

ORDINANCE # 5976

**AN ORDINANCE TO ESTABLISH A MOBILE ICE CREAM VENDOR LICENSE
IN THE CITY OF RAPID CITY BY ADDING
CHAPTER 5.50 OF THE RAPID CITY MUNICIPAL CODE.**

WHEREAS, the City of Rapid City (“City”) is authorized to regulate and license certain food sales, peddlers and hawkers, and delivery vehicles and trucks pursuant to the authority granted by Chapter 9-34 of the South Dakota Codified Laws; and

WHEREAS, the City of Rapid City pursuant to Rapid City Municipal Code § 5.48.010 authorizes the sale or delivery of ice cream and sundries for immediate consumption from vehicles in the streets and thoroughfares of the City; and

WHEREAS, the sales and delivery of ice cream described above is a type of business activity commonly referred to as mobile ice cream vending; and

WHEREAS, the current process for the authorization for mobile ice cream vending requires prospective mobile ice cream vendors to enter into a written contract with the City; and

WHEREAS, regulation via a mobile ice cream vendor license ordinance rather than a contract will provide a stronger framework for monitoring and enforcement of mobile ice cream vending requirements within the City; and

WHEREAS, the Common Council of the City of Rapid City has deemed it is in the best interest of the City to regulate mobile ice cream vending via a mobile ice cream vendor license ordinance, rather than via contracts.

NOW, THEREFORE, BE IT ORDAINED by the City of Rapid City that Chapter 5.50 is hereby added to the Rapid City Municipal Code to read as follows:

Chapter 5.50: MOBILE ICE CREAM VENDORS

5.50.010 Definitions.

As used in this chapter:

- A. **CITY.** The City of Rapid City, South Dakota, unless specified otherwise.
- B. **CRIME OF THEFT OR DISHONESTY.** Shall include, but not be limited to, perjury, false official statement, robbery, theft, burglary, forgery, counterfeiting, or identity crimes as defined by South Dakota Codified Law.

C. **DARKNESS.** Any time from one-half hour after sunset to one-half hour before sunrise and any other time when visibility is not sufficient to render clearly discernible any person or vehicle on the roadway at a distance of one thousand feet.

D. **DELIVERY.** Means and includes leaving, handing over or surrendering any goods, including but not limited to wares, merchandise or materials previously ordered or purchased by a patron or customer.

E. **FROZEN DESSERT PRODUCT.** Means and includes, but is not limited to, ice cream, ice milk, popsicles, frozen yogurt, confections, pre-packaged ice cream novelties, and chilled desserts of any kind.

F. **ICE CREAM TRUCK.** Any vehicle which is equipped or primarily used for retail sales on any public street, alley or highway within the City of ice cream, ice milk, popsicles, frozen yogurt, frozen dessert products, soft drinks and other non-alcoholic drinks and refreshments, and confections of any kind.

G. **MOBILE ICE CREAM VENDOR.** Any person, as defined in this section who:

1. Conducts, permits or causes the operation of an ice cream truck(s).
2. Owns, operates, controls, manages or leases an ice cream truck(s).
3. Contracts with person(s) to drive and vend from ice cream truck(s).

H. **OPERATOR.** Any person who drives, operates, or vends from an ice cream truck and shall include the driver and assistant, if there is an assistant therein, on each ice cream truck.

I. **PERSON.** Any natural person, firm, partnership, association, corporation, stockholder and includes, but is not limited to owners, operators, drivers, lessors and lessees of ice cream trucks.

J. **VEND OR VENDING.** Offering frozen dessert products of any kind for sale from a motor vehicle on a street, alley, highway or public place within the City and includes the movement or standing of an ice cream truck for the purpose of searching for, obtaining or soliciting retail sales of frozen dessert products.

5.50.020 Compliance with chapter.

It is unlawful for any person to conduct unlicensed mobile ice cream vending in the City, or to operate an ice cream truck in violation of the terms and conditions imposed by this chapter.

5.50.030 License—Required.

It is unlawful for the owner of an ice cream truck to drive or operate, or vend therefrom, or cause or permit another person to drive or operate, or vend therefrom an ice

cream truck on the public ways of the City without having a valid mobile ice cream vendor license.

5.50.040 Conflicting provisions.

In the event of a conflict between the provisions of this chapter with any other section of this code, or any county, state or federal law, the provision(s) which imposes the highest standard shall prevail.

5.50.050 Background Investigations.

A. Any person applying for a license under this chapter must, before their application will be considered, appear at the Rapid City Police Department and furnish adequate identification and authorization to enable a criminal background history search to be performed. Any employee(s) or lessee(s) of the applicant who may at any time be an operator of any ice cream truck must also furnish adequate identification and authorization to enable a criminal background history search to be performed. If a mobile ice cream vendor license is issued to the applicant, the licensee is required to submit adequate identification and authorization for a criminal background history search for each and any new employee or lessee who may at any time be an operator of any ice cream truck. The applicant or licensee shall be responsible for the payment of any fees relating to the criminal background history search(es), including any fingerprinting fees, if applicable.

