AN ORDINANCE AMENDING SECTION 230.010 AND CREATING SECTION 309.110, ORDINANCES OF ST. CHARLES COUNTY, MISSOURI ("OSCCMo.") REGARDING SAFETY REGULATIONS FOR ICE CREAM TRUCKS

WHEREAS, one of the surest signs of summer is the sound of an ice cream truck’s siren song jingle announcing to children young and old that a brief respite from the humid summer air has arrived; and

WHEREAS, the safe operation of ice cream trucks is crucial to both the safety of St. Charles County residents and to the success of those businesses; and

WHEREAS, St. Charles County has adopted the 2013 FDA Food Code in Chapter 230, Ordinances of St. Charles County, Missouri ("OSCCMo") and wishes to further amend that Code to add additional regulations related to ice cream trucks; and

WHEREAS, requiring these additional uniform requirements for ice cream trucks and similar vendors will ensure that they may operate safely within the County, while not unduly burdening those businesses; and

WHEREAS, these additional regulations are therefore in the public interest to ensure all residents’ health and safety; and

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WHEREAS, all municipalities within St. Charles County have contracted with St. Charles County to administer and enforce the Food Code, so the Food Code provisions will apply throughout the incorporated and unincorporated portions of St. Charles County; and

WHEREAS, the following shall be known as “Felicity’s Law.”

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. CHARLES COUNTY, MISSOURI, AS FOLLOWS:

Section 1. Section 230.010 OSCCMo. is hereby amended as follows (additions in bold type, deletions in [bracketed and striken] type):

SECTION 230.010: ADOPTION OF FOOD CODE OF ST. CHARLES COUNTY

A. The Council hereby adopts the 2013 FDA Food Code, Chapters 1 through 8, a certified copy of which is on file in the office of the County Registrar, with the following amendments:

1. Section 1-101.10 shall be amended to read as follows:

These provisions shall be known as the St. Charles County Food Code, hereinafter referred to as “this Code”.

2. Section 1-201.10(B), sub verbo (s.v.). “Approved”. Amend this Section to read as follows:

“Approved” means acceptable to the Department of [Community] Public Health [and the Environment]
of St. Charles County or the appropriate County agency, based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

3. Section 1-201.10(B), s.v. “Certificate of training” shall be added and read as follows:
   “Certificate of training” means the document issued by an accredited program, which certifies that the holder has successfully completed a food protection manager certification program.

4. Section 1-201.10(B), s.v. “Community Event” shall be added and read as follows:
   “Community Event” means an event that is of civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other public gathering events APPROVED by the DEPARTMENT.

5. Section 1-201.10(B), s.v. “Commissary” shall be added and read as follows:
   “Commissary” means a FOOD ESTABLISHMENT that services TEMPORARY FOOD FACILITIES, MOBILE FOOD FACILITIES, or VENDING MACHINES where all of the following occur:
   (1) FOOD, containers, or supplies are stored;
   (2) FOOD is prepared or prepackaged for sale or service at other locations;
   (3) UTENSILs are cleaned;
   (4) Liquid and solid wastes are disposed, or POTABLE WATER is obtained; and
(5) The location is not a private home.

6. Section 1-201.10(B), s.v. “Conditional Food Permit” shall be added and read as follows:

“Conditional Food Permit” means a document issued by the department that authorizes a PERSON to operate a FOOD ESTABLISHMENT while completing the requirement of Sections 8-302.12, 8-302.13, and 8-302.14 and shall not be issued for greater than a three (3) month period.

7. Section 1-201.10(B), s.v. “Department” shall be added and read as follows:

“Department” means the St. Charles County Department of [Community] Public Health [and the Environment].

8. Section 1-201.10(B), s.v. “Division Director” shall be added and read as follows:

“Division Director” means the Director of the Division of Environmental Health and Protection of the St. Charles County DEPARTMENT of [Community] Public Health [and the Environment] or his/her delegate.

