

ORDINANCE NO. 2020-4163

AN ORDINANCE AMENDING CHAPTER 8, “BUSINESSES,” ARTICLE VIII “MOBILE FOOD VENDORS,” OF THE CODE OF ORDINANCES OF THE CITY OF COLLEGE STATION, TEXAS, BY AMENDING CERTAIN SECTIONS RELATING TO MOBILE FOOD VENDORS; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLLEGE STATION, TEXAS:

PART 1: That Chapter 8, “Businesses,” Article VIII, “Mobile Food Vendors,” of the Code of Ordinances of the City of College Station, Texas, be amended as set out in **Exhibit “A”** attached hereto and made a part of this Ordinance for all purposes.

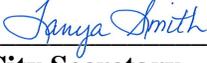
PART 2: If any provision of this Ordinance or its application to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality does not affect other provisions or application of this Ordinance or the Code of Ordinances of the City of College Station, Texas, that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Ordinance are severable.

PART 3: That any person, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty five dollars (\$25.00) and not more than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000) for a violation of fire safety, zoning, or public health and sanitation ordinances, other than the dumping of refuse. Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PART 4: This Ordinance is a penal ordinance and becomes effective ten (10) days after its date of passage by the City Council, as provided by City of College Station Charter Section 35.

PASSED, ADOPTED and APPROVED this 9th day of March, 2020.

ATTEST:



City Secretary

APPROVED:



Mayor

APPROVED:



City Attorney

EXHIBIT A

That Chapter 8, “Businesses,” Article VIII, “Mobile Food Vendors,” of the Code of Ordinances of the City of College Station, Texas, is hereby amended to read as follows:

**ARTICLE VIII. - MOBILE FOOD VENDORS
DIVISION 1. - GENERALLY****Sec. 8-381. - 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:

Contact person means a person responsible for the mobile food unit while in service. The contact person can be the owner, applicant, or an authorized representative.

Edible goods shall include, but is not limited to:

- (1) Prepackaged food, including, but not limited to, candy, beverages, and ice cream.
- (2) Prepared food, including, but not limited to, hot dogs, desserts, and pizza.
- (3) On-site prepared food, including, but not limited to, shaved ice, sandwiches, and tacos.

Food service establishment means a business that sells edible goods and has been inspected and approved by the Brazos County Health District, including a commercial kitchen and commissary, and shall specifically exclude accessory or self-serve retail food sales as described in Texas Food Establishment Rules 25 TAC 228.2 (57) as amended.

Mobile means the state of being in active, but not necessarily continuous, movement.

Mobile food court means a land use approved through a conditional use permit (see Unified Development Ordinance (see App. A)) and developed in conformity with an approved site plan (see Unified Development Ordinance (see App. A)). This land use is specifically for two or more mobile food vendors congregating to offer edible goods for sale to the public and providing shared amenities for all vendors' customers.

Mobile food vendors means any business that sells edible goods from a stationary location within the City. The term "mobile food vendors" shall include, but not be limited to:

- (1) **Mobile food trucks.** A mobile food truck is a self-contained motorized unit selling items defined as edible goods.
- (2) **Concession carts.** A concession cart is a self-contained unit that is moved by non-motorized means.
- (3) **Concession trailers.** A concession trailer is a self-contained unit that is pulled by a motorized unit and has no power to move on its own.

Non-refrigerated means edible goods that are not required to be kept at a temperature below 41 degrees Fahrenheit according to the Federal Food and Drug Administration and the Texas Food Establishment Rules.

Sell means the act of exchanging a good for a profit or in return for a donation.

Stationary location means the position of the mobile food vendor when not in motion and selling to the public.

Sec. 8-382. - Exemptions.

- (a) **Farm Products.** Any mobile food vendor selling only non-refrigerated farm products in an unrefined state is exempt from this article.
- (b) **Special Events.** Mobile food vendors operating solely as a part of a City-permitted Special Event are not required to have a mobile food vendor permit under this article, but are required to obtain a Brazos County Health District temporary food permit and provide a copy of a valid permit for a mobile food vendor business.

Sec. 8-383. - Offenses and regulations.

- (a) It is unlawful for any person to:
 - (1) Operate or act as a mobile food vendor without a valid City permit.
 - (2) Directly or indirectly misrepresent information on the permit application or affidavit.
 - (3) Directly or indirectly represent that the City issuing a permit constitutes the City's endorsement or approval of the mobile food vendor.
 - (4) Operate a mobile food vendor operation not in compliance with the Texas Food Establishment Rules, Brazos County Health District rules or any other food safety laws, as amended from time to time.
 - (5) Violate any provision of this article.
- (b) A permit may only be granted to a business associated with a food service establishment, unless the mobile food vendor is not required to obtain a permit from the County Health District.
- (c) Permits are non-transferable.
- (d) A violation of this article shall be punished as provided in Section 1-7.

