

**CITY OF KODIAK
ORDINANCE NUMBER 1422(SUB)**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
TITLE 5 WITH THE ADDITION OF A NEW CHAPTER 5.08 REGULATING MOBILE
FOOD SERVICES**

WHEREAS, Kodiak City Code Section 5.04.020 authorizes mobile food vendors to temporarily stop their vehicles in the public streets for the purpose of making sales; and

WHEREAS, the City of Kodiak desires to give the public and operators of such businesses greater clarity and guidance regarding the conduct of such business on city property; and

WHEREAS, to protect the health and safety of consumers and the general public, licensing and regulation of such businesses is necessary;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: This ordinance is of a permanent and general nature and shall be included in the Kodiak City Code.

Section 2: Title 5 of the Kodiak City is hereby amended with the addition of a new Chapter 5.08 to read as follows:

MOBILE FOOD SERVICES

Sections:

- 5.08.010 Applicable State law incorporated
- 5.08.020 Definitions
- 5.08.030 Permit required
- 5.08.040 Permit application
- 5.08.050 Insurance
- 5.08.060 Application review and permit fees
- 5.08.070 Permit duration
- 5.08.080 Posting permits and documents
- 5.08.090 Vehicle inspection and plan review
- 5.08.100 Mobile food service areas
- 5.08.110 Prohibited acts
- 5.08.120 Permit suspension, revocation, and denial
- 5.08.130 Violations

5.08.010 Applicable State law incorporated

All statutes of the State of Alaska and any rules or regulations adopted by any State agency pertaining to public nuisances, food and food service establishments, public health and public sanitation applicable to a mobile food service, with particular reference but not limited to AS Titles 17 and 18, as amended, and 18 AAC 31, as amended, are incorporated by this reference as though fully set forth in this chapter.

5.08.020 Definitions

For the purpose of this chapter:

Mobile food service means the vending of food from a self-contained establishment that is designed for, and capable of, being readily moved from location to location under its own power or towed by a vehicle, without being permanently affixed to any site or connected to any water or sewer utility service. Mobile food service does not include those activities lawfully conducted pursuant to a permit for community festival permit issued pursuant to 5.04.050 or retail sale of seafood by harvesters to consumers permit issued pursuant to 5.04.080.

Mobile food service permit or *permit* means a permit for mobile food service authorized and issued pursuant to this chapter.

Mobile food service vehicle or *vehicle* means the vehicle from which mobile food service is conducted.

5.08.030 Permit required

No person may operate a mobile food service on city property without first obtaining a mobile food service permit.

5.08.040 Permit application

Every applicant for a permit shall submit:

- (a) Legal name of the applicant;
- (b) Applicant's address;
- (c) A copy of the applicant's city of Kodiak business license and certificate of registration for collection of City of Kodiak sales tax, and when applicable a health certificate, letter of approval or other appropriate notification from State authorities for a food vending business;
- (d) At the time of filing the application, a fee, as specified in the city's fee schedule, shall be paid to cover the cost of processing the application. If no such fee is established by the fee schedule, the application fee shall be \$500;
- (e) Satisfactory proof that the applicant has obtained the necessary licenses and permits from all governmental agencies having jurisdiction over such business, including a copy of the applicant's State of Alaska business license;
- (f) Documentary proof of the insurance require by KCC 5.08.050, unless the applicant elects to pursue conditional permit approval as described in KCC 5.08.060(e);
- (g) Proof of the fire marshal's satisfactory inspection of the proposed mobile food service vehicle; and
- (h) A description of the vehicle, including the VIN and registration and a copy of a valid driver's license for each person who will operate the vehicle.

5.08.050 Insurance

(a) The applicant shall obtain and maintain for the duration of the permit insurance as listed below and furnish one or more policies or certificates of liability insurance by an insurance company authorized to do business in the state.

(b) Permittees shall obtain and maintain:

(1) General commercial liability insurance with a policy limit of not less than \$500,000;

(2) Workers' compensation insurance as required by state law; and

(3) Motor vehicle liability coverage with policy limits not less than \$100,000/\$200,000 for bodily injury or death and \$50,000 for property damage.

(c) The City of Kodiak shall be named as an additional insured on all liability policies. Every insurance policy shall contain a clause obligating the insurer to give the city written notice no less than 30 days before the cancellation, expiration, nonrenewal, lapse or other termination or alteration of such insurance. Liability policies shall waive subrogation. A lapse, cancellation, expiration, nonrenewal or other termination or alteration of such insurance shall cause the permit to which it pertains to be automatically suspended for so long as the insurance required by this section is not in place.

5.08.060 Application review and permit issuance

(a) Within 30 days of receiving a complete application, the city shall:

(1) issue a permit, subject to reasonable conditions, if the city determines that the applicant and application conforms to all requirements of this chapter; or

(2) deny the permit.

