

**SECTION 33**  
**Special Events and Vending**  
As amended by Ordinance 1363, April 22, 2013

**DIVISION I**  
**SPECIAL EVENTS**

**33-10 PURPOSE AND INTENT**

The purpose and intent of this Division is to provide for the temporary use of land for Special Events in a manner consistent with its normal use and beneficial to the general welfare of the public. Furthermore, it is the intent of this Division to protect nearby property owners, residents and businesses from Special Events that may be disruptive, unsafe or inappropriate given site conditions, traffic patterns, land use characteristics and the nature of the proposed event.

**33-11 AUTHORITY**

Special Event Permits as used in this section may be issued by the Governing Body, or as otherwise directed in this section, without the requirements of a public hearing. Conditions may be attached to the permits that are deemed necessary to protect the health, safety and welfare of the citizens of Tonganoxie.

**33-12 DEFINITIONS**

The terms used in this Division, for purposes of the regulations in this Section, shall be defined as follows:

- A. Special Event. A temporary, short-term use of land or temporary structure(s), located or conducted outside. A Special Event may be on a public or private street right-of-way, public property, or private property within the corporate limits of the City of Tonganoxie, and may include, but not be limited to, the following types of activities:
1. Athletic Event. An organized competitive or recreational event in which a group of people collectively engage in a sport or form of physical exercise, including but not limited to: running, jogging, walking, bicycling or skating, on any public street right-of-way or upon public property in the corporate limits.
  2. Auction/Estate Sale. Any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.
  3. Block Party. A neighborhood event, in which a street is temporarily closed and designated as a “play street.”
  4. Commercial Event. Commercial activities, either on the same property as the primary commercial use, or on other private commercial property, which are intended to sell, lease, rent or promote specific merchandise, services or product lines, including, but not limited to: tent sales, sidewalk sales, trade shows, flea markets, product demonstrations or parking lot sales of food, art work or other goods. This definition does not include Street or Mobile Food Vending (see Division II of this Section).
  5. Entertainment Event. An organized event having as its primary purpose the entertainment or amusement of a group of people, including but not limited to: carnivals, festivals, public firework displays, fairs, or concerts, on public or private property within the corporate limits.
  6. Film Production. The process of making a film on public or private property within the corporate limits.

7. Garage Sales. The sale of personal property that is conducted on premises within a residential district upon which is located a dwelling, or on any portion of a lot used for residential purposes.
  8. Non-commercial Events. Fund-raising or non-commercial events sponsored by non-profit groups or non-profit organizations.
  9. Parade. Any march or procession consisting of people, animals, or vehicles, or any combination thereof, except funeral processions, upon any public street, sidewalk, alley, jogging trail, or bike path, which does not comply with normal and usual traffic regulations or controls.
  10. . Political Event. An organized event, not including an athletic or entertainment event, having as its primary purpose the exercise of expressive activities of a political nature, including but not limited to speech making, picketing, protesting, marching, demonstrating or debating public issues.
  11. . Seasonal Sales. Farmer’s market, Christmas tree sales, fruit, flower or vegetable sales, or sale of other seasonal products, when sold on property other than on the site where grown, constructed or assembled.
  12. Sidewalk Café. A portion of an eating or drinking establishment located on a public sidewalk or mall which functions as an extension of the use of the adjacent private property by an eating or drinking establishment. A sidewalk café is open to the sky except that it may have awnings or umbrellas. No portion of the sidewalk café shall be used for any purpose other than dining, drinking, and the associated circulation therein.
  13. . Private Events. Events held on private property meeting all applicable codes and ordinances, including but not limited to wedding receptions and birthday events.
- B. Non-Profit Group or Organization. Any person(s), partnership, association, non-profit corporation, a 501(c)(3) corporation, or other group that does not distribute its surplus funds to its owners, shareholders or members, and whose activities are conducted for charitable, civic, or humanitarian motives, or for the benefit of others, and not for the private gain of any individual or group and may include, but shall not be limited to, patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, charitable, scientific, historical, athletic, or medical activities.
- C. Special Event Signage. Signage that is temporary in nature, is not permanently attached to the ground or sign surface, and is used to advertise any type of Special Event as listed herein, whether or not a Special Event Permit is required.

**33-13 SPECIAL EVENT PERMIT REQUIRED**

- A. Except as otherwise provided under Section 33-014, Exemptions, a Special Event Permit is required for the following Special Events:
1. Athletic Event.
  2. Commercial Event.
  3. Entertainment Event.
  4. Non-Commercial Event, unless conducted entirely on private property owned or leased by the sponsoring non-profit group or organization.
  5. Seasonal Sales Event.
  7. All Special Events requiring street closure.
  8. All Special Events which include Street or Mobile Food Vendors to be located on a public right-of-way.
- B. A Special Event Permit is also required for the following *temporary uses* in any district upon

review and finding of the Governing Body that the proposed use is in the public interest. The use

shall be approved for a specific short-term duration. This Special Event Permit is not to be used as a method to avoid the process for those uses normally allowed in zoning districts or under a Special Use Permit. (See Section 25-013.s for sign requirements for this subsection).

Performance requirements in Section 33-070.j do not apply to the following temporary uses.

1. Batching plant, asphalt or portland cement concrete plant in connection with a large-scale road or building project. The term shall be for no more than the expected duration of a specific project and the plant is to be completely removed and the site restored to its original condition at completion of the project.
2. Off-site construction structure or construction materials yard in connection with a large-scale building or road project. The term shall be for no more than the expected duration of a specific project and the operation is to be completely removed and the site restored to its original condition at completion of the project. Temporary event permits shall not be required for this type of use when located wholly on the construction site.
3. Commercial flea markets, swap meets or auctions including those events held at the Leavenworth County Fairgrounds or other similar location that provide sufficient services and amenities for special events of this type.
4. Movie or video filming operations involving a combined cast, crew and extras of greater than ten (10) persons, except that one (1) permit may be acquired for a single movie or video filming operation at different locations over a (6) month period provided the applicant informs the Police Department of each filming location twenty-four (24) hours prior to commencing filming operations.
5. Other temporary uses which are similar to the listed uses in function, traffic-generating capacity, and effects on other land uses.
6. Farmer's market or similar activity for no more than two (2) days per week for the traditional summer season.