B. The results of the applicant's and any employee's or lessee's criminal background history(ies) shall be sent to the City's Chief of Police or designee for review and determination of whether the applicant is an appropriate candidate for a mobile ice cream vendor license, and if applicable, whether the employee(s) or lessee(s) is an appropriate candidate to be an operator of an ice cream truck. No license shall be issued to an applicant if any of the following apply to the applicant or an employee(s) or a lessee(s) who is proposed to be an ice cream truck operator:

1. The person has at any time received a conviction for any crime against a minor, including but not limited to crimes involving child molestation or child pornography, or child abuse;
2. The person is a verified registered sex offender; or
3. The person has within the preceding five years received one felony class or three misdemeanor class convictions for a crime of theft or dishonesty as defined by this chapter.

C. If an applicant is deemed to be an appropriate candidate for a mobile ice cream vendor license, but the application is denied or a mobile ice cream vendor license is suspended or revoked due to an employee's or lessee's criminal background history, the applicant may re-apply provided proof is provided via sworn affidavit that the subject employee or lessee is not and will not at any time be an operator of any ice cream truck. In such cases, payment of a license application fee shall not be required for the re-application.

D. Failure to furnish for any and all employees and lessees who are proposed to be ice cream truck operators adequate identification and authorization to enable a criminal background history search to be performed shall subject an applicant or licensee to all potential remedies under this code and specifically this chapter, including license suspension, license revocation, and/or criminal penalties.

5.50.060 License—Application and fee.

The application for the license shall contain all pertinent information required by Chapter 5.04 of this code and the City’s Finance Office, and shall be issued and governed in accordance with Chapter 5.04, in addition to the governance required by this chapter.

The application shall be signed by the applicant under penalty of perjury and filed with the Finance Office. Such application shall be accompanied by a nonrefundable application fee of \$50.00. Such fee shall be due and payable upon the submission of an initial application, or an application to renew a license. Licenses shall not be renewed without proof that the public liability insurance required by this chapter remains in full force and effect.

The applicant shall provide the number of vehicles to be operated or controlled, and the year, make, body style, serial number, state license plate number, and name and address of the registered and/or legal owner(s) of each vehicle.

5.50.070 License—Grant or denial determination—Issuance.

The Finance Officer or designee shall make his or her determination granting, granting with conditions, or denying the application in writing, and shall mail a copy thereof to the address provided by the applicant. The order shall become final on the fifteenth day following such mailing. The applicant may appeal the order pursuant to Section 5.04.055 of this code.

A mobile ice cream vendor license shall be denied under any of the following grounds:

- A. The applicant knowingly made a false statement of fact required to be revealed in the license application.
- B. Failure to pay the required fees.
- C. Failure to provide the public liability insurance required pursuant to Section 5.50.210.
- D. Failure to provide the number of vehicles to be operated or controlled, and other identifying information for each vehicle.
- E. The applicant or an employee(s) or lessee(s) does not meet the requirements set forth in Section 5.50.050.

5.50.080 License—Term.

The term of a mobile ice cream vendor license shall be 24 months from the date of issuance, unless sooner revoked, canceled, or otherwise terminated.

5.50.090 License—Nontransferability.

No license issued pursuant to this chapter shall be transferable or used by a person or entity not named on the license.

5.50.100 License—Revocation.

A. The Finance Officer or designee shall revoke any license issued pursuant to this chapter when any of the following occurs:

1. A licensee or a licensee's employee or lessee has received a conviction for any of the crimes listed in Section 5.50.050.
2. The owner fails to maintain the public liability insurance specified in Section 5.50.210 to remain in full force and effect.
3. Upon cancellation of such insurance for any other reason than as set forth in subdivision 2 of this subsection.
4. If the insurance does not meet the requirements of Section 5.50.210.
5. The renewal fee is not paid.

B. Except in cases where a license is revoked pursuant to (A)(1) above, the Finance Officer or designee shall not revoke any mobile ice cream vendor license under this subsection without first giving five days written notice to the holder of such license by certified mail, return receipt requested. The license revocation shall become immediately effective upon City notification or knowledge of a criminal conviction in cases of license revocation pursuant to (A)(1) above.

C. The Finance Officer or designee shall serve the licensee with a notice of revocation to include the effective date and the reason therefore by certified mail, return receipt requested. The notice will provide the affected licensee with process to appeal the revocation, which process is defined in Section 5.04.055 of this code.