Sec. 8-384. - Zoning and location restrictions.

(a) Distance regulations.

- (1) **Zoning Districts.** Mobile food vendors shall not operate within any single-family residential or agricultural zoning district, including townhouse districts, but may be located in such districts when selling and within 100 feet of a property with an active building permit or located within a public park facility.

- (2) **Food Service Establishments.** Mobile food vendors shall not be located within 100 feet of the primary entrance of an open and operating fixed-location food service establishment outside of Northgate. This buffer may be reduced upon receiving written permission from the establishment.
- (3) **Northgate.** In Northgate only, a mobile food vendor may not be located within 100 feet of an existing business lawfully operating as a restaurant as defined by the Unified Development Ordinance (see App. A) within Northgate. This buffer may be reduced upon written permission from said restaurant.

(b) A mobile food vendor shall not sell:

- (1) Longer than 5 hours per day per location.
- (2) Longer than 21 hours per day per location in NG-1 Core Northgate and NG-2 Transitional Northgate zoning districts.
- (3) Longer than 30 minutes on any public street designated on the City's Thoroughfare Plan as a minor collector or lesser.
- (4) On any public street designated on the City's Thoroughfare Plan as a major collector or greater.
- (5) In any area where operations impede vehicular or pedestrian traffic, accessible routes, drive-aisle or road access, fire access, or sight distances.
- (6) In a bike lane.
- (7) Between the hours of 2:00 a.m. and 5:00 a.m.
- (8) In any other location the City reasonably believes presents a public safety or health concern.

(c) Concession Carts. Concession carts shall not disrupt pedestrian traffic, must keep a five-foot clear space around the mobile vending unit, and are only allowed in:

- (1) Northgate zoning districts,
- (2) Wolf Pen Creek District at a mixed-use development,
- (3) An approved mobile food court,
- (4) Other planned mixed use developments.

(d) Location regulations.

- (1) Mobile food vendors shall not locate on any private property without written permission to sell from the property owner on letter head with current contact information, signed by the property owner. Mobile food vendors must comply if asked to leave by the property owner or City official. A copy of the written permission to operate in a specific location, signed by the private property owner, must be kept within the mobile vending unit at all times.
- (2) A mobile food vendor may not be located within 20 feet of another mobile food vendor unless they are within a mobile food court and located in accordance with the approved mobile food court site plan.

Sec. 8-385. - Mobile food vendor requirements.

(a) Mobile food vendors must:

- (1) **TFER.** Comply with all sections of Texas Food Establishment Rules 228.221 for mobile food unit requirements.
- (2) **Trash.** Be equipped with two portable trash receptacles. Following sales at any location, all disturbed areas must be cleaned at a minimum of 20 feet around the perimeter of the sales location.
- (3) **Solid Waste and Wastewater.** Be responsible for proper disposal of solid waste and wastewater at approved sanitation facilities, as specified in the application. The City requires wastewater and grease disposal facilities have a grease interceptor with more than 500-gallons capacity. These facilities may be located at an approved Food Service Establishment or other approved facility.
- (4) **Fixtures.** Not provide any freestanding fixtures including, but not limited to, tents and canopies. Waste receptacles are exempt. Tables and chairs may be allowed if there is sufficient space, they do not impede vehicular or pedestrian access, and are stored nightly.
- (5) **Music.** Not play continuous music or repetitive sounds.
- (6) **Lights.** Not display or project flashing, blinking, or traveling light signs or displays.
- (7) **Spacing.** Keep a five-foot clear space around the mobile food vending unit.
- (8) **Parks.** Not sell in a public park while park concession units are operating.
- (9) **No Smoking.** Post a "No Smoking" sign visible from the order window.
- (10) **Fire Extinguisher.** Maintain a tagged fire extinguisher accessible at all times. The appropriate type(s) of fire extinguisher(s) is determined by the Fire Marshal.
- (11) **Vent Hood.** Have an extinguishing vent hood, Type 1 or other, if the cooking process produces grease laden particles. Upon initial application for a mobile food vendor permit with a newly installed vent hood system, plans must be submitted as part of the application and vent hoods must be tested in the presence of a Fire Marshal representative. For permit renewals, vent hoods must have a current inspection.
- (12) **Insurance, Registration and DL.** Vehicle must have a current registration and insurance. The driver must have a valid driver's license in their possession at the time of inspection. All of these items will be reviewed by a Fire Marshal representative.
- (13) **Service Log.** Keep a service log for the mobile food vendor, documenting the date and time of arrival and departure from the food service establishment where the vendor's services are performed. The mobile food vendor shall make the service log available for inspection upon request.