(b) The city shall not issue a permit if the applicant, or any person with an ownership interest in the applicant, is presently delinquent on any amounts due under KCC Title 3, has had any serious delinquency of such amounts in the preceding three years, or has had a permit revoked in the preceding three years.

(c) The permit shall be valid only for the vehicle for which it was issued.

(d) Issuance of a permit shall not exempt a permittee from any provision of this code, including the requirement of any other city permit, license, or authorization that may be required.

(e) If the applicant did not submit documentary proof of the insurance require by KCC 5.08.050 with the permit application and the city would issue the permit pursuant to subsection (a)(1) but for the lack of proof of insurance, the city shall issue a conditional permit approval, conditioned upon the applicant furnishing the required proof of insurance within 30 calendar days from the date of notice of the conditional approval. No permit shall issue, nor shall the applicant engage in any mobile food vending, until proof of insurance is furnished to and accepted by the city. If proof of insurance is not received within 30 days as specified in this paragraph, the permit application shall be automatically denied.

5.08.070 Permit duration

A mobile food service permit shall expire on December 31st of the calendar year following the year in which the permit was issued unless earlier revoked in accordance with this chapter.

5.08.080 Posting permits and documents

(a) During all hours of operation, a permittee shall display the permit in a prominent location on the vending stand or vehicle from which the business is conducted so it is easily visible to the public.

(b) A permittee shall maintain copies of the following documents in the vehicle from which the business is conducted pursuant to the permit and shall display them to any person upon request:

- (1) Current city and state business license for the business operated pursuant to the permit; and
- (2) All government permits relating to the service of food or beverages offered by the vendor.

5.08.090 Vehicle inspection and plan review

(a) All mobile food service vehicles must, in addition to all other applicable standards, conform to the requirements of Section 319 “Mobile Food Preparation Vehicles” of the 2018 International Fire Code. Upon recommendation of the fire chief, the city manager may, by executive order, require that food service vehicles operated under a permit applied for subsequent to the date of the order shall conform to the requirements of a subsequent or revised version of the International Fire Code standards for mobile food preparation vehicles.

(b) A person may not operate a mobile food service or apply for a permit unless the fire marshal inspects the vehicle to be used for a mobile food service vehicle for compliance with this chapter.

(c) If a person intends to undertake modifications, regulated under the 2018 International Fire Code Section 319 “Mobile Preparation Vehicles”, of a mobile food service vehicle or vehicle the person intends to use as a mobile food service vehicle, the person shall submit to the fire marshal a plan review application accompanied by one copy of plans and specifications a minimum of 30 days before beginning any work or modifications. The fire marshal shall approve plans submitted under this section if the plans meet the requirements of this chapter, including rules and regulations adopted by reference. Approval of plans does not exempt the vehicle from the inspection required by this section.

(d) City officials may inspect a vehicle permitted under this chapter for the purpose of determining whether the permittee is conducting the business in accordance with the requirements of this chapter or the permit.

5.08.100 Mobile food service areas

(a) A mobile food service may be located and operated in the following locations and subject to further limitations imposed by the Kodiak Island Borough zoning code:

- (1) On private property or leased land, provided the owner or lessor has first granted permission for the use;
- (2) Between the hours of 5:00 am and 12:30 am, on city streets, alleys, and right-of-way located within or adjacent to the Business District, the Retail Business District, Public Use Lands District, the Conservation District, the Light Industrial,

and the Industrial District, as defined and established by the Kodiak Island Borough zoning code, provided that:

- (i) no portion of the mobile food service, including the vehicle, is operated within four feet of the portion thereof traveled by vehicles and does not otherwise obstruct the flow of vehicle or pedestrian traffic; and
- (ii) the vehicle is continuously attended by a person authorized to operate the vehicle.

(3) The city manager, upon determination that mobile food service use of any location identified in the above subsection (2) is causing or is likely to cause unreasonable congestion, obstruction of traffic, lack of parking access, or otherwise is not in the public interest, may suspend mobile food service in such location for a period not to exceed 90 days. The suspension shall take effect upon the earlier of five days after mailing notice to permittees or actual notice to the permittee.

(b) A mobile food service may not be operated on city property or right-of-way in front of or adjacent to a business offering the similar food service from a fixed location unless in a mobile food service area designated by the city manager.

(c) A mobile food service may be operated on additional city property or right-of-way designated for such use by the city manager, subject to those restrictions the manager may impose.

(d) A map maintained in city clerk's office shall identify city property and right-of-way where mobile food service is authorized.

(e) A mobile food service vehicle shall not be located within 20 feet of any permanent structure or within 15 feet of another mobile food service vehicle.

