

ORDINANCE NO. 2110

INTRODUCED BY: AMADOR, BULLOCK, CARSON, DIAZ, DOUGLAS, ELLIOTT, FORD,
MCELDOWNEY, TETER

AN ORDINANCE AMENDING THE COMMERCE CITY REVISED MUNICIPAL CODE TO LICENSE AND REGULATE MOBILE ICE CREAM VENDORS

WHEREAS, the City Council of the City of Commerce City desires to allow the operation of, and to provide reasonable provisions for the licensure and safe operation of, mobile ice cream vendors on the public rights-of-way within the City of Commerce City; and

WHEREAS, the City Council of the City of Commerce City finds and declares that these regulations are reasonable and necessary to protect the public health, safety, and welfare.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. Section 6-2004 of the Commerce City Revised Municipal Code is hereby repealed in its entirety.

SECTION 2. Article III of Chapter 9 of the Commerce City Revised Municipal Code is hereby amended by the addition of a new Division 8 entitled “Ice Cream Vendors,” which shall read as follows:

Section 9-3801. Purpose and intent. The purpose and intent of this division is to protect the health, safety and welfare of the public by licensing and regulating the sale of ice cream products from vehicles on public rights-of-way and to ensure safe pedestrian and vehicular movement within the city. The purpose and intent of this division is to avoid the suppression of speech activities protected by the United States Constitution and the Colorado Constitution.

Section 9-3802. Definitions. As used in this division, the following terms shall have the following meanings:

Ice cream products means ice cream, frozen milk, or any other frozen dairy or ice product or confection.

Ice cream vehicle means any vehicle, whether human-powered, animal-powered or motor-powered, from which ice cream products are sold or offered for sale to the general public, except for any vehicle operated from a stationary location as a outdoor vendor under Division 3 of this chapter.

Operator means any person who drives or is otherwise present on an ice cream truck while the ice cream vehicle is being used, or is available for use, to sell or offer for sale ice cream products.

Section 9-3803. License & insurance requirements.

- (a) License required. There shall be a specialty license called an “ice cream vendor license.” It is unlawful for any person to sell or offer for sale ice cream products from an ice cream vehicle on the streets, alleys, or other public places in city except as authorized by this division and pursuant to an ice cream vendor license. A separate license shall be required for each ice cream vehicle.
- (b) Display of license. The ice cream vendor license shall be firmly attached to the ice cream vehicle and visible to the public at all times during the operation of the ice cream vehicle.
- (c) Application for license.
 - (1) *Application.* In addition to any other applicable license requirement under this chapter, each application for an ice cream vendor license shall include:
 - a. a list of all operators of the ice cream vehicle;
 - b. a copy of a current, valid Colorado driver’s license for each operator of the ice cream vehicle who may drive the ice cream vehicle;
 - c. a copy of a current, valid Colorado driver’s license or other reasonable identification for any other operators who may be present on, but will not drive, the ice cream vehicle;
 - d. a valid Colorado driver license history report of each operator of the ice cream vehicle who may drive the ice cream vehicle;
 - e. a valid criminal background clearance report issued by the Colorado Bureau of Investigation; and
 - f. a map of all proposed routes on which the ice cream vehicle may operate.
 - (2) *Modification.* A separate application shall be filed to modify the operators of an ice cream vehicle or the route applicable to an existing ice cream vendor license.
- (d) Insurance Required. Each licensee holding an ice cream vendor license shall maintain, at all times during the term of the license, commercial general liability insurance and comprehensive automobile liability insurance, each naming the city as an

additional insured, in coverage amounts as determined by the city Manager. Proof of such insurance shall be submitted to the city upon request.

Section 9-3804. Operation of ice cream vehicles.

- (a) Hours of operation. No ice cream vehicle shall sell or offer for sale ice cream products between sunset and 10:00 a.m.
- (b) Amplified sound. The use of amplified sound in connection with an ice cream vehicle shall be permitted only during the sale or offer for sale of ice cream products and only in accordance with the provisions of section 6-2011 of this code.
- (c) Products. Only single-serve, prepackaged ice cream products may be sold or offered for sale from ice cream vehicles. The city reserves the right to prohibit the sale of any food items deemed necessary to protect the public health, safety and welfare.
- (d) Persons prohibited. No person under the age of 18 or who has been convicted of any of the following shall be an operator of an ice cream vehicle or otherwise be present in or on an ice cream vehicle at any time during which the ice cream vehicle is being used, or is available for, the sale or offering for sale of ice cream products:
 - (1) a crime of moral turpitude;
 - (2) a crime of violence;
 - (3) a crime against a juvenile;
 - (4) a drug-related felony;
 - (5) an alcohol- or drug-related traffic offense within the previous five (5) years; or
 - (6) more than three (3) traffic offenses in the previous five (5) years.
- (e) Unlawful actions. It shall be unlawful for any person operating an ice cream vehicle to:
 - (1) operate an ice cream vehicle in violation of any law or regulation, including any law or regulation applicable to traffic safety or health and sanitation;

- (2) operate an ice cream vehicle to sell or offer to sell ice cream products:
 - a. on streets other than residential streets; or
 - b. while driving in excess of ten (10) miles per hour;
- (3) engage in any transaction or attempted transaction:
 - c. when the ice cream vehicle is not lawfully and safely stopped and the ice cream vehicle's hazard lights are not in operation;
 - d. from any part of the ice cream vehicle facing traffic;
 - e. when the ice cream vehicle is not as near to the curb or the edge of the roadway as is reasonably possible; or
 - f. with any person standing in the traveled portion of the roadway or on any median or other traffic control device;
- (4) drive an ice cream vehicle in reverse to sell or offer to sell any ice cream product;
- (5) allow any person other than an operator designated under the ice cream vendor license to hold or hang onto, or to ride in or on, an ice cream vehicle; or
- (6) operate an ice cream vehicle in any manner that endangers the health, safety or welfare of any person or property.

Section 9-3804. Violations and penalties.

- (a) Any person convicted of violating any provision of subsection (e) of Section 9-3803 of this code shall be guilty of a misdemeanor and shall be subject to the general penalties set forth in this code.
- (b) A violation of any other provision of this division shall constitute a civil infraction and shall be subject to the general penalties set forth in this code.
- (c) The determination of any civil or criminal infraction under this division shall be in addition to, and not required before, any action that the city is authorized to take with respect to the ice cream vendor license under this chapter.

SECTION 3. Except as specifically modified herein, the provisions of the Commerce City Revised Municipal Code shall remain unchanged and in full force and effect.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE
ORDERED THIS 1ST DAY OF AUGUST, 2016.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED
THIS 19TH DAY OF SEPTEMBER, 2016.

CITY OF COMMERCE CITY, COLORADO

Sean Ford, Mayor

ATTEST:

Laura J. Bauer, MMC, City Clerk