### **33-14 SPECIAL EVENT PERMIT EXEMPTIONS**

The following Special Events are exempt from the requirements of this Section and do not require a Permit, unless the Special Event requires street closure:

- A. Commercial, non-commercial or private events that have a minimal impact on the community. Criteria for determining minimal versus significant impact shall include, but not be limited to the following:
  1. Public services required
  2. Tent or other structures required
  3. Traffic circulation
  4. Parking considerations
  5. Anticipated attendance. This could include centralized Special Events held within a shopping center parking area, not connected to individual businesses within the shopping center, with no off-site impact.
- B. Garage sales, rummage sales, farm sales, one-time estate auction sales held by private individuals or non-profit organizations. Garage sales, rummage sales or farm sales on private property are permitted up to 4 times per year, not to exceed five (5) days per event and twenty (20) days per year.
- C. Political Events.
- D. Any Special Event sponsored or co-sponsored by the City. Such events shall comply with the performance standards set forth herein.
- E. Any Special Event held within a public park. These events shall be governed by other provisions of the Municipal Code regulating conduct in City parks and recreation areas.

- F. Any business already operating under a Special Use Permit that regulates the display and sale of outdoor goods or is authorized the operation of any Special Event as defined herein.
- G. Vendors selling at the City's designated Farmers' Market.
- H. Seasonal Sales of produce, vegetables, flowers or other foods when sold on the property where grown.
- I. Athletic events conducted exclusively on school owned property.
- J. The City Administrator or his designee shall determine if one or more permits are required for a specific event, based upon the impact of the event(s).

### **33-15 FEES FOR SPECIAL EVENT PERMITS**

- A. Application Fee. An Application Fee shall be required upon submittal of each Special Event Application in accordance with the City's Schedule of Fees and Charges.
- B. Fees for City Services. If the Permit applicant requests City services, or City staff determines the need or the City Council upon referral or appeal, as described in this Section, determines, as a condition of granting the permit, that public services or equipment must be provided to protect the public health or safety, the applicant shall be required to pay a fee for City services in accordance with the City's Schedule of Fees. Payment for City services shall be paid prior to issuance of the permit.

### **33-16 SPECIAL EVENT PERMIT APPLICATIONS**

- A. Application Required. A Special Event Application shall be submitted for any Special Event requiring a Special Event Permit, as outlined above under "Permit Required."
- B. Application Deadline. A complete application shall be submitted at least 20 calendar days prior to the requested start date of a Special Event. The City Administrator or his designee shall have the authority to waive the application deadline.
- C. Submission Requirements. The application shall include the following:
  1. Applicant Name and address and brief description of the event.
  2. Name and address of the owner of the premises or property on which the proposed event is to be held.
  3. Description of City services required for the event such as traffic control, street sweeping etc. , if applicable.
  4. Fees, as required.
  5. A written narrative, fully describing the proposed event, including
    - a. Location.
    - b. Hours of operation.
    - c. Anticipated attendance.
    - d. Buildings or structures to be used in conjunction with the event .
    - e. Proposed signs or attention attracting devices .
    - f. Public streets to be used, if any.
  6. A statement that the standards set forth in this Division have been satisfied.
  7. A site plan in the form and the level of detail as required by the City Administrator or his designee, showing the location of all existing or proposed uses, structures, parking areas, outdoor display areas, signs, streets, and property lines.
  8. Date and time of the event to include start and ending dates and times.
  9. Written approval from the property owner agreeing to the proposed event, if the applicant is not the same as the property owner.
  10. Location and number of proposed temporary public toilets, if appropriate.

11. Proposed temporary potable water supplies, which shall be reviewed by the Water Utilities Department, if applicable.
  12. . Proof of liability insurance. If the Special Event will take place on public property, said certificate of insurance shall name the City as an additional insured party in an amount determined by the City Administrator or his designee based on the nature of the Special Event.
  13. . A statement that ensures indemnification of the City and that public property will be protected and/or restored to its condition prior to the Special Event.
- D. The City Administrator or his designee (unless otherwise specified in this Division), may approve any Special Event Permit after determining that the event will comply with all applicable terms in this Division,
- E. Conditions of Approval. When issuing a Special Event Permit, the City Administrator or his designee, or City Council may establish additional conditions deemed necessary to ensure compatibility with adjacent land-uses and to minimize potential adverse impacts on nearby uses, including, but not limited to:
1. Special Events which require City services during the event shall be limited to one (1) per day or (1) per weekend subject to availability of personnel, as determined by City staff. Scheduling shall be on a first come-first served basis.
  2. Signs. The number, size, location, or time limit for signs may be limited.
  3. Temporary arrangements for parking and traffic circulation.
  4. Modifications or restrictions on the hours of operation, duration of the event, size of the event or other operational characteristics.
  5. The provision of traffic control or security personnel to ensure the public safety and convenience.
  6. Posting of a security deposit in an amount required by the City Administrator for Special Events where the anticipated attendance is five hundred (500) or more people to help ensure that the operation of the event and the subsequent restoration and cleanup of the site are conducted according to required Special Event standards and conditions of approval. This security deposit may be waived at the discretion of the City Administrator.
- F. Prohibition on Transfer. No Special Event Permit issued under the provisions of this Division shall be assignable or transferable to any other person or transferable to another location for the operation of a Special Event by that person or at a different location.

### **33-017. SPECIAL EVENT PERFORMANCE STANDARDS**

Special Events shall comply with the following standards. Failure to comply with these standards may be cause for early closure of the event.

- A. Location. Special Events that do not require the use of public right-of-way shall be conducted on private property in a commercial or industrial zoning district, except that non-profit organizations may conduct Special Events on any property where the owner grants permission.
- B. Land-Use Compatibility. The Special Event shall be compatible with the purpose and intent of this Division and with adjacent land uses. The Special Event shall not impair the normal, safe and effective operation of a permanent use on the same site. The Special Event shall not endanger or be detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the Special Event.-
- C. Compliance with Other Regulations. Permit holders must at all times comply with all applicable legal and regulatory provisions, including, without limitation, health code regulations.