9. Section 1-201.10(B), s.v. “Director” shall be added and read as follows:

“Director” means the Director of the DEPARTMENT of the St. Charles County Department of [Community] Public Health [and the Environment] or his/her delegate.

10. Section 1-201.10(B), s.v. “Enforcement Officer” shall be added and read as follows:
“Enforcement officer” means the DIVISION DIRECTOR of Environmental Health and Protection or his/her delegate.

11. Section 1-201.10(B), s.v. “Food Establishment” (2)(a). Amend this Section to read as follows:

An element of the operation such as a transportation vehicle, a satellite catered feeding location, a vending location, or a central preparation facility that supplies a satellite catered feeding or vending location unless the satellite catered feeding location, vending location, or central preparation facility that supplies a satellite catered feeding or vending location is operating under a permit issued by the Department; and

12. Section 1-201.10(B), s.v. “Food Establishment”, Item (3)(d). Amend this Section to read as follows:

A kitchen in a private home, provided the food prepared in that kitchen is not ultimately offered for sale or is not potentially hazardous whether or not offered for sale, or, whether potentially hazardous or not is prepared for social or religious gatherings as described in Section 1-201.10(B) s.v. “Food Establishment” Item (3)(dd).

13. Section 1-201.10(B), s.v. “Food Establishment” Item (3)(dd) shall be added after Item (3)(d) and read as follows:

Any charitable, religious, fraternal or other not-for-profit organization, excluding social or country clubs, that regularly or occasionally provides food for members and their invitees if the consumer is informed by a clearly visible placard that the food is
prepared in a kitchen that is not subject to regulation and inspection by the Department, unless the organization or its members prepare and serve food for consumption by the public;

14. Section 1-201.10(B), s.v. “Food Establishment” Item (3)(f). Amend this Section to read as follows:

A kitchen in a private home that is operating as a business, such as a small family day care provider; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed four (4), breakfast is the only meal offered, the number of guests served does not exceed twelve (12), and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the Department; or

15. Section 1-201.10(B), s.v. “Food Safety School” shall be added and read as follows:

(1) Food Safety School means a program operated or approved by the DEPARTMENT that requires the certified FOOD protection manager or designated employee of a FOOD ESTABLISHMENT to engage in a two and half hour (2.5) training following the provisions of the ENFORCEMENT OFFICER’s FOOD safety program.

(2) FOOD SAFETY SCHOOL does not refer to, or fulfill any part of the ACCREDITED PROGRAM as outlined in the Code.
16. Section 1-201.10(B), s.v. "ICE CREAM TRUCK" shall be added and read as follows:

"ICE CREAM TRUCK" means any motorized mobile FOOD ESTABLISHMENT from which ice cream, frozen milk, frozen dairy or ice confection products are sold or offered for sale in a ready-to-eat form and customarily consumed at the point of sale.

17. Section 1-201.10(B), s.v. "OPEN-AIR BARBECUE" shall be added and read as follows:

"OPEN-AIR BARBECUE" means a piece of EQUIPMENT designed for barbecuing FOOD, where the FOOD is prepared out-of-doors by cooking directly over hot coals, heated lava, hot stones, gas flame, or other method APPROVED by the DEPARTMENT, on EQUIPMENT suitably designed and maintained for use out-of-doors, that is operated by a TEMPORARY FOOD FACILITY, or a MOBILE FOOD FACILITY that remains fixed during hours of operations at a COMMUNITY EVENT or a PERMANENT FOOD FACILITY.

[47]18. Section 1-201.10(B), s.v. "OUTDOOR WOOD-BURNING OVEN" shall be added and read as follows:

"OUTDOOR WOOD-BURNING OVEN" means an oven located out-of-doors, that utilizes wood as the primary fuel for cooking and is operated on the same PREMISES as, and in conjunction with, a PERMANENT FOOD FACILITY.

[48]19. Section 1-201.10(B), s.v. "PERMANENT FOOD FACILITY" shall be added and read as
follows:

“PERMANENT FOOD FACILITY” means a FOOD FACILITY operating in a permanently constructed structure, including any room, building, place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, or otherwise handling FOOD at the RETAIL level.