Sec. 8-386. – Mobile Food Courts.

- (1) **Distance.** Minimum distance regulations for mobile food courts are described in Specific Use Standards of the Unified Development Ordinance (see App. A). Minimum distance requirements may be increased through the conditional use permit process described in Development Review Procedures of the Unified Development Ordinance (see App. A). Individual mobile food vendors within a mobile food court shall be located as identified on the approved mobile food court site plan.

(2) **Requirements.** Mobile food vendors on an approved pad site within a mobile food court may remain at the mobile food court with the following exceptions:

- a. **Short-Term.** Mobile food vendors shall leave a short-term mobile food court site at least once a year to retain their status as mobile food vendors.
- b. **Long-Term.** Mobile food vendors shall leave a long-term mobile food court site, or a pad site within the court, at least once a year to retain their status as mobile food vendors.

(3) **Hours.** Mobile food vendors within a designated mobile food court shall not be open between the hours of 3:00 a.m. and 5:00 a.m. Sales shall only be within the approved hours of operation for the court, which may be restricted through the conditional use permit.

DIVISION 2. - PERMIT

Sec. 8-414. - Permit. Every mobile food vendor must have a permit issued by the City to conduct a mobile food vendor business.

Sec. 8-415. - Application. An applicant must apply for a permit on a City application form. A complete application shall require the following information from the applicant for consideration:

- (1) **Contact Information.** Full applicant name and business owner or entity legal name, phone numbers, and any forms of government issued identification;
- (2) **Contact Person.** Contact person's name, phone number, address and a copy of their valid driver's license issued by a U.S. state or territory. Concession cart operators may provide any form of valid government issued identification;
- (3) **Business Information.** State in which the business entity is filed and if applicable, copies of business formation documents, current listing of directors, partners, or principles, managers and owners (publicly traded companies are exempted);
- (4) **Foreign Companies.** Copy of permits or filings for foreign companies to do business in Texas;
- (5) **Food Permit.** Copy of a valid Brazos County Health District food permit issued to the mobile food vendor unit;
- (6) **Central Prep Agreement.** Copy of a valid Brazos County Health District central preparation facility agreement signed by the food service establishment and the mobile food vendor unit.
- (7) **Tax Information.** Sales tax number with a copy of sales tax permit;
- (8) **Property Owner Information.** Signed permission from all private property owner(s) authorizing use of the property(s) as sales locations, on letter head with current contact information and signed by the property owner(s);
- (9) **Locations.** Address(es) and location plan or diagram of sales locations;
- (10) **Food.** Description of edible good being sold;
- (11) **Unit Information.** Vehicle identification number, license plate number, description of mobile food vending unit, and description of attached signage;

- (12) **Insurance.** Proof of business auto liability insurance covering the mobile food vending unit and authorized drivers must meet the State of Texas minimum level of auto liability insurance;
- (13) **Bond.** A bond in the sum of not less than \$1,000.00, executed by the mobile food vendor with two or more good and sufficient sureties satisfactory to the Finance Director. The bond shall be payable to the City, for the use and benefit of any person or persons entitled thereto, and conditioned that the principal and sureties will pay all damages to persons caused by or arising from or growing out of any action of the mobile food vendor while conducting business in the City. The bond shall remain in full force and effect for the entire duration of the permit provided herein. The bond shall not be required for the sale of goods in interstate commerce;
- (14) **Civil Judgments.** A signed affidavit stating the applicant, business owner, and contact person have no unpaid civil judgments against them arising from a business activity which may be covered by this article if in effect at the time in the jurisdiction where such judgments are of record;
- (15) **Criminal Convictions.** A statement of all convictions of the applicant, business owner and unit contact person in any state, the United States or U.S. possession within the last ten years; and
- (16) **Other.** Any other information the City deems necessary for the safe operation of a mobile food vendor business.

Sec. 8-416. – Permit Review and Inspection.

- (a) The application shall be processed through the following method:
 - (1) The applicant submits a completed application to the City for review.
 - (2) After the applicant satisfies all application requirements an inspection is scheduled by the City.
 - (3) After passing the inspection, the City may issue an approved mobile food vendor permit.
 - (4) The mobile food vending unit may be subject to random inspection during the permit term and will be inspected by the City at permit renewal.

Sec. 8-417. – Application and Permit denial.