5.50.110 License—Suspension.

Any license issued pursuant to this chapter may be suspended by the Finance Officer or designee if any City department or agency is notified or comes to have knowledge of any of the following:

- A. A court of competent jurisdiction has determined that the vendor has become a public nuisance; or
- B. The licensee has violated a condition of the license; or
- C. Due to a change in circumstances and conditions, the continuance of the activity is hazardous to the public health, welfare or safety; or

- D. The applicant for the license made a material misrepresentation of the facts in the application or supporting statements; or
- E. The vehicle is maintained in violation of the standards prescribed by this chapter.

The Finance Officer or designee shall serve the licensee with a notice of suspension to include the reason therefore by certified mail, return receipt requested. The notice will provide the licensee with the process for appeal and the corrective action required to reinstate the license.

The suspension notice shall provide the licensee an opportunity to cure, within a time period to be determined by the Finance Officer or designee, but in any event not to exceed thirty (30) days.

Upon notification of suspension and if a timely appeal is made pursuant to 5.04.055 of this code, the affected licensee may continue to operate his or her business during the hearing and appeal process until a final decision has been rendered, unless it has been determined by the Finance Officer or designee that continued operation would constitute a health or safety hazard to the community.

5.50.120 Appeal.

In conformance with Section 5.04.055 of this code, if a mobile ice cream vendor license application is denied, or if an issued license is cancelled, suspended, or revoked, the affected applicant/licensee may appeal to the Common Council, provided the affected person does so in writing to the Finance Officer within 15 days after notice of the action is sent by mail to the address provided on the application, or in the case of a licensee, the most up-to-date address on file with the Finance Office.

5.50.130 Suspension—Effect of appeal.

After a formal hearing and upon receipt by the Finance Officer that an order of suspension has been overturned on appeal by the Common Council, a license will be issued without need for additional application and/or payment of fees.

5.50.140 License—Revoked or expired.

It is unlawful for an owner of an ice cream truck to conduct mobile ice cream vending in the City, or to drive or operate, or cause or permit another person to conduct mobile ice cream vending in the City, or to drive or operate, an ice cream truck on the public ways of the City with an expired, revoked, or suspended mobile ice cream vendor license.

5.50.150 Mobile ice cream vendor regulations.

A. Each ice cream truck shall be inspected by and meet the requirements of the county health department prior to the issuance of the mobile ice cream vendor license, and

each ice cream truck shall be compliant at all times with any and all applicable city, county, state, and federal ordinances, laws, requirements, rules and regulations.

B. Each individual who drives, operates or vends from an ice cream truck shall have on his or her person a current, valid driver's license, which he or she shall make available for inspection by law enforcement officials upon request.

C. A mobile ice cream vendor license, along with any other municipal, county, state, and federal license(s) and/or permit(s) that may be required in order to conduct mobile ice cream vending activities, shall at all times be on display in a conspicuous place and available for inspection during the times that any ice cream truck is being operated. Each license holder shall immediately surrender to the Finance Officer or designee, any mobile ice cream vendor's license upon the suspension, cancellation, revocation or expiration of such or upon leaving employment as a mobile ice cream operator.

D. Each vehicle which is operated or controlled by the license holder shall have a current valid state vehicle registration form, which shall be made available for inspection by law enforcement officials upon request.

E. Allowed inventory on, about, and within, and any and all sales made from mobile ice cream trucks are limited to frozen dessert products, soft drinks, and other non-alcoholic refreshments.

F. Each ice cream truck shall be equipped with a trash receptacle device and the operator shall monitor any area in which the ice cream truck stops to conduct business and pick up all litter resulting from therefrom.

G. Each ice cream truck shall not in any manner obstruct the free use of any public street, alley, sidewalk, or public ground, and shall at all times be operated with the utmost regard for the safety of children and pedestrians.

5.50.160 Inspection of ice cream trucks.

A. Upon written request by the City or any of its agents, mobile ice cream vendor licensees shall allow inspection of any ice cream truck utilized for mobile ice cream vending.

B. In addition to other equipment required by law, each ice cream truck shall be equipped with the following:

1. A convex mirror mounted so that the occupant of the driver's seat can see the area in front of the truck which is obscured by the vehicle's hood.
2. A back-up alarm audible for a distance of at least one hundred feet.

C. The business operator shall maintain each ice cream truck the business operator operates in such condition that:

1. All doors, windows, hood and trunk shall open and close securely;
2. The inside of the ice cream truck shall be clean and free of litter and trash;
3. There is a trash receptacle that shall be made accessible to the public when sales occur in which patrons can place package wrappers and trash; and
4. The exterior of the ice cream truck shall be clean and in good repair, and not have any peeling, dents, rust, scratches or missing components which are discernible at a distance of five feet or more from the truck.