[49]20. Section 1-201.10(B), s.v. “Permit”. Amend this Section to read as follows:

“Permit” means the document issued by the Department that authorizes a person to operate a food establishment.

[20]21. Section 1-201.10(B), s.v. “Prepackaged Food” shall be added and read as follows:

“PREPACKAGED FOOD” means any properly labeled processed FOOD, prepackaged to prevent any direct human contact with the FOOD product upon distribution from the manufacturer, and prepared at an APPROVED SOURCE.

[2+4]22. Section 1-201.10(B), s.v. “Regulatory Authority”. Amend this Section to read as follows:

“Regulatory Authority” means the St. Charles County Department of Community Public Health [and the Environment] or its authorized representative, herein sometimes referred to as “the Department”.

[22]23. Section 1-201.10(B), s.v. “Retail” shall be added and read as follows:

“Retail” means the storing, preparing, serving,
manufacturing, packaging, transporting, salvaging, or otherwise handling FOOD for dispensing or sale directly to the CONSUMER or indirectly through a delivery service.

[23][24] Section 1-201.10(B), s.v. “Revocation” shall be added and read as follows:

“Revocation” means the removal of a food establishment permit, following a hearing, for a period of time that is to be determined by the Department, not to exceed one (1) year.

[24][25] Section 1-201.10(B), s.v. “Suspension” shall be added and read as follows:

“Suspension” means the immediate removal of a food establishment permit, without prior notice or hearing, based on the declaration of an imminent health hazard by the Department or as a result of interference with the official duties of the Department, effective until such time as the Department determines that the imminent health hazard no longer exists or that the official duties of the Department are no longer subject to interference.

[25][26] Section 2-102.11. Amend the introductory paragraph to read as follows:

Based on the risks of foodborne illness inherent to the food operation, during inspections and upon request, the person in charge shall demonstrate to the Department or its authorized representatives knowledge of foodborne disease prevention, application of the hazard analysis critical control point principles, and the requirements of this Code. The person in charge shall demonstrate this
knowledge by compliance with this Code, by being a certified food protection manager who has shown proficiency in required information through passing a test that is part of a program approved by the Department, and by responding correctly to the inspector’s questions as they relate to the specific food operation. The areas of knowledge include:

[26]27. Section 2-102.20. Amend this Section to read as follows:

Manager Certification Training. In accordance with Section 2-102.11, the person in charge must successfully complete a program that is approved by the Department for food protection manager certification and have posted in the food establishment a current certificate of training issued by the program.

(A) Failure to post a current certificate of training for the person in charge shall be an automatic five (5) point deduction from the establishment score, in accordance with Section 8.403.11(A).

(B) Temporary food establishments shall not be required to have a certified manager/person in charge.

[27. (Reserved)-]

28. Section 4-204.124 shall be amended to read as follows:

Open-air barbecue/outdoor wood-burning oven.

Notwithstanding any of the provisions of this part, neither the DEPARTMENT nor any City, County, City and County air pollution control district, or air
quality management district shall require the enclosure of an OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN if the ENFORCEMENT OFFICER determines that the barbecue or wood-burning oven meets all of the following requirements:

(A) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is operated on the same PREMISES as, in reasonable proximity to, and in conjunction with, a PERMANENT FOOD FACILITY that is APPROVED for FOOD PREPARATION, or a TEMPORARY FOOD FACILITY or a MOBILE FOOD FACILITY that is operating at a COMMUNITY EVENT. The PERMIT HOLDER of the PERMANENT FOOD FACILITY, TEMPORARY FOOD FACILITY or MOBILE FOOD FACILITY shall be deemed to be the PERMIT HOLDER of the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN, and shall be responsible for ensuring that it is operated in full compliance with this part.

(B) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is not operated in, or out of, any motor vehicle, or in any area or location that may constitute a fire HAZARD, as determined by the ENFORCEMENT OFFICER.

(C) The OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is separated from public access to prevent FOOD contamination
or injury to the public by using ropes or other APPROVED methods.

(D) If the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN is a permanent structure, it shall be equipped with an impervious and EASILY CLEANABLE floor surface that extends a minimum of five feet from the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN facility on all open sides.

(E) Sanitary facilities, including, but not limited to, toilet facilities and handwashing facilities, shall be available for use within two hundred (200) feet in travel distance of the OPEN-AIR BARBECUE or OUTDOOR WOOD-BURNING OVEN and shall comply with all provisions of this part.

29. Subpart 6-103 ICE CREAM TRUCKS shall be created, and Section 6-103.11 shall be added and read as follows:

6-103.11 ICE CREAM TRUCK Safety Equipment

(A) Any ICE CREAM TRUCK must be equipped with the following safety equipment, all of which must be fully operational while doing business within St. Charles County:

1) Front passenger side-mounted wide-angle convex mirror;

2) Signage visible from the rear of the
vehicle, a minimum of one square foot in size, stating either “Caution” or “Watch for Children” with the lettering at least three (3) inches tall;

(3) Reverse backup alarm capable of emitting a sound adequate in quantity and volume to give warning that the vehicle is about to back up;

(4) Rear visibility for the operator by means of a rear-mounted mirror, obstacle detection sensor, or camera; and

(5) Front-mounted obstacle detection system capable of detecting obstacles within three (3) feet of the vehicle’s front bumper.

(B) The requirements of subsection (A) shall not apply to a mobile FOOD ESTABLISHMENT that serves FOOD only while remaining parked in a stationary position for thirty (30) minutes or more.

[29]30. Section 6-202.111. Amend this Section to read as follows:

Private homes and living or sleeping quarters, use prohibition.

(A) Except as specified in subdivision (B), a private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters shall not be used for conducting FOOD FACILITY operations.
(B) Notwithstanding subdivision (a):

(1) Non-perishable, PREPACKAGED FOOD may be given away, sold, or handled from a private home. No FOOD that has exceeded the labeled shelf life date recommended by the manufacturer shall be deemed to be non-perishable FOOD.

(2) For purposes of this subdivision, “non-perishable FOOD” means a FOOD that is not a POTENTIALLY HAZARDOUS FOOD, and that does not show signs of spoiling, becoming rancid, or developing objectionable odors during storage at ambient temperatures.

[30]31. Section 8-301-11.1 shall be added and read as follows:

*Conditional Food Permit.*

The DEPARTMENT may issue a CONDITIONAL FOOD PERMIT to a person operating a FOOD ESTABLISHMENT without an annual PERMIT only under the following conditions.

(A) The FOOD ESTABLISHMENT:

a. Has changed ownership within the past twelve (12) months and prior to change of ownership operated under a duly issued annual PERMIT, or

b. Has opened within the past twelve (12) months and the DEPARTMENT has determined that its operation under a CONDITIONAL FOOD PERMIT will
not compromise public health.

(B) The person operating the FOOD ESTABLISHMENT has submitted an application for an annual PERMIT, an application fee, as required by this Code.

(C) The CONDITIONAL FOOD PERMIT shall be issued for a non-renewable term not to exceed three (3) months.

(D) The person operating a FOOD ESTABLISHMENT under a CONDITIONAL FOOD PERMIT shall comply with the requirements of Section 8-304.11 of this Code.

[32]32. Section 8-303.5 shall be added and read as follows:

Failure to Post.

(A) Failure to post a current, valid permit in accordance with Section 8-304.11 shall be considered a CORE ITEM and scored in accordance with Section 8-403.11.

(B) Failure to post current inspection form in accordance with 8-304.11 shall be considered a PRIORITY FOUNDATION ITEM and scored in accordance with Section 8-403.11.

[32]33. Section 8-304.10. Amend this Section to read as follows:

Responsibilities of the Department.

(A) At the time a permit is first issued, the Department shall make available an electronic version of this Code in PDF format to the permit
holder so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under Section 8-304.11, that are applicable to the permit. (A bound, printed copy of this Code will be made available at a reasonable fee.)

(B) Failure to provide the information specified in Subsection (A) of this Section does not prevent the Department from taking authorized action or seeking remedies if the permit holder fails to comply with this Code or an order, warning, or directive of the Department.

[33]34. Section 8-304.11(K) shall be amended to read as follows:

(K) Post most recent inspection form (first page with inspection score) in clear view of customers as they enter the FOOD ESTABLISHMENT or in a location where food orders are placed by the consumer.

[34]35. Section 8-304.21 shall be added and read as follows:

**Permit Suspension.**

(A) The ENFORCEMENT OFFICER may suspend a permit for any of the following causes without prior notice or hearing:

(1) The operation of the food establishment is deemed an imminent health hazard by the Department due to certain conditions, including, but not limited to, those circumstances set forth in Section 8-
404.11(A); or

(2) Interference with the Department in the performance of its duties, including denial of access, in accordance with Section 8-402.20; or

(3) In accordance with Section 8-501.20(C).

(B) When a permit is suspended, the food establishment operation shall cease immediately.

(C) A suspension shall become effective upon service of written notice to the permit holder or person in charge of the food establishment or temporary food establishment.

(D) The permit holder may make a written request for a hearing within ten (10) days after notice of suspension and the ENFORCEMENT OFFICER shall provide a hearing within ten (10) days after the request. If no request for a hearing is filed within ten (10) days, the suspension becomes final.

(E) Reserved (this letter was not used in the ordinance).

(F) The ENFORCEMENT OFFICER may end the suspension at any time if it is determined that the reason for suspension no longer exists.

[35]36. Section 8-304.22 shall be added and read as follows:

*Permit Revocation, Refusal to Renew.*

(A) The ENFORCEMENT OFFICER may revoke
or refuse to renew a permit for any one (1) or more of the following reasons:

(1) Repeated or continuing violations of the provisions of this Code; or

(2) Failure to pay the permit fees pursuant to Section 9-101.10; or

(3) Materially false statements made in the application for permit.

(B) Prior to revocation, the ENFORCEMENT OFFICER shall provide an opportunity for a hearing in accordance with Section 8-304.23 of this Code. The permit holder will have five (5) working days from the notice of revocation to request a hearing. If a hearing is requested, revocation of a permit is stayed until the hearing has been conducted and a final determination has been given.

(C) Whenever a revocation has become final, the person whose permit was revoked may re-apply for a permit under Section 8-303.40.1 after the expiration of the penalty period imposed by the Department in accordance with Section 8-601.12.

[36]37. Section 8-304.23 shall be added and read as follows:

Suspension and Revocation Hearing Procedure.

(A) The Department shall have the power to suspend, revoke, or refuse to renew any permit issued pursuant to this Code in accordance with Section 8-304.21 and Section 8-304.22.
(B) Written notice of a suspension or revocation hearing shall be presented by the ENFORCEMENT OFFICER either personally, or by certified mail, to the permit holder’s last known address of record and shall state the date, time, and place of hearing, as well as setting forth the charges against the food establishment. A copy of the notice shall be filed in the records of the Department.

(C) The ENFORCEMENT OFFICER shall have the power to swear witnesses. The permit holder or his legal counsel shall have the opportunity to present evidence and/or witnesses to the Department. A record of the hearing shall be made.

(D) The ENFORCEMENT OFFICER shall issue a decision, in writing, to uphold either the suspension, revocation or non-renewal of the permit; or to invoke a penalty in accordance with Section 8-601.12; or to find in favor of the permit holder within five (5) working days of the conclusion of the hearing.

(E) The decision of the ENFORCEMENT OFFICER can be appealed to the DIRECTOR if the permit holder requests an appeal meeting within five (5) working days of receiving the decision of the ENFORCEMENT OFFICER.