- D. Restoration of the Site. Any temporary structure shall be promptly removed upon the cessation of the event. Within forty-eight (48) hours of cessation of the event, the site shall be returned to its previous condition, including the removal of all litter, signage, attention-attracting devices or other evidence of the Special Event. If the site is not returned to its previous condition, the City may restore the site at the expense of the applicant.
- G. Traffic Circulation. The Special Event shall not cause undue traffic congestion or accident potential given anticipated attendance and the design of adjacent streets, intersections, parking and traffic controls. All sidewalks shall be left open for pedestrian traffic unless special approval is received for blockage. No alleys, driveways, fire lanes or other access points shall be blocked by the Special Event unless specific approval is granted for the Special Event.
- H. Parking Restrictions. Approval of a short-term parking restriction can be granted through a Special Event application as determined by the City Administrator or his approved designee.
- I. Street Closings and Temporary Traffic Control. Special Event Permit holders shall be responsible for securing or arranging for installation and removal of all required temporary traffic control devices, including but not limited to all barricades and signs when street or lane closures are approved. All temporary traffic control shall be in accordance with the Manual on Uniform Traffic Control Devices, subject to approval by the City Administrator or his approved designee. The approval of a Special Event Permit shall waive the requirement for any applicable Temporary Traffic Control Permit required.
- J. Off-street Parking.
1. All off-street parking surfaces used for special events shall be on asphalt, concrete, or other improved impervious surface unless otherwise approved with the Special Event Permit.
  2. Parking lot stalls shall not be reduced by more than twenty percent (20%) of the amount required for the associated structure by the Special Event.
  3. Parking lot stalls shall not be reduced by more than ten percent (10%) of the amount of required parking for the associated structure when used for seasonal sales, which can occur for up to 90 days each, three times a year, with at least a 30 day break between events regardless of the length of the sale.
  4. Special Events shall not cause a shortage of parking for the primary use on the property on which they are located. Special Events shall also not create a shortage of parking for uses on surrounding the property on which they are located.
- K. Anchoring Devices. No spikes, nails, anchors or other devices shall be driven into any public street or sidewalk.
- L. Fire Safety. The City's Fire Department shall be consulted for the following requirements and inspection, as necessary.
1. Fire lanes a minimum of 20 feet in width and 12 feet in height or as otherwise approved by the Fire Chief, must be provided in order to allow Fire Department access within 150 feet of all structures and on at least two sides of all two-story structures within 500 feet of the location of the Special Event.
  2. All fire hydrants in the area of the Special Event must be left with five (5) feet of clearance on all sides and shall be accessible from the fire lanes that are designated with the event.
  3. No open fires shall be permitted unless written advance approval is obtained from the Fire Department.
  4. Fire extinguishers shall be available as determined by the Fire Chief.

5. Temporary electrical wiring for the Special Event shall be installed in accordance with the requirements of the National Electrical Code.
  6. Tents shall comply with the Fire Code and applicable building codes.
  7. Exit signs and proper exiting aisles shall be provided in temporary Special Event structures.
- M. Nuisances. The Special Event shall not generate excessive noise, dust, smoke, glare, spillover lighting or other forms of environmental or visual pollution.

**33-018 SPECIAL EVENT PERMIT DENIAL**

- A. A permit may be denied where
1. An applicant is found to have an unpaid civil judgment against him or her which relates to the duties and responsibilities of the special event which shall be determined by the nature and the amount of the judgment, the relationship of the judgment to the purpose of the permit, and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments; or
  2. An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the special event which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit, and the extent that the permit would allow someone to engage in further criminal activity; or
  3. The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct the special event; or
  4. The opportunity to reissue a permit has been denied due to previous violations as described in this Division.
- B. The denial of any application by the City Administrator or his designee shall be in writing.

**33-019 APPEAL OF A SPECIAL EVENT PERMIT REVOCATION, SUSPENSION OR DENIAL**

- A. The notice of revocation, suspension or denial of a Special Event Permit shall include the procedure for appealing the suspension, revocation or denial
- B. If a City official revokes, suspends or denies a Special Event Permit, the applicant of the permit which has been revoked, suspended or denied shall have the right of appeal to the City Council by submitting an appeal in writing to the City Clerk within ten 10 business days of the revocation, suspension or denial.
- C. Pending action on the appeal of a permit which has been revoked or suspended shall be considered revoked or suspended.
- D. If a written appeal is not submitted within ten 10 business day of revocation suspension or denial or if the appeal is denied, the permit shall hence be considered revoked, suspended or denied
- E. Schedule. Appeals shall be placed on the first available City Council meeting agenda for consideration.
- F. City Council Consideration. The City Council action shall be final and may include additional fees to cover the cost of providing city services and/or any other conditions deemed necessary to protect the general welfare of the City and the public.

**33-20 SPECIAL EVENT PERMIT REVOCATION OR SUSPENSION**

- A. A Special Event Permit may be revoked upon conviction of any offense committed by an individual in the City of Tonganoxie while engaged in the special event or if a final conviction occurs or is found to have existed at the time of application or if civil judgments

as set forth above are placed or found of record against an applicant. A Special Event Permit may be suspended in the event of pending charges of a crime as set forth above upon a magistrate determination of probable cause in connection with such charges.

- B. A Special Event Permit may be revoked for non-conformity to the application location, specifications or requirements as well as to non-conformity to an approved location plan or diagram.
- C. Any employee working for an applicant permitted as an employer under this Division may be denied the right to operate under the Special Event Permit or such rights may be suspended or terminated under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer permit terminates all employee permits.
- D. A Special Event Permit may be suspended or revoked for not complying with the requirements of this Division or any other ordinances or laws.