5.50.170 Required signs and lettering.

A. There shall be displayed in a conspicuous place on both the front and back of the ice cream truck appropriate warning signs or lettering, e.g., "CAUTION CHILDREN." The lettering shall not be less than six inches in height and the lettering shall be in contrast to the color of the background upon which they are placed.

B. There shall be displayed in a conspicuous place on both the right and the left side of the ice cream truck lettering permanently affixed showing the name of the company or operator of the ice cream truck and the business address and telephone number of the owner or operator. The lettering shall not be less than three and one-half inches in height, and shall be in contrast to the color of the background upon which they are placed.

C. Price lists, if displayed on the exterior of the ice cream truck, will be placed directly under the right passenger window.

5.50.180 Place of operation.

A. No person shall vend from an ice cream truck which is stopped, parked or standing on any public street alley or highway:

1. When the posted speed limit on the public street, alley or highway is thirty miles per hour or greater.
2. When the ice cream truck is in violation of any other provision of this code, or is in violation of any provision of county, state, or federal law.
3. When any part of the ice cream truck is open to prospective customers other than on the side of the vehicle next to the right side of the street, alley or highway.
4. When the ice cream truck is not stopped, parked or standing on the right side of the street, alley, or highway.
5. When the prospective customer is standing or sitting in another vehicle.

6. When the prospective customer is located in that portion of the street, alley or highway which is open to vehicular traffic.

7. On streets designated as truck or delivery routes.

8. In or around school zones, or in any public parks.

B. No person shall back up an ice cream truck to make or attempt to make a sale.

C. No minor without a work permit shall ride in or on an ice cream truck.

D. No more than two individuals shall be in or on an ice cream truck at any given time and as is required by this chapter, any and all individuals in or on an ice cream truck as operators shall have completed and passed the required criminal background history search.

E. The headlights and standard warning flashers shall be in operation at all times.

5.50.190 Hours of operation.

Mobile ice cream vending sales shall be limited to the hours of ten a.m. to darkness, as defined in this chapter.

5.50.200 Noise restrictions.

A. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck after eight p.m. or one-half hour after sunset, whichever occurs first.

B. No person shall use, play or employ any sound, outcry, amplifier, loudspeaker, or any other instrument or device for the production of sound from an ice cream truck in such a manner as to create a disturbance of the peace.

5.50.210 Insurance—Required.

A. No license shall be issued and no business may be conducted pursuant to this chapter until a policy of public liability insurance as required by this chapter has been secured, and the policy, or a copy of the policy or certificate evidencing the policy, has been deposited with the Finance Office, along with the required license fee. The policy or an endorsement thereto, shall provide that the issuing company will not allow the policy to be canceled for any person without first serving a ten-day notice of cancellation upon the City. Such service shall be made by registered mail to the Finance Officer.

B. The required public liability insurance shall protect the licensee and the City, and shall name the City of Rapid City as an additional insured, from any and all claims for damages to property and persons, including death, and the use of products, giving cause for claims or damages, which may arise from the operation of the mobile ice cream vending business conduct or from anyone directly or indirectly employed by the licensee. Such public liability insurance shall provide single limit coverage of not less than \$1,000,000.00 for persons injured or killed or property damaged per occurrence.

C. The public liability insurance specified by this section shall be executed by an insurance company authorized to do business in the state by the Insurance Commissioner of the state.

5.50.220 Licensee to hold City harmless.

The mobile ice cream vendor licensee shall hold harmless and indemnify the City, its officers, employees and agents against any and all suits, claims, damages, and actions of any kind or nature arising directly or indirectly on the part of the licensee, its agents, servants, employees, lessees, contractors, and suppliers out of its mobile ice cream vending operations.

5.50.230 License not an exclusive right.

Issuance of a mobile ice cream vendor license does not entitle any license holder to an exclusive right to conduct mobile ice cream vending activities within the City. The City reserves the right to issue as many mobile ice cream vendor licenses as it so chooses.

5.50.240 Other provisions unimpaired.

The provisions of this chapter are not the exclusive regulation of mobile ice cream vendors within the City. The provisions of this chapter shall supplement and be in addition to the regulatory codes, statutes and laws enacted by the City, the county, the state or any other legal entity or agency having jurisdiction, before or after the effective date of the ordinance codified in this chapter.

5.50.250 Severability.

If any section, provision or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected.

5.50.260 Violation—Penalty.

Any person violating any provision of this chapter shall be subject to the general penalty provision as set forth in Section 1.12.010 of this code.

CITY OF RAPID CITY

Mayor

ATTEST:

Finance Officer

(SEAL)

First Reading:
Second Reading:
Published:
Effective: