

ORDINANCE NO. 2010

AN ORDINANCE AMENDING CITY OF DANVILLE, KENTUCKY CODE OF ORDINANCE CHAPTER 13 PERTAINING TO THE OPERATION OF FOOD TRUCKS IN THE CITY OF DANVILLE.

WHEREAS, the City previously adopted Ordinance 2005 to prescribe certain rules and regulations for mobile food units and vendors in order to protect and promote the health, safety, and welfare of the general public; and

WHEREAS, the City finds it necessary and appropriate to amend said ordinance to provide clarity for the application of same;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DANVILLE, KENTUCKY, as follows:

SECTION ONE: Chapter 13 in the City of Danville Code of Ordinances is hereby amended to read as follows:

Chapter 13 MOBILE FOOD SALES

§ 13-1. Definitions.

Unless the context requires otherwise, the following terms as used in this Chapter shall have the following meanings:

- (a) **MOBILE FOOD UNIT VENDOR.** Any person or entity who conducts business from a Mobile Food Unit within the City of Danville on more than two (2) occasions per calendar year.
- (b) **MOBILE FOOD UNIT.** A licensed, motorized vehicle permitted by the Boyle County Health Department for food service, which is temporarily parked in a location to sell and/or serve food and/or beverages to the general public. Mobile Food Unit shall also include food concession trailers pulled by licensed vehicles which are used to prepare or sell consumable foods. Mobile Food Unit shall include ice cream vehicles.
- (c) ~~**PUSHCARTS.** A non-motorized structure that is lightweight enough, designed, and intended to be moved by one person for the sale and/or service of food and/or beverages,~~

including but not limited to fruit, cotton candy, popcorn, drinks, hotdogs, flavored ice, and pre-wrapped foods.

- (d) ~~PUSHCART VENDOR. Any person or entity who operates a pushcart within the City of Danville.~~

§ 13-2. Permit Required to Operate Mobile Food Unit or Pusheart

- (a) No person, firm, partnership, corporation, or other entity shall operate a Mobile Food Unit ~~or Pusheart~~ in the City of Danville without obtaining a Mobile Food Unit Vendor ~~or Pusheart~~ Vendor permit, respectively, issued by the City of Danville Codes Enforcement Department. Each Mobile Food Unit ~~or Pusheart~~ shall require a separate permit (a vehicle pulling a trailer constitutes one Mobile Food Unit). The Codes Enforcement Department may issue a permit based on the following criteria:
- (1) Impact on local economy.
 - (2) Impact on public health and safety.
 - (3) Impact on transportation and traffic.
 - (4) Completeness of the application and accuracy of information provided.
 - (5) Compliance with the terms of this ordinance and other City, county, state, and federal laws, ordinances, rules, and regulations.
 - (6) Outstanding delinquent accounts or liabilities, if any, to the City.
 - (7) The existing number of Mobile Food Unit ~~or Pusheart~~ permits operating in the City.
 - (8) If demand exceeds appropriate and available space.

Each permit will be valid for a twelve (12) month calendar period beginning on January 1st of each year unless suspended or revoked. Upon approval of the permit application, the Mobile Food Unit ~~or Pusheart~~ shall be issued a unique colored coded sticker for calendar year and this sticker shall be affixed to the Mobile Food Unit ~~or Pusheart~~ in a publicly visible location. Mobile Food Unit Vendors ~~and Pusheart Vendors~~ shall renew permits with the City prior to the end of any twelve (12) month term and shall be in compliance with the provisions of the Subchapter prior to being issued a renewal permit.

The provisions of this chapter shall not apply to mobile food units ~~or pushearts~~ owned by an educational institution and utilized on its campus; however, in the event said mobile food unit ~~or pusheart~~ is moved off of the educational institution's campus, the provisions of this chapter shall apply.

- (b) The Mobile Food Unit ~~or Pusheart~~ permit application shall be submitted with annual fee of \$300 along with the name, business address and contact information for the applicant, with credit being given for the cost of a business license that was previously obtained by the applicant. Any permit issued on or after July 1 of any calendar year shall pay a permit fee of \$150 for the remainder of that year. The application shall also include a copy of the City of Danville's business registration and documentation showing that the Mobile Food Unit ~~or Pusheart~~ has been inspected and approved by the City of Danville Fire Department and the Boyle County Health Department, if applicable.

- (c) By submitting a permit application, each Mobile Food Unit Vendor ~~or Pusheart Vendor~~ issued a permit agrees to hold the City of Danville and its officials, officers, and employees harmless and to indemnify and defend the City against all claims, damages, losses, and expenses, including attorney's fees, resulting from the permitted activity. Each Mobile Food Unit Vendor ~~or Pusheart Vendor~~ also agrees to indemnify and hold harmless the City of Danville and its officials, officers, and employees for bodily injury, disease, or death, or injury to or destruction of property, including the loss of use therefrom and/or breach of contract that is not caused by any negligent act or omission of willful misconduct of the City or its officials, officers, and employees acting within the scope of their employment.
- (d) The granting of a permit under this section shall not constitute a property interest or right in any City-owned property, including but not limited to City rights and sidewalks. Any permit granted herein does not provide a Mobile Food Unit Vendor or Mobile Food Unit exclusive rights to any public property or parking space.

§ 13-3. Insurance for Mobile Food Unit ~~or Pusheart~~

- (a) A Mobile Food Unit Vendor ~~or Pusheart Vendor~~ shall not commence work until all insurance has been obtained and copies of policies or certificates thereof are submitted to and approved by the City of Danville Codes Enforcement Department. Prior to commencing work, the Vendor shall maintain continuous liability coverage written on an occurrence basis or, if on a claims-made basis, with an extended reporting period (ERP) option of not less than three (3) years. Coverage will be provided through insurance companies licensed to do business in the State of Kentucky with a Best Rating of A- or better. Without limiting Vendor's indemnification requirements, Vendor shall procure and maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations in the minimum limits set out below.

~~(1)~~ (1) **COMMERCIAL GENERAL LIABILITY** – Including contractual liability, bodily injury, and property damage combined at a minimum of \$1,000,000 for each occurrence; personal and advertising injury of \$1,000,000 for any one person or organization and \$1,000,000 in the aggregate.

~~(2)~~ **AUTOMOBILE LIABILITY** – ~~Insuring all Owned, Non-Owned, and Hired Motor Vehicles. The minimum coverage for Liability Limit is \$1,000,000 Combined Single Limit for any one accident. The limit of liability may be subject to increase according to any applicable State and Federal Transportation Regulations.~~

~~(3)~~ (2) **WORKER'S COMPENSATION** – Insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits.

- (b) The Commercial General Liability Policy shall be endorsed to contain the following provisions:

“The City of Danville, its elected and appointed officials, employees, agents and successors and volunteers are to be added as “Additional Insured.” The coverage

shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, employees, agents, successors, and volunteers and may not include terms which may make the coverage excess to other insurance on which the City, its elected and appointed officials, employees, agents, successors and volunteers may also qualify as an additional insured.

(c) The insurance coverage for the Vendor entering into a contract shall be on a primary and non-contributory basis for liability arising out of activities performed by or on behalf of the Vendor entering into this contract for service including the insured's general supervision of the premises owned, occupied or used by the Vendor/Seller entering into this contract and ongoing operations as well as completed operations and work performed by Vendor. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, agents and successors and volunteers shall be in excess of the Vendor's insurance coverage.

(d) Certificates of Insurance as required above shall be furnished to:

City of Danville
Codes Enforcement Department
Attn: Director of Codes Enforcement
445 W. Main St.
P.O. Box 670
Danville, KY 40423
Fax: 859-238-1232

§ 13-4. Mobile Food Unit Vendor and Pusheart Regulations.

(a) Mobile Food Unit Vendors and Pusheart Vendors shall be subject to and shall comply with all City of Danville business registration requirements and shall not be delinquent on any fees or taxes owed to the City. Mobile Food Unit Vendors and Pusheart Vendors shall also comply with all federal, state, and local laws, rules and regulations including, but not limited to, Health Department and Fire Department laws and regulations.

~~(b) Pusheart Vendors may operate on public sidewalks in the City of Danville. Pusheart Vendors shall not operate on public streets, roads or alleys. Pusheart Vendors shall not impede the ingress or egress of any driveway or the entrance into any building. Pusheart Vendors shall not obstruct pedestrian space and shall maintain at a minimum 5 feet of sidewalk space for pedestrian passage adjacent to the pusheart. Pusheart Vendors may operate on public sidewalks in the City of Danville from 6:00 AM to 12:00 AM each day and shall not remain at the same location for longer than 4 hours. In addition to public sidewalks, Pusheart Vendors may operate on private property subject pursuant to a Temporary Use Zoning Permit under Section 5.3.3 of the Danville Zoning Ordinance.~~

(c) ~~(b)~~ Mobile Food Unit Vendors may operate in the following locations on right of way: 1) on the east side of South 2nd Street adjacent to Constitution Square; 2) ~~the parking lot at 319 West Walnut Street;~~ and 3) on the east side of North 4th Street adjacent to Weisiger Park (an "Approved Location"). The Codes Enforcement Department may from time to time

regulate the number and location of Mobile Food Units at an Approved Location, including by establishing parking spots and a reservation system. A Mobile Food Unit Vendor may only operate at an Approved Location for 4 hours per day, between the hours of 8:00 AM and 9:00 PM, and pursuant to advance approval by the Codes Enforcement Department. When operating at an Approved Location, a Mobile Food Unit Vendor shall not serve or sell a food item which is substantially similar to the primary food offering of a brick-and-mortar establishment within 250 feet of the Approved Location. Other than at an Approved Location, no Mobile Food Unit Vendors may operate without a Temporary Use Zoning Permit under Section 5.3.3 of the Danville Zoning Ordinance.

- (d) No Mobile Food Unit ~~or Pusheart~~ shall be left unattended or allowed to park on public streets or sidewalks in the City of Danville overnight and any such Mobile Food Unit ~~or Pusheart~~ left unattended or parked overnight may be towed or removed at the City's discretion. All Mobile Food Unit Vendors ~~and Pusheart Vendors~~ shall promptly cease operations and remove the Mobile Food Unit ~~or Pusheart~~ upon request by appropriate City Officials. ~~Neither The Mobile Food Unit or Pusheart,~~ nor any inventory or equipment thereof, shall be left overnight upon any unenclosed portion of any lot or site within the city, except that it may be stored on property belonging to the owner of the mobile food unit ~~or pusheart~~ in accordance with all other laws and regulations.
- (e) Mobile Food Unit Vendors ~~or Pusheart Vendors~~ shall only use lighting which is affixed to the Mobile Food Unit ~~or Pusheart~~ and which does not cause any glare that creates a public hazard, nuisance or distraction to other vehicles or neighboring businesses. No flashing, strobe or neon lighting shall be permitted.
- (f) Mobile Food Unit Vendors ~~and Pusheart Vendors~~ shall supply their own electrical power and shall not connect to City power outlets.
- (g) Mobile Food Unit Vendors shall be equipped with at least one 2A-40 BC fire extinguisher; if fryers are used a 2A-40BC, class K fire extinguisher; and if a gas generator is used a "propane leak detector".
- (h) The operator of any Mobile Food Unit shall possess a valid driver's license and shall provide that license upon request by any authorized City Official.
- (i) Mobile Food Units ~~and Pushearts~~ shall at all times operate in a manner that ensures the safety of patrons, pedestrians, and the public. All operations of authorized Mobile Food Units shall serve customers only from the side of the Mobile Food Unit that is parked abutting and parallel to the curb and from the side opposite of the flow of traffic. No Mobile Food Units ~~or Pushearts~~ shall solicit drive-through service or solicit or make any sales to occupants of vehicles nor shall Mobile Food Units ~~or Pushearts~~ operate in a manner to cause congestion that impedes pedestrian or vehicle traffic or interferes with the public use of any rights-of-ways, sidewalks or public benches. No tables, chairs or similar property shall be permitted on public property. No cords, cables or wire shall be attached to any part of the Mobile Food Unit, or trailer ~~or Pusheart~~ that cross any public sidewalk or street.