**33-21 SPECIAL EVENT REAPPLICATIONS AFTER REVOCATION, SUSPENSION OR DENIAL OF PERMIT**

- A. If a Special Event Permit holder or applicant is not in compliance with this Division or any other ordinances, laws or the approved special event application, the following actions will be taken
  - 1. One violation. A warning may be issued or the permit may be revoked or suspended and the applicant or permit holder may become ineligible for new or reissued permit for three (3) months.
  - 2. Two violations. Permit will be revoked and the applicant or permit holder may become ineligible for new or reissued permit for three (3) months
  - 3. Three violations. Permit will be revoked and the applicant or permit holder will become ineligible for new or reissued permit for one (1) year
  - 4. If an applicant's permit has been denied and the appeal is denied, the applicant may not reapply for three (3) months.

**33-022. RESERVED**

**DIVISION II  
STREET and MOBILE FOOD VENDING**

**33-100 PURPOSE AND INTENT**

The purpose and intent of this Division is to advance the health, safety, and welfare of the residents of the City of Tonganoxie. The Governing body find that it is necessary to regulate various activities, including those of Street or Mobile Food Vendors. This Division is designed to provide standards relative to the accessibility, appearance, and safety regarding those uses.

**33-101 AUTHORITY**

Street and Mobile Food Vending permits as used in this Division may be issued by the City Council, or as otherwise directed in this Division without the requirements of a public hearing. Conditions may be attached to the permits that are deemed necessary to protect the health, safety and welfare of the citizens of Tonganoxie.

**33-102 DEFINITIONS**

The terms used in this Division, for purposes of the regulations in this Division, shall be defined as follows:

*Lot, Vacant.* A vacant lot on which there are no permanent buildings.

*Push cart:* A non-self-propelled vehicle used for street vending.

*Street vending:* the act of selling, hawking, peddling, or offering to sell, hawk or peddle any personal service or item, perishable or otherwise, in or upon any public street, public sidewalk, public alley, public way, public building, public park, or other public place in the city; or in or upon any private property within the city.

*Street vendor:* One who sells, hawks, peddles, or offers to sell, hawk or peddle any personal service or item, perishable or otherwise, in or upon any public street, public sidewalk, public alley, public way, public building, public park, or other public place in the city; or in or upon any private property within the city.

*Mobile Food Vending.* The act of selling food and/or beverages by operating a mobile food truck, a mobile food cart, or a mobile packaged food delivery truck.

*Mobile Food Cart.* A vehicle that is not self-propelled or a stand limited to serving: a) non-potentially hazardous foods, as defined by the Kansas Department of Agriculture, or b) commissary-wrapped food maintained at proper temperatures, or c) limited to the preparation and serving of hot dogs or similar sausages.

*Mobile Food Truck.* An enclosed vehicle, truck or trailer licensed to operate on public roads in which a person travels from place to place to serve food or beverage.

*Mobile Packaged Food Delivery Truck.* An enclosed vehicle or truck licensed to operate on public roads in which a person travels from place to place to deliver packaged food that has been previously ordered.

*Single-Unit Mobile Food Truck.* A Federal Highway Administration (FHWA) Class 1-7 vehicle, with vehicle weight less than 33K lbs, that is licensed to operate on public roads in which a person travels from place to place to sell packaged food items.

### **33-103 VENDING PERMIT REQUIRED**

- A. No person shall engage in street or mobile food vending except as specifically authorized by this Division.
- B. Except as otherwise provided in this Division, a Street or Mobile Food Vendor Permit is required for any push cart, street vending, mobile food vending, or mobile food cart.
- C. A permit for a Street or Mobile Food vendor may be issued on a daily, monthly, annual or event basis and shall continue in force until the expiration of the permit, or as otherwise provided within this Division. All permits expire on December 31<sup>st</sup> of the issuing year, and must be renewed. Annual and monthly fees are not prorated for a partial month or year.
- D. In addition to any local permits that are required, vendors must meet all applicable state laws and regulations.
- E. No vendor shall be issued more than one city of Tonganoxie Street or Mobile Food Vending Permit.

### **33-104 VENDING PERMIT EXEMPTIONS**

Street or Mobile Food vendor permits are not required for the following:

- A. Mobile Packaged Food Delivery Trucks
- B. Neighborhood Refreshment Stands and other similar products.
- C. Noncommercial Events such as private events held on one and two family residential properties, provided that all required permits are obtained and that the Street or Mobile Food vendor:
  - 1. Is not open to the public, such as at an outdoor weddings or employee parties;
  - 2. Is located on a site with a single user and/or tenant; and
  - 3. Will not make, cause or allow the making of any noise or sound which exceeds the limits set forth in the City of Tonganoxie's Code of Ordinances, as may be amended from time to time, and
  - 4. Will not generate adverse traffic, or other nuisance impacts on adjacent properties.
- D. Vendors selling at the City's designated Farmers' Market.
- E. Events held exclusively for the benefit of a non-profit (501c3) organization.

**33-105 FEES FOR STREET or MOBILE FOOD VENDING PERMITS**

An application fee shall be required upon submittal of each Street or Mobile Food Vendor Permit application, in accordance with the City's Schedule of Fees and Charges.

**33-106 PERMITTED LOCATIONS FOR STREET or MOBILE FOOD VENDING**

- A. *Private Property.* Street or mobile food vending is permitted in all commercial and industrial zoning districts on private property if:
  - 1. The vendor has obtained the permission of the property owner; and
  - 2. The vendor is in compliance with all provisions of this Division; and
  - 3. The vending is operated on asphalt, concrete, or other improved impervious surface; and
  - 4. The vendor is not offering for sale any food and/or beverage from any unoccupied or vacant lot, except as part of a City Approved Event; and
  - 5. Only one (1) Street or Mobile Food Vendor shall be allowed on any one (1) parcel less than one-half (1/2) acre in size, and no more than one (2) Street or Mobile Food Vendors shall be allowed on any one (1) parcel, except as part of a City Approved Event; and
  - 6. The vendor shall not locate within one-half mile from the boundary of any special event requiring street closure, except:
    - a. When the vendor has written authorization from the event coordinator to operate within the festival boundaries or within one-half mile thereof; or
    - b. When the vendor has a previously approved permit to operate elsewhere.
- B. *Residential Property.* Street or mobile food vending is limited in residential districts to the following:
  - a. Single-Unit Mobile Food Trucks that do not exceed a 15-minute parking duration for sales/services.
  - b. Ice cream truck as permitted in Division III of this ordinance.
- C. *Public Property (Sidewalks).* Where the vending occurs on a public sidewalk, the vending must be setback no more than six feet from the curb leaving at least a three-foot passageway for pedestrians. All merchandise shall be securely and adequately placed so as not to endanger a passerby or protrude into any street, alley or way.

**33-107 PROHIBITED LOCATIONS FOR STREET or MOBILE FOOD VENDING**

- A. *Similar Businesses.* Street or Mobile Food vendors shall not sell, hawk or peddle, or offer to sell, hawk or peddle any service or item within a 50 foot radius of a public entrance of an established brick and mortar business offering similar products to the public during the hours

that the business is open to the public, unless they have written permission from the business owner.

- B. *Residential Property.* Street or mobile food vending is prohibited in residentially zoned districts, except as provided in section 33-106.B .
- C. *Public Street.* Street or Mobile Food Vendors are prohibited from offering for sale any food and/or beverage from a public street, except as part of a City Approved Event.
- B. *School Proximity.* Street or Mobile Food vendors shall not sell or attempt to sell any item or attempt to make any sale within two hundred (200) feet of a primary or middle school on a day in which school is in session, during the 30 minute period preceding school or the 30 minute period after adjournment.
- C. *Adjacency.* Street or Mobile Food vendors shall not vend or locate equipment adjacent to on-street parking spaces reserved for disabled access, entries and exits from buildings or facilities, street intersections, in driveways, alleys, fire lanes, or other access points where equipment may obstruct vehicle and pedestrian sight distance. Mobile Food Vending shall not cause undue traffic congestion or accident potential given anticipated attendance and the design. All sidewalks shall be left open for pedestrian traffic unless otherwise approved.

### **33-108 PERMITTED HOURS OF OPERATION FOR STREET or MOBILE FOOD VENDING**

- A. Vending shall only occur between the hours of 7:00 a.m. to 10:00 p.m. Sunday through Thursday, and 7:00 a.m. to 11:00 p.m. Friday and Saturday, unless otherwise approved.
- B. All Street or Mobile Food vendors shall adhere to designated time and day requirements and shall be allotted one hour set-up and one hour breakdown and travel time before and after stated selling hours, unless otherwise approved.

### **33-109 STREET or MOBILE FOOD VENDING PERFORMANCE STANDARDS**

The following conditions are made applicable to street or mobile food vending within the city:

- A. Any person engaging in street vending must apply for and obtain all business licenses and permits as required by this Code and must keep those licenses and permits current as long as vending occurs.
- B. Any person engaging in street or food vending who offers to the public any food or beverage item must also apply for and obtain all licenses and permits as required by the applicable Health Department, and must keep those licenses and permits current as long as vending occurs.
- C. A vendor permit including all required licenses and permits must be prominently displayed on the vehicle or push cart from which the Street or Mobile Food vendor operates, and in a manner prescribed by the City Administrator or his designee, and department of health (as applicable). If a Street or Mobile Food vendor vends without a push cart or mobile unit, the Street or Mobile Food vendor must prominently display a hanging Street or Mobile Food vendor permit upon his or her person. It shall be a violation of this Division to vend without a properly displayed vendor permit. All permits shall be made available for inspection by law enforcement officials upon request
- D. Any person engaging in street or mobile food vending shall have prominently displayed upon the side of the vehicle or push cart from which the Street or Mobile Food vendor operates his or her business name, or personal name as registered with the Secretary of State, in letters not less than four inches in height.
- E. Any Street or Mobile Food vendor who changes his or her place of residence or business, or who transfers ownership of the vehicle or push cart from which the Street or Mobile Food

- vendor operates, shall notify the City Administrator or his designee and Department of Health of the change or sale, as applicable, within 15 days.
- F. No Street or Mobile Food Vendor Permit issued under the provisions of this Division shall be assignable or transferable to any other person or transferable to another location for the operation of a Street or Mobile Food vendor by that person or at a different location
  - G. No person under the age of 16 years, other than the Street or Mobile Food vendor or the Street or Mobile Food Vendor's employees, shall be allowed in or upon any vehicle or push cart engaged in street vending.
  - H. Street or Mobile Food vendors selling, hawking or peddling, or offering to sell, hawk or peddle any service or item must comply with all ordinances applicable to the business in which they are engaged and the services and items being offered to the public.
  - I. Street or Mobile Food vendors offering food or beverage shall provide a trash receptacle and must clean the litter and food deposits from that receptacle as often as necessary to ensure compliance with all applicable health code ordinances and regulations, but in no event less than once per day.
  - J. Restoration of Site. Immediately upon cessation of the vending, the site shall be returned to its previous condition, including the removal of all litter, or other evidence of the vending. If the site is not returned to its previous condition, the City may restore the site at the expense of the applicant.
  - K. Health and Safety Criteria. Mobile Food Vending shall not impair the normal, safe and effective operation of a permanent use on the same site. Mobile Food Vending shall not endanger or be detrimental to the public health, safety or welfare or injurious to property or improvements in the immediate vicinity of the vending, given the nature of the activity, its location on the site and its relationship to it.
  - L. Signs shall be in conformance with Section 25-013.t 'Street or Mobile Food Vendor Signs'.
  - M. The failure of a Street or Mobile Food Vendor to satisfy any of the conditions established by this Division shall render the street or mobile food vending unlawful.
  - N. Off-street Parking.
    - 1. All off-street parking surfaces used for Street or Mobile Food vending shall be on concrete, asphalt or other improved impervious surface.
    - 2. The Street or Mobile Food vendor sales area shall not exceed more than two (2) parking spaces or six hundred square feet in area, whichever is greater. However, at no time may the required number of parking spaces for the principal use of the property be rendered nonconforming due to vendor use.
    - 3. Street or mobile food vending shall not create a shortage of parking for uses on properties surrounding the property on which they are located.
  - O. A Street or Mobile Food Vendor shall be permitted to conduct sales a maximum duration of four consecutive (4) hours per approved location per day, unless part of a special event.
  - P. Anchoring Devices. No spikes, nails, anchors or other devices shall be driven into any public street or sidewalk.
  - Q. No Street or Mobile Food vendor shall use any sound device or sound reproducing or amplifying device in the course of business. All Street or Mobile Food vendors shall operate in compliance with Chapter XI, Article 2, Section 11-201 of the City of Tonganoxie's Code of Ordinances.
  - R. Vendors shall maintain a twelve (12) foot distance between one another while selling, offering for sale, or soliciting offers to purchase food, unless part of a special event (Cross reference 33-210.A.5).

- S. Street or Mobile Food Vendors may travel along any public right-of-way within the city of Tonganoxie to reach their destination. However, vending shall be limited to the location(s) on the permit issued. Street or Mobile Food vendors shall not be allowed to vend, expose or otherwise advertise merchandise, solicit sales, or loiter greater than fifteen (15) feet outside of the permitted locations.
- T. Nuisances. The Mobile Food Vending shall not generate excessive noise, dust, smoke, litter, glare, spillover lighting or other forms of environmental or visual pollution.
- U. Vending vehicles or carts cannot be left unattended at any time, parked or placed with 15 feet of any intersection or within 25 feet of any fire hydrant.

### **33-110 EXEMPTIONS**

- A. Nothing in this article shall be construed to prohibit businesses from operating a sidewalk cafe, provided they have obtained an annual sidewalk cafe permit.
- B. Nothing in this article shall be construed to alter or prohibit the operation of any municipal market, presently existing or established in the future by an act of the city council.
- C. Nothing in this article shall be construed to prohibit street vending within an area closed by Special Event Permit issued by the city, including, but not limited to, permits for street fairs, parades and block parties, but vendors must comply with the ordinances herein.

### **33-111 VENDING APPLICATIONS**

- A. Application Required. A Street or Mobile Food Vendor application shall be submitted to the City Clerk on a form provided by the City Clerk for that purpose, in addition to paying the Street or Mobile Food Vendor's Permit Fee.
- B. Application Deadline. A complete application shall be submitted at least 20 calendar days prior to the requested start date of vending. The City Administrator or his designee shall have the authority to waive the application deadline.  
*The application shall provide the following information:*
  - a. The applicant's full legal name, date of birth, place of birth, and Social Security Number.
  - b. The applicant's permanent address, business mailing address, and telephone number.
  - c. A copy of the applicant's government-issued photo identification.
  - d. The applicant's valid Kansas sales tax number.
  - e. A brief description of the nature of the business and the product, food and/or beverage to be offered for sale.
  - f. A photograph of each Street or mobile Food Unit and, if licensed, the license plate number of each Street or mobile Food Unit.
  - g. A copy of a valid State of Kansas license for food service establishments, if such is required.
  - h. Proof of a valid city of Tonganoxie Business License;
  - i. If a vendor proposes to vend from a single location for more than four (4) consecutive hours at a time, the vendor must identify the location and an available restroom to be used by the vendor, and written permission to use the bathroom from its owner.
  - j. Proof of general liability insurance in the amount of \$500,000.00 or more, as required by the City Administrator.
  - k. A statement indicating whether or not the applicant has had a Street or Mobile Food Vendor's License, or any similar license, revoked in this jurisdiction within the preceding two (2) years.
  - l. The applicant's signature.

- D. The City Administrator or his designee may approve any Street or Mobile Food Vendor Permit after determining that the event will comply with all Street/ Mobile Food Vending performance standards and application criteria and requirements.
- E. Prohibition on Transfer. No Street or Mobile Food Vendor Permit issued under the provisions of this Division shall be assignable or transferable to any other person or transferable to another location for the operation of Street/ Mobile Food Vending by that person or at a different location.

### **33-112 VENDING PERMIT DENIAL**

- A. A permit may be denied where
  - 1. An applicant is found to have an unpaid civil judgment against him which relates to the duties and responsibilities of the permitted occupation which shall be determined by the nature and the amount of the judgment, the relationship of the judgment to the purpose of the permit, and the extent that the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments; or
  - 2. An applicant has been convicted of a crime which directly relates to the duties and responsibilities of the licensed occupation which shall be determined by the nature and seriousness of the crime, the relationship of the crime to the purpose of the permit, and the extent that the permit would allow someone to engage in further criminal activity; or
  - 3. The required information is incomplete or incorrect or shows that a person is not otherwise entitled to conduct business as a Street or Mobile Food vendor; or
  - 4. The opportunity to reissue a permit has been denied due to previous violations as described in this Division.
- B. The denial of any application by the City Administrator or his designee shall be in writing.

### **33-113 VENDING PERMIT REVOCATION OR SUSPENSION**

- A. A permit may be revoked upon conviction of any offense committed by an individual operating as a Street or Mobile Food vendor in the City of Tonganoxie while engaged in the permitted business or if a final conviction occurs or is found to have existed at the time of application or if civil judgments as set forth above are placed or found of record against an applicant. A permit may be suspended in the event of pending charges of a crime as set forth above upon a magistrate determination of probable cause in connection with such charges.
- B. A permit may be revoked for non-conformity to the application location, specifications or requirements as well as to non-conformity to an approved location plan or diagram.
- C. Any employee working for an applicant permitted as an employer under this Division may be denied the right to solicit under such permit or such rights may be suspended or terminated under the same circumstances and procedures which apply to the holder of the permit. Revocation or suspension of an employer permit terminates all employee permits.
- D. A permit may be suspended or revoked for not complying with the requirements of this Division or any other ordinances or laws.

### **33-114 APPEAL OF VENDING PERMIT REVOCATION, SUSPENSION OR DENIAL**

- A. The notice of revocation, suspension or denial of a permit shall include the procedure for appealing the suspension, revocation or denial.
- B. If a City official revokes, suspends or denies a Street or Mobile Food Vendor Permit the holder or applicant of the permit which has been revoked, suspended or denied shall have the right of appeal to the City Council by submitting an appeal in writing to the City Clerk within ten 10 business days of the revocation suspension or denial.

- C. Pending action on the appeal of a permit which has been revoked or suspended shall be considered revoked or suspended.
- D. If a written appeal is not submitted within ten (10) business days of revocation, suspension or denial, or if the appeal is denied the permit shall hence be considered revoked, suspended or denied.
- E. Schedule. Appeals shall be placed on the first available City Council meeting agenda for consideration.
- F. City Council Consideration. The City Council action shall be final and may include additional fees to cover the cost of providing city services and/or any other conditions deemed necessary to protect the general welfare of the City and the public.

**33-115 REAPPLICATION AFTER REVOCATION, SUSPENSION OR DENIAL OF VENDING PERMIT**

- A. If a Street or Mobile Food vendor or applicant is not in compliance with this Division or any other ordinances, laws or the approved vendor application, the following actions will be taken.
  - 5. One violation. A warning may be issued or the permit may be revoked or suspended and the vendor may become ineligible for new or reissued permit for three (3) months.
  - 6. Two violations. Permit will be revoked and the vendor may become ineligible for new or reissued permit for three (3) months.
  - 7. Three violations. Permit will be revoked and the vendor will become ineligible for new or reissued permit for one (1) year.
  - 8. If an applicant permit has been denied and the appeal is denied, the applicant may not reapply for three (3) months.

**33-116 PENALTIES AND ENFORCEMENT**

- A. Penalties. Any violation of this Division is an ordinance violation and shall be punishable as outlined in Section 28-011. Each offense shall constitute a separate and distinct offense.
- B. It shall be the duty of the City Police Department or other City Administrator designee to enforce and carry out the provisions of this Division.

**33-117. RESERVED**

**33-118. RESERVED**

**DIVISION III  
MOBILE ICE CREAM VENDING**

**33-119 DEFINITIONS**

The following words and terms as used in this Division shall be deemed to mean and be construed as follows:

*Mobile Ice Cream Vending Operation* shall mean any person, firm, partnership or corporation who conducts or engages in the business of selling or offering for sale any prepackaged ice cream novelties, intended for immediate consumption, from a vehicle that travels from house to house, street to street, or place to place. Provided that, this definition shall not include any person, firm, partnership or corporation who conducts or engages in the business of selling or offering for sale prepackaged ice cream novelties

that are sold or delivered to the ultimate consumer on a prearranged date that is scheduled with the consumer.

*Mobile Ice Cream Vendor* shall mean a person who drives a vehicle used for a mobile ice cream vending operation, or who assists the driver from within such vehicle.

### **33-120 LICENSE REQUIRED**

- A. It shall be unlawful for any person to operate a mobile ice cream vending operation unless such person has obtained the license required by this Division.
- B. It shall be unlawful for any person to be a mobile ice cream vendor unless such person has obtained the license required by this Division.

### **33-121 LICENSE APPLICATION; TERM; FEES; EXEMPTION.**

- A. The application for a mobile ice cream vending operation license shall be on a form provided by the city clerk, and a complete application shall be submitted to the city clerk, accompanied by the appropriate fee. The application shall include a photograph of, and the vehicle identification number (VIN) for each vehicle used for the mobile ice cream vending operation in the corporate limits of the city.
- B. The license shall expire on December 31 of the calendar year for which it was issued.
- C. The annual license fee shall be \$150. The license fee shall not be pro-rated and is non-transferable and non-refundable.

### **33-122 STANDARDS OF ISSUANCE.**

- A. The mobile ice cream vending operation shall comply with all food safety laws and requirements of the state of Kansas. The mobile ice cream vending operation must have a valid Kansas food license for the mobile ice cream vending operation, and/or for each vehicle used by the operation, as required by the state of Kansas.
- B. The applicant must provide a Kansas Retail Sales Tax Number for the mobile ice cream vending operation.
- C. The applicant must secure and maintain commercial general liability insurance for the mobile ice cream vending operation, written by an insurance carrier licensed to do business in Kansas, with minimum limits of \$500,000 combined, single limit for bodily and property damage, each occurrence and \$500,000 in the general aggregate. Evidence of compliance with the insurance requirements shall be in the form of a certificate of insurance that shall be submitted with the application. Such insurance certificate shall include coverage for premises/operations liability, products/completed operations, and personal/advertising injury.
- D. The applicant must provide proof that each vehicle used for the mobile ice cream vending operation complies with the vehicle regulations listed in Sec. 24-31(a) through (e).
- E. No license shall be issued under this chapter to any person who:
  - 1. Is required to register pursuant to the Kansas Offender Registration Act, K.S.A. 22-4901 *et seq.*, as amended, or pursuant to an offender registration act of any state; or,
  - 2. Has been convicted of a felony; or,
  - 3. Has been convicted in the past five (5) years of a misdemeanor or ordinance violation involving force, violence, deceit, or fraud; or,
  - 4. Has been convicted in the past three (3) years of any law prohibiting leaving the scene of an accident; driving under the influence of alcohol and/or drugs; reckless driving; fleeing or alluding a police officer; driving while license is suspended or

revoked; failure to report an accident; or five or more traffic violations (not including parking violations).

### **33-123 PERFORMANCE STANDARDS**

- A. The licensee shall only engage in mobile ice cream food vending between the hours of 8:00 a.m. and sunset.
- B. The licensee shall remain mobile, which means that the licensee shall only stop when summoned by a customer, and that such stop shall be for a maximum duration of ten (10) minutes.
- C. The licensee shall not vend on any street at a location where the speed limit is greater than thirty miles per hour. In no case shall the licensee's speed exceed fifteen (15) miles per hour in a residentially zoning district when soliciting customers.
- D. The licensee shall comply with all traffic regulations. The licensee shall not stop, stand, or park at any location prohibited by the most recent version of the standard traffic ordinance. Further, the licensee shall not vend from any location marked where official signs or yellow-painted curb markings prohibit stopping, standing, or parking. The licensee shall not obstruct or interfere with traffic, nor shall the licensee stop or vend in any location that creates a danger to pedestrians or other drivers.
- E. The licensee shall not operate within alleys or public parking lots, nor can the licensee vend within fifty (50) feet of an intersection. The licensee shall only vend from the curbside window, to individuals standing on the curb or on private property. The licensee shall not vend to individuals standing or located within city streets.
- F. The licensee shall not solicit or conduct any transaction within two blocks from the property lines containing any public or private school property, for a period beginning thirty minutes before the regular school day of any such school and continuing until thirty minutes after the adjournment of the regular school day.
- G. The licensee shall not operate within city parks and recreation facilities without first receiving the permission of the city parks and recreation department. If the licensee receives permission from the city parks and recreation department, the licensee shall comply with the requirements imposed by the parks and recreation department, including limitations on hours and location of operation.
- H. Any sound equipment used by the licensee shall be limited to music or human speech and can only be used between 10 a.m. and 7:00 p.m. The sound emitted from such equipment shall not be played in such a manner as to be plainly audible at a distance of fifty (50) feet from the vehicle. The sound must be turned off when the vehicle is stopped for vending.
- I. When occupying a motor vehicle used for the mobile ice cream vending operation, the licensee shall not allow anyone to occupy such vehicle other than one other licensed mobile food vendor.
- J. The licensee shall comply with all food safety laws and requirements of the state of Kansas.
- K. The licensee shall not make more than two stops in anyone block to make any sale.
- L. The licensee shall not stop anywhere within twenty-five feet of an intersection when making a sale or attempting to make a sale.
- M. The licensee shall not make a U-turn on any block;
- N. The licensee shall not drive the vehicle backwards to make or attempt any sale.
- O. The licensee shall not permit any person to hang on the vehicle or permit any person to ride in or on the vehicle, except a bona fide assistant or assistants.
- P. The licensee shall not sell or attempt to sell along any particular route more than one time during a twenty-four hour period.

### **33-124 MOTOR VEHICLE REGULATIONS**

- A. Each motor vehicle used for the mobile ice cream vending operation must be equipped with the following:
  - 1. Prominent signs, visible from the front and the rear of the vehicle, with the wording “Caution – Children”, or similar language, in letters at least six inches tall;
  - 2. Flashing amber yellow caution lights on the vehicle, visible from the front and rear, which may include a swinging arm equipped with such lights;
  - 3. Left and right outside rearview mirrors, as well as two additional outside wide-angle mirrors on the front and back of the vehicle to enable to driver to see around the entire vehicle; and,
  - 4. A serving window that is located on the curbside of the vehicle only.
- B. Each motor vehicle used for the mobile ice cream vending operation must be in good working order and kept in a safe and clean condition.
- C. Each motor vehicle must have a valid registration.
- D. Each motor vehicle must be insured with business automobile liability insurance, written by an insurance carrier licensed to do business in Kansas, with minimum limits of insurance of \$50,000 for bodily injury or death to any one person; \$100,000 for injury or death of any number of persons; and \$10,000 for property damage in any one accident. Evidence of compliance with the insurance requirements shall be in the form of a certificate of insurance that shall be submitted with the application for a mobile food vending operation license.
- E. No vending vehicle attached to a motor vehicle by means of a hatch or any other connecting device shall be permitted.
- F. When used for the mobile ice cream vending operation, each motor vehicle must be driven by a licensed mobile food vendor, and occupied by no more than one additional person, who shall also be a licensed mobile food vendor.

### **33-125 CONDITIONS OF LICENSURE**

The city clerk, or an officer of the Tonganoxie Police Department, may deny, suspend or revoke a license in the following circumstances:

- A. Fraud, misrepresentation, or any false statement contained in any application, including attachments, for such license;
- B. Failure to comply with the standards of issuance and maintain such compliance throughout the license term;
- C. Failure to comply with the motor vehicles requirements for each motor vehicle used for the mobile ice cream vending operation; and,
- D. Fails to display, at all times while operating any motor vehicle for the mobile ice cream vending operation, a copy of the city license issued under this article and a copy of the licensee’s Kansas food license. The copies of such license shall be prominently displayed on, or in close proximity to, the serving window of each motor vehicle, so that they can be clearly and easily viewed by a customer at the serving window.

### **33-126 RIGHT TO APPEAL**

The applicant or licensee shall have the right to appeal the denial, suspension, or revocation of a license issued under this article to the City Administrator. The applicant or licensee shall file a

written notice of appeal with the City Administrator within five (5) business days following the notification that the license has been denied, suspended, or revoked.

### **33-127 RESERVED**

#### **Fee Structure**

##### **Special Event Permits**

|   |  |
|---|--|
| Application fee with no booths or tents                                 | \$50   |
| Application fee with booths and/or tents                                | \$250  |
| City services fee for special event of one day or less, if required     | \$250  |
| City services fee for special event of two days, if required            | \$500  |
| City services fee for special events of three or more days, if required | \$1000 or as determined, by the city administrator |
| Non-Profit 501(c)3 organizations  | 50% of listed fee                                  |

##### **Street or Food Vending Permits**

|   |               |
|---|---------------|
| Push Cart, Street vendor (selling from on their person) | \$25 daily    |
| Push Cart   | \$100 monthly |
| Push Cart   | \$250 annual  |
| Mobile Food Cart or Mobile Food Truck                   | \$50 daily    |
| Mobile Food Cart or Mobile Food Truck                   | \$250 monthly |
| Mobile Food Cart or Mobile Food Truck                   | \$500-annual  |
| Mobile Packaged Food Delivery Truck                     | Exempt        |
| Single-Unit Mobile Food Truck                           | Exempt        |
| Sidewalk Café Permit                                    | \$50          |
| Not-for-Profit (including fund raisers)                 | Exempt        |