(F) The decision of the DIRECTOR is final.

[37]38. Section 8-401.10, Establishing Inspection Interval, shall be amended to read as follows:

(1) Except as specified in Paragraphs (B) and (C) of
this section, the REGULATORY AUTHORITY shall inspect a FOOD ESTABLISHMENT at least once every 18 months.

(2) The DEPARTMENT may increase the interval between inspections if:

[38]39. Section 8-402.11. Amend this Section to read as follows:

Access Allowed at Reasonable Times after Due Notice.

After the Department presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the Department to determine if the food establishment is in compliance with this Code by allowing access to the establishment, allowing inspection, the taking of photographs to document inspection findings, and providing information and records specified in this Code, and to which the Department is entitled according to law, during the food establishment’s hours of operation and other reasonable times.

[39]40. Section 8-403.11 shall be added and read as follows:

Scoring of Inspection.

(A) In accordance with Section 8-405.11, each PRIORITY ITEM OR PRIORITY FOUNDATION ITEM marked in violation on the inspection form shall be assigned a five (5) point demerit score.

(B) In accordance with Section 8-406.11, each
CORE ITEM marked in violation on the inspection form shall be assigned a two (2) point
demerit score.

(C) All demerit scores of PRIORITY ITEMS or
PRIORITY FOUNDATION ITEMS and CORE
ITEMS shall be totaled and subtracted from one
hundred (100) possible points to determine the
overall score of the food establishment.

[49]41. Section 8-403.12 shall be added and read as
follows:

Notice to Public of Inspections.

(A) Every food establishment shall display,
without obstruction in a conspicuous place
designated by the Department, notice stickers that
inform the public that the establishment is subject to
inspection by the Department. Such notice stickers
shall be displayed at every public entrance and at
every drive-up and/or walk-up window of every
food establishment.

(B) Such notice to the public shall include, at a
minimum, a statement that the establishment is
inspected by the DEPARTMENT.

[41]42. Section 8-404.11 (C) shall be added and read
as follows:

(C) Whenever the DEPARTMENT finds that
conditions exist, as specified in Subsection (A) of
this Section, it may immediately suspend the permit
of the food establishment without prior notice or
hearing, in accordance with Section 8-304.21.

[42]43. Section 8-405.11 (C) shall be added and read
as follows:

(C) All second and subsequent follow-up inspections during the permitted year, due to PRIORITY ITEMS or PRIORITY FOUNDATION ITEMS, shall be subject to a follow-up fee as described in Chapter 9, Section 230.030.

Section 2. Section 309.110 OSCCMo. is hereby created as follows (additions in bold type):

Section 309.110 Requirements for Ice Cream Trucks

A. For purposes of this section, an “ice cream truck” is any motorized mobile food establishment from which ice cream, frozen milk, frozen dairy or ice confection products are sold or offered for sale in a ready-to-eat form and customarily consumed at the point of sale.

B. Every ice cream truck shall be equipped with:

(1) Front passenger side-mounted wide-angle convex mirror;

(2) Signage visible from the rear of the vehicle, a minimum of one square foot in size, stating either “Caution” or “Watch for Children” with the lettering at least three (3) inches tall;

(3) Reverse backup alarm capable of emitting a sound adequate in quantity and volume to give warning that the vehicle is about to back up;

(4) Rear visibility for the operator by means of a rear-mounted mirror, obstacle detection
sensor, or camera; and

(5) Front-mounted obstacle detection system capable of detecting obstacles within three (3) feet of the vehicle’s front bumper.

C. Every ice cream truck shall activate the equipment in subsection A(3) – (5) when engaged in operation as an ice cream truck.

Section 3. This ordinance is subject to penalty provisions for its violation and therefore, for penal purposes, shall be effective thirty-one (31) days after its posting in six public places, its publication in full on the web site of St. Charles County, and the publication of its title and the location in St. Charles County where it may be viewed in its entirety in a legal publication or a newspaper of general circulation in St. Charles County.