- (j) The Mobile Food Unit ~~or Pusheart~~ shall provide its own waste and recycling containers in sufficient size to collect all waste and recyclables generated by the Mobile Food Unit ~~or Pusheart~~. The operator of the Mobile Food Unit ~~or Pusheart~~ shall remove all garbage, trash, papers, cups, cans or litter from the immediate area around the Mobile Food Unit ~~or Pusheart~~. No waste shall be disposed of in public waste receptacles. No hoses or drainage of grease traps or similar liquids shall be drained into any storm water drainage system and all such liquids shall remain on the Mobile Food Unit ~~or Pusheart~~ until properly disposed.
- (k) Mobile Food Unit Vendors ~~and Pusheart Vendors~~ shall be responsible for any damage to public property or public streets caused by the operation of the Mobile Food Unit ~~or Pusheart~~, including, but not limited to, damage due to stakes, rods, or other support methods.
- (l) Codes Enforcement Officers, fire department officers and police officers shall be authorized to inspect the permitted Mobile Food Unit ~~or Pusheart~~ without notice and without consent during normal operating hours.
- ~~(m) All Mobile Food Units and Pushearts shall be subject to Chapter 8 (Article III) (Noise) of the City of Danville Code of Ordinances. Sound absorbing devices are recommended to contain or deflect the noise from generators. All Mobile Food Unit generators shall be rated at or below 68 decibels. Amplified music is not permitted.~~
- (n) (m) Consent for Mobile Food Units ~~or Pushearts~~ to operate on any City property other than an Approved Location shall be obtained from the City Manager or his designee prior to operating on such City property. The City may impose conditions for the approval of such requests as it deems necessary for health and safety and to mitigate the impact of vending that conflicts with City operations. The City has the authority to limit or prohibit such operation on other City properties.
- (o) (n) Mobile Food Unit Vendors ~~and Pusheart Vendors~~ shall not sell or serve alcoholic beverages except under the applicable state and local license.
- (p) (o) The City may grant relief from the above provisions pursuant to an approved special event permit. During special events, no Mobile Food Unit ~~or Pusheart~~ shall occupy any permitted special event location without the consent of the management of the special event.

§ 13-5. Enforcement and Penalties.

- (a) Enforcement proceedings for the provisions of this Chapter shall be initiated by the issuance of a notice of violation or a citation by any designated Codes Enforcement Officer as set out in Section 1-12 of the City's Code of Ordinances. Any person or business entity violating any of the provisions of this Chapter, shall be subject to civil fines as set out in Chapter 1-12 (General Code Enforcement) of the City of Danville Code of Ordinances.
- (b) The Codes Enforcement Department may suspend or revoke any permit issued under this section, or require a Mobile Food Unit Vendor ~~or Pusheart Vendor~~ to relocate its Mobile Food Unit ~~or Pusheart~~, for any of the following reasons:

- (1) To allow for construction, maintenance, or repair of any street, curb, gutter, sidewalk, storm drain inlet, or any other similar facility.
- (2) Failure to comply with all terms of this ordinance, or other applicable local, state, and federal regulations.
- (3) Revocation of any required permit to conduct the mobile food service operations, including revocation by the Boyle County Health Department or other issuing entity.
- (4) Excessive noise.
- (5) Improper disposal of solid waste, grease, oil, or other materials from the Mobile Food Unit.
- (6) When the desired location of the Mobile Food Unit ~~or Pusheart~~ is closed, or during special events.
- (7) In the event this ordinance is amended or repealed as to render the Vendor's activities inconsistent with the law.
- (8) To maintain the comfort, health, safety, and welfare of the public.

If the Codes Enforcement Department exercises the right to suspend or revoke a permit issued under this chapter, written notice shall be provided to the Vendor at the address on file for the permit. Delay or failure to issue a suspension or revocation of any permit shall not constitute a waiver of this section. No reimbursement for any portion of the permit fee shall be made in the event a permit is suspended or revoked, or if a Mobile Food Unit ~~or Pusheart~~ is required to relocate temporarily or permanently.

- (c) Any person aggrieved by a decision of the Codes Enforcement Department regarding denial, suspension, or revocation of a permit under this chapter shall have the right to appeal any such decision to the Board of Commissioners by filing a written notice of appeal with the City Clerk within 5 days after the written decision is rendered. The appeal shall be heard no later than 20 days after the notice of appeal is filed. The appeal shall be based on the record, except when the Board of Commissioners, in its sole discretion, requests additional evidence from the interested parties or other witnesses. No appeals will be considered if an appeal is not filed in a timely manner.

SECTION TWO:

SECTION TWO: This ordinance is effective upon its publication.

SECTION THREE: If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

GIVEN FIRST READING AND PASSED 04.10.2023

GIVEN SECOND READING AND PASSED 04.24.2023

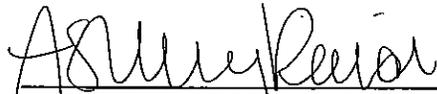
PUBLISHED IN THE *ADVOCATE-MESSENGER*

APPROVED:



J. H. ATKINS, MAYOR

ATTEST:



ASHLEY RAIDER, CITY CLERK