5.08.110 Prohibited acts

(a) It is unlawful for any person to engage in the business of a mobile food service in a manner inconsistent with the terms of a permit issued pursuant to this chapter or the requirements of this chapter.

(b) It shall be unlawful for any person to engage in the business of a mobile food service at any unauthorized location on city property or right-of-way.

(c) It shall be unlawful for a mobile food service permittee to obstruct traffic with the location of the permittee's vehicle or operations. For the purpose of this subsection, a mobile food service permittee shall be conclusively obstructing traffic if the permittee does not immediately move the vehicle following the order of a peace officer, exercising good faith and judgment, to move the vehicle so that traffic is not obstructed.

5.08.120 Permit suspension, revocation, and denial

(a) The city manager may suspend, revoke, or otherwise restrict a permit for any of the following reasons:

- (1) The making of a false statement in the permit application.
- (2) Failure of the permittee to collect or timely remit sales taxes due on sales rendered under the permit.
- (3) The permittee, in connection with the permitted activity, violated any provision of this code or the terms or conditions of the permit.

- (4) Failure of the permittee to maintain a current certificate of registration as a sales tax collector under KCC 3.08.080.
- (5) The cancellation of the insurance required by this chapter, or the reduction of insurance coverage below the minimum limits required by this chapter, and the permittee's failure to provide the city manager with evidence of replacement insurance before the effective date of the cancellation or reduction.
- (6) The permittee is performing or permitting the performance of an act in connection with the permitted activity that endangers the public health, safety or welfare.
- (7) The permittee sold, conveyed or otherwise transferred the permit to another person.
- (8) The permittee permits, allows, directs or otherwise sanctions the violation of any provision of this code or the permit in connection with the permitted activity.

(b) Except where subsection (c) of this section authorizes an immediate suspension, at least 10 days before denying, suspending or revoking a permit, the city manager shall mail to the applicant or permittee written notice of intent to deny, suspend or revoke the permit, stating the grounds therefor. The notice shall state the time and place at which the city will hold a hearing on the permit denial, suspension or revocation upon the permittee's written request, which time shall not be less than 10 days after the date the city manager mails the notice.

(c) Notwithstanding subsection (b) of this section, the city manager may suspend a permit immediately if the city manager has probable cause to believe that continued operation under the permit presents a substantial hazard to public safety, and shall suspend a permit immediately upon the permittee's failure to maintain insurance required by this chapter. The suspension shall remain in effect until the permittee demonstrates to the city manager that the cause for the suspension has been corrected. Promptly after suspending a permit under this subsection, the city manager shall give the permittee written notice of the suspension, and of the permittee's right to request a hearing on the suspension, in accordance with subsection (b) of this section.

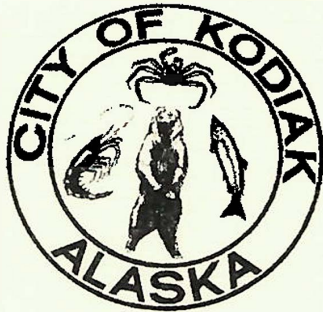
(d) Upon the submission by the applicant or permittee within ten days after the date of the notice provided under subsection (b) of this section of a written request for a hearing on the denial, suspension or revocation of a permit, a hearing officer designated by the city manager shall conduct the hearing at the time and place stated in the notice of the denial, suspension or revocation. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by the technical rules of evidence. The applicant or permittee may appear in person or by counsel, present evidence, and cross examine witnesses. The hearing shall be recorded. Within five days after the conclusion of the hearing, the hearing officer shall prepare and mail to the applicant or permittee and the city manager a written decision whether to deny, suspend or revoke the permit, stating the reasons for the decision.

(e) Any person aggrieved by the hearing officer's decision under subsection (d) of this section may appeal the decision to the superior court within 30 days after the date the decision was mailed or delivered to the parties. Unless the court orders otherwise, an appeal does not stay the effect of a decision by the hearing officer to deny, suspend or revoke a permit.

Section 4: Section 1.12.040 of the Kodiak City Code is hereby amended such that the offense and fine schedule set forth in subsection (c) shall contain the following:

Code Section	Description of Offense	Fine
5.08.030	Operating mobile food service without permit	1,000
5.08.080(a)	Failure to display permit	100
5.08.080(b)	Failure to furnish documents upon request	100
5.08.110(a)	Unlawful operation of mobile food service	1,000
5.08.110(b)	Operating mobile food service in unauthorized area	1,000
5.08.110(c)	Obstructing traffic or inconveniencing public	1,000

Section 5: This ordinance shall go into effect one month after its passage and publication.



CITY OF KODIAK

Pat Owen

 MAYOR

ATTEST:

Michelle W. Shively, Treasurer

 CITY CLERK

First Reading: October 14, 2021
 Second Reading: October 28, 2021
 Effective Date: December 3, 2021