- (a) An Application or Permit may be denied if:
 - (1) **Civil Judgments.** The applicant, business owner or contact person has an unpaid civil judgment against him or her relating 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 the permit would allow someone to engage in further activity that would lead to unsatisfied civil judgments;
 - (2) **Criminal Convictions.** The applicant, business owner or contact person has been convicted within the past ten years of a felony crime or the following offenses:
 - a. Prostitution or related offenses;
 - b. Driving while intoxicated;

- c. Driving while under the influence of drugs;
 - d. Violations of the Texas Controlled Substance Act (Texas Health and Safety Code ch. 481);
 - e. Rape, murder, attempted murder, aggravated assault;
 - f. Theft over \$500.00;
 - g. A felony or other offense involving moral turpitude adversely affecting the person's ability to provide safe and reliable mobile food vending; and
 - h. The offense descriptions in Subsection (2) of this section are meant to be descriptive only and not as exclusive to convictions under the Texas Penal Code. They include convictions for comparable offenses as provided under other State or Federal law.
- (3) The applicant, business owner or contact person failed to provide proof of a license or permit required by law or ordinance for mobile food vending operations.
 - (4) The applicant, business owner, contact person or persons associated with the mobile food vendor permit or application has violated this article or has been convicted of any violations of this article within the 24-months immediately preceding the application.
 - (5) The required application or permit information is incomplete, incorrect, does not meet minimum requirements, provides false or misleading information, or shows a person is not otherwise entitled to conduct business as a mobile food vendor; or
 - (6) The permits or applications have been denied from previous violations of this Article.

Sec. 8-418. - Permits.

- (a) **Fee.** The application fee for a mobile food vendor permit shall be established in Section 2-117. Each mobile food vendor unit is separately permitted.
- (b) **Permit Term.** Mobile food vendor permits are valid for one year from the permit issue date.
- (c) **Permit Renewal.** Upon renewal, the applicant must provide payment of a renewal fee established in Section 2-117, and updated permitting documentation. The applicant must submit the application and renewal fee no less than 30 days before expiration of the permit or must reapply as a new applicant.
- (d) **Concession Carts.** Concession carts shall apply under a reduced fee for initial application, and a reduced fee for renewal, all as established in Section 2-117.

Sec. 8-419. - Display of permit. Every permit, including those from the City and the Brazos County Health District, must be displayed at all times in a conspicuous place on the mobile food vendor's truck, concession cart, or concession trailer where it can be read by the general public.

Sec. 8-420. - Permit revocation or suspension.

- (a) The City may revoke or suspend any permit issued under this article if:
 - (1) The applicant, business owner, contact person, agent or employee of the mobile food vendor has violated this article, any City ordinance, State law, or any policies or rules pursuant to this article.

- (2) The applicant, business owner, or contact person, agent or employee of the mobile food vendor has been arrested or convicted of a felony or other offense involving moral turpitude, which may adversely affect the ability to provide safe and reliable mobile food service to the public.
- (3) Material facts were intentionally omitted or falsely stated on the application.
- (4) The applicant, business owner, or contact person is delinquent on any taxes owed to the City or fails to show financial ability to maintain services in compliance with this article.
- (5) There is non-conformity to the application location specifications or requirements or non-conformity to an approved location plan or diagram.
- (6) Any Brazos County Health District regulations are violated or there is not a valid County Health District Permit.

Sec. 8-421. - Appeal of permit revocation, suspension, or denial.

- (a) **Appeal Process.** The permit revocation, suspension, or application denial shall include a copy of the appeal process, as stated below:
- (b) **Appeal.** The applicant or owner has the right to appeal any permit denial, suspension or revocation to the City Manager:
 - (1) The written appeal must include relevant information or evidence and be delivered to the City Secretary within five days after the date of the denial, suspension or revocation.
 - (2) If the City Secretary does not receive a timely appeal the permit denial, suspension or revocation is final.
 - (3) If the City Secretary receives a timely appeal the City Manager or designee shall render a final written decision within 20 business days.

Sec. 8-422. - Reapplication after permit revocation, suspension, or denial.

- (a) If a mobile food vendor applicant or business owner is not in compliance with this article or any other ordinances, laws, or the approved mobile food vendor application, the following actions will be taken:
 - (1) **First violation.** A warning, summons or citation may be issued, or the permit may be revoked or suspended and the vendor may become ineligible for new or reissued permit for three months.
 - (2) **Second violation.** A summons or citation may be issued and the permit will be revoked and the mobile food vendor may become ineligible for new or reissued permit for three months.
 - (3) **Third violation.** A summons or citation may be issued and the permit will be revoked and the mobile food vendor will become ineligible for new or reissued permit for one year.
- (b) If an applicant's permit has been denied and the appeal is denied, the applicant may not reapply for three months.