another city permit.

(f) A mobile food vendor shall not sell nor offer to sell food from city park property unless he/she possesses the written consent of the Director of Public Works or his/her designee.

(g) A mobile food vendor shall not sell nor offer to sell food from a school property unless he/she possesses the written consent of an authorized representative of the school.

(h) A mobile food vendor shall not sell nor offer to sell food from an area developed as single-family residential except as a caterer or otherwise for an isolated private event hosted at the sole cost of the owner of the residence for the owner’s personal guests, with no public access, or an event authorized by another city permit.

(i) A mobile food vendor shall not sell nor offer to sell food from a location within an area authorized for a street show, festival, parade, block party, or similar event, or within at least 200 feet of any boundary of such authorized area, unless the mobile food vendor is in possession of the written consent of the event licensee to sell or offer to sell food from that location.

(j) A mobile food vendor shall possess and be able to exhibit his/her license under this section, all required Nebraska Department of Agriculture permits, a State of Nebraska sales tax permit or proof of sales tax exemption, and any other written consents or documentation required under this section, at all times during which the mobile food vendor is selling or offering to sell food.

(k) An authorized employee of the public works or police departments may order a mobile food vendor to move from or leave a specific location, if the operation of the mobile food vendor at that location causes an obstruction to vehicular or pedestrian traffic or otherwise endangers the health, safety, or welfare of the public. The city may tow or otherwise move a mobile food vendor's vehicle or other auxiliary equipment to another location if the vehicle or equipment presents a danger to public safety and the mobile food vendor fails to move the same. The City Clerk shall provide to the mobile food vendor a written explanation for any such order, upon written request by the mobile food vendor to the City Clerk.

(l) An individual representative of the mobile food vendor shall be present with the motor vehicle and other auxiliary equipment operated by the mobile food vendor at all times that it is parked in city right-of-way or on city property, and at all times that it is parked on private property at a location where food is or will be offered for sale.

(m) A mobile food vendor may sell or offer to sell food seven days a week, but only from 6:00 a.m. to 2:30 a.m. It shall be unlawful for a mobile food vendor to sell or offer to sell food at any other times. Notwithstanding this subsection, upon evidence of endangerment of public safety, the Chief of Police or his/her designee may further limit hours of operation for all mobile food trucks within the city, as needed for the protection of public safety, for a period of no more than 30 consecutive days at a time.

(n) A mobile food vendor during non-hours of operation shall not leave a mobile food vendor motor vehicle or trailer parked or to remain on any city property or city right-of-way, or on any private property on which any sales have taken place, or on any other private property unless parking of such vehicles or trailers is permitted under applicable zoning and other laws or regulations.

(o) A mobile food vendor using a motor vehicle shall maintain a motor vehicle liability insurance policy for such motor vehicle as required by state law and shall exhibit proof of such policy when requested.

(p) A mobile food vendor shall maintain in operable condition all fire suppression equipment or devices as required by local, state or federal law.

(q) It shall be unlawful for a mobile food vendor to sell or offer to sell alcoholic beverages or alcoholic food.

(r) A mobile food vendor shall visibly display his/her business name on his/her motor vehicle or auxiliary equipment.

(s) A mobile food vendor shall provide trash receptacles for the collection of trash and recyclable materials, in sizes sufficient to serve his/her customers. Prior to leaving a location, the mobile food vendor shall pick up and properly dispose of any trash, litter, or recyclable materials within 20 feet of the location. Receptacles and their contents shall be removed from the location for proper disposal or recycling, and contents shall not be deposited in public trash or recycling containers on city right-of-way or city property.

(t) A mobile food vendor shall not place on city right-of-way or city property any freestanding sign, table, chair, umbrella, electric generator, or other fixture or equipment; provided, that a mobile food vendor may place one identification or menu sign and one table (not for seating customers) on the sidewalk or other area directly adjacent to his/her parked motor vehicle or other equipment.

(u) A mobile food vendor shall comply with all city ordinances regulating noise.

**§ 113.11.8. – REVOCATION OR SUSPENSION.**

(a) Grounds. A license issued under this section may be revoked or suspended by the City Clerk for any of the following reasons:

(1) Any fraud, misrepresentation, or false statement contained in the application for license;

(2) Any fraud, misrepresentation, or false statement made in connection with the selling of food;

(3) Any violation of this section or any applicable laws or provisions of this Code;

(4) Conducting the business licensed under this section 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.

(b) Multiple violations of this section or of any similar section. The City Clerk shall revoke a license issued under this section for any mobile food vendor who on three or more separate occasions has been in violation of the provisions of this section within any consecutive 12-month period.

(c) Notice. To revoke or suspend a license, the City Clerk shall provide written notice to the license 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 license holder or sent by regular U.S. mail to the license holder's permanent address as stated in his/her application.

(d) Appeal. A license holder aggrieved by the decision of the City Clerk under this section may file a written appeal with the City Administrator. The appeal shall be mailed by certified mail or hand delivered to the office of the City Administrator within fourteen calendar days from the date of service or mailing of the notice. Upon receipt of written appeal, the City Administrator will review and respond to appeal within ten calendar days.

(e) Re-application. A person whose license has been revoked under this section may not re-apply for a new license for a period of six months after the effective date of the revocation.

**§ 113.11.9. – PENALTY.**

It shall be unlawful for any person to violate the provisions of this section. Any person found guilty of violating any of the provisions of this section shall, upon conviction be fined a sum of not less than Two Hundred Dollars ($200.00) nor more than Five Hundred Dollars ($500.00) in addition to the penalties set forth herein.

**§ 113.11.10. – PERIODIC REVIEW.**

The City Administrator may review provisions of this article annually or at such other times as the City Administrator determines necessary or advisable.

SECTION 3. Repeal of Conflicting Provisions. Any and all Ordinances or portions thereof, which are in conflict herewith are hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this Ordinance. The Mayor and City Council of the City of La Vista hereby declare that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 5. Pamphlet form. This Ordinance shall be published in pamphlet form.

Section 6. Effective date. This Ordinance shall take effect and be in full force from and after its passage, approval and publication.

PASSED AND APPROVED THIS 4TH DAY OF AUGUST 2020.

CITY OF LA VISTA

_____
Douglas Kindig, Mayor

ATTEST:

_____
Pamela A. Buethe, CMC
City Clerk