

ORDINANCE NO. 2022- _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTIONS 26-346 AND 26-347 AND REPEALING SECTION 26-348 TO ALLOW MOBILE ICE CREAM VEHICLES WITHIN THE CITY

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home rule municipality, organized and existing under and by virtue of Article XX, Section 6 of the Colorado Constitution, and as such the City has the authority to regulate matters of local concern including taxation and local business licensing; and

WHEREAS, the City has received considerable requests for ice cream vehicles to be allowed within the City. However, mobile ice cream vehicles are currently a prohibited occupation in the City, and the City Council (the “Council”) no longer wishes to forbid mobile ice cream vehicles within the City; and

WHEREAS, jurisdictions such as Denver and Commerce City allow mobile ice cream vehicles within their jurisdictions, and the City Council wishes to assist small businesses that operate mobile ice cream vehicles to be permitted within the City; and

WHEREAS, the Council finds it necessary to amend the City Code to repeal the prohibition against ice cream vehicles, and therefore the Council agrees that new rules and regulations are needed to protect the safety and welfare of the public; and

WHEREAS, the Council wishes to regulate the sale of ice cream products from vehicles on public rights-of-way and to ensure safe pedestrian and vehicular movement within the City; and

WHEREAS, the Council finds these amendments to the City Code are necessary and proper to promote the health, safety, and welfare of the citizens of Aurora.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That Article VII Subheading and Section 26-346 of the City Code of the City of Aurora, Colorado, are hereby amended to read as follows:

Article VII. ~~Peddlers~~ **Mobile Ice Cream Vehicles.**

Sec. 26-346 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

***Mobile 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 mobile food truck as defined under section 146-6.2 (*Mobile Food Truck*).**

***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.**

~~*Vehicle* includes every device in, upon, or by which any person or property is or may be transported or drawn upon the streets, irrespective of the source from which the power to propel such vehicle may come and irrespective of the number of wheels of such vehicle.~~

Section 2. That Section 26-347 of the City Code of the City of Aurora, Colorado, is hereby amended to read as follows:

Sec. 26-347. ~~Occupations prohibited~~ **Mobile Ice Cream Vehicles.**

(a) Unlawful actions. It shall be unlawful for any person operating or owning an ice cream vehicle to:

- 1) Operate or permit the operation of an ice cream vehicle without first obtaining a city general business license.
- 2) Operate or permit the operation of an ice cream vehicle without a Colorado retail mobile food service license when one is required due to the nature of food service.
- 3) Operate or permit operation of an ice cream vehicle by a person that is not licensed by the state of Colorado to operate a motor vehicle when such licensing is required.
- 4) Operate or knowingly permit the operation of an ice cream vehicle by a person that is a registered sex offender or has ever been convicted of any sex crimes involving children.
- 5) Fail to verify that employees or contractors hired to operate an ice cream vehicle are not registered sex offenders.

- 6) Operate an ice cream vehicle to sell or offer to sell ice cream products, including the playing of music when:
 - a. Driving in excess of ten (10) miles per hour.
 - b. On a street where in the posted speed limit is in excess of twenty-five (25) miles per hour.
 - c. Stationary in excess of fifteen (15) minutes unless otherwise permitted as a mobile food truck by the city's uniform development code.
 - d. Driving the vehicle in reverse.
 - e. Between the hours after sunset and before 10:00 am.
 - f. On private property, school grounds or park property without prior written permission maintained on the vehicle.

- 7) Engage in any transaction or attempted transaction:
 - a. When the ice cream vehicle is not lawfully and safely stopped, and the ice cream vehicle's hazard lights are not in operation.
 - b. From any part of the ice cream vehicle facing traffic.
 - c. When the ice cream vehicle is not as near to the curb or the edge of the roadway as is reasonably possible.
 - d. With any person standing in the traveled portion of the roadway or on any median or other traffic control device.

- 8) Attempt to entice any person not affiliated with the business into the vehicle or to ride on the ice cream vehicle.

- 9) Attempt while operating the ice cream vehicle to entice any children under the age of eighteen (18) years of age to meet at another location or contact the operator for reasons not related to the ice cream business without the consent of a parent or guardian.

- 10) Operate or permit operation of an ice cream vehicle unless such vehicle:
 - a. Is clearly marked and identifiable as an ice cream vehicle.
 - b. Is marked in letters and numbers at least three (3) inches in height, with the name and address of the licensee.
 - c. Has the city general business license and state retail food licenses either posted or available upon request of the operator.
 - d. Is properly licensed and registered by the state of Colorado as required.
 - e. Is equipped with safety features including rear and side view mirrors and a convex mirror mounted to the front of the vehicle or a camera

so the operator in a normal seating position is capable of seeing the area in front of the vehicle that is obscured by the hood.

- f. Is properly insured with commercial general liability insurance and comprehensive automobile liability insurance, in coverage amounts determined by the Finance Director and is available upon request of the operator.

11) Operate an ice cream vehicle in any manner that endangers the health, safety or welfare of any person or property.

~~Except as authorized by section 146-1254, the trade, business, occupation, enterprise or operation of selling and distributing or offering for sale or distribution frozen milk, frozen dairy or ice confection products, candy, gum or other confection products from vehicles on the streets, highways, alleys, rights of way or public ways in the City is declared a nuisance and is unlawful and prohibited. (Code 1979, § 30-2; Ord. No. 2014-20, § 2, 7-14-2014)~~

Section 3. That Section 26-348 of the City Code of the City of Aurora is hereby repealed in its entirety.

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 5. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this ____ day of _____, 2022.


PASSED AND ORDERED PUBLISHED BY REFERENCE this ____ day of _____, 2022.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ,
City Clerk

APPROVED AS TO FORM:



HANOSKY HERNANDEZ,
Sr. Assistant